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1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
 2 Case No. 2005CV4794, Division 9

3 REPORTER'S TRANSCRIPT: Trial - Day 11
 4 August 15, 2011

5 ANTHONY LOBATO, et al.,
 6 Plaintiffs,
 7 and
 8 ARMANDINA ORTEGA, et al.,
 9 Plaintiff-Intervenors,
 10 v.
 11 THE STATE OF COLORADO, et al.,
 12 Defendants.

13 The trial in the above-entitled matter,
 14 having commenced on Monday, August 1, 2011, was
 15 reconvened on Monday, August 15, 2011, at 1437 Bannock
 16 Street, Courtroom 424, Denver, Colorado 80202, before
 17 the Honorable Sheila A. Rappaport, Judge of the
 18 District Court.

19 This transcript is a complete transcription
 20 of the proceedings that were had in the above-entitled
 21 matter on the aforesaid date.

22 Reported by: Carol M. Bazzanella, RPR, CRR

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1 A P P E A R A N C E S
 2 For the Plaintiffs: KENZO KAWANABE, ESQ.
 REBECCA J. DUNAWAY, ESQ.
 3 Davis Graham & Stubbs LLP
 1550 17th Street, Suite 500
 4 Denver, Colorado 80202
 KATHLEEN J. GEBHARDT, ESQ.
 5 JENNIFER W. BEZOZA, ESQ.
 Kathleen J. Gebhardt LLC
 6 1900 Stony Hill Road
 Boulder, Colorado 80305
 7 ALEXANDER HALPERN, ESQ.
 Alexander Halpern LLC
 8 1426 Pearl Street, Suite 420
 Boulder, Colorado 80302

9 For the Plaintiff- DAVID G. HINOJOSA, ESQ.
 10 Intervenor: MARISA BONO, ESQ.
 Mexican American Legal Defense
 11 and Education Fund (MALDEF)
 110 Broadway, Suite 300
 12 San Antonio, Texas 78205

13 For the Defendants: NICHOLAS P. HEINKE, ESQ.
 JONATHAN P. FERRO, ESQ.
 14 CAREY T. MARKEL, ESQ.
 ERICA WESTON, ESQ.
 15 State of Colorado
 Office of the Attorney General
 16 1525 Sherman Street, 7th Floor
 17 Denver, Colorado 80203

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1 MORNING SESSION, MONDAY, AUGUST 15, 2011

2 WHEREUPON, the court reconvened at

3 8:32 a.m., and the following proceedings were had:

4 * * * * *

5 THE COURT: Calling up Case 05CV4794. The

6 parties are present. Are we ready to proceed?

7 MS. DUNAWAY: We are, Your Honor.

8 MR. HEINKE: We are, Your Honor.

9 THE COURT: Thank you. Okay. Next

10 witness for the plaintiff?

11 MS. DUNAWAY: Plaintiffs call Dr. Sue

12 Chandler.

13 THE COURT: Thank you. If you'd come

14 forward up here to the witness stand. Right up over

15 here. If you'd raise your right hand.

16 SUSAN MARIE CHANDLER,

17 having been first duly sworn to state the whole truth,

18 testified as follows:

19 THE COURT: Thank you. Please be seated.

20 And that microphone can be moved around so it's

21 comfortable. And then if you could state your full

22 name, and please spell your last name for the record.

23 THE WITNESS: Susan Marie Chandler.

24 C-h-a-n-d-l-e-r.

25 THE COURT: Thank you.

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1 MS. DUNAWAY: Rebecca Dunaway for the
 2 plaintiffs, Your Honor.
 3 THE COURT: Thank you.
 4 DIRECT EXAMINATION
 5 BY MS. DUNAWAY:
 6 **Q. So to start, Dr. Chandler, would you**
 7 **please state your current employment.**
 8 A. I am the superintendent, Adams 14 School
 9 District.
 10 **Q. And how long have you held that position?**
 11 A. This is my fourth year.
 12 **Q. What is your educational background?**
 13 A. I have a B.S. in education, an M.A. in
 14 education, and a Ph.D. in education leadership.
 15 **Q. And will you please describe what you did**
 16 **before you became superintendent of Adams County 14.**
 17 A. I was a teacher for 16 years, three of
 18 them being in Adams 14 at Kearney Middle School, a
 19 special education teacher. I was down at the
 20 University of Colorado at Denver on grants, working on
 21 grants, while I was getting my Ph.D. I worked at the
 22 Colorado Department of Education for two years, then
 23 moved back to the university again.
 24 And then I accepted a position with
 25 Adams 14 in 2003 as their director of organizational

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1 development. Two years later I became their chief
 2 academic officer, and then their superintendent.
 3 **Q. And will you please describe for the Court**
 4 **your responsibilities as superintendent.**
 5 A. I oversee the daily operations of the
 6 district and report to the board of education.
 7 **Q. Dr. Chandler, will you please describe the**
 8 **demographics of Adams 14's students.**
 9 A. We have about 7,500 students. About
 10 85 percent of our students are Hispanic and about
 11 13 percent are white. 85 percent of our students are
 12 on free and reduced lunch. About 79 percent of those
 13 students are on free lunch. We have about 10 percent
 14 of our population homeless and about 33 percent
 15 mobility.
 16 **Q. And where is Adams 14 School District**
 17 **located?**
 18 A. It's just north of Denver.
 19 **Q. Will you describe that community a little**
 20 **bit?**
 21 A. Our adult population over 25, about
 22 17 percent have less than a ninth grade education, and
 23 about 40 percent do not have a high school diploma.
 24 Our voting population is mostly white and elderly. And
 25 our school population is 55 percent English language

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1 learners and Hispanic.
 2 **Q. So what challenges does that population**
 3 **present for your students?**
 4 A. Bringing the community together. Speaking
 5 with some of our older population, they feel very
 6 distanced from our younger population and don't feel
 7 that they can communicate very well together. So those
 8 are some of our community issues.
 9 **Q. So I'd like to direct your attention to**
 10 **Exhibit 10133. Do you recognize this document?**
 11 A. Yes. That's great.
 12 **Q. I can move this a little bit. And will**
 13 **you describe what this document is to the Court,**
 14 **please.**
 15 A. So these are performance indicators. So
 16 on the side you have academic achievement, academic
 17 growth, academic growth gaps, and postsecondary and
 18 workforce readiness. And then you are rated on how you
 19 do in those four areas. So we are rated 18 out
 20 of -- 3.8 out of 15 points, at 25 percent, on academic
 21 growth -- or academic achievement. And academic
 22 growth, we're approaching. That's our rating. We
 23 earned 47.2 percent of those points. In academic
 24 growth gaps, we're approaching at 41.7. And then
 25 postsecondary and workforce readiness we do not meet,

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1 at 25 percent.
 2 **Q. So what do those ratings mean to you,**
 3 **Dr. Chandler?**
 4 A. That means that we are not meeting state
 5 standards. We're not meeting the state targets.
 6 **Q. And what does this document say about your**
 7 **accreditation status?**
 8 A. We -- up in the corner, we are accredited
 9 with a turnaround plan.
 10 **Q. And what does that mean?**
 11 A. This accreditation started last year, in
 12 2010-'11, and that means we need to write a plan
 13 addressing our issues. Our academic issues.
 14 **Q. And are there any consequences if you**
 15 **don't meet the expectations of that plan?**
 16 A. Right now if you don't meet or start
 17 making progress within five years, then the
 18 commissioner and a team that meets with the
 19 commissioner to review your district will meet with the
 20 state board of education. They can revoke your
 21 accreditation, and then you would have to implement
 22 measures that they thought would help your school
 23 district succeed, and then you would be back on
 24 accreditation. As far as I know at this point.
 25 **Q. Why is Adams 14 in this accreditation**

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1 category?

2 A. Because we are not meeting the standards.

3 **Q. So I'd like to direct your attention to**

4 **the second page of this document. Let's see. Okay.**

5 **Just generally, will you please describe what this page**

6 **of the document is showing us.**

7 A. So this is three years. This is our

8 elementary. So on the side you have academic

9 achievement, reading, mathematics, writing, science.

10 And then the -- if you go over more to the right side

11 is the percentage that are proficient/advanced. And

12 then it tells you if you're meeting the rating. And we

13 are not meeting the rating in reading, mathematics,

14 writing, and science.

15 **Q. And will you read for us, please, the**

16 **percent proficient/advanced in each of those academic**

17 **achievement areas.**

18 A. Yes. So in reading we're at 47 percent,

19 in mathematics 47.9 percent, writing 32.3 percent,

20 science 19.5 percent proficient/advanced.

21 **Q. So I'd like to direct your attention to**

22 **the same information for your middle school population.**

23 A. In reading we are at 46.8 percent

24 proficient/advanced, mathematics 33.2 percent

25 proficient/advanced, writing 34.4 percent

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1 proficient/advanced, and science 23.7

2 proficient/advanced.

3 **Q. And for high school?**

4 A. In reading we are at 37.6 percent

5 proficient/advanced, mathematics 10 percent

6 proficient/advanced, writing 17.9 percent

7 proficient/advanced and science 15.7

8 proficient/advanced.

9 **Q. And what do those proficiency numbers mean**

10 **to you?**

11 A. The amount of students that are reaching

12 the standards and are proficient in the standards. Or

13 advanced.

14 **Q. And what is the purpose of the state**

15 **standards that you've mentioned that this amount of**

16 **students are -- only this amount of students are**

17 **reaching?**

18 A. It means that the majority of our

19 population are not meeting these standards.

20 **Q. What do those standards measure?**

21 A. Academic performance. So if you're

22 proficient third through tenth grade. If you're

23 proficient at the end of that grade in the standards.

24 **Q. Do all of your students need to meet those**

25 **proficiency measures?**

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1 A. Yes.

2 **Q. And how does the state measure those**

3 **proficiency standards?**

4 A. Through the CSAP and the CSAP-A.

5 **Q. As a district, what do you do to prepare**

6 **your students to meet those standards?**

7 A. We hire and recruit the best teachers that

8 we can find. We have a curriculum that we

9 professionalize our teachers within, instruction and

10 assessment. So we really focus on the curriculum, the

11 instruction and assessment, and professional

12 development with our teachers, which we don't have

13 enough time.

14 **Q. And does creating the curriculum you**

15 **mentioned, does that require resources?**

16 A. Yes. So we have limited resources at

17 central ad. So you also bring teachers in as well,

18 which is also paying your teachers to do that, to sit

19 down and work with the curriculum. So it requires a

20 fair amount of resource.

21 **Q. Does the state provide funding for that**

22 **specific purpose?**

23 A. No.

24 **Q. Will you please describe the size of Adams**

25 **14's budget.**

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1 A. Our budget is about 60 million.

2 **Q. And what percentage of that budget comes**

3 **from the state?**

4 A. The state provides about 56 percent of

5 that budget.

6 **Q. What percentage comes from the federal**

7 **government?**

8 A. About 8 percent.

9 **Q. And what percentage comes from local**

10 **property taxes?**

11 A. About 36 percent.

12 **Q. Because Adams 14 is accredited with a**

13 **turnaround plan, does it receive any additional state**

14 **funds?**

15 A. At the district level, no.

16 **Q. At what level does it receive funds?**

17 A. We have one elementary school that is in

18 the bottom 5 percent of title schools, and they receive

19 support from the state.

20 **Q. Since you started with the district, have**

21 **you seen budget cuts?**

22 A. Yes.

23 **Q. And where have those budget cuts been, and**

24 **can you describe them, please.**

25 A. Yes. So we look across the district when

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1 we're in budget cuts. So we have increased class size,
 2 we have decreased central administration.
 3 Transportation, students have to walk further.
 4 Grounds, you do less, less watering, less cutting,
 5 cutting of the grass. So across the board we look for
 6 a percentage in each department and area that we will
 7 cut back on. We try to stay away from the classroom as
 8 much as possible.

9 **Q. So in your opinion, Dr. Chandler, have**
 10 **these cuts had an impact on student achievement?**

11 A. Yes. We have also cut back on our
 12 induction for teachers, so it cuts into professional
 13 development for teachers. They are the most important
 14 person in the classroom, so you want -- they need to
 15 have as many skill sets and knowledge as possible.
 16 Most of our teachers are one through six years, so
 17 they're dealing with a population that has many, many
 18 needs that they need to meet, which can be quite
 19 daunting.

20 **Q. Other than needs for more professional**
 21 **development, can you describe any other impacts on**
 22 **student achievement that you've noticed due to budget**
 23 **cuts?**

24 A. I would say more or less meeting the needs
 25 of our students. They need -- they need more time in

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1 the learning. So we provide as much summer school as
 2 possible. But typically our kids will have about a
 3 two-month decrease in their learning because of the
 4 summer. So it's catching them up. Most of our
 5 students that come to school at a 3-year-old level are
 6 not on a 3-year-old level. So getting them to a
 7 3-year-old level, 4-year-old level, a 5-year-old level
 8 is extremely important for us.

9 Nationally, 32 percent of the students
 10 that are not reading by third grade, as you can tell by
 11 our scores, if they're not reading by third grade, are
 12 potential dropouts.

13 **Q. Going back to the budget. Can you please**
 14 **describe your efforts at obtaining local revenue.**

15 A. We passed a mill levy in 1996, and that's
 16 when the district let go of their art, music, and
 17 phys. ed programs. So a mill levy was passed to bring
 18 that back, along with technology, literacy, and dropout
 19 programs.

20 **Q. Have you ever considered a mill levy**
 21 **override?**

22 A. We have. So we have worked with a company
 23 to survey our community, and when they surveyed it,
 24 they found that it was not a possibility at this time.
 25 The surveys were not positive for that.

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1 **Q. And what about efforts at -- at offering**
 2 **bonds?**

3 A. We did pass a bond in 2006 for the
 4 building of a new high school. So that is open. To
 5 provide full-day kindergarten classrooms, science
 6 classrooms in our middle schools, and air conditioning
 7 in our schools.

8 **Q. Have you considered offering additional**
 9 **bonds?**

10 A. We have. But, again, with the mill levy,
 11 that's something that is not where the community wants
 12 to place their money at this point.

13 **Q. And in your opinion, why is the community**
 14 **not favorable to a mill levy override or these bonds?**

15 A. I think because of economic times. Our
 16 population -- actually, our student population is at
 17 the highest it's ever been, and that's typically
 18 because there's many rentals, affordable rentals, in
 19 Commerce City. So when we are in economic difficult
 20 times, our population tends to grow.

21 We also have many seniors that are on
 22 fixed incomes. So medication and the rest of what they
 23 have to provide for themselves is fixed on a monthly
 24 basis, which also has a great impact on that.

25 **Q. What does Adams 14 School District use**

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1 **local funds for?**

2 A. To educate our students.

3 **Q. Does Adams 14 receive any grants?**

4 A. Yes. We did decide two years ago to hire
 5 a grant writer because there were so many competitive
 6 grants that need to be written for. So two years ago,
 7 we benchmarked to bring in about 500,000 in competitive
 8 grants, and we brought in a million 500,000. Last year
 9 we benchmarked at a million five and brought in a
 10 million 800,000. So a lot of those grants right now,
 11 because of the national agenda on health and fitness, a
 12 large portion is due to the nutrition grants.

13 We did have experts come out when we were
 14 writing for these grants, and they reviewed our
 15 district and said that our elementary students were
 16 basically always hungry. So we provide breakfast in
 17 the morning, breakfast in the classroom, and free
 18 lunch. And they said by the time our kids get to high
 19 school, because of the diet of carbohydrates and a lot
 20 of sugar, then we deal with obesity issues.

21 **Q. And what is the impact on the district of**
 22 **relying on grants?**

23 A. Well, grants go away. So you can provide
 24 the professional development. Typically you want
 25 grants to be sustainable. But hopefully through the

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1 professional development, some of the things -- the
 2 knowledge and skill sets that are developed will carry
 3 on.
 4 **Q. Has district -- or Adams 14 received any**
 5 **BEST grants?**
 6 A. Yes, we did. We received BEST grants for
 7 three new roofs with an 11 percent match from the
 8 district.
 9 **Q. And did that BEST grant cover all of your**
 10 **capital needs for the district?**
 11 A. No. All of our schools were built, except
 12 for the high school, in the 1950s, so basically,
 13 according to the Colorado Department of Education, what
 14 a classroom should look like now is not. So our
 15 classrooms are very small and they are very old. So it
 16 would take about 350 million if we were to reconstruct
 17 our buildings. So we do have a long-term plan.
 18 Obviously right now we don't have the financial ability
 19 to do that. But our schools are in great need.
 20 **Q. In your opinion, Dr. Chandler, is Adams 14**
 21 **School District a good steward of state moneys?**
 22 A. Yes.
 23 **Q. Do you offer preschool programs in**
 24 **Adams 14?**
 25 A. Yes. But we cannot service all of our

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1 students because we do not have enough room. So we
 2 have between 150 and 200 students on a waiting list.
 3 Preschool's extremely important to us. We did provide
 4 for full-day kindergarten. The state picks up part of
 5 that, and we think it's so important, we provide the
 6 rest for a full-day kindergarten for all of our
 7 students.
 8 But in preschool, we cannot provide for
 9 all of our preschoolers, which puts us behind, and it
 10 puts our students behind in education. So we don't
 11 have enough room to provide. And it would also
 12 be -- we'd have to find that money in the general fund
 13 as well. Right now our preschoolers come to school
 14 four days a week for a half day. So it doesn't have as
 15 much of an impact as we would like it to have if it was
 16 full day five days a week.
 17 **Q. And can you describe the importance of**
 18 **preschool on your particular community and population?**
 19 A. Yes. So students have to be reading by
 20 the second, third grade. Our students coming in do not
 21 have the background knowledge and the vocabulary. So
 22 we work intently on helping our students to speak and
 23 to read. So the lack of resources in the home has a
 24 direct impact on the child's knowledge and skill set
 25 when they come to school.

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1 So it's extremely important even to work
 2 with zero to 3, but we don't have the money to work
 3 from zero to 3. We have a couple of grants for
 4 programs to work with parents in the home. But it's
 5 imperative that we reach all of our students early.
 6 What national research would show is that 50 percent of
 7 your mature intelligence is developed from zero to 4.
 8 It's an important growth time.
 9 **Q. Will you please describe your special**
 10 **education program.**
 11 A. So we are full inclusion in our special ed
 12 program. We have about a little over 800 students.
 13 We're about 11 percent special ed in our district.
 14 That's one of the highest percentages. Our budget is
 15 about 1.8 from the federal government, 1.8 from the
 16 state. We take out about 5 million out of our general
 17 fund to support special education.
 18 Basically, you can look at 25 students
 19 have five teachers, 25 to 50 high-needs students have
 20 about five teachers, and we provide paraprofessionals
 21 as much as possible for a one on one. And right there,
 22 even with that smaller population, is about a million.
 23 Transportation is about 400,000 per year. So it's a
 24 very high-cost program to meet the needs of our
 25 students.

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1 **Q. Okay. So I'd like to direct your**
 2 **attention to Exhibit 10134. Can you please describe in**
 3 **a general way what this document is, Dr. Chandler.**
 4 A. All right. This is our proficiency on
 5 CSAP, CSAP-A. So there's federal and state
 6 expectations and then there's the '09-'10 district
 7 results. So for the elementary in reading, the federal
 8 and state expectation is 71.5 percent, and we're at
 9 44.4 percent. Middle school's at -- what it's -- the
 10 federal and state expectation is 70.5 percent, we're at
 11 48.2 percent. High school, the expectation is
 12 71.5 percent, and the high school's at 36.1 percent.
 13 **Q. So I'd like to direct your attention to**
 14 **the special education numbers down at the bottom there.**
 15 A. Okay.
 16 **Q. Here. Here.**
 17 A. Okay. So the federal and state
 18 expectation is to be at 59 percent, and our '09-'10
 19 results were at 36 percent in reading. In math, the
 20 expectation state and federal is 59.5 percent, and the
 21 '09-'10 district results are 36.8 percent.
 22 **Q. And what does that say to you about your**
 23 **special education programs?**
 24 A. A majority of our students are not
 25 reaching standard.

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1 **Q. Would more resources help you to get your**
 2 **special education students to proficiency?**
 3 A. Yes. Typically a small group for special
 4 ed would be about three to five students. So what we
 5 have is many of our students are in the general ed
 6 classroom receiving services there as well. Again, it
 7 becomes a professional development issue on our
 8 teachers being able to differentiate and serve all
 9 students in their classroom.
 10 We pull our special ed teachers ten days
 11 to work on state requirements and IEPs, much less how
 12 to differentiate and how to instruct and assess.
 13 **Q. So do you currently differentiate**
 14 **instruction for your students?**
 15 A. Yes. To the best of a teacher's ability.
 16 **Q. And what would you use more resources to**
 17 **do for your special education population?**
 18 A. Smaller groups, more one-on-one services.
 19 A teacher has a direct correlation to how much a
 20 student learns. So it's also imperative to have highly
 21 effective teachers. Our turnover rate has been a
 22 little bit higher within special ed. It's a very -- it
 23 can -- it takes a lot of energy and a lot of effort and
 24 a lot of passion to be a special ed teacher. So it's
 25 very important to be able to support teachers with

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1 everything that they have to do.
 2 So it's key you -- that they really have
 3 the skills to be able to do that. So smaller groups,
 4 more professional development, longer days, longer
 5 school year so that we don't have those gaps in
 6 learning when they're not in school.
 7 **Q. Do you believe you need more special**
 8 **education teachers?**
 9 A. More special education teachers, more
 10 paras, more one-on-one support for our students.
 11 **Q. Will you please describe your English**
 12 **language programs for me, please.**
 13 A. We had a CADI review in 2007-2008 because
 14 we were not meeting our AYP targets in reading and
 15 math. And when we reviewed our data and they reviewed
 16 our data, about 25 percent of our students would reach
 17 English proficiency over six years. So that's
 18 25 percent, one in four of our students. So we knew we
 19 had an issue with our programs.
 20 Overall, a student could learn in Spanish
 21 or English, depending on, again, the ability of the
 22 teacher. So there was no assessment in place for how
 23 students were learning -- a program in place for how
 24 they were learning and then assessed for if they were
 25 learning English or not.

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1 So we brought in two national experts and
 2 created a group, a review group, for a year to review
 3 all the literature and review our programs and what was
 4 best for our students. And we came to the program of
 5 ESOL, English for Speakers of Other Languages. We
 6 reviewed other programs like dual language and
 7 bilingual, but we did not have the resources or the
 8 money to provide those type of programs. They were too
 9 expensive for us.
 10 **Q. And besides a different program that you**
 11 **just mentioned that you might have implemented, what**
 12 **other programs would you implement with additional**
 13 **resources?**
 14 A. In general overall?
 15 **Q. Yes.**
 16 A. Obviously more preschool, a longer school
 17 day, whether that is for summer school. But our kids
 18 have to be in content longer. It would be great just
 19 to extend the year so that all students receive those
 20 services. When you have summer school, some students
 21 receive services and some do not.
 22 Overall community programs. Parent
 23 education is extremely important. Attendance is
 24 something that we focus on in depth; you saw that in
 25 the newspaper on Sunday. We -- so it's a balance of

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1 our -- all of our teachers walked through the community
 2 to talk about how important attendance is, but you --
 3 then you're not in professional development with our
 4 content, lesson plans, working on that content.
 5 But attendance is extremely important for
 6 us, especially in poverty. A chronic non-attender can
 7 lose up to 75 percent of literacy for that year. So
 8 it's imperative that our kids are in school on time
 9 every day.
 10 **Q. And each of those programs that you just**
 11 **mentioned, in your opinion, would they help your**
 12 **students, your ELL students, as well as special ed**
 13 **students, would they help them meet state standards?**
 14 A. Yes.
 15 **Q. And do you generally agree with state**
 16 **achievement standards?**
 17 A. There have to be assessments in place to
 18 know that students are learning.
 19 **Q. And do you believe there are assessments**
 20 **in place to measure student achievement?**
 21 A. Yes.
 22 **Q. And what are those assessments?**
 23 A. The CSAP and the CSAP-A, as well as all
 24 the other measurements we have in place as a district.
 25 **Q. And does Adams 14 use its local funds to**

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1 **meet these state standards?**
 2 A. Yes.
 3 **Q. Does Adams 14 have a gifted and talented**
 4 **program?**
 5 A. It does. We had to cut back on that. We
 6 did target teachers in each school to be in charge of
 7 those programs, to make sure that all of the plans were
 8 in place and that students were receiving services. We
 9 did have to cut back on that, so we have a person at
 10 central ad that oversees the program. But, again, it
 11 is full inclusion.
 12 And we do programs like Great Books. But
 13 definitely those students could receive more services,
 14 but we can't provide all those services. So we provide
 15 it through differentiated instruction in the classroom
 16 and some small groups.
 17 **Q. So I'd like to direct your attention again**
 18 **back to Exhibit 10134. And now I'd like to direct your**
 19 **attention to the Adams 14's postsecondary and workforce**
 20 **readiness, which is on the next page. All right. So**
 21 **I'm going to highlight graduation rate first. If you'd**
 22 **please read that for the Court.**
 23 A. 80 percent or above.
 24 **Q. And what is that 80 percent? Is that what**
 25 **Adams 14 is or -- I'm going to move this a little bit.**

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1 A. That's where the state -- so that would be
 2 overall for students on IEPs. So in '08-'09, the
 3 district was at 51.9 percent, IEPs were at
 4 47.5 percent. Students on IEPs.
 5 **Q. And will you repeat again what the**
 6 **80 percent is?**
 7 A. That would be the '09-'10 federal and
 8 state expectation, that 80 percent or above overall and
 9 for students on IEPs.
 10 **Q. And what is the dropout rate for Adams**
 11 **14's students?**
 12 A. Overall 8 percent, on IEPs it's
 13 4.5 percent.
 14 **Q. And what is the state and federal**
 15 **expectation for dropout rate?**
 16 A. 3.6 percent overall and 2.4 percent for
 17 students on IEPs.
 18 **Q. And will you please read the ACT scores**
 19 **average, ACT scores for Adams 14 compared to the**
 20 **federal and state expectations.**
 21 A. '09-'10 district results for ACT are at
 22 15.5, and the federal and state expectation is a 20.
 23 **Q. So based on these numbers, in your**
 24 **opinion, are Adams 14 students postsecondary and**
 25 **workforce ready?**

2859

1 A. No.
 2 **Q. How many students from Adams 14 went on to**
 3 **higher education?**
 4 A. Our latest numbers are 65 students. So
 5 CDE tracks students going to postsecondary at two- and
 6 four-year institutions that are public.
 7 **Q. And what year was that for?**
 8 A. That would be our '09-'10, I believe.
 9 **Q. And what percentage of those students, if**
 10 **you know, needed remediation?**
 11 A. It was at 68 percent, and that's been
 12 lowered to around 30, 35 percent.
 13 **Q. And do you have an idea of what the**
 14 **expectation for percentage of remediation is from the**
 15 **state?**
 16 A. I think that might be in the 20 percent
 17 range. I'm not positive on that, though.
 18 **Q. Do you have programs in effect at Adams 14**
 19 **to address attendance issues?**
 20 A. Yes. We have attendance liaisons at all
 21 of our buildings. If a child in elementary misses
 22 school, we contact a parent, and it's direct contact.
 23 Middle schools, we have direct contact. The list is
 24 longer at the high school, so we have a team in place
 25 called a Care Team that develops the plans, attendance

2860

1 plans, for students. Of course you have to prioritize
 2 those, because there are quite a few. So we don't
 3 reach all students as much as we should, because we
 4 don't have the resources to be able to do that. So it
 5 is a -- you have to prioritize.
 6 **Q. What would you do with more resources?**
 7 A. Keep kids in school.
 8 **Q. How would you do that?**
 9 A. Through education and through contacts
 10 with families. So we educate our families when their
 11 kids are younger. We do have an attendance issue at
 12 preschool and kindergarten, so it's making sure that
 13 our parents really know it's imperative that their
 14 students come to school.
 15 What I hear from our parents is when their
 16 students get older, it's harder for them to get them to
 17 school. So we really emphasize the importance of it's
 18 a habit and it's extremely important that your child's
 19 at school. So part -- a great part of that is
 20 education, and educating your community also, that if
 21 you see a student or a child not in school, ask and
 22 then call.
 23 **Q. And what is the impact of truancy on your**
 24 **community?**
 25 A. Well, for a student that drops out,

2861

1 there's different research on it, but it's probably
 2 about 250,000. Just economically it hurts your
 3 community when students do not graduate because they
 4 don't bring income back into the community. Also, what
 5 are students doing when they're not in school would be
 6 another issue for a community, and for us to talk about
 7 what -- what happens there, what happens to families,
 8 what happens to the community.

9 **Q. I'd like to discuss teacher turnover at**
 10 **Adams 14. Will you please describe that for the Court.**

11 A. Our retention rate is about 89 percent.
 12 Most of our teachers are one through six years. We are
 13 working on our retention of our teachers. We did have
 14 to reduce induction because of reduction in our
 15 revenues. But professional development, again, is key
 16 for us in retaining our teachers.

