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

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3 REPORTER'S TRANSCRIPT: Trial - Day 10  
 4 August 12, 2011

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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.

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13 The trial in the above-entitled matter,  
 14 having commenced on Monday, August 1, 2011, was  
 15 reconvened on Friday, August 12, 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: Lori A. Martin, RMR, CRR

23  
24  
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I N D E X

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1 MORNING SESSION, Friday, August 12, 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. Are

6 the parties ready to proceed?

7 MS. YATES: Yes, Your Honor.

8 MR. HEINKE: We are, Your Honor.

9 THE COURT: Thank you. Next witness for

10 the plaintiff.

11 MS. YATES: Your Honor, the plaintiffs

12 call Holly Hultgren.

13 THE COURT: Thank you.

14 \* \* \* \* \*

15 HOLLY HULTGREN, Ed.D.,

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

17 testified as follows:

18 THE COURT: Thank you. And, ma'am, if you

19 could please state your full name and why don't you

20 spell both your first and last name for us.

21 THE WITNESS: Okay. My name is Holly

22 Hultgren, and it's H-o-l-l-y, H-u-l-t-g-r-e-n.

23 THE COURT: Thank you.

24

25

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1 DIRECT EXAMINATION  
 2 BY MS. YATES:  
 3 **Q. Good morning, Dr. Hultgren.**  
 4 A. Good morning.  
 5 **Q. You're a former employee of the Boulder**  
 6 **Valley School District; is that right?**  
 7 A. Yes.  
 8 **Q. Can you tell us in what capacity you**  
 9 **worked for the district starting with your most recent**  
 10 **job.**  
 11 A. Most recently I was the principal at  
 12 Lafayette Elementary School for five years. Prior to  
 13 that, I was the principal at Superior Elementary for  
 14 ten years. Prior to that, the principal at Nederland  
 15 Elementary for seven years.  
 16 **Q. And are you currently working for the**  
 17 **district?**  
 18 A. No. I retired just a year ago.  
 19 **Q. Have you also taught for the district?**  
 20 A. As a classroom teacher?  
 21 **Q. Uh-huh.**  
 22 A. No. I taught for five years in the  
 23 St. Vrain Valley School District as an elementary  
 24 teacher.  
 25 **Q. Do you have any licensures?**

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1 A. Yes. I have a -- an administrative  
 2 license and a principal license, professional license.  
 3 **Q. Do you have any certifications?**  
 4 A. Not in addition to that.  
 5 **Q. Okay. Can you briefly describe your**  
 6 **educational background.**  
 7 A. I have a bachelor's degree from Dickinson  
 8 College with a major in psychology; a master's degree  
 9 from Washington University, with a major in early  
 10 childhood education; and a doctorate from the  
 11 University of Denver in the field of school  
 12 administration and gifted and talented education.  
 13 **Q. When did you get your doctorate from the**  
 14 **University of Denver?**  
 15 A. 1981.  
 16 **Q. You mentioned school administration and**  
 17 **gifted education. Could you describe how that was a**  
 18 **focus of your doctorate, what kind of course work you**  
 19 **did.**  
 20 A. I did, in addition to the typical doctoral  
 21 research course work, approximately 30 hours in gifted  
 22 and talented education and another 24 hours in school  
 23 administration; and so it was really a combined program  
 24 where I had a focus on both gifted and school admin.  
 25 **Q. What was your dissertation on?**

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1 A. The title of my dissertation was  
 2 "Competencies for Teachers of the Gifted." It was a  
 3 qualitative survey study regarding the state of  
 4 teaching skills, knowledge, et cetera, for gifted  
 5 teachers.  
 6 **Q. Have you done any other work specific to**  
 7 **gifted students?**  
 8 A. Yes. When I completed my doctorate, I  
 9 stayed at the University of Denver for an additional  
 10 eight years, where I was adjunct faculty member, and  
 11 taught in the gifted program, advised doctoral students  
 12 in gifted education; and in addition to that, I was the  
 13 administrator who supervised gifted -- programs for  
 14 gifted students in preschool through middle school.  
 15 **Q. Can you tell us about those, administering**  
 16 **those programs, preschool through middle school.**  
 17 A. Right. One was called University for  
 18 Youth, and that was a program for beginning at four  
 19 years old up through elementary schools, and it was  
 20 enrichment opportunities for students to come on campus  
 21 primarily in the summer, sometimes after school, to  
 22 take courses that wouldn't be available in the regular  
 23 school.  
 24 But my primary focus after my dissertation  
 25 was something called Rocky Mountain Talent Search, and

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1 that was a program for highly academically gifted  
 2 middle school students, and they came on campus for a  
 3 three-week summer institute to do a really radically  
 4 accelerated curriculum.  
 5 **Q. Did you actually teach those students?**  
 6 A. I was the coordinator of the program, so I  
 7 hired the staff that helped supervise them on campus, I  
 8 coordinated with the university professors and high  
 9 school teachers that taught the courses, and then  
 10 helped with the identification of the administration of  
 11 students in the program. So I was the program  
 12 coordinator, not an instructor.  
 13 **Q. But you supervised the people who were**  
 14 **teaching the students?**  
 15 A. Yes. It -- I was really the -- the  
 16 coordinator of the entire program.  
 17 **Q. Have you served in any gifted and talented**  
 18 **capacity at the Boulder Valley School District level?**  
 19 A. I've served on what they call the TAG  
 20 DAC -- acronyms: TAG, talented and gifted; DAC,  
 21 District Advisory Committee -- and that's a committee  
 22 with administrators, teachers, parents, central  
 23 administrators that met monthly to help advise staff in  
 24 Boulder Valley regarding their gifted programming.  
 25 **Q. What kinds of things did you do as part of**

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1 **that, serving on that commission or that board?**  
 2 A. We were instrumental in helping to develop  
 3 the long-term plan for the school district including  
 4 how to -- what we would do to identify students and  
 5 what kind of programming would be available. We  
 6 frequently discussed issues, budget issues. We talked  
 7 about special programs for parents that might help  
 8 support parents and families of gifted students. We  
 9 talked about a lot -- a lot about professional  
 10 development and training of teachers. So it was a wide  
 11 variety, whatever would seem to be on the plate, the  
 12 political issue of the day.  
 13 **Q. Have you ever received any professional**  
 14 **awards in the past ten years?**  
 15 A. Yes. I have.  
 16 **Q. Can you tell us about them.**  
 17 A. Probably the most recent award was the  
 18 National Distinguished Principal Award, and that's an  
 19 award given out by the National Association of  
 20 Elementary Principals. One principal, elementary  
 21 principal in every state is identified each year for  
 22 recognition, and in 2008 -- it's the equivalent of  
 23 being a Colorado elementary principal of the year.  
 24 I was also given the Lifetime Achievement  
 25 Award from the Colorado Association for Gifted and

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1 Talented, and that's a recognition for involvement in  
 2 that field and support of that field over time.  
 3 Related to some of those awards, there were also what  
 4 we call in our district Superintendent Honor Roll  
 5 awards, and that's recognition internally in the  
 6 district for leadership as administrator -- well,  
 7 anyone can get the superintendent's honor -- honor  
 8 roll, but mine was for administrative leadership.  
 9 **Q. What is your philosophy about the role of**  
 10 **education designed for gifted and talented students?**  
 11 A. The philosophy that I bring to the -- the  
 12 school is that we have the obligation to meet the needs  
 13 of all students in our school, and the gifted students  
 14 have particular abilities and needs that we need to  
 15 focus in on in the same way we need to focus in on all  
 16 students and that it's our responsibility to meet their  
 17 needs on a daily basis, yearly basis within the  
 18 classroom as best we can.  
 19 **Q. When you were a principal, did the Boulder**  
 20 **Valley School District expect you to meet the needs of**  
 21 **your gifted and talented students?**  
 22 A. Well, the district -- yes. The district  
 23 had a TAG plan -- again, TAG is talented and gifted --  
 24 and the expectation was that every school would  
 25 identify gifted students and that would be based on

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1 cognitive abilities, specific academic aptitudes, you  
 2 know, a variety of anecdotal information and  
 3 assessments; and then we would use those assessments to  
 4 determine whether a child qualified for gifted  
 5 education and, if so, we would develop what was called  
 6 an advanced learning plan, an ALP, for those gifted  
 7 students which spoke to their strengths and perhaps to  
 8 areas where they maybe had some challenges and that we  
 9 would then operationalize those in the classroom  
 10 through classroom teachers to meet the needs of those  
 11 gifted students. So, yes, that was the obligation for  
 12 me and -- and for all administrators in the district to  
 13 oversee meeting their schools.  
 14 **Q. Was there an expectation by the -- by the**  
 15 **district that the content provided to gifted and**  
 16 **talented students would be somehow different than other**  
 17 **students?**  
 18 A. Yes. That would be the hope if it was  
 19 done well because in -- by virtue of identifying  
 20 students as being gifted, you would hope that their  
 21 curriculum was either at a faster pace, a greater  
 22 depth, perhaps more complexity, and so the content of  
 23 the regular curriculum for a grade level would need to  
 24 either be compacted, accelerated, enriched or in some  
 25 way matched with the ability of the -- of the student

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1 that had been identified. So, yes, there's a  
 2 significant difference that needs to happen for some  
 3 students who are identified as gifted.  
 4 **Q. What about the state? Does the state have**  
 5 **any sort of expectation or standard about serving the**  
 6 **needs of gifted and talented students, in your**  
 7 **experience?**  
 8 A. Yes. The state does require that all  
 9 districts identify gifted students. All states -- I  
 10 mean, all districts are asked to complete a program  
 11 plan -- I don't know the exact name of it -- but a  
 12 program plan for gifted education, and that includes  
 13 annual updates for growth of those identified students;  
 14 and then there are some funds that go to districts, and  
 15 so there's a budget requirement for spelling out how  
 16 the monies will be spent. So, yes, it's my  
 17 understanding that there are expectations -- I know  
 18 that there are expectations from the state level that  
 19 gifted students' needs be met.  
 20 **Q. And what about -- you mentioned growth and**  
 21 **tracking growth. Are there any state standards**  
 22 **specific to growth for gifted and talented students?**  
 23 A. One of the terms that -- that we use in  
 24 the field is "commensurate growth," and all students'  
 25 academic achievement is charted or -- or tracked to see

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1 the growth that they make from year to year, and we  
 2 would hope that students make at least a year's growth  
 3 in a year's time; and the expectation for those  
 4 students who are identified as gifted students was that  
 5 they would make a year and a half's growth in a year's  
 6 time and that their performance level would be  
 7 certainly proficient and most likely advanced,  
 8 depending upon the curricular field perhaps in which  
 9 they were identified. Math, gifted in math, advanced  
 10 performance in math, but maybe not across the board.  
 11 **Q. Roughly, what percentage of a school**  
 12 **population, based on your experience, might you expect**  
 13 **to be gifted and talented?**  
 14 A. Well, traditionally, one would say 3 to  
 15 5 percent of the -- the students in a school might be  
 16 identified as gifted. I think when I say  
 17 "traditionally," that's a definition that's, say,  
 18 20 years old. I would say operationally we see more  
 19 like 8 to 10 percent of students. 5 to 8 -- 5 to  
 20 10 percent. I mean, it's variable depending upon what  
 21 the criteria are, but you're really looking at the top  
 22 93 to 99 percentile, 95th to 99th percentile of  
 23 performance, so . . .  
 24 **Q. Now, you mentioned that there is a certain**  
 25 **amount of state funding that does come with gifted and**

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1 **talented. What does the district need to do, if**  
 2 **anything, to tap into those funds?**  
 3 A. Again, I'm only familiar with Boulder  
 4 Valley's budget, and in order to receive funds from the  
 5 state, our district coordinator needs to create a  
 6 long -- a three- to five-year master plan and report on  
 7 progress made annually toward that plan. There's an  
 8 end-of-year report that has specific student  
 9 achievement data in it and submit a -- a budget sheet  
 10 that describes how those funds would be used.  
 11 **Q. Who typically does the work of putting**  
 12 **this together?**  
 13 A. Typically -- I can speak for Boulder -- we  
 14 have a person who's in a position to coordinate  
 15 programs for gifted students, and that person, that  
 16 coordinator, completes the sheet. It's a 20-plus-page  
 17 document. One of the other things that the document  
 18 requires is that -- that her plan is aligned with our  
 19 district plan for school improvement, and -- and so she  
 20 gets input from schools, works closely with the  
 21 district's central administration, but she's actually  
 22 the one that completes that report on an annual basis.  
 23 **Q. Do you know roughly how much money per**  
 24 **year Boulder Valley School District gets from the state**  
 25 **for gifted and talented?**

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1 A. Only because I recently checked. \$270,000  
 2 was the allocation from the state to Boulder this last  
 3 year.  
 4 **Q. If you can take a look at the chart that's**  
 5 **behind you, and let me know if you can't see it.**  
 6 A. I'm good.  
 7 **Q. Okay. Is it your understanding, from that**  
 8 **chart, that TAG in the far right column stands for**  
 9 **talented and gifted?**  
 10 A. Uh-huh, yes.  
 11 **Q. Okay. And, here, it's indicating 13**  
 12 **percent of the school district's a little over 29,000**  
 13 **students has been identified as talented and gifted.**  
 14 **Does that look about right to you?**  
 15 A. Yes. I think that's -- that's what I  
 16 would have -- I would have guessed probably 10 percent,  
 17 but 13 percent doesn't surprise me.  
 18 **Q. Okay. So the \$270,000 that you've sort of**  
 19 **checked on recently in terms of the budget is expected**  
 20 **to serve that entire 13 percent?**  
 21 A. Yes.  
 22 **Q. And that would probably be somewhere**  
 23 **between 3,000 and 4,000 students?**  
 24 A. Yes.  
 25 **Q. Are there any limitation on exactly how**

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1 **this money can be spent, to your knowledge?**  
 2 A. Yes. To my knowledge -- and, again, I'm  
 3 not an expert on this -- but those funds are to be  
 4 spent on teacher FTE, professional development,  
 5 supplies and equipment. I guess those would be the --  
 6 the primary areas. I don't know if there's any money  
 7 left after you cover those areas; but, yes, those are  
 8 the areas that the money can be spent. It's restricted  
 9 from being spent on teacher assistance or aides,  
 10 nonlicensed people, I guess. So the requirement for  
 11 personnel is that it be spent on licensed personnel.  
 12 **Q. Now, you just mentioned nonlicensed**  
 13 **personnel. How would a nonlicensed personnel be**  
 14 **involved in the gifted and talented program?**  
 15 A. That's a fairly common occurrence. A  
 16 teacher assistant, or in our district they're called  
 17 tutors, teacher tutors, who are not licensed personnel  
 18 might be hired to assist with an identification process  
 19 where they would be doing the paperwork for nominating  
 20 students. They're trained to do some simple  
 21 assessments of students, creating the file, bringing  
 22 the child to a committee for identification, and that  
 23 would be a committee that involved licensed teachers,  
 24 and then helping to do the paperwork and coordination  
 25 of the ALP.

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1 They are not licensed to nor qualified to  
 2 give direct instruction to students. So their role  
 3 would be more support of teachers. They might be in a  
 4 classroom when a teacher has taught a lesson working  
 5 with a small group following up, and they might also,  
 6 in many cases, coordinate some enrichment activities  
 7 during the day, after school, the spelling bee, the  
 8 drama club, those kinds of things.

9 **Q. Now, typically, is it a nonlicensed person**  
 10 **or a licensed person who is doing the process of the --**  
 11 **completing the student identification paperwork and the**  
 12 **advanced learning plan?**

13 A. Well, it's a team effort, and that varies  
 14 from school to school, because in Boulder Valley, the  
 15 TAG tutors average between five and 15 hours a week,  
 16 and that's not a -- that's the allocation that comes  
 17 from the district to the school. It's not a lot of  
 18 time, and so it has to be used judiciously, and the  
 19 principal and the committee for TAG at the school  
 20 may -- may allocate that teacher to do a specific task  
 21 and they may take over other tasks like identification;  
 22 but basically the TAG tutors do the identification  
 23 process, the paperwork process, keep the files, and the  
 24 teachers do the instruction.

25 **Q. And, again, the state gifted and talented**

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1 **allocation cannot be used to fund the TAG tutors,**  
 2 **right?**

3 A. Correct.

4 **Q. Is there any district allocation for**  
 5 **licensed instruction that's specific to gifted and**  
 6 **talented students?**

7 A. In Boulder Valley?

8 **Q. When you say district -- yes, uh-huh.**

9 A. Could you ask me that question, again,  
 10 please? Because I got lost on that.

11 **Q. Sure. That's okay. Is there any Boulder**  
 12 **Valley School District allocation for licensed**  
 13 **instruction and specific to gifted and talented**  
 14 **students?**

15 A. I'm not -- I'm going to say not formally,  
 16 not as a regular practice, and I say that because  
 17 occasionally there may be a -- a portion of FT --  
 18 teacher FTE that a principal might assign to teach a  
 19 period in middle school or an afternoon in elementary  
 20 school. There are some exceptions in -- and the school  
 21 where I was the principal last, at Lafayette Elementary  
 22 School, did have one FTE of teacher time specifically  
 23 set aside for gifted education. That was truly the  
 24 exception, I think, across the district. So, no,  
 25 generally speaking, there's not an FTE earmarked for

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1 gifted -- teachers of the gifted in Boulder Valley.

2 **Q. I'm going to ask you a few questions about**  
 3 **your time at Superior Elementary. So you were there**  
 4 **for about ten years; is that right?**

5 A. Ten years.

6 **Q. Can you briefly describe the demographics**  
 7 **of that population, and feel free to refer to the chart**  
 8 **behind you, if that helps.**

9 A. Superior Elementary was designed, built  
 10 and opened in 19 -- okay, let me get this right -- '95?  
 11 '95, and I was there from '95 to 2005, and so it was a  
 12 new school that opened and rapidly grew in a suburban  
 13 east county area from 350 students to more than 600 in  
 14 those ten years, primarily Anglo students, Caucasian  
 15 students, very -- as you can see, almost no meal  
 16 assistance, very -- very little poverty, and there  
 17 might be situational, temporary, if there was at all,  
 18 at Superior, few English language learners, and a very  
 19 high-performing school really sort of from the get-go,  
 20 and the parents were professional, either educators,  
 21 businesspeople, that kind of thing, high parent  
 22 involvement, high-performing, and really a delightful  
 23 school.

24 **Q. Roughly what percentage of the student**  
 25 **population was identified as gifted and talented?**

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1 A. Well, it says 10 percent there, and that's  
 2 probably a -- probably what it was for the period of  
 3 time that I was there, ramping up from the -- the year  
 4 we opened; but about 10 percent of the students, I  
 5 think that's accurate, were identified within the  
 6 parameters for Boulder Valley School District  
 7 identification at Superior. That's -- that's been  
 8 consistent, and though these demographics were from  
 9 last fall and it's been a while since I was there, I  
 10 think that's consistent with what I experienced, too.

11 **Q. What did Superior Elementary do to meet**  
 12 **the needs of its gifted and talented students?**

13 A. Well, we had a TAG tutor, and that person  
 14 did help coordinate the identification process. One of  
 15 the things that I really helped try to focus on at  
 16 Superior was training of teachers for differentiating  
 17 for students in the classroom, and so most of the  
 18 instruction was provided by classroom teachers doing  
 19 cluster groupings or differentiating instruction in the  
 20 classroom. We had many parent volunteers, and so when  
 21 it came to doing special projects or enrichment, those  
 22 kinds of things, it was fairly easy to get highly  
 23 skilled parents to come in and assist with special  
 24 programs for gifted students. We did some  
 25 competitions, we did some clubs, that kind of thing.

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1 Overall, the performance at Superior was  
 2 remarkably high, so average was quite above average,  
 3 and so the school really streamed at a pretty fast pace  
 4 overall.

5 **Q. Were you able to meet the needs of your**  
 6 **gifted and talented students while you were at**  
 7 **Superior?**

8 A. To some extent, I would say. There was  
 9 always more that we could do and should do.  
 10 Particularly for the most highly gifted students, we  
 11 really didn't have any additional resources to do very  
 12 specific activities for them, so we did a pretty good  
 13 job. We could have done a better job.

14 **Q. Were there any specific content areas**  
 15 **where you think maybe you could have done a better job**  
 16 **such as science, social studies, anything like that?**

17 A. Right. The programming primarily across  
 18 the district or at least in my experience at elementary  
 19 schools with the -- the TAG tutor that you have and the  
 20 way that we assess and differentiate really focuses in  
 21 on reading instruction, math instruction, some --  
 22 somewhat in the field of language arts overall, but  
 23 when it comes to science and social studies, we're out  
 24 of steam, so to speak, in terms of resources and ways  
 25 that we can differentiate for perhaps the student that

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1 has a high, high interest in science and would like to  
 2 go very deeply into the scientific investigation or  
 3 maybe is a history buff and really wants to do a very  
 4 specialized project in the history area. That's  
 5 totally dependent upon a classroom teacher's ability to  
 6 figure out resources or -- or perhaps bring a volunteer  
 7 in to help with that. That would not have been funded  
 8 through the district nor was it a way that, as a  
 9 principal, I could really bring more resources to that  
 10 teacher.

11 **Q. Were these parent volunteers generally**  
 12 **licensed or not licensed?**

13 A. Oh, not licensed, not licensed, but that's  
 14 not to say the parent volunteers can't offer a high  
 15 level of stimulation to students; but, no, they could  
 16 never be teaching students without a licensed teacher  
 17 present, and whatever a volunteer does in the schools  
 18 is overseen by the school staff very closely.

19 **Q. Tell me about how you came to Lafayette**  
 20 **Elementary after that.**

21 A. After ten years at Superior Elementary, I  
 22 was invited by the superintendent, assistant  
 23 superintendent, to consider moving to Lafayette and  
 24 become their principal. Their previous principal was  
 25 retiring. The Lafayette schools were a focus on the

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1 part of the district for trying to inject some new  
 2 energy, and they had done a community survey asking  
 3 parent interest for what would -- what would bring  
 4 parents back to Lafayette.

5 Boulder has a fairly high level of open  
 6 enrollment, and many of the Lafayette schools had been  
 7 declining in enrollment and achievement; and so as part  
 8 of an initiative in the district, they were looking for  
 9 some new leadership, and when the Lafayette principal  
 10 retired, I was invited to transfer laterally to that  
 11 school and take over the leadership role there.

12 **Q. Can you briefly describe the demographics**  
 13 **of the Lafayette population.**

14 A. Okay. I have to tell you when I went  
 15 there, it was a little different than what you have up  
 16 here (indicating). So I became the principal in 2005,  
 17 and if I can go back to that --

18 **Q. Sure.**

19 A. -- the enrollment was 330 students. Free  
 20 and reduced lunch was approximately 25 to 30 percent.  
 21 We had about 18 percent ELL students, probably about  
 22 the same for special ed. Well, we had about  
 23 15 percent. No, not even. That's probably about --  
 24 close for special ed, and so it was a school in decline  
 25 in terms of enrollment. The trend had been downward

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1 for the last several years prior to 2005, and so what's  
 2 represented here were the statistics from last year.  
 3 The enrollment actually increased 300 students in those  
 4 five years; and, interestingly, the demographics  
 5 shifted. To some extent, though, the numbers of free  
 6 and reduced lunch, Hispanic, and ELL students didn't  
 7 actually change. The percentages changed because among  
 8 those 300 students who returned or enrolled in  
 9 Lafayette in that five-year period, there were many  
 10 more families who lived in our attendance area who  
 11 returned to our school, and though they weren't all  
 12 Caucasian families, there was a higher percentage of  
 13 Caucasian families who were assigned to Lafayette, who  
 14 had chosen to leave our attendance area, returned to  
 15 the school.

16 And so the present demographics are on the  
 17 chart here. About 8 percent ELL, 17 percent  
 18 Hispanic -- I think there are about 75 percent  
 19 Caucasian students now -- meal assistance at  
 20 20 percent. I'm surprised. I would guess that -- I  
 21 would have guessed that was a little bit higher. We  
 22 have a fairly high special education population  
 23 compared to the district and many other schools, and  
 24 that is because we were a center school for high-needs  
 25 special ed students, multi-intensive special ed

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1 students, and so we have two classrooms at Lafayette  
 2 for multi-intensive students, one classroom for  
 3 resource students, and then there's also a -- a special  
 4 ed preschool at Lafayette. So it's a fairly high  
 5 percentage of special ed population.  
 6 **Q. If you take a look at the Talented and**  
 7 **Gifted column for Lafayette, it's at 17 percent. Can**  
 8 **you tell me about that?**  
 9 A. Right. Okay. So when I arrived at  
 10 Lafayette in 2005, there were a handful, and I'm going  
 11 to say probably half a dozen students who were  
 12 identified as gifted and a TAG tutor who was working  
 13 hard at eight to ten hours a week to try to coordinate  
 14 programs, primarily doing some enrichment activities.  
 15 One of the focuses that came from the  
 16 initiative to boost the Lafayette schools was to  
 17 identify a different focus for each of the four  
 18 elementary schools, and Lafayette Elementary was  
 19 identified as a talented and gifted focus school. Now,  
 20 that did not mean that it was only for TAG students, by  
 21 any means, but that we were given one teacher FTE to be  
 22 a teacher coordinator of gifted programs at Lafayette,  
 23 and that person worked with me and other staff members  
 24 to really shore up the gifted program and identify  
 25 students who had been underrepresented and certainly

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1 not served in the past, and that probably would have  
 2 brought it up to about the average for the district.  
 3 But when you are a focus school, one of  
 4 the things that happens when you have success is the  
 5 reputation of the school brought additional students  
 6 into the school, and families who were looking for a  
 7 school program that would meet the needs of their  
 8 gifted students began to seek out Lafayette as an  
 9 option and enroll students there.  
 10 So that, I think, is representative of the  
 11 fact that that was a focus school and we were really  
 12 trying to attract and meet the needs of gifted students  
 13 as well as all the other students in the school.  
 14 **Q. Now, you mentioned earlier that you got a**  
 15 **dedicated FTE for that and that that was actually**  
 16 **fairly unique in the district to get a dedicated FTE.**  
 17 **Can you tell us about what this person did in her**  
 18 **capacity as a dedicated gifted and talented FTE.**  
 19 A. Uh-huh. Well, we actually started out  
 20 with focus groups within our community to identify what  
 21 the interests and needs were within our school, and it  
 22 evolved into a job description for this person that was  
 23 a combination of some of the clerical tasks of  
 24 identifying students, though the TAG tutor in the  
 25 school maintained that responsibility. This person

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1 actually provided direct teaching to students, and  
 2 that's what we needed. We needed someone who was  
 3 trained and endorsed -- in fact, she was -- and skilled  
 4 in meeting the academic needs of gifted students, and  
 5 so she did direct instruction for identified students.  
 6 She did professional development team teaching and  
 7 coaching of classroom teachers.  
 8 And the other thrust that we identified  
 9 through our focus groups was that we really wanted all  
 10 students to benefit from this resource in the school,  
 11 and we, under her guidance, developed a variety of  
 12 enrichment activities during the school day, before,  
 13 during and after school, which were open to any  
 14 students based on interest, and she oversaw and  
 15 coordinated those program. So that's kind of in a  
 16 nutshell what her job description was.  
 17 **Q. And she was licensed, correct?**  
 18 A. Yes, a licensed teacher and actually came  
 19 from the state of Texas where she'd had experience  
 20 teaching gifted students in that position, gained her  
 21 endorsement in gifted ed through the University of  
 22 Denver.  
 23 **Q. When you talked about program**  
 24 **development -- I'm sorry, professional development and**  
 25 **co-teaching, can you provide some examples of what she**

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1 **might have been doing while you were there.**  
 2 A. Right. We started out with just a simple  
 3 definition of what differentiating curriculum means and  
 4 how you would use assessment information about  
 5 students' abilities and how to use that information to  
 6 design instruction so that you didn't have repetition  
 7 of content that students already knew. That was --  
 8 that's pretty basic, but not surprisingly many teachers  
 9 were unfamiliar with how to particularly increase the  
 10 pace and depth and complexity of a lesson for  
 11 individual students in the classroom.  
 12 But beyond that, she did professional  
 13 development on the affective needs of gifted students,  
 14 some of the stresses and pressures and expectations  
 15 that those students might be feeling. We, as a school,  
 16 did a focus group on what's called Twice Exceptional  
 17 students, and she was the leader of that book  
 18 discussion and focus group on how to identify students  
 19 who might have a learning disability and also be  
 20 gifted, and that is something that many people don't  
 21 realize can happen. You can be on the autism spectrum  
 22 and be gifted. You can have a learning disability and  
 23 be gifted, and oftentimes students are sort of  
 24 pigeonholed into special education and never considered  
 25 in terms of other abilities, and so that was a big

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1 focus of professional development.  
 2 And I would say the last one, because we  
 3 were very much about equity and trying to be sure that  
 4 all populations were considered, and with our English  
 5 language learner population, we did some work with an  
 6 author on the movie PAIN, who focuses in on giftedness  
 7 and poverty and language learning and language  
 8 acquisition and how that might impact testing and  
 9 assessment that systematically leaves some students out  
 10 of consideration for advanced programming. So those  
 11 are the -- those are just some samples of some of the  
 12 professional development that she initiated or led or  
 13 coordinated for the school.  
 14 **Q. And individualized instruction, what kind**  
 15 **of instruction did she provide gifted and talented**  
 16 **students?**  
 17 A. Okay. So she did do direct instruction of  
 18 students, and the two areas that I mentioned, math and  
 19 language arts, were really the areas that she focused  
 20 on; and at our school, we did assessment in the area of  
 21 math, and then we would have three or four classes per  
 22 grade level, and so there was some skilled grouping  
 23 during math assessment, and that allowed this  
 24 particular teacher to take fourth- and fifth-grade  
 25 students who were at the top end of elementary

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1 curriculum, and she did literally a sixth-grade math  
 2 class for those students during their math instruction  
 3 time. She was their math teacher for very advanced  
 4 fourth- and advanced fifth-grade students.  
 5 She also coordinated about a half a dozen  
 6 fifth-grade students who went on to the middle school  
 7 for math because their needs were so great that even in  
 8 a sixth-grade class she wasn't able to challenge them  
 9 enough. So she was the direct instructor for fourth-  
 10 and fifth-grade math students and then switched up  
 11 after the first thing in the morning and did language  
 12 arts instruction for identified students in those areas  
 13 in second, third, fourth and fifth grade through the  
 14 rest of the day. So she, throughout the day, every day  
 15 was a teacher of gifted students.  
 16 Now, she was unable just in her day, in  
 17 her daily schedule, to provide direct instruction in  
 18 kindergarten or first grade. We regretted that. So  
 19 did the teachers, so did the parents, but we only had  
 20 so much of her, and that's how the schedule went.  
 21 **Q. In terms of those sort of extracurricular**  
 22 **activities that were open to all students, can you**  
 23 **provide some examples of the activities that she**  
 24 **coordinated and brought to the school.**  
 25 A. Uh-huh. One of the things that was