17 Teachers that have the skills -- again,
 18 the skills and abilities to be able to teach and
 19 develop their efficacy and see success are more likely
 20 to stay. So we work diligently with our teachers. Our
 21 strategy is that 80 percent of our students will be at
 22 grade level, because they'll have a standards-based
 23 dynamic teacher that provides 21st century experiences
 24 for our students.
 25 We put all of our money into teachers,

2862

1 because we believe a teacher makes the greatest impact
 2 on a student. A highly effective teacher can create
 3 nine months more growth in a student than an
 4 ineffective teacher. So it's really supporting them.

5 **Q. So in your opinion, is teacher retention a**
 6 **problem particular to your district and community?**

7 A. I would say with the needs of our free and
 8 reduced and our English language learners, there's a
 9 lot of skill sets you have to have. We are in the
 10 middle of a lot of other bigger districts. Our pay for
 11 beginning teachers is on the lower side. So yes,
 12 we -- we need to make it desirable to be in Adams 14.

13 **Q. Can you describe some of the efforts that**
 14 **you would make to improve teacher retention if you had**
 15 **more resources?**

16 A. Yes. Well, bottom line, pay. You would
 17 increase pay. And you would, again, increase
 18 professional development to make sure that they're
 19 successful. You'd decrease class size. To really
 20 decrease class size, you'd want to get it down to about
 21 15 students to really make a difference in the class
 22 size.

23 **Q. So what is your understanding of a**
 24 **thorough and uniform education, Dr. Chandler?**

25 A. Students graduate ready for postsecondary

2863

1 work.

2 **Q. And is Adams 14 currently able to provide**
 3 **a thorough and uniform education to all of its**
 4 **students?**

5 A. For some of our students, but not for all
 6 of our students, as we can see by our data.
 7 (Discussion off the record between
 8 Ms. Dunaway and Ms. Bezoza.)

9 **Q. (BY MS. DUNAWAY) Dr. Chandler, I asked**
 10 **you about the state expectation for remediation, and I**
 11 **believe you answered about the state average for**
 12 **remediation.**

13 A. Uh-huh.

14 **Q. Do you have an understanding of what the**
 15 **state expectation is for students needing remediation?**

16 A. As compared to what ours is when they
 17 leave?

18 **Q. Yes.**

19 A. No, I don't know what the exact
 20 expectation is percentage-wise.

21 **Q. Okay. And how do you think your community**
 22 **is unique from the others in the Denver metro area?**

23 A. Overall poverty, about 79 percent of our
 24 students are on free lunch. So poverty is -- it's
 25 across the district. It's not just in some areas and

2864

1 at some schools, it's across all of Commerce City
 2 schools. Language issues. We have 18 languages in our
 3 district, but our primary language is Spanish. About
 4 55 percent of our students are English language
 5 learners.

6 So also, when we look at our population,
 7 we also look at how it's increasing. So we look at
 8 factors. And the three factors we look at are free and
 9 reduced, are you on free lunch, reduced lunch or not,
 10 you don't need that. So we put values to that. So
 11 free lunch would be two, a reduced would be one.

12 We also look at English language learners.
 13 Not English-proficient students would be a three,
 14 limited English proficiency would be a two, fluid
 15 English proficiency is one, and then if you're an
 16 English-first speaker, there's not a risk factor there.
 17 And then we also look at special ed. If you have an
 18 Individual Education Program, you receive a value of
 19 one.

20 So when we look at all these risk factors,
 21 you could have six risk factors, right? So when we
 22 looked at our students from 2005 to 2011, 30 percent of
 23 those students had no risk factor in 2005. No risk
 24 factor, 30 percent. In 2011, only 8 percent of our
 25 students had no risk factor.

2865

1 So then when we look at the students that
 2 are achieving on the CSAP test, so we're looking at
 3 third grade through 11th grade, we look at the factors
 4 in 2005, our students that are proficient or advanced
 5 on the CSAP had a risk factor of 1.4. In 2011, our
 6 students that are proficient or advanced on the CSAP
 7 had a risk factor of 2.4. That's one full risk factor
 8 that has increased from our population in 2005 to 2011.
 9 With less revenue.

10 **Q. So what challenges in educating your**
 11 **students do those risk factors present?**

12 A. Well, it presents students that need a lot
 13 more resource. So these students don't have resources.
 14 Families don't have resources. And then you also have
 15 teachers that are coming into a culture that they need
 16 to become adept and learn how to be a really highly
 17 effective teacher with students and families that are
 18 coming with a lot of needs.

19 So just providing breakfast in the
 20 classroom and providing a free lunch, just making sure
 21 that your kids are healthy enough to learn and are
 22 ready to learn, and knowing that attendance is
 23 extremely important. So there's so many factors that
 24 you really have to mitigate to make sure that you
 25 change that trajectory of the students so that they're

2866

1 a successful learner. So there's many components that
 2 are a part of that, and when you have a decrease of
 3 revenue, you put these students at more risk than what
 4 they already are.

5 **Q. And you mentioned that only 65 students**
 6 **graduate --**

7 A. Graduated --

8 **Q. -- or graduate and go on to postsecondary**
 9 **education. How many students are there in a senior --**
 10 **high school senior class, average?**

11 A. Average would be about 325 students.

12 **Q. And what happens to those students who**
 13 **don't go on to postsecondary education?**

14 A. The students that don't go on to
 15 postsecondary education typically find jobs within
 16 Commerce City.

17 **Q. And does the state require all kids to be**
 18 **post workforce ready?**

19 A. Yes.

20 **Q. Postsecondary workforce ready?**

21 A. Yes. So I'm saying students find jobs. I
 22 can't tell you what those jobs are or how many students
 23 actually get jobs out of all of those students. So I
 24 just wanted to clarify that.

25 **Q. And you said there was 300-something**

2867

1 **seniors?**

2 A. In the graduating class. Around 300. It
 3 varies year to year.

4 **Q. And that's district-wide?**

5 A. Yes.

6 MS. DUNAWAY: I have no more questions,
 7 Your Honor. Thank you, Dr. Chandler.

8 THE WITNESS: Thank you.

9 MS. BONO: Your Honor, is there any
 10 possibility we could take a quick break? Is it too
 11 early?

12 THE COURT: Sure. No, that's fine. We
 13 can -- is ten minutes enough? 9:30?

14 MS. BONO: Absolutely.

15 THE COURT: Okay. We'll just take a break
 16 till 9:30 then. Thank you.

17 (Recess taken, 9:19 a.m. to 9:31 a.m.)

18 THE COURT: All right. Thank you. Are we
 19 ready?

20 MS. BONO: Thank you, Your Honor.

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MS. BONO:

24 **Q. Good morning, Dr. Chandler.**

25 A. Good morning

2868

1 **Q. To your knowledge, has the percentage of**
 2 **English language learner, or ELL, students increased in**
 3 **your district over the last five years?**

4 A. Yes, it has.

5 **Q. And how would you describe that growth?**

6 A. It's consistent growth. We were at one
 7 point about 30 percent, and now we're at 85 percent.

8 **Q. And what about the population of students**
 9 **who qualify for free and reduced lunch or low-income**
 10 **students, have you seen a similar increase in that**
 11 **student population?**

12 A. Yes, we have. Especially in free lunch.
 13 With the high percentage of free lunch at about
 14 79 percent out of the 85 percent is free.

15 **Q. So you have approximately 80 percent**
 16 **students who qualify for free and reduced lunch**
 17 **currently, and I think the population of ELL students**
 18 **you mentioned earlier was at 65 percent?**

19 A. 55 percent.

20 **Q. 55 percent. And so what types of**
 21 **challenges have those -- has that growth in student**
 22 **population, both low income and ELL, created for your**
 23 **district?**

24 A. Well, it creates great challenges. So
 25 let's just -- let's take a classroom and a teacher in a

2869	<p>1 classroom. Today is the first day of school for our</p> <p>2 students, which is pretty exciting. But when -- let's</p> <p>3 take a second grade teacher who -- or let's take a</p> <p>4 third grade teacher who walks into a classroom, a new</p> <p>5 teacher, or maybe a teacher who has three years of</p> <p>6 experience. You're looking at about half of your</p> <p>7 students are learning English. So, of course, in your</p> <p>8 mind, you're thinking how prepared am I to teach</p> <p>9 English as a second language.</p> <p>10 You're also looking at most of your</p> <p>11 students requiring -- well, all of our students get a</p> <p>12 free breakfast in the classroom. So your first day you</p> <p>13 start out, you know, you're giving breakfast. So all</p> <p>14 of our teachers provide breakfast, and then you clean</p> <p>15 up and move into instruction.</p> <p>16 So looking at all of the needs, you're</p> <p>17 also looking at a great part of your population coming</p> <p>18 back from summer, so you have a two-year (sic) loss.</p> <p>19 So you're looking at students who aren't in the</p> <p>20 curriculum where you're ready to begin. Most of your</p> <p>21 students are not there at that point. So it's also</p> <p>22 knowing how to effectively group your students and</p> <p>23 assess your students.</p> <p>24 So that's key as well, is knowing how to</p> <p>25 assess students where they are in their language,</p>	2871	<p>1 assessment. You read the story, engage the students</p> <p>2 into that story. There's lots of different strategies</p> <p>3 to be able to do that. And, of course, all of these</p> <p>4 are aligned with the curriculum, because you have</p> <p>5 essential outcomes now that students have to have</p> <p>6 within the new curriculum.</p> <p>7 So you're explicitly teaching, you're</p> <p>8 doing a we do and you're doing an I do, and then you're</p> <p>9 working with those small groups around those skill sets</p> <p>10 that they don't have. So those skill sets are going to</p> <p>11 be in reading, also in language proficiency and</p> <p>12 academic language. So vocabulary is key.</p> <p>13 So you're looking probably at having a</p> <p>14 classroom of 32, 33 students in third grade at this</p> <p>15 point.</p> <p>16 Q. What types of supports does a teacher</p> <p>17 who's faced with those types of challenges have in the</p> <p>18 classroom?</p> <p>19 A. Due to the reduction in revenue, we've had</p> <p>20 to let go of any outside resources for a teacher, like</p> <p>21 a coach who could come in and coach you instructionally</p> <p>22 in your reading and in your progress. So we have had</p> <p>23 to eliminate those. So it's based upon the principal,</p> <p>24 and if there is an assistant principal, to give that</p> <p>25 teacher feedback.</p>
2870	<p>1 assessing students where they are in their reading,</p> <p>2 writing, math, and science, and then grouping those</p> <p>3 students.</p> <p>4 So we also -- teachers have to mandatorily</p> <p>5 engage all of their students. That's why being healthy</p> <p>6 is so important. And they also have to be able to</p> <p>7 reach their students that are not speaking English or</p> <p>8 are limited English speakers. So there is a wide</p> <p>9 variety when you walk into a classroom to have the</p> <p>10 skill set to know how to differentiate for all of those</p> <p>11 students and how to group those students and be well</p> <p>12 prepared.</p> <p>13 Q. And you've used the term "differentiation"</p> <p>14 and "differentiate." Can you describe what that</p> <p>15 process might be like for that second grade teacher?</p> <p>16 A. Yes. So in a learning -- or a teaching,</p> <p>17 learning sequence, you would assess all of your</p> <p>18 students first, and then you would break them into</p> <p>19 where their needs areas are. So basically you assess.</p> <p>20 And it's a lot of time out of the classroom figuring</p> <p>21 out here's how I'm going to group my students. So</p> <p>22 that's on your plan time, which is 45 minutes, pretty</p> <p>23 brief, with you to work with other teachers as well.</p> <p>24 You would group those students, let's say,</p> <p>25 into two reading groups overall. You have your</p>	2872	<p>1 So typically in a school you have about 30</p> <p>2 teachers, in an elementary, that you need to support</p> <p>3 professionally, as well as manage your school. We</p> <p>4 require our principals to be in classrooms most of</p> <p>5 their time supporting teachers. Which is crucial.</p> <p>6 Q. And I imagine there are other</p> <p>7 responsibilities that the principals have?</p> <p>8 A. Yes.</p> <p>9 Q. And so if they're in the classroom all day</p> <p>10 with -- providing support for their teachers, when are</p> <p>11 they able to complete the other responsibilities</p> <p>12 associated with their positions?</p> <p>13 A. After school.</p> <p>14 Q. And I imagine -- is it safe to assume that</p> <p>15 there are similar challenges with differentiation</p> <p>16 across grade levels?</p> <p>17 A. Yes. So -- yes. From kindergarten</p> <p>18 through 12th grade.</p> <p>19 Q. And going back to that second grade</p> <p>20 teacher on the first day.</p> <p>21 A. Yes.</p> <p>22 Q. That's the day she goes in. You said</p> <p>23 there's an average class size for him or her of, you</p> <p>24 said, 30 to 33 students?</p> <p>25 A. Yes.</p>

2873

1 **Q. Primarily with needs that are associated**
 2 **with being low income?**
 3 A. Yes.
 4 **Q. ELL?**
 5 A. Yes.
 6 **Q. Perhaps they don't speak English?**
 7 A. Yes.
 8 **Q. You also mentioned a high percentage of**
 9 **homelessness and mobility in your district?**
 10 A. Yes.
 11 **Q. What types of challenges do homeless**
 12 **students present in the classroom?**
 13 A. Homeless students, as many of our students
 14 bring, do, are very mobile. So that's why we had
 15 to -- we looked at our curriculum across the board, so
 16 all second grade teaches the same curriculum typically
 17 in the same content, so that if a child moves, they
 18 won't -- they'll be in the same learning.
 19 What that creates, though, is for a
 20 student, we know those students have the most difficult
 21 time because of mobility, because then they have a new
 22 teacher, they have to meet new kids, there's anxiety
 23 just getting to know your environment. So the more a
 24 student moves, the less likely they are to achieve. It
 25 becomes more difficult for them because they're in that

2874

1 consistent catch-up mode.
 2 When our -- even throughout a year, a
 3 teacher can lose 15 students and gain 15 students. So
 4 that teacher also is consistently balancing who's in
 5 her classroom, when they're coming in, and that
 6 consistent assessment to make sure she knows, he knows
 7 where the students are and then how to catch them up or
 8 keep them up.
 9 So that -- that in itself can be very
 10 overwhelming for a teacher, on losing that many
 11 students and gaining that many students, with not a lot
 12 of time. So we do double-block reading, we
 13 double-block math to give our students more time. But,
 14 of course, you have the same time. So it's the same
 15 amount of time in the day, it's the same amount of time
 16 in the year. And our kids need much more time because
 17 they're coming in so far behind with the lack of
 18 resources that they experience.
 19 **Q. When you double-block students, does that**
 20 **mean they miss instructional time in other subject**
 21 **areas?**
 22 A. Yes.
 23 **Q. And -- but the state has certain**
 24 **expectations in all subject areas; isn't that right?**
 25 A. Yes. Also at the high school, we put in a

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1 ninth grade academy, so that they have basically the
 2 same teachers and they can be double-blocked in reading
 3 and math with the same teachers as well. And most of
 4 our students, probably about 90 percent of our
 5 students, need that double block.
 6 Another challenge that I didn't mention
 7 earlier, when I was talking about our health clinics,
 8 we support health clinics, because our students can't
 9 access health. I talked about that a little bit. But
 10 at the high school, we had about 1200 students access
 11 the health clinic, and about 73 percent of those
 12 students are uninsurable. So we pick all of that up
 13 for them through our health clinics. So we have a
 14 health clerk in every school.
 15 **Q. And have -- has the district been able**
 16 **to -- I know there's been an increase in some of these**
 17 **at-risk populations.**
 18 A. Yes.
 19 **Q. Has the district been able to keep up with**
 20 **the growth in terms of providing health services**
 21 **through the clinic?**
 22 A. Well, we have increased by about a
 23 thousand students since 2005, and mostly because of
 24 these economic times recently. So we provide all that
 25 we can within a health clinic. So -- because our

2876

1 students can't get health services anywhere else. We
 2 also provide dental, as well, through grants. Which is
 3 imperative, because if you're not healthy, you're not
 4 learning. So . . .
 5 **Q. So that second grade teacher we were**
 6 **talking about has to make sure that her kids are fed?**
 7 A. Yes.
 8 **Q. That they're healthy?**
 9 A. Yes.
 10 **Q. And if they're not, to make sure -- does**
 11 **she refer them for the services they need if they're**
 12 **not healthy?**
 13 A. Yes.
 14 **Q. And what about issues with being properly**
 15 **clothed?**
 16 A. We have a Hope Center that provides -- we
 17 used to provide for all of our families, but our funds
 18 were cut on that. So now we provide for our homeless
 19 families. So that provides food, clothing, and any
 20 other type of services.
 21 We also -- it's such a need in our
 22 community that we had to look at our resources. So we
 23 provide a part-time family liaison to work with our
 24 families directly, because they are so needy, to make
 25 sure that they're getting provided for with all the

2877

1 partnerships that we have in our community that will
 2 offer services through the grants that they provide.
 3 But we have to get them connected.
 4 **Q. Do you know -- are there family liaisons**
 5 **at each school?**
 6 A. Part time at each school.
 7 **Q. Part time at each school. And how many**
 8 **liaisons are there per number of students on average?**
 9 A. Well, they would work for the whole
 10 school. So for every -- for each elementary there's a
 11 part time. So -- well, at the high school, up to 1600,
 12 you have a half-time liaison.
 13 **Q. Is that sufficient to meet the needs of**
 14 **the student populations in those schools?**
 15 A. No. But it's something we did put in and
 16 moved revenue from another program to support our
 17 families in that way so we can directly communicate.
 18 **Q. Do you recall what program you redirected**
 19 **resources from?**
 20 A. That would come out of -- we probably just
 21 pulled overall from other resources. So our health
 22 clerk is part time; they used to be full time. So we
 23 also pull from those times, part time to full time.
 24 And you have to move those resources around.
 25 **Q. You mentioned wanting to use longer**

2878

1 **instructional days, more summer school to prevent**
 2 **students from falling behind?**
 3 A. Longer school year.
 4 **Q. Longer school year. Would an increase in**
 5 **those family liaisons and health services be something**
 6 **you would also want to implement if you had more**
 7 **resources?**
 8 A. Yes.
 9 **Q. How do -- how do those health issues, the**
 10 **other issues you mentioned, impact student performance?**
 11 A. Other health issues of being hungry, which
 12 does increase sickness, we would -- absolutely. So you
 13 would need more clinic time, and you would provide even
 14 more services for your -- for our students just to make
 15 sure that they are healthy.
 16 **Q. Going back to that second grade teacher.**
 17 **She's -- she receives below-average pay, is that right,**
 18 **for the surrounding areas?**
 19 A. Yes.
 20 **Q. And it sounds like she's providing similar**
 21 **services to a social worker in addition to being a**
 22 **teacher?**
 23 MR. FERRO: Objection. Leading.
 24 THE COURT: Sustained.
 25 A. Yes.

2879

1 **Q. (BY MS. BONO) She's making sure kids are**
 2 **fed?**
 3 A. Yes.
 4 **Q. Clothed, healthy, in addition to providing**
 5 **differentiated instructional services for them?**
 6 A. Yes.
 7 **Q. Without support in the classroom?**
 8 A. Yes, we've had to decrease that.
 9 **Q. What -- in your opinion, what incentives**
 10 **does that teacher have to teach in Adams versus one of**
 11 **the other surrounding districts?**
 12 MR. FERRO: Objection. Leading.
 13 THE COURT: No. Overruled. That's --
 14 overruled.
 15 A. It's an important question, because really
 16 what we do is we partner with universities. So really,
 17 the people that are going to come teach in Commerce
 18 City really have a passion and a purpose to make sure
 19 that all students have access to education and have
 20 access to being a contributing member to their
 21 community.
 22 So it's really people that have the desire
 23 to make the world a better place than where it is
 24 and -- and helping students in poverty.
 25 **Q. (BY MS. BONO) Have the challenges that**

2880

1 **the teacher -- that you described that the teacher**
 2 **faces in the classroom, have those contributed to the**
 3 **district's ability to attract and retain teachers?**
 4 A. The partnerships have, because teachers do
 5 get connected to kids, and then it's keeping them
 6 there. So I'm going to go back to the same thing. If
 7 you can't offer the professional development to make
 8 teachers successful, they will leave. And we have a
 9 very challenging population, students who have a lot of
 10 needs, families that have a lot of needs. And it can
 11 be very wearing if you don't have the skills and the
 12 knowledge to really see how you affect families and
 13 make their lives better.
 14 But that requires a lot of professional
 15 development and training and time. And kids need time.
 16 Just like kids need time in school and in the content,
 17 teachers need time in learning. They don't come
 18 prepared. They take one -- typically one reading class
 19 at the university. There's many things they have to
 20 cover. But they do not come prepared in an Adams 14
 21 way or in a Jeffco way how you teach.
 22 So you can't teach like you were taught.
 23 So professional development's extremely important in
 24 what strategies you professionalize your teachers in
 25 that you know will make a difference for kids. Not

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1 just any teaching style or conversation is going to
 2 make a difference for a child. You really have to be
 3 strategic, know their skill sets, and to increase
 4 those. So it's a lot of strategies and it's a lot of
 5 time learning how to do that.
 6 **Q. I'd like to go ahead and move on to**
 7 **student performance in your district on the CSAP. As**
 8 **superintendent of Adams, are you familiar with the**
 9 **performance of your students on the CSAP test?**
 10 A. Yes.
 11 **Q. And I'd like to show you what we've marked**
 12 **and admitted as Exhibit No. 20131. And this is a**
 13 **demonstrative we created using CSAP data from your**
 14 **district. From what you can tell, does it appear to be**
 15 **a fair and accurate representation of the performance**
 16 **of ELL students and non-ELL students on the 2010 CSAP**
 17 **writing test?**
 18 A. Yes.
 19 **Q. In third grade, it appears that 38 percent**
 20 **of limited English proficient, or LEP, students reached**
 21 **proficiency in writing; is that right?**
 22 A. Yes.
 23 **Q. And in tenth grade, what was that**
 24 **percentage for LEPs?**
 25 A. I'm following your blue line. Is it zero

2882

1 percent? From LEPs. The line goes down and then goes
 2 across in tenth.
 3 **Q. And I apologize, I can't -- I don't know**
 4 **if I'm going to be able to zoom. Would it help if you**
 5 **could see it in person?**
 6 A. It would.
 7 MS. BONO: Your Honor, may I approach?
 8 THE COURT: Yes.
 9 **Q. (BY MS. BONO) So it looks like those two**
 10 **lines overlap.**
 11 A. So for limited English proficiency in
 12 ninth grade and tenth grade?
 13 **Q. In tenth grade.**
 14 A. In tenth grade. Zero percent.
 15 **Q. In third grade, more LEP students reached**
 16 **proficiency than non-ELL students?**
 17 A. Yes.
 18 **Q. But in tenth grade, LEP students are**
 19 **under-performing non-ELL students by 13 percent?**
 20 A. Yes.
 21 **Q. In fact, no LEP students reached**
 22 **proficiency in ninth or tenth grade?**
 23 A. Right. Yes.
 24 **Q. And it appears that after sixth grade no**
 25 **NEP students achieved proficiency in writing; is that**

2883

1 **right?**
 2 A. Yes.
 3 **Q. And there's a persistent significant gap**
 4 **between NEP students and non-ELL students over grade**
 5 **levels, where NEP students are lagging behind non-ELL**
 6 **students?**
 7 A. Yes.
 8 **Q. It looks like the largest gap between NEP**
 9 **and non-ELL students is 42 percent in eighth grade?**
 10 A. Yes.
 11 **Q. And did the rates of proficiency in**
 12 **writing for non-ELL students ever increase over**
 13 **42 percent in any grade level?**
 14 A. No.
 15 **Q. Is that acceptable for the district?**
 16 A. No.
 17 MS. BONO: Your Honor, may I approach?
 18 THE COURT: Yes.
 19 **Q. (BY MS. BONO) I'm going to show you what**
 20 **we've marked and admitted as Exhibit 20130. And for**
 21 **the benefit of the Court, I'd like to try -- and the**
 22 **other parties present, I'd like to try publishing it,**
 23 **but, again, if we have problems reading the numbers,**
 24 **I'll hand it to you --**
 25 A. Thank you.

2884

1 **Q. -- so you can see it a little more**
 2 **closely. From what you can tell, is this -- and all**
 3 **these demonstratives I'll show you today we created**
 4 **using CSAP data from your district. From what you can**
 5 **tell, is this a fair and accurate representation of how**
 6 **ELL versus non-ELL students did on the 2010 CSAP**
 7 **science test in Adams?**
 8 A. Yes.
 9 **Q. What percentage of NEP students achieved**
 10 **proficiency in science in the fifth grade?**
 11 A. NEP would be zero.
 12 **Q. What about eighth grade?**
 13 A. 12 percent. NEP.
 14 **Q. In tenth grade?**
 15 A. Zero percent.
 16 **Q. Is it fair to say that in 2010, ELL**
 17 **students did not achieve proficiency in science at even**
 18 **half the rate as non-ELL students across grade levels?**
 19 A. Yes. So in regard to that, we have to
 20 develop the curriculum for English language learning.
 21 And we also put in a 45-minute ELD time, English
 22 language development time, which is required by law.
 23 So the development of that curriculum and then also
 24 professionalizing just your ELD teachers, much less
 25 your classroom teachers, where your students are most

2885

1 of the time, again, it's getting them skilled in
 2 helping students acquiring English. That's different
 3 than acquiring content.
 4 **Q. Sure.**
 5 A. You're acquiring a language. So that's
 6 another skill that your teachers have to develop.
 7 **Q. And is that because the state expects all**
 8 **ELL students to achieve at the same proficiency rates**
 9 **as any other student?**
 10 A. Yes.
 11 **Q. And is that the district's expectation as**
 12 **well?**
 13 A. Yes.
 14 **Q. I'd like to show you what we've marked and**
 15 **admitted as Exhibit 20129. Does this look like a fair**
 16 **and accurate representation of the CSAP performance on**
 17 **the reading test in 2010 for ELL and non-ELL students?**
 18 A. Yes.
 19 **Q. And, again, across grade levels, it looks**
 20 **like ELL -- or non-ELL students reach proficiency at**
 21 **greater rates than non-ELL students across grade**
 22 **levels; is that right?**
 23 A. Yes.
 24 **Q. It looks like the largest gap between LEP**
 25 **and non-ELL students is 42 percent in eighth grade?**

2886

1 A. Yes.
 2 **Q. And for NEP and non-ELL students, it's**
 3 **60 percent in eighth grade?**
 4 A. Yes.
 5 **Q. In fact, after seventh, eighth, and**
 6 **ninth -- in fact, in seventh, eighth, and ninth grade,**
 7 **no NEP students ever achieved proficiency in reading?**
 8 A. Yes.
 9 **Q. Have you observed similar achievement gaps**
 10 **between ELL and non-ELL students on the CSAP test in**
 11 **previous years?**
 12 A. Yes.
 13 **Q. In all grade levels?**
 14 A. Yes.
 15 **Q. In light of this data and the data you**
 16 **reviewed with Ms. Dunlevy (sic), do you have an opinion**
 17 **as to whether the state funds made available to Adams**
 18 **14 through ELPA are sufficient to provide your district**
 19 **with the tools of -- you need to help ELL students**
 20 **reach proficiency?**
 21 A. No, they are not sufficient.
 22 **Q. Do you believe some of the strategies that**
 23 **you mentioned earlier that the district would like to**
 24 **implement would help ELL students reach grade level**
 25 **proficiency?**

2887

1 A. Yes.
 2 **Q. And I'd like to show you what we've marked**
 3 **as Exhibit No. -- and admitted as Exhibit No. 20127.**
 4 **From what you can tell, does this look to be a fair and**
 5 **accurate representation of the performance on the 2010**
 6 **CSAP writing test for -- of students who qualify for**
 7 **free and reduced lunch and non-low-income students?**
 8 A. Yes.
 9 **Q. In 2010, what percentage, if you can**
 10 **tell -- and I can hand this to you if you need it --**
 11 **but what percentage of reduced-price lunch students**
 12 **reached proficiency in CSAP writing?**
 13 A. In third?
 14 **Q. In third grade.**
 15 A. It looks like 28 percent.
 16 **Q. 29 percent?**
 17 A. 29 percent.
 18 **Q. Did that percentage rise above 38 percent**
 19 **at any grade level?**
 20 A. For the non-free and reduced lunch?
 21 **Q. For the reduced-price lunch.**
 22 A. For the reduced-price lunch.
 23 **Q. The light blue line.**
 24 A. No, it did not. No.
 25 **Q. What percentage of tenth grade students**

2888

1 **who qualified for reduced lunch achieved proficiency in**
 2 **writing?**
 3 A. 20 percent.
 4 **Q. In 2010, it appears that 31 percent of**
 5 **third grade students who qualified for free lunch**
 6 **reached proficiency in writing; is that right?**
 7 A. Yes.
 8 **Q. And what was that percentage in tenth**
 9 **grade?**
 10 A. 9 percent -- 11 percent.
 11 **Q. 11 percent?**
 12 A. Yes.
 13 **Q. And it looks like in sixth and eighth**
 14 **grades, 50 percent of non-low-income students -- that's**
 15 **the red line --**
 16 A. Yes.
 17 **Q. -- achieved proficiency in writing; is**
 18 **that right?**
 19 A. Yes.
 20 **Q. And that rate never rose above 50 percent**
 21 **at any grade level?**
 22 A. Correct.
 23 **Q. Is it acceptable to the district not to**
 24 **have more than half of any of these groups of students**
 25 **reaching proficiency in any grade level?**

2889

1 A. No.

2 **Q. I'll now show you what we've marked and**

3 **admitted as Exhibit 20126. From what you can tell, is**

4 **this a fair and accurate representation of the**

5 **performance of low-income versus non-low-income**

6 **students on the 2010 CSAP science test?**

7 A. Yes.

8 **Q. In third grade, there's a gap between**

9 **low-income and non-low-income students who reach**

10 **proficiency in science, correct?**

11 A. In which grade?

12 **Q. In third grade. I'm sorry, fifth grade.**

13 A. Fifth grade?

14 **Q. Uh-huh.**

15 A. Yes.

16 **Q. And in light of the CSAP data that -- that**

17 **we've reviewed and also the framework performance**

18 **indicators that you reviewed with Ms. Dunlevy (sic), do**

19 **you have an opinion as to whether the funds made**

20 **available to Adams 14 through the PSFA formula and the**

21 **supplemental at-risk factor are sufficient for the**

22 **district to get low-income students to proficiency?**

23 A. No, they are not sufficient.

24 **Q. And do you believe the instructional tools**

25 **and strategies that you mentioned earlier in your**

2890

1 **testimony would -- would help get those students to**

2 **proficiency?**

3 A. Yes. And time.

4 MS. BONO: That's all the questions I have

5 for you today. Thank you for your time.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you. Cross-examination.