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1 interesting about students -- when I first arrived at  
 2 Lafayette in 2005, I stood outside the front door, and  
 3 the bell rang and the kids poured out of the school.  
 4 They couldn't get out of school fast enough, and I  
 5 heard things like, "Free at last! Free at last!" et  
 6 cetera. There was really no culture to hang out after  
 7 school or be in school for anything -- any longer than  
 8 you had to; and Julie ended up, by the time I left in  
 9 2009-10, having three or four different enrichment  
 10 opportunities for students after school every day. It  
 11 could be chess club, it could be drama club, robotics,  
 12 an advanced sort of math problem-solving. She just --  
 13 she created literally what the kids wanted. We had  
 14 Destination Imagination teams. She coordinated a choir  
 15 that helped -- the music teacher helped put on a  
 16 musical production. So what we tried -- art classes.  
 17 We tried to look at areas where perhaps  
 18 during the day we might not have been meeting the needs  
 19 of the artistically gifted student, the dramatically  
 20 charged student, robotics, computer club, et cetera;  
 21 and -- and these were all free of charge, and we used  
 22 whatever funds we could find to -- if we had to pay  
 23 someone to do it. We had some volunteers. Teachers --  
 24 actually, the thing that was very exciting about that,  
 25 most teachers developed the culture within the school

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1 that they would find one day after school that they'd  
 2 be willing to jump in and coordinate one of these  
 3 clubs. So there were -- there were just so many things  
 4 for kids to do for the hour after school that literally  
 5 a couple of hundred students would be after school  
 6 every day.  
 7 **Q. So a couple hundred, that's probably close**  
 8 **to a third of the school population, were there?**  
 9 A. Correct.  
 10 **Q. And these were open to all students?**  
 11 A. Open to all students, and, interestingly,  
 12 we also tried to do, and I -- and it's not your line of  
 13 questioning, but we tried to do some homework help,  
 14 some special tutoring, some library. Come to the  
 15 library, check out a book and kind of get some help on  
 16 your reading homework kind of thing.  
 17 So the attitude across the school was one  
 18 that staying after school didn't mean you were in a  
 19 remedial program, it meant that there were fun things  
 20 going on after school and how do I get into that one  
 21 or -- and she would often have wait lists and parents  
 22 knocking at the door saying, What do you mean, my kid  
 23 can't get into that club? So -- yes. So there were  
 24 after-school activities that were of an enrichment  
 25 nature sort of blended in with a few other support or

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1 tutorial kinds of things, too.  
 2 **Q. So did you see any results in your --**  
 3 **you're hinting at some of these as you talk, but from**  
 4 **getting this dedicated GTE FTE and being able to**  
 5 **provide these additional services?**  
 6 A. Well, it was a -- certainly a team effort,  
 7 but when I was asked to go to Lafayette, it was -- it  
 8 was pretty clearly outlined that the focus -- that my  
 9 mission as the building leader was to try to increase  
 10 the achievement and increase the enrollment. Improve  
 11 the achievement, increase the enrollment, and the two  
 12 are sort of intertwined, and the TAG focus had quite a  
 13 bit to do with that, but that wasn't exclusively what  
 14 turned the school around, but in the course of the five  
 15 years that we were there, not only did the enrollment  
 16 increase from approximately 300 students, but the  
 17 school had been rated an average school in decline.  
 18 Love those terms. Those are -- those are based on the  
 19 state accountability system.  
 20 But at the time when I left, and I think  
 21 still presently, the school is rated as a high school,  
 22 a school that is a high-performing school with a  
 23 significant improvement, and that significant  
 24 improvement was over the course of a couple of years.  
 25 It's probably improving now. I'm not sure what the

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1 terminology is.  
 2 But one of the things that was very  
 3 dramatic is not only did the overall achievement go up,  
 4 but the percentage of students scored advanced -- at  
 5 the advanced levels increased dramatically, and  
 6 compared to other schools across the district, it was  
 7 one of the top three to five schools in the district  
 8 for percent of students at the advanced level. So  
 9 those are some of the sort of internal pieces that  
 10 don't always end up on the charts.  
 11 **Q. Based on your experience, what kinds of**  
 12 **strategies should a school employ to meet the needs of**  
 13 **its gifted and talented students?**  
 14 A. Well, first of all, taking a look at  
 15 individual students -- and right now, the gifted  
 16 programming sort of falls into the RtI, or Response to  
 17 Intervention paradigm, but -- but basically what that  
 18 means is there's certain things that can happen in the  
 19 regular classroom for all students, and that should be  
 20 good quality instruction for all students based on the  
 21 curriculum and with assessment ongoing, eyes on how the  
 22 students are doing, and then some sort of a final  
 23 assessment to be sure that they've learned what they  
 24 needed to learn.  
 25 I think good, basic education is important

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1 for all students, but for gifted students, honestly  
 2 sometimes they'll begin the lesson -- or they will be  
 3 in the room when the teacher begins the lesson and they  
 4 will already have mastery of that content, and so the  
 5 teacher needs to figure out not only what the students  
 6 know but how to then differentiate what's offered to  
 7 the students so that they are challenged, so that they  
 8 do learn new information, so that they are engaged in  
 9 classroom activity and so that they continue to meet  
 10 their potential as students within that school.  
 11 So I have pretty high expectations that  
 12 teachers do that for all kids, whether it's a  
 13 struggling student and figuring out how to bring them  
 14 up to speed, or a student who has already shown mastery  
 15 of that not having to sit and mark time in that  
 16 classroom while the teacher teaches the typical  
 17 curriculum for that grade level. I don't know how -- I  
 18 mean, I can launch into curriculum and gifted  
 19 education. I'm not sure you really want me to go into  
 20 too much detail.  
 21 **Q. Well, how about we shift gears for just a**  
 22 **moment and I'll ask you about what the resource**  
 23 **implications are for -- you know, in your experience,**  
 24 **for being able to meet the needs of gifted and talented**  
 25 **students through some of the things you've been talking**

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1 **about.**  
 2 A. Okay. There are -- there are pretty big  
 3 resource implications to do it right and well, starting  
 4 with training teachers, but then also even the most  
 5 highly trained teacher generally has a classroom set at  
 6 the elementary level of 25 students, we'll say, and  
 7 even if the ability and will is there, the teacher is  
 8 not going to be able to differentiate unless there are  
 9 some additional materials and time to do that, and time  
 10 may look like having another teacher to co-teach with  
 11 or to do some pull-out instruction. Teachers need time  
 12 to compact the curriculum, and that's a planning  
 13 function.  
 14 Sometimes students are accelerated to the  
 15 next grade, but that has implications for numbers of  
 16 students at the next grade, so you might need to look  
 17 at the allocation of FTEs so that there can be small  
 18 groups for intervention for gifted students in the same  
 19 way you would have intervention groups for other  
 20 students that had needs.  
 21 So it's a resource, it's professional  
 22 development, it's personnel; and particularly for older  
 23 students, there may be supplies and equipment needs  
 24 that would be more advanced than you might typically  
 25 see in a regular classroom.

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1 **Q. In your experience as an elementary school**  
 2 **principal, did you get enough resources to meet the**  
 3 **needs of your gifted and talented students?**  
 4 A. I would say no. With all due respect to  
 5 Boulder Valley, no. It was a -- excuse me. It was a  
 6 struggle every day, all the time for the teachers in  
 7 the classroom to be able to do what they wanted to do  
 8 and knew they needed to do for students; and as a  
 9 principal, I would look at my budgets, I would look at  
 10 my schedule, I would scratch my head and try to figure  
 11 out creative ways, because I don't think the resources  
 12 were there to really adequately meet the needs of those  
 13 students.  
 14 **Q. What are the adverse effects on gifted and**  
 15 **talented students that are not getting their needs met?**  
 16 A. That's something that we spend quite a bit  
 17 of time talking about, and there's research base that  
 18 says it's critically important from the very beginning  
 19 of school for your children to be challenged  
 20 academically, to not learn that learning comes easy. I  
 21 don't have to try, I don't really have to put effort  
 22 in, maybe I'm smarter than everybody else.  
 23 So if a gifted student's abilities are  
 24 ignored, they never -- or at least in the younger  
 25 grades -- won't be challenged, won't learn the

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1 resiliency that it takes to struggle with something and  
 2 finally learn it. They may be a -- in many ways, it's  
 3 just a lost resource that -- that's being wasted in  
 4 terms of kids who have ability and interest will become  
 5 bored, will become disengaged, maybe use their  
 6 creativity in some more negative ways within the  
 7 classroom. We've certainly seen that. If they can't  
 8 get attention positively, they'll tear it apart in some  
 9 other way.  
 10 And I think my theory is that eventually  
 11 all students will be challenged, maybe not in  
 12 elementary school and middle school, it might not be  
 13 until graduate school, but if a student's never really  
 14 met their match, had to struggle with it, get their  
 15 teeth into it, figure it out and realize that it  
 16 doesn't just come naturally or easily, that's a  
 17 disservice to those students; and for many students who  
 18 are just asked to -- you already know how to read, so  
 19 you take your book to the back and read your book and  
 20 write a little report on it and bring it back to me,  
 21 that's not engaging those students. That's not turning  
 22 them on to school and learning, and most of all it's  
 23 not making them struggle to learn, which I think at  
 24 some point we all have had to do and -- so the other  
 25 part of that, too, is I think that without gifted

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1 programming, oftentimes students won't ever get  
 2 together with other students who think and learn in the  
 3 same ways.  
 4 And so it's critically important, at least  
 5 part of the day or part of the educational program, to  
 6 have other students be able to bounce ideas off each  
 7 other, to be able to stimulate the thinking, to be able  
 8 to challenge and discuss with other students at a  
 9 higher, more complex level, and those things really  
 10 ought to be a part of the educational day for -- for  
 11 all students, and in this case we're talking  
 12 specifically about gifted students.  
 13 **Q. Are there any adverse effects on the rest**  
 14 **of the student population if gifted and talented**  
 15 **students are not getting their needs met?**  
 16 A. Well, let me -- can I flip that question  
 17 to when you meet the needs of gifted students, how does  
 18 it positively affect the other students in the  
 19 classroom?  
 20 **Q. Sure.**  
 21 A. Because I think that's probably the -- the  
 22 point I would like to make. If -- if -- well, one of  
 23 the things that was remarkable about the five years  
 24 that I was able and privileged, really, to be the  
 25 leader of the school at Lafayette was to see the

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1 overall climate of the school change when the teachers'  
 2 expectations for all students were raised, and -- and  
 3 so if the -- if a teacher's really focusing in on  
 4 higher-level thinking for gifted students, other  
 5 students have role models in the room that they're  
 6 watching. They may have a partner that's going to push  
 7 them a little harder. They may have an attitude  
 8 overall in the room that learning is cool, that this  
 9 is -- this is really something that's interesting and  
 10 we'll all get after it.  
 11 And if that's -- if the focus really is  
 12 more on a kind of a remedial, We've got to bring those  
 13 struggling kids up, that's important, but you also need  
 14 to have that spark of, We really expect all kids to do  
 15 their best to work together and that learning is not  
 16 only fun but engaging and important.  
 17 I don't know. I'm sorry. If that didn't  
 18 work, ask me that question again.  
 19 **Q. No. That's fine. I'm going to switch**  
 20 **gears for a moment and ask you what kind of work you're**  
 21 **doing right now.**  
 22 A. Okay. As a retired person, I'm actually  
 23 partially retired, or whatever the term for that is. I  
 24 have -- actually, since I left the University of Denver  
 25 in 1988 as a full-time employee, I've been an adjunct

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1 faculty member at the University of Denver and I've  
 2 taught courses for basically aspiring administrators,  
 3 teachers in a program to become an administrator; and  
 4 so I've taught one or two classes a year primarily in  
 5 the areas of school improvement and supervision and  
 6 evaluation. So I'm an adjunct faculty member. That  
 7 schedule changes from year to year, so I can't tell you  
 8 exactly what I'm going to teach this year, but will  
 9 continue to work there.

10 I'm also contracted with CASE, the  
 11 Colorado Association of School Executives, to teach a  
 12 series of workshops in supervision and evaluation, and  
 13 that's really borne of the new SB 191 bill and some of  
 14 the changes that have come along that will require some  
 15 retraining across the state, and I'm doing some private  
 16 consulting with school districts and private schools to  
 17 help with educational program planning.

18 **Q. Tell me a little -- you mentioned SB 191.**  
 19 **What's your understanding of -- of what that is and why**  
 20 **you're teaching about it?**

21 A. It's the educator effectiveness bill that  
 22 changes the focus of evaluation for teachers and  
 23 principals. It was passed last year. It's in a pilot  
 24 phase and a feedback phase right now and will be fully  
 25 implemented in 2013-'14.

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1 But the primary differences that have to  
 2 do with training focus in on the fact that teachers'  
 3 evaluation will now -- teacher and principal evaluation  
 4 will now be 50 percent determined by student growth,  
 5 student growth of the students in the teacher's  
 6 classroom or school growth, in the case of a principal,  
 7 and also that all teachers and principals will be  
 8 evaluated every year. The council has written --  
 9 rewritten the quality standards for teachers and  
 10 quality standards for principals, and they will be  
 11 adopted throughout the state, and so there's -- there  
 12 will be changes in terms of those standards for  
 13 teachers.

14 And also the effectiveness ratings are now  
 15 going to be recommended by the state and on a  
 16 four-point scale as effective, partially effective, not  
 17 effective, or highly effective; and in some cases,  
 18 school districts have had a two-point scale, et cetera.

19 So the standards, the ratings, the  
 20 50 percent on student growth, that all teachers and  
 21 administrators are evaluated every year, and there's  
 22 some potential changes afoot for a sequence of  
 23 noneffective ratings over two years or more that could  
 24 change the non-probationary status for some teachers.

25 **Q. And just can you briefly compare that to**

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1 **the current system. What would the current evaluation**  
 2 **system look like?**

3 A. The current evaluation system does have  
 4 standards for teachers and principals, but the actual  
 5 implementation of the evaluation system is determined  
 6 by local evaluation councils. So the documents that  
 7 are used, the procedures, the deadlines, et cetera, are  
 8 a little bit more less mandated. What's the opposite  
 9 of that? Lenient. Not lenient, but -- the word  
 10 escapes me. Anyway, made up by the individual  
 11 districts. As long as they meet the overall  
 12 guidelines, the number of observations and the type of  
 13 data collection is determined at the district level,  
 14 and the ultimate rating of the educator is determined  
 15 on a scale devised by individual districts.

16 We are required to evaluate probationary  
 17 teachers, to observe them twice a year and evaluate  
 18 them once a year for the first three years; and for --  
 19 after the third year, a teacher reaches  
 20 non-probationary status and then the law requires that  
 21 each teacher be observed once every three years and a  
 22 final evaluation report written. That's the state law.

23 Individual districts may have more  
 24 rigorous systems. I know, in Boulder, ours was a bit  
 25 more rigorous than that in terms of numbers of

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1 observations, et cetera, but the state statutes dictate  
 2 what I just said.

3 **Q. Are you involved in any kind of focus**  
 4 **group related to SB 191?**

5 A. Yes. Actually coming up very soon there  
 6 will be a focus group not run by CDE -- CDE'S hired  
 7 someone to do the focus group -- but the focus group  
 8 topic is on meeting the professional development or  
 9 training needs of districts across the state and how --  
 10 what the needs are and what are some of the mechanisms  
 11 or vehicles through which educators, primarily the  
 12 evaluators, will be trained to do SB 191 rules and regs  
 13 accurately.

14 So the focus group is pulling together  
 15 trainers to -- from higher ed, from school districts,  
 16 from HR areas, et cetera, to talk about how they are  
 17 going to address the professional training needs of  
 18 evaluators across the state when we need to do full  
 19 implementation in three years -- two years.

20 **Q. You're a participant in the focus group?**

21 A. Yes, I am.

22 **Q. What's your understanding of the resource**  
 23 **implications of SB 191?**

24 A. Well, there certainly are resource  
 25 implications. The council -- the State Council for

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1 Educator Effectiveness presented a report to the state  
 2 board of education in April with the recommendations  
 3 from the council; and at the conclusion of the report,  
 4 they were asked to give financial implications, and  
 5 they hired a firm, Augenblick, et cetera, to do a cost  
 6 analysis, and one of the final chapters in that report  
 7 summarizes that for start-up there would be -- I  
 8 believe it's \$53 per teacher cost to put the new SB 191  
 9 regulations in place and then ongoing costs of hundreds  
 10 up to thousands of dollars. I don't have that  
 11 memorized, but there is a cost study for ongoing  
 12 implementation of SB 191, so there are cost  
 13 implications.  
 14 **Q. If you can take a look at the screen up**  
 15 **there. Is this the report you're referring to?**  
 16 A. Yes, it is.  
 17 **Q. Okay. It's Exhibit 3008.**  
 18 A. It's a 170-, '80-page report. So, yes,  
 19 that's the cover.  
 20 **Q. This is -- I'll represent to you, this is**  
 21 **page 153 of the report. I'll try to get it in there so**  
 22 **you can see. Can you see it all right?**  
 23 A. I can.  
 24 **Q. Okay. Are these the cost figures you were**  
 25 **referring to?**

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1 A. Yes. "Based on the assessment from the  
 2 professional judgment panel," Augenblick and associates  
 3 "estimated districts would incur one-time start-up  
 4 costs of \$53 per student." That's the number that I  
 5 remembered. "This number has not been adjusted for  
 6 size," it says. "For ongoing annual costs, estimates  
 7 of additional costs per teacher/principal varied  
 8 depending upon the rating category."  
 9 So there's a -- the table, then, shows per  
 10 teacher and per principal with obviously greater costs  
 11 to the identified ineffective teacher, but for novice  
 12 and effective teachers, there are still ongoing  
 13 costs.  
 14 This would be everything from materials  
 15 development to the cost of the more frequent  
 16 observations, and that's one of the concerns even after  
 17 the training has occurred whether the administrator,  
 18 the supervisor, has the -- the time or how to make the  
 19 time to observe every teacher -- observe and evaluate  
 20 every teacher every year. Of course the administrators  
 21 observe teachers hopefully all the time formally and  
 22 informally, but this requires that a formal evaluation  
 23 be written on every educator, every teacher and  
 24 principal every year.  
 25 **Q. As far as you know, has the state provided**

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1 **any additional funding to implement SB 191?**  
 2 A. As far as I am aware, no, not to date.  
 3 MS. YATES: Thank you. I have no further  
 4 questions for the moment.  
 5 THE COURT: Thank you. Cross -- direct  
 6 examination?  
 7 MR. HINOJOSA: No questions, Your Honor.  
 8 THE COURT: Cross-examination?  
 9 MS. WESTON: Yes, Your Honor.  
 10 CROSS-EXAMINATION  
 11 BY MS. WESTON:  
 12 **Q. Good morning, Dr. Hultgren.**  
 13 A. Hi.  
 14 **Q. As a nonlawyer, do you have a definition**  
 15 **of a thorough and uniform education?**  
 16 A. As a --  
 17 **Q. I understand that you're not an attorney.**  
 18 A. I'm not an attorney.  
 19 **Q. As an educator.**  
 20 A. As an educator, would you accept a lay  
 21 definition, an interpretation? Is that what you're  
 22 asking?  
 23 **Q. Yes.**  
 24 A. Well, you kind of got me there on that  
 25 one. Yes. If you were to ask me just casually what I

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1 thought it meant when we talked about a thorough and  
 2 uniform education, I would say that all students  
 3 that -- that that would mean that all students have the  
 4 right to education that is standards based with a solid  
 5 curriculum that would be accessible to all students;  
 6 that that -- that curriculum would be delivered with  
 7 integrity and that students would all have access to  
 8 the curriculum at whatever ability level or level of  
 9 challenge that they needed and that they wouldn't be  
 10 limited based on their language ability, their learning  
 11 ability, their economic background, et cetera; that all  
 12 students would get a high quality education that would  
 13 prepare them to be future citizens.  
 14 **Q. While you were principal of Superior, did**  
 15 **the school offer a thorough and uniform education, as**  
 16 **you've just defined it?**  
 17 A. No. I think there's always more that  
 18 could have been done to support the -- the legislation,  
 19 the mandates, the laws, et cetera. We -- whether it be  
 20 in special education, gifted education, et cetera. We  
 21 worked hard, but I would say there was -- we were never  
 22 finished and never did adequately everything that I  
 23 felt the students in the school deserved.  
 24 **Q. And while you were principal of Lafayette,**  
 25 **did the school offer a thorough and uniform education?**

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1 A. No.  
 2 **Q. For the same reasons you just mentioned or**  
 3 **for --**  
 4 A. For the same reasons, and I say, out of  
 5 due respect to Boulder and the State of Colorado, no.  
 6 I think that there was a lot more that could have been  
 7 done were the resources available.  
 8 MS. WESTON: I have no further questions  
 9 for this witness.  
 10 THE COURT: Thank you. Redirect?  
 11 MS. YATES: None, Your Honor.  
 12 THE COURT: Thank you. Thank you. You  
 13 may step down. Thank you.  
 14 THE WITNESS: Thank you.  
 15 THE COURT: Next witness?  
 16 MS. YATES: Your Honor, plaintiffs call  
 17 Dr. Ellen Miller-Brown.  
 18 \* \* \* \* \*  
 19 ELLEN MILLER-BROWN, Ph.D.,  
 20 having been first duly sworn to state the whole truth,  
 21 testified as follows:  
 22 THE COURT: Please be seated. And once  
 23 you're seated, if you could state your full name and  
 24 spell your last name for the record.  
 25 THE WITNESS: Ellen Miller-Brown,

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1 M-i-l-l-e-r, hyphen, B-r-o-w-n.  
 2 THE COURT: Thank you.  
 3 DIRECT EXAMINATION  
 4 BY MS. YATES:  
 5 **Q. Good morning, Dr. Miller-Brown.**  
 6 A. Good morning.  
 7 **Q. You're the chief academic officer for the**  
 8 **Boulder Valley School District, right?**  
 9 A. Yes, I am.  
 10 **Q. Can you tell me what that job entails.**  
 11 A. It entails the responsibility of the  
 12 teaching and learning of all the students and the staff  
 13 in the Boulder Valley School District.  
 14 **Q. How long have you held that position?**  
 15 A. This is my fourth year, fifth year.  
 16 **Q. Do you have any teaching experience?**  
 17 A. I do. I taught for 15 years.  
 18 **Q. Where did you teach?**  
 19 A. I started in Puerto Rico, and then I  
 20 taught in Tucson, Arizona and went to Albuquerque, New  
 21 Mexico.  
 22 **Q. Do you have any other experience in school**  
 23 **administration?**  
 24 A. I was an assistant principal in  
 25 Albuquerque, New Mexico; a principal in Albuquerque,

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1 New Mexico; and a principal at Casey Middle School in  
 2 the Boulder Valley School District.  
 3 **Q. Do you hold any other central**  
 4 **administrative positions for the district?**  
 5 A. I was the director of middle-level  
 6 education in Boulder Valley School District. Then I  
 7 became the deputy superintendent, which then just  
 8 changed the name and I became the chief academic  
 9 officer.  
 10 **Q. Can you briefly describe your educational**  
 11 **experience.**  
 12 A. I have a bachelor's from Colorado State  
 13 University in English literature and composition and a  
 14 master's degree from the University of Arizona in  
 15 literacy instruction, and a Ph.D. from the University  
 16 of New Mexico in educational change and multicultural  
 17 teacher education.  
 18 **Q. Can you explain what "educational change**  
 19 **and multicultural teacher education" is.**  
 20 A. Well, even back in the day that -- I  
 21 finished my degree, in 1997, and it was obvious that  
 22 the world was changing, the demographics of this  
 23 country were changing and public education needed to  
 24 change to take care of the different children that were  
 25 entering our classrooms, so that degree is about how to

2626

1 help educational institutions and the people in them be  
 2 responsive to the students that are entering their  
 3 doors.  
 4 **Q. Are you familiar with the demographics of**  
 5 **the Boulder Valley School District?**  
 6 A. Yes; and if I don't remember them, they're  
 7 right over there.  
 8 **Q. That's right. So let's just talk about it**  
 9 **briefly for a moment, and you're welcome to -- to look**  
 10 **at that chart just to sort of state for the record**  
 11 **roughly what percentage of the district are English**  
 12 **language learners?**  
 13 A. 8.5 percent.  
 14 **Q. About what percentage have special**  
 15 **education needs?**  
 16 A. 9.3 percent.  
 17 **Q. What percentage are on free or reduced**  
 18 **lunch programs, which up there is captured by the label**  
 19 **"Meal Assistance"?**  
 20 A. 18.4 percent.  
 21 **Q. And has that changed in recent years?**  
 22 A. It actually has. In the last few years,  
 23 it's gone -- well, I'll speak specifically about meal  
 24 assistance. We were at -- about three years ago, we  
 25 were at about 16.7 percent. Now it's up to 18.4, so we

2627

1 are at -- there are 11,000 students that are sort of  
 2 part of our achievement gap that combine a lot of those  
 3 students up there in an -- an unduplicated group.  
 4 **Q. So let's break that down for a moment. So**  
 5 **when you say you have over roughly 11,000 students in**  
 6 **your achievement gap, are you counting certain labels**  
 7 **or demographics up there?**  
 8 A. Right.  
 9 **Q. Which ones are you counting?**  
 10 A. We -- we don't break it out by Hispanic.  
 11 We break out English language learner, meal assistance,  
 12 special education, and then we have another metric that  
 13 we use, not that we don't care about this, but for --  
 14 we're really curious about how Latino students with a  
 15 home language of English fare in our district, so  
 16 that's our fourth area.  
 17 **Q. And you just mentioned that they're your**  
 18 **"achievement gap" students. What do you mean by that?**  
 19 A. Uh-huh. Well, the achievement gap is the  
 20 gap between the group of students who are -- the gap  
 21 between the performance and the opportunities of  
 22 students who are traditionally underserved in our  
 23 public schools and those of their peers who are not  
 24 underserved.  
 25 **Q. What does the term "achievement gap" mean**

2628

1 **to you? What are the indicators in the achievement**  
 2 **gap?**  
 3 A. Well, in Boulder Valley, we look at things  
 4 like graduation rate, ACT scores, CSAP scores,  
 5 attendance, non-CSAP scores, scores that we have on  
 6 areas in our school district that are not determined by  
 7 state tests, like social studies and PE and art and  
 8 that sort of thing.  
 9 **Q. Can you see this all right?**  
 10 A. I can.  
 11 **Q. I apologize. I don't have a marked copy,**  
 12 **but I believe this is Exhibit 3110. And did you -- I'm**  
 13 **sorry. Did you recognize this document?**  
 14 A. I do.  
 15 **Q. What is it?**  
 16 A. That's our annual report on the  
 17 achievement of our board goals. That was last year's  
 18 report.  
 19 **Q. Do you see this all right?**  
 20 A. Yes, I can.  
 21 **Q. Can you tell me about what we're looking**  
 22 **at here.**  
 23 A. You're looking at the -- the all-district  
 24 reading and writing CSAP scores and looking at the  
 25 weighted index scores for -- in terms of our goal and

2629

1 how that has been achieved, whether or not it has been  
 2 achieved either by all districts at the very top or by  
 3 specific students at different schools. For example,  
 4 we have the bilingual elementary schools, students in  
 5 grades 1 through 5, 6 through 8, and 9 through 10 in  
 6 the areas of reading and writing.  
 7 **Q. I'll take you to this page now, and it's**  
 8 **hard to see everything. At the top it says "Equity**  
 9 **Goal," so -- but just to make it a little bit more**  
 10 **readable, I'm going to pull it this way so you can see.**  
 11 **Can you tell us what we're looking at now.**  
 12 A. Well, in reading for CSAP, what you do as  
 13 a -- as a whole district, you get a median growth  
 14 percentile. So you'll see, where it says, "Specified  
 15 Group's Growth," remember the equity goal is for each  
 16 group's gain to exceed the district's average  
 17 performance gain, so you'll have an all-district  
 18 average performance gain, and then we want to know if  
 19 our English home language Latino students, our English  
 20 language learners, our students receiving meal  
 21 assistance, or our students with IEPs -- where they  
 22 stand in relation to that district average performance  
 23 gain, and that's what it shows there.  
 24 **Q. So for this particular chart, the number**  
 25 **50 is the average -- the district-wide average. That**

2630

1 **includes all students, right?**  
 2 A. Right, Uh-huh.  
 3 **Q. And then for each of those, it's broken**  
 4 **out by subgroups, so with respect to, say, students**  
 5 **receiving meal assistance, they are below that,**  
 6 **somewhere around 46 or so; is that what I'm seeing?**  
 7 A. That's correct.  
 8 **Q. And the point between what they are**  
 9 **getting and that 50, is that what you would say is an**  
 10 **indicator of the achievement gap?**  
 11 A. It's one of the indicators, yes.  
 12 **Q. So I'll represent to you -- this is the**  
 13 **next page in the report. Can you describe what we're**  
 14 **looking at here.**  
 15 A. We're looking at the same thing, the  
 16 difference between these identified groups of students  
 17 that we've broken out to -- to care about, to sort of  
 18 be canaries in the coal mine for us, and they are --  
 19 their growth scores, their median growth percentile  
 20 scores in relation to the district performance gain,  
 21 so -- in writing and in mathematics.  
 22 **Q. Okay. I'm sorry. Before I take that**  
 23 **away, is it -- does it show, again, a -- a gap between**  
 24 **the performance of those selected subgroups and the**  
 25 **district average?**

2631

1 A. Yes. What we wanted to see is --  
 2 that little icon of the person reading a book? We want  
 3 that to be on those stars. You can't really see, but  
 4 those are yellow stars. We want them to be on or to  
 5 the right of those stars. So there is a gap.  
 6 **Q. Okay. Can you give me any other examples**  
 7 **of achievement gaps?**  
 8 A. Well, I mentioned before about graduation  
 9 rate. The average graduation rate for Boulder Valley  
 10 School District students is about 85 percent, and these  
 11 identified groups are somewhere about 15 percent lower  
 12 than that. The ACT, we're at about 23 percent in terms  
 13 of our average -- oh, does it say that up there or --  
 14 where are we?  
 15 **Q. This is the --**  
 16 A. Okay. This one, all district, it says  
 17 89.2, yeah. Last year -- that was '09 data. Our last  
 18 one -- the last one was about 85 percent. So, yeah,  
 19 there's a gap there; and then the ACTs, we're at --  
 20 about 23 is the average score on the ACT for Boulder  
 21 Valley School District students; but for these  
 22 identified groups, they're somewhere around eight  
 23 points less on the average for ACTs in 2010.  
 24 **Q. In this -- it's hard to see everything on**  
 25 **the same page, but here on this particular page, the**

2632

1 **stars don't actually represent the district average,**  
 2 **right?**  
 3 A. That is correct. Those represent the  
 4 district -- well, five years ago, four years ago, we  
 5 established goals for each of these groups of students,  
 6 and on this particular page, the star means a goal that  
 7 we set, so we really wanted English home language  
 8 Latino students to achieve 22.4, have that be their  
 9 average score on the ACT, but they're not quite there  
 10 yet.  
 11 **Q. Okay. And the same with the graduation**  
 12 **rate?**  
 13 A. That's true.  
 14 **Q. That those are goals, not the district**  
 15 **average?**  
 16 A. That is true in this, yes. That is true.  
 17 **Q. Okay. Are you familiar with the term**  
 18 **"root causes"?**  
 19 A. Yes.  
 20 **Q. In relation to the achievement gap?**  
 21 A. Yes.  
 22 **Q. Can you tell me what that means.**  
 23 A. So a root cause, you -- what we want to do  
 24 is find out -- we have this situation called an  
 25 achievement gap. What are those things that are

2633

1 underlying that that if we do something about them, if  
 2 we can figure out what those are and do the right  
 3 thing, then we can ameliorate the achievement gap.  
 4 **Q. Are you familiar with this report?**  
 5 A. Yes. I cowrote it.  
 6 **Q. And what is it?**  
 7 A. It -- oh, it's our Unified Improvement  
 8 Plan. It's the plan that we give the state that  
 9 acknowledges we know that these are our data that we're  
 10 dealing with, and we have to analyze what are the root  
 11 causes of these data and what are the action strategies  
 12 that we're going to use in order to change our data and  
 13 improve it.  
 14 MS. YATES: I'll just state for the record  
 15 that this is Exhibit 10356.  
 16 THE COURT: Thank you.  
 17 **Q. (BY MS. YATES) I'm going to take you to**  
 18 **page 6 of that report. Let's see if I can get it to**  
 19 **where you can actually read it. Can you see that all**  
 20 **right?**  
 21 A. Yes.  
 22 **Q. Can you tell me what we're looking at**  
 23 **here.**  
 24 A. Well, on the left, there are significant  
 25 trends in terms of -- well --

2634

1 **Q. I just didn't know. Do you need to see**  
 2 **this side, the left side? Are you all right?**  
 3 A. Yeah.  
 4 **Q. Okay.**  
 5 A. So these are the significant trends about  
 6 our academic achievement and then the priority needs,  
 7 what are our concerns, and then what are those root  
 8 causes that we think are underlying those significant  
 9 trends.  
 10 **Q. Can you describe what some of these root**  
 11 **causes are.**  
 12 A. Oh, all of them or just in --  
 13 **Q. You don't have to go through all of them,**  
 14 **but just -- you can make some general statements or**  
 15 **pull out some examples that describe the concept that**  
 16 **you were just talking about.**  
 17 A. Well, so lack of preschool opportunities,  
 18 support for home literacy. You'll see there the word  
 19 "interventions" a lot, so interventions at all  
 20 different levels to support students to access the  
 21 curriculum and help -- and then the professional  
 22 development to help teachers know what -- how to  
 23 provide those interventions.  
 24 Then we have the inadequate numbers of  
 25 students in advanced course work, then teacher skills.