8 MR. FERO: Yes. Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. FERO:

11 **Q. Good morning, Dr. Chandler.**

12 A. Good morning.

13 **Q. How are you today?**

14 A. Good. How are you?

15 **Q. Fine. Thank you. You were talking about**

16 **the CADI report during your direct examination. Do you**

17 **recall that?**

18 A. Yes.

19 **Q. And that was issued in 2008; is that**

20 **right?**

21 A. 2007-2008.

22 **Q. Thank you. Now, the district had the**

23 **option of undertaking an internal review or work with**

24 **the state department of education?**

25 A. Yes.

2891

1 **Q. And the district then chose to allow CDE**

2 **to hire a team to come in and review the district; is**

3 **that right?**

4 A. Yes.

5 **Q. And you found that it was very helpful to**

6 **get that outside view of the district?**

7 A. Yes.

8 **Q. You highly valued the report that the CDE**

9 **team produced, correct?**

10 A. Yes.

11 **Q. And that report told you what was working**

12 **and what was not working in the district; is that**

13 **right?**

14 A. Yes.

15 **Q. And I have a copy of the report here,**

16 **which is admitted as Exhibit 3302. And, Dr. Chandler,**

17 **are you aware that the CADI report found that the**

18 **district's organizational structure did not appear to**

19 **foster a cohesive and coherent leadership?**

20 A. Yes.

21 **Q. And are you also aware that the CADI**

22 **report found that there -- a belief that all children**

23 **can learn and be successful was not pervasive**

24 **throughout the district?**

25 A. Yes.

2892

1 **Q. Dr. Chandler, would you agree that the**

2 **teacher in the classroom has the No. 1 affect on**

3 **academic growth?**

4 A. Yes.

5 **Q. And the district believes that the driver**

6 **of student achievement is having highly effective**

7 **teachers in classrooms?**

8 A. Yes.

9 **Q. The district has found that teachers do**

10 **not come out of college prepared; is that right?**

11 A. Prepared enough for the challenges that

12 they face in the classroom.

13 **Q. And you would say very unprepared; is that**

14 **right?**

15 A. They -- they need a lot of time and

16 professional development, yes, to be prepared for the

17 classroom.

18 **Q. And the district has agreed with the**

19 **teachers union that teachers will only be required to**

20 **attend two professional development training days per**

21 **year; is that right?**

22 A. That's what we could afford, yes, two

23 days. We could not afford to add on more professional

24 development days to the contract.

25 **Q. But that's what the district agreed to**

2893

1 **with the union, correct?**
 2 A. In regard -- in the light of the revenue
 3 that we receive, yes, that's what we could afford.
 4 **Q. And you would agree that the district**
 5 **would like to have more professional development days**
 6 **to be required?**
 7 A. Yes.
 8 **Q. But that would require negotiating an**
 9 **increased base salary with the teachers union; is that**
 10 **right?**
 11 A. Or an add-on to their days. Yes. It
 12 could be an increase in their base, or you could add on
 13 the days to their year.
 14 **Q. So increase the time of the teaching**
 15 **contract?**
 16 A. Yes.
 17 **Q. And is it your understanding that doing**
 18 **that would require the district to agree to an increase**
 19 **in the base salary for teachers?**
 20 A. We would have to have more revenue to even
 21 have the conversation.
 22 **Q. The district does offer additional**
 23 **professional development to its teachers though; is**
 24 **that right?**
 25 A. More than the two days?

2894

1 **Q. Yes.**
 2 A. Yes. During the day we offer professional
 3 development. So we will, for example, take all third
 4 grade across the district and bring them in for a
 5 professional development for all third grade teachers
 6 for that networking purpose as well.
 7 **Q. And there's an additional cost to the**
 8 **district for doing that, correct?**
 9 A. The substitute, yes.
 10 **Q. Now, you would agree that if the district**
 11 **were offering professional development after contract**
 12 **hours, that many teachers would choose not to take part**
 13 **in that?**
 14 A. It's possible, just because teachers,
 15 outside of the contract day, typically have commitments
 16 that they already have, children or any other
 17 commitment that they may have that would make it more
 18 difficult for them to attend those.
 19 **Q. And there are some teachers that just**
 20 **won't work beyond the contract day; is that right?**
 21 A. I'm sure there are teachers that would not
 22 work beyond the contract day.
 23 **Q. And what is the length of the contract**
 24 **day?**
 25 A. Seven-and-a-half hours.

2895

1 **Q. And you don't believe that two days per**
 2 **year of professional development is enough time, do**
 3 **you?**
 4 A. No, I do not.
 5 **Q. Dr. Chandler, you're familiar with teacher**
 6 **tenure law in this state, are you not?**
 7 A. Yes.
 8 **Q. And you're aware of the change of a**
 9 **probationary teacher into a non-probationary teacher**
 10 **after three years?**
 11 A. Yes.
 12 **Q. That means that the district essentially**
 13 **has three years to decide if a teacher is effective; is**
 14 **that right?**
 15 A. Yes.
 16 **Q. And if you retain a teacher that's not**
 17 **highly effective and you know is not going to be highly**
 18 **effective after the third year, you would characterize**
 19 **that as a million dollar decision, would you not?**
 20 A. Yes.
 21 **Q. And it's extremely costly and difficult to**
 22 **dismiss a poorly performing teacher?**
 23 A. Yes.
 24 **Q. \$60,000 would be the very low end?**
 25 A. Yes.

2896

1 **Q. And the district might even offer that**
 2 **much money to an ineffective teacher just to quit?**
 3 A. To resign.
 4 **Q. Students don't grow with ineffective**
 5 **teachers?**
 6 A. Correct.
 7 **Q. And if a student got an ineffective**
 8 **teacher for three years, you would say that without a**
 9 **doubt they would be so far behind as to be at risk of**
 10 **dropping out?**
 11 A. Three years with an ineffective teacher,
 12 that would put them at risk, yes.
 13 **Q. And there are ineffective non-probationary**
 14 **teachers in the district at this time, correct?**
 15 A. There are two.
 16 **Q. You're familiar with Senate Bill 191, the**
 17 **recent teacher effectiveness law?**
 18 A. Yes.
 19 **Q. And the district applied and was selected**
 20 **by the state to be a pilot site for the implementation**
 21 **of 191; is that right?**
 22 A. Yes.
 23 **Q. And so a group from the state is reviewing**
 24 **the district's policies and evaluation system as well**
 25 **as the district's teacher resource center?**

2897

1 A. Yes.
 2 **Q. And that was at no cost to the district?**
 3 A. Correct.
 4 **Q. You were talking about how the district**
 5 **had revamped its English language acquisition**
 6 **program; is that right?**
 7 A. Correct.
 8 **Q. And that was in response to the CADI**
 9 **report, right?**
 10 A. Yes.
 11 **Q. So the district changed to English for**
 12 **Speakers of Other Languages because that was a**
 13 **cost-effective, research-based program; is that right?**
 14 A. Correct.
 15 **Q. And that was a program that would show**
 16 **students learning English at a higher rate?**
 17 A. Correct. At a higher rate than -- at a
 18 higher rate than what they were or compared to another
 19 program?
 20 **Q. At what they were.**
 21 A. Yes.
 22 **Q. Dr. Chandler, do you post a**
 23 **superintendent's blog on the Internet?**
 24 A. Yes.
 25 **Q. And do you recall an entry in May of this**

2898

1 **year on the great year that Adams 14 had?**
 2 A. Yes.
 3 **Q. And do you recall writing that the**
 4 **district staff had so much to be proud of?**
 5 A. Yes.
 6 **Q. And did you also write that instructional**
 7 **improvements in the district are showing results?**
 8 A. And teachers' instruction in the
 9 classroom, yes.
 10 **Q. Did you also write that fiscal**
 11 **responsibility allowed the district to avoid laying off**
 12 **staff next year?**
 13 A. Yes.
 14 **Q. Did you also write that the collective**
 15 **commitment to meeting needs of students, staff, and**
 16 **families is strengthening the Adams 14 community?**
 17 A. Yes.
 18 **Q. The district has nurses at all of its**
 19 **elementary schools; is that right?**
 20 A. Health clerks.
 21 **Q. Okay. And there are community health**
 22 **clinics at the middle schools and the high school?**
 23 A. Yes.
 24 **Q. And those health clinics serve the**
 25 **community's adult population as well as students,**

2899

1 **correct?**
 2 A. The student population.
 3 **Q. They don't serve adults?**
 4 A. They will -- it's primarily students, is
 5 the population that we serve.
 6 **Q. So could an adult in the community, if**
 7 **they needed medical service, could they come to the**
 8 **health clinic at the middle or high school?**
 9 A. Yes.
 10 **Q. There is an after-school program at the**
 11 **elementary schools?**
 12 A. Yes.
 13 **Q. And the district has an intergenerational**
 14 **learning center that offers classes for students that**
 15 **are 17 to age 21?**
 16 A. Yes.
 17 **Q. As well as adults, correct?**
 18 A. Correct.
 19 **Q. And the district employs a professional**
 20 **grant writer?**
 21 A. Yes.
 22 **Q. And you would say that that position**
 23 **basically pays for itself with the grants that are able**
 24 **to be acquired?**
 25 A. Yes.

2900

1 **Q. Dr. Chandler, the district built a new**
 2 **high school that was completed in 2009; is that right?**
 3 A. Yes. Started -- the bond passed in 2006,
 4 yes.
 5 **Q. Okay. And -- okay. So that was my next**
 6 **question. It was paid for by a bond that the community**
 7 **approved?**
 8 A. Yes.
 9 **Q. And did the district receive three BEST**
 10 **grants for roof replacements this year?**
 11 A. Yes. With an 11 percent match.
 12 **Q. So that means the state provided**
 13 **89 percent of the cost for those roof replacements?**
 14 A. Yes.
 15 **Q. And you mentioned that the district**
 16 **has -- still has some facility needs for its older**
 17 **buildings?**
 18 A. Yes.
 19 **Q. You would agree that BEST could be an**
 20 **option for that?**
 21 A. We've applied for that.
 22 **Q. For a rebuild?**
 23 A. Yes, for a rebuild.
 24 **Q. Has that --**
 25 A. But we got the three roofs. That's what

2901

1 we received from BEST.

2 **Q. Did the district apply for a BEST grant to**

3 **rebuild any of those facilities?**

4 A. We -- that's what we were determining, if

5 we would be eligible for that. So -- but we found we

6 were eligible for the roofs.

7 **Q. You were talking about special education**

8 **in the district. Do you recall that?**

9 A. Yes.

10 **Q. And you were talking about your**

11 **familiarity with -- with federal law?**

12 A. Yes.

13 **Q. And is it your understanding that the**

14 **district provides the -- all the accommodations**

15 **required by law to its disabled students?**

16 A. Yes.

17 **Q. I believe you said that the district is**

18 **receiving funds from a 1996 mill levy; is that right?**

19 A. Correct.

20 **Q. And that's about \$4.89 million a year?**

21 A. Correct.

22 **Q. And did you say that that provides funding**

23 **for arts education, music, physical education,**

24 **technology, literacy, and dropout programs?**

25 A. And right now those programs are pretty

2902

1 much max'd out, unless we start supporting them through

2 other funds through the district. Because there's

3 people involved, programs get more expensive, people

4 get more expensive. So what was 4.89 million in 1996

5 is not the same as today. So we will have to

6 supplement that to keep all of those programs.

7 **Q. And the district is not at its capacity**

8 **right now and legally has the right to ask voters for**

9 **additional funding?**

10 A. Yes. So we did formal surveys to see if

11 the community was willing, and at this point it has

12 been no. But we will continue with those formal

13 surveys and our education of the community.

14 **Q. And at least what the district has a legal**

15 **right to ask for would be an additional almost**

16 **\$8 million per year?**

17 A. I believe so.

18 **Q. So you would agree that a mill levy**

19 **override could provide funds for a full-day preschool?**

20 A. It could. If that's what the community

21 would support.

22 **Q. And it -- the mill levy could also provide**

23 **funds for a longer school day or an extended year?**

24 A. Yes. But with the economic times we're in

25 right now, our community is not supportive of that.

2903

1 Just keeping their -- what they have at this point. So

2 they aren't supporting any more cost for them at this

3 time.

4 **Q. A mill levy override could also provide**

5 **funding for parental education and for the attendance**

6 **measures you were talking about?**

7 A. The attendance measures, yes. Parental

8 education is through the intergenerational center,

9 which is separate as well. They support themselves.

10 They're a self-supporting organization with us.

11 **Q. The mill levy override, it could actually**

12 **provide funds for expanded health care services?**

13 A. If that's what the community -- what we

14 would focus on would be educating our kids up to

15 standard, is where we would focus.

16 **Q. Well, you could -- the mill levy override**

17 **could provide funds for decreasing class sizes?**

18 A. It could, yes.

19 **Q. It could also provide funds for additional**

20 **professional development?**

21 A. Yes.

22 **Q. It could provide funds for additional**

23 **gifted and talented programming?**

24 A. Yes.

25 **Q. And it could also pay increasing teacher**

2904

1 **salaries?**

2 A. Yes. And as our poverty grows, the less

3 our community is willing to support that, because

4 they're trying to support themselves.

5 **Q. And you base that -- your knowledge of**

6 **that willingness on the surveys that the district**

7 **received?**

8 A. Yes.

9 **Q. But the district -- you don't know that**

10 **for sure, because the district hasn't asked the**

11 **community to vote on a mill levy override since '96,**

12 **correct?**

13 A. Right. We work with a professional

14 company, and they discuss strategy and the surveys with

15 us.

16 **Q. And even if you had the resources to meet**

17 **all of the needs that you've testified about today, you**

18 **still wouldn't be able to guarantee 100 percent**

19 **proficiency, would you?**

20 A. No.

21 MR. FERRO: That's all the questions I

22 have. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect.

25 MS. DUNAWAY: Your Honor, I have some

2905

1 redirect, but would like to request a midmorning break.
 2 Is this a good time?
 3 THE COURT: All right. Well, let's take
 4 till 10:30 then. Is that enough time?
 5 MS. DUNAWAY: Yes, it is, Your Honor.
 6 THE COURT: All right. We'll be in recess
 7 until 10:30.
 8 (Recess taken, 10:14 a.m. to 10:33 a.m.)
 9 THE COURT: All right. We're ready for
 10 redirect. Thank you.
 11 MS. DUNAWAY: Thank you, Your Honor.
 12 REDIRECT EXAMINATION
 13 BY MS. DUNAWAY:
 14 **Q. Dr. Chandler, Mr. Fero mentioned the CADI**
 15 **report. Are you able to implement all of the**
 16 **strategies and plans recommended in that report?**
 17 A. No. So we prioritized the report, and we
 18 took the major parts and made a plan around that. But
 19 we did not have the funds to make all the changes that
 20 were asked for.
 21 **Q. Have you looked at whether every IEP in**
 22 **the district is being fully implemented?**
 23 A. Not personally.
 24 **Q. So you don't know whether services on the**
 25 **IEPs are being delivered to every kid?**

2906

1 A. No. Not personally.
 2 **Q. Are students with disabilities meeting**
 3 **state requirements?**
 4 A. No.
 5 **Q. Do you have sufficient resources for all**
 6 **of your students to meet state achievement**
 7 **requirements?**
 8 A. No.
 9 **Q. And you listed a number of programs that**
 10 **could be provided with mill levy override money in your**
 11 **discussion with Mr. Fero. Could those programs be**
 12 **provided if the state provided additional money to**
 13 **Adams 14?**
 14 A. Yes.
 15 MS. DUNAWAY: I have no more questions,
 16 Your Honor.
 17 THE COURT: Thank you.
 18 MS. BONO: None, Your Honor. Thank you.
 19 THE COURT: Thank you. Recross.
 20 MR. FERRO: None, Your Honor. Thank you
 21 very much.
 22 THE COURT: Thank you. Thank you very
 23 much, Doctor. You may step down.
 24 THE WITNESS: Thank you.
 25 MS. BEZOZA: Plaintiffs call Lillian

2907

1 Leroux.
 2 THE COURT: If you'd come forward to the
 3 witness stand. If you'd raise your right hand.
 4 LILLIAN LEROUX,
 5 having been first duly sworn to state the whole truth,
 6 testified as follows:
 7 THE COURT: Thank you. Please be seated.
 8 And I can tell you have a low voice, so please keep
 9 your voice up. And if you could state your full name
 10 and spell your last name for the record. And you can
 11 move the mic a little closer if it would help. Thank
 12 you.
 13 THE WITNESS: Lillian Leroux.
 14 L-e-r-o-u-x.
 15 DIRECT EXAMINATION
 16 BY MS. BEZOZA:
 17 **Q. Good morning, Ms. Leroux. If you'd like**
 18 **to pour yourself some water, there's some right there.**
 19 **Can you tell us where you live?**
 20 A. Commerce City, Colorado.
 21 THE COURT: Can you hear her?
 22 THE REPORTER: A little bit. If we could
 23 move the mic.
 24 THE COURT: Move the mic a little closer.
 25 The seat doesn't move, but the mic does. Please keep

2908

1 your voice up, because we're trying to take everything
 2 down. Thank you.
 3 **Q. (BY MS. BEZOZA) How long have you lived**
 4 **in Commerce City?**
 5 A. Since 1972.
 6 **Q. What school district is Commerce City in?**
 7 A. District 14.
 8 **Q. That's Adams 14?**
 9 A. Yes, Adams 14.
 10 **Q. Where did you go to school?**
 11 A. I started in Durango, Colorado, and then I
 12 moved to Chama, New Mexico.
 13 **Q. What's the highest level of schooling you**
 14 **attained?**
 15 A. 12th grade.
 16 **Q. Did you go to college?**
 17 A. No.
 18 **Q. Do you work?**
 19 A. No. Not now.
 20 **Q. Are you married?**
 21 A. Yes.
 22 **Q. Does your husband work?**
 23 A. He's retired.
 24 **Q. What did he used to do when he worked?**
 25 A. He worked for Regional Transportation

2909

1 District as a mechanic.
 2 **Q. What's your current source of income?**
 3 A. Pension from RTD and Social Security.
 4 **Q. Why did you join the Lobato lawsuit as an**
 5 **individual plaintiff?**
 6 A. To help -- help our children that we have,
 7 and also to -- hopefully it'll help the school much --
 8 to get more funding for our schools out in Commerce
 9 City.
 10 **Q. And on whose behalf are you participating**
 11 **in the lawsuit?**
 12 A. Me -- me and my children.
 13 **Q. And how many children do you have?**
 14 A. I have three at the -- now at home.
 15 **Q. And what are their names?**
 16 A. Ashley, Alexandria, and Amber.
 17 **Q. And does Alexandria go by Ali?**
 18 A. Ali, right.
 19 **Q. And are they your biological children?**
 20 A. No, they're not. They're adopted.
 21 **Q. And can you explain a little bit about**
 22 **your relationship with them?**
 23 A. They were in foster care in three
 24 different homes at the time that we took an interest in
 25 them. We had one, the oldest one, and my daughter had

2910

1 two, and the other one was in another foster home in
 2 Westminster.
 3 **Q. And approximately when did they first come**
 4 **to live with you?**
 5 A. Due to severe abuse, neglect, they -- they
 6 were removed from the home, the biological parents, due
 7 to, you know -- you know, due to the fact that they
 8 were being neglected and abused.
 9 **Q. And so approximately when was that? Do**
 10 **you remember what year?**
 11 A. Around 1999, I believe. I'm not sure.
 12 **Q. So about how old were the kids when they**
 13 **first came to live with you?**
 14 A. Let's see. Ari, the oldest one, was about
 15 7 or 8. And then my daughter, which had Ashley and
 16 Ali, they were like 2 and 3. And then Amber was
 17 removed from the home at six months with 14 to 18
 18 fractured bones.
 19 **Q. So you mentioned your daughter had two of**
 20 **the girls. Did they ultimately come to live in your**
 21 **home?**
 22 A. Right. Once we put our petition for
 23 adoption, we -- they moved to our home.
 24 **Q. And are you also bringing claims in this**
 25 **case on behalf of your granddaughter?**

2911

1 A. Yes, I am.
 2 **Q. And what's her name?**
 3 A. Lillian Noreen Leroux III.
 4 **Q. And can you explain your role in Lillian's**
 5 **education?**
 6 A. I -- I've been -- I -- I've done all of
 7 her educational IEPs, every -- all of her -- oh, well,
 8 you'd call it going to all of her -- oh, gosh. I'm
 9 blank now. All of her --
 10 **Q. The IEP meetings?**
 11 A. Right, all of the IEP meetings. Her
 12 parent-teacher conference meetings, everything.
 13 **Q. So have you been responsible for decisions**
 14 **with respect to her education?**
 15 A. Yes, I have.
 16 **Q. And has that been throughout her**
 17 **education?**
 18 A. Yes, I have.
 19 **Q. Were any of your other children ever**
 20 **involved in this lawsuit?**
 21 A. Ari.
 22 **Q. And is Ari the oldest of the girls?**
 23 A. Yes. She -- she turned 18 two -- well,
 24 she's 19 now.
 25 **Q. And what is your relationship to Ari?**

2912

1 A. We're not -- we have no relationship at
 2 this point.
 3 **Q. But were you -- was she adopted at one**
 4 **point?**
 5 A. What was that? I'm sorry.
 6 **Q. Was she a foster child in your home at one**
 7 **point?**
 8 A. Yes, she was.
 9 MS. BEZOZA: Your Honor, may I approach,
 10 please.
 11 THE COURT: Yes. Thank you.
 12 **Q. (BY MS. BEZOZA) Ms. Leroux, can you look**
 13 **at Exhibit 10437, please. Is this a -- is this a**
 14 **declaration that you submitted in this case?**
 15 A. Yes, it is.
 16 **Q. And can you take a minute to look at what**
 17 **it says and let us know whether this document**
 18 **accurately states the reasons why Ari is no longer a**
 19 **part of this case?**
 20 A. Yes.
 21 **Q. Thank you.**
 22 MS. BEZOZA: Your Honor, I'd move to admit
 23 document 10437, please.
 24 MR. HEINKE: No objection.
 25 THE COURT: 10437 will be admitted.

2913

1 MS. BEZOZA: Thank you.
 2 **Q. (BY MS. BEZOZA) Have you had any other**
 3 **foster children besides the four girls you mentioned?**
 4 A. Yes. A lot.
 5 **Q. Can you give us a sense of how many foster**
 6 **children you've had in your home over the years?**
 7 A. Over the years we've probably had at least
 8 35 or more. I -- I was also helping my daughter and my
 9 son, which both of them do foster care, and I was doing
 10 all of their educational planning, everything on their
 11 behalf too.
 12 **Q. So that number includes the children that**
 13 **were living in your daughter and your son-in-law's**
 14 **home?**
 15 A. Right. Uh-huh.
 16 **Q. Where did all those foster children go to**
 17 **school?**
 18 A. District 14.
 19 **Q. And how many biological children do you**
 20 **have?**
 21 A. I have three.
 22 **Q. And are they grown?**
 23 A. Yes, they are.
 24 **Q. And where did they go to school?**
 25 A. District 14.

2914

1 **Q. How would you describe your involvement in**
 2 **your children's education? And we're going to refer**
 3 **throughout your testimony, when I say children, I'm**
 4 **referring to Lillian, Ashley, Ali, and Amber.**
 5 A. Okay. How --
 6 **Q. How involved were you in their education?**
 7 A. I've been very involved in their
 8 education. I've -- I've -- I do the -- I'm -- I've
 9 been a PTO member, I've been to district accountability
 10 meetings, I do building maint (ph), and I also
 11 volunteer at most everything that I'm -- I'm able to do
 12 to help out.
 13 **Q. So you sit on a number of school**
 14 **committees?**
 15 A. Yes, I have.
 16 **Q. And what types of things do you do at home**
 17 **to help support their learning?**
 18 A. Well, I -- I'm very consistent in making
 19 sure that their homework -- I go through their -- their
 20 backpacks every day whenever they come home to find out
 21 if they have homework or whatever. And they normally
 22 get a -- what do you call it, where they have to write
 23 down what they have to do in homework, and I -- I check
 24 that each day, and then I sign off on it. And what I
 25 do is I make sure that their homework is done and -- to

2915

1 the best that I know how to do it. And then they're
 2 not allowed to watch TV or -- you know, until the
 3 homework is done.
 4 **Q. What do you like best about the education**
 5 **your children have received in Adams 14 School**
 6 **District?**
 7 A. The best I like is they have a lot of
 8 community, like music. They have parent involvement at
 9 night. They have several different -- several
 10 different activities that the whole community can be
 11 together.
 12 **Q. And what do you like least about the**
 13 **education your children have received in Adams 14**
 14 **School District?**
 15 A. Well, I'm not very happy with it. I mean,
 16 I -- I'm not blaming the school, I'm not blaming the
 17 teachers or anyone, I actually -- you know, they're
 18 doing the best they can. And I have several that are
 19 on IEPs.
 20 **Q. And when you say you're not happy, what**
 21 **types of things are you not happy with?**
 22 A. That they're not -- as they get older,
 23 they're not -- their life skills are not -- they're not
 24 prepared to go to college and they're not prepared to
 25 really get out there and get a job.