2635

1 lack of assessments and -- and the ability to use those  
 2 assessment results to improve instruction and then lack  
 3 of systemic inclusive practices, so -- yeah. It's a  
 4 lot.  
 5 **Q. It is a lot. Are these root causes**  
 6 **something that could be addressed by a school district?**  
 7 A. Yes. You know, you could put in your root  
 8 cause section all those things that reside in the  
 9 child, you know, but these are all the root causes that  
 10 are under a school district's control.  
 11 **Q. Is the district doing anything to address**  
 12 **these root causes?**  
 13 A. We try every day.  
 14 **Q. Does it have the resources to implement**  
 15 **the interventions that you've mentioned that are needed**  
 16 **to address the root causes?**  
 17 A. No, we do not.  
 18 MS. YATES: Your Honor, if now is a good  
 19 time, I'd like to offer the court a midmorning break.  
 20 THE COURT: Okay. That -- that's fine.  
 21 It's right about 10 o'clock. Okay. Let's say 10:20.  
 22 Does that work?  
 23 MS. YATES: Sure.  
 24 THE COURT: Okay. Thank you.  
 25 (Recess taken, 9:56 a.m. to 10:22 a.m.)

2636

1 THE COURT: Do you want to retake the  
 2 witness stand. Thank you.  
 3 MS. YATES: Are we ready?  
 4 **Q. (BY MS. YATES) Dr. Miller-Brown, you**  
 5 **mentioned on this chart that we're looking at here that**  
 6 **the word "interventions" comes up quite a bit. Can you**  
 7 **tell me about what some of the types of interventions**  
 8 **you have in mind are.**  
 9 A. We have a variety of interventions. It  
 10 depends on the kind of student, but what we've been  
 11 working on lately a lot with is co-teaching, where you  
 12 take what we call a teacher who is like a teacher for  
 13 students who are on IEPs and that teacher helps the  
 14 student stay in a general education classroom, so you  
 15 have a general educator who is the teacher of content  
 16 and the co-teacher who is the teacher of access, and so  
 17 they're co-teaching, so that's one of our  
 18 interventions.  
 19 We have summer school programs for  
 20 students who really just cannot withstand the summer  
 21 learning loss. We have something called Take My  
 22 Teacher Home, which is little iPods that teachers --  
 23 they tape lessons on them, give them to students who  
 24 are really struggling even as kindergartners, and they  
 25 take the little lessons home, listen to them, listen to

2637

1 them with their families and bring them back and get a  
 2 new lesson the next day. There's so many.  
 3 **Q. Let's break it down a little bit.**  
 4 A. Okay.  
 5 **Q. You started with co-teaching.**  
 6 A. Right.  
 7 **Q. You -- you defined it a little bit for us**  
 8 **in terms of having an access teacher and a support**  
 9 **teacher.**  
 10 A. Uh-huh.  
 11 **Q. What kinds of aspects of educational**  
 12 **instruction is co-teaching designed to assist?**  
 13 A. Well, let me give you a little context.  
 14 It used to be that students who had special needs or  
 15 students who were English language learners, they were  
 16 taken out of a class and they were taught outside of  
 17 the class and then brought back in. That's what people  
 18 used to think was -- would be beneficial. It's called  
 19 a pull-out philosophy, and now we've read a lot of  
 20 research that that is not a good thing to do with kids,  
 21 that kids really need to have access to the general  
 22 education curriculum.  
 23 So what aspect of instruction that helps  
 24 with is it helps take whatever it is the students are  
 25 learning, that other students are learning in the class

2638

1 and make it so that it's understandable and  
 2 comprehensible to the students that the access teacher  
 3 is supporting. So if a student has a learning  
 4 disability, the teacher -- the access teacher tries to  
 5 help them access the -- the curriculum based on their  
 6 modalities, or if it's a student who is an English  
 7 language learner, it helps them learn the vocabulary  
 8 ahead of time and some of the concepts so that when  
 9 they get to it in the classroom, it's more  
 10 comprehensible to them.  
 11 **Q. And so what does that look like? Is it**  
 12 **two teachers in a classroom or two different classes?**  
 13 **What does that --**  
 14 A. Good question. The majority of the time,  
 15 by far the majority of the time, it is now pushed in.  
 16 So it's two teachers in the classroom who then need  
 17 time to plan together. So every once in a while, the  
 18 teacher -- the access teacher or the content teacher  
 19 will take small groups of students aside and support  
 20 them, but for the most part, the point is that two  
 21 teachers are in that classroom.  
 22 **Q. So what schools in Boulder are doing**  
 23 **co-teaching?**  
 24 A. Well, the most recent -- I don't know how  
 25 it's going to be this year, but I think as of last

2639

1 year, about -- about a third of our teachers are  
 2 teaching in a co-teaching manner, and I don't -- I  
 3 can't maybe say exactly which schools are and are not.  
 4 I know which ones -- I know which ones are specifically  
 5 that I'm working with, but there are probably more  
 6 because teachers from every school and every principal,  
 7 they were all trained in co-teaching, so . . .

8 **Q. Let's talk a little bit about the**  
 9 **training. When did that happen?**

10 A. Not this past summer but the summer before  
 11 that, we received ARRA funds, and we decided the best  
 12 use of those ARRA funds would be to train every  
 13 teacher, every -- every staff, every teacher and every  
 14 service provider and every principal and assistant  
 15 principal on inclusionary practices, differentiated  
 16 instruction and co-teaching. So we paid, for anybody  
 17 who wanted to, two full days after school was out.

18 **Q. When you said "ARRA funds," are you**  
 19 **referring to the American -- I think it's Reinvestment**  
 20 **and -- something act?**

21 A. Recovery.  
 22 **Q. And Recovery Act?**  
 23 A. Uh-huh.  
 24 **Q. So that's the federal funding?**  
 25 A. The federal infusion of funds that saved

2640

1 us, yeah.

2 **Q. And will you be getting any additional**  
 3 **ARRA funds?**

4 A. No.  
 5 **Q. Are those gone?**  
 6 A. They're gone.  
 7 **Q. Okay.**  
 8 A. September -- well, next month. We have to  
 9 spend them by next month.

10 **Q. So let's back up. You mentioned about a**  
 11 **third of your teachers are co-teaching. Are you just**  
 12 **referring generally to the -- they're co-co-teaching at**  
 13 **some point in the school year or for at least some**  
 14 **period of time or are they co-teaching all the time?**

15 A. Some of those teachers are teaching all  
 16 the time, every day. Like at Creekside Elementary  
 17 School, they had eight co-teachers last year. It was  
 18 so successful, they're doing 22 out of the 26 this  
 19 year. So some are doing it all the time and some are  
 20 doing it just certain periods. In high schools, they  
 21 do it just certain periods.

22 **Q. So let's talk a moment about Creekside.**  
 23 **Can you tell me a little bit about that school, and**  
 24 **feel free to refer to the chart behind you, if that**  
 25 **helps.**

2641

1 A. I was just going to say 350 students,  
 2 yeah, 348, so they have about a quarter of their  
 3 population are students who are learning English as  
 4 their second language. About a third of their students  
 5 are Hispanic, 38 percent are receiving free and  
 6 reduced -- free or reduced lunch, about 16 percent are  
 7 special education or are on an IEP, and about 4 percent  
 8 are identified as TAG.

9 **Q. Has Creekside observed any impact from**  
 10 **having a co-teaching model?**

11 A. They think so. They -- they just got  
 12 their scores back, their growth scores and they went up  
 13 in reading, they went up in mathematics. They went  
 14 down slightly in writing, but their students with IEPs  
 15 went up 11 percent, so that's a huge gain for a student  
 16 on an IEP.

17 **Q. How did Creekside obtain the resources to**  
 18 **do this level of co-teaching?**

19 A. Well, I'm sure they gave up other things,  
 20 but for this coming year, to do the 22 teachers,  
 21 they -- the principal went to her supervisor and said,  
 22 I need more money to do this co-co-teaching, it's  
 23 making a difference for my kids, and she said the only  
 24 money we have left -- there are two FTE -- two  
 25 full-time equivalency, which are two teacher bodies,

2642

1 essentially. We have two of those left, but they're  
 2 for all of the elementary schools to divide up.

3 So the -- the principal of Creekside went  
 4 to the elementary principals and said, I beg you,  
 5 please let me have some of this money. Instead of  
 6 having it go a little bit to all the schools, please  
 7 give me a substantial portion so I can pay for another  
 8 co-teacher, and they did. So they -- that's what we do  
 9 in Boulder.

10 **Q. Is -- is that something that could be**  
 11 **replicated in every school that needs co-teachers?**

12 A. The money, no.  
 13 **Q. The way she went to get the money?**  
 14 A. No. We didn't have the money. That's why  
 15 she had to go beg her colleagues.

16 **Q. What are the resource implications of**  
 17 **co-teaching?**

18 A. Well, typically what you do is you  
 19 determine -- you give your allocation of teachers to a  
 20 school based on the number of students per teacher.  
 21 So, for example, at a high school level, you  
 22 probably -- they're probably allocating about 20 -- one  
 23 teacher for every 26 kids, so you take the total number  
 24 of students, divide it by 26, and give an allocation.  
 25 When you have students with special needs,

2643

1 the class -- or special needs as in an IEP or they're  
 2 second language learners, the classes have to be  
 3 smaller and then you have two people in them, so -- and  
 4 then you have to make sure that their planning time is  
 5 at the same time. So it -- it's a lot of extra FTE and  
 6 we don't have that -- we don't have enough money to do  
 7 that across the district.  
 8 **Q. You mentioned that there are other schools**  
 9 **that are doing some co-teaching. Is one of those**  
 10 **schools Centaurus High School?**  
 11 A. Centaurus. They have been working with  
 12 Richard Villa, who is paid for out of ARRA funds; and  
 13 so last year, there were 178 students who took  
 14 advantage of co-taught classes.  
 15 **Q. Did Centaurus see any results from**  
 16 **co-teaching?**  
 17 A. You know, at a high school, they only have  
 18 CSAP in two areas, and that's only in 9th and 10th  
 19 grade. So what they're looking at is grades and  
 20 attendance, and so they said it was phenomenal, and  
 21 I -- I did look at some of the -- the growth scores for  
 22 some of the kids, and some of them had a growth  
 23 percentile median score gain of 90. 90. I mean,  
 24 that -- that's shocking.  
 25 So they are -- I asked the principal if --

2644

1 if we could give you more funds, what -- how would that  
 2 benefit you, and she said, I would have more classes to  
 3 support students who are in these more advanced courses  
 4 because what we've done at our high school is we no  
 5 longer have basic courses. Basic courses is where you  
 6 used to put students who struggled with a regular  
 7 course, the regular curriculum, so it's kind of a  
 8 pull-out idea. So we've changed that philosophy, and  
 9 so now we're putting those kids who used to be in basic  
 10 courses into general ed courses and into more advanced  
 11 courses, as we said with, up there, one of our  
 12 interventions.  
 13 So what she said is if I could have more  
 14 content area teachers who, if those students had a  
 15 support class to help them in their general education  
 16 or in their advanced course work, I would just feel  
 17 great. Then they would be much more likely to be  
 18 successful in that class.  
 19 **Q. Why do advanced courses matter, you know,**  
 20 **in terms of closing the achievement gap?**  
 21 A. If a student has access to the richest  
 22 curriculum -- well, you want everyone in your district  
 23 to have access to the same level of curriculum, and if  
 24 there -- I was listening to Holly's testimony, and she  
 25 talked about what are the advantages for the students

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1 who are not TAG being with students who are TAG.  
 2 So I'll -- a quick anecdote. When I was a  
 3 principal at Casey Middle school, a student came to me  
 4 one day and said, You made a mistake, Dr. Miller-Brown,  
 5 you put me into honors mathematics in eighth grade, and  
 6 you may have forgotten, but I have an IEP.  
 7 I said, I didn't forget. You have an IEP.  
 8 I know you are in special education. I also know you  
 9 can be in an honors class.  
 10 He said, I can't. I have -- I'm a special  
 11 ed kid.  
 12 I said, You know what? I tell you what.  
 13 If you get a D or an F at semester, I will move you;  
 14 but if you can stay above a D or an F in that class,  
 15 I'm going to keep you there.  
 16 Now, if you don't know eighth-graders,  
 17 you'd think, Well, then of course what he's going to do  
 18 is fail so he can get out of the class; but  
 19 eighth-graders, they don't realize that they can do  
 20 that, so what he did is he tried, and so he ended up  
 21 with a B in an honors eighth grade math class. So he  
 22 was strutting around, he was so proud of himself; and  
 23 that's what happens when you put kids in advanced  
 24 course work and they just need support to be there.  
 25 They don't think they can be there, but if you give

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1 them support, they can.  
 2 And then what happens after that? So then  
 3 he has the concept, Oh, I could be college ready. I  
 4 could be college bound. So we're less likely to have  
 5 that student drop out, which so many special education  
 6 students do. We're less likely to have him drop out.  
 7 We're more likely to have him attend school, we're more  
 8 likely to have him be college ready or career ready at  
 9 the end of the day, and that's what we care about.  
 10 **Q. Can you provide an example of the kinds of**  
 11 **support that can help a student like that access an**  
 12 **advanced class?**  
 13 A. Uh-huh. Well, what we did with him at  
 14 Casey Middle school and what they're doing at the high  
 15 schools is -- we call it double dosing. So before he  
 16 goes into his advanced course, that boy did, or other  
 17 students, before they go into their advanced course  
 18 that day, they have another class that double doses  
 19 them, so they get -- a lot of the work that they're  
 20 about to get in that class, they get it ahead of time  
 21 so that they can learn the vocabulary, they can learn  
 22 the concepts a little bit.  
 23 Then they go in and learn it a second time  
 24 so then they're better prepared, and they -- they're  
 25 not just learning it for the first time. If you're a

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1 second language learner, then you get double the  
 2 vocabulary experience, double the background, and the  
 3 same is true for a student with special needs.  
 4 **Q. What are the resource implications of, as**  
 5 **you call it, double dosing?**  
 6 A. Well, I've got double the teachers, then,  
 7 that I need, and I -- you might say, Well, just put in  
 8 a paraprofessional. I can't put in someone who isn't a  
 9 licensed teacher to teach the content of an advanced  
 10 course work. I -- I'm not remediating this young man  
 11 or young woman, I'm propelling them, I'm accelerating  
 12 them so they can be with their like peers.  
 13 **Q. Now, we started off this conversation**  
 14 **talking about Centaurus, and I didn't get a chance to**  
 15 **reflect on the demographics. Can you comment a little**  
 16 **bit about Centaurus' demographics and how that fits**  
 17 **into the attempt at closing the achievement gap there?**  
 18 A. So they have about a thousand students.  
 19 7.6 percent are English language learners; 31 percent  
 20 are Hispanic; 31 percent free and reduced lunch;  
 21 12 percent, approximately, are students on IEPs; and  
 22 11 percent are TAG. The students that come from Holly  
 23 Hultgren's Lafayette Elementary eventually go to  
 24 Centaurus.  
 25 **Q. Okay. What about Boulder High? Has**

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1 **Boulder High done some co-teaching?**  
 2 A. Yeah. That's another one of our  
 3 co-teaching schools that works with Rich Villa, and  
 4 they have 1700 students: 6.1 percent English language  
 5 learners, 16 percent Hispanic students, 16 percent  
 6 students on -- receiving free or reduced lunch;  
 7 7.8 percent special education, and 18.7 percent TAG,  
 8 and they haven't seen anything yet in terms of their  
 9 CSAP scores.  
 10 They see -- what they're seeing is in  
 11 terms of grades. So, for example, they're -- the  
 12 students with special needs have -- they really  
 13 struggle in mathematics and science. It's -- Boulder  
 14 High is -- you know, it's -- it uses our same  
 15 curriculum. It's got a lot of scientists' kids there,  
 16 and so it's -- you stay right with the curriculum and  
 17 move it right along, and so there's some students who  
 18 typically fall out.  
 19 So about five years ago, they looked at  
 20 their Algebra 1 rates, and they found that about 60  
 21 students with special needs failed the first semester  
 22 of Algebra 1 and then just dropped the second semester.  
 23 So what typically happens, what research shows is if  
 24 you fail a course -- first of all, if you fail a course  
 25 in ninth grade, you're 50 percent more likely to drop

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1 out; but if you fail Algebra 1, you're automatically  
 2 not bound for graduation at the regular time.  
 3 So they struggled, What do we do, what do  
 4 we do? And so they had these basic courses and they  
 5 beefed up their basic courses. Then finally we said,  
 6 That's it with the basic courses, you're done with the  
 7 basic courses. We're going to move all these kids into  
 8 regular Algebra 1, and we're going to move their --  
 9 their teacher of access in with them.  
 10 So they found that in lieu of the 60  
 11 students who used to drop out of Algebra 1, and who  
 12 knows what happened to them, never go on, last semester  
 13 or last year, there were only two students who did  
 14 that. So it's phenomenal the difference that support  
 15 can make.  
 16 **Q. You were referring momentarily to special**  
 17 **ed.**  
 18 A. Uh-huh.  
 19 **Q. Did they also target English language**  
 20 **learners?**  
 21 A. They do. English language learners, and  
 22 then there's a lot of duplication there with the  
 23 English language learners and the students on meal  
 24 assistance. So they've had a lot of success with those  
 25 students, too, a lot of drop in failure rates; and so

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1 the students keep their credits, move on to the next  
 2 grade just like everyone else, and end up graduating  
 3 just like everyone else, but they just started  
 4 co-teaching last year.  
 5 I was in a class one day, and it was a  
 6 World Languages class, and people couldn't believe --  
 7 we had a teacher who didn't speak Spanish who was a  
 8 teacher of access. She was a teacher of -- for special  
 9 needs students. She was up in front of the class  
 10 practicing her Spanish and helping kids see that  
 11 everybody could take a risk and teach a world language,  
 12 and there were no failures out of that class; and that  
 13 teacher told me later, she said, If I had known back in  
 14 the day -- she said, I am now in my 30th year of  
 15 teaching. If I had known when I started the power of  
 16 co-teaching, I would never have taught any -- any  
 17 differently, and all of these years I've been pulling  
 18 my special ed students out, and now when I see what  
 19 it's like to ensure that they are in general education  
 20 classrooms, it's made all the difference for them.  
 21 **Q. You mentioned that ARRA monies went to**  
 22 **help train everybody in co-teaching.**  
 23 A. Uh-huh.  
 24 **Q. Do you recall how much that was?**  
 25 A. Well, we received 5.1 million, and out of

2651

1 the 5.1 million for students with special needs, we  
 2 used 1.2 million for this training. The rest of it  
 3 went for staff and materials because we -- we were in  
 4 need of some materials for these students, too.  
 5 **Q. Does Boulder Valley School District have**  
 6 **any intensive learning centers?**  
 7 A. Uh-huh.  
 8 **Q. Can you tell me about those.**  
 9 A. We have 44 teachers who teach in an  
 10 intensive learning center in a variety of places  
 11 throughout Boulder Valley School District.  
 12 **Q. What's the purpose of intensive learning**  
 13 **centers?**  
 14 A. It's -- an intensive learning center is a  
 15 place where a student can go to get his or her needs  
 16 met with highly trained people that are trained to deal  
 17 with their particular special need.  
 18 **Q. Does it have a focus on, say, autistic**  
 19 **kids or anything like that?**  
 20 A. It's usually autism or multi-intensive or  
 21 behavioral, yeah. Those are our three main areas.  
 22 **Q. What's the typical teacher-student ratio**  
 23 **for children who are participating in that group?**  
 24 A. Typically about 1 to 10, 1 to 12.  
 25 **Q. So are these -- what are the resource**

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1 **implications of intensive learning centers and having**  
 2 **that low teacher-student ratio?**  
 3 A. Well, it costs more to educate a student  
 4 with -- it costs more to educate a student with intense  
 5 special needs.  
 6 **Q. Is it more inclusionary than, for example,**  
 7 **sending the kids out of district?**  
 8 A. Absolutely. It's not as inclusionary as  
 9 we want. If -- if we really did it right, we would  
 10 have -- we wouldn't have these intense -- intensive  
 11 learning centers at different pockets of our community.  
 12 Every school would have a teacher that had those  
 13 qualifications at their school, but we don't have the  
 14 money to do that, so we have these little centers. So  
 15 students have to -- have to be bussed so not every  
 16 student gets to be in their neighborhood school, but  
 17 it's still better than bussing them out, which we have  
 18 to do with some of our kids because we don't have the  
 19 money to train teachers for some of our really  
 20 intensive students with the diagnosis of autism or some  
 21 of our students with severe behavioral needs or we  
 22 don't have space. Some of our programs are full.  
 23 **Q. Actually, I'll just switch for a moment,**  
 24 **switch gears to the high cost needs pool. Are you**  
 25 **familiar with that?**

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1 A. Yeah.  
 2 **Q. Do you know what that is?**  
 3 A. Yeah. It's -- well, I think this is what  
 4 I know of it. There are -- the state sets aside \$2  
 5 million a year for students who cost a lot of money to  
 6 educate, and then the districts tell them how many  
 7 students they have that meet their criteria and then  
 8 they ask for a certain amount of money, and then  
 9 depending on how many districts ask for the money, it's  
 10 divided up into those -- that many kids and we get a  
 11 certain amount of money in return. That's kind of a  
 12 long-winded answer.  
 13 **Q. That's all right. I'll represent this is**  
 14 **Exhibit 92. Have you seen this document before?**  
 15 A. Uh-huh, I have.  
 16 **Q. Can you tell me what it is.**  
 17 A. This is the Special Education Fiscal  
 18 Advisory Committee report. It shows, I think -- is it  
 19 up to 2009? I'm trying to remember the date. I don't  
 20 think we have -- or maybe that's up to 2010. I think  
 21 that one is up to 2010 and we don't have it for this  
 22 year. I can't remember.  
 23 But anyway, it's a report based on how  
 24 much money the state has for the high cost needs  
 25 students, how much money each district has requested,

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1 and -- and there's two different kinds of monies,  
 2 there's in-district and out-of-district monies, and  
 3 then how much we get.  
 4 **Q. So I'm going to help you out here.**  
 5 A. Good. That'd be great. Oh, it's '9-'10,  
 6 yeah.  
 7 **Q. Right. So this is page 11 of that report.**  
 8 A. Okay.  
 9 **Q. Can you see the Boulder line?**  
 10 A. Uh-huh.  
 11 **Q. You identified -- I know there were two**  
 12 **Boulder lines. Which one is the one that we're looking**  
 13 **at for your school district?**  
 14 A. We're not St. Vrain.  
 15 **Q. Okay.**  
 16 A. Or I'm not. Boulder RE-2 is my district,  
 17 and so how you do -- the out-of-district students are  
 18 any student that costs more than \$40,000 a year to  
 19 educate. So we had a certain amount of students, we  
 20 applied for that. I think we had 400 -- we had a  
 21 certain amount of students that cost over \$40,000, so  
 22 we asked for that funding, which was about \$450,000,  
 23 and we got 166,000 to educate those children.  
 24 **Q. And that's -- that's only, again, of the**  
 25 **students that cost more than \$40,000?**

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1 A. Right.

2 **Q. So students that --**

3 A. Right.

4 **Q. -- cost less than that aren't even**

5 **included there?**

6 A. We have 33 students that we send out of

7 district for their education, that we pay for, to the

8 cost of about a thousand dollars -- or, excuse me, a

9 million dollars a year. So that's a fraction of that,

10 yeah.

11 **Q. And the million dollars a year, does that**

12 **include transportation?**

13 A. No, it does not, no. That's just the

14 contract services for their education.

15 **Q. So this is page 12 of the same report,**

16 **except it's labeled for in-district placements or**

17 **programs. Can you tell me what we're looking at here**

18 **with respect to the Boulder Valley School District.**

19 A. Well, for students in district that cost

20 more than \$25,000, we -- we ask for money, and

21 apparently we asked for money, but we didn't get it.

22 So we were not funded at all for our in-district

23 placements or programs.

24 **Q. And the amount not funded there is listed**

25 **at basically 1.5 million. Does that look right to you?**

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1 A. That's correct, uh-huh. It tends to be

2 going up because our population in Boulder Valley

3 School District for our special -- or students with

4 special needs is changing, so . . .

5 **Q. How has it changed?**

6 A. It's changed in the amount and the

7 severity. So about five years ago, 10.8 percent of our

8 students were students with special needs, and now it's

9 down to about 9.3 percent, but we have much less

10 students who have specific learning disabilities, which

11 is much more minor to deal with, and many more students

12 with a diagnosis -- diagnosis of autism. We're up

13 50 percent in our numbers of students with the

14 diagnosis of autism over five years ago.

15 **Q. Does Boulder use consulting experts in**

16 **helping close the achievement gap?**

17 A. We -- when we got the ARRA money, we did.

18 **Q. And that was training by Rich Villa?**

19 A. Uh-huh, uh-huh.

20 **Q. Does he still do some work with Boulder?**

21 A. He did. He has. He's doing a little bit

22 this year as we finish up the funds. He's -- he's

23 working on those three things that he taught two

24 summers ago; and last summer, we -- we spent ARRA money

25 on that, too, for him, in inclusionary practices.

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1 differentiation and co-teaching, and he's working with

2 five schools and really helping them drill down into

3 best practices so we can create five lab schools so

4 that when he leaves we can have teachers come in from

5 the other schools and learn from those teachers.

6 **Q. Does Boulder Valley School District have a**

7 **plan for trying to replace those ARRA funds when they**

8 **go away?**

9 A. A plan?

10 **Q. Yes.**

11 A. We don't have access to -- to that kind of

12 money, an infusion of money like that.

13 **Q. Has Boulder had consulting experts**

14 **in-house that have been available?**

15 A. We have had, in the past -- up until three

16 years ago, when we had to make cuts, we had

17 coordinators that supported -- we had eight

18 coordinators who were supporting teachers and students

19 with special needs, and we had three coordinators who

20 were supporting students who were English language

21 learners, and they helped with state compliance issues

22 or federal compliance issues and also went out and

23 modeled instruction for teachers and supported

24 individual family needs, that sort of thing, but those

25 people -- that expertise has gone away.

2658

1 **Q. So what happened?**

2 A. Well, we moved that money into schools

3 and -- so that people could at least take care of

4 compliance, and now we've lost the expertise, but we

5 don't have any money to replace those people.

6 During -- with the ARRA funds, we've been able to hire

7 three people in our special education department, but

8 they'll be finished at the end of this year. They'll

9 finish up with the ARRA funds.

10 **Q. How have your in-house consulting experts**

11 **in the past helped the district close the achievement**

12 **gap?**

13 A. Well, as I think we talked about earlier,

14 if you think about what is it that's going to close the

15 achievement gap, it's about students having access to

16 opportunities and opportunities in general and

17 opportunities specifically in their -- in general ed

18 classrooms. So I would say what they've done is

19 they've helped teachers really know how to help a

20 student who's a different kind of learner excel in

21 their classroom.

22 **Q. Does the Boulder Valley School District**

23 **have any after-school or summer extended-learning kinds**

24 **of programs?**

25 A. We have some where we have the funds to do

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1 it. We have a school named Sanchez Elementary School  
 2 that the principal is kind of a go-getter, and in the  
 3 last four years, she's raised a million dollars.  
 4 Sanchez has -- 70 percent of their students are --  
 5 receive meal assistance. They're either free or  
 6 reduced lunch. They have 3 -- about 300 students, and  
 7 they're right in the heart of -- of Lafayette, and so  
 8 they struggle. They have a lot of family resource  
 9 needs. There's a lot of hunger, there's a lot of  
 10 violence, there's a variety of things you wouldn't  
 11 think in Boulder County, but we have it in our own  
 12 backyard.  
 13 So the principal goes in, she finds all  
 14 this money. She has a 21st Century grant and they do  
 15 after-school programming, they do Saturday school  
 16 programming, they do before-school programming, they  
 17 pay for any kid -- we have something called the Thorne  
 18 Institute in Boulder, which does really nice, deep  
 19 science work with kids. So it's not remedial, it's  
 20 like accelerated and enrichment, and any kid who wants  
 21 to go to this Thorne science camp at Sanchez gets to do  
 22 it, and they play with bugs and seeds and do all this  
 23 cool stuff, but it's \$400 a week for this science camp.  
 24 Well, a lot of people in Boulder -- so what, you know?  
 25 But the kids at Doris's school don't have that

2660

1 opportunity unless she has the money. So, yeah,  
 2 there's a lot going on at schools like Sanchez that can  
 3 raise the money.  
 4 **Q. You mentioned she has a 21st Century**  
 5 **grant. Is -- does that grant provide money every year**  
 6 **or is it a time-limited grant?**  
 7 A. Well, every year for -- this is our third  
 8 of the five-year grant, so it'll be done in two more  
 9 years.  
 10 **Q. Does she have a plan for replacing that**  
 11 **money when the 21st Century grant goes away?**  
 12 A. Knowing Doris, she will figure out  
 13 something. She'll find another funding source  
 14 somewhere. She'll do the best -- she won't come to me,  
 15 but she -- she will find somebody in the community or  
 16 find a federal or state grant to -- to take -- she --  
 17 this is what she believes: You have to extend the time  
 18 that a student learns, that the real equalizer is some  
 19 of these students need more time, they need more time  
 20 for enrichment, they need more time for access, and so  
 21 she wants to buy them that.  
 22 **Q. You said she won't come to you. Why won't**  
 23 **she come to you?**  
 24 A. She knows what my budget looks like.  
 25 She's listened to the principal of Creekside go beg for

2661

1 a .3 for co-teaching, so . . .  
 2 **Q. Has Sanchez seen any results from it's**  
 3 **efforts to have extended learning?**  
 4 A. Yeah, she really has. They've increased  
 5 not as much in reading but in -- or, excuse me, not as  
 6 much in writing but in reading and mathematics, and --  
 7 and the students with special needs have increased  
 8 quite a bit in writing.  
 9 **Q. When you say "increased," are you**  
 10 **referring to CSAP?**  
 11 A. CSAP. I'm sorry. Their median growth  
 12 percentile data in reading and mathematics has  
 13 increased pretty substantially; and, in fact, I think  
 14 in both of those, they're above the state median  
 15 percentile gain.  
 16 **Q. And this is something that she has**  
 17 **observed since being able to implement these programs?**  
 18 A. In the last four years, she's watched this  
 19 trend.  
 20 **Q. Does Boulder have other examples of any**  
 21 **kind of extended learning program or after-school**  
 22 **summer-type program?**  
 23 A. We have pockets, and different schools  
 24 find money. The -- the one program we -- that we paid  
 25 for with ARRA money that -- we wanted to try something

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1 to infuse literacy with science, to capture both the  
 2 imagination of the kids and the information that they  
 3 needed to access science course work eventually, as  
 4 well as literacy. So we put students who are the most  
 5 likely to have -- to struggle in school into a summer  
 6 program. We call it the science summer camp so they  
 7 thought it was not summer school.  
 8 But they were students kindergarten  
 9 through fifth grade, and we had 1200 kids this year for  
 10 five weeks. The previous year we had a thousand kids  
 11 for six weeks, so we kind of moved the money around;  
 12 and they had -- from 8:00 till 11:30 every day, they  
 13 went to school. They had a little breakfast, they had  
 14 a little snack. These are kids who typically don't eat  
 15 much in the summer because they rely on the schools for  
 16 their food, so we gave them food, and then we had this  
 17 really deep enrichment of science, and so we've been  
 18 watching them, and people are really excited.  
 19 We don't have -- we don't have  
 20 quantitative data yet. We need to watch them. It's  
 21 only happened two years, so we're going to be watching  
 22 them and seeing how their CSAP scores change, but what  
 23 we're finding is, just anecdotally, that 95 percent of  
 24 these students like or love science now. So -- and  
 25 they did this science notebooking to bring the literacy

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1 part in, and so they became little scientists.  
 2 And last year, I went to some of teachers  
 3 in the program and said, Do you have any students who  
 4 were in the summer program and are with you in your  
 5 regular school year, and they said yes, and I said, How  
 6 did they change? And she said, Whenever we start a  
 7 science lesson, those children often stand up and  
 8 co-teach with me. Now, these are kids who are -- they  
 9 had to be a student with special needs or they had to  
 10 be an English language learner or a student who was in  
 11 McKinney-Vento or homeless. Those are the only kids in  
 12 the program. So those kids are standing up with a  
 13 teacher and co-teaching.  
 14 **Q. And how is that funded?**  
 15 A. ARRA funds.  
 16 **Q. ARRA funds?**  
 17 A. Uh-huh.  
 18 **Q. And those are the funds that are going**  
 19 **away, right?**  
 20 A. Yes.  
 21 **Q. Does Boulder have a Take My Teacher Home**  
 22 **program?**  
 23 A. We do.  
 24 **Q. Tell me about that.**  
 25 A. It's -- I think I mentioned it in the

2664

1 beginning, so these -- it's 14 kindergarten classes and  
 2 two first grade classes and these -- the teachers in  
 3 those classes are trained in how to take a lesson,  
 4 kinds of pare it down and -- so that it can be put on  
 5 an audio, on an iPod and then the iPod lesson is given  
 6 to the student, the student takes it home. He gets to  
 7 listen to it by himself and with his family, if he  
 8 wants to, or she and then brings it back the next day.  
 9 Well, the lesson is like a double dosing.  
 10 They're learning at home, pre learning for the next  
 11 day, so they're like double learning and these are --  
 12 are most struggling kindergartners and our most  
 13 struggling first graders, so they take their teacher  
 14 home, so to speak.  
 15 **Q. Has there been any observations about the**  
 16 **impact of this program?**  
 17 A. It's -- it's just reaching its -- it just  
 18 finished its fourth year and the students that we could  
 19 monitor started in the beginning, what we're finding is  
 20 of those 56 students that we could monitor from the  
 21 beginning, all but nine of them are now reading on  
 22 grade level.  
 23 **Q. How has this program been funded?**  
 24 A. It's been funded partially by grants.  
 25 Well -- but primarily from Impact on Education, which

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1 is an organization in our community that is a  
 2 foundation that finds generous donors in our community  
 3 to give money to our school district for special  
 4 projects, and so it's grants through our Impact on  
 5 Education.  
 6 **Q. You mentioned you had had some teaching**  
 7 **experience, I think, in Albuquerque and some other**  
 8 **areas. Do -- is it pretty typical for a school**  
 9 **district to have its own foundation that's able to**  
 10 **provide these kinds of resources?**  
 11 A. It's probably typical for large districts.  
 12 I don't know if they have the resources that we have.  
 13 I don't really know. I haven't checked into it. I  
 14 know we had one in Albuquerque. I've heard of one in  
 15 Denver, and then we have one in Boulder.  
 16 **Q. What about attendance interventions? Do**  
 17 **you have any examples of attendance types of programs**  
 18 **that Boulder has?**  
 19 A. Uh-huh. We have something called the  
 20 EARSS grant. It's -- let's see, it stands for Expelled  
 21 and At-Risk Student Services grant, and you can write  
 22 for those, and we got a grant for five years. I think  
 23 we're in the third year of our five years of that.  
 24 And we decided that something that really  
 25 mattered in our district was ensuring that kids came to

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1 school, so -- I mean, if you're not in school, you  
 2 can't learn, and we also looked at our data and found  
 3 that our -- we had a real struggle with school-going  
 4 behaviors getting started in pre-K and K. That's where  
 5 a lot of our non-attenders were. So we wrote this  
 6 grant, got it funded from the state, and we have some  
 7 attendance advocates that -- we have one in our  
 8 district for 29,000 students, so then we hired three  
 9 other ones, and they have met with 725 students. They  
 10 met with them last year.  
 11 And what they're finding is attendance  
 12 rates are changing. Students are getting more credits,  
 13 they're more likely to graduate, they're going to  
 14 graduate on time with their peers and we're changing  
 15 school attendance-going behaviors, school-going  
 16 behaviors from the little tiny ones now, so -- because  
 17 if you don't come to school, you get an attendance  
 18 advocate at your door who says, How can I help you get  
 19 your child to school? So . . . they're not a truant  
 20 officer, they're an attendance advocate.  
 21 **Q. Advocate. So why does attendance matter**  
 22 **in terms of closing the achievement gap?**  
 23 A. Well, we know that -- well, I mean, I  
 24 think it stands to reason, but if you look at research,  
 25 you know that kids don't start out with mental

2667

1 abilities that are different. There's no racial or  
 2 class differences in kids when they're one year old,  
 3 they all have the same mental abilities.  
 4 So what happens between that time and high  
 5 school -- you know, end of high school? It's -- it's  
 6 what they have access to, and so if kids are not around  
 7 as much English vocabulary, for example, or they have a  
 8 different learning need, they need to be in school to  
 9 get support. So we believe they need to be there every  
 10 day. Every day matters, and if you want to have -- so  
 11 here we are now. This -- I didn't teach in a  
 12 standards-based system. That was 15 years ago, or  
 13 whatever, that I did that. So now if every child is  
 14 supposed to achieve the same standards, then if they're  
 15 not there, there's no way they can do that. We can't  
 16 help them do that.  
 17 **Q. Have you or the district observed any**  
 18 **changes in attendance behaviors as a result of the**  
 19 **advocacy program?**  
 20 A. Well, let's take Sanchez. They, with -- a  
 21 lot of times, with poverty, what you'll find is that  
 22 people have so many other issues, they can't get their  
 23 kids to school, but -- so Doris's attendance rate was  
 24 at about 93 average daily attendance, and -- 93 percent  
 25 average daily attendance; and then just last year, it

2668

1 went up a whole percent because the attendance  
 2 advocates were out there helping her families get to  
 3 school. So we've -- it's changed in the district.  
 4 We've improved it in the district, and we've improved  
 5 it in our schools of high poverty like Sanchez.  
 6 **Q. Does Boulder use tutoring or coaches, as**  
 7 **well?**  
 8 A. Uh-huh.  
 9 **Q. Can you give me an example of -- of that**  
 10 **perhaps at, say, Columbine.**  
 11 A. Well, Columbine has a few coaches. They  
 12 have a literacy coach and a mathematics coach. They've  
 13 been paid for out of ARRA funds, so we're hoping we're  
 14 going to be able to sustain that. It's sort of one  
 15 year at a time, and the coaches don't do very much work  
 16 with individual students. They -- our philosophy is  
 17 that if you teach every teacher in the school to be a  
 18 literacy teacher or you teach every teacher in the  
 19 school to be a -- a highly qualified talented  
 20 mathematics teacher, that what you've done is just  
 21 increase the likelihood that they're going to get  
 22 literacy 6-1/2 hours a day instead of just in this  
 23 little time that they spend with the coach. So the  
 24 coach -- we really believe in coaches.  
 25 We used to -- when we had Reading Recovery

2669

1 money, we had a literacy coach in every elementary  
 2 school, but those days are gone and -- and now we have  
 3 coaches in some of our schools. We use some of our  
 4 Title money there. We've used some of our ARRA money,  
 5 and we'll just see, as we go along, how much money we  
 6 have to maintain at least the coaches at our  
 7 high-poverty schools. We don't have them at other  
 8 schools that aren't high-poverty.  
 9 **Q. What is Boulder Universal?**  
 10 A. Boulder Universal is a new online high  
 11 school that we started a year ago. It's for students  
 12 who need to recover credits, and so we've had a little  
 13 over a hundred students go through there, and so that's  
 14 helping us to increase our graduation rate because  
 15 typically the kids who need credit recovery are the  
 16 kids in our gap.  
 17 **Q. Has it had any effect on the graduation**  
 18 **rates?**  
 19 A. Yes, it has, uh-huh. It's starting to.  
 20 We've only had them for a year. A lot of the things  
 21 that we've been doing we haven't done them for very  
 22 long, so it's because of the infusion of some of this  
 23 money that we've had that ability to do that.  
 24 **Q. We've just gone through a number of**  
 25 **different types of interventions and supports. Are**

2670

1 **some of these the kinds of things that address the root**  
 2 **causes that we were talking about earlier?**  
 3 A. Uh-huh. Intervention, access,  
 4 professional development for teachers, support for  
 5 families at home, yeah.  
 6 **Q. Let's talk a moment about professional**  
 7 **development and the role of that in closing the**  
 8 **achievement gap. Roughly how much time does the**  
 9 **district allow schools to -- or allot to schools to**  
 10 **devote to professional development each year?**  
 11 A. In our negotiated agreement with teachers,  
 12 there is set aside a certain amount, which is 4.5 days  
 13 a year for professional development. This year we're  
 14 starting something new. We are putting in  
 15 collaboration time, which is -- we've asked schools to  
 16 put in a minimum of 50 minutes every week outside of  
 17 the -- the instructional day so that teachers can get  
 18 together and plan, but those -- those are the two times  
 19 that -- those are the two opportunities we have.  
 20 **Q. Do you think that's enough time to devote**  
 21 **to professional development?**  
 22 A. No. I -- I had somebody tell me -- I read  
 23 somewhere that it was told to me that IBM says that if  
 24 you don't spend 10 percent of your budget on  
 25 professional development, you can't claim to be a

2671

1 learning organization.

2 **Q. So why doesn't the district spend more on**

3 **professional development?**

4 A. I think we're really careful with our

5 money and it has to go a lot of different places. It

6 has to go for learning materials and salaries and

7 interventions, assessments. We don't have money to do

8 everything we want to do.

9 **Q. Why is professional development important**

10 **in closing the achievement gap or what's its role?**

11 A. Right. Well, it depends -- I think some

12 people wish -- some voters surely wish that we could --

13 there was a silver bullet out there that we could just

14 latch onto and -- and just have it and it would just

15 change things, but for those of us who have been in

16 education our whole life, we know that there's nothing

17 easy about this. It's going to take a change in the

18 system and it has to take a change in teacher practice,

19 and you can't change teacher practice unless you have

20 professional development.

21 Teachers have to know what they need to

22 do. They have to read current research, they have to

23 visit people's classrooms and see how it's being done

24 well, like our lab schools. They -- they have to have

25 people come in and help them model for them, let them

2672

1 practice, get some feedback, try it on their own, all

2 of that. That -- that's what professional development

3 looks like to be a learning organization.

4 **Q. Does the district actually have a**

5 **professional development budget?**

6 A. No, we don't have a budget for

7 professional development.

8 **Q. How do schools get professional**

9 **development money?**

10 A. Well, they -- every school is allocated --

11 I think they're allocated like \$6,000 a year for

12 professional development for their staffs and -- and

13 then separate departments may -- like, for example,

14 we're required to use the CELA testing in our district,

15 and so we have to have set aside some money for -- to

16 train people to do the CELA testing, so there's

17 professional development money in each department for

18 things that we think are really important.

19 We have money to train about 25 teachers a

20 year in equitable practices out of 1800 teachers. It's

21 going to take us a while to do that, but -- so we just

22 have little pockets, I think, and . . .

23 **Q. So some of this money is -- is actually**

24 **dedicated to making sure teachers can comply with state**

25 **requirements, like CELA testing?**

2673

1 A. Some of it is, uh-huh. In our literacy

2 budget, we have money to train people to do the DRA2,

3 and in our planning and assessment budget, we have

4 money to train people to administer the CSAP and the

5 CELA.

6 **Q. Does the district have any designated**

7 **professional development money now, after ARRA, to**

8 **train teachers in co-teaching?**

9 A. No.

10 **Q. Has the school district experienced budget**

11 **cuts?**

12 A. Yes.

13 **Q. What are some examples of the effect of**

14 **budget cuts on the district?**

15 A. Well, at the school level, they -- they

16 had budget cuts of 2.25 percent, so schools were

17 allowed to do -- make the cuts they needed to make at

18 their school. Most of them gave up a variety of things

19 like clerical staff, xerox budgets, materials.

20 At the district level, we cut over 13

21 percent in each of our departments. So we've lost

22 expertise, the ability to provide quality professional

23 development from -- from our in-house experts. I think

24 a variety -- learning materials.

25 **Q. You told me about learning materials in**

2674

1 **particular. How is -- what's an example of -- of how**

2 **the budget cuts have affected learning materials?**

3 A. Well, we have new standards at the state

4 now, so it's time for us to have a mathematics adoption

5 for our district and so we have to get books now that

6 are compliant with the new standards, so our budget for

7 learning materials has stayed the same for the last

8 probably nine years; and so we get about \$860,000 a

9 year for learning materials. Well, in order to

10 purchase mathematics materials for every single kid in

11 our district so that everyone gets a uniform

12 mathematics system that they're a part of over time,

13 it's going to cost us double that, so we have to

14 postpone our mathematics adoption for an additional

15 year. So our students will have the same mathematics

16 materials for ten years. They won't get their new

17 mathematics materials for two more years because we

18 need double that, you know, the 860,000 to pay for the

19 whole system.

20 **Q. Because you don't want to phase it in over**

21 **just half the students at a time?**

22 A. Right, right.

23 **Q. Does the school district serve any**

24 **homeless children?**

25 A. Uh-huh.

2675

1 **Q. Have there been any changes to that**  
 2 **population?**  
 3 A. Four years ago, we had about 600 students.  
 4 Now we're at a thousand.  
 5 **Q. What are the resource implications of**  
 6 **servicing homeless students?**  
 7 A. A student who is homeless is -- from the  
 8 McKinney-Vento Act, can go to any school that they deem  
 9 is their home school. So we -- we have students who,  
 10 at one point, lived in Boulder Valley School District,  
 11 really felt comfortable at one of our schools. Since  
 12 then they've moved to -- well, I can think of one  
 13 particular student has moved to Longmont. We are  
 14 required by law to transport that student from Longmont  
 15 to this school, so it's transportation issues.  
 16 **Q. So has the money you're spending on**  
 17 **transportation for these students increased in the past**  
 18 **four years?**  
 19 A. Yes.  
 20 **Q. How does the district pay for that or meet**  
 21 **those needs?**  
 22 A. Well, they are -- there's a transportation  
 23 budget. We all get budgets, and so we do our best to  
 24 stay within our budgets. So I stay within mine, but I  
 25 can control my budget. Transportation can't. So what

2676

1 they have to do is if there's any carryover money, if  
 2 somebody didn't spend any money out of their budget,  
 3 the carryover money will go to take care of the  
 4 transportation issues. We can't -- in the general  
 5 budget, we can't end up with a budget that's in the  
 6 red, so where -- whoever has a little bit of carryover  
 7 money, their money goes to transportation.  
 8 **Q. You were here this morning for**  
 9 **Dr. Hultgren's testimony?**  
 10 A. Yes.  
 11 **Q. And she was talking about Lafayette**  
 12 **Elementary having a dedicated FTE for gifted and**  
 13 **talented.**  
 14 A. Yes.  
 15 **Q. And that that struck her as fairly unusual**  
 16 **for the district. Is it fairly unusual for the**  
 17 **district for a school to have a dedicated FTE for**  
 18 **gifted and talented?**  
 19 A. It's -- absolutely, yeah. We have one  
 20 other school that has that who is the -- the school  
 21 that Lafayette feeds to, is the middle school. They  
 22 also have a 1.0 for talented and gifted.  
 23 **Q. Is that Angevine?**  
 24 A. It's Angevine Middle School that feeds to  
 25 Centaurus.

2677

1 MS. YATES: Okay. Your Honor, I don't  
 2 have any more questions for this witness at the  
 3 moment.  
 4 THE COURT: Yes. Go right ahead.  
 5 MR. HINOJOSA: Yes.  
 6 DIRECT EXAMINATION  
 7 BY MR. HINOJOSA:  
 8 **Q. Hi, Dr. Miller-Brown.**  
 9 A. Hi.  
 10 **Q. You've spoken of some of the achievement**  
 11 **gaps and some of the growth gaps here, and I want to go**  
 12 **over some charts that reflect the gaps between students**  
 13 **on the free and reduced price lunch program versus**  
 14 **non-free and reduced price lunch program and then some**  
 15 **English language learners versus non-English language**  
 16 **learners.**  
 17 I'm first going to show you what's part of  
 18 Exhibit 20124. This is the performance of Boulder  
 19 students on the 2010 CSAP math test score -- on the  
 20 CSAP math test, and the red line reflects the non-free  
 21 and reduced priced lunch, the light blue line reflects  
 22 the reduced price lunch program, and then the blue  
 23 line -- the dark blue line reflects the performance of  
 24 students on the free lunch program.  
 25 **And what percentage of students in the**

2678

1 **third grade from the non-free and reduced priced lunch**  
 2 **program met the proficiency standard?**  
 3 A. It looks like 89 percent. Is that  
 4 correct?  
 5 **Q. Yes. And how about for the reduced price**  
 6 **lunch program?**  
 7 A. And then reduced price lunch would be 59.  
 8 **Q. And then 50 percent for the third grade;**  
 9 **is that correct?**  
 10 A. Yes. That's correct.  
 11 **Q. For the free lunch program, right?**  
 12 A. Right.  
 13 **Q. And then if you -- if you look across the**  
 14 **trend of performance, with a couple of exceptions, one**  
 15 **being the fourth grade reduced price lunch students and**  
 16 **then the reduced price lunch program in the 10th**  
 17 **grade --**  
 18 A. Uh-huh.  
 19 **Q. -- and the non-free and reduced price**  
 20 **lunch program in the eighth grade, with those few**  
 21 **exceptions, would you agree that there's a general**  
 22 **decline in the performance of all student groups?**  
 23 A. Well, that's kind of a tricky question, so  
 24 let me just -- it looks like it here; and, yes, but  
 25 what -- in Colorado, the CSAP in mathematics gets

2679

1 exponentially more difficult, so that -- but, yes, I  
 2 know what you're saying and, yes, that is true.  
 3 They're . . .  
 4 **Q. And the expectation is that the students**  
 5 **meet the proficiency standards --**  
 6 A. Yes.  
 7 **Q. -- at each grade level, correct?**  
 8 A. That's correct. That's correct.  
 9 **Q. And a student's income or language should**  
 10 **not matter whether or not they're achieving the**  
 11 **proficiency standards because that's what they're**  
 12 **required under the state's proficiency --**  
 13 A. That is absolutely correct, yes.  
 14 **Q. And -- and then even when you get to your**  
 15 **students on the non-free and reduced price lunch**  
 16 **program, you have 47 percent who are not meeting the**  
 17 **minimum proficiency standard on the 10th grade math**  
 18 **test, correct?**  
 19 A. That's correct.  
 20 **Q. I want to go next to Exhibit 20125 -- all**  
 21 **these have already been marked and admitted -- and this**  
 22 **is the 2010 CSAP reading test by income, and what**  
 23 **percentage on the non-free and reduced price lunch**  
 24 **program for the third grade met the standard?**  
 25 A. 92 percent.

2680

1 **Q. How about for the reduced price lunch**  
 2 **program?**  
 3 A. Then that would be 51 percent.  
 4 **Q. And the free lunch program?**  
 5 A. 46 percent. Are you talking about third  
 6 grade? Third grade?  
 7 **Q. Yes.**  
 8 A. Yes, uh-huh.  
 9 **Q. And the gaps remain between the student**  
 10 **groups of at least 25 percent all the way up until the**  
 11 **10th grade; is that correct?**  
 12 A. That's correct.  
 13 **Q. And at the 10th grade, you had basically**  
 14 **one out of -- let me move this for you -- one out of**  
 15 **five students from the non-free and reduced price lunch**  
 16 **program not meet the minimum proficiency standard,**  
 17 **correct?**  
 18 A. That is correct.  
 19 **Q. And then there were more than two out**  
 20 **of -- or more than one out of three students on the**  
 21 **reduced price lunch program failed to meet that**  
 22 **standard, correct?**  
 23 A. Uh-huh. Uh-huh, yes.  
 24 **Q. Yes?**  
 25 A. Yes. I'm sorry. Yes.

2681

1 **Q. That's all right. And then two out of**  
 2 **three students on the free lunch program failed to meet**  
 3 **the minimum standard in the 10th grade, correct?**  
 4 A. Uh-huh. Yes.  
 5 **Q. Going to Exhibit 20126, this is the CSAP**  
 6 **2010 test by income, and what percentage of the third**  
 7 **grade -- or the fifth grade students met the standard**  
 8 **from the non-free and reduced priced lunch program?**  
 9 A. 78 percent.  
 10 **Q. How about the fifth grade reduced price**  
 11 **lunch program?**  
 12 A. 37 percent.  
 13 **Q. That's 31 percent?**  
 14 A. 31 percent. Excuse me.  
 15 **Q. That's fine. And 28 percent for the**  
 16 **reduced -- or the free lunch program?**  
 17 A. Yes. Yes.  
 18 **Q. And then there was a 40 percent --**  
 19 **percentage point gap between the eighth-grade students**  
 20 **on the reduced -- I mean, the non-free and reduced**  
 21 **priced lunch program versus the reduced price lunch**  
 22 **program, correct?**  
 23 A. Correct.  
 24 **Q. And then what was the percentages of**  
 25 **the -- the percentage of the non-free and reduced price**

2682

1 **lunch students meeting the standard in the 10th grade?**  
 2 A. The non?  
 3 **Q. Yes, the non.**  
 4 A. Oh, 68 percent.  
 5 **Q. And how about the reduced price lunch?**  
 6 A. Would be 45 percent.  
 7 **Q. And the free lunch programs?**  
 8 A. It would be 21 percent.  
 9 **Q. Going next to Exhibit 20127, and this is**  
 10 **the 2010 CSAP writing test by income, and what**  
 11 **percentage of students met the proficiency standard in**  
 12 **the third grade from the non-free and reduced price**  
 13 **lunch program?**  
 14 A. 71 percent.  
 15 **Q. And how about from the reduced price lunch**  
 16 **program?**  
 17 A. 38 percent.  
 18 **Q. And the free lunch program?**  
 19 A. 28 percent.  
 20 **Q. And the gaps remain at least by -- at**  
 21 **30 percent across the grade levels except the 10th**  
 22 **grade; would you agree?**  
 23 A. Yes.  
 24 **Q. And at the 10th grade, we have just over**  
 25 **one out of three students failed to meet the writing**

2683

1 **standard, correct?**  
 2 A. Uh-huh.  
 3 **Q. Yes?**  
 4 A. Yes.  
 5 **Q. And more than one-half of the students on**  
 6 **the reduced price lunch program failed to meet the**  
 7 **minimum proficiency standard?**  
 8 A. Yes.  
 9 **Q. And then you have just about --**  
 10 A. 20 percent.  
 11 **Q. -- four out of five students failed to**  
 12 **meet the standard from the free lunch program, correct?**  
 13 A. Correct.  
 14 **Q. Going now to the ELL test scores, and here**  
 15 **the different line graphs reflect -- the red is where**  
 16 **they're non-English language learners, the light blue**  
 17 **is the LEP students or limited English proficient, and**  
 18 **then the NEP is not English proficient; and what**  
 19 **percentage of the non-ELL students met the minimum**  
 20 **standard on the third grade math test?**  
 21 A. 87 percent.  
 22 **Q. And the LEP students?**  
 23 A. 57 percent.  
 24 **Q. And the NEP students?**  
 25 A. 32 percent.

2684

1 **Q. And with the exception of the -- of the**  
 2 **10th grade, would you agree that the -- well, let me**  
 3 **strike that.**  
 4 **The gaps grow as -- as -- in excess of 50**  
 5 **percentage points across the grade levels, correct?**  
 6 A. Yes.  
 7 **Q. At one point in time or another?**  
 8 A. Yes.  
 9 **Q. And then in the 10th grade, what**  
 10 **percentage of your non-ELL students met the minimum**  
 11 **proficiency standard in math?**  
 12 A. 51 percent.  
 13 **Q. And how about your LEP students?**  
 14 A. 13 percent.  
 15 **Q. And the NEP students?**  
 16 A. Zero percent.  
 17 **Q. Looking at the 2010 CSAP reading test**  
 18 **on -- by language, what percentage of the third grade**  
 19 **students non-ELL met the standard?**  
 20 A. 89 percent.  
 21 **Q. And the LEP students?**  
 22 A. 42 percent.  
 23 **Q. And the NEP students?**  
 24 A. 9 percent.  
 25 **Q. And the gaps here seem to close no closer**

2685

1 **than 54 percent in the fifth grade; is that correct?**  
 2 A. That's correct.  
 3 **Q. And then what are the percentage of**  
 4 **students on the non-ELLs that met the minimum standard**  
 5 **in the 10th grade?**  
 6 A. 77 percent.  
 7 **Q. And how about for the LEP students?**  
 8 A. 2 percent.  
 9 **Q. And the NEP students?**  
 10 A. Zero percent.  
 11 **Q. Looking at Exhibit 20130 -- and the last**  
 12 **exhibit was 20129 -- this is Exhibit 20130, the Boulder**  
 13 **achievement scores for the 2010 CSAP by language, and**  
 14 **what percentage of students met the minimum proficiency**  
 15 **standard for the fifth grade science test for the**  
 16 **non-ELL?**  
 17 A. 74 percent.  
 18 **Q. How about for the LEP students?**  
 19 A. 12 percent.  
 20 **Q. For the NEP students?**  
 21 A. 9 percent.  
 22 **Q. Then it looks like the gap between the LEP**  
 23 **and non-English language learners rose to 69 percent in**  
 24 **the eighth grade; is that correct?**  
 25 A. Yes.

2686

1 **Q. And then what are the proficiency**  
 2 **standards for the different groups on the 10th grade**  
 3 **math test for the non-free and reduced price lunch?**  
 4 A. Oh, okay. 66 percent.  
 5 **Q. And the LEP students?**  
 6 A. 4 percent.  
 7 **Q. And the NEP students?**  
 8 A. Zero percent.  
 9 **Q. Going now to Exhibit 20131, this is the**  
 10 **2010 writing CSAP test by language for Boulder, and**  
 11 **what percentage of the students from the non-ELL group**  
 12 **met the minimum standard in the third grade?**  
 13 A. 68 percent.  
 14 **Q. And how about LEP students?**  
 15 A. Is that 26 percent?  
 16 **Q. And NEP students?**  
 17 A. 8 percent.  
 18 **Q. It looks like --**  
 19 A. 6 percent? I'm not sure.  
 20 **Q. Yeah. It's 8 percent.**  
 21 A. 8 percent. Okay.  
 22 **Q. And it looks like the highest that the**  
 23 **non-ELL student group went was to 79 percent in the**  
 24 **fifth grade; is that correct?**  
 25 A. Yes.

2687

1 **Q. And at that same grade level, what**  
 2 **percentage of students from the LEP student group met**  
 3 **the minimum proficiency standard?**  
 4 A. 16 percent.  
 5 **Q. How about for the NEP students?**  
 6 A. Zero percent.  
 7 **Q. When we go to the 10th grade, what**  
 8 **percentage of students from the non-ELL group met the**  
 9 **minimum proficiency standard?**  
 10 A. 64 percent.  
 11 **Q. And from the LEP and NEP student groups?**  
 12 A. Zero for both.  
 13 **Q. You've testified about -- you testified**  
 14 **about the level of funding that the school districts**  
 15 **receive in broad terms, and given the level of funding**  
 16 **the district receives with respect to the per-pupil**  
 17 **operating revenue and the at-risk and ELPA funds, does**  
 18 **the district have sufficient funds to provide the**  
 19 **opportunities for these students to be able to achieve**  
 20 **the proficiency standards?**  
 21 A. No.  
 22 MR. HINOJOSA: Pass the witness, Your  
 23 Honor.  
 24 THE COURT: Thank you. Cross-examination?  
 25 MS. MARKEL: Thank you, Your Honor.