2916

1 **Q. Let's look at Exhibit 10243.**
 2 MS. BEZOZA: May I approach, Your Honor,
 3 please.
 4 THE COURT: Yes.
 5 **Q. (BY MS. BEZOZA) Does this appear to be an**
 6 **accurate copy of the discovery responses you submitted**
 7 **in this case?**
 8 A. Yes, it is.
 9 **Q. Okay. Look at page 6, please. On page 6,**
 10 **there's a chart that indicates the schools that your**
 11 **children have attended. Does that chart appear to be**
 12 **accurate to you?**
 13 A. Yes, it is.
 14 **Q. And the first school listed for Lillian,**
 15 **your granddaughter, is kindergarten. Did she attend**
 16 **public preschool?**
 17 A. No, she was not able to.
 18 **Q. And what's your understanding of why not?**
 19 A. For the fact that she -- we -- the funding
 20 was not there to provide for all children. Only the
 21 foster children were able to attend preschool.
 22 **Q. So the foster children qualified for**
 23 **public preschool, but Lillian did not?**
 24 A. Right.
 25 **Q. And did she attend private preschool?**

2917

1 A. No, she didn't.
 2 **Q. And why was that?**
 3 A. Because we were -- we were not able
 4 financially to provide that.
 5 **Q. And how many hours per week, roughly, was**
 6 **the kindergarten program at Monaco Elementary School**
 7 **that your children attended?**
 8 A. Two hours.
 9 **Q. Two hours a day?**
 10 A. Yes. No. Actually, four days a week.
 11 **Q. Two hours four days a week?**
 12 A. Yeah.
 13 **Q. So it was a half-time program?**
 14 A. Right.
 15 **Q. I put on the Elmo Exhibit 10434. Are you**
 16 **able to see that, or would you like a copy?**
 17 A. I can see that.
 18 **Q. Okay. Can you tell us what that document**
 19 **is, please.**
 20 A. That's for free and reduced lunches.
 21 **Q. And did your children receive reduced**
 22 **price lunch?**
 23 A. Yes, they did.
 24 **Q. And was that just this particular year, or**
 25 **how often did they receive it?**

2918

1 A. They -- they've done -- except for
 2 Lillian, now, she was not -- she didn't -- some years
 3 didn't qualify for it, depending on the income. And
 4 the rest of the years, my foster -- well, they were
 5 foster children, and now that we've adopted them,
 6 they've had reduced and free lunches.
 7 **Q. So some years they had free lunch?**
 8 A. Yes, uh-huh.
 9 MS. BEZOZA: Your Honor, I'd like to move
 10 to admit Exhibit 10434.
 11 MR. HEINKE: No objection, Your Honor.
 12 THE COURT: 10434 will be admitted.
 13 MS. BEZOZA: Thank you.
 14 **Q. (BY MS. BEZOZA) Let's talk a little bit**
 15 **about Lillian. How old is she?**
 16 A. She's 18.
 17 **Q. And what does Lillian like to do? What**
 18 **are her hobbies?**
 19 A. She loves art and music and -- art --
 20 mostly art and music. She loved the violin, she played
 21 that quite often. And she did a lot of artwork through
 22 the high school. Which, you know, she was very
 23 talented in both of them.
 24 **Q. And what does she want to do when she's**
 25 **older?**

2919

1 A. She would like to be an art teacher.
 2 **Q. And how would you describe Lillian's**
 3 **academic performance in school?**
 4 A. Very low.
 5 **Q. And when did she first start having**
 6 **problems in school?**
 7 A. Actually, in kindergarten. In fact, she
 8 had to repeat kindergarten for two years. She was not
 9 ready to go on to first grade. She was not qualified.
 10 **Q. In what types of areas did Lillian**
 11 **struggle in school?**
 12 A. Basically everything. Math, reading,
 13 writing. Everything, I would say.
 14 **Q. Was there one of those that was most**
 15 **difficult for her?**
 16 A. Reading. And math.
 17 **Q. What is your understanding of Lillian's**
 18 **problems with reading?**
 19 A. I wasn't quite sure, but I know she -- she
 20 always had trouble. Even whenever we were trying to
 21 teach her at home, she was more of a visual person that
 22 looked at the pictures and deciphered what the story
 23 was about. And I, myself, thought she had --
 24 how -- dyslexia.
 25 **Q. Dyslexia?**

2920

1 A. But I don't know if she was ever tested or
 2 not.
 3 **Q. And do you know how schools test for**
 4 **dyslexia?**
 5 A. No, I don't.
 6 **Q. How would you describe Lillian's reading**
 7 **progress over the years?**
 8 A. Very minimal. In fact, I don't believe
 9 it's changed at all, all through high school even.
 10 **Q. So how well does she read now?**
 11 A. Poorly. Very poorly. She's like in the
 12 second grade -- the last report we have received, it
 13 was like in the second grade, I don't know how many
 14 months, on reading.
 15 **Q. Second grade reading level?**
 16 A. Right. Uh-huh.
 17 **Q. Is there anything you believe could have**
 18 **helped Lillian improve her reading skills more?**
 19 A. More individual attention.
 20 **Q. Did -- I'm sorry.**
 21 A. I'm sorry. With -- with teachers that can
 22 really understand the reading problems of children.
 23 **Q. Did Lillian ever receive special education**
 24 **services in school?**
 25 A. All the way through school.

2921

1 **Q. And do you remember when she first started**
 2 **receiving special education?**
 3 A. First grade.
 4 MS. BEZOZA: Your Honor, may I approach,
 5 please, with a copy of this document.
 6 THE COURT: Yes.
 7 **Q. (BY MS. BEZOZA) Ms. Leroux, I've given**
 8 **you Exhibit 10439, and it's up on the Elmo. Can you**
 9 **tell us what this document is?**
 10 A. It's a reevaluation of Lillian Leroux.
 11 **Q. So that's -- that's a reevaluation, an**
 12 **IEP; is that right?**
 13 A. Right. Exactly. I'm sorry.
 14 **Q. Can you look on page 791 and tell us the**
 15 **date of this meeting, please.**
 16 A. Okay. 10/9 of 2008.
 17 **Q. What grade was Lillian in?**
 18 A. Gosh. What grade was that. Tenth grade.
 19 I'm sorry.
 20 **Q. That's okay. And now if you'll turn to**
 21 **page Leroux 802. The numbers are on the bottom right.**
 22 **This is a page called "Determination of Disability."**
 23 A. Okay.
 24 **Q. Did you find it?**
 25 A. Yes, I did.

2922

1 **Q. Can you tell us what it says in response**
 2 **to No. 1? It asks, "A disorder in the psychological**
 3 **processes which affects language and/or learning."**
 4 **What does it say underneath that?**
 5 A. "Lillian will qualify for special
 6 education services under the category of perceptual
 7 communicative. Lillian has difficulties in reading,
 8 writing, and math."
 9 **Q. And do you know what that term,**
 10 **"perceptual or communicative disability" means?**
 11 A. Not -- no, I don't.
 12 **Q. Is that consistent with your understanding**
 13 **that Lillian had difficulties in reading, writing, and**
 14 **math?**
 15 A. Yes, it is.
 16 **Q. Can you read what it says under No. 2, the**
 17 **test scores there?**
 18 A. "Testing indicates that Lillian is below
 19 the performance of her tenth-grade peers in reading,
 20 writing, and math." Her Broad Reading was 3.1 GE, her
 21 Broad Writing was 5.0 GE, her math was 5.2. Lillian's
 22 math scores are all at least one standard division --
 23 dev -- behind those of her tenth-grade peers. And then
 24 in math -- well, science 188, language 210, math 201,
 25 reading 200.

2923

1 **Q. And is "GE" grade equivalent, to your**
 2 **understanding?**
 3 A. Yes, it is.
 4 **Q. Okay. And can you look now at Leroux 793,**
 5 **please. And can you please read what it says under**
 6 **CSAP scores for Lillian. And this is her tenth grade**
 7 **IEP.**
 8 A. Okay. In tenth, CSAP scores in 2008, her
 9 reading was 589, partially proficient. Writing 458,
 10 partially proficient. Math 449, un -- unefficient, I
 11 guess, is what you'd call it. In 2007, her reading
 12 score was 589, partially proficient. Writing 520,
 13 partially proficient. Math 489, unsatisfactory.
 14 "Lillian's scores in reading have stayed
 15 the same; however, in both math and writing, her scores
 16 have been declining."
 17 **Q. Now, if you'll look at -- thank you. If**
 18 **you'll look at page 803 now. Can you tell us what**
 19 **special education and related services Lillian got that**
 20 **year?**
 21 A. With a special education teacher, and she
 22 got weekly -- she got total five hours per -- per week.
 23 **Q. And if you look right above that, can you**
 24 **tell us what type of classroom Lillian got that**
 25 **instruction in?**

2924

1 A. Okay. She -- regular classroom.
 2 **Q. A general education classroom?**
 3 A. Right. A general. Okay. Instruction in
 4 general education classroom with con -- con --
 5 consolidation from special education.
 6 **Q. Thank you.**
 7 MS. BEZOZA: Your Honor, I move to admit
 8 Exhibit 10439.
 9 MR. HEINKE: No objection.
 10 THE COURT: 10439 will be admitted.
 11 **Q. (BY MS. BEZOZA) And I'd like you to look**
 12 **at Exhibit 10438, please.**
 13 MS. BEZOZA: Your Honor, may I approach,
 14 please, with copies.
 15 THE COURT: Yes. Thank you.
 16 **Q. (BY MS. BEZOZA) Will you turn to page 772**
 17 **of this document?**
 18 A. Individual education pro -- IEP.
 19 **Q. Yes. Can you tell us the date on this**
 20 **IEP?**
 21 A. 10/6 of 2009.
 22 **Q. And what grade was Lillian in here?**
 23 A. 11th grade.
 24 **Q. And now if you'll turn to page Leroux 775.**
 25 **Can you tell us what special education-related services**

2925

1 **Lillian got in 11th grade?**
 2 A. Okay. She got special education teacher
 3 weekly, and one hour per week.
 4 **Q. Do you know why Lillian's special**
 5 **education services decreased from five hours per week**
 6 **in tenth grade to one hour per week in 11th grade?**
 7 A. No, I don't.
 8 **Q. And what level of special education**
 9 **services do you believe Lillian needed in 11th grade?**
 10 A. I actually believe she needed more than
 11 five hours, even, because she was getting close to
 12 graduation.
 13 MS. BEZOZA: Your Honor, I move to admit
 14 Exhibit 10438, please.
 15 MR. HEINKE: No objection, Your Honor.
 16 THE COURT: 10438 will be admitted.
 17 MS. BEZOZA: May I approach, please, Your
 18 Honor.
 19 THE COURT: Yes. Thank you.
 20 **Q. (BY MS. BEZOZA) Ms. Leroux, you've been**
 21 **given Exhibit 10435, which is another IEP for Lillian.**
 22 **Can you tell us what grade she was in here?**
 23 A. 12th grade.
 24 **Q. And now can you look at page Leroux 761,**
 25 **please.**

2926

1 A. Okay.
 2 **Q. Can you tell us what special education**
 3 **services Lillian got in 12th grade?**
 4 A. Special education teacher weekly,
 5 frequency 0.5. Half of -- half a -- half of one.
 6 **Q. So that's less than she was getting the**
 7 **prior year, in 11th grade?**
 8 A. Yes, it is. By 50 percent.
 9 MS. BEZOZA: Your Honor, I move to admit
 10 Exhibit 10435, please.
 11 MR. HEINKE: No objection, Your Honor.
 12 THE COURT: 10435 will be admitted.
 13 MS. BEZOZA: May I approach, please.
 14 THE COURT: Yes. Thank you.
 15 **Q. (BY MS. BEZOZA) Ms. Leroux, can you**
 16 **please look at Exhibit 10451, which is entitled**
 17 **"Summary of Performance."**
 18 A. Yes.
 19 **Q. Can you tell us what this document is?**
 20 A. What -- okay. Complete and up-to-date
 21 information is critical. This is the exiting out of
 22 12th grade, is what I presume. I -- I received this
 23 after she graduated.
 24 **Q. Okay. And what's the date on this, that**
 25 **this form was created? In the right-hand corner.**

2927

1 A. 5/16 of 2011.
 2 **Q. So was that around the time that Lillian**
 3 **graduated from high school?**
 4 A. Right. It was just about a week before.
 5 **Q. Can you please tell us what Lillian's**
 6 **reading scores were upon graduation from Adams City**
 7 **High School.**
 8 A. Okay. Her word reading was 2.9 grade
 9 level. Her Woodcock-Johnson testing, Broad Reading was
 10 3.1 GE.
 11 **Q. What about math?**
 12 A. Okay. Math, it was grade level 5.1 level.
 13 And then on the Woodcock-Johnson was 5.2 rated
 14 efficiency.
 15 **Q. And for written language?**
 16 A. Okay. Her spelling was 3.5 grade level.
 17 Her Wood -- okay. Her Woodcock -- okay. The Broad
 18 testing was 5.0 general equivalent.
 19 **Q. Thank you.**
 20 MS. BEZOZA: Your Honor, I move to admit
 21 Exhibit 10451, please.
 22 MR. HEINKE: No objection, Your Honor.
 23 THE COURT: 10451 will be admitted.
 24 **Q. (BY MS. BEZOZA) Ms. Leroux, are you**
 25 **familiar with Lillian's ACT scores?**

2928

1 A. Yes, I am.
 2 **Q. What did Lillian get on the ACT in 11th**
 3 **grade?**
 4 A. 11 percent -- or 11.
 5 **Q. A composite score of 11?**
 6 A. Yes, uh-huh.
 7 **Q. And did she take it again in the 12th**
 8 **grade?**
 9 A. Yes, she did.
 10 **Q. And what did she get then?**
 11 A. Another 11.
 12 **Q. And you said that Lillian graduated from**
 13 **high school; is that correct?**
 14 A. Yes, she did.
 15 **Q. And what is she doing now?**
 16 A. Now she is working part time at King
 17 Soopers.
 18 **Q. Does she have any plans to attend college?**
 19 A. She really wants to. She's -- you know,
 20 she's kind of lost hope of -- she's been denied from
 21 two different schools, one in Fort Collins and Metro
 22 here, on account of her low averages on her -- her ACT
 23 tests and everything.
 24 **Q. So she hasn't been admitted to a college**
 25 **for this coming fall?**

2929

1 A. No, she hasn't.
 2 **Q. And does she want to attend college?**
 3 A. Very much so.
 4 **Q. Do you believe she's ready for college?**
 5 A. No, I don't. I really don't.
 6 **Q. Why is that?**
 7 A. Her grades are well below -- even
 8 community college wouldn't accept her with this type of
 9 grades, I don't believe.
 10 **Q. Okay. Let's talk about Ashley now. Can**
 11 **you describe what Ashley likes to do?**
 12 A. Ashley's very active with sports and
 13 gymnastics, anything to do outdoors, riding bicycles,
 14 everything like that. She's very active.
 15 **Q. What does she want to do when she grows**
 16 **up?**
 17 A. She wants to become a day care provider.
 18 **Q. And did Ashley receive special education**
 19 **services in school?**
 20 A. Yes, she has.
 21 **Q. Or does she?**
 22 A. Yes, she does.
 23 **Q. And do you know what Ashley's disability**
 24 **is?**
 25 A. Behavior Social/emotional

2930

1 **Q. And how do Ashley's disabilities affect**
 2 **her in school?**
 3 A. She -- she is struggling with large
 4 classes, and she's got a lot of behavioral problems
 5 which need to be addressed in a very small classroom
 6 setting.
 7 **Q. And for how long do you believe she's**
 8 **needed a small class setting?**
 9 A. Since first grade.
 10 **Q. And when Ashley was at Adams City Middle**
 11 **School, what type of class was she in?**
 12 A. Just general education teacher.
 13 **Q. And how did she do there?**
 14 A. Very poorly.
 15 **Q. What types of problems did she have?**
 16 A. She was the -- truancy. We had a lot of
 17 problems. She was not ditching school, but she was
 18 hiding out in different hallways and -- and wherever
 19 she could, you know, slip away from the teachers. And
 20 they'd mark her absent and truant both. And then she
 21 and -- she has had a stealing problem, and that's
 22 whenever they finally -- she stole a -- a real nice
 23 necklace from a teacher, and they almost sent us to
 24 court over -- finally over that.
 25 **Q. And is the stealing related to her**

2931

1 **disability?**
 2 A. Yes, it is.
 3 **Q. And her abuse history?**
 4 A. Yes, very much so. And her lying.
 5 She's -- she's had a lot of problems. She's one of the
 6 most -- I would say most affected children over this
 7 whole, you know -- well, from her biological parents.
 8 **Q. And can you give an example of how many**
 9 **absences Ashley would have in one marking period?**
 10 A. Gosh. 90. It was the fact that every
 11 time -- every class she missed or would go in late,
 12 they'd mark her absent. And that did get up to 90.
 13 **Q. And what's your opinion of the school's**
 14 **efforts to keep Ashley in class?**
 15 A. Oh, they -- they worked hard. I mean,
 16 they even sent her to counseling. They -- they tried
 17 to, you know -- they -- they did a lot for Ashley, to
 18 try to help her, you know, and contain her as much as
 19 possible. But with 30, 35 kids, there -- children,
 20 there -- there is no way that she can be contained.
 21 **Q. Where has Ashley gone to school the last**
 22 **few years?**
 23 A. She's gone to Community Reach Day
 24 Treatment Program.
 25 **Q. Do you know who pays for Community Reach?**

2932

1 A. Medicaid and the school district.
 2 **Q. Did it cost you any money?**
 3 A. No, it didn't.
 4 **Q. How has Ashley done at Community Reach?**
 5 A. Pretty minimal. She has done better, but
 6 the class sizes there are like five, and they
 7 have -- they have the therapist and the teacher and --
 8 you know. They have maybe, I'd say, two to -- two to
 9 five people in -- I mean workers in the room at all
 10 times.
 11 **Q. So the class size is much smaller than the**
 12 **classes she was in at Adams City Middle School?**
 13 A. Yes. There was like five in her grade
 14 level.
 15 **Q. And do you believe that small class size**
 16 **has helped her?**
 17 A. Very much so.
 18 MS. BEZOZA: Your Honor, may I approach,
 19 please.
 20 THE COURT: Yes.
 21 **Q. (BY MS. BEZOZA) Ms. Leroux, I'm showing**
 22 **you what's been marked as Exhibit 10440, which is an**
 23 **IEP for Ashley. Can you tell us the date on this IEP?**
 24 A. I'm sorry?
 25 **Q. The date on the IEP in the top right-hand**

2933

1 **corner.**
 2 A. 11/10 of 2010.
 3 **Q. And this was when Ashley was at the**
 4 **Community Reach Center; is that right?**
 5 A. Yes, it is. Day treatment.
 6 **Q. Can you turn to page Leroux 1005, please.**
 7 **If you look at the section entitled "Present Levels of**
 8 **Educational Performance Summary." Can you read the**
 9 **highlighted sentences that begin with "Ashley is**
 10 **currently attending Community Reach . . ."**
 11 A. Okay. "Ashley is currently attending
 12 Community Reach Day Treatment to focus on social and
 13 emotional issues. Ashley is working on developing
 14 appropriate friendships, working out conflicts, telling
 15 the truth, and advocating for herself when she is
 16 frustrated or needs something." Or -- God, I lost
 17 something here.
 18 "Ashley displays behavior such as shutting
 19 down and becoming non-verbal, excessive crying, and
 20 uses advantageous situations to meet her own needs and
 21 self-soothe sometimes to the decline of others is
 22 involved. Ashley benefits from individual instruction
 23 she receives in smaller class size and support
 24 surrounding her PTSD issues. Ashley works well on
 25 tasks when she has simple directions broken into

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1 steps."
 2 MS. BEZOZA: Your Honor, I move to admit
 3 Exhibit 10440, please.
 4 MR. HEINKE: No objection, Your Honor.
 5 THE COURT: 10440 will be admitted.
 6 **Q. (BY MS. BEZOZA) Will Ashley be attending**
 7 **Community Reach Center this year?**
 8 A. No. They transitioned her out of
 9 Community Reach. And she will be attending AC High
 10 School this year.
 11 **Q. That's Adams City High School?**
 12 A. Yes.
 13 **Q. Do you have any concerns about how Ashley**
 14 **will do at the high school?**
 15 A. Yes, I do. Very much so. I do feel that
 16 she's going to fall back into her same behaviors as
 17 before she went to Community Reach.
 18 **Q. And have you told anyone at the school**
 19 **about your concerns?**
 20 A. Yes, I have. I talk to anybody who'll
 21 listen to me. But . . .
 22 **Q. Let's talk about Alexandra (sic), please.**
 23 **Ali. Can you describe Ali? What does she like to do?**
 24 A. She -- she loves animals. She likes
 25 bicycle riding. She likes, you know, going out,

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1 libraries and different -- you know, she -- she's just
 2 all around generally a pretty happy child.
 3 **Q. And how old is Ali?**
 4 A. Ali is 15. I'm sorry.
 5 **Q. And what does Ali want to do when she**
 6 **grows up?**
 7 A. She wants to become a veterinarian.
 8 **Q. And does Ali have any special education**
 9 **needs?**
 10 A. Very much so.
 11 **Q. And what are they?**
 12 A. She struggles with speech, math, writing.
 13 Most all of the curriculum.
 14 **Q. Can you tell me about Ali's speech issues?**
 15 A. What was that? I'm sorry.
 16 **Q. Can you tell me about Ali's speech issues?**
 17 A. She has a very distinctive speech
 18 impediment that, you know, they work with her on it,
 19 but now she's no longer in speech.
 20 **Q. So she was receiving speech services at**
 21 **school?**
 22 A. Yes, very -- somewhat.
 23 **Q. And now she's no longer receiving speech?**
 24 A. No.
 25 **Q. And in your opinion, does she still have**

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1 **problems with speech?**
 2 A. Very much so. She runs her words
 3 together. She has -- there's some of the alphabet that
 4 she doesn't even pronounce the words right.
 5 **Q. And do you have any understanding as to**
 6 **why they stopped her speech services?**
 7 A. I -- I believe it was lack of funding, and
 8 the teacher that was working with Ali had to -- well,
 9 they couldn't afford to keep him due to the funding of
 10 our school. He was a part-time speech teacher.
 11 **Q. So the teacher that was working with Ali**
 12 **was let go?**
 13 A. What?
 14 **Q. The teacher that was working with Ali is**
 15 **no longer at the school?**
 16 A. No, he isn't.
 17 **Q. And do you believe Ali still needs speech**
 18 **services?**
 19 A. Very much so.
 20 **Q. Now let's talk about Amber. How old is**
 21 **Amber?**
 22 A. She's 14.
 23 **Q. And what does Amber like to do?**
 24 A. She likes a lot of shopping and she's
 25 very -- wants to do educational things. She likes

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1 coming to the library and doing that type of stuff.
 2 **Q. What does Amber want to be?**
 3 A. She definitely wants to be -- she told
 4 me -- well, she started out wanting to be a lawyer or a
 5 physician, but whatever paid the most, she said, that
 6 was her idea. But now she wants to become a
 7 philosopher.
 8 **Q. Has Amber ever been identified as gifted**
 9 **and talented?**
 10 A. She was like in the fourth or fifth grade.
 11 I'm not sure.
 12 **Q. And how would you describe the gifted and**
 13 **talented services that Amber has received?**
 14 A. I -- very minimal.
 15 **Q. Has -- to your knowledge, has Amber ever**
 16 **had an Advanced Learning Plan?**
 17 A. No. Not that I know of.
 18 **Q. And what are your observations about how**
 19 **the lack of GT services has affected Amber?**
 20 A. She's very bored at school, and she -- she
 21 just don't seem -- she'd rather -- rather stay home
 22 and, you know, do home schooling or -- you know, on the
 23 computer. But I -- I don't feel that that's a real
 24 good thing for her.
 25 **Q. Are you familiar with the transportation**

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1 **services offered by Adams 14 district?**
 2 A. Yes, very much so.
 3 **Q. Have you had any problems with**
 4 **transportation?**
 5 A. Yes.
 6 **Q. Can you tell us what those have been?**
 7 A. The problems we've had is with all the
 8 cutbacks and every -- the funding and everything, they
 9 were not providing transportation, even for after
 10 school for tutoring, sports, everything at the middle
 11 school until the last half of this -- this last year.
 12 The high school, they have no after-school buses
 13 running.
 14 **Q. And how did that affect your girls?**
 15 A. Oh. Well, they weren't able to go to
 16 tutoring. They weren't able to join sports.
 17 Everything.
 18 **Q. And why couldn't you pick them up from**
 19 **school?**
 20 A. I don't drive.
 21 **Q. Now let's talk about the books at your**
 22 **children's schools. Have their schools always had**
 23 **enough books for all the children?**
 24 A. No.
 25 **Q. How did that affect your children?**

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1 A. The books that they studied by or taught
 2 by was left in the classroom, and they only was to use
 3 them when -- when they were in that class. And they
 4 weren't able to bring them home.
 5 **Q. So how, if at all, did that affect your**
 6 **ability to help them with their schoolwork at home?**
 7 A. Well, if you haven't been in school for
 8 years and you have to refresh your memory, and if they
 9 don't catch what they're doing in the classroom, which
 10 then they -- they don't know how to do their homework,
 11 and we're at a loss of what they actually were teaching
 12 in the school. And if you had the books to come back,
 13 you know, home with, then at least you could read
 14 through and see what they were really wanting them to
 15 learn.
 16 **Q. What are your greatest concerns about the**
 17 **education your children have received in Adams 14**
 18 **schools?**
 19 A. I'm just very concerned that they're not
 20 college-ready, they're not life-ready, skilled
 21 or -- and they're -- they're getting -- well, two of
 22 them have already graduated, and I don't feel that
 23 they're ready to be out in this world.
 24 **Q. What do you hope to achieve through your**
 25 **participation in this lawsuit?**

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1 A. That we -- we are able to get more funding
 2 for our schools. And I want more help for my children
 3 as well as other children.
 4 MS. BEZOZA: Thank you very much. I have
 5 no more questions.
 6 MS. BONO: We have no questions, Your
 7 Honor. Thank you.
 8 THE COURT: Thank you. Cross-examination?
 9 MR. HEINKE: No, Your Honor. Thank you
 10 very much.
 11 THE COURT: Thank you, ma'am.
 12 THE WITNESS: Thank you.
 13 MR. KAWANABE: Your Honor, we have two
 14 witnesses this afternoon. I apologize. Senator Heath
 15 is coming at 1 o'clock. And so is it permissible to
 16 take a longer lunch? We are right on track. And so we
 17 have two witnesses this afternoon, just as scheduled.
 18 And we will finish up with our side Wednesday, with,
 19 again, a couple of trickle-overs that we've worked out
 20 with the state.
 21 THE COURT: All right. I know it's hard
 22 with scheduling, so that's fine. You said he'll be
 23 here by 1:00?
 24 MR. KAWANABE: Yes.
 25 THE COURT: Okay. We'll reconvene at 1:00

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1 then. Thank you.
 2 MR. KAWANABE: Thank you.
 3 (Recess taken, 11:20 a.m. to 1:01 p.m.)
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1 AFTERNOON SESSION, MONDAY, AUGUST 15, 2011
 2 THE COURT: Calling up Case No. 05CV4794.
 3 Are we ready to proceed?
 4 MS. GEBHARDT: We are, Your Honor.
 5 MR. HEINKE: We are, Your Honor.
 6 THE COURT: Next witness for the
 7 plaintiff?
 8 MS. GEBHARDT: The plaintiffs would call
 9 Senator Rollie Heath.
 10 THE COURT: If you would come forward,
 11 sir, here to the witness stand. If you would raise
 12 your right hand.
 13 STRATTON ROLLINS HEATH,
 14 having been first duly sworn to state the whole truth,
 15 testified as follows:
 16 THE COURT: Thank you, sir. Please be
 17 seated. And that microphone is adjustable, so if you
 18 want to pull it closer. Could you please state your
 19 full name, and spell both your first and last name for
 20 the record.
 21 THE WITNESS: It's Stratton,
 22 S-t-r-a-t-t-o-n, Rollins, R-o-l-l-i-n-s, Heath,
 23 H-e-a-t-h, Jr.
 24 THE COURT: Thank you.
 25

2943

1 DIRECT EXAMINATION
 2 BY MS. GEBHARDT:
 3 Q. Good afternoon, Senator Heath.
 4 A. Good afternoon.
 5 Q. Can you tell us your current position,
 6 please.
 7 A. I'm a Colorado State Senator.
 8 Q. From what district?
 9 A. 18th.
 10 Q. And what is the 18th District?
 11 A. Basically Boulder, but goes up to the very
 12 north, unincorporated part of Longmont.
 13 Q. And how long have you been a state
 14 senator?
 15 A. Basically three years. Three years this
 16 November.
 17 Q. And why did you run for the state senate?
 18 A. Well, it goes way back, I guess, in my own
 19 personal history. I had a wife who ran for the United
 20 States Senate, and I took a year of my life to campaign
 21 for her and found that, you know, talking about things
 22 that really mattered in a public setting were
 23 important, and I decided through that inspiration that
 24 I -- that I thought I would like to do it. So I -- I
 25 ran, and because I care particularly about a couple of

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1 things.
 2 Q. And what are those?
 3 A. Well, we came to the state in 1970 with
 4 two little kids and shortly thereafter had a third and
 5 put them into our school system. And it was a great
 6 school system. They went all through the school in
 7 Boulder and came out with a great education. And when
 8 we moved to this state, we were funding education
 9 at -- at one of the top levels of the country. And our
 10 oldest son went to the University of Colorado as well.
 11 So for me, I then went into business for
 12 40 years, and what became clear to me is if you're
 13 going to recruit companies or individuals to a state,
 14 one of the first or second questions you ever get asked
 15 is tell me about your education system, tell me about
 16 where my kids are going to go to school, and tell me
 17 about the people that I'm going to hire from your
 18 institutions of higher education.
 19 And when we came here, the answers to both
 20 those questions were something that were envious to
 21 most states in the country. Unfortunately, as I got
 22 involved in this and as our educational system and the
 23 funding for it continued to deteriorate, I decided that
 24 I needed to do something about it. So I decided to run
 25 for governor in 2002 and thought I was done, but became

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1 convinced that I needed to -- that I shouldn't sit on
 2 the sidelines. So I ran for the state senate in
 3 2008.

4 **Q. You mentioned a little about your**
 5 **professional background, being in business for**
 6 **40 years. Can you tell us a little about your business**
 7 **background, please, Senator Heath.**

8 A. Let me go back, I guess. Before I got
 9 here, I spent nine years on active duty in the United
 10 States Army as a -- I'm a lawyer by training and was an
 11 army judge advocate. Spent 15 more years in the Army
 12 Reserve. Taught at the University of Virginia Law
 13 School, which the army law school was part of the
 14 University of Virginia Law School. So I taught there
 15 for 15 years, and there was my reserve capacity.

16 Came here in both a legal and a business
 17 position in 1970, a subsidiary of Armco Steel. They
 18 wanted me to move to Ohio in 1973, and I decided life
 19 was too short, and -- I love the Midwest, but once
 20 you're here, you want to figure out a way to stay. And
 21 I spent until 2000 with Johns Manville Corporation. I
 22 started as a lawyer, but ended up basically running all
 23 of their businesses, including I was president of both
 24 the domestic and international companies.