2688

1 CROSS-EXAMINATION  
 2 BY MS. MARKEL:  
 3 **Q. Good morning, Dr. Miller-Brown.**  
 4 A. Good morning.  
 5 **Q. It's good to see you again.**  
 6 A. Good to see you.  
 7 **Q. Boulder Valley's mission is to graduate**  
 8 **students in the new century who have the knowledge,**  
 9 **skills, and personal characteristics that will make**  
 10 **this world a safer, more thoughtful and more inclusive**  
 11 **place in which to live. Did I get that about right?**  
 12 A. That's very close, yes. Good.  
 13 **Q. And Boulder Valley developed that mission**  
 14 **about 10 years ago?**  
 15 A. Yes.  
 16 **Q. Boulder Valley's mission sounds a lot like**  
 17 **CAP4K, wouldn't you agree?**  
 18 A. Yeah, uh-huh.  
 19 **Q. In your conversation with Ms. Yates this**  
 20 **morning, you were mentioning the difficulties of**  
 21 **spreading limited resources throughout the district,**  
 22 **and one of the things that you mentioned was, for**  
 23 **example, the district's salary obligations to its**  
 24 **teaching staff. Do you recall that testimony?**  
 25 A. Uh-huh, yes.

2689

1 **Q. Are you aware that 90 -- 92 percent of the**  
 2 **district's budget goes to compensation?**  
 3 A. Yes.  
 4 **Q. And you're also aware that the Boulder**  
 5 **Valley School District voters passed a mill levy in**  
 6 **November 2010, this past November, to in part support**  
 7 **teachers' compensation, correct?**  
 8 A. Yes.  
 9 **Q. And the other part of that mill levy, as I**  
 10 **understand it, was used to expand early education**  
 11 **programs?**  
 12 A. That's what part of it was for, and then  
 13 the other part was to help pay for the costs that had  
 14 been cut out of our budgets so that we were a little  
 15 more in alignment, didn't have to cut as much from our  
 16 schools.  
 17 **Q. And in your conversations with Ms. Yates**  
 18 **regarding the reorganization of the central staff and**  
 19 **the loss of the in-house experts, those experts are now**  
 20 **placed in the classroom, correct, like Ms. Vidari is**  
 21 **now at Sanchez Elementary?**  
 22 A. Some of them got classroom jobs, yes.  
 23 **Q. And in fact, if we look at the annual**  
 24 **report, which is Exhibit 3110, the message from the**  
 25 **superintendent, who at the time was Chris King --**

2690

1 A. Uh-huh.  
 2 **Q. He mentioned this reorganization of -- is**  
 3 **that legible? He mentions the reorganization of**  
 4 **central office funding supports in the third-to-the-**  
 5 **last paragraph. Do you see that? Is that legible for**  
 6 **you? Where he says --**  
 7 A. Yes.  
 8 **Q. -- "In order to adapt the BVSD's**  
 9 **instructional delivery to meet our three long-range**  
 10 **goals, I oversaw a comprehensive reorganization" --**  
 11 **"reorganization of instructional delivery**  
 12 **during '08-'09 as well as the reduction of central**  
 13 **administration staffing and operating budgets over the**  
 14 **past two years," and then he goes on to state, "This**  
 15 **reduction of central office funding supports**  
 16 **implementation of our Response to Intervention model to**  
 17 **close distinct gaps in student learning by placing more**  
 18 **direct learning intervention resources in our . . .**  
 19 **schools."**  
 20 A. That's true. We -- we had some direct --  
 21 so some of those people got to provide direct resources  
 22 to the schools and there were no longer people at the  
 23 district level who could provide generalized support.  
 24 So Carol Vidari is one of the best behavioral  
 25 specialists in the state, and one school gets her now

2691

1 versus all the schools having access to her.  
 2 **Q. But wouldn't you agree that that is part**  
 3 **of getting those resources closer to the classroom?**  
 4 A. I would agree that Sanchez gets better  
 5 access to Carol Vidari.  
 6 **Q. You would also agree, I think, that for a**  
 7 **majority of Boulder Valley's students, Boulder Valley**  
 8 **meets or exceeds student-teacher and parent**  
 9 **expectations for achievement?**  
 10 A. Say that -- the first part again.  
 11 **Q. It's -- in fairness, it's off of the**  
 12 **website.**  
 13 A. Okay.  
 14 **Q. And I'm just asking, would you agree that**  
 15 **for a majority of BVSD's students, BVSD meets or**  
 16 **exceeds students', teachers' and parents' expectations**  
 17 **for achievement?**  
 18 A. I would say for the majority, yes. Not  
 19 for all.  
 20 **Q. And we -- we've -- in your conversations**  
 21 **with both Mr. Hinojosa and Ms. Yates, you discussed the**  
 22 **achievement gaps that exist in Boulder Valley?**  
 23 A. Uh-huh.  
 24 **Q. Boulder Valley, in fact, has one of the**  
 25 **largest achievement gaps in the state; is that correct?**

2692

1 A. Yes.  
 2 **Q. And that gap has been persistent over**  
 3 **time; is that true?**  
 4 A. Yes.  
 5 **Q. For example, as part of its efforts to**  
 6 **close the achievement gap or to narrow the achievement**  
 7 **gap, in 2005, Boulder Valley School District formed a**  
 8 **task force to study stratification in Boulder Valley**  
 9 **schools; is that true?**  
 10 A. That's correct.  
 11 **Q. In other words, the task force was asked**  
 12 **to study why schools within the district were racially**  
 13 **and socioeconomically segregated.**  
 14 A. Right. That's correct.  
 15 **Q. And you were the deputy superintendent**  
 16 **heading up the destratification efforts at that time?**  
 17 A. No. I -- I was not. That was Chris King  
 18 at that time. I came in the year after that.  
 19 **Q. Perhaps this article from the Boulder**  
 20 **Daily Camera will help refresh your recollection. This**  
 21 **is an article dated April 20, 2008 titled "Inching**  
 22 **Toward Desegregation," and there's a quote at the**  
 23 **bottom, and it refers to you as the deputy**  
 24 **superintendent heading the destratification efforts.**  
 25 **It says, at the very bottom, "You need time for these**

2693

1 **kinds of innovations to make a dramatic change in**  
 2 **something as challenging as education," and this quote**  
 3 **is attributed to you, "Deputy superintendent heading**  
 4 **the destratification efforts," and it goes on to quote**  
 5 **you, "We're trying to move as fast as we can, and some**  
 6 **communities are responding faster than others."**  
 7 A. That's correct. In 2008, I was. In 2005,  
 8 I was not.  
 9 **Q. And you would agree that all children can**  
 10 **achieve --**  
 11 A. Yes.  
 12 **Q. -- regardless of their zip code,**  
 13 **socioeconomic status, or their racial ethnicity?**  
 14 A. That's correct.  
 15 **Q. Would you also agree that in order to**  
 16 **close the achievement gap in Boulder, that Boulder**  
 17 **Valley needs to be, quote, courageous in its will to**  
 18 **change systems and practices?**  
 19 A. Yes.  
 20 **Q. Let's talk a little bit about Boulder's**  
 21 **Title I elementary schools. There are -- first, if you**  
 22 **would, describe for the court what Title I elementary**  
 23 **schools are.**  
 24 A. It's a school that has over 30 percent  
 25 free lunch.

2694

1 **Q. And Boulder Valley has seven Title I**  
 2 **elementary schools, if I'm correct?**  
 3 A. That's correct.  
 4 **Q. And of those seven Title I elementary**  
 5 **schools, only two made adequately -- their adequate**  
 6 **yearly progress targets this year; is that correct?**  
 7 A. Let's see. It was --  
 8 **Q. Columbine and Whittier?**  
 9 A. Whittier, yeah. No. I don't think  
 10 Whittier did make them this year.  
 11 **Q. As I understand it, Creekside, University**  
 12 **Hill, Emerald, Pioneer and Sanchez did not make their**  
 13 **targets?**  
 14 A. And I don't think Whittier did, either.  
 15 **Q. I have an article from the Boulder Daily**  
 16 **Camera that refers to, again -- and this article is**  
 17 **dated August 10, 2011.**  
 18 MR. HINOJOSA: Objection, Your Honor.  
 19 It's an improper use.  
 20 **Q. (BY MS. MARKEL) Just to refresh your**  
 21 **recollection if you -- if there's --**  
 22 MS. YATES: Your Honor, I'm going to join.  
 23 She's demonstrated no -- she's demonstrated no problem  
 24 remembering these events.  
 25 THE COURT: This has to do with meeting

2695

1 the --

2 MS. MARKEL: AYP targets.

3 THE COURT: Right.

4 MS. MARKEL: And I believe the witness --

5 I'm not trying to enter the exhibit, Your Honor, I'm

6 simply trying to refresh the witness's recollection.

7 THE COURT: Those who have met or not met

8 the target, so --

9 MR. HINOJOSA: Yes, Your Honor, and the

10 problem that I have is that she's not simply asking --

11 showing her this and whether or not it reflects or

12 refreshes her recollection, she's reading it, which --

13 and she's reading it into an evidentiary record.

14 THE COURT: Well, if you wanted to show it

15 to her -- I mean, why don't you let her read it and

16 then you can ask her the question. Overruled.

17 **Q. (BY MS. MARKEL) I'll point you to -- if**

18 **you would, Dr. Miller-Brown, it's the paragraph that**

19 **begins "Of the seven."**

20 A. Uh-huh.

21 **Q. And if you -- why don't you read that.**

22 A. Was this just recently done?

23 **Q. This is -- this is from August 10, 2011.**

24 THE COURT: And just read it to

25 yourself

2696

1 THE WITNESS: Oh, okay.

2 A. (The witness perused the document.)

3 Okay. For some reason, I thought Whittier

4 had not met their targets because the targets have

5 raised this year. Every two years, the targets raise,

6 and so I thought that Whittier also hadn't made them.

7 **Q. (BY MS. MARKEL) Did that refresh your**

8 **recollection that Whittier did make their targets?**

9 A. Yes, uh-huh.

10 **Q. As did Columbine?**

11 A. I knew Columbine did, yes.

12 **Q. But the other five Title I elementary**

13 **schools did not meet their targets this year?**

14 A. That's correct.

15 **Q. As part of -- of the district's ongoing**

16 **efforts to address the achievement gap, this persistent**

17 **gap that's existed in Boulder Valley, Boulder Valley**

18 **has been working with a consultant, Rich Villa; is that**

19 **correct?**

20 A. That's correct.

21 **Q. And in part, out of that work, Boulder**

22 **Valley has begun to recognize that if a teacher of a**

23 **content area has 90 percent of its children who fail**

24 **the classes happen to be children of poverty, that**

25 **there's a problem with the teacher and that the**

2697

1 **district has to be courageous and do things**

2 **differently; is that correct?**

3 A. Yes.

4 **Q. And that the reason the teacher will need**

5 **to do things differently is if the children of poverty**

6 **are not accessing her class, then those children**

7 **probably are going to have less opportunities to be the**

8 **new century graduate that's expected for the district's**

9 **students, correct?**

10 A. Yes.

11 **Q. And you would agree that through the work**

12 **that's being done and has been done with Dr. Villa,**

13 **that Boulder is actively attempting to address these**

14 **ongoing challenges in narrowing the achievement gap?**

15 A. Yes.

16 **Q. For example, the goal in -- in the**

17 **district now is for all teachers and principals to take**

18 **on the responsibility in Boulder Valley of ensuring**

19 **equitable practices and equitable results for every**

20 **child?**

21 A. Yes.

22 **Q. And you've personally placed teachers on**

23 **evaluation for failing to address the inequitable**

24 **delivery of education to children of poverty or**

25 **children of color, correct?**

2698

1 A. Yes.

2 **Q. Another --**

3 A. Not in my current position.

4 **Q. Another example of Boulder's efforts to**

5 **address equity is the Summit on Equity Engagement held**

6 **at Boulder High School in August of last year, correct?**

7 A. Uh-huh, yes.

8 **Q. And that equity summit was facilitated by**

9 **the United States Department of Justice Community**

10 **Relations Service, correct?**

11 A. Yes.

12 **Q. And in that summit, about 60 community**

13 **members met on August 7 of last year to meet and**

14 **discuss issues around racial equity, correct?**

15 A. Yes.

16 **Q. Did you attend the Summit?**

17 A. Yes.

18 **Q. And this report that was issued as a**

19 **result of the summit is -- is found on Boulder Valley's**

20 **website?**

21 A. That's correct.

22 **Q. Do you recall that one of the issues that**

23 **was identified by the community members were at least**

24 **at that time teachers within Boulder Valley School**

25 **District have a lower expectation for minority**

2699

1 **students?**  
 2 A. I think some people think that, yes.  
 3 **Q. And, in fact, on the Unified Improvement**  
 4 **Plan, which is, for the record, Exhibit 10356, the --**  
 5 **one of the root causes that was identified is lower**  
 6 **teacher expectations; is that correct?**  
 7 A. Yes. That's correct.  
 8 MS. MARKEL: I have no further questions.  
 9 THE COURT: Thank you. Redirect?  
 10 MS. YATES: Thank you, Your Honor.  
 11 REDIRECT EXAMINATION  
 12 BY MS. YATES:  
 13 **Q. Dr. Miller-Brown, you were just talking,**  
 14 **in response to Ms. Markel's questions, about the rule**  
 15 **of expectations, teacher expectations in achieving**  
 16 **equity.**  
 17 A. Uh-huh.  
 18 **Q. What's the role of professional**  
 19 **development and an investment in professional**  
 20 **development in addressing expectations?**  
 21 A. I think sometimes when -- as the world  
 22 changes and as the kinds of students that teachers have  
 23 in their classrooms change, I think sometimes teachers  
 24 lose sight of what to expect of kids because they don't  
 25 have the skills themselves to deal with the variety of

2700

1 students in their classroom, so they need professional  
 2 development to feel efficacious in order to deal with a  
 3 student of extreme poverty, a student with special  
 4 learning needs that they've never had in their  
 5 classroom before, a student that they've never had in  
 6 their classroom before that has English as their second  
 7 language. So professional development, as I've said  
 8 repeatedly, is key to changing teacher expectations not  
 9 only of the children but of themselves.  
 10 **Q. And what are the resource implications of**  
 11 **this kind of professional development?**  
 12 A. This kind of professional development is  
 13 not just where you go and take a pill and all of a  
 14 sudden -- or you go and learn a particular skill.  
 15 This -- this is overtime work where the resource  
 16 implications are huge that teachers need to -- to work  
 17 with kids, see what they're struggling with, see what  
 18 the student is struggling with, think about what --  
 19 what would I have to do to work with that child, learn  
 20 from other people who could come and model for them,  
 21 talk to them -- to other teachers in their school and  
 22 see what they're doing that's making a difference for  
 23 those kids and then go back and practice it, come back  
 24 out and get feedback. It's -- it's huge. The  
 25 implications for that are huge if we truly want to

2701

1 change teacher practice so that it can make an impact  
 2 on the student performance we saw there.  
 3 **Q. When teachers go into other classrooms to**  
 4 **observe model teachers, do you have to hire a**  
 5 **substitute?**  
 6 A. Yes, you do.  
 7 **Q. Did Boulder used to have a director of**  
 8 **equity position?**  
 9 A. Yes, we did.  
 10 **Q. What's happened with that position?**  
 11 A. It was cut two years ago.  
 12 **Q. In the budget cuts?**  
 13 A. In the budget cuts. That was part of our  
 14 13 percent at the Ed Center.  
 15 **Q. You spoke a lot this morning about**  
 16 **interventions, spending quite a bit of time on**  
 17 **co-teaching, some extended learning programs. Are**  
 18 **those -- have those been fairly recently implemented in**  
 19 **the district?**  
 20 A. They have been.  
 21 **Q. So at this point, you don't have long-term**  
 22 **data that correlates with those interventions; is that**  
 23 **right?**  
 24 A. Well, as I've said repeatedly, this kind  
 25 of work takes a long time, so -- we just started with

2702

1 Rich Villa two summers ago, so we've had one year so  
 2 far, and so it's going to take some time to really  
 3 change practice.  
 4 **Q. But --**  
 5 A. And --  
 6 **Q. I'm sorry. Go ahead.**  
 7 A. And so it hasn't -- it's impacted some  
 8 things that you can see initially, like attendance and  
 9 grades for classes, but it hasn't impacted, I don't  
 10 think, the CSAP yet. It hasn't been long enough.  
 11 **Q. But you have noticed at least some**  
 12 **improvements on things like grades and attendance; is**  
 13 **that right?**  
 14 A. That's correct. Grades, attendance and  
 15 some CSAP scores.  
 16 **Q. Some CSAP scores at Sanchez and Creekside,**  
 17 **for example?**  
 18 A. Uh-huh, uh-huh.  
 19 MS. YATES: Thank you, Your Honor. I have  
 20 no further questions.  
 21 THE COURT: Thank you. Any redirect?  
 22 MR. HINOJOSA: No questions.  
 23 THE COURT: Any recross?  
 24 MS. MARKEL: Just briefly.  
 25

2703

1                   RE CROSS-EXAMINATION  
2 BY MS. MARKEL:  
3       **Q. Dr. Miller-Brown, it's not your testimony**  
4 **that it takes more money for teachers to stop having**  
5 **low expectations for children of color, is it?**  
6       A. No.  
7       MS. MARKEL: No further questions.  
8       THE COURT: Thank you. Thank you, ma'am.  
9 You may step down. Thank you.  
10       Is this a good time to take a break or do  
11 you -- okay. We'll be in recess, then, until  
12 1 o'clock. Thank you.  
13       (Noon recess taken, 11:49 a.m. to  
14 1:03 p.m.)  
15       THE COURT: We're back on the record in  
16 05CV4794. The next witness for the plaintiff?  
17       MS. BEZOZA: Thank you. The plaintiffs  
18 call Herbert Conboy.  
19       THE COURT: If you'd come forward, sir,  
20 here to the witness stand.  
21       \* \* \* \* \*  
22                   HERBERT CONBOY,  
23 having been first duly sworn to state the whole truth,  
24 testified as follows:  
25       THE COURT: Thank you, sir. Please be

2704

1 seated, and you can adjust that mike so it's  
2 comfortable for you; and then if you could state your  
3 full name and spell your last name for the record.  
4       THE WITNESS: My name is Herbert Conboy.  
5 The last name is C-o-n-b-o-y .  
6       THE COURT: Thank you.  
7                   DIRECT EXAMINATION  
8 BY MS. BEZOZA:  
9       **Q. Good afternoon, Mr. Conboy.**  
10       A. Good afternoon.  
11       **Q. Where do you reside?**  
12       A. I reside at 682 Pueblo West -- 682 Clarion  
13 Drive, Pueblo West, Colorado.  
14       **Q. And where is Pueblo West?**  
15       A. In Pueblo County, just about a hundred  
16 miles south of Denver.  
17       **Q. And how long have you lived there?**  
18       A. I've lived in Pueblo West over ten years.  
19       **Q. What is the highest level of education**  
20 **you've achieved?**  
21       A. I have approximately 56 credit hours of  
22 criminal justice emphasis through PCC.  
23       **Q. Did you get any kind of degree?**  
24       A. Yes. It's a certificate program.  
25       **Q. A certificate?**

2705

1       A. Yes, ma'am.  
2       **Q. And where do you work?**  
3       A. I currently work for AIRSERV Colorado,  
4 which is a --  
5       **Q. Can you tell us what AIRSERV is.**  
6       A. It is a vending business, and I cover  
7 about 6,000 miles a month over the Western Slope of  
8 Colorado.  
9       **Q. Are you married?**  
10       A. I am married.  
11       **Q. Does your wife work?**  
12       A. My wife works for Loaf 'N Jug, which is a  
13 subsidiary of Kroger there in Pueblo, also.  
14       **Q. How many children do you have?**  
15       A. I have two children that are biological,  
16 and I have had the pleasure of taking care of a very  
17 dear friend's child. Her name is Keila Barish, who is  
18 handicapped.  
19       **Q. Did Keila ever live with you?**  
20       A. She lived with us from seventh or eighth  
21 grade through her graduation from Pueblo West High  
22 School.  
23       **Q. And can you briefly tell the court how it**  
24 **came about that Keila lived with your family.**  
25       A. Keila's mother was divorced from her

2706

1 spouse and Keila was having problems getting to and  
2 from school on a regular basis, and I offered to take  
3 Keila in, talk to her mother, and her mother very  
4 quickly gave us temporary custody and decision-making  
5 responsibilities for medical and school.  
6       THE COURT: And, sir, could you spell her  
7 name for us, her first and last name.  
8       THE WITNESS: Her first name is Keila,  
9 K-e-i-l-a.  
10       THE COURT: Thank you.  
11       THE WITNESS: Last name Barish,  
12 B-a-r-i-s-h.  
13       THE COURT: Thank you.  
14       **Q. (BY MS. BEZOZA) And so what was your role**  
15 **with respect to Keila's education?**  
16       A. I had all education-making decisions as  
17 far as her education.  
18       **Q. And what are your other children's names?**  
19       A. Timothy is my oldest, he's my son; and  
20 Tabitha is my daughter, Tabitha Conboy; and Timothy is  
21 now 21, will be 22 the end of this month, and Tabitha  
22 is 18.  
23       **Q. What is your role in the Lobato lawsuit?**  
24       A. Individual plaintiff.  
25       **Q. And your wife is also an individual**

2707

1 **plaintiff in the case?**  
 2 A. Yes, she is.  
 3 **Q. And why did you and your wife decide to**  
 4 **join the Lobato case as plaintiffs?**  
 5 A. When our three children were going to  
 6 Pueblo West High School, we had had the opportunity to  
 7 see a lot of inadequacies within the high school where  
 8 funding was just an issue, and for that reason, we got  
 9 involved more deeply and investigated and became  
 10 plaintiffs in the Lobato lawsuit.  
 11 **Q. How would you describe your involvement in**  
 12 **your children's education?**  
 13 A. Very involved. Both my wife and I were  
 14 very involved, attending all of the school functions.  
 15 I was on the accountability committee, as was my wife  
 16 of Pueblo West High School for two years, and keeping  
 17 in mind Pueblo West High School was only built about  
 18 eight years, nine years before we were involved and  
 19 they still had not had an auditorium, so . . .  
 20 **Q. And what types of things did you do at**  
 21 **home to support your children's learning?**  
 22 A. We have done numerous things from buying  
 23 books so that we had books at home to sitting down with  
 24 each one of the kids, reading with them, trying to get  
 25 their proficiencies up, working with them in math, et

2708

1 cetera. We were very involved both at the school and  
 2 at home.  
 3 **Q. Can you look at what's been marked as**  
 4 **Exhibit 10268. This is the second page. Do you recall**  
 5 **submitting discovery responses in this case?**  
 6 A. I did.  
 7 MS. BEZOZA: If I may approach, Your  
 8 Honor.  
 9 THE COURT: Yes.  
 10 **Q. (BY MS. BEZOZA) And I just gave you a**  
 11 **copy of the discovery responses. Does that appear to**  
 12 **be a true and accurate copy of the responses you**  
 13 **submitted in this case?**  
 14 A. Yes, it does.  
 15 **Q. Can you please look at page 5. I was**  
 16 **actually going to focus on page 6 because it won't all**  
 17 **fit on the camera. And on pages 5 and 6, there's a**  
 18 **chart with the schools that your children went to?**  
 19 A. Yes.  
 20 **Q. Does that appear to -- to be accurate, the**  
 21 **information contained in that chart?**  
 22 A. Yes, it does.  
 23 **Q. The first school listed for Tabitha is**  
 24 **kindergarten, Hellbeck Elementary kindergarten. Did**  
 25 **Tabitha attend preschool?**

2709

1 A. Tabitha never had the opportunity to  
 2 attend preschool.  
 3 **Q. And why is that?**  
 4 A. Because the school at the time only dealt  
 5 with those that were designated special needs through  
 6 usually food stamps or a free lunch program of  
 7 assembly, which we did not qualify for, so therefore we  
 8 would have had to have paid for any of her preschool,  
 9 and at that time, we could not afford it.  
 10 **Q. So you couldn't afford to send her to a**  
 11 **private program?**  
 12 A. Correct.  
 13 **Q. And how many hours a week roughly was the**  
 14 **kindergarten program that Tabitha attended?**  
 15 A. When we did get her in kindergarten, she  
 16 attended only for a half day, because that's all that  
 17 they would offer.  
 18 **Q. And what about the kindergarten program**  
 19 **that Tim attended?**  
 20 A. It also was only a half day.  
 21 **Q. And Keila was not living with you at the**  
 22 **time that she was in kindergarten; is that correct?**  
 23 A. That's correct.  
 24 **Q. And are any of your children still**  
 25 **attending Pueblo 70 schools?**

2710

1 A. No. Very thankfully they have all three  
 2 graduated.  
 3 **Q. Congratulations. How old is Tim?**  
 4 A. Tim now is 21.  
 5 **Q. And what does Tim like to do? What are**  
 6 **his hobbies?**  
 7 A. Tim's hobbies are computer games. If  
 8 there's a game out there, he'll play it. He likes to  
 9 spend time with family, and he loves his pets. He's  
 10 got three of his dogs at home now.  
 11 **Q. What are Tim's career aspirations?**  
 12 A. Tim's goals when he started high school as  
 13 a freshman were going to be to be an attorney, and he  
 14 got the opportunity to shadow one and decided that he  
 15 would change that to being a business major and getting  
 16 a bachelor's degree in business.  
 17 **Q. So that was his goal, to get a bachelor's**  
 18 **degree?**  
 19 A. That was his goal, yes.  
 20 **Q. And how would you describe Tim's academic**  
 21 **performance when he was in school?**  
 22 A. Below average to -- to very poor.  
 23 **Q. What types of areas did -- did Tim**  
 24 **struggle in?**  
 25 A. Specifically math was by far his hardest

2711

1 subject. English would be second right behind it.  
 2 **Q. When did he first start struggling in**  
 3 **school?**  
 4 A. He started struggling as early as the  
 5 fourth and fifth grades when we started seeing an  
 6 actual problem.  
 7 **Q. Can you please look at Exhibit 10189.**  
 8 MS. BEZOZA: And if I may approach to --  
 9 to give Your Honor and the witness a copy.  
 10 THE COURT: Yes. Thank you.  
 11 **Q. (BY MS. BEZOZA) So does this appear to be**  
 12 **Timothy's report card from second, third and fourth**  
 13 **grades?**  
 14 A. Yes, it does.  
 15 **Q. And can you tell me what Tim's grades in**  
 16 **math were for these years.**  
 17 A. They were satisfactory, unsatisfactory;  
 18 and for a letter grade, it was a D.  
 19 **Q. Now, if you'll turn to the next page, or**  
 20 **you can look up at the screen, can you tell us his math**  
 21 **grades in fifth grade, please.**  
 22 A. Once again, they're below average. C, D  
 23 minus, and a C minus.  
 24 **Q. Now, if you'd turn to the next page, let's**  
 25 **look at sixth grade, please. What were Tim's grades in**

2712

1 **math in sixth grade?**  
 2 A. D, D, D. Third quarter an F, and fourth  
 3 quarter a D. He barely passed both semesters with D's.  
 4 **Q. Now, this is seventh grade. At least the**  
 5 **record that the district had of seventh grade. I'll**  
 6 **represent for the record that it's incomplete. What**  
 7 **were his grades in seventh grade?**  
 8 A. C minus, F and D.  
 9 **Q. And, again, that's in math?**  
 10 A. Yes.  
 11 **Q. In eighth grade, what were his grades in**  
 12 **math?**  
 13 A. C, F, D, C and B for the fourth quarter  
 14 and B for the semester grade.  
 15 MS. BEZOZA: May I approach, Your Honor,  
 16 please?  
 17 THE COURT: Yes.  
 18 **Q. (BY MS. BEZOZA) Mr. Conboy, you've been**  
 19 **given Exhibit 10191, which has been admitted into**  
 20 **evidence, and it's a series of CSAP scores for Timothy**  
 21 **from grades 5 to 10. Now I'm showing you**  
 22 **Exhibit 10424. Can you tell me whether the chart on**  
 23 **the screen appears to be a reflection of the scores in**  
 24 **the CSAP reports that you have?**  
 25 A. Yes. It's a very clear reflection of --

2713

1 of the reports.  
 2 **Q. And can you tell me what Tim's CSAP scores**  
 3 **in writing were in grades 5 to 10.**  
 4 A. Only partially proficient completely  
 5 throughout all five grades.  
 6 **Q. I'm sorry. That's grades 6 to 10. I**  
 7 **believe he didn't take writing in fifth grade.**  
 8 A. That's correct.  
 9 **Q. And his math scores, please, from grades 5**  
 10 **to 10.**  
 11 A. He was only partially proficient the first  
 12 three grades, fifth, sixth and seventh; and completely  
 13 unsatisfactory the last three grades of 8, 9 and 10.  
 14 MS. BEZOZA: And, Your Honor, I'll move to  
 15 admit this exhibit. I believe this came after the  
 16 other exhibits that have been admitted. It's  
 17 No. 10424.  
 18 THE COURT: Any objection?  
 19 MR. FERRO: No objection, Your Honor. Does  
 20 it need to be marked as confidential?  
 21 MS. BEZOZA: No. I believe Mr. Conboy is  
 22 here.  
 23 THE WITNESS: I'm fine.  
 24 THE COURT: So 10424 will be admitted.  
 25 MS. BEZOZA: Your Honor, may I approach

2714

1 with a copy of this?  
 2 THE COURT: Yes.  
 3 **Q. (BY MS. BEZOZA) Now, Mr. Conboy, can you**  
 4 **please look at Exhibit 10190, and what is this**  
 5 **document?**  
 6 A. This is Timothy's final high school report  
 7 card.  
 8 **Q. And can you tell us what Timothy's GPA was**  
 9 **when he graduated from Pueblo West High School?**  
 10 A. It's a 2.8, almost the minimum that you  
 11 can graduate with.  
 12 **Q. What, if any, educational supports did Tim**  
 13 **receive in school to address his academic difficulties?**  
 14 A. Very little. There was a little bit of  
 15 tutoring by parents after school. For those parents  
 16 that didn't work, they were able to volunteer; and as  
 17 far as his English, he also had to take a  
 18 correspondence course to complete his junior English  
 19 his senior year.  
 20 **Q. So the tutoring after school was not by a**  
 21 **teacher, it was by a parent?**  
 22 A. It was by a -- a parent that the school  
 23 deemed qualified.  
 24 **Q. And did Timothy ever receive tutoring in**  
 25 **math?**

2715

1 A. Like I said, the tutoring in math was very  
 2 infrequent and not really directed to a specific class.  
 3 It was usually one parent with about ten or 15 students  
 4 after school.  
 5 **Q. And did Tim ever go to summer school?**  
 6 A. The opportunity for summer school was  
 7 provided; however, we would have had to have paid as  
 8 parents because we didn't fall into any special needs  
 9 group, and at that time, we could not afford to send  
 10 Timothy to summer school.  
 11 **Q. So Timothy never attended summer school?**  
 12 A. No. No, ma'am, he did not.  
 13 **Q. What, if anything, do you believe would**  
 14 **have helped him improve his academic performance in**  
 15 **school?**  
 16 A. Not necessarily being identified as a  
 17 special ed student, but possibly smaller classrooms,  
 18 more individualized lesson plans directed more toward,  
 19 there again, the smaller classroom. 30 students is a  
 20 lot of students for a teacher to teach, no matter what  
 21 class it is.  
 22 **Q. Can you now look at Exhibit 10192, which**  
 23 **is an ACT report for Timothy.**  
 24 MS. BEZOZA: Your Honor, may I approach,  
 25 please?