25 Took early retirement to work on my wife's

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1 senate campaign, as I said, and then started my own
 2 business. I had a precision metal machine shop for
 3 13 years.

4 **Q. And going, reaching back even a little**
 5 **farther, can you tell us a little about your**
 6 **educational background, please.**

7 A. I've got two degrees from the University
 8 of Wisconsin, a marketing degree and a law degree.

9 **Q. So in your work as senator, what has been**
 10 **some of the primary areas that you've wanted to focus**
 11 **on?**

12 A. I guess we all tend to go towards the
 13 things that we know best and, more importantly, are
 14 probably passionate about. And I'll start with
 15 economic development, because jobs are basically
 16 everything, and so I've tended to spend a lot of my
 17 time on economic development. And you can't talk about
 18 economic development and jobs without talking about
 19 education.

20 So for me, it was -- it was just natural
 21 to -- to basically gravitate towards both economic
 22 development, jobs, and education. I also have a
 23 passion for career and technical education, 'cause
 24 we're not really training people to be tool and die
 25 makers, welders, machinists, brick layers, carpenters,

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1 electricians, all of those kinds of things. So that's
 2 kind of my natural fit, and I've spent a lot of my time
 3 in those two areas.

4 **Q. What subcommittees or committees have you**
 5 **served on in the senate?**

6 A. I chair the state Veterans and Military
 7 Affairs Committee, the Education Committee. I was on
 8 the Business Committee, and I'm on Appropriations
 9 Committee.

10 **Q. And have you worked on any interim**
 11 **committees since you've been a state senator?**

12 A. Yes, I have, when I chaired the state
 13 Long-Term Fiscal Policy Commission.

14 **Q. And what year was that, Senator?**

15 A. 2009.

16 **Q. Can you tell us a little about what the**
 17 **long-term fiscal stability was looking at?**

18 A. Yes. I think we all recognize that, you
 19 know, we have some real structural issues in this
 20 state, and it impacts particularly our funding, our
 21 funding for education, and the commission was designed
 22 just to basically take a look at the funding and how
 23 that relates to where we are in government today.

24 **Q. And do you remember if there was a**
 25 **presentation by the state -- any of the different state**

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1 **departments?**

2 A. We had virtually all the major state
 3 departments come and testify before the commission. We
 4 asked them to explain where their current funding was,
 5 and I hate to say this, if we got to average or if we
 6 got to middle of the road, what that funding would look
 7 like. It's terrible to have your aspiration to
 8 be -- to be mediocre.

9 But we asked them to give us that
 10 ceremony. And then we asked them to say if we really
 11 were -- wanted to be one of the best states in the
 12 country, whether it was in education, roads, you know,
 13 whatever the core functions of government are, what
 14 would it take to fund at those levels.

15 **Q. And do you remember a presentation by the**
 16 **Colorado Department of Education?**

17 A. Oh, I sure do.

18 **Q. And do you remember approximately what**
 19 **some of those numbers were that they presented to you?**

20 A. Yeah, I think I've got a fairly good
 21 understanding of this.

22 **Q. Would it be helpful to look at something**
 23 **that would maybe help refresh your memory?**

24 A. That would be great.

25 MS. GEBHARDT: If I might approach. Your

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1 Honor?

2 THE COURT: Yes.

3 Q. (BY MS. GEBHARDT) I've handed you just

4 part of a slide show that was presented to you by the

5 department. Does that help refresh your memory,

6 Senator Heath?

7 A. It does. It does.

8 Q. And what were the numbers that the state

9 department of education presented to you?

10 A. Well, we asked them first, and that's the

11 first number on this chart, to -- if we got to the

12 national average per-pupil funding -- and this is

13 2009-'10. This number would even be worse if we looked

14 at it now, because we're somewhere in the neighborhood

15 of \$2,000 per pupil less than the national average

16 today. I think when this was done, we were closer to

17 \$1500 per pupil less.

18 And that number was -- just to get us to

19 the national average of per-pupil funding was

20 1.2 billion. And then we asked them if you basically

21 did all the things that we know we need to do to have a

22 really top-flight education system, such as preschool

23 for all kids.

24 I did serve on Mayor Hickenlooper's Early

25 Childhood Task Force. We spent two years talking about

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1 the criticality of preschool. And we did pass it

2 overwhelmingly, but with less than 1 percent of the

3 vote, I think, but we did get it passed, in the City

4 and County of Denver, preschool for all 4-year-olds.

5 And then full-day kindergarten. We've got two kids in

6 St. Vrain, and our youngest was not able to get into

7 basically kindergarten, much less full day.

8 So we asked them to look at those kinds of

9 things and to fund the categoricals and all of that.

10 And that number came, if we did all of those things,

11 which fundamentally would say to have an education

12 system that gives our kids every chance in the world to

13 compete, that number was 2.8 billion.

14 MS. GEBHARDT: If I might approach again,

15 Your Honor?

16 THE COURT: Yes.

17 (Discussion off the record between

18 Ms. Gebhardt and Mr. Kawanabe.)

19 Q. (BY MS. GEBHARDT) So that number was

20 2.8 billion? Not an "M," a "B"?

21 A. A "B."

22 Q. Are you aware of any efforts since the

23 time that this presentation occurred by the general

24 assembly to address this shortfall?

25 A. I wish I could say yes. But the answer is

2951

1 no. All's we've done is continue to cut from -- from

2 the 2009-'10 budget to where we are today.

3 Q. And are you aware of any efforts by the

4 general assembly just to address even the base funding

5 amount for education?

6 A. Again, no. I'd love to say yes.

7 Q. And are you aware, Senator Heath, of the

8 increasing standards and mandates that we've been

9 placing on school districts?

10 A. Yes. I was part of that. I served on the

11 Senate Education Committee and Senate Bill 191 and so

12 forth. Yes, very much aware of it.

13 Q. And you believe that's the right direction

14 to be headed?

15 A. I voted for it. Yes.

16 Q. Was there any financial support to support

17 any of those measures, to your knowledge?

18 A. No.

19 Q. And with your background in business,

20 Senator Heath, if you wanted -- does that make sense to

21 you, as a businessman?

22 A. No. It's pretty hard to task. When I was

23 in Johns Manville and running a fairly large billion

24 dollar company, I mean, we always would try to look at

25 ways to grow our market share, and to do that, you

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1 obviously had to invest in R&D, you had to invest in

2 sales and marketing and the whole gamut if you really

3 wanted to make an effort to increase your market share.

4 And without putting funding to it, it would be pretty

5 difficult to do.

6 So what we've basically asked is let's

7 reform the system, but you figure out how to do it

8 without us giving you any financial resources to do it.

9 Q. So what's your -- your current project

10 that you're working on in your spare time?

11 A. Well, we need to go to the voters and

12 basically ask them to -- if they're willing, to take a

13 crack at that 1.2 billion or the 2.8 billion by raising

14 funds in the short term. The way I look at it, your

15 kids are only in second grade, in my case, with my

16 grandkids, or third grade once. And I look at it as we

17 can't wait to figure out whether the general assembly

18 and everybody else can figure it out. So what this

19 initiative is is going to the voters and saying are you

20 willing to invest in your education system.

21 Q. And was that a referred measure or an

22 initiated measure?

23 A. It's an initiated measure.

24 Q. And why did you go the initiated route?

25 A. Well, to try to get a measure through

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1 general assembly I felt wasn't worth the effort.
 2 Because even if we did, it still has to go to the
 3 voters. So my thought was if it's got to go to the
 4 voters, let's ask them. We just went through the
 5 rather tortuous process of getting 86,000 signatures.
 6 We got 142,000 signatures of people who believe that we
 7 should start reinvesting in education, that it's gone
 8 too far.

9 **Q. And can you tell us a little about --**
 10 **first of all, does it have a name, your measure?**
 11 A. We call it Bright Colorado.
 12 **Q. And if -- what does it do? If it were to**
 13 **pass, what would it do?**
 14 A. We reduced our taxes in 1999 and 2000, our
 15 state income tax, from 5 percent to 4.63. We did it in
 16 two stages; we took it to 4.75 in '99 and 4.63 in 2000.
 17 And we reduced the state income tax -- excuse me, the
 18 state sales tax in 2000 from 3 to 2.9. So what this
 19 does is just take us back -- takes us back to that
 20 level for five years and to allow us to have what I
 21 hope will be a long-term conversation about the
 22 structural issues.
 23 And we would then put all that money into
 24 preschool through higher education, and it would be up
 25 to the general assembly to decide how -- how that money

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1 would be divvied up each year. But we figure it'll
 2 raise, the estimate is, 2.85 billion over the five
 3 years, starting in the lower 500s and going into the
 4 low 600s by year five.

5 **Q. And would there be any substantive change**
 6 **to the School Finance Act as the result of this?**
 7 A. There is no structural. This is just
 8 adding the dollars to the State Education Fund and to
 9 higher ed in just the way it is divvied up today.
 10 There are no structural changes.
 11 MS. GEBHARDT: One second, Senator Heath.
 12 (Discussion off the record between
 13 Ms. Gebhardt and Ms. Bezosa.)
 14 MS. GEBHARDT: Thank you, Senator Heath.
 15 Those are all the questions I have.
 16 THE WITNESS: Thank you.
 17 THE COURT: Thank you.
 18 MS. BONO: We have no questions, Your
 19 Honor.
 20 THE COURT: Cross-examination?
 21 MS. MARKEL: Just briefly, Your Honor.
 22 **CROSS-EXAMINATION**
 23 **BY MS. MARKEL:**
 24 **Q. Good afternoon, Senator Heath.**
 25 A. Good afternoon.

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1 **Q. Just have a very few questions for you.**
 2 A. Sure.
 3 **Q. The voters in Colorado have to approve any**
 4 **tax increase; that's correct, isn't it?**
 5 A. Yes, it is.
 6 **Q. And K-12 education receives 43 percent of**
 7 **the state's general fund, correct?**
 8 A. I think it's actually a little higher than
 9 that now, but, roughly, yes.
 10 **Q. And your initiative includes funds for**
 11 **higher education, does it not?**
 12 A. Yes, it does.
 13 **Q. If your initiative passes, Bright**
 14 **Colorado, would your proposal have people paying higher**
 15 **taxes for school districts other than their own?**
 16 A. I'm not sure how to answer your question.
 17 Everybody pays state income tax and sales tax, and it
 18 goes into the general fund. So from that standpoint I
 19 guess the answer is yes.
 20 MS. MARKEL: I have no further questions.
 21 THE COURT: Thank you. Redirect?
 22 MS. GEBHARDT: No redirect, Your Honor.
 23 THE COURT: Okay.
 24 MS. GEBHARDT: And, Your Honor, if we
 25 could take a brief just technology recess, because for

2956

1 the next witness I have to get a laptop set up and an
 2 easel. So if we could just get that set up?
 3 THE COURT: Okay. Thank you, Senator.
 4 Appreciate your time.
 5 THE WITNESS: Okay. Thank you.
 6 THE COURT: Let us know when you're ready,
 7 then. Okay. Thank you.
 8 (Recess taken, 1:18 p.m. to 1:29 p.m.)
 9 THE COURT: We're back on the record in
 10 Case 05CV4794. The next witness for the plaintiff?
 11 MS. GEBHARDT: David Hart, please.
 12 THE COURT: If you'd raise your right
 13 hand, sir.
 14 **DAVID D. HART,**
 15 **having been first duly sworn to state the whole truth,**
 16 **testified as follows:**
 17 THE COURT: Thank you. Please be seated,
 18 sir. And that microphone can be adjusted so it's
 19 comfortable for you. And then if you could state your
 20 full name, and spell your last name for the record.
 21 THE WITNESS: David D. Hart. D-a-v-i-d,
 22 middle initial D., last name Hart, H-a-r-t.
 23 THE COURT: Thank you.
 24
 25

2957

1 DIRECT EXAMINATION
 2 BY MS. GEBHARDT:
 3 **Q. Good afternoon, Mr. Hart. Could you tell**
 4 **us what your current position is, please.**
 5 A. I am the chief financial officer for the
 6 Denver Public Schools, a position I've held since
 7 June 16, 2010.
 8 **Q. What are your duties and responsibilities**
 9 **as the chief financial officer for Denver Public**
 10 **Schools?**
 11 A. For ensuring -- for the financial
 12 well-being of the district on all matters of budget and
 13 finance, accounting. Sort of an encompassing view of
 14 the district for purposes of fiscal health.
 15 **Q. Can you pull the mic up a little? There.**
 16 **Thanks.**
 17 A. Sorry.
 18 **Q. That's okay. Can you tell us a little**
 19 **about your education background starting with college,**
 20 **please.**
 21 A. Undergraduate degree, University of
 22 Colorado, 1986, in kinesiology/P.E., political science,
 23 so a double major. 1989, master's, University of
 24 Colorado-Denver, public administration.
 25 Employment history, City of Denver as an

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1 intern during that time. Went to the City of Thornton,
 2 working in the city manager's office. Excuse me, I
 3 skipped a step. Was in the city manager's office in
 4 Englewood in a full-time position. With the City of
 5 Thornton from '89 to '91 working out of the city
 6 manager's office on a variety of functions. In '91
 7 to '93 was with the City and County of Denver out of
 8 their budget office. '93 through approximately 2000
 9 was working for the City and County of Denver's
 10 treasury as the city's debt administrator.
 11 From approximately 2000 to 2002, remaining
 12 with the treasury within the City and County of Denver,
 13 was the cash manager for the city. 2002 to 2003 was
 14 with the City of Cherry Hills Village as the director
 15 of finance and administration, served in that time as a
 16 interim city manager. Left in 2003 for Douglas County
 17 Schools. Served as the budget director through fall of
 18 2004. Returned back to the City and County of Denver
 19 as the treasurer in the fall of 2004, a position I held
 20 through spring of 2007.
 21 During that time, April 2006 to April of
 22 2007, also was the -- a dual incumbent to the city, in
 23 that I was also the manager of revenue. In May of
 24 2007, returned to the Douglas County School District as
 25 their CFO. Was there through June 15 of 2010 as their

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1 CFO before coming to the Denver Public Schools in June
 2 of 2010.
 3 **Q. Thank you. In your work experience, have**
 4 **you had an opportunity to become familiar with the**
 5 **School Finance Act and the school finance, how it works**
 6 **in Colorado?**
 7 A. Yes.
 8 **Q. And what I was hoping is that maybe you**
 9 **could help explain how the School Finance Act works?**
 10 A. Okay.
 11 **Q. If we could start with maybe just the**
 12 **overall how it works and then sources of revenue**
 13 **and . . .**
 14 A. Might I use the prop of a whiteboard?
 15 MS. GEBHARDT: Is that all right, Your
 16 Honor?
 17 THE COURT: Yes, that's fine.
 18 **Q. (BY MS. GEBHARDT) Okay.**
 19 A. So by way of illustration --
 20 **Q. You're going to have to talk really loud**
 21 **so the court reporter can hear you.**
 22 A. By way of illustration, I'll speak in the
 23 broadest of categories for K-12 revenue to the public
 24 schools, but meant to be illustrative. If we draw a
 25 pie, five sections to the pie. And so this would be

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1 revenues available to K-12 entities, the Denver Public
 2 Schools being an example.
 3 In this regard, we have a state -- so by
 4 way of illustration, it's not meant to describe the
 5 revenue, it's just meant to speak to the source. So
 6 there's a state source, a local source. There are then
 7 federal dollars and there are private dollars. And
 8 then for our purposes, I'm going to put a second local
 9 share, but I'm going to sort of sub-categorize that as
 10 the mill levy override.
 11 For the purposes of getting familiarity
 12 around the School Finance Act, the private and federal
 13 sources do not apply. The federal and private sources
 14 are, if you will, grants, gifts, donations. They are
 15 typically discrete, in that they are, by source and
 16 use, very targeted.
 17 They are -- should be thought to be
 18 discrete in terms of not just source and use, but also
 19 their time. They are not -- when a grant is received,
 20 it is not a limitless grant. At the federal level,
 21 they are subject to appropriation, and from a private
 22 source, they are very typically defined in a 12-,
 23 sometimes 36-, at the outside, sometimes you'll get a
 24 60-month grant. But typically very discrete in terms
 25 of its source and its use in a targeted use and a

2961

1 time-bound usage.
 2 It is the case -- and for our purposes,
 3 I'm linking both the private grant and the federal
 4 grant in that regard, which is to say that the focus
 5 then is, for our purposes, to chat about the state and
 6 local share. And this state and local share is then
 7 what determines the funding sources for, under the
 8 School Finance Act, total program funding.
 9 And it is, in fact, when you add the state
 10 and local shares together, those revenue sources, you
 11 have, for purposes of total program funding, the
 12 entirety of revenue streams available to support that
 13 appropriation.
 14 The local mill levy override we'll discuss
 15 in a moment. But while covered statutorily, it is not
 16 the focus of the School Finance Act and should be
 17 thought to be outside of the School Finance Act.
 18 The School Finance Act, while laying out
 19 parameters through which the local mill levy override
 20 might be achieved, is the subject of a local voted
 21 authorization for the purpose of taxation and revenue
 22 generation.
 23 The -- so with that said, what I'd like to
 24 do is -- just making sure that folks are on the same
 25 page, is then talk about the total program funding

2962

1 And for sake of discussion, if we have the state plus
 2 the local equaling total program funding from a revenue
 3 perspective, it's also the case, then, that the total
 4 program funding minus the local equals the state. That
 5 is, if you will, a revenue equation.
 6 It is also the case that total program
 7 funding from an expenditure point of view is equal to a
 8 per-pupil revenue multiplied times a pupil count,
 9 otherwise known as a funded pupil count.
 10 Within the context of the funded pupil
 11 count we can also draw a very similar pie chart. This
 12 is not meant to be illustrative in terms of
 13 proportionality, but it is accurate in terms of
 14 assigning the various categories. You have, by my
 15 words, a brick-and-mortar student, and that student is
 16 meant to be distinguished from the other three, that
 17 is, a full-time student different than an online
 18 student, that is to say, a student who receives their
 19 education not in a brick-and-mortar environment in the
 20 traditional context, but receives their education
 21 online, through online instruction.
 22 The other is an at-risk student, a
 23 student -- for our purposes, under the School Finance
 24 Act, a student is thought to be at risk if that student
 25 qualifies for the federal free lunch program. And then

2963

1 the fourth category are kindergarten, what I'll just
 2 abbreviate for kindies, and kindies are funded at
 3 a 0.0 -- excuse me, I misspoke -- at 0.58 of the
 4 traditional brick-and-mortar student.
 5 We'll talk in greater detail about the
 6 proportional shares, but it's fair to say, to give a
 7 beginning point, that the online student receives a
 8 discounted amount compared to the non-online student of
 9 per-pupil revenue, and the at-risk student receives a
 10 premium compared to the non-at-risk student.
 11 **Q. And, Mr. Hart, are those also known as the**
 12 **factors in the formula? In some part.**
 13 A. The -- in respect to the formula, the
 14 weighting of students matters in the determination of
 15 total program funding, but in terms of the per-pupil
 16 revenue, there is a base amount, which I'll show you in
 17 a moment that amount within the formula. That is then
 18 adjusted by factors that recognize -- and I'll put a
 19 small "D" for district for that -- that recognize
 20 variability by district. And for our purposes, we'll
 21 keep it to three. They are size, cost of living, and
 22 personnel expense.
 23 And then there are additional factors
 24 which recognize the discrepancies or differences on a
 25 district-by-district basis, but with respect to the

2964

1 pupils within those districts, and those are the
 2 factors as determined by at risk, online, et cetera.
 3 We will -- we will get to that within -- in a moment
 4 here.
 5 And so the case is is that the base amount
 6 is multiplied times these factors, and that these
 7 factors then give you a per-pupil revenue, when
 8 multiplied upon the funded pupil count, determines your
 9 total program funding.
 10 **Q. And of all those numbers, what's the most**
 11 **important number that drives everything?**
 12 A. It is the base amount in the per-pupil
 13 revenue. As it is the driver upon which these factors
 14 as a -- to which they are, if you will, applied to
 15 result in a product, for a math context. Trying to
 16 make that simple.
 17 **Q. Okay.**
 18 A. So in that regard, the base amount is then
 19 adjusted for the weighting of differentiated size, cost
 20 of living, personnel district to district and within a
 21 district is then further differentiated based upon the
 22 population of funded pupil count. And then realize
 23 that in the context of the funded pupil count, there is
 24 then a further distinguishing characteristic as to
 25 whether or not the student is determined to be a

2965

1 full-time or part-time student.
 2 **Q. Okay. Thank you.**
 3 A. Okay. So --
 4 **Q. Is there a -- does CDE help you when**
 5 **you're trying to then calculate each individual**
 6 **calculation for how much you receive? Is there a**
 7 **worksheet that helps you with that?**
 8 A. The CDE does the worksheet on a -- for a
 9 district-by-district basis for the state, and it is
 10 posted and available for one's walk-through.
 11 **Q. Was there anything else you needed to add**
 12 **to your chart before we move over to the computer?**
 13 A. Not now. But I may.
 14 **Q. Okay. All right. We'll see if our -- it**
 15 **says help, but I'm hoping when you hit the screen,**
 16 **it'll come back up. Oh, there we go. Thanks, Kyle.**
 17 **So what do we have on the -- on the screen in front of**
 18 **us, Mr. Hart? If you could explain, please, what we're**
 19 **looking at.**
 20 A. What is before you is the -- the
 21 spreadsheet that is produced by CDE on an annual basis
 22 at a minimum. And it is adjusted throughout the year
 23 as pupil counts go from being adjusted to actual. The
 24 point being is that there is an estimation made at the
 25 time the budget is adopted by the state. But, in fact,

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1 when school districts, pursuant to CDE's guidelines,
 2 conduct a pupil count in October, it is readjusted for
 3 actual pupil counts. It has been in more recent years
 4 further adjusted based upon any funding decision that
 5 has come vis-a-vis the legislature.
 6 And it takes you then through the
 7 calculations on a district-by-district basis, very much
 8 paralleling what is before -- what I covered before on
 9 the -- on the flip chart. What you see here then is --
 10 and since I know them better than others, going to hide
 11 some -- hide some rows and columns to be able to walk
 12 through this.
 13 **Q. So first it covers every district in the**
 14 **state?**
 15 A. Yep. So there are 178 school districts.
 16 And if we were to go -- bear with me a minute. Don't
 17 look too closely or you'll wonder why, but you'll see
 18 that you'll go all the way out to column FZ to be able
 19 to get to state totals, and if you were to drop into
 20 one of these, you can see, then, that that -- the way
 21 this spreadsheet works is it is summing everything on a
 22 row-by-row basis coming from left to right from cell --
 23 staying within row 3, column C, all the way across to
 24 column FX.
 25 So for this instance, in this juncture and

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1 time, the state was projecting for year -- grades 1
 2 through 12, approximately 743,000 students before any
 3 other adjustments.
 4 **Q. Okay. And this is for the last school**
 5 **year?**
 6 A. This one is the projected forward,
 7 '11-'12.
 8 **Q. Oh, for '11-'12.**
 9 A. So for the school year that has, in some
 10 districts, begun, or in some, soon to begin. So for
 11 purposes of illustration, want to show three -- three
 12 school districts, Aurora, Denver, and Douglas County
 13 School Districts. If I can get back to getting just
 14 Aurora. I think I flew by it. Let's see. Adams.
 15 **Q. So what you're doing is just isolating**
 16 **three school districts on the Excel spreadsheet?**
 17 A. Yep. And so what you'll see on a
 18 firsthand basis can speak both to Denver and Douglas.
 19 So at the end of the day, want to be able to, just for
 20 purposes of illustration, add in the third. And then
 21 so we can see that none of the numbers are going to
 22 change, I'll keep the state -- I'll hide all the -- all
 23 the columns between Douglas and the state total. But
 24 you'll be able to see that none of the numbers are
 25 changing at the state level, that these are just being

2968

1 hidden for purposes of ease. Right now I'm just
 2 shrinking the columns so we can be able to see four
 3 columns going across.
 4 **Q. And those four columns, again, you can**
 5 **identify them now that we have them?**
 6 A. It is the row 2 that we're going to focus
 7 on. They are listed by first and row column, that is
 8 the county. So you see that Aurora School District,
 9 which is shown in cell Q2, is in the county of
 10 Arapahoe, whereas Denver and Douglas are both, for
 11 purposes -- largely for purposes are co-terminus. And
 12 then you see the state totals. And to be able to fit
 13 more onto this -- in fact, I'm going to hide that first
 14 row. But you now see the three school districts and
 15 the state's total.
 16 For purposes of illustration, then what
 17 you'll see is that as you go through this formula, one
 18 is you see that there are then adjusting pupil counts.
 19 So when I'm moving the cursor here, you can see that
 20 we're going back to fiscal year '08 and coming forward
 21 to the funded pupil count in fiscal year '11, before
 22 CDE starts to make estimations of pupil counts for the
 23 current year.
 24 You can see, then, that each of these
 25 three school districts, that they have been growing

2969

1 enrollment school districts. You can also see the same
 2 has been true on a statewide basis, as the number is
 3 increasing from 731 up to the 798.
 4 As we go through this, you'll see -- and
 5 so for our purposes, I'll end up hiding this. But as
 6 we go down, what you'll also see, then, is to the point
 7 of the formula a moment ago, row 32, which is entitled
 8 within this spreadsheet as row V31, there is the base
 9 amount per funding, which is \$5,634.77.
 10 **Q. So on there, that's where you circled**
 11 **"base"?**
 12 A. That is correct. In that formula,
 13 that -- this value represents that location on the
 14 formula.
 15 So what I want to be able to do is we're
 16 going to move -- largely the rows that I am now hiding
 17 are meant to be informative, but they're not the actual
 18 final pupil counts. And if you'll bear with me, I'm
 19 going to hide some of the computations that go into
 20 some of this. But what you'll see, by the way, to the
 21 point that after the per-pupil funding calculations are
 22 determined, that online is at a discount. You'll see
 23 that the amounts that are described for a minimum
 24 funding pursuant to the School Finance Act of
 25 \$7,050.87, that the online funding amount is less than

2970

1 You'll also see a cost-of-living factor,
 2 a -- the at risk, et cetera, and we'll get to that in
 3 more detail in a moment, but for our purposes, going to
 4 hide all of that except for the base funding.
 5 **Q. So tell us why you're hiding that.**
 6 A. You'll see the actual computations later
 7 in the formula, and it'll -- I think it will hopefully
 8 become clearer as to how that -- how those numbers come
 9 to be and the meaning behind those computations. I
 10 think it's important, then, that we understand not only
 11 the content, but the context for those computations in
 12 order to be able to talk further.
 13 In regards to the local share, if I might
 14 return to the --
 15 **Q. Sure.**
 16 A. -- prop?
 17 MS. GEBHARDT: Is that all right, Your
 18 Honor?
 19 THE COURT: Yes.
 20 MS. GEBHARDT: He's going back and forth.
 21 A. So in determining the local share, the
 22 largest driver of the local share is going to be the
 23 property tax component. And property tax is determined
 24 in a fairly simplistic way. And what it is is it's
 25 taking a market value of a property, applying an

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1 assessor's rate to that property, and then making a
 2 determination, a product, if you will, of the assessed
 3 value.
 4 The assessed value then has applied to it
 5 the mill levy, that is, the tax rate upon that assessed
 6 valuation, and that then tells the property taxpayer
 7 what the property tax is due to be. It is the case
 8 that the assessed -- the assessment rate is different
 9 for residential as opposed to non-residential
 10 properties. For our purposes, residential is
 11 7.96 percent and non-residential is 29 percent. Which
 12 means that for a market -- a market value of \$100,000,
 13 the assessed value for that residential is \$7,960 for a
 14 resident and it is \$29,000 for a non-residential
 15 property.
 16 The assessed valuation, then, is \$7,960
 17 times a mill levy. The mill levy is written as 0.001.
 18 So for the hundred thousand dollar residential
 19 property, one mill will generate \$7.96. For the
 20 non-residential property, one mill will then generate
 21 \$29.
 22 It is the case that the only place, if you
 23 will, within the formula that a school district has any
 24 ability to influence is in this mill levy. Anything
 25 with regards to market value is the determination of

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1 the assessor on a county-by-county basis. The
 2 assessment rate is otherwise set in law. And the
 3 formula is a standard application of determining
 4 property taxes in the context of a determined market
 5 value given the tax rate, otherwise known as the mill
 6 levy and the assessment rate.
 7 So then back to the spreadsheet. What
 8 you're seeing here is that the -- on a county-by-county
 9 basis, the assessor has made a determination of the
 10 assessed value within the school district for the City
 11 and County of Denver. The county assessed valuation
 12 and the DPS's assessed valuation are one in the same.
 13 In Aurora, given that it is a subset of a larger
 14 county, that would not be the case. But this is the
 15 assessed valuation for that particular school district.
 16 What that also suggests, in looking at the
 17 statewide, is that you're seeing a \$84 billion number,
 18 and approximately then Denver is -- is -- has a
 19 weighted -- or excuse me, as a percentage is
 20 approximately 10 percent.
 21 You can also see that by virtue of the
 22 School Finance Act, recalling that this spreadsheet is
 23 determined -- is -- excuse me, is a reflection of CDE's
 24 work, having interpreted the state law and their own
 25 rules and regulations, this mill levy is what is

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1 otherwise known as the frozen mill, and with Denver and
 2 Douglas, you can see differs by a 0.000001, and with
 3 regards to Aurora, is about a 0.005 greater.
 4 And the point being, though, is the
 5 assessed valuation is Denver is roughly two times -- I
 6 shouldn't say roughly -- is easily two times greater
 7 than Douglas. And Douglas is easily greater by two
 8 times over Aurora.
 9 The local share is comprised of two
 10 pieces, the specific ownership tax and the property
 11 tax. We'll come back to the specific ownership tax and
 12 the rest of these matters. But for our purposes right
 13 now, we'll illustrate that in greater detail at another
 14 time, so I'm going to hide that as well, to be able to
 15 sort of keep us to point here.
 16 Sort of not wanting to give a historical,
 17 I'm going to skip over the prior year funding, also
 18 skipping over the categorical funding, skipping through
 19 and getting down to the computations associated with
 20 the funded pupil count.
 21 So back to the formula that I had behind
 22 me. What we're trying to do is understand that there's
 23 a revenue side to the total program funding and there's
 24 an expenditure side to the total program funding. So
 25 we've talked about the base amount within that. That's

2974

1 on the expenditure side.
 2 The way the spreadsheet works is we're now
 3 going to flip and talk about the revenues, and so
 4 you're seeing the assessed valuation. We're now back
 5 to doing something on the expenditure side, which is a
 6 determination of the funded pupil count. And so to
 7 that simplistic pie chart that I had shown, you'll see
 8 that within these rows 83 through 102, you see numbers
 9 attributed to online.
 10 By way of illustration, this row here,
 11 row 99, otherwise entitled FC8, shows that the Douglas
 12 County Schools has slightly over 2900 students who are
 13 online; whereas Aurora and Denver do not. You'll also
 14 see that there are full-day kindergarten, et cetera,
 15 numbers that are included within this computation.
 16 Trusting that that work is done in a sound
 17 and reasonable way, we're going to hide those numbers
 18 as well and come down to the district funded pupil
 19 count. And you can see, then, that the school
 20 districts vary not only in their assessed valuation,
 21 but you can also see that the -- while the base amount
 22 of funding per district is identical, that the funded
 23 pupil counts have Denver at approximately 74,600, have
 24 Douglas at 59,300, and Aurora is just over 36,700.
 25 **Q. And we've seen a couple times the**

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1 **institute. Can you just tell us what that is? 'Cause**
 2 **it has a separate line.**
 3 A. The state has the ability to charter
 4 schools through its own mechanisms, if you will, its
 5 own means, as opposed to through an individual school
 6 district. So it is meant to capture those charter
 7 schools chartered through the state as opposed to an
 8 independent district.
 9 **Q. Okay. So are we moving on to the size**
 10 **factor?**
 11 A. Yes. So looking, then, at the size
 12 factor. This is one of the factors, as appropriately
 13 entitled, attributable to size, but you can also notice
 14 that while the school districts vary tremendously,
 15 Denver being essentially two times that of Aurora, for
 16 purposes of CDE's formula, these numbers are the same.
 17 They are 1.0297. And given that they are otherwise
 18 equal in all respects across the three districts, I'm
 19 going to hide those as well.
 20 You'll also note that the personnel costs
 21 on a -- across the three districts is also identical,
 22 it is 0.9050. And, again, wanting to highlight the
 23 entirety of the formula, going to hide those.
 24 You'll see, back again, that we're at the
 25 base per-pupil funding. And you'll see that when I

2976

1 click on this cell, and what that does is it tells you
 2 a reference from where within a spreadsheet a number is
 3 being derived. And you'll see that it is being derived
 4 from, in the same column, the row that I was showing or
 5 highlighting before of the base per-pupil funding. In
 6 this example, the row that is entitled PP1 is drawing
 7 from B21, otherwise known as the cell Q32. And the
 8 only reason I say that is I'm going to now hide these
 9 other ones so that we have room. But the point, again,
 10 being is that the spreadsheet is internally consistent,
 11 there's nothing that I'm doing other than just showing
 12 how this is working.
 13 So you'll see that this base amount, true
 14 to the formula over my right shoulder, then, is having
 15 a personnel cost. You'll see at this point the
 16 cost-of-living factor is being introduced here. And
 17 you'll note that this is the first time, other than on
 18 pupil count and assessed valuation, but in the --
 19 regards to the weighting of the districts within the
 20 formula, this is the first occasion where the three
 21 districts are not the same. While they are both a 1.2,
 22 you can see that Aurora is 1.240, Denver 1.243, and
 23 Douglas 1.242.
 24 The reason that matters is that as you
 25 apply, then, the size factor, noting that the personnel

2977

1 cost is the same, that when you get to the base amount
 2 of per-pupil funding, now adjusted for those other
 3 factors -- I'm going to take the liberty, since this is
 4 carried out to an obnoxious number of decimal points,
 5 at least for my purposes, I'm going to change that to a
 6 number that's more recognizable to us. And what you'll
 7 note, then, is that Denver at this juncture, by the
 8 strength of the difference in the cost-of-living
 9 factor, a 0.001, receives approximately \$6 more than
 10 does Douglas County. And how I'm doing that is taking
 11 \$7,078 minus 7,072, and you can see that that's a
 12 difference of \$5.25.

13 Said another way, with regards to Aurora,
 14 that the -- that the Douglas County Schools are
 15 receiving approximately \$10.50 greater, which means,
 16 then, that Denver is receiving approximately -- not
 17 approximately, I think it's going to be exact, \$15.75.

18 And so at this juncture, it is just at
 19 the -- at the point in the formula where the amount per
 20 student is differentiated by a grand total in spread of
 21 those three districts of \$16. And so what is now
 22 happening within the formula is you would take that
 23 weighted -- as it is to this point in the calculation,
 24 weighted student --

25 **Q. So what you've done are just the district**

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1 **adjustments to date, right?**
 2 A. Correct.
 3 **Q. That you showed up there?**
 4 A. That is correct. So at this juncture,
 5 we're just focusing on the district before applying the
 6 at risk.
 7 **Q. Or student factors?**
 8 A. Correct. So we -- in terms of the
 9 formula, we've differentiated what is happening on a
 10 district to district, size to size, cost of living to
 11 cost of living, personnel cost to personnel cost. Now
 12 we're talking of the intent of the '94 act to be able
 13 to have differentiated funding based upon the
 14 demographics of the district and its population within
 15 the district.
 16 So we're going to start to focus on how
 17 many of those students are kindergarten, how many are
 18 being educated online, and what of those students are
 19 eligible for the free lunch program, otherwise counted
 20 as at-risk students.
 21 So with that said, I'm going to take the
 22 liberty for a moment of hiding some numbers. Excuse
 23 me.
 24 **Q. So you're hiding the district factors now?**
 25 A. Hiding -- keeping the base --

2979

1 **Q. Right.**
 2 A. -- visible. I am hiding the computations
 3 so that one can go from the base funding of \$5600 and
 4 change to 7,000, rounding, \$75 and change for the
 5 respective districts. To your point, noting, then,
 6 that at this juncture it's just the district factors
 7 have that been put through the formula.
 8 That is then shown upon the funded pupil
 9 counts and gives you a total program funding, the TPF
 10 that I had abbreviated behind me. And now we're going
 11 to move into an at-risk computation.
 12 What you'll see, then, as you start to
 13 look at the at-risk computations for the three
 14 districts, that the districts again vary quite
 15 significantly. And take the liberty of turning these
 16 numbers into percent, and what you'll note is that when
 17 that is done, that the City and County -- excuse me,
 18 that the Denver Public Schools has an at-risk
 19 population of just under 63 percent, Aurora is at
 20 50. -- rounding, 50.5, and Douglas County is at 2.02.
 21 Let's move it to one decimal. You'll see,
 22 then, that there is additional computations that the
 23 formula takes you through, and it goes on to further
 24 define at risk in greater detail based upon an
 25 alternative calculation. And at that juncture, you can

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1 see that there's an adjusted at risk for the two -- for
 2 each of the school districts. Aurora's grows to 61.7,
 3 Denver's grows to 68.6, and Douglas County's is at 9.3.
 4 These are legitimate computations within the manner,
 5 mechanisms of the CDE's formula.
 6 What you'll see is in the computations
 7 that are being done, and I'm going to just keep the
 8 at-risk percentages noted, because what you'll note is
 9 that the -- this base factor in terms of the at risk is
 10 that's the premium, a minimum for which school
 11 districts receive, but there's also a concentration
 12 factor. And so that you can see that when you go
 13 through this, that the number of pupils that are
 14 thought to be at risk is one counted, but then it is
 15 also a density consideration, if you will.
 16 And given that Denver is at 68.6 in
 17 comparison to Douglas at 9.1, you'll see that there are
 18 values within this column AP attributable to the
 19 at-risk computations such as they exist within the
 20 formula, whereas for Douglas County, they are largely
 21 missing, which is just to say they don't meet the
 22 criteria of the formula.
 23 **Q. The concentration?**
 24 A. Correct. Whereas Aurora meets certain of
 25 those tests, but not to the same degree as Denver, both

2981

1 as a function of size and concentration. And so you'll
 2 see that the -- the cells that I'm skimming over here
 3 are populated, they don't have the same valuations.
 4 And what I want to be able to do, then, is
 5 that when you get down to here, what you're seeing is
 6 that the -- between the respective districts, the
 7 amount of at-risk funding is significantly different
 8 district to district, as one would expect, because of
 9 those pupil demographics. Roughly stated, Aurora's
 10 receiving \$24 million additional, Denver 60.6, and
 11 Douglas County 4.6, and I'm rounding here.
 12 You'll see, then, the computations, very
 13 similar to what we had talked about with the at risk,
 14 is now repeated with the online, and whereas before
 15 Douglas didn't have any weighting in that regard, you
 16 can see that Denver, without any population of online
 17 students, is likewise missing in that, whereas Douglas
 18 County, which runs the Hope online centers, does have a
 19 material at-risk population just under 3,000 pupils.
 20 So, again, in this pupil count of 3,000
 21 students, while perhaps material to some districts, and
 22 certainly \$20 million is not immaterial to Douglas
 23 County, going to just sort of move us along, hide that.
 24 You'll see that the size factor, again, I had
 25 emphasized before that they were largely identical. So

2982

1 skipping down to then wanting to be able to show the
 2 total -- total program funding for the respective
 3 districts.
 4 **Q. Again, what you had up on your chart, the**
 5 **total program funding?**
 6 A. Yes, that is correct. So staying --
 7 staying hopefully true to that form, would like to be
 8 able to show, then, that as we've increased from the
 9 526, in the example of Denver, million, adding in the
 10 additional at-risk funding here of 60 million, you're
 11 now getting to a number that is closer to 587. And the
 12 similar math is occurring across each of these
 13 districts.
 14 And what you'll then see as we go further
 15 into the total program funding, and I beg the
 16 indulgence, and just continue to hide rows, in that
 17 they are just being repeated as the formula is working
 18 through its various iterations. What you'll now see is
 19 that the total program funding for the three school
 20 districts at -- as I'm identifying it as row 219 within
 21 the spreadsheet, it's entitled in column A as TF11,
 22 that Aurora is at 288.3 million, Denver is at
 23 588.4 million, and Douglas County is at 423.1 million.
 24 You'll also then see that whereas before,
 25 if we were to go back up, whereas the difference in the

2983

1 school districts -- and I hid the rows, but you'll
 2 recall that the difference between Denver and Douglas
 3 was \$6. It is now the case that Denver's funding is a
 4 order of magnitude different than what was before of
 5 \$753.56. And given that the rest of those factors were
 6 largely immaterial or equal one to another, it is, I
 7 think, fair to say that the difference of this, absent
 8 the \$6, so just for sake of discussion, \$747, is
 9 attributable to the distinction in the at-risk factors.
 10 Similarly, Aurora, which was lagging, is now greater
 11 than -- than Douglas County, to the tune of \$575.
 12 So at this juncture, we have now worked
 13 through, if you will, the right side of what I had
 14 before. The total program funding is determined by
 15 multiplying a per-pupil revenue times a pupil count, as
 16 differentiated across those different categories, at
 17 risk, online, kindergarten, and the -- essentially the
 18 fourth category being those that are not online, not at
 19 risk, and not kindergarten, or otherwise first through
 20 12th grade in a brick-and-mortar environment.
 21 It is the case, too, that we have a number
 22 that we know to be our total program funding. So
 23 moving, if you will, to the revenue side of this
 24 equation, what you'll see is that the total program
 25 funding is --

2984

1 **Q. Uh-oh.**
 2 A. Yikes.
 3 MS. GEBHARDT: Hold on a second. Your
 4 Honor, we're going to lose our computer. Do we have a
 5 power cord? Sorry, Your Honor.
 6 THE COURT: No problem.
 7 (Pause in the proceedings.)
 8 **Q. (BY MS. GEBHARDT) Okay. So I think we**
 9 **were talking about the total per-pupil formula funding.**
 10 A. Right. So at this juncture what you're
 11 seeing here, just to sort of restart again, at
 12 the -- this is the total formula of funding, what I put
 13 as total program funding. And the respective amounts
 14 district to district, having made the computations
 15 based on pupil counts differentiated by the
 16 distinguishing qualities of the district at a
 17 district-to-district level and within district based
 18 upon the pupil characteristics.
 19 Now, in terms of focusing to the amounts
 20 that are paid, so to the revenue side of this equation,
 21 what I want to do is as before, I'm just going to click
 22 on a cell, and you're going to see that this cell is
 23 referencing amounts that are elsewhere within the
 24 spreadsheet, and you'll see that the total program
 25 funding is picking up the amount from up above. You'll

2985

1 see then as -- what I'm going to do is just go ahead
 2 and hide some of these rows as -- and they are not
 3 going to factor -- no pun intended -- in the rest of
 4 this. And what you'll see here -- I apologize, need to
 5 return to the --
 6 **Q. That's fine.**
 7 MS. GEBHARDT: Is that all right, Your
 8 Honor? He's going to go back to the flip chart.
 9 THE COURT: No problem.
 10 MS. GEBHARDT: Okay.
 11 A. So with regards to this mill levy portion,
 12 when you get your property tax bill from a school
 13 district, there will be four portions to it. Some of
 14 the portions could be blank or zero, so they may or may
 15 not be highlighted, depending upon the county and the
 16 district in which you reside.
 17 But there are four portions to it. There
 18 is the mill levy that we've spoken of, which for -- to
 19 draw reference to before, was saying essentially this
 20 25.5 for, in example, Denver, Douglas County, very
 21 close to that for Aurora. You then have an amount
 22 for -- and that is otherwise known as the frozen mill,
 23 and that is the portion of the mill levy within your
 24 property tax statement that is attributable to the core
 25 of the School Finance Act

2986

1 **Q. (BY MS. GEBHARDT) And, Mr. Hart, if you**
 2 **could flip to that very first sheet and show us where**
 3 **that plays into your pie chart? Where that mill . . .**
 4 A. So for our purposes, the 25.5 is here as
 5 an expression of the local computation of property
 6 taxes in support of total program funding.
 7 **Q. Okay. Thank you.**
 8 A. Now, the one that I just drew, then, the
 9 next one, is the portion of the mill levy attributable
 10 to the mill levy override, and that is the portion that
 11 we'll cover in a moment, but I just want to identify it
 12 for now. It is a portion of your property tax bill, to
 13 the extent you have, within your school district, at a
 14 point in time granted a mill levy override that was not
 15 sunset and remains in -- in play, that would be
 16 appearing on your property tax statement.
 17 The other portion is a bond redemption
 18 bill. That is to say, if your school district had
 19 approved general obligation indebtedness and that
 20 indebtedness remained outstanding, you would have, by
 21 nature of that election, been levying a mill levy for
 22 purposes of collecting property taxes to retire the
 23 principal then due and any interest in the next 12
 24 months.
 25 The final portion, and it is the fourth of

2987

1 four, is an abatement bill, and that abatement is meant
 2 to recover property taxes foregone through the county
 3 process whereby property taxes are made. So I'll leave
 4 it at that.
 5 For purposes of Denver, the mill levy
 6 override is approximately eight mills, the bond
 7 redemption is approximately eight mills, and the
 8 abatement is approximately five. So by order of
 9 illustration, what you'd have is something that's on
 10 the order -- do my math here right hopefully -- we're
 11 going to be at -- did something wrong here -- 42 mills.
 12 And that will give you an example of just how a
 13 property tax bill is constructed.
 14 Again, depending upon how your individual
 15 county and school district work and get together, these
 16 could be shown individually. Often it is the case that
 17 the abatement, mill levy override, and the mill levy
 18 for School Finance Act for the frozen mill are
 19 combined. The point being is an entity may often be
 20 distinguishing debt retirement from operating mill
 21 levies.
 22 **Q. Thank you.**
 23 A. So in that component, what you have here
 24 then are the mill levies across the respective
 25 districts And we'll spend some time in a moment on

2988

1 that. But you'll see that there's the 25.5 for one
 2 reappearing, et cetera. There's the . . .
 3 So now back to our determination of total
 4 program funding. And you'll see that again, as before,
 5 total program funding is just reappearing within the
 6 spreadsheet drawing from cells above. So trusting that
 7 that's consistent and that CDE's spreadsheet has
 8 integrity, we're going to hide some of those rows just
 9 to make the comparison within a column easier.
 10 **Q. And just one quick question, Mr. Hart.**
 11 **This is just the top part of your chart, so this does**
 12 **not reflect any of the other programming which you**
 13 **identified, the federal grants or the private grants?**
 14 A. Correct.
 15 **Q. And what's the overall Denver budget,**
 16 **approximately?**
 17 A. In which context?
 18 **Q. If you were to do the whole pie chart.**
 19 A. Well, I don't have the bond redemption or
 20 anything up there with regards to non-operating. I
 21 would say we're -- the easiest way to put that is
 22 we're -- it depends on how you want to treat the
 23 federal funds -- just under a billion dollars.
 24 **Q. Okay. Thanks. Go on.**
 25 A. Total program funding. So just sort of to

2989

1 hit a refresh, we knew before what -- our assessed
 2 valuation for each of these districts. We have the
 3 mill levy assigned to those. We knew know the funded
 4 pupil count, the base funding, the per-pupil funding
 5 before the computation of at risk, a per-pupil funding
 6 after the computation of at risk, and the amount under
 7 the formula.
 8 So for our purposes, just to save space,
 9 going to hide again some of these rows. Oops. Excuse
 10 me. So at this juncture, what you now see is the
 11 respective share of the total program funding coming
 12 from the state and local sources. The local source, as
 13 we said before, as I said before, largely derived from
 14 the property tax revenues that are computed in the
 15 manner where the assessed valuation times that mill
 16 levy gets you that value.
 17 So if we -- if I haven't hidden -- and I
 18 did. If you were to go back, you would see that that
 19 valuation is the same number as was appearing before.
 20 And it would be multiplied times that 25.51 -- excuse
 21 me, 25.5 to get to the property tax.
 22 The specific ownership tax is here. And
 23 then you see the state's share. So for way of
 24 illustration, want to be able to show, then, what the
 25 state's share is as a percent of total program funding

2990

1 So just dividing -- in this context you can see that
 2 the total program funding is the 588.6 million for
 3 Denver, and utilizing that as a denominator to the
 4 state's share, which is shown to be \$327.9 million, and
 5 you can see, then, that that is 56 percent.
 6 **Q. And you could do that similar calculation**
 7 **for your comparison districts?**
 8 A. Yes. And so when doing that across the
 9 comparison districts, what you'll see is that for
 10 Aurora, it is approximately 84.2 percent.
 11 **Q. The state share?**
 12 A. The state share. And when doing the same
 13 computation for both Douglas County, you'll see that it
 14 is 71.8, but you'll also see that when the same is done
 15 for the state in total, it is 68.7.
 16 Said another way, that is to say that the
 17 share that is -- Denver is less than the state average
 18 of 68.7, whereas Aurora and Douglas are greater than.
 19 So just to show out that math, what that also means is
 20 that if you were to take the combined local sources,
 21 which would be the property tax revenue plus the
 22 specific ownership tax, and divide that also, then, by
 23 the total program funding, we would expect to see a
 24 number of about 40 -- excuse me, 46.3, 44.3, and when
 25 converting that to a percent, you'll see the same.

2991

1 And, correspondingly, you'll expect, then,
 2 to see similar numbers, which is to say the sum of the
 3 two numbers in a percent should equal to a hundred
 4 percent. And you'll see the 15.8, you should see over
 5 here a number of about 18.2. And what this is meant to
 6 do is just to give you a sense of the variability on
 7 a -- within a county on a district-by-district basis of
 8 what the respective weighting of local versus state
 9 shares are into the formula, remembering that the
 10 formula is for total program funding. It's total
 11 program funding minus the local share gives you what
 12 the state equalization needs to be.
 13 So said another way, before the
 14 application of the negative factor, the state's share
 15 is 31.3 percent, Denver is approximately a third
 16 greater than that, Aurora is approximately half of that
 17 amount, at 15.8; whereas Douglas County, about
 18 10 percent in terms of -- of the state's share.
 19 10 percent below. Roughly stated.
 20 When one applies the negative factor, what
 21 you're going to --
 22 **Q. Are you going to explain -- can we talk**
 23 **about the red that's on the spreadsheet?**
 24 A. Yeah. So with regards to the revenue
 25 shortfalls that the state is experiencing, the state

2992

1 has needed to lower its contribution, and you see here,
 2 by their spreadsheet, that the estimation has been a
 3 combined total of, rounding, \$776.1 million, and that
 4 the allocation across each of the districts, if I were
 5 to un-hide each of columns, what you would see is it's
 6 proportional to the formula.
 7 Again, stating what I stated earlier,
 8 Denver is approximately 10 percent of that weighting.
 9 And so at 77, you would expect us to be in the
 10 neighborhood of 77 million, and we are at 76.3. And so
 11 on and so forth with regards to each particular school
 12 district. So what that suggests, then, is we should be
 13 able to take the amount that we knew to be the total
 14 program funding of 588.5, sticking with Denver, and
 15 subtracting, then, the negative factor, which is the
 16 amount that the state backs out for purposes of
 17 lowering its contribution, and we should get to the
 18 number that you're seeing in cell -- which is
 19 identified by column AP and row 283, or 521.
 20 Oops. Did that backwards. Hold on. Let
 21 me adjust my formula. And so -- and I transposed
 22 numbers. 512. And what's notable about this is that
 23 you'll note that if I click on the property tax
 24 portion, that you'll see that this 243 is the same,
 25 exact-to-the-penny amount of the property tax revenue

2993

1 before. And you would expect that given the formula.
 2 Because the formula requires that total program funding
 3 is minus the local share, and then the state is
 4 required to, as the phrase is properly referred to,
 5 backfill.
 6 So the state is reducing its backfill
 7 obligation by making this adjustment. The adjustment
 8 is not proportional. The adjustment takes into no
 9 consideration other than on a dollar-for-dollar basis
 10 what is needed to be done.
 11 The effect of that is that the -- when one
 12 looks at this, you can see, then, that the per-pupil
 13 amounts have also dropped, as one would expect. If
 14 you're not adjusting for pupil count and you are
 15 adjusting for your total program funding, when the
 16 total program funding goes down, by default, the amount
 17 of pupil revenue must also fall, and so what you'll see
 18 is when I take the computations that are within the
 19 spreadsheet, taking the cell that is -- that's the
 20 intersection of row GT6 with column AP, otherwise said
 21 to be -- and I'm going to round -- \$7900, and I
 22 subtract from that the annual computed per-pupil
 23 revenue after the adjustment of the negative factor,
 24 that the Denver Public Schools lost approximately
 25 \$1,025.

2994

1 **Q. Per student?**
 2 A. Per student. Which you would expect,
 3 right? Because back up to our numbers at the top, if
 4 we're saying we lost approximately -- or CDE's
 5 computing that we lost approximately 76,000.
 6 **Q. 76 million?**
 7 A. So we would expect that from losing
 8 approximately a thousand students, we should be able to
 9 go up and say, well, what's your pupil enrollment. And
 10 you see that we're approximately 75,000. So the
 11 spreadsheet works. It does what it's intended to do.
 12 And what it's determined here is that when
 13 the diligence is applied, and with fidelity, the folks
 14 at CDE do so, you are seeing that the spreadsheet does
 15 what it's intended to do. And it's essentially a
 16 spreadsheet that's on autopilot. It is doing
 17 computations that are dictated by statute. It's a
 18 determination of pupil counts and the weighting of
 19 pupils within districts. It's a consideration for
 20 district-by-district variance. But what you'll see
 21 here, again, this is not, you know, something
 22 mischievous with respect to CDE, but the amount of
 23 reduction is no longer constant.
 24 So whereas before we knew that the Denver
 25 Public School's per-pupil enrollment grew from,

2995

1 rounding, \$6 greater than Douglas County to something
 2 that was over \$700, you can see that our reduction is
 3 now greater than Douglas County by almost a hundred
 4 dollars. And so to determine that, we'll just take the
 5 thousand 23 less the 925, and you can see that our
 6 funding reduction is greater than Douglas County's, on
 7 the order of approximately \$97.
 8 **Q. And can you explain why that is and how
 9 the negative factor works, please, Mr. Hart. Where the
 10 calculation takes place.**
 11 A. Sure. So with respect to the negative
 12 factor, it is, with fidelity, determining the state's
 13 contribution. And so it is back -- if I might? To
 14 the --
 15 MS. GEBHARDT: Sure. Your Honor, he's
 16 moving back, if that's all right?
 17 THE COURT: Yes.
 18 A. So if the state formula is to say that
 19 it's the state plus the local gets you to the total
 20 program funding, what we also see here is that back to
 21 our -- our portions here, total program funding minus
 22 the local gives you the state portion, or otherwise
 23 known as the state equalization.
 24 So when this local amount remains
 25 unchanged here, which this formula is showing, our

2996

1 dollar amounts within those three districts. If you
 2 were to look at the spreadsheet, you would see it as
 3 row 271 within the spreadsheet, titled GT2. These are
 4 unchanging amounts as we work through this.
 5 You can see that there's -- speaking to
 6 the Denver Public Schools, it's the constant 243. --
 7 rounding -- \$3 million. The total program funding,
 8 however, with the introduction of the negative factor,
 9 has to come down. It's coming down to that number
 10 there. You see it's coming down -- and I'm rounding
 11 grossly, but it's coming down by approximately 776. So
 12 if that amount is the case, and we know this one to be
 13 constant, then the state's is the only one that's being
 14 reduced.
 15 However, what we also know is that if the
 16 total program funding is also coming down and we know
 17 that the base amount is not going to change because of
 18 the manner in which the legislature and CDE have
 19 interpreted Amendment 23, then the only place that
 20 there can be a change within the formula is at the
 21 factors. And so when you're looking at the three
 22 respective districts in regards to the formula factors
 23 that we have shown, and we knew that their size, cost
 24 of living and personnel, with the exception of the one
 25 item identified, which was a 0.0001, to create a \$6

2997

1 difference between Denver and Douglas and a \$16
 2 difference between Aurora and Denver, that the only
 3 place that this can then be impacted by is the
 4 consideration of at risk. Because that is the only
 5 place where there was a material difference.
 6 Yes, there was a slight difference in
 7 online, but the online was already at a discount. And
 8 so while Douglas County did receive additional funding,
 9 the point in fact is if you were to look at these on a
 10 weighted basis, the only place they could impact this
 11 is within these factors. These factors are, to the
 12 best of my understanding, owing to the 1994 School
 13 Finance Act funding when it wasn't the intention to
 14 create differentiated funding for students --
 15 differentiated funding for school districts based on
 16 the demographics of the individual school districts and
 17 the students that populate those districts.
 18 And so as a result, then, it's unwinding
 19 that or smoothing for the -- what was an intended act
 20 of the legislature in '94 as they are adjusting for the
 21 revenue shortfalls that they are experiencing.
 22 **Q. (BY MS. GEBHARDT) So does that explain**
 23 **the differential impact between Douglas, Denver, and**
 24 **Aurora of the negative factor? Could you walk us**
 25 **through that one more time?**

2998

1 A. Yes. And yes. So the total program
 2 funding is between the -- and I'll just use Denver as
 3 an example. But this -- what I say for Denver will be
 4 true in each column, as long as we stay row to row --
 5 or stay within the row. So total program funding of
 6 Denver of approximately \$588.6 million is reduced by
 7 76.3 million, to a new total of 512.
 8 However, because of the formula, the
 9 property tax and specific ownership tax contributed by
 10 the local school district remain constant, and as a
 11 result, given the way the formula works, the only
 12 option is for -- if this cut is being made, is for it
 13 to come at the, if you will, expense or to the benefit
 14 of the state's share, and as a result, then, the
 15 per-pupil funding drops by over a thousand dollars for
 16 the Denver Public Schools student, whereas the other
 17 districts drop, but not to the same degree.
 18 And, again, I think it's worth copying
 19 over the formula that we had for each of the individual
 20 school districts, and you'll get to see what happens on
 21 a statewide basis. And you can see that the same
 22 characterization of district-to-district and
 23 district-to-state average is maintained. The state
 24 average is a reduction of \$962, rounding, whereas
 25 Douglas County is below that average. Denver and