2716

1 THE COURT: Yes.  
 2 **Q. (BY MS. BEZOZA) Can you tell us what**  
 3 **Tim's -- let me make it a little bigger -- what Tim's**  
 4 **scores were on the ACT?**  
 5 A. In English, it was 17; mathematics was 14;  
 6 reading, 18; and science, 18.  
 7 **Q. And what was his composite score?**  
 8 A. The total composite score was 17.  
 9 **Q. And can you look at the top right-hand**  
 10 **corner where it asks the students to fill out their**  
 11 **college plans. What did Timothy indicate were his**  
 12 **plans?**  
 13 A. He wanted to major in management or  
 14 services and receive a bachelor's degree in that forum.  
 15 **Q. And is that consistent with your**  
 16 **understanding of Timothy's plans?**  
 17 A. Yes, it is.  
 18 **Q. Is Tim in college now?**  
 19 A. No. He's currently not in college.  
 20 **Q. Has he ever attended college?**  
 21 A. He attempted the year that he got out of  
 22 high school. The following fall, he enrolled, and it  
 23 was a program for online because he was so computer  
 24 oriented at that point, and he still was not able to  
 25 complete the classes satisfactorily that he had

2717

1 enrolled in, and they were basic entry-level classes.  
 2 **Q. So how long did he attend classes online?**  
 3 A. One semester.  
 4 **Q. And did he pass those classes?**  
 5 A. No. He was unsuccessful at any of the  
 6 classes.  
 7 **Q. And so then what happened?**  
 8 A. He kind of fell out and went back into the  
 9 workforce. There was a period of time where, after  
 10 about three or four jobs, he had about a year off, and  
 11 during that year, he basically lived off of mom and dad  
 12 and friends and focused on a computer game.  
 13 **Q. And so has Timothy ever returned to**  
 14 **college since that one semester?**  
 15 A. We have finally gotten him to start  
 16 looking at college again. It looks like maybe this  
 17 fall or next spring we'll be able to get him back into  
 18 some type of program, but it's going to take a lot of  
 19 intensive follow-up, and we may have to hire a  
 20 college-level tutor because he don't have the study  
 21 skills.  
 22 **Q. Is he currently enrolled in any kind of**  
 23 **program?**  
 24 A. At this moment, no.  
 25 **Q. And you mentioned that Tim has worked, has**

2718

1 **had some jobs since graduating high school. Can you**  
 2 **explain his work experience.**  
 3 A. His work experience is mainly in retail.  
 4 He has had -- keep in mind he's only been out of high  
 5 school for two years. He has had five different jobs,  
 6 all in retail, and he's just not able to maintain a  
 7 job. He -- he's not been ready to go out into the  
 8 workforce.  
 9 **Q. What's the average amount of time he's**  
 10 **spent at one of those jobs?**  
 11 A. I think the longest job he's had was about  
 12 three months. Maybe four.  
 13 **Q. And is he currently working now?**  
 14 A. He is currently working a job now at a  
 15 convenience store, of which I was friends with the  
 16 manager, and I basically got him the job, and I think  
 17 the only reason why he tries to keep it is because it's  
 18 for me. I get at least two or three phone calls asking  
 19 for advice.  
 20 **Q. From his employer?**  
 21 A. From him.  
 22 **Q. Oh, from him.**  
 23 A. About what to do.  
 24 **Q. Let's shift gears now and talk about**  
 25 **Keila. How old is she?**

2719

1 A. Keila is 19.  
 2 **Q. And what does Keila like to do? What are**  
 3 **her hobbies?**  
 4 A. Keila loves music. For someone that  
 5 stands 3 foot tall, to see her dance, it's just  
 6 amazing, but she'll get out on a dance floor with  
 7 anybody, and if she's in too much pain, she'll -- she's  
 8 not afraid to take her scooter out there onto the dance  
 9 floor.  
 10 **Q. You mentioned she's 3 foot tall. Can you**  
 11 **explain what Keila's disability is.**  
 12 A. Keila has diastrophic dysplasia and spinal  
 13 kyphosis. She's not wheelchair bound, but if it  
 14 involves going any distance walking or on her feet for  
 15 more than maybe 5, 10 minutes, she has to be able to  
 16 sit down; therefore, she has a scooter that she uses  
 17 probably 95 percent of the time.  
 18 **Q. And what are Keila's other limitations as**  
 19 **a result of her disability?**  
 20 A. Well, of course anyone with diastrophic  
 21 dysplasia, being a dwarf, their arms are shorter  
 22 proportionately to their body. So they have an  
 23 inability to reach things at a distance, and it makes  
 24 her very unique in a lot of -- lot of ways. It means  
 25 that she really has to have someone help her in any of

2720

1 the public bathrooms, school bathrooms, et cetera,  
 2 because she can't reach anything. She can't reach a  
 3 door handle to open a door. If the door opens toward  
 4 her scooter, she does not have the strength in her  
 5 fingertips to grasp and hold onto it as she backs the  
 6 scooter up to open the door.  
 7 **Q. Can you describe the physical**  
 8 **accessibility of Pueblo West High School.**  
 9 A. Pueblo West High School has four  
 10 handicapped-designated doors. Two of those doors are  
 11 functional; however, the only doors that are fully  
 12 functional and that do not need modification for  
 13 wheelchair or scooter would be the main entryway to the  
 14 school itself.  
 15 The handicapped door to the room where she  
 16 kept her scooter at night -- because she always had a  
 17 ride to and from school, and in the house she was able  
 18 to get around, so we didn't need the scooter, so she  
 19 left it at school; and if she were outside, to get into  
 20 that room, you walk up the sidewalk, which is attached  
 21 to the building, and when you push on the handicapped  
 22 button, the door opens toward the direction of travel  
 23 on the sidewalk, so you either had to push the button  
 24 and get past the door or get past the door and then try  
 25 and reach and push the button because the door opened

2721

1 the wrong way, and the sidewalk wasn't wide enough to  
 2 push the button and go out and turn around and come  
 3 back in.  
 4 **Q. So did Keila have difficulty getting in**  
 5 **that door?**  
 6 A. It's difficult for somebody that don't  
 7 have a handicap to get in that door.  
 8 **Q. Can you tell us about any other issues**  
 9 **with accessibility that Keila encountered at Pueblo**  
 10 **West High School?**  
 11 A. Well, anytime you had -- a lot of the  
 12 issues were -- like I said, she liked choir, liked  
 13 singing, liked to dance; however, the choir room was up  
 14 on the second level. There was one elevator, I would  
 15 say almost the size of this desk area right here, for  
 16 her to go up to the second floor. It was the only one,  
 17 and it was located by the office.  
 18 When it was operable, she could get to the  
 19 second floor very easily. When it wasn't, it took four  
 20 guys to get her up there, and usually other students  
 21 were helping carry her scooter to the second floor.  
 22 **Q. How often was the elevator not operable?**  
 23 A. As frequently as once or twice a week.  
 24 Once on the second floor, to go to any classroom, they  
 25 had heavy doors with the lever-type latch, but she

2722

1 would need someone to assist her to open that door, so  
 2 she was always dependent on someone to help her.  
 3 When she was going to her music  
 4 department, of which she went all four years, she not  
 5 only had the doors to navigate, but she also had to go  
 6 through the -- I call them boys, if you will, phys ed  
 7 classrooms. She had the weight room and the wrestling  
 8 room, which are two separate rooms, so a total of three  
 9 doors to get to where she needed to go; and in between  
 10 each door is a heavy, thick mat, and if anyone has had  
 11 experience with a scooter, it's very hard when you get  
 12 into a thick, heavy mat and the tire starts sinking in,  
 13 it takes a lot more to get it across those rooms. Not  
 14 only that, most of the time those doors were kept  
 15 locked.  
 16 **Q. So how would she get in if the door was**  
 17 **locked?**  
 18 A. Sure. There was a teacher's office right  
 19 outside that door, the first door that she needed to go  
 20 through. If the teacher was there, it was no problem,  
 21 and he was there probably 75 percent of the time. The  
 22 other 25 percent of the time, whoever might have been  
 23 walking with Keila, if anybody, would have to go down  
 24 the stairs, go back to the main stairs to the building,  
 25 which is very near the elevator, go all the way down,

2723

1 get some -- somebody, some staff member, of course,  
 2 with a key to go back up and unlock the door; and so  
 3 oftentimes she was late to choir because she had to  
 4 navigate not only the wrestling room and the weight  
 5 room and the doors but all the boys playing weights and  
 6 wrestling in the -- in the classes as they were going  
 7 on.  
 8 **Q. How did the other students get into the**  
 9 **choir room?**  
 10 A. They could go up any of two flights of  
 11 stairs from downstairs; it went directly into the  
 12 classroom.  
 13 MS. BEZOZA: May I approach, Your Honor,  
 14 please.  
 15 THE COURT: Yes.  
 16 **Q. (BY MS. BEZOZA) Mr. Conboy, I've given**  
 17 **you a series of exhibits, Exhibits 10413 through 10420.**  
 18 **Can you tell me what these are.**  
 19 A. These are pictures that Keila and I took  
 20 at Pueblo West High School roughly a month ago or so  
 21 just showing some of her -- some of the accessibility  
 22 issues that she faced every day and in between every  
 23 class.  
 24 **Q. Can you tell us what the first photo,**  
 25 **Exhibit 10418, depicts.**

2724

1 A. Yes. This -- this is the fire doors in  
 2 the main hallway of Pueblo West High School and she is  
 3 not even able to navigate close enough to push that  
 4 bar; if she were able to get close enough to push that  
 5 bar, she could actually open that door by pushing the  
 6 door open with the scooter, but she can't get close  
 7 enough to even push that bar.  
 8 **Q. And are those --**  
 9 A. They're very heavy doors, and if --  
 10 without her scooter, she would not be able to  
 11 physically push those doors open herself.  
 12 **Q. Are those doors sometimes kept closed**  
 13 **during the school day?**  
 14 A. They are. Depending on which wing of the  
 15 building you're in and what time, many of them are  
 16 closed.  
 17 **Q. Can you tell us what this photo,**  
 18 **Exhibit 10417, depicts?**  
 19 A. This is actually the door handle that I  
 20 was telling you that she can't grip and back up. All  
 21 of these classroom doors open out into the hallway.  
 22 **Q. And what's --**  
 23 A. We are -- we are actually in the hallway,  
 24 and Keila is trying to reach that door handle, and that  
 25 is the door handle to the special education department.

2725

1 **Q. And that's where she kept her scooter?**  
 2 A. And that's where her scooter was stored  
 3 every evening.  
 4 **Q. Can you look at Exhibit 10416. Can you**  
 5 **tell us what this depicts.**  
 6 A. This is a picture of Keila attempting to  
 7 wash her hands in the lower-level bathroom of Pueblo  
 8 West High School and all of the bathrooms in that  
 9 school are set up the same way.  
 10 **Q. This one is a little bit dark, but**  
 11 **Exhibit 10415, can you tell us what this shows.**  
 12 A. This -- this actually goes back to the  
 13 choir classroom and the department that was most loved  
 14 by Keila, trying to get through the -- of course, the  
 15 weight room was first, and the door you see in the far  
 16 back, back there -- it looks like a milk crate kind of  
 17 sitting on the floor in the entryway -- goes into the  
 18 wrestling room, and this was her only actual in -- into  
 19 and out of that classroom she could go.  
 20 **Q. Exhibit 10414, what are we looking at**  
 21 **here?**  
 22 A. We're looking at a situation that -- where  
 23 Keila cannot get into that upper- -- upper-level floor.  
 24 That is where the seniors have their lunch. So when  
 25 Keila was a senior, she was quite segregated from the

2726

1 rest of her class. The only way that she could get up  
 2 there is if someone would carry her up there and carry  
 3 her back down after lunch.  
 4 **Q. So was she typically able to eat lunch**  
 5 **with her peers?**  
 6 A. I don't believe she ate lunch with any of  
 7 her senior class members unless they would sit at the  
 8 table down with the underclassmen; and we all know, in  
 9 high school, that don't happen unless you're forced to.  
 10 **Q. And can you tell us about Exhibit 10420.**  
 11 A. This is one of the four modular units that  
 12 Pueblo West High School has. They have eight  
 13 classrooms in modulars, all of them set up identical.  
 14 In order for Keila to enter those doors, she would have  
 15 to actually -- they open out and they come within  
 16 probably 2 foot of this rail, as you see the handrail  
 17 that goes up. Those are stairs. The ramp actually  
 18 comes up from the right-hand side. She has to pull  
 19 into that corner. Someone has to open that door out  
 20 and hold it almost completely open for her to get  
 21 turned around and back into it.  
 22 **Q. And how often did Keila have classes in**  
 23 **the modular classrooms?**  
 24 A. At least once a day.  
 25 MS. BEZOZA: Your Honor, I'd like to move

2727

1 for the admission of Exhibits 10414, 10415, 10416,  
 2 10417, 10418 and 10420.  
 3 THE COURT: Any objection?  
 4 MR. FERRO: None, Your Honor.  
 5 THE COURT: All right. Those exhibits  
 6 will be admitted.  
 7 MS. BEZOZA: Thank you.  
 8 **Q. (BY MS. BEZOZA) Did you or Keila ever**  
 9 **bring the accessibility issues at Pueblo West to the**  
 10 **attention of the administration?**  
 11 A. We did, on -- on a couple different  
 12 occasions, talk to the administration of Pueblo West  
 13 High School, and they were very receptive in the fact  
 14 that they changed everything that they could afford to  
 15 change that was -- they actually had some maintenance  
 16 budget that they could do, but there's a lot of things  
 17 that are more costly than what you can get on a  
 18 maintenance budget.  
 19 **Q. So they weren't able to -- to fix**  
 20 **everything that you brought to their attention?**  
 21 A. Exactly. They weren't able to fix -- I  
 22 would probably say 75 percent of what needed fixed is  
 23 by far more than what the maintenance budget would  
 24 cover, but they fixed a lot of little things that made  
 25 it a little easier for Keila

2728

1 **Q. And what are your observations about how**  
 2 **the lack of physical accessibility of the school**  
 3 **building affected Keila?**  
 4 A. Well, just like eating lunch with your  
 5 peers. If you can't eat lunch with your peers, it's  
 6 social; and by Keila having problems getting into the  
 7 building, getting around the building, getting into and  
 8 out of classrooms, it was very much isolating to her  
 9 because she would either arrive late to class because  
 10 of the navigation problems or she would be completely  
 11 isolated through the hall because they let her out five  
 12 minutes early to go to -- from one class to another.  
 13 **Q. Why did they let her out five minutes**  
 14 **early?**  
 15 A. Imagine a hallway -- an average school  
 16 hallway with 1500 kids that stand 6 foot and you've got  
 17 somebody that's 3 foot on a scooter that's about 4 foot  
 18 high trying to get through that maze of people. It was  
 19 just -- they considered it safer for not only Keila but  
 20 at the same time safer for the other students, I think.  
 21 **Q. Now, what about the instructional time she**  
 22 **missed by leaving every class five minutes early?**  
 23 **Did -- did she get to make up that time?**  
 24 A. She never made up that time, and that five  
 25 minutes equals to at least 2 to 2-1/2 classes a week

2729

1 times the total number of -- of weeks that are in a  
 2 school year. So she lost, I think, some very important  
 3 instructional time because the last five minutes, as we  
 4 all know, are when the teachers are finalizing the  
 5 homework and telling you what you got to do for the  
 6 next day, so she pretty much lost that and had to pick  
 7 that up from friends that we feel very fortunate told  
 8 her accurate information.  
 9 **Q. When did Keila graduate from high school?**  
 10 A. Keila actually walked across the stage two  
 11 years ago.  
 12 **Q. And what has she been doing since**  
 13 **graduation?**  
 14 A. She has had several doctor's appointments.  
 15 Her aspiration is to end up back in California to go to  
 16 college at the university out there; but in the  
 17 meantime, she has enrolled in Pueblo Community College,  
 18 and I do believe the last she told me she had one  
 19 remedial class that she had to take before she could  
 20 actually do any major core classes at PCC.  
 21 **Q. So has she taken any college classes yet**  
 22 **since she graduated from high school?**  
 23 A. Not at this point, and even at mid-winter,  
 24 she may be out for another semester because we're  
 25 looking at another surgery.

2730

1 **Q. And has Keila held any jobs since**  
 2 **graduation from high school?**  
 3 A. The only type work that Keila can actually  
 4 do is a job that is sit-down, of course, because of her  
 5 physical size, and those jobs are very hard. So, no,  
 6 she's not been able to find employment.  
 7 **Q. And what are her career aspirations?**  
 8 A. Her career aspirations is to go to a four-  
 9 to six-year program in California after completing two  
 10 years here in the state, in Colorado, to become a  
 11 clinical psychologist.  
 12 **Q. Now let's talk about Tabitha. How old is**  
 13 **Tabitha?**  
 14 A. Tabitha is 18.  
 15 **Q. What does she like to do?**  
 16 A. She loves to get out and circle track race  
 17 in a modified car. She doesn't bring it to the  
 18 streets, thank goodness. No tickets yet. And she  
 19 loves her animals. She's one of those kids that you  
 20 got to check before she comes in the door because she  
 21 may have a pet in her pocket. She's just really a  
 22 well-rounded girl with the aspirations of being a  
 23 pediatrician here at Denver Children's Hospital. She's  
 24 got a long road to go.  
 25 **Q. How would you describe Tabitha's academic**

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1 **performance in school?**  
 2 A. Her academic performance personally or on  
 3 paper? Personally she did absolutely the best she  
 4 could do under the circumstances. On paper, she was  
 5 probably just average.  
 6 **Q. What types of things were -- were**  
 7 **difficult for Tabitha?**  
 8 A. Reading was a major concern. Many times  
 9 at night she would sit up and study until 2 o'clock,  
 10 1:30, 2 o'clock in the morning, and she would have told  
 11 me to wake her up early in the morning, that she had to  
 12 get ready for a test and that -- when she said wake her  
 13 up early, that meant as early as 4:30, 5 o'clock so she  
 14 could study and be ready for a test before 8 o'clock in  
 15 the morning.  
 16 **Q. What -- what's your understanding of her**  
 17 **difficulties in reading?**  
 18 A. There were -- some of her reading was --  
 19 was recognized as problematic when she was in school,  
 20 and I and my wife have both sat and worked with her on  
 21 many occasions at home when she was younger, but not  
 22 being a specialist, not knowing how to teach it, it  
 23 became absolutely frustrating and we had no one in the  
 24 school to go to because once it got so far, there was  
 25 like no reading teacher --

2732

1 **Q. When did you first --**  
 2 A. -- that she could go to.  
 3 **Q. When did you first notice issues with**  
 4 **Tabitha's reading skills?**  
 5 A. As early as like the fourth -- third,  
 6 fourth grade.  
 7 **Q. And did Tabitha receive any support in**  
 8 **school for her reading difficulties?**  
 9 A. I believe at one point in time there was a  
 10 little bit or -- or at least I remember seeing a paper  
 11 that showed some goals.  
 12 **Q. And did Tabitha ever receive assistance**  
 13 **before or after school with reading or any academic**  
 14 **subjects?**  
 15 A. No. They did not have any type of reading  
 16 tutor or anything like that for after school, but  
 17 they -- there again, they offered the math tutoring by  
 18 a parent, a layperson. The English was very, very  
 19 little. I think they provided it once every two weeks  
 20 for an hour after school.  
 21 **Q. And did Tabitha --**  
 22 A. It was very low.  
 23 **Q. Excuse me. Did Tabitha ever go to summer**  
 24 **school?**  
 25 A. Tabitha was not designated as a summer

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1 school-directed student by the school. So, no, she did  
 2 not ever go to summer school. If she had, we would  
 3 have had to pay for it, and at that point in time, we  
 4 definitely did not have the money to send her to  
 5 school.  
 6 **Q. Did Tabitha ever have an individual**  
 7 **literacy plan, an ILP?**  
 8 A. I -- I believe that's what the paper was  
 9 that was sent home with a couple goals. I only  
 10 remember seeing it maybe once. Twice, maybe.  
 11 **Q. So you don't remember seeing it every**  
 12 **school year?**  
 13 A. Not every school year, no.  
 14 MS. BEZOZA: May I approach, Your Honor,  
 15 please?  
 16 THE COURT: Yes.  
 17 **Q. (BY MS. BEZOZA) Mr. Conboy, can you look**  
 18 **at Exhibit 10197, which has been admitted into**  
 19 **evidence. Does this look like the literacy plan that**  
 20 **you recall seeing?**  
 21 A. Yes, I do believe so.  
 22 **Q. And can you look at Conboy 297, please.**  
 23 **It's the number on the bottom of the page, bottom**  
 24 **right. What year is this from?**  
 25 A. This is from 2004.

2734

1 **Q. And what grade was Tabitha in, then?**  
 2 A. It would be Tabitha's fifth-grade year.  
 3 **Q. Can you read the first goal, goal No. 1,**  
 4 **please.**  
 5 A. "Tabitha will increase comprehension by  
 6 recalling important facts or details from a passage."  
 7 **Q. And what was the teacher's comments?**  
 8 A. "Tabitha is making improvements, but she  
 9 still needs prompting and cues to help recall facts and  
 10 details. She did not score 75 percent or better on 2  
 11 out of 5 ITTs, which was the proficiency indicator."  
 12 **Q. And can you read the second goal for us,**  
 13 **please.**  
 14 A. "Tabitha will make inferences and draw  
 15 conclusions about a text."  
 16 **Q. And what were the comments with respect to**  
 17 **that goal?**  
 18 A. "Answering implicit questions is still  
 19 difficult for Tabitha. On the fifth grade level QRI,  
 20 she did score a 75 percent on implicit questions.  
 21 However, on the sixth grade level (which is where she  
 22 should be in the spring) she was at the" --  
 23 **Q. Frustrational?**  
 24 A. -- "frustrational level. Therefore, she  
 25 did not meet the proficiency indicator."

2735

1 **Q. In your opinion, did the literacy plan for**  
 2 **Tabitha address her reading difficulties?**  
 3 A. Not even close.  
 4 **Q. Who is the teacher that signed the plan at**  
 5 **the bottom? Do you recognize that name?**  
 6 A. The last name is Luna. It was her  
 7 fifth-grade teacher, classroom teacher.  
 8 **Q. And to your knowledge, was that teacher a**  
 9 **literacy specialist?**  
 10 A. No.  
 11 **Q. Did Tabitha's reading issues improve as**  
 12 **she went through school?**  
 13 A. Actually, I don't believe they have.  
 14 **Q. Does she still struggle to this day with**  
 15 **reading?**  
 16 A. She struggles all the time. Anything that  
 17 she reads, she struggles to comprehend. As late as her  
 18 senior finals last year, she said, "I have to read  
 19 something five or six times or have it read to me to  
 20 understand it."  
 21 **Q. This is Exhibit 10195, Tabitha's ACT**  
 22 **scores. Can you read her scores, please, on the ACT.**  
 23 MS. BEZOZA: If I may approach, Your  
 24 Honor.  
 25 **Q. (BY MS. BEZOZA) Can you see it or would**

2736

1 **you like a copy?**  
 2 MS. BEZOZA: May I approach, Your Honor?  
 3 THE COURT: Yes.  
 4 **Q. (BY MS. BEZOZA) Can you tell us Tabitha's**  
 5 **ACT scores, please.**  
 6 A. English is 10; mathematics, 16; reading  
 7 15; and science, 16.  
 8 **Q. And what was her composite score?**  
 9 A. The composite score is 14.  
 10 **Q. And to the right of the scores, there's a**  
 11 **box called "College Readiness." Can you tell us what**  
 12 **that box indicates about Tabitha's readiness for**  
 13 **first-year college courses.**  
 14 A. Well, I'll tell you what it told me is  
 15 that she needs six remedial classes as a graduate of  
 16 high school.  
 17 **Q. And is that unsatisfactory?**  
 18 A. So she is unsatisfactory, unfit for  
 19 entry-level college work.  
 20 **Q. And you said she needs six remedial**  
 21 **classes. How do you know that?**  
 22 A. Because she took the Accuplacer under  
 23 direction of PCC, and they will not let her go into any  
 24 core requirements until all six of those remedial  
 25 classes are met.

2737

1 **Q. And does Tabitha intend to -- plan to**  
 2 **attend college?**  
 3 A. Absolutely. She's enrolled for this fall  
 4 semester starting in about two weeks. She plans to do  
 5 a minimum of three of the remedial classes each  
 6 semester.  
 7 **Q. What are Tabitha's career aspirations?**  
 8 A. Tabitha will someday be a pediatrician at  
 9 Pueblo -- or at the Children's Hospital here in Denver,  
 10 Colorado.  
 11 **Q. Are you familiar with the instructional**  
 12 **materials used at the schools that your children have**  
 13 **attended?**  
 14 A. Yes, I am.  
 15 **Q. And how would you describe those**  
 16 **instructional materials?**  
 17 A. The quality is fair. The quantity is far  
 18 lacking, and I say that because in the science  
 19 department, biology books, they had 32 books to serve  
 20 700 enrolled students in the program.  
 21 **Q. And have your children been affected at**  
 22 **all by lack of sufficient textbooks?**  
 23 A. On many -- many times when Timothy was in  
 24 biology, the teacher would make assignments that needed  
 25 to be done at home, or any studies that needed to be

2738

1 done, the students were afforded the opportunity to go  
 2 to the classroom after school and check out a textbook,  
 3 but the book had to be returned before the beginning of  
 4 classes the next day. That's well and good if you're a  
 5 student that walks to school. Timothy rode the bus.  
 6 They did not allow time to go check out a book after  
 7 school before the bus was leaving, so if he needed a  
 8 book, I or his mother had to take time off work to go  
 9 make sure that he was not left at the high school  
 10 because they did not run a second late bus or anything  
 11 like that for any stragglers or sports practices or  
 12 anything like that.  
 13 **Q. So you would have to pick him up at**  
 14 **school?**  
 15 A. Yes.  
 16 **Q. So that he could bring a textbook home?**  
 17 A. Yes.  
 18 **Q. And can you describe the health services**  
 19 **at Pueblo West High School.**  
 20 A. First of all, the school, to my knowledge,  
 21 has three nurses to service the entire district.  
 22 Timothy was on Adderall.  
 23 **Q. What is Adderall for?**  
 24 A. Adderall is a -- it's actually speed, but  
 25 it's given to attention deficit hyperactivity kids, and

2739

1 it does the reverse of what we think it should do. It  
 2 calms him down, allows him to think through and process  
 3 individual information versus having to have ten things  
 4 going on at one time, so therefore they're a lot more  
 5 mellow in their general demeanor and personality.  
 6 He was to be given that mid-school day,  
 7 which would be -- if you figure 8:00 to 3:00, roughly  
 8 11:30. Between 11:00 and noon, he should have had his  
 9 Adderall. He could not get that dose because there was  
 10 not any med-certified staff member there to administer  
 11 a narcotic.  
 12 **Q. So what -- so what did he do?**  
 13 A. We had it available at home so the minute  
 14 he got home he would be given his medication three  
 15 hours late.  
 16 **Q. Have you incurred any expenses with**  
 17 **respect to your children's public education?**  
 18 A. Many, many expenses that have been just --  
 19 I overlooked for a long time. The fact that I had to  
 20 buy biology books for public school. The kids came  
 21 home one year and said, "Hey, Dad, I want you to buy a  
 22 book." I looked at them. "I get extra credit if I  
 23 take it to school." So they were being given grades to  
 24 bring a textbook to school.  
 25 **Q. And what's your understanding of why the**

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1 **teachers were doing that?**  
 2 A. Lack of -- of books. Didn't have enough  
 3 books to supply to kids, and if kids needed it for  
 4 homework, there again, we were in the situation of  
 5 trying to check one out and get on the bus or miss the  
 6 bus and check a book out, you know, and the kids were  
 7 being given extra credit to bring in a textbook.  
 8 **Q. Did you have to pay any fees for the --**  
 9 **for your kids to participate in any activities?**  
 10 A. The fees associated with all three kids --  
 11 with Timothy, it was very little because he did not  
 12 actually participate in sports, but Keila participated  
 13 in choir all four years of her education, and we had to  
 14 buy a choir dress for her all four years. They were  
 15 roughly 100 to \$150 apiece, and Tabitha joined choir,  
 16 and we had to buy her two dresses because she was in  
 17 two different choirs, so consequently it doubled up.  
 18 Those costs were -- there again, the choir dresses are  
 19 about a hundred to 150, depending on the choir. Of  
 20 course, they want special shoes.  
 21 We had Tabitha in middle school  
 22 cheerleading her eighth-grade year, and in order to get  
 23 her cheerleading uniform, because cheerleading is not  
 24 considered a sport by, to my knowledge, any school  
 25 district in the state of Colorado, although it is a

2741

1 recognized CHSSA sport, we had to buy the uniforms and  
 2 supply transportation and everything else for her in  
 3 middle school.  
 4 The cost of just the uniform portion was  
 5 \$1500. That didn't include any transportation up here  
 6 to Denver when they had their competitions or to like  
 7 Raton, New Mexico, where they had training, the camps,  
 8 if you will.  
 9 **Q. So how would she get there?**  
 10 A. We would either pay another parent a  
 11 portion of the gas to get her there or we would have to  
 12 drive to those locations ourselves. Many times we  
 13 would, as families, carpool, if we could, just because  
 14 it saves money. Keeping in mind, when they went to  
 15 camp, they also had two to three nights in a motel,  
 16 which was purely out of pocket.  
 17 **Q. What are your greatest concerns about the**  
 18 **education your children have received at Pueblo 70**  
 19 **schools?**  
 20 A. Number one, they're not ready for college.  
 21 I've always thought that the number one goal of a high  
 22 school is to prepare a student to either go to college  
 23 or enter the workforce with very little or no problem.  
 24 Not one of my three can do that.  
 25 **Q. What do you hope -- I'm sorry. Was there**

2742

1 **something else you were going to say?**  
 2 A. I would hope that through this whole  
 3 process, the schools will eventually get funded  
 4 properly so they can fix the inadequacies and hire  
 5 adequately trained staff that can be able to deal with  
 6 individual students, if necessary; but right now, with  
 7 the lack of funds, teachers are multitasking. Teachers  
 8 are in teaching sports, and then they go in and teach  
 9 chemistry. They teach mathematics and then go coach  
 10 wrestling. They're being so multitasked that we need  
 11 to be able to hire adequate staff.  
 12 And remodel things we need to remodel to  
 13 make these schools 100 percent accessible. Not 50, not  
 14 10. A hundred.  
 15 And provide these kids an education that  
 16 can get them into college without remedial classes.  
 17 Give them life skills, if they don't want to go to  
 18 college, to get a job and hold it and succeed, and  
 19 we're not doing that right now.  
 20 MS. BEZOZA: Thank you, Mr. Conboy. I  
 21 have no more questions.  
 22 MS. BONO: I have no questions, Your  
 23 Honor.  
 24 THE COURT: Thank you. Cross-examination?  
 25 MR. FERRO: None, Your Honor. Thank you.