2999

1 Aurora, because of the at-risk populations, is greater.
 2 Clearly an average is an average. So
 3 these are not, you know, the -- the only variances.
 4 There's 178 school districts. These are but three.
 5 And you'll see what's going on here.
 6 Now, what's interesting, also, though, is
 7 just to draw this point out further, is that if we do
 8 the same math that we had before and we say okay, well,
 9 what is the state's share as a percentage of -- oops.
 10 Excuse me one moment.
 11 What you'll see is that when we take the
 12 state's share as a numerator to the total program
 13 funding that in this context, for Denver, it has gone
 14 from approximately 54. -- excuse me, 55.7 percent to
 15 49.1.
 16 And the same thing's going to be true in
 17 each instance. I mean, it has to be for this math to
 18 work. Is that then what was Aurora before is now going
 19 to be Aurora at 81.9. And copying over the formula,
 20 you'll see that Douglas County is at 67.6.
 21 **Q. So because the state takes it out of the**
 22 **at-risk funding and Denver has a higher percentage of**
 23 **at-risk funding, you take a bigger hit than those two**
 24 **districts, or the state average, even?**
 25 A. Correct. True. And it is also the case

3000

1 that the distribution between the local and state moves
 2 to where the local share is growing because the state
 3 share is shrinking. Did I say that backwards? I think
 4 it's the other way around. Because the state is
 5 lowering theirs, it makes, by default, the -- how do I
 6 want to say that?
 7 **Q. So what happens, then, in the way the**
 8 **state calculated the negative factor to that**
 9 **differentiated funding for student characteristics?**
 10 A. It is smoothing for that. It is
 11 essentially -- meaning that it is negating the intent
 12 of the legislature in '94. The negative factor is
 13 negating the legislative intent to create for
 14 differentiated funding. Because when the funding
 15 works, when all things are equal, size, cost of living,
 16 which is going to be pretty uniform even in the metro
 17 districts, the only differentiation that is then left
 18 is the computations of at risk.
 19 I mean, it's -- it's gross to say this,
 20 but your kindergarten populations as a percent of total
 21 are not going to be dramatically different district to
 22 district. Your online populations, even if they are
 23 dramatically different -- and I showed you Denver and
 24 Douglas -- it's not at this juncture a sizeable enough
 25 demographic on a state basis to move the dial

3001

1 So Douglas County had 3,000 students, but
 2 3,000 students on approximately a 60,000 student
 3 population base. And in the context of all the online
 4 students in the state, it's not a driver.
 5 So the only -- by default, as well as what
 6 we saw pretty dramatically, the only left driver is the
 7 at-risk computation. And so when there is that type of
 8 reduction, essentially within the mechanics of this
 9 formula, the only way the negative factor can work is
 10 to unwind the intent of the legislature to give
 11 differentiated funding for at-risk students.
 12 **Q. And are you familiar with how the**
 13 **legislature interpreted Amendment 23 pre-negative**
 14 **factor?**
 15 A. In general terms, yes.
 16 **Q. And did it change?**
 17 A. No.
 18 **Q. Did they include increases in funding in**
 19 **the factors before the negative -- the negative factor?**
 20 A. I think the way I would answer that is
 21 it -- and this is the way I did answer it at the time.
 22 It didn't matter, because at the end of the day, if you
 23 upped it more, that meant they cut more. If you upped
 24 it less, they cut less. Because the state knew what
 25 they could afford. And so at this point, it's

3002

1 just -- it's -- it's sort of a cold, calculating --
 2 it's more this math than it is legislative intent.
 3 They know the number that they need to
 4 back into. So with respect to Amendment 23 and having
 5 1 percent plus inflation, if inflation were a very high
 6 number -- we used to, you know, say circa 2005 or 2006,
 7 you would increase your per-pupil revenues accordingly.
 8 Well, now you just knew that if you were
 9 going to do that, that you would back out more. So it
 10 became somewhat indifferent, because you knew that they
 11 were going down to a number. It wasn't a question of
 12 what number they were going to, it was a question of
 13 how high would you have otherwise been.
 14 **Q. So this negative factor is purely a**
 15 **mathematical equation solving for the state problem?**
 16 A. That is correct.
 17 MS. GEBHARDT: Your Honor, we were hoping
 18 to take a snapshot of this so we have a demonstrative,
 19 but that's going to take a few minutes. And I was
 20 going to move to another area, and I was thinking we
 21 could take a short break, if that's all right. We'll
 22 be all right on our time, if that's all right?
 23 THE COURT: Let's say till 3:00. Would
 24 that be fine?
 25 MS. GEBHARDT: And then after that, we'll

3003

1 do one more, it takes a few minutes to take a snapshot,
 2 and then I'll be able to turn it over to the state.
 3 THE COURT: Thank you. No problem.
 4 MS. GEBHARDT: Thank you.
 5 THE COURT: 3 o'clock work for you? Okay.
 6 Thank you.
 7 (Recess taken, 2:40 p.m. to 3:05 p.m.)
 8 THE COURT: All right. We're back on the
 9 record in Case 05CV4794.
 10 MS. GEBHARDT: So what we did during the
 11 break, Your Honor -- and thank you for the time.
 12 THE COURT: No problem.
 13 MS. GEBHARDT: -- is we made a Word
 14 document of this spreadsheet that we will just use,
 15 mark as a demonstrative, and we've cleared it with the
 16 state. And so -- and we'll produce it to the state and
 17 have a hard copy tomorrow.
 18 THE COURT: Great.
 19 MS. GEBHARDT: But it's just of this. And
 20 it will be marked 10466. And then we're going to --
 21 THE COURT: That will be the hard document
 22 of the spreadsheet?
 23 MS. GEBHARDT: Yes.
 24 THE COURT: Okay.
 25 MS. GEBHARDT: So we just took what's

3004

1 called a snapshot of what's up there.
 2 THE COURT: All right. That will be
 3 great. Thank you.
 4 MS. GEBHARDT: And the charts and the hand
 5 drawings are going to be marked 10467. And then we'll
 6 have one more, it will be a mill levy calculation that
 7 we'll mark at the end of that set of questions.
 8 THE COURT: Okay. And no objection by the
 9 state?
 10 MR. HEINKE: No objection.
 11 THE COURT: Thank you. They'll be
 12 admitted then. 10466, 10467.
 13 MS. GEBHARDT: Thank you, Your Honor.
 14 THE COURT: Thank you.
 15 **Q. (BY MS. GEBHARDT) So, Mr. Hart, we were**
 16 **talking about the negative factor and the impact on the**
 17 **at risk. Is there an additional calculation that can**
 18 **help explain to us the impact of the negative factor on**
 19 **the at risk?**
 20 A. Yes. So picking up where we left off. As
 21 you saw before, I had shown where the discrepancy on a
 22 per-student basis had a -- a difference of, you know, a
 23 thousand dollars versus the 900, and I'm rounding. But
 24 I think it's also illustrative to show, back to where
 25 we were before, if I take the amount of per-pupil

3005

1 funding -- just do this illustrative of Denver to
 2 Douglas County -- and I take the amounts of per-pupil
 3 revenues before the application of the negative factor,
 4 you see that, again, as we had stated before, what was
 5 a roughly \$6 difference has grown to 752.
 6 And what I wanted to do was be able to
 7 show, sort of asking for the folks to remember from
 8 before that the primary driver for that was the at-risk
 9 computation, where we had the 0.001 difference in
 10 certain factors. There was a little bit of an online,
 11 but they're -- they're not that material in driving for
 12 this difference.
 13 And the point is, if you take that amount
 14 of revenue per student and you then multiply that times
 15 the number of students in Denver, and I'm doing it on
 16 the total student population, what you see is that
 17 number totals to 56. -- \$56,145,111.
 18 And my point in doing so is that if you
 19 take the \$56 million amount, which is a very rough
 20 proxy for the amount that is attributable to at risk,
 21 and then you take away from that the negative factor,
 22 you see that the amount by which the state has reduced
 23 the Denver Public Schools by way of this formula -- I'm
 24 not saying, necessarily, it was an intent of policy --
 25 was to essentially obliterate the per-pupil revenue

3006

1 computations that between these two districts were
 2 distinguished by the at risk.
 3 And so it's to say that the -- when one
 4 were to factor out the at-risk computation, which
 5 general -- which, generally stated, \$750 per student
 6 across 75,000 students, rounding, sums to, as I said,
 7 56 million. And then taking that against the negative
 8 factor, you see that you still have a difference of
 9 \$20 million.
 10 Now, understand that the state has, you
 11 know, a fiscal condition. The fiscal health of the
 12 state is not done with -- to be punitive, but the
 13 effect of the formula, as I said before, is that it's
 14 largely on autopilot. This isn't necessarily an
 15 expression of policy, it is the only option that is
 16 available in how this formula works. It doesn't give
 17 the ability of the legislature, as it is currently
 18 operating, nor CDE, in response to the legislative
 19 intent, to be able to honor that which was part of the
 20 1994 School Finance Act.
 21 **Q. So this calculation does not honor what**
 22 **you understood to be the original intent of the '94**
 23 **act?**
 24 A. Correct.
 25 **Q. And can you explain that again? And how**

3007

1 **it impacts the at-risk funding.**
 2 A. Taking Denver to Douglas as we went
 3 through before, there was essentially a \$6 difference
 4 after we went through the two districts side by side,
 5 after we got down to the at-risk formula. There was
 6 essentially a very negligible difference. When we
 7 would have applied the online, it would have actually
 8 helped Douglas County, because Denver had none, and the
 9 point being that for sake of argument, they were
 10 essentially the same.
 11 So we're going to just round to say that
 12 the difference between the two student -- between the
 13 two districts, when taking into account all of the
 14 factors in the formula, is largely predicated on the
 15 treatment of at risk.
 16 To draw a finer point on that, if we were
 17 to go back up in the chart, we know that Denver has an
 18 at-risk population that is approaching 70 percent, and
 19 Douglas County's is approaching 10, so it's a
 20 seven-to-one ratio. If we would have spent more time
 21 in the formula, what you would have seen is Douglas
 22 County's at-risk computation is actually assisted by
 23 its online student population. The Hope online student
 24 population is largely an at-risk population, and that
 25 population is actually -- there are no centers, no

3008

1 online centers, within Douglas County.
 2 So said another way, I think it's very
 3 fair to say that the distinction on a per-student basis
 4 between the two districts is rested upon the
 5 determination of at risk, and we're assigning a dollar
 6 value. Not that I'm doing that. I'm just getting us
 7 to a place in time in this formula where we can say
 8 okay, based on CDE's formulas, I've not changed any of
 9 their formulas, I'm just showing on this row the
 10 difference between the two per-student amounts and
 11 multiplying that by Denver's population, and that sums
 12 to that \$752 on approximately 75,000 students. Sums to
 13 just over \$56 million, and that is more than wiped out
 14 by the state's negative factor.
 15 And the -- I understand, again, that the
 16 state is making effort to balance to its ability to
 17 pay, but it is much more a function of the math behind
 18 the formula than an expression of legislative intent to
 19 cause harm. And in that context, what they're doing,
 20 though, by not holding harmless, they are, in fact,
 21 unwinding their own intent from the '94 act as it is
 22 annually amended.
 23 **Q. Is there an impact on taxpayers as a**
 24 **result of this?**
 25 A. Well, the impact is -- yes, I guess, on a

3009

1 couple of fronts. One is is that what you realize as
 2 you go through this is that the -- back to -- bear with
 3 me as I find it. We know the mill levies between the
 4 two districts -- between the three districts to be
 5 relatively equal. They're in this neighborhood of
 6 25.5 mills.

7 Back to the flip chart that's over my
 8 right shoulder, we know that one mill per hundred
 9 thousand dollars in assessed valuation then creates a
 10 circumstance where there's \$8, rounding, of -- on
 11 residential property, \$8 of property tax revenues
 12 derived.

13 However, what one needs to look at,
 14 though, is that in fairness to all, is that -- going to
 15 try to create a little bit of a quick formula here. Is
 16 that if we know it's a hundred thousand, so I'm just
 17 going to type in to make the illustration. We know
 18 this to be 0.796.

19 So when we do the math of saying okay,
 20 this number, the hundred thousand dollars in market
 21 value, times the assessment rate, that's where we get
 22 the \$7,960. So what we're going to do is just create a
 23 little formula so I can show you the distinction of
 24 district by district. So back to what I had before.
 25 ~~And then we're going to put in a 0.001. Let me get~~

3010

1 this so we can see that as decimals.

2 So there's the \$7.96 that you're going to
 3 see per hundred thousand dollars in market value. But
 4 the point that has to be noted is that in the City and
 5 County of Denver, for the '11-'12 year, the assessor is
 6 anticipating that the average single-family residence
 7 will have a market value of about 200 -- and I'm just
 8 going to round. If he were here, he would give a more
 9 precise number, but I'm going to say it's 225,000. So
 10 one mill generates approximately -- excuse me, one mill
 11 on the average assessed valuation for a single-family
 12 dwelling, stand-alone home, et cetera, as further
 13 qualified, would generate just under \$18.

14 However, in Douglas County, that number is
 15 going to be north of 300,000. For purposes of
 16 illustration, I think it's going to be in the
 17 neighborhood of 315, and so you see it's going to
 18 generate approximately \$6 more because of the increase.
 19 And what that means is that that taxpayer, the average
 20 taxpayer per mill in Douglas County, is going to pay \$6
 21 more per mill. And if we, instead of putting in one
 22 mill, put in the actual value that their assessed value
 23 will be, is that you see for the average taxpayer in
 24 Douglas County -- and I'm just going to put a
 25 little -- we'll type this number in over here. So it's

3011

1 \$637.88.

2 If we go back to Denver and we say okay,
 3 what are you paying at 225,000, and we change this to
 4 be the mills that are attributable for the -- those in
 5 the DPS, you'll see that they've paid 457.44. So to an
 6 average taxpayer, as average might be thought of in
 7 terms of a single-family residence, the single taxpayer
 8 in Douglas County is paying \$180 more, even though the
 9 district-wide contribution of property tax is
 10 materially less than in Denver.

11 Then what that has to do with is that you
 12 see that Denver has a total AV of -- in the forecast
 13 for '11-'12 of \$9.5 billion, whereas Douglas County's
 14 at 4.3. And yet because of the math behind me in terms
 15 of how this mill levy works, where you take, by way of
 16 where my cursor is, a market value times a fixed
 17 assessment rate and you get, then, to an assessed value
 18 and you take that assessed value times the existing
 19 mill levies which are frozen, you then get to a
 20 property tax bill.

21 And as I was referencing at the very
 22 start, where I now have my cursor, back to the formula
 23 I had before, this has been the only place where school
 24 finance has had the ability to influence the
 25 computation of property tax. This is an expression of

3012

1 the frozen mill. I used that phrase before. That's
 2 where the legislature acted in spring of '7 for effect
 3 in the '7-'8 school year to freeze the mill.

4 Now, that's an expression of to -- if I
 5 might go to --

6 MS. GEBHARDT: Is that all right, Your
 7 Honor?

8 THE COURT: Yes.

9 MS. GEBHARDT: He wants to --

10 THE COURT: Yes.

11 A. So again we're just to -- at the risk of
 12 being redundant, we're staying here and we're talking
 13 about the state and local shares. And this is that
 14 portion that's frozen.

15 But what's happening is when the local
 16 share is being impacted by the mill levy being frozen,
 17 it's impacting, then, the state's obligation. And so
 18 the policy decision that was being reached by the
 19 legislature in 2007 was not something to do with this
 20 side of the equation, the expenditure side of the
 21 equation. There was really, to the best of my
 22 knowledge, no consideration for how impacting these
 23 revenues in terms of the local and state mirrored in
 24 any respect that which was an expected outcome from the
 25 expenditures.

3013

1 The point being is that a decision made at
 2 the state level to freeze the mill levy presumed, then,
 3 to our formula -- and this would have been a fairly
 4 safe presumption in 2007 -- that the market values were
 5 going to increase. And with increasing market values
 6 upon a essentially fixed assessment rate of
 7 7.96 percent, we knew, then, that if market values are
 8 going up -- by way of order, if market values are going
 9 up and the assessment rate is remaining unchanging,
 10 which for our purposes it is, that meant, then, that
 11 the assessed valuation had to go up.
 12 If the assessed valuation that has then
 13 gone up and the mill levy itself is frozen, then the
 14 property taxes go up. And the case being, then, back
 15 to our earlier portion of this -- of how this
 16 sequentially works, is that if the total program
 17 funding, for all intents and purposes, is flat and the
 18 state is going -- and the local is going up, then the
 19 state is going down.
 20 The policy consideration, then, was not
 21 one made for the expectation of how pupils should be
 22 counted or segregated or the demographics reflected
 23 within the formula, whether by district or by
 24 individual traits within a district, it was a
 25 consideration then made for the state's affordability

3014

1 And so as that occurs, what's happening is
 2 the total program funding, if you will, it just became,
 3 then, a matter for the state. Total program funding is
 4 essentially being then driven by Amendment 23, as this
 5 base amount is being adjusted by inflation plus
 6 1 percent, or since 2010, inflation. As it plays out
 7 through the funded pupil counts and gives that
 8 implication, the question for the state is to the
 9 extent that the local is rising, the state is being, if
 10 you will, offset.
 11 My point being, if the local rises faster
 12 than the total program funding, then the state would go
 13 down. If the local is rising, but less than the total
 14 program funding, the state is still going to have to
 15 increase relative to the formula, they have no
 16 discretion, before the introduction of the negative
 17 factor. But the amount, the relative amount they would
 18 have had to contribute, was less.
 19 And so it was a consideration, then, for
 20 the revenues, the -- if you will, from a rating agency
 21 perspective, they ask about your willingness and
 22 ability to pay. It was a consideration the state made,
 23 then, for their ability, their willingness to make
 24 payments. And understanding that if we were to go back
 25 in time, the relative shares between the state and the

3015

1 local have essentially reversed themselves over a 20-,
 2 25-year period, as the ramifications of local share
 3 fell in the face of increasing total program funding,
 4 such then that the state's contributions had to
 5 increase.
 6 **Q. (BY MS. GEBHARDT) Is there anything else**
 7 **you want to add, or we'll move on to mill levies?**
 8 A. Move on to mill levies.
 9 **Q. Can you find the mill levy worksheet up**
 10 **there?**
 11 A. I hope. Can I ask for assistance?
 12 **Q. Sure. Kyle.**
 13 **(Pause in the proceedings.)**
 14 A. So going back to the state's, CDE's,
 15 public school finance page, then going to go to the
 16 mill levy and override revenues tab. And then go to
 17 the '10-'11 override revenues. And hope that it opens
 18 up.
 19 **Q. There we go. Is that the right sheet?**
 20 A. It is. And so --
 21 **Q. So tell us what we're looking at, please.**
 22 **Before.**
 23 A. Sure. So this is a spreadsheet that CDE
 24 promulgates, much -- they're very effective at putting
 25 out a lot of tools to districts, and one of them is, as

3016

1 you see entitled here, the mill levy and overrides.
 2 And it's based on a fiscal year, and it assists
 3 districts in understanding how much mill levy override
 4 capacity they have and how much of -- in terms of the
 5 formula, how much of that that they have utilized, and
 6 then as a result, the balance that's available to them.
 7 So at this point, relative to the material
 8 I had before, this is that bottom triangle of the pie
 9 that I drew. It is not included within the School
 10 Finance Act as a portion related thereto. It is, I
 11 think, fair to say that for practitioners, at least, it
 12 was meant to be supplemental to that which was
 13 otherwise provided through the School Finance Act. And
 14 this is that spreadsheet that allows a district to sort
 15 of walk through where -- where one is in that cycle.
 16 **Q. So can you do the same comparison with the**
 17 **three districts that we were looking at before as**
 18 **relates to the mill levy overrides?**
 19 A. Yes. I'll identify the same three
 20 districts. Bear with me a moment.
 21 **Q. So you're just hiding all of the districts**
 22 **except those three?**
 23 A. That is correct. And what I want to call
 24 out -- and should have done this at the outset. This
 25 table began in row 3, and the reason I want to identify

3017

1 that is what you'll note as you go through this, when I
 2 get to the bottom, there are a total of 110. So 110
 3 minus the two, the obvious being is that there are 108
 4 districts that have mill levies outstanding.
 5 So the point is that based on the
 6 information for the '11 -- excuse me, '10-'11 year,
 7 they have not -- CDE have yet to do the computations
 8 for '11-'12. That of the 178 school districts in the
 9 state, only 108 as of last year had any mill levy
 10 override outstanding.
 11 And so to that what I've also left as
 12 before is the state. So you'll see that the total
 13 program funding one year ago. And the reason that
 14 matters is the available level of mill levy override is
 15 a computation of total program.
 16 **Q. Can you just draw that for us so you know**
 17 **how the mill levy override works? Just draw that**
 18 **formula for us?**
 19 A. Sure.
 20 MS. GEBHARDT: Is that all right, Your
 21 Honor?
 22 THE COURT: Yes.
 23 A. Just so there's no ambiguity, at this
 24 juncture, we're talking about this portion of the -- of
 25 our pie. And it is -- I would say historically it's

3018

1 been thought to be supplemental to the School Finance
 2 Act. I would say practically, both from my vantage
 3 points in Douglas County and Denver, that it has moved
 4 to being supplemental to essentially being a backfill
 5 to state funding.
 6 The way in which this works, and this is
 7 overly simplistic, as I'll show you in a moment, with
 8 regards to the -- to the actual computations. But it's
 9 essentially the total program funding, it's the same
 10 total program funding that we talked about in terms of
 11 total program funding minus the local equals the state.
 12 It's the same total program funding of per-pupil
 13 revenue times a pupil count. That is one in the same.
 14 It's that amount times 25 percent gives you a mill levy
 15 override and dollar amount ceiling.
 16 Now, admittedly -- and, again, the formula
 17 here is going to show that's not 100 percent true. As
 18 we'll see in Denver, there's a computation on top of
 19 this for a cost-of-living adjustment. But at its core,
 20 the determination of a mill levy override capacity is a
 21 determination of total program funding and 25 percent
 22 thereof. Or if that amount is less than 200,000, then
 23 a district is allowed to seek up to 200,000.
 24 **Q. (BY MS. GEBHARDT) Thank you. Okay. So**
 25 **we'll return to the spreadsheet now.**

3019

1 A. So in that regard, just using Denver,
 2 Douglas, and Aurora in example, you see that there is
 3 the computation. And yes, if we were to bounce between
 4 spreadsheets, you would see they are different, and
 5 that is because of the difference in fiscal year, this
 6 being fiscal year '10-'11, whereas the spreadsheet we
 7 were on before was for the forthcoming fiscal year,
 8 '11-'12.
 9 You see, then, sticking with Denver, that
 10 at the level of 563.5 million for last year, 25 percent
 11 would generate 141 million, with the cost-of-living
 12 adjustment and additional rounding, 14 million, that
 13 gets you to an approximate amount of \$155 million.
 14 You'll see, then, that as -- working
 15 through this formula, that the amounts authorized
 16 within the respective districts, Aurora at
 17 approximately 22.3 million, Denver at approximately
 18 77. -- excuse me, 76.9, and Douglas County at 33.7.
 19 **Q. So those are prior authorized mill levy**
 20 **elections in each of those?**
 21 A. That is correct. And in respect to
 22 Denver, there were elections in 1988, 1998, and in
 23 2003. And in 2005, there was a fourth, which is
 24 commonly known as pro comp. The '88, '98, and 2003
 25 were neither indexed for inflation or for pupil count,

3020

1 whereas the '03 election -- excuse me, the '05 election
 2 for pro comp has an inflation adjustment in it.
 3 **Q. So what's the effect of that?**
 4 A. Which is to say that on an annual basis,
 5 the amount of revenue that can be collected can be
 6 adjusted for inflation.
 7 **Q. And those that aren't?**
 8 A. And those that aren't, in the context of
 9 Denver, they were determined to be flat dollar
 10 authorizations. So the '88, '98, and '03 elections are
 11 fixed dollar amounts, which is to say that when one
 12 takes into account the effect of growing enrollment
 13 from '88 to today, the district has grown in
 14 enrollments, speaking of the Denver Public Schools, and
 15 we have not had a sustained period of disinflation,
 16 such that taking out -- and I'm using gross numbers --
 17 the '05 election for pro comp generates approximately
 18 27 million.
 19 So we'll say that if we take that amount
 20 out, the remaining \$50 million today, is the equivalent
 21 in terms of purchasing power to when each of those were
 22 passed, we're getting about 65 percent of our
 23 purchasing power. We have lost that amount due to an
 24 increase in enrollment, which causes for less money per
 25 student. When taking the '88 election through 2011, we

3021

1 lose, then, additional amounts in the face of
 2 inflation.
 3 So said another way, for -- and I'm doing
 4 this on a combined basis. The three elections, '88,
 5 '98, and '03, have lost approximately 65 -- or excuse
 6 me, have lost approximately a third, we have about
 7 65 percent of the purchasing power remaining.
 8 With respect to the elections that a
 9 district can pass, and the 2005 election is a very good
 10 example, it -- they are always a condition of what the
 11 question to the local voter was. Meaning in the '05
 12 example for pro comp, it is an amount of money that is
 13 reserved for a -- essentially a differentiated --
 14 keeping with the differentiated theme, a differentiated
 15 pay for performance.
 16 **Q. So can that pro comp mill levy be used for**
 17 **anything else?**
 18 A. It cannot. And it can only be used, to
 19 the best of my knowledge, for those within the teacher
 20 ranks. So it's not available beyond teachers. And it
 21 is only available for performance, meritorious work.
 22 **Q. So how much, then, remains in Denver?**
 23 A. The formula helps with that. And so what
 24 you'll see is that true to the state, when I said
 25 generally it's 25 percent, but as we get to the

3022

1 spreadsheet, it will prove that I wasn't a hundred
 2 percent correct. When you factor into that, it'll show
 3 you on a district-by-district basis what the exact
 4 computation is relative to total program.
 5 Denver stands, as of for the fiscal year
 6 '10-'11, at approximately 27.5, of which we've used
 7 approximately half of that, at 13.64. So we have
 8 revenue generated of just under 77 million, and we have
 9 78 million available to us. And what you'll see, then,
 10 is that this is -- this is not a uniform circumstance.
 11 The percentages of utilization vary district to
 12 district. Aurora and Douglas very similar to each
 13 other, different by a tenth of a percent -- excuse me,
 14 a hundredth of a percent.
 15 But what you also see is that the
 16 amounts -- because of the size of the district and the
 17 total program funding, what you'll see, then, is that
 18 the amount under is vastly different. And the revenue
 19 generated you can see between Aurora and Douglas is
 20 that Douglas, at essentially the same utilization, is
 21 generating approximately 50 percent more. When one
 22 takes --
 23 **Q. More or less?**
 24 A. -- into account -- 33.8 million compared
 25 to 21.4.