2743

1 THE COURT: Thank you, sir. You may step  
 2 down. Thank you.  
 3 MR. KAWANABE: Your Honor, the plaintiffs  
 4 call Cary Kennedy.  
 5 THE COURT: If you'd come forward here to  
 6 the witness stand.  
 7 \* \* \* \* \*  
 8 CARY KENNEDY,  
 9 having been first duly sworn to state the whole truth,  
 10 testified as follows:  
 11 THE COURT: Thank you. Please be seated,  
 12 and you can adjust that microphone; and then if you  
 13 would state your full name, and why don't you spell  
 14 both your first and last name for us.  
 15 THE WITNESS: Thank you. It's Cary  
 16 Kennedy. C-a-r-y, K-e-n-n-e-d-y.  
 17 THE COURT: Thank you.  
 18 DIRECT EXAMINATION  
 19 BY MR. KAWANABE:  
 20 Q. Good afternoon, Ms. Kennedy.  
 21 A. Good afternoon.  
 22 Q. Would you do me a favor and pull the  
 23 microphone a little closer? Thank you.  
 24 Ms. Kennedy, what is your current  
 25 position?

2744

1 A. I'm currently serving as the chief  
 2 financial officer for the City and County of Denver.  
 3 Q. And were you subpoenaed in this case to  
 4 testify today?  
 5 A. I was.  
 6 Q. Your testimony today is only your personal  
 7 opinion; is that correct?  
 8 A. That's correct. It doesn't represent the  
 9 official position of the City.  
 10 Q. You're not testifying as chief financial  
 11 officer of the City of Denver or on behalf of the City  
 12 and County of Denver; is that right?  
 13 A. That's correct.  
 14 Q. Okay. Ms. Kennedy, tell us about where  
 15 you grew up.  
 16 A. I grew up here in Denver and graduated  
 17 from Manual High School, Denver Public Schools.  
 18 Q. Tell us about your further education  
 19 background, please.  
 20 A. I received my undergraduate degree from  
 21 St. Lawrence University in New York, a master's in  
 22 public administration from Columbia University in New  
 23 York, and a law degree from the University of Denver.  
 24 Q. Ms. Kennedy, describe your work  
 25 experience, and, if you would, let's go in

2745

1 **chronological order. So after law school.**  
 2 A. Sure. I passed the bar in 1995 and went  
 3 to work for then Governor Roy Romer in the Office of  
 4 State Planning and Budgeting. I was a state budget  
 5 analyst. I left that position to be a budget analyst  
 6 for the Department of Health Care Policy and Financing,  
 7 working on children's health care. I left that  
 8 position and spent a year working on the Amendment 23  
 9 campaign. That was in 2000.  
 10 After that, I was hired by a nonprofit  
 11 called Educare Colorado and subsequently by the  
 12 Colorado Children's Campaign to continue to work on  
 13 state fiscal and budget issues related to funding  
 14 education and children's services.  
 15 I was then hired by House Speaker Andrew  
 16 Romanoff when he became the Speaker of the House. I  
 17 believe that was in 2004. I served with him until I  
 18 left that position to run for state treasurer. I was  
 19 elected Colorado state treasurer in 2006, began serving  
 20 my term in January of 2007, and served in that position  
 21 until January of 2011.  
 22 Q. Let me go back to a couple of things you  
 23 said. You started in the Governor's office after law  
 24 school; is that correct?  
 25 A. Yes.

2746

1 Q. During that time, did you deal with school  
 2 finance issues?  
 3 A. I did. I was hired in the Governor's  
 4 office in 1995 and the Taxpayer's Bill of Rights had  
 5 gone into effect in 1994, and so a lot of the work that  
 6 I did in that capacity was looking at TABOR's impact on  
 7 school finance.  
 8 Q. And you said you were the author and  
 9 co-proponent of Amendment 23; is that correct?  
 10 A. Yes.  
 11 Q. And did that concern school finance?  
 12 A. Yes, it did.  
 13 Q. Okay. We'll get to that shortly. You  
 14 also worked at the Colorado Children's Campaign and in  
 15 the Department of Health Care Policy for children's  
 16 basic health plan -- I hope I got that right -- two  
 17 different time periods. Were you dealing with  
 18 children's education issues in either of those jobs?  
 19 A. Yes, I was. Particularly at the Colorado  
 20 Children's Campaign, I was working on a proposal that  
 21 eventually became legislation that related to the local  
 22 tax structure or the local share of funding for K-12  
 23 education.  
 24 Q. And as policy director for House Speaker  
 25 Andrew Romanoff back in 2004/2005, or starting in that

2747

1 **time period, did you deal with school finance or**  
 2 **education issues?**  
 3 A. Yes. We -- I staffed the Speaker in the  
 4 development of what became Referendum C on the ballot,  
 5 which was largely intended to stabilize the state's  
 6 budget and funding for the School Finance Act.  
 7 **Q. And, finally, as -- was it during your**  
 8 **time as state treasurer -- well, let me back up a**  
 9 **little bit. As state treasurer, did you deal with**  
 10 **education or school finance issues? I lost state**  
 11 **treasurer.**  
 12 A. Yes, I did.  
 13 **Q. And tell me about that.**  
 14 A. Really two main areas: The first one was  
 15 the work that I had done at the Colorado Children's  
 16 Campaign on the local share, the local tax structure  
 17 for education was presented and adopted as legislation  
 18 while I was state treasurer. I worked on that piece of  
 19 legislation from its inception to its adoption and also  
 20 subsequently when it moved into the court system.  
 21 Secondly, while I was state treasurer, we  
 22 developed, again working with House Speaker Andrew  
 23 Romanoff, legislation called the Building Excellent  
 24 Schools Today legislation. It was a school capital  
 25 construction program that was administered -- we helped

2748

1 develop the legislation, and it was administered  
 2 through the treasury.  
 3 **Q. So while you were treasurer, you dealt**  
 4 **with the mill levy stabilization issue, as well as the**  
 5 **Building Excellent Schools Today program?**  
 6 A. Yes, that's correct; and let me be more  
 7 specific. The financing for the Building Excellent  
 8 Schools program is administered through the treasury.  
 9 **Q. Thank you, Ms. Kennedy.**  
 10 MR. KAWANABE: Your Honor, at this time,  
 11 we would offer Ms. Cary Kennedy as an expert in  
 12 Colorado school finance.  
 13 THE COURT: Any objection or voir dire?  
 14 MR. FERRO: No objection, Your Honor.  
 15 Thank you.  
 16 THE COURT: She'll be admitted as an  
 17 expert in that area.  
 18 **Q. (BY MR. KAWANABE) Ms. Kennedy, I'm going**  
 19 **to show you on the big screen -- so if you wouldn't**  
 20 **mind swiveling just a bit -- what's previously been**  
 21 **marked as Exhibit 10429. It's a demonstrative, and I**  
 22 **will shrink this. And to be clear, it is one page --**  
 23 **it's a multipage demonstrative exhibit. Have you seen**  
 24 **this document or graph before?**  
 25 A. Yes.

2749

1 **Q. And would you explain the state of**  
 2 **Colorado's school finance starting in the 1980s and**  
 3 **tell us what's happened since.**  
 4 A. Sure. So this chart is data from the  
 5 National Center of Education Statistics, and it shows  
 6 what Colorado spends per pupil normed to the national  
 7 average. So the zero line is the national average  
 8 per-pupil funding, and the red line is what Colorado  
 9 spends per student either below or above the national  
 10 average.  
 11 And so the history of school finance here,  
 12 just very briefly, as you can tell in the 1980s, we  
 13 were at the national average or -- or above the  
 14 national average by a couple hundred dollars per  
 15 student. The first real impact that started this  
 16 downward trend was the adoption of the Gallagher  
 17 amendment in 1982 passed by Colorado's voters. That  
 18 was an immediate reduction in residential property  
 19 taxes through an immediate reduction in the residential  
 20 assessment rate, the portion of the value of property  
 21 that is subject to tax; and it built in place a formula  
 22 that over time would continue to maintain a ratio  
 23 between residential and nonresidential property taxes.  
 24 That had the effect over time, as home values grew more  
 25 quickly than business values, reduced property taxes

2750

1 from residential properties.  
 2 Then, in 1988 was the adoption of the  
 3 first modern equalization School Finance Act where the  
 4 state started to take a more aggressive role in trying  
 5 to accomplish equity throughout the state in the  
 6 distribution of school funding.  
 7 1992 is the adoption of the Taxpayer's  
 8 Bill of Rights by Colorado's voters, and the TABOR  
 9 amendment reduced the amount of funding that otherwise  
 10 would have been available from the state to support  
 11 public education and from local school districts, the  
 12 local share. So it hit both sides of the equation, and  
 13 as you can see, we fell precipitously from there  
 14 relative to what other states are spending in their  
 15 education systems.  
 16 **Q. Thank you, Ms. Kennedy. So in the early**  
 17 **1980s, Colorado was actually above the national average**  
 18 **in per-pupil funding; is that right?**  
 19 A. That is correct, by as much as \$202 per  
 20 student.  
 21 **Q. And let's fast-forward to 2008. How much**  
 22 **are we behind the national average per pupil?**  
 23 A. \$1,809 per student below the national  
 24 average is the most recent data that we have available  
 25 from NCS.

2751

1 **Q. And what is NCS?**  
 2 A. The National Center for Education  
 3 Statistics. It's part of the Department of Education.  
 4 They've been gathering this data for decades.  
 5 **Q. And are we able, at least at this point in**  
 6 **2011, to update this chart through 2011? And if not,**  
 7 **why not?**  
 8 A. We are not. I believe they put together  
 9 estimates, but we don't have good audited data that's  
 10 published.  
 11 **Q. It's about three years behind; is that**  
 12 **correct?**  
 13 A. That's correct.  
 14 **Q. Since 2008, do you know what Colorado has**  
 15 **done with regard to public education funding in the**  
 16 **state?**  
 17 A. So we've made significant cuts in  
 18 education funding since 2008, but how it plays out on  
 19 this chart will depend on what other states have done,  
 20 whether we've cut more or less than they have.  
 21 **Q. Right. Thank you, Ms. Kennedy.**  
 22 **You mentioned "local share," and would you**  
 23 **please define for us the difference between local share**  
 24 **and state share and generally describe how local share**  
 25 **has been affected over the last few decades.**

2752

1 A. So schools get their money primarily from  
 2 two sources: local, the local share, which is  
 3 primarily local property taxes, although there are  
 4 other sources of revenue that are collected locally  
 5 that are much smaller; and from the state. And the  
 6 state generally would back into how much it would  
 7 provide after it takes a look at how much a district is  
 8 able to raise locally, and historically local school  
 9 districts had a good deal of authority over how much  
 10 they could raise for their own school district. As we  
 11 have evolved and we've attempted to accomplish more  
 12 equity across districts and across the state, the state  
 13 has played a much larger role.  
 14 Simultaneously, the capacity of local  
 15 school districts across the state to raise local  
 16 funding for their schools has been diminished by the  
 17 passage of both the Gallagher amendment in 1982 and the  
 18 TABOR amendment in 1992; and the state, throughout this  
 19 entire time frame, has needed to come up with state  
 20 resources in essence to backfill the loss of capacity  
 21 to generate local tax dollars to support schools.  
 22 So if you go back to the '80s, where we  
 23 were above the national average in per-pupil funding,  
 24 more than 60 percent -- and I want to say it was about  
 25 65 percent -- of every education dollar was raised

2753

1 locally. As time has moved on, because of the impact  
 2 of the Gallagher amendment reducing the portion of the  
 3 value of residential properties that are subject to  
 4 taxation and layering on top of that the TABOR  
 5 amendment which has also reduced local property tax  
 6 rates, and I know we're going to talk about how, that  
 7 has -- the local share has fallen from being roughly  
 8 60, 65 percent of total education funding back in  
 9 the '80s to -- to -- to today dropping to -- I believe  
 10 it's around 35 percent.  
 11 **Q. So our local communities today, are they**  
 12 **able to raise as much money or as much of a portion of**  
 13 **the money for public schools as they were back in the**  
 14 **1980s?**  
 15 A. No. Despite tremendous growth in property  
 16 values over that period of time, the residential  
 17 assessment rate, the portion of the value of property  
 18 that is taxable, has been cut by 60 percent, and the  
 19 tax rate for schools imposed by school districts on  
 20 average -- again, it varies by district, but on  
 21 average, it's dropped by about half.  
 22 **Q. Ms. Kennedy, we will come back to taxes**  
 23 **and mill levies shortly, okay? But let's switch to**  
 24 **Amendment 23. You were -- fair to say you were**  
 25 **involved with Amendment 23?**

2754

1 A. Yes. I was part of the original group of  
 2 people that submitted language to the ballot. I also  
 3 drafted the measure.  
 4 **Q. And were you the spokesperson for**  
 5 **Amendment 23 when the voters were considering it?**  
 6 A. I was. Once it was certified to the  
 7 ballot, I served as the spokesperson throughout the  
 8 campaign.  
 9 **Q. And Amendment 23 passed. It's a**  
 10 **constitutional amendment; is that correct?**  
 11 A. Yes. In 2000, it was approved by the  
 12 voters.  
 13 **Q. So what is Amendment 23? And perhaps**  
 14 **break it out in parts for us.**  
 15 A. So Amendment 23 was designed to fix that  
 16 (indicating).  
 17 **Q. And since we're keeping a transcript --**  
 18 A. I'm pointing.  
 19 **Q. -- what are you referring to?**  
 20 A. I'm pointing to the chart that shows the  
 21 decline in Colorado's funding for education. It  
 22 declined in real dollars, meaning we were failing to  
 23 keep up even with the inflation rate over that period  
 24 of time. It also declined relative to what other  
 25 states were spending, which is what's reflected on the

2755

1 chart.

2 So Amendment 23 really had four major

3 components to it: The first one was a catch-up. We

4 looked at how much education funding had failed to keep

5 pace with inflation -- and when I use the term

6 "inflation," I'm referring to the Denver-Boulder

7 Consumer Price Index -- throughout the 1990s, and it

8 had lost through that decade roughly 9 percent per

9 student norm to inflation.

10 And so Amendment 23 sought to correct

11 that. Recognizing it had taken us ten years to fall

12 into that hole, it put in place a ten-year catch-up

13 where we would add 1 percent over the rate of inflation

14 to per-pupil funding every year for the decade between

15 2002 and 2011.

16 **Q. May I pause you for just a second? So**

17 **back on the chart, if you'd grab that pointer for me,**

18 **when you say "catch-up" -- so it passed in 2000. What**

19 **levels was Amendment 23 intended to catch up to?**

20 A. It was intended to catch up to 1989

21 per-pupil funding adjusted for the rate of inflation.

22 **Q. Okay.**

23 A. So on this chart, it's going back to about

24 there (indicating) and saying let's at least keep up

25 with the Denver-Boulder CPI in our per-pupil funding.

2756

1 **Q. Okay. And so that's part 1 of how many**

2 **parts?**

3 A. I think four.

4 **Q. Four? So part 1 is a catch-up in 2000**

5 **back to 1988 funding levels. Was Amendment 23 ever**

6 **intended to address the funding level for a thorough**

7 **and uniform system of free public schools, as set forth**

8 **in the constitution?**

9 A. No, it was not.

10 **Q. Okay. So part 1 was to catch up to 1988**

11 **levels. Part 2. What did Part 2 concern? Is that the**

12 **CPI that you referred to?**

13 A. Sure. So another component of

14 Amendment 23 was after the catch-up phase was over and

15 we were back at 1988 levels of funding adjusted for the

16 rate of inflation, that it would -- per-pupil funding

17 would keep up with inflation going forward so the

18 purchasing power on a per-student basis wouldn't fall

19 again.

20 **Q. Got it. So Part 2, after ten years, then,**

21 **public education was supposed to keep up with the**

22 **Consumer Price Index. Please explain what the Consumer**

23 **Price Index is and how it was used for Amendment 23.**

24 A. So we used the Denver-Boulder CPI as a --

25 as a proxy for school districts to be able to maintain

2757

1 their purchasing power over time. So if something

2 doesn't keep up with inflation, you can't purchase the

3 same thing the next year that you purchased this year

4 if its costs went up and your revenues didn't. So the

5 idea of using the Denver-Boulder CPI was simply to keep

6 the purchasing power of school districts constant.

7 It's not an increase, it's just making sure they don't

8 lose ground.

9 I will point out, however, the true cost

10 of a school district is not necessarily the

11 Denver-Boulder CPI. They have other expenses that, as

12 we know from this history, grew much faster than the

13 CPI did: wages, health care, construction, energy; and

14 so even though Amendment 23 allowed school districts

15 through 2008 -- we're going to talk about what's

16 happened the last couple years -- but through 2008 to

17 keep up with the Denver-Boulder CPI, add that little

18 1 percent, they still were in many cases losing ground

19 in terms of what the purchasing power of their budgets

20 allowed.

21 **Q. And that's because those expenses that you**

22 **mentioned, the wages, health care insurance,**

23 **construction costs, have increased more than inflation**

24 **or the CPI?**

25 A. That is correct.

2758

1 **Q. All right. So we talked about two of the**

2 **four parts. First, catching up to 1988 levels; second,**

3 **keeping up with the Consumer Price Index. What's the**

4 **third part?**

5 A. So the third part was a way to pay for it,

6 and Amendment 23 asked the voters, the citizens of

7 Colorado, if the state could keep a portion of income

8 tax revenue that -- at the time, much more than what

9 Amendment 23 asked to keep was being given back to the

10 taxpayers as TABOR surplus. The state was in a surplus

11 environment, nearly a billion dollars in surplus,

12 meaning money the state was collecting under its

13 current tax structure but was not allowed to keep under

14 the Taxpayer's Bill of Rights revenue limit.

15 Amendment 23 -- we used the term

16 "de-Bruced." It means authorized the state to retain

17 rather than return a surplus, a portion of income tax

18 revenues in order to pay for the requirements of

19 Amendment 23, and the measure itself created the State

20 Education Fund to deposit that money into to be used

21 for that purpose.

22 **Q. And so the State Education Fund, that was**

23 **a separate pot of money; is that correct?**

24 A. Yeah. The revenues that were de-Bruced by

25 Amendment 23, the state was authorized to retain those

2759

1 revenues rather than return them under TABOR, were  
 2 earmarked specifically to pay for the requirements of  
 3 Amendment 23, the inflation, the catch-up, and some  
 4 enumerated purposes all specific to education.  
 5 **Q. All right. So we've talked about three of**  
 6 **the four parts. Finally and fourthly?**  
 7 A. So the fourth part of Amendment 23 was a  
 8 maintenance-of-effort clause, and the idea there is we  
 9 didn't want the new money that was coming in that the  
 10 voters had just authorized the state to keep to pay for  
 11 Amendment 23, to be used to supplant what the state was  
 12 already spending in education. So it put a floor in  
 13 place and it said, State, what you're spending in 2000,  
 14 the date that Amendment 23 passed, hold steady to that.  
 15 **Q. Okay. And this is an important**  
 16 **distinction. Tell us the difference between "supplant"**  
 17 **and "supplement."**  
 18 A. Right. So supplanting is if I'm spending  
 19 \$10 today on my mortgage and somebody gives me \$2, if I  
 20 say, Well, I'm going to back out and only spend \$8 and  
 21 use this \$2, it saved me money, that's supplanting;  
 22 whereas, if I take that \$2 and I add it so I'm spending  
 23 12, that's supplementing. We wanted the Amendment 23  
 24 money, the money that had been authorized by the voters  
 25 to be dedicated to education, to go to increase what

2760

1 was being spent.  
 2 **Q. You said that the money in the education**  
 3 **fund, the State Education Fund, could only be used for**  
 4 **education purposes; is that correct?**  
 5 A. That is correct. It's constitutionally  
 6 earmarked to pay for the required increases under  
 7 Amendment 23 plus some enumerated education purposes  
 8 that are outlined in the measure. Over time, the  
 9 General Assembly -- so all the money in the State  
 10 Education Fund has only ever gone to education  
 11 purposes.  
 12 Over time, the General Assembly has used  
 13 that floor provided in the maintenance-of-effort, as  
 14 they've increased state spending, to back their state  
 15 commitment back down. So they've used the State  
 16 Education Fund to -- to come in and share -- to carry a  
 17 greater burden, if you will, a greater percentage of  
 18 school funding than was originally contemplated because  
 19 they've been in tough budgetary environments.  
 20 **Q. So did monies in the education fund**  
 21 **support other areas of the budget during the recession,**  
 22 **for example, back in 2001 or -- to 2003?**  
 23 A. Indirectly, yes; not directly. Indirectly  
 24 meaning the state relied on the State Education Fund  
 25 more than it otherwise would have and spent down those

2761

1 reserves in the State Education Fund so that they  
 2 didn't have to spend as much general fund in school  
 3 finance and they could use that general fund, then, for  
 4 other areas of the budget.  
 5 **Q. You said that Amendment -- were those the**  
 6 **four parts of Amendment 23?**  
 7 A. Yes.  
 8 **Q. You said it passed in 2000; is that right?**  
 9 A. Yes.  
 10 **Q. Okay. And, Ms. Kennedy, after**  
 11 **Amendment 23 passed, what was the intent with regard to**  
 12 **how that money would be used for public education? Was**  
 13 **there a particular focus?**  
 14 A. So there was a lot of talk at the time  
 15 about wonderful goals that the state had to improve  
 16 education, reducing class sizes, using the funds to  
 17 improve classroom resources. The school districts were  
 18 required to report how they used that funding, but,  
 19 really, it was to accomplish the types of goals like  
 20 class size reduction that were set forth for education.  
 21 **Q. And by "class size reduction," what are**  
 22 **you referring to? Is that the ratio between students**  
 23 **and teachers?**  
 24 A. Yes, the ratio between students and  
 25 teachers and the fact that districts -- most districts

2762

1 were required to report on how they were making  
 2 improvements in their student-teacher ratios, using  
 3 Amendment 23 funds to accomplish improvements in the  
 4 student-teacher ratios.  
 5 **Q. And do you recall -- you mentioned**  
 6 **discussions regarding class size reduction. Do you**  
 7 **recall who was having those discussions?**  
 8 A. The legislature, the school districts, the  
 9 Governor at the time.  
 10 **Q. And that was --**  
 11 A. Governor Owens.  
 12 **Q. Okay. And I skipped one question. Let me**  
 13 **go back. It passed -- Amendment 23 passed in 2000. Do**  
 14 **you recall approximately how much it cost for that**  
 15 **campaign, for that movement?**  
 16 A. The Amendment 23, the total cost of -- of  
 17 passing Amendment 23, the ballot, was roughly a million  
 18 dollars.  
 19 **Q. And also back to this chart, TABOR**  
 20 **passed -- do you recall what year?**  
 21 A. 1992.  
 22 **Q. And since TABOR, has the General Assembly**  
 23 **ever referred a tax increase to the voters for their**  
 24 **consideration?**  
 25 A. For schools? For education?

2763

1 **Q. Yes, for education. I apologize. For**  
 2 **education.**  
 3 A. No.  
 4 **Q. Let's stick with Amendment 23. So back in**  
 5 **2000 -- I'm sorry. It passed in 2000, meant to catch**  
 6 **up to 1988 levels. Did we ever catch up to 1988**  
 7 **levels?**  
 8 A. We did. It's -- I believe it was in 2008,  
 9 and that might -- I might be off by a year, but I  
 10 believe it was in 2008, per-pupil funding reached --  
 11 and there's a report produced by the joint budget  
 12 committee staff every year that tracks this. I believe  
 13 it was 2008 that we reached -- per-pupil funding caught  
 14 up with the 1998 level of funding adjusted for the  
 15 Denver-Boulder CPI.  
 16 **Q. What's happened since that time?**  
 17 A. So starting in -- I want to say it's 2009  
 18 was the first year the General Assembly adopted what's  
 19 called a negative factor. It is a cut in per-pupil  
 20 funding that is -- has -- was passed by the General  
 21 Assembly in, I believe, 2009, 2010 and 2011.  
 22 **Q. What's happened to that catch-up that we**  
 23 **reached back in 2008? Do you know?**  
 24 A. We have fallen way below it. I -- I  
 25 believe we're \$776 million below where we would be if

2764

1 we were following the Amendment 23 trajectory of the  
 2 10-year catch up and keeping pace with the  
 3 Denver-Boulder CPI thereafter.  
 4 **Q. All right. Let's focus in on the negative**  
 5 **factor and what you just referred to as -- was it the**  
 6 **\$770 million short?**  
 7 A. Somewhere between 750 and \$800 million.  
 8 **Q. Okay. And let's explain the negative**  
 9 **factor, and forgive my lack of drawing skills, but**  
 10 **let's make a pie chart. Let's say this is Amendment 23**  
 11 **funds, and what are factors?**  
 12 A. So the factors are a component of  
 13 per-pupil funding that are specific to try to obtain  
 14 equity across school districts in purchasing power.  
 15 They address several different -- differentiations, if  
 16 you will, among school districts, but the big ones are  
 17 the size of the district. Very small school districts  
 18 have smaller economies of scale, so their fixed costs  
 19 are higher. The factors address that. The cost of  
 20 living in the school district. Some school districts  
 21 have high costs of living, some school districts have  
 22 lower costs of living.  
 23 **Q. Oh. Can you slow down for me on the pie**  
 24 **graph? So on factors, cost of living is one of them;**  
 25 **is that correct?**

2765

1 A. Cost of living.  
 2 **Q. Cost of living. Okay.**  
 3 MR. FERO: Excuse me, Your Honor. I just  
 4 have an objection to counsel -- I'd prefer if the  
 5 witness would actually be involved in the --  
 6 THE COURT: The witness should do that,  
 7 because she's testifying.  
 8 MR. KAWANABE: Oh, sure. And, yes, Your  
 9 Honor, this is our last witness of the day, and if I  
 10 might perhaps suggest a break and we can pull up a  
 11 larger sheet.  
 12 THE COURT: Sure, and if she wants to even  
 13 draw it ahead of time and draw it -- or draw it as she  
 14 goes. Either way.  
 15 MR. KAWANABE: Sure, if it's  
 16 permissible.  
 17 THE COURT: 3 o'clock. Is that fine, if  
 18 it's the last witness?  
 19 MR. KAWANABE: Ms. Kennedy, is that okay?  
 20 THE WITNESS: Yes.  
 21 THE COURT: Okay. Thank you.  
 22 (Recess taken, 2:36 p.m. to 3:00 p.m.)  
 23 **Q. (BY MR. KAWANABE) Ms. Kennedy, we are**  
 24 **back from the break; is that correct? Let me start**  
 25 **over.**

2766

1 **During the break, did you draw two**  
 2 **demonstrative exhibits? And let me show you the first.**  
 3 A. Yes, I did.  
 4 **Q. And this, for the record, is Demonstrative**  
 5 **Exhibit 10462. Is that your handwriting?**  
 6 A. Yes, it is.  
 7 MR. KAWANABE: And, Your Honor, we are not  
 8 seeking admission of a demonstrative exhibit, simply to  
 9 use it for demonstrative purposes.  
 10 THE COURT: That's fine.  
 11 **Q. (BY MR. KAWANABE) Ms. Kennedy, so tell us**  
 12 **what this picture is a picture of.**  
 13 A. So this is a representation -- and please  
 14 note it's not to scale -- of per-pupil funding here in  
 15 Colorado where we have a base dollar amount that is the  
 16 same for all of Colorado's school districts' per-pupil  
 17 funding, and then it is -- there's an adjustment made  
 18 to that base for every school district in the state  
 19 based on the unique characteristics of that district,  
 20 and the big ones are the cost of living in that  
 21 district. That is the largest adjustment that we make,  
 22 the size of the district. Again, addressing economies  
 23 of scale and at-risk, which are the number of students  
 24 in the district that present risk factors, poverty.  
 25 It's based on poverty.

2767

1 **Q. So essentially the pie represents the --**  
 2 **the School Finance Act amount; is that correct?**  
 3 A. Yes. The pie represents the School  
 4 Finance Act per-pupil funding.  
 5 **Q. And the base represents -- is that the**  
 6 **same base per pupil, no matter where you reside?**  
 7 A. That's correct.  
 8 **Q. All right. What are the factors supposed**  
 9 **to address?**  
 10 A. So the factors were put in place to try to  
 11 accomplish equity across Colorado's 178 school  
 12 districts and to try to -- when I say "equity," I mean  
 13 purchasing power. To try to accomplish equity in the  
 14 purchasing power so that a district that's in a high  
 15 cost of living community or a district that has a high  
 16 concentration of low-income children has the ability to  
 17 purchase on behalf of their students an equitable  
 18 education relative to the other districts in the state.  
 19 **Q. Okay. Now, let's tie Amendment 23 to this**  
 20 **pie graph, okay? You drafted Amendment 23; is that**  
 21 **correct?**  
 22 A. Yes, I did.  
 23 **Q. All right. In Amendment 23, was it -- the**  
 24 **increases in Amendment 23, were they supposed to**  
 25 **apply -- what portion of this pie graph were they**

2768

1 **supposed to apply to, those increases?**  
 2 A. So when we went to the voters with  
 3 Amendment 23, we talked about per-pupil funding  
 4 statewide going up, and in drafting the measure, it was  
 5 very clear that the factors are not appropriate to  
 6 subject to a formula. You can't say the at-risk factor  
 7 should go up by inflation because the at-risk factor is  
 8 going to go up or down dependent on the number of  
 9 children in the district who are in poverty. It may go  
 10 up a lot one year to the next. It may go down one year  
 11 to the next. It is going to change every year based on  
 12 the demographics of the district. Same with the size  
 13 of the district, same with the cost of living in the  
 14 district.  
 15 And so Amendment 23 was written to apply  
 16 to the base with the idea that the base would be  
 17 adjusted in order to accomplish equity in purchasing  
 18 power across districts through the formula that was --  
 19 or a successive formula that addresses the equity issue  
 20 by having adjustments, the factors or some subsequent  
 21 measure.  
 22 **Q. So those equity adjustments were part of**  
 23 **the Amendment 23 increases?**  
 24 A. Absolutely.  
 25 **Q. And, in fact, after Amendment 23 passed,**

2769

1 **did the General Assembly fund those increases to the**  
 2 **base plus the factors?**  
 3 A. Yes, they did.  
 4 **Q. And has that continued today?**  
 5 A. It continued for many years. The General  
 6 Assembly increased the base by inflation plus 1 percent  
 7 and then ran that dollar amount through the factors to  
 8 try to accomplish equity in the purchasing power across  
 9 the districts, as was intended through the act. That  
 10 changed in 200- -- and I believe '9 was the first year  
 11 when the General Assembly adopted the negative factor.  
 12 And the negative factor, in essence, is a  
 13 cut to per-pupil funding, and the General Assembly,  
 14 through the implementation, the adoption of the  
 15 negative factor has taken those cuts out of the  
 16 factors. So the red line there, also not drawn to  
 17 scale --  
 18 **Q. Right.**  
 19 A. -- is a representation of how much of the  
 20 factors -- how much of the funding in the factors has  
 21 been lost. So the total dollar amount going into the  
 22 factors before the negative factor was put into place  
 23 was \$1.5 billion. That's been cut in half, so we're  
 24 \$776 million below where we would be if we were still  
 25 keeping pace with the Amendment 23 adjustment; and that

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1 entire reduction, that entire \$776 million has been cut  
 2 out of the factors, really reducing the funding that  
 3 districts -- that the state allocates to accomplish  
 4 equity.  
 5 **Q. And on Exhibit 10462, Ms. Kennedy, if**  
 6 **you'll look back up on the big screen, the negative --**  
 7 **did you call it "the negative factor"? Is that right?**  
 8 A. Yes. I believe that's the term they use  
 9 in the legislation.  
 10 **Q. And that is signified by the red line**  
 11 **bracketing a portion of the factors pie; is that a fair**  
 12 **statement?**  
 13 A. Yes, trying to represent about half of the  
 14 factors pie.  
 15 **Q. So we are, as a state, 776 short as of**  
 16 **today, an approximation?**  
 17 A. Again, somewhere between 750 and \$800  
 18 million.  
 19 **Q. Is the State of Colorado in violation of**  
 20 **the Colorado constitution, Amendment 23?**  
 21 A. In my --  
 22 MR. FERRO: Objection, calls for a legal  
 23 conclusion.  
 24 THE COURT: It is a legal conclusion.  
 25 Maybe you can rephrase it.