3023

1 **Q. Oh, okay. I'm sorry, I didn't follow**
 2 **that.**
 3 A. So Douglas is generating approximately
 4 50 percent more, but it is on a student population that
 5 if we were to do this on a per-student basis, I'm
 6 confident would be either close to equal or that Aurora
 7 would be greater, because it's such a smaller school
 8 district.
 9 What you'll see, though, is that one of
 10 the things to bear in mind is that what are the mills
 11 necessary? And so while you can see that the revenue
 12 generated here, as I toggle over, for Aurora is
 13 21.4 million compared to Douglas County's 33.7, because
 14 of the strength of the net assessed valuation, you'll
 15 see -- and it's worth noting that -- yes, these
 16 assessed valuations are different in '10-'11 than in
 17 '11-'12. That as the assessed valuation has
 18 fluctuated, then the mills required to generate that
 19 are different.
 20 Point being, back to our math, it's just
 21 to say okay, what's your assessed valuation. This is
 22 after the market value times the combined residential
 23 and non-residential properties. They're saying their
 24 net AV is -- I'm going to round -- \$5 billion, and
 25 they're multiplying that amount times the override mill

3024

1 to generate \$33.7 million
 2 **Q. So can you -- I'm sorry, I didn't mean to**
 3 **interrupt you.**
 4 A. Go ahead.
 5 **Q. So can you walk us through the calculation**
 6 **of what it would take for Denver to max out its mill**
 7 **levy?**
 8 A. So for Denver to max out its mill levy,
 9 it's a fairly simple piece. You take the -- the
 10 revenue that is available to you. So we're going to go
 11 over to that negative number, and we're going to divide
 12 that by the assessed valuation, and what that tells
 13 you -- let me put this in greater decimal points -- is
 14 that for a rounding, seven mills, that one could
 15 generate, then, the additional \$78 million.
 16 And you would expect that, if this math
 17 were true, that the number that I'm on in cell Q26
 18 would look very similar to the number that I'm on in
 19 cell S26, because these numbers are essentially the
 20 same, 78 million versus 77 million. And so as a
 21 percentage of the assessed valuation, they should
 22 essentially be the same number, and they are. 6.9
 23 compared to 6.8.
 24 And what you're seeing, then, is that for
 25 that additional seven mills, you could generate

3025

1 approximately \$78 million. And the reason, you know, I
 2 think it's illustrative, if we were to go back to the
 3 other spreadsheet, is were Denver to do so, they would
 4 solve for the reductions that the state has made to
 5 date.
 6 **Q. To date only?**
 7 A. To date only. So when -- when we look at
 8 that, what that's saying is that were Denver's
 9 taxpayers to approve a measure to -- to not have any
 10 dedicated mill for purposes of pro comp, it's just for
 11 general education purposes, they could, if they were
 12 willing to double their mill levy override tax,
 13 generate dollar amounts sufficient to solve for the
 14 state's reductions, and in this -- in this context,
 15 hence the reason they say that we maybe -- not maybe, I
 16 think it's fair to say historically school districts
 17 sought mill levy overrides for purposes of
 18 supplementing their educational programs. We've not
 19 quite gone to the supplant aspect, in that it's things
 20 that would otherwise be funded, that's primarily the
 21 definition of supplant, it's now really to backfill for
 22 the state's lack of backfill.
 23 So when total program funding is not being
 24 totally funded by the state, the only option that is
 25 open to the local school district as the School Finance

3026

1 Act is configured is to approach voters for a mill levy
 2 override.
 3 **Q. And to ask them to double the mill levy
 4 override tax?**
 5 A. In the instance of Denver, that is
 6 correct. However, if we go to Douglas County, what
 7 you'll see is that Douglas County would need
 8 approximately 50 -- I'm going to round -- 55 million.
 9 And so if you do the same kind of consideration for
 10 Douglas County, they need 55 million. So we're just
 11 going to divide 55 million by their assessed valuation,
 12 and you see that they would need 11 mills.
 13 So they are almost to a point where they
 14 would have to double their mills relative to Denver
 15 because of the assessed valuation. That would leave
 16 them approximately -- I'm grossly rounding numbers as I
 17 do this -- but this would leave them approximately
 18 \$12 million of available capacity.
 19 But back to the point when we look at the
 20 math in the formulas for the respective districts, what
 21 you see is that when we go up here and we were
 22 adjusting our formulas, right now this is the formula
 23 that I put in place for Denver. So if I were to add an
 24 additional, you know, seven mills -- make sure I got my
 25 decimal points here -- you'll see that tax bill grew

3027

1 from the 457 that I had before up to 582. Excuse me
 2 one moment.
 3 **Q. That's all right.**
 4 A. And so the increase to the Denver taxpayer
 5 would be on the order of \$125 per average single-family
 6 residence of approximately 225,000. If I were to
 7 change that to the 315,000 that I was using and instead
 8 change that from being a seven mill increase --
 9 **Q. So we're moving to Douglas County now?**
 10 A. We're moving to Douglas County now. If I
 11 were to change that to be Douglas County's and I were
 12 to add to that 11 mills, what you'll see is that goes
 13 to \$913. So what you're asking for the Douglas County
 14 individual is to increase for their average taxpayer an
 15 increase of \$275. And --
 16 **Q. And this is just to solve for the negative
 17 factor?**
 18 A. This is to solve for the negative factor.
 19 And it's to say that you have two communities of means,
 20 in that Denver has a very strong assessed valuation and
 21 a -- relative to state average, the single-family
 22 residence is a -- above the state averages both in
 23 terms of personal income as well as the single-family
 24 dwellings' market value, and Douglas County's is above
 25 Denver in each instance.

3028

1 Yet, the point being is that regardless of
 2 the ability, I think there's a fair question to ask
 3 about the willingness. Communities have not, as
 4 witnessed by this spreadsheet, where we saw that only
 5 108 of 178 school districts in the state have passed
 6 mill levies, you cannot be assured of a local
 7 electorate's ability to, in fact, win an election.
 8 Having been in Douglas County in 2008,
 9 when they failed, it's not necessarily a safe
 10 assumption to assume an ability to pay by virtue of
 11 wealth should be confused with a willingness to pay in
 12 context of a value for -- you know, a political
 13 estimation, if you will.
 14 **Q. What you would be asking the Douglas
 15 County voters to do is to increase from six mills, they
 16 would increase an additional 11 mills?**
 17 A. That is correct.
 18 **Q. And can you do the computation, then, for
 19 Aurora?**
 20 A. Yes. So to Aurora, we need -- sorry, got
 21 to get back to that number. Aurora needs, for sake of
 22 argument, \$37 million. And what we see is that Aurora
 23 has approximately 47 million available. I'm not quite
 24 certain why that's there, so I'm going to just move
 25 this, so I don't want to mess with the spreadsheet.

3029

1 Sorry.

2 **Q. That's all right. You're just doing the**

3 **same calculation for Aurora that you did for Denver and**

4 **Douglas?**

5 A. Correct. And what you see for Aurora is

6 they have to almost go up by 21 mills. So let's get

7 that to something a little more manageable. So what

8 you're seeing there is that with respect to 21 mills --

9 and we didn't do the computation here, but can do the

10 same thing for Aurora. If we were to go back -- I have

11 to admit, I don't know Aurora's.

12 **Q. Just put an assumed number in there.**

13 A. I'll just say if Denver's at 225, I mean,

14 no offense to Aurora, I'll just say 175. It may be

15 higher, it may be lower. And so if we're using

16 Aurora's, then I got to put in Aurora's here at their

17 26. And so we know that their base number is 362.32.

18 And if I then increase this by 20, that theirs is going

19 to go up to 640. What you see is that their increase

20 outpaced that of Douglas County by approximately just

21 under \$3.

22 And so the average property taxpayer in

23 Aurora who, you know, if you can draw any inference

24 from housing values, and I'm more comfortable speaking

25 to Denver versus Douglas, but point being is that if

3030

1 it's 250 -- or 225 or 315 or somewhere in that

2 neighborhood, I don't think it's a stretch. And at one

3 time I could have quoted these and felt comfortable.

4 But the single-family incomes of those homes correlate

5 to the values of those homes.

6 And so what you're asking, by and large,

7 is folks who have less of an ability to pay to pay

8 something that's equal. And so as you start to address

9 taxpayer equity, you're creating some tremendous

10 winners and losers when thought of as a percentage of

11 wealth.

12 **Q. And so to go back to Denver, then. If**

13 **Denver was to be able to successfully pass its mill**

14 **levy override and be max'd out, what's your**

15 **understanding of what the next budget year holds for**

16 **Denver from the state share?**

17 A. Speaking of '12-'13?

18 **Q. Yes.**

19 A. I think we're -- we're worried. That the

20 state -- you know, if we look at the June 20th edition

21 of forecasts from OSPB and legislative council, I think

22 we'd consider it a win if we had flat funding. And I

23 think at this juncture, I can -- I'd have to think

24 about it. I'm advising that we'll anticipate a

25 reduction of no less than 250 million to K-12, and in

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1 Douglas County -- excuse me, the Denver Public Schools

2 is approximately 10 percent. All other things being

3 equal, would expect that we would have a reduction of

4 tens of millions of dollars, and that could be 10, 20,

5 25.

6 **Q. And so the money would be just used to**

7 **backfill current cuts, would not allow additional**

8 **programs, and you would have no room to be able to do**

9 **anything in the future?**

10 A. Absent further change in state law, that

11 is a correct statement. And then the challenge that I

12 have is that at that juncture, if one were to sum these

13 numbers -- so at this juncture, what you're saying is

14 that we would take approximately to that -- to your

15 statement, we would take the full \$154 million

16 available and use that essentially for state program,

17 and what that would do at that juncture is when you

18 come back to Denver and you look at the local property

19 tax, instead of using their formula here, if I were to

20 instead add into that \$150 million, what you see is

21 that's a great number, but the state's share has now

22 dropped, you know, in a very dramatic fashion.

23 And there are many in the state who think

24 that the circumstance, particularly in this fiscal

25 environment, one that you have 70 school districts that

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1 aren't enjoying mill levy override for reasons of

2 willingness or abilities to pay, whether that's thought

3 to be financially based on their AV or political

4 climates or both, but the point being that the state

5 share relative to the local state control issues, you

6 are getting incredibly disproportionate, to where the

7 state has a growing share, but I think in some counties

8 and some school districts is tremendously

9 disproportionate.

10 **Q. So, again, then, back to Denver. If you**

11 **were to pass your mill levy to your max, can you**

12 **explain what that would mean for your future ability to**

13 **absorb cuts or to actually use mill levy override money**

14 **to implement programs outside what's mandated by the**

15 **state?**

16 A. You know, I mean, absent a change in the

17 state law, further reductions in revenues would require

18 further reductions in expenditures at the district

19 level.

20 **Q. And no ability to actually, as you were**

21 **talking about, supplement your program?**

22 A. That is correct. Our ability to offset

23 cuts, losses of revenue, has been somewhat buttressed

24 by extreme federal action. The ARRA funds that came to

25 local districts. But as folks know, that has lapsed.

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1 so that funding alternative is no longer available as a
 2 offset or a reduction to state.
 3 Federal programs. One would only need
 4 watch the front page of any major newspaper to know, to
 5 be concerned about the federal deficit and what the
 6 debt ceiling means in terms of the federal ability to
 7 pay for title programs.
 8 So not only are we not looking at the
 9 federal government as an ability to offset, we have
 10 grave concerns for those targeted populations, whether
 11 they are coming vis-a-vis private foundation -- private
 12 moneys or through federal funds, that we'll be able to
 13 absorb or offset those reductions.
 14 The mill levy override to that pie that I
 15 put up before was the fifth segment that right now is
 16 available to us. But were it to be utilized in full
 17 for this purpose would not be available. We would have
 18 no additional capacity.
 19 And I think there's an interesting legal
 20 question. Don't know the answer, but if we're at total
 21 program funding and the state continues to lower the
 22 contributions, does that -- what exactly does that
 23 spell for individual school districts? Are they then
 24 required to ratchet down as well?
 25 So far, if you look at it, it seems as if

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1 the law is define -- defaulting to what the total
 2 program funding was at the time. So what that will do
 3 is it will incentivize local school districts to rush
 4 to the voters to ask for that before total program
 5 funding is further reduced, because it's that
 6 computation of 25 percent of total.
 7 So if the state's cutting further, then by
 8 default their mill levy override totals in future years
 9 will be less than they are today.
 10 MS. GEBHARDT: Okay. Your Honor, what I'd
 11 like to do is go back to the mill levy spreadsheet,
 12 take a minute to take the snapshot, and I think I'm
 13 really close to being done and then handing it over to
 14 the state.
 15 THE COURT: That's fine.
 16 MS. GEBHARDT: And I don't know how long
 17 that will take, but it might take five minutes or so,
 18 if you want to take a five-minute break.
 19 THE COURT: That's fine. Go right ahead.
 20 (Recess taken, 3:50 p.m. to 4:08 p.m.)
 21 MS. GEBHARDT: Thank you, Your Honor --
 22 THE COURT: No problem.
 23 MS. GEBHARDT: -- for allowing us to do
 24 that.
 25 THE COURT: No problem.

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1 MS. GEBHARDT: So just for the record,
 2 when Mr. Hart's done, we're going to take care of
 3 getting the exhibits -- you know, whatever it's called,
 4 a snapshot taken and marked and sent to the state. So
 5 there will be two more that will be taken. One will be
 6 the changes that he made to this spreadsheet when he
 7 played with the at-risk factor, and that will be 10468.
 8 And then the mill levy override calculation sheet will
 9 be 10469.
 10 MR. HEINKE: And no objection from the
 11 state, Your Honor.
 12 THE COURT: So that's 10468 and 10469?
 13 MS. GEBHARDT: Right. And we'll take care
 14 of getting the right sheets marked and all of that when
 15 we're not taking up the Court's time.
 16 THE COURT: No problem. Thank you.
 17 **Q. (BY MS. GEBHARDT) So, Mr. Hart, we've**
 18 **covered a lot of ground and a lot of numbers. Are**
 19 **there any take-aways that we can gain from what you've**
 20 **tried to describe to us today?**
 21 A. I suppose. Condense hours into minutes.
 22 **Q. Yeah.**
 23 A. I think there are a number of things to
 24 bear in mind. One is in the context of the negative
 25 factor, it -- I think it is fair to say, in and of the

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1 numbers that I had shown earlier, that the negative
 2 factor reversed, did away with the at-risk weighting.
 3 One.
 4 Two, I think it's the case that any -- as
 5 the CFO for the DPS, the alternatives of how to solve
 6 for that are few, and that going to the mill levy
 7 override does give a dollar amount that on paper is
 8 available to backfill for the loss of that funding, but
 9 to do so puts us at tremendous risk on a go-forward
 10 basis for having flexibility to deal with future events
 11 and would remove all of the capacity that I would have
 12 to say that the district has been very sort of zealous
 13 and jealous about guarding in the past and using for
 14 specific purpose to garner electoral support would now
 15 be gone.
 16 **Q. Is there any impact of the frozen mill?**
 17 A. I think there is. I think the frozen
 18 mill, in the context of -- let me go to find that. Is
 19 that the frozen mill, particularly when taken in
 20 context to the negative factor, it obviously is an
 21 expression of the revenue side of the equation. It is
 22 not meant to address the outputs that are required from
 23 school districts.
 24 It is the case that the mill, once frozen
 25 in 2007, did nothing in regards to the history of the

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1 district. It wasn't a recognition of either being a
 2 declining or growing enrollment. It didn't take into
 3 consideration whether up to that time you had had
 4 growing or declining assessed valuations. And it
 5 certainly hasn't done that on a go-forward basis. It
 6 simply said that we are freezing the mill at a point in
 7 time.
 8 And so as goes the assessed valuation on a
 9 district basis, so goes that local contribution. And
 10 that is done without regard to necessarily the state's
 11 needs for outputs in terms of K-12 being a statewide
 12 concern, or from a standpoint of the ability to pay.
 13 And so when you take the mill levy
 14 override and the frozen mill taken together, what
 15 you've got is a system that has a largely insensitive
 16 means for which a mill levy is the tool by which school
 17 finance is -- the engine is fueled, if you will. And
 18 it has incredible inequities district to district that
 19 don't seem to have any sensitivity for the outputs
 20 educationally that are in pursuit or for the
 21 willingness or ability of school districts to pay.
 22 Back to that prior spreadsheet. You know,
 23 I mentioned that there were 108 school districts. It's
 24 obvious, then, that there are 70 that aren't part.
 25 It's also the case that within that 108, if we were to

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1 explode that, we would see that many of the school
 2 districts are already at a hundred percent of their
 3 available capacity.
 4 So while that bottom-line number is
 5 suggestive that were every school district to go out
 6 and, you know, here's the revenue that potentially is
 7 available -- I think I'm on the right one. No. Excuse
 8 me. They're very similar numbers. But were the
 9 amounts available fully acquired, that you could
 10 essentially hold on a statewide basis.
 11 But the problem, back to the mill levy,
 12 again, is it's a local tool, it's a local expression.
 13 So there are individual winners and losers that come
 14 when the mill levy override is thought to be anything
 15 other than an expression of local behaviors relative to
 16 their willingness and their ability and, at a local
 17 level, their desire to solve for educational pursuits,
 18 back to when it was supplemental to those outcomes that
 19 were desired as a local school board as opposed to some
 20 sort of fix for the state's revenue shortfalls.
 21 **Q. And does the mill levy override affect**
 22 **taxpayers equally across districts, or not?**
 23 A. It affects them equally, in that the
 24 formula is the same. Per hundred thousand dollars,
 25 it's \$8 per -- for the assessed value.

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1 It is the case, though, that as we have
 2 seen, that the assessed valuations on a
 3 district-by-district basis vary tremendously, and
 4 within individual districts, the ability of an
 5 individual taxpayer should be thought to be widely
 6 disproportionate.
 7 MS. GEBHARDT: That's all I have. Thank
 8 you for your patience in doing all the technology, Your
 9 Honor.
 10 THE COURT: Oh, no problem. Any
 11 questions?
 12 MS. BONO: We have no questions, Your
 13 Honor. Thank you.
 14 THE COURT: Thank you. Cross-examination.
 15 MR. HEINKE: Thank you, Your Honor.
 16 CROSS-EXAMINATION
 17 BY MR. HEINKE:
 18 **Q. Good afternoon, Mr. Hart.**
 19 A. Hello, sir.
 20 **Q. I know you've been on the stand for a**
 21 **while, so I'll try to be brief in my cross-examination.**
 22 **Am I right in understanding Denver's -- well, let me**
 23 **take a step back. You and Ms. Gebhardt discussed in**
 24 **part some of the effects on the budget in Denver Public**
 25 **Schools; is that correct?**

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1 A. Yes. As a global.
 2 **Q. Am I right to remember that in the next**
 3 **fiscal year, the '11-'12 year, that looking at the**
 4 **district's general fund revenue, there's been a local**
 5 **support reduction of about 43.3 million due to a**
 6 **9 percent decline in assessed value? Does that sound**
 7 **right to you?**
 8 A. Approximately, yes. It's taking the
 9 number of 11 -- rounding to the spreadsheets that I'd
 10 shown before, the greater than a 11 billion and
 11 dropping it to a 9.5.
 12 **Q. And that state equalization increased**
 13 **approximately 25 million to offset that loss of local**
 14 **support?**
 15 A. That is correct.
 16 **Q. Okay. So 43 million less in local,**
 17 **25 million more in state?**
 18 A. I don't have the numbers in front of me.
 19 We can do the math if you want me to, but I'll take
 20 that that's a fair approximation.
 21 **Q. You and Ms. Gebhardt also discussed bonds**
 22 **and mill levies, and if my recollection's right, you**
 23 **testified that Denver still has approximately**
 24 **\$78 million in capacity for mill levy overrides?**
 25 A. Correct.

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1 **Q. Do you know Denver's bonding capacity?**
 2 A. It is significant. It is in the -- off
 3 the top of my head, Nic, I don't remember. Hundreds of
 4 millions.
 5 **Q. Okay. And if I recall --**
 6 A. We can go look if you need a number.
 7 **Q. That's okay. A ballpark is all right.**
 8 **And if I understood your testimony correctly, for an**
 9 **average homeowner paying an extra \$125 a year, that**
 10 **would generate the \$78 million in additional mill levy**
 11 **overrides; is that fair?**
 12 A. It was that the average single-family
 13 residence. It's not fair to say that the average
 14 taxpayer, because in the composition of the tax base,
 15 you will have commercial and residential. I was giving
 16 the residential for a single family. A commercial will
 17 be assessed, as I had shown earlier, at 29 percent.
 18 So, you know, rough -- roughly multiple times of that,
 19 on the order of almost four.
 20 It is the case, then, that the dollar
 21 determinant will then be a function of that assessed
 22 value, after having taken into account the computation
 23 of market value in determining which assessment rate.
 24 **Q. Okay. But if we stick with the average**
 25 **single-family homeowner --**

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1 A. Correct.
 2 **Q. -- \$125 extra generates \$78 million extra**
 3 **for the district?**
 4 A. For that taxpayer.
 5 **Q. For that taxpayer. Thank you. You also**
 6 **mentioned that the -- I think I had my ears right --**
 7 **the '88, '98, and '03 mill levy overrides were**
 8 **essentially flat dollars; is that correct?**
 9 A. Correct.
 10 **Q. They weren't indexed to population growth**
 11 **or inflation?**
 12 A. They're not indexed, period.
 13 **Q. And that was a district decision, correct?**
 14 A. It was a district -- no. The way I'd
 15 answer that is state law till that time did not
 16 contemplate having variability in the amounts
 17 collected. That --
 18 **Q. Sorry. I didn't mean to interrupt.**
 19 A. That came by subsequent state action.
 20 **Q. And then in 2005, the district exercised**
 21 **its authority to index that mill levy override,**
 22 **correct?**
 23 A. Correct.
 24 **Q. Okay. In discussing state and local share**
 25 **with Ms. Gebhardt, I believe if we looked at the**

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1 **spreadsheet, we were roughly in the neighborhood of**
 2 **somewhere above 60 percent state support today, does**
 3 **that seem accurate?**
 4 A. It does.
 5 **Q. Going back about 20 years, it's fair to**
 6 **say that your memory is in 1988, you recall that state**
 7 **share being more in the high 30s, low 40s percent; is**
 8 **that fair?**
 9 A. Just to be precise, not my memory. I
 10 wasn't doing this at that time.
 11 **Q. Fair.**
 12 A. That is my understanding.
 13 **Q. Okay. And today, again, it's over -- even**
 14 **with the negative factor adjustment, it's over**
 15 **60 percent?**
 16 A. Correct.
 17 **Q. Okay. In discussing the negative factor**
 18 **with Ms. Gebhardt, I think you used the phrase "fiscal**
 19 **condition." I think you said something along the lines**
 20 **of the state's in a certain fiscal condition. Am I**
 21 **accurately recalling your testimony?**
 22 A. Correct.
 23 **Q. What did you mean by fiscal condition?**
 24 MS. BONO: Objection, Your Honor, to the
 25 extent this is calling for testimony about the state's

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1 budgetary conditions, which the Court ruled was not
 2 relevant in this case.
 3 THE COURT: Overruled. You can answer.
 4 A. In the context of the state's fiscal
 5 condition, it is -- as best I can recall, the context
 6 of my testimony was making reference to the quarterly
 7 economic reports released on the 20th of March, June --
 8 count my months right -- September, December that speak
 9 to the available revenues and required expenditures of
 10 the state for solving for its general fund obligations.
 11 And I think it's fair to say that the state has a
 12 revenue shortfall.
 13 **Q. (BY MR. HEINKE) Do you have a magnitude**
 14 **in mind of the revenue shortfall? From your memory of**
 15 **those reports.**
 16 A. They have changed over time. If we were
 17 to go back to, you know, '03-'04, when I was in the
 18 budget director, Douglas County Schools context, I
 19 think they were forecasting for growth. In the time
 20 that I've been with the DPS, since -- you know, over
 21 the last year, they've clearly been forecasting for
 22 further constraint.
 23 **Q. Do you know why those reports have**
 24 **forecasted for further constraint?**
 25 A. Fiscal -- I'm trying to think about how to

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1 answer this most -- just economic condition.
 2 **Q. Okay. You also, I believe, used the**
 3 **phrase in your testimony that the state is making an**
 4 **effort to balance its ability to pay. Do you recall**
 5 **that testimony?**
 6 A. Could you elaborate?
 7 **Q. I think, again, it was in the context of**
 8 **discussion of the negative factor. And I think one of**
 9 **the things you said is that the state is making an**
 10 **effort to balance its ability to pay.**
 11 A. Correct.
 12 **Q. What did you mean by that?**
 13 A. Meaning that the state has, in the course
 14 of attempting to -- and not attempting, succeeding to
 15 balance the budget, is in a process of going through
 16 tradeoffs. So not just solving for K-12, solving for
 17 other issues in and of their general fund. And
 18 recognizing that they have certain obligations to
 19 provide for and certain latitudes in which they can
 20 operate. And so they're doing their best to make
 21 informed tradeoffs.
 22 With respect to K-12, I think it's a sense
 23 that they have a dollar amount in mind for which they
 24 are making a target of reductions, and based upon pupil
 25 count and the composition of that pupil count, which is

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1 to say at risk, non-at risk, et cetera, then, no, how
 2 to back -- much like we built through the formula, you
 3 could essentially unwind through the formula, going the
 4 other direction.
 5 **Q. You also talked a fair amount about the**
 6 **negative factor. What's your understanding of why the**
 7 **negative factor was put in place?**
 8 A. I think twofold. One is to create an
 9 earmarking of the current and cumulative effect of
 10 reductions made over time, such that it was
 11 memorialized, if you will, so that at such time that
 12 the state had the ability to pay, that that number
 13 would help to remind and serve as an anchor for what
 14 would be necessary to offer -- to restore, if you will,
 15 funding to that, which is in the -- for lack of a
 16 better way to put it, the spirit and letter of
 17 Amendment 23.
 18 I think it also was understood by certain
 19 legislators at the time that the ability of local
 20 communities to offset state reductions would be
 21 facilitated if the state spoke with one voice as to the
 22 broader fiscal condition of the state, economic. And
 23 that the local elections would be, in relative terms,
 24 made less onerous if there was a single number and a
 25 single means by which the state was making those

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1 adjustments.
 2 **Q. You also discussed a few times with**
 3 **Ms. Gebhardt questions around legislative intent. To**
 4 **be clear, you have not been a member of the Colorado**
 5 **House of Representatives, fair?**
 6 A. That is fair.
 7 **Q. You've not been a member of the Colorado**
 8 **Senate?**
 9 A. That is fair.
 10 **Q. And you were not working at CDE at the**
 11 **time the negative factor was put into place; is that**
 12 **correct?**
 13 A. That is correct.
 14 **Q. Okay. Mr. Hart, would you agree that**
 15 **despite challenging financial times, Denver Public**
 16 **Schools believes it can make significant progress in**
 17 **improving the instructional core, growing and retaining**
 18 **great people, engaging families and the community, and**
 19 **creating a culture within DPS of high expectations,**
 20 **service, and excellence?**
 21 A. Sorry, is that a statement or a question?
 22 **Q. Would you agree with the statement?**
 23 A. I agree.
 24 MR. HEINKE: Okay. No further questions.
 25 THE COURT: Thank you. Redirect.

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1 MS. GEBHARDT: Thank you, Your Honor.
 2 REDIRECT EXAMINATION
 3 BY MS. GEBHARDT:
 4 **Q. I just have one question, Mr. Hart.**
 5 **Mr. Heinke asked you about the bonding capacity that**
 6 **DPS has left. Are you able, even if you were to use**
 7 **your bonding capacity, to use any of that money for**
 8 **operations?**
 9 A. The only extent to which you can use
 10 bonding money for what a -- if you will, a common
 11 citizen might think of operations, is to the extent you
 12 would hire somebody to build the capital construction.
 13 So if we were building a school, for instance, we could
 14 hire the architects or the employees who are, you know,
 15 slinging a hammer, putting up shingles, what have you.
 16 So it's not just for raw material, unless we want to
 17 think of labor in that context.
 18 However, once you move from design to
 19 building and from building to a certificate of
 20 occupancy, once the -- in this example of a school,
 21 once it is opened, those moneys are not available for
 22 said purpose. And unless remaining bond dollars
 23 existed, those employees would be terminated.
 24 MS. GEBHARDT: I don't have any other
 25 questions. Thank you, Mr. Hart.

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1 MR. HEINKE: Nothing further. Thank
 2 you.
 3 THE COURT: Thank you.
 4 MR. HEINKE: Thank you, Mr. Hart.
 5 THE COURT: Thank you, sir. You may step
 6 down. Thank you.
 7 MS. GEBHARDT: This is our last witness of
 8 the day, Your Honor.
 9 THE COURT: Okay.
 10 MS. GEBHARDT: And I need to address a
 11 scheduling issue for tomorrow.
 12 THE COURT: Yes.
 13 MS. GEBHARDT: We were going to call Lorie
 14 Gillis, who's the CFO from Jefferson County. Her
 15 mother is ill and in the emergency room, so we are not
 16 going to be calling her tomorrow. The state's aware of
 17 this. So we only have two witnesses tomorrow, and we
 18 will have to finish early in the afternoon, and we just
 19 ask for your understanding of that kind of situation
 20 that we just learned about this afternoon.
 21 And we'll work with the state and with
 22 MALDEF to figure out another time to put on
 23 Ms. Gillis's testimony.
 24 THE COURT: All right. So you're saying
 25 that you -- you have witnesses in the morning, though,

REPORTER'S CERTIFICATE
 STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)
 I, CAROL M. BAZZANELLA, Registered
 Professional Reporter, Certified Realtime Reporter,
 and Notary Public, State of Colorado, do hereby certify
 that the within proceedings were taken in machine
 shorthand by me at the time and place aforesaid and was
 thereafter reduced to typewritten form; that the
 foregoing is a true transcript of the proceedings had.
 I further certify that I am not employed by,
 related to, nor of counsel for any of the parties
 herein, nor otherwise interested in the outcome of this
 litigation.
 IN WITNESS WHEREOF, I have affixed my
 signature this 22nd day of August, 2011.
 My commission expires February 10, 2012.

3050

1 right?
 2 MS. GEBHARDT: We do. And early
 3 afternoon.
 4 THE COURT: Okay.
 5 MS. GEBHARDT: But we're going to end
 6 early just because of the situation that Ms. Gillis was
 7 confronted with today unexpectedly.
 8 THE COURT: All right. Thank you.
 9 MS. GEBHARDT: So we just wanted to let
 10 you know that ahead of time.
 11 THE COURT: I appreciate that. Thank you.
 12 WHEREUPON, the within proceedings were
 13 adjourned at the approximate hour of 4:28 p.m. on the
 14 15th day of August, 2011.
 15 * * * * *

A				
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