2771

1 MR. KAWANABE: Sure.

2 **Q. (BY MR. KAWANABE) What effect does the --**

3 **not funding the negative factor, what is your opinion**

4 **as to that effect on Amendment 23?**

5 A. Well, there are two big effects:

6 Specifically with respect to Amendment 23, this is a

7 huge cut in education funding, and Amendment 23

8 committed to the voters that education funding wasn't

9 going to be cut and, in fact, when you look at the

10 \$776 million that's been cut, that dollar amount is

11 more than what Amendment 23 provided through those

12 1 percent increases each year. It's been an enormous

13 reversal of what was promised to the voters and what

14 the voters said they wanted.

15 In addition to that, there has been a -- a

16 lack, a loss in the state's allocation of funds to

17 accomplish equity.

18 **Q. And not funding the base plus all of the**

19 **factors, is that consistent with Amendment 23?**

20 A. My opinion, both as the drafter and as the

21 spokesman for the campaign, is that no, it's not

22 consistent with the measure at all. The measure was

23 designed, intended and sold to restore the cuts that

24 had been taken in education funding back to levels in

25 1989; and with these cuts, we're nowhere near that.

2772

1 **Q. Ms. Kennedy, I'd like to show you the --**

2 **and we'll come back to the equity statement that you**

3 **just made and factors, but I do want to put up the**

4 **second pie graph that -- that I'll confirm you drew.**

5 MR. KAWANABE: For the record, 10463 is

6 another demonstrative, Your Honor.

7 **Q. (BY MR. KAWANABE) Ms. Kennedy, is that**

8 **your handwriting?**

9 A. It is.

10 **Q. And tell us what this second demonstrative**

11 **represents.**

12 A. So this is trying to provide a little more

13 of a complete picture of where funding for education

14 comes from in the state of Colorado. This one really

15 isn't drawn to scale, but the -- but the largest

16 segment you see there of the -- of the pie represents

17 the School Finance Act, and the School Finance Act is

18 comprised of the state contribution as well as the

19 local share, but wanted to point out that there are

20 other sources of funds that flow to the districts:

21 federal funds, there are grants, gifts, donations, and

22 then there are also overrides at the local level.

23 **Q. And do all school districts have mill levy**

24 **overrides?**

25 A. No, they don't. So a little -- a little

2773

1 bit of history here. The override was built into the

2 School Finance Act to allow school districts whose

3 local voters wanted to put more money into their

4 schools to be able to do so with their own local

5 dollars, and it has always been capped so that we don't

6 have some school districts that have higher property

7 value wealth raising a whole lot more for their schools

8 so that we lose equity across school districts.

9 So originally the override actually was

10 very small. Very few districts went to their voters to

11 get it, and it was capped and statuted, I believe, no

12 more than 10 percent of per-pupil funding. As time has

13 gone on over the last couple decades -- and that chart

14 that we put up, it tells the story about how funding

15 for schools has really been constrained under TABOR and

16 Gallagher and the School Finance Act -- districts are

17 relying more on overrides to finance their basic school

18 needs.

19 Generally we see the larger,

20 higher-property-value districts being able to get voter

21 approval on their overrides. We do have about 70

22 school districts in the state that don't have

23 overrides. Two important pieces about overrides. Many

24 of them are restricted and limited to specific

25 purposes, like kindergarten. Many school districts

2774

1 don't have the ability to get them, and this ties in

2 very closely to our conversation that I know we're

3 going to talk about on mill levies, because the

4 inequity across the state on the local taxes -- the

5 local taxes for the School Finance Act has driven real

6 inequities on the override side. So many districts

7 have benefited from very low property tax rates on the

8 school finance side, so they've been able to go to

9 their voters without much of a burden at all in terms

10 of property taxes and raise additional resources for

11 their schools. Districts that haven't benefited on the

12 school finance side, and we're going to talk about

13 that, have had more success going to their voters.

14 So there's enormous inequity across the

15 state on the dollar amount and the ability to seek

16 override revenues.

17 **Q. And let's compare the first graph that you**

18 **drew, which is the base plus factors. This initial**

19 **graph, as to the second -- is that highlighted by the**

20 **red?**

21 A. Yes.

22 **Q. Okay. So the first pie was base plus**

23 **factors, but of the -- the bigger pie of how school**

24 **districts are actually financed, that is the large**

25 **portion here in the red; is that fair?**

2775

1 A. Yes.

2 **Q. All right. Now, the portion in the red,**

3 **that is the Public School Finance Act portion, correct?**

4 A. Yes.

5 **Q. And the two big parts of the finance act,**

6 **you have state and local, so they're both -- the state**

7 **and the local share, that's part of the School Finance**

8 **Act; is that right?**

9 A. Yes.

10 **Q. Explain the difference between the state's**

11 **share versus the local share, specifically mills.**

12 A. So the state share is calculated based on

13 the General Assembly's per-pupil funding, so they take

14 a look at each student's funding times the total number

15 of kids in the district. Then they take a look at,

16 well, how much of that do we raise locally, how much of

17 that does the district raise locally with its School

18 Finance Act mill levy, and then the state, based on how

19 much is raised locally, then backs into the number that

20 the state provides in order to get to that per-pupil

21 dollar amount. So you look first at what's raised

22 locally through the local mill levy.

23 **Q. And over the last two decades, how -- how**

24 **have certain restrictions affected the local school**

25 **districts' ability to raise money through those local**

2776

1 **mill levies?**

2 A. So the 1994 School Finance Act that we've

3 talked about tried to -- it set out some policy goals,

4 and one of the policy goals that it laid out was to

5 have a uniform mill levy across the state so that --

6 for schools, so that no matter where you lived, what

7 school district you lived in, you paid the same

8 portion, same percentage of the value of your property

9 in taxes to your local school district; and if you had

10 a uniform mill levy across the state, in essence,

11 districts with very high property value wealth would

12 raise enough money to pay for their schools and the

13 state may contribute very little to their school

14 funding. In districts with low property value wealth,

15 that same mill levy may raise nowhere near the -- the

16 per-pupil funding and so the state would have to come

17 in to equalize, and the state would contribute a lot

18 more to those districts.

19 So the idea in the '94 act, with some

20 exceptions, was to try to have a uniform levy for

21 school finance built into the -- into the statute, and

22 it was set at 40 mills, and what that means is \$40 for

23 every thousand dollars of assessed value, and your

24 assessed value calculation is uniform across the state.

25 That was based on the -- the Gallagher amendment. That

2777

1 was the original intent of the 1994 act.

2 Now, the '94 act also recognized that the

3 Taxpayer's Bill of Rights had just passed statewide,

4 and the Taxpayer's Bill of Rights says property tax

5 revenues to any districts, including a school district,

6 cannot grow faster than a growth formula. That growth

7 formula was inflation and student growth for the

8 district.

9 So we started out trying to get to a

10 uniform property tax structure for schools, and over

11 the years since TABOR has passed, certain districts

12 across the state have grown quite rapidly, their

13 property values have. Think of the I-70/I-25 corridor.

14 Lots of growth in property values. Certain districts

15 across the state didn't see property value growth like

16 that. Think of the Eastern Plains.

17 What was adopted at the time, and it was

18 an interpretation of statute by the administration at

19 the time, was that the way those districts that were

20 growing would avoid collecting those TABOR surpluses in

21 their property taxes was their mill levy would be

22 lowered. So they started at \$40 per every thousand

23 dollars of assessed value, and they would lower that --

24 anytime their property tax revenues were coming in

25 faster than inflation on a per-student basis, they

2778

1 would lower their mill levy.

2 So we saw lots of districts in that

3 high-growth corridor lowering their mill levies, not

4 collecting what they otherwise would have collected in

5 property taxes, and the state coming in and

6 backfilling.

7 **Q. Okay. Now, we've heard testimony from**

8 **other witnesses talk about mills, mill levy overrides**

9 **and bonds. Are those three different concepts?**

10 A. Three different concepts, all linked

11 together with the fact that they are a property tax.

12 **Q. Okay. Let's start, then, with the first**

13 **concept, a mill levy. So the mill levy is actually**

14 **part of the School Finance Act, correct, this area in**

15 **the red?**

16 A. That's correct; and again in 1994, the act

17 tried to say our goal is to have, with exceptions, all

18 districts have the same levy.

19 **Q. And say you have a house. You referred to**

20 **assessed value. Can you briefly explain -- say the**

21 **house is worth 10 bucks, a thousand bucks, but explain**

22 **how much money each thousand dollars, or whatever**

23 **increment you choose, actually raises for schools.**

24 A. Sure. So the property tax formula that

25 gets you the local share is a three-part formula: You

2779

1 take the market value of your property; that gets  
 2 multiplied by the assessment rate, which is set in the  
 3 constitution and was set through the Gallagher  
 4 amendment; and then that gets multiplied by the mill  
 5 levy. So I'll give you an example. If I'm a homeowner  
 6 with a \$100,000 home, the market value of my home is  
 7 \$100,000, that gets multiplied first by the assessment  
 8 rate, and since it's a home, it's by the residential  
 9 assessment rate. This is set in the constitution by  
 10 the Gallagher amendment, and it is today 7.96 percent  
 11 of the value of the property. It used to be much  
 12 higher than that, but the Gallagher amendment embedded  
 13 a formula that has brought that down over the last two  
 14 decades.  
 15 So for my \$100,000 home, \$7,960 gets  
 16 taxed. It's a strange concept. \$7,960 gets taxed, so  
 17 that's what you apply the mill levy to. So if you have  
 18 one mill --  
 19 **Q. Right.**  
 20 A. -- it's one dollar for every thousand  
 21 dollars of assessed value. If I have \$7,960 of  
 22 assessed value, my bill for one mill would be \$7.96; if  
 23 I have 40 mills, it's \$40 -- whatever that math is.  
 24 **Q. I think we're following. And thank you**  
 25 **for that example. How important are mill levies to**

2780

1 **public school finance?**  
 2 A. Well, again, the vast majority of the  
 3 local funding for schools comes from that local School  
 4 Finance Act mill levy, and that drives what the state  
 5 also contributes.  
 6 **Q. And do actual dollars vary depending on**  
 7 **geographic location in Colorado?**  
 8 A. There is an enormous disparity across the  
 9 state in what one mill levy generates because you have  
 10 school districts that have millions of dollars in  
 11 property value per student, and you have school  
 12 districts that -- that have far, far less than that.  
 13 It's -- it's an extraordinary range. If you take the  
 14 difference -- difference between, say, an Aspen school  
 15 district and a district in the San Luis Valley, it's  
 16 a -- it's a huge difference.  
 17 **Q. Do you have a range or an approximation of**  
 18 **the difference between, say, an Aspen and an Alamosa?**  
 19 A. I don't have the numbers off the top of my  
 20 head. I apologize.  
 21 **Q. Okay.**  
 22 A. But it's a -- a wide, wide gap on what  
 23 mill -- what one mill generates.  
 24 **Q. And, Ms. Kennedy, can school districts set**  
 25 **their own mill levies?**

2781

1 A. So they used to be able to, and over time,  
 2 as the effort to equalize funding across school  
 3 districts has evolved, it is now set by statute.  
 4 **Q. What do you mean by that?**  
 5 A. There's a provision in the School Finance  
 6 Act that sets what the school district mill levy will  
 7 be.  
 8 **Q. And you were involved with stabilizing the**  
 9 **difference in mill levies; is that correct?**  
 10 A. Yes. So the history that I just talked  
 11 about, where we had a high growth in some school  
 12 districts, particularly in the I-70 and I-25 corridors,  
 13 they lowered their mill levies year after year after  
 14 year in order to avoid collecting surplus that the --  
 15 was defined by the Taxpayer's Bill of Rights. That was  
 16 defined by TABOR, and that really was eroding, in  
 17 essence, the local share; and part of the reason we've  
 18 seen this huge shift from education being funded by  
 19 local districts to the state having to take on a bigger  
 20 and bigger share is because these districts, the -- the  
 21 high-growth districts have been reducing their mill  
 22 levy.  
 23 So two huge outcomes from that: One is  
 24 that we just simply have lost a lot of that taxing  
 25 capacity across the state. Again, the mill levy has

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1 dropped from an average of 38 back in the 1994 act, \$38  
 2 for every thousand dollars of assessed value, down to  
 3 around 20. So it's lost almost half of its value  
 4 statewide on average; but you also have a lot of  
 5 districts around the state -- you have, again, huge  
 6 variation. So you have some districts, generally the  
 7 lower-property-value districts, the ones that didn't  
 8 have the growth still have high mill levies, and the  
 9 districts that have a lot of growth had to bring them  
 10 down to avoid collecting these surpluses.  
 11 So we now have school districts in the  
 12 state that have a mill levy of only 1.5 -- 1.5 or 2,  
 13 and we have districts out on the Eastern Plains that  
 14 still have a levy of, say, 27.  
 15 So we're generating the -- the inequity is  
 16 such that the rates are the lowest in the wealthier  
 17 districts and they're the highest in the poorer  
 18 districts, and this was a function over time of the  
 19 administration's interpretation -- the General Assembly  
 20 and the administration's interpretation of TABOR and of  
 21 the School Finance Act.  
 22 Now, the legislation that I was involved  
 23 in that was adopted by the General Assembly in 2007,  
 24 to, quote/unquote, stabilize the school finance mill  
 25 levy was a big effort to address this dynamic that had

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1 been going on for years, and the argument that we made  
 2 that was upheld by the state Supreme Court was  
 3 districts that had gone to their voters, school  
 4 districts across the state that had gone to their  
 5 voters and said, Can the school district keep the money  
 6 that it generates, notwithstanding TABOR's limits?  
 7 Should that apply to property taxes? And we worked on  
 8 legislation that said yes, it should and it should  
 9 apply to school district property taxes, and the court  
 10 agreed.

11 So now it is in formula not that those  
 12 levies have to continue to go down in statute, not that  
 13 those levies have to continue to go down to avoid  
 14 collecting TABOR surpluses, but that in districts where  
 15 the voters have authorized the district to keep the  
 16 money notwithstanding TABOR's limits, the levy, in  
 17 essence, got locked. It can't go up, because that  
 18 would be a tax increase without voter approval. It's  
 19 now not required to automatically go down. So we have  
 20 a -- a map of high levies, low levies, depending on  
 21 what district you're in, depending on what your growth  
 22 rates have looked like over the last 15 years, and  
 23 those are, in essence, locked.

24 We look at that today when we calculate  
 25 per-pupil funding and the state share. We look at each

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1 school district, what's their levy, how much do they  
 2 raise, and then the state identifies how much it can  
 3 contribute, and if the state resources aren't there, as  
 4 they haven't been over the last three years, then they  
 5 have to find these cuts.

6 **Q. You said that this stabilizing mill levy  
 7 legislation passed in about 2007; is that correct?**  
 8 A. I believe that's correct.

9 **Q. And was there a lawsuit challenging that  
 10 piece of legislation?**  
 11 A. There was.

12 **Q. What happened?**  
 13 A. It went up to the state Supreme Court, and  
 14 the state Supreme Court upheld the state's action to  
 15 have a School Finance Act that did not require those  
 16 levies to continue to go down to avoid collecting TABOR  
 17 surplus in districts where voters had authorized the  
 18 district to keep money, their revenues, notwithstanding  
 19 TABOR's limits.

20 **Q. And, Ms. Kennedy, prior to the legislation  
 21 actually passing in 2007, were you involved in  
 22 legislative efforts to stabilize mill levies that  
 23 failed prior to 2007?**  
 24 A. Yes. The legislation that was adopted in  
 25 2007, we had been working on -- I had been working on

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1 that proposal since 2002.

2 **Q. And who in the legislature had you been  
 3 working with, if you recall?**  
 4 A. Senator Norma Anderson was very much  
 5 concerned about this. She didn't -- it was not her  
 6 intent -- she was the sponsor of the 1994 School  
 7 Finance Act. It was not her intent that we would see  
 8 this permanent ratchet in the local mill levies for  
 9 school finance, and when we started looking at this  
 10 issue, she wanted to get that fixed, and she introduced  
 11 it as part of the School Finance Act as early as maybe  
 12 2004 or 2005.

13 **Q. And what happened to that initial -- those  
 14 initial attempts with regard to stabilizing the mill  
 15 levy?**  
 16 A. I believe it passed the senate and then  
 17 was killed in the house or it was killed in conference  
 18 committee. It was taken out.

19 **Q. Do you recall -- I'm sorry.**  
 20 A. I'm sorry.

21 **Q. Do you recall which legislator or which  
 22 legislators opposed stabilizing the mill levy?**  
 23 A. It was Representative Keith --

24 **Q. Keith King?**  
 25 A. Keith King

2786

1 **Q. Would you do me a favor, Ms. Kennedy --**  
 2 MR. KAWANABE: And, Your Honor, may I  
 3 approach?  
 4 THE COURT: Yes.

5 **Q. (BY MR. KAWANABE) I'd like you to write  
 6 the word "mills" in the local section.**  
 7 MR. KAWANABE: Is that okay, Your Honor?  
 8 THE COURT: Yes. That's fine.

9 A. (Witness complied.)

10 **Q. (BY MR. KAWANABE) And then on overrides  
 11 would, you write "mill" -- "mill levy overrides," and  
 12 we can talk about the difference between those two.**  
 13 **But before we do, where do bonds fit on  
 14 this graph?**  
 15 A. Bonds are outside of this chart entirely.  
 16 School districts are responsible for meeting the  
 17 capital needs of their school district, and they can  
 18 refer questions to their citizens for a dedicated mill  
 19 levy to finance infrastructure in their district.  
 20 That's a bond levy. It's entirely separate from this,  
 21 which is all -- all for operating.

22 **Q. All right. So take the red pen, please,  
 23 and write the word "bonds" outside of the pie.**  
 24 A. (Witness complied.)

25 **Q. You can keep the pens. So the pie is back**

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1 **up, and we're talking about the difference between**  
 2 **mills, mill levy overrides, and bonds. Now, the Public**  
 3 **School Finance Act is only the portion in red, correct?**  
 4 A. That's correct.  
 5 **Q. And that includes mills, correct?**  
 6 A. It includes the Public School Finance Act  
 7 mill levy, yes.  
 8 **Q. Thank you for that clarification. Bonds**  
 9 **are actually outside the Public School Finance Act,**  
 10 **correct?**  
 11 A. Yes.  
 12 **Q. And how important are bonds to local**  
 13 **school districts and their projects for public**  
 14 **education?**  
 15 A. They're enormously important. As I  
 16 indicated, school districts are responsible for -- are  
 17 held responsible to meet the facilities capital needs  
 18 of their school district. Because of the inequity  
 19 across the state -- remember, we talked about how one  
 20 mill levy -- one mill raises a very small amount in  
 21 many school districts and potentially raises a very  
 22 large amount in some other districts -- it has been  
 23 that -- the capital issues with respect to schools have  
 24 been the subject of previous litigation, previous  
 25 settlement, and then also legislation that -- that I

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1 worked on, the Building Excellent Schools Today  
 2 legislation.  
 3 But the ability of districts to go to  
 4 their voters to raise funds to finance new schools and  
 5 repair their old schools is enormously important.  
 6 **Q. And is there a difference in the ability**  
 7 **of a school district in the San Luis Valley to raise an**  
 8 **amount for a bond versus a school district in Aspen or**  
 9 **other property -- a more property wealthy neighborhood?**  
 10 A. Sure. Because it's a lower-property-value  
 11 community, they don't raise nearly as much money with  
 12 one mill levy. So, in essence, they have to ask for a  
 13 lot more in order to raise the same amount of money;  
 14 and, in fact, we have about 100 school districts in  
 15 Colorado that don't have the tax base that even if they  
 16 were to raise the maximum number of mills allowed under  
 17 the law, there is a limit on bonds, they won't raise  
 18 enough money to build a building.  
 19 **Q. And mill levy overrides, are they outside**  
 20 **the Public School Finance Act?**  
 21 A. As we calculate that term, yes.  
 22 **Q. Okay. What are mill levy overrides?**  
 23 A. So, again, a mill levy override is the  
 24 ability of a school district to go over and above the  
 25 School Finance Act and go to their voters and ask for

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1 additional property taxes to support their school  
 2 district.  
 3 **Q. And can you talk about the equities of**  
 4 **mill levy overrides?**  
 5 A. So districts have had varying degrees of  
 6 success passing overrides, so you have enormous  
 7 inequity out across the state right now. When the  
 8 override legislation was originally adopted, it had a  
 9 cap, and I believe that cap was 10 percent of per-pupil  
 10 funding, and over time, the legislature has raised that  
 11 because the School Finance Act funding hasn't been  
 12 adequate to meet the districts' needs, and so they've  
 13 asked the legislature, Gosh, can we increase the  
 14 overrides? Can we go to our voters and ask for more  
 15 because we can't even pay for our basic materials  
 16 through the School Finance Act? And the legislature  
 17 has accommodated that request and raised that cap up to  
 18 now 25 percent of per-pupil funding.  
 19 Now, there are very few districts who have  
 20 been able to obtain voter approval to go to 25 percent  
 21 of their PPOR, and those districts tend to be only the  
 22 wealthiest districts in the state. I believe Cherry  
 23 Creek and Boulder. Many districts -- I believe  
 24 somewhere around 70 -- don't have any override money.  
 25 So you have a -- you have enormous

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1 variation across the state, and the districts that have  
 2 been more successful at getting their voters to approve  
 3 these overrides are districts that have been in that  
 4 high-growth category since TABOR passed and, in  
 5 essence, what they've said to their voters when they've  
 6 gone to the ballot with override questions is, We're  
 7 getting a windfall, we have to lower our School Finance  
 8 Act mill levy because our property tax revenue under  
 9 that levy is growing faster than inflation on a student  
 10 adjusted basis, so we're going to lower our School  
 11 Finance Act mill levy, the state's going to backfill  
 12 that money, would you be willing to pay, say, the --  
 13 say their mill levy is coming down 4 mills. They go to  
 14 their voters and say, Can we increase the levy by 4  
 15 mills? Your rate won't go up at all. This one will go  
 16 down by 4, this one will go up by 4, the override levy;  
 17 and the taxpayers don't pay anything more, but they get  
 18 that net benefit of an additional 4 levies, the dollars  
 19 that are generated by that for their schools.  
 20 So they've had this wonderful opportunity  
 21 in certain districts to generate override money to  
 22 support their schools, and other districts really have  
 23 not had that ability.  
 24 **Q. And these high-growth districts, these**  
 25 **certain districts, where are they located in the state?**

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1 A. Again, think of districts where your  
 2 property values have grown a lot. I always talk about  
 3 the I-25/I-70 corridor. We could certainly produce a  
 4 map that shows where this has happened, but  
 5 high-growth, high-wealth districts have generally been  
 6 much more successful at passing overrides.  
 7 **Q. Thank you, Ms. Kennedy. Let's shift gears**  
 8 **and talk about BEST. You're familiar with the BEST**  
 9 **program, correct?**  
 10 A. I am.  
 11 **Q. What is the BEST program?**  
 12 A. So BEST stands for Building Excellent  
 13 Schools Today, and many districts for a long time,  
 14 particularly rural districts with low property value  
 15 wealth that don't raise much money off of one mill,  
 16 have struggled to repair and replace their aging school  
 17 buildings. We have many school buildings around the  
 18 state that are 70, 80, in some cases approaching a  
 19 hundred years old; and for those districts, as I talked  
 20 about, many of them, even if they went to their voters  
 21 and got the maximum bond -- bonding authorized by law,  
 22 they don't raise enough money. They don't have the tax  
 23 base. They're small, rural districts. They don't  
 24 raise enough money to replace their 70- or 80-year-old  
 25 school building or even to do enough of an upgrade to

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1 bring that building into even a safe, appropriate  
 2 learning environment.  
 3 The Building Excellent Schools Today  
 4 legislation was developed by my team when I was serving  
 5 as state treasurer and by Speaker Romanoff and  
 6 advocates in the community that came together and  
 7 identified a funding stream from Colorado's School  
 8 Trust Lands that generate money ever year, and we  
 9 adopt -- we proposed legislation that would use a  
 10 portion of the revenues generated off of those lands as  
 11 a dedicated stream to finance school construction  
 12 projects all across the state, and they are  
 13 specifically earmarked or targeted for those districts  
 14 that don't have the ability to make the necessary  
 15 repairs to their aging school infrastructure.  
 16 **Q. What time frame was this legislation**  
 17 **developed?**  
 18 A. 2008.  
 19 **Q. And was this related or concerned with**  
 20 **litigation that was filed regarding these capital**  
 21 **concerns?**  
 22 A. Yeah. So there was a lawsuit against the  
 23 state, the Giardino case, that raised the issue of  
 24 inequities across the state in capital needs and the  
 25 lack of appropriate facilities for schools for kids.

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1 particularly in rural Colorado. The state entered into  
 2 a settlement in that case and provided a stream of  
 3 funds to support some projects around the state.  
 4 The challenge on school construction is  
 5 the need far -- is far larger than any of the resources  
 6 that were provided either through the Giardino case or  
 7 through the Building Excellent Schools Today program.  
 8 There has been a facilities assessment of the condition  
 9 of every school building in the state of Colorado. The  
 10 estimated funding needs to address all of those  
 11 buildings is in excess of \$10 billion.  
 12 For comparison, I believe the funding  
 13 provided through the Giardino lawsuit was \$190 million  
 14 in total. The funding provided through the Building  
 15 Excellent Schools Today program is \$500 million in  
 16 total today. It has the ability to grow to about 1  
 17 billion.  
 18 **Q. And you -- you referred to a capital needs**  
 19 **assessment. If Giardino and BEST has the ability to**  
 20 **grow to 1 billion, what was the amount of needs as**  
 21 **assessed by the state in that study? Do you recall?**  
 22 A. I -- I apologize. I don't recall the  
 23 specific dollar amount. I believe it was around 14  
 24 billion.  
 25 **Q. Okay. A much larger amount; is that fair**

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1 **to say?**  
 2 A. A much larger amount.  
 3 **Q. Did BEST change any of the school finance**  
 4 **formula as it relates to capital construction, if you**  
 5 **know?**  
 6 A. Yeah. There was a -- a technical change,  
 7 and I'm not going to be the best person to answer this  
 8 because it's too technical. There was a small  
 9 diversion of funding from the School Trust Lands that  
 10 had been going into the School Finance Act. That was  
 11 refinanced with another stream of funding so that the  
 12 revenues generated off those lands could be dedicated  
 13 to the BEST program.  
 14 **Q. I had mentioned that we're going to go**  
 15 **back to the equities comment. Do we have an equitable**  
 16 **system for public school finance?**  
 17 A. I don't believe we do.  
 18 **Q. Why not?**  
 19 A. So this wraps up a lot of what we've been  
 20 talking about. First, when I think of equity across  
 21 school districts to support a system of public  
 22 education, first, on the tax side, what had  
 23 historically been a more equitable tax burden across  
 24 the state to support public schools is now a very  
 25 inequitable tax structure. It's a twentyfold

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1 difference between people living in one district, what  
 2 their property tax bill is just for the School Finance  
 3 Act. So just for the piece we're trying to equalize, a  
 4 twentyfold difference in what their tax rate is to what  
 5 someone who's in a wealthier, or a higher growth  
 6 district is paying in their property tax rates.  
 7 On the spending side, what we actually  
 8 spend in each school district across the state, first,  
 9 there is the inequity that's created through the  
 10 override structure. Some districts have very large  
 11 overrides, again, 25 percent of -- of their funding  
 12 that they're able to add on, again, benefiting from  
 13 this dynamic over time, so that doesn't necessarily  
 14 mean their property taxes are that much higher, but  
 15 they've been able to capture additional money, up --  
 16 upwards of 25 percent for their schools, and other  
 17 districts have nothing. Zero.  
 18 The third area where I think the system is  
 19 inequitable is in the School Finance Act itself, the  
 20 distribution itself, where we used to provide a  
 21 significant amount of money, over a billion dollars  
 22 through the factors, to try to level the purchasing  
 23 power of districts across the state that have different  
 24 demographic and geographic characteristics, the  
 25 ~~negative factor has taken half of that away, making~~

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1 that distribution system far less equitable than was  
 2 ever designed in the School Finance Act.  
 3 The final area where I think we have  
 4 serious inequities across the state is in the capital  
 5 facilities area, and I visited a lot of these schools  
 6 around the state. There are very stark differences  
 7 between the condition and the quality of the  
 8 infrastructure, particularly in rural Colorado, to what  
 9 we see in the suburban and urban areas of our state.  
 10 **Q. Ms. Kennedy, other than the technical**  
 11 **adjustment, after BEST's \$1 billion contribution that**  
 12 **you mentioned, do districts, school districts still**  
 13 **rely on their own property tax base to fund capital**  
 14 **needs?**  
 15 A. Yes.  
 16 **Q. And is that through the bonds that you**  
 17 **have previously discussed and other funding mechanisms?**  
 18 A. Yes, so the -- the vast majority of school  
 19 construction and the vast majority of needs in school  
 20 construction is met solely by the school districts.  
 21 It's the responsibility of the school districts and  
 22 their local voters.  
 23 **Q. Does Colorado have a thorough and uniform**  
 24 **system of free public schools?**  
 25 A. In my opinion, it does not.

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1 **Q. Why not?**  
 2 A. I think the -- the funding structure, the  
 3 tax structure that underlies our public education  
 4 system in Colorado has been severely eroded over time  
 5 so that we simply don't have the resources that -- the  
 6 taxing capacity, if you will, to provide an adequate  
 7 level of funding per student to accomplish the state's  
 8 education goals.  
 9 **Q. Thank you, Ms. Kennedy.**  
 10 MR. KAWANABE: Your Honor, before we pass  
 11 the witness, if you had any questions, we would have no  
 12 objections at this time from you.  
 13 THE COURT: No, I don't at this time.  
 14 Thank you.  
 15 Any questions?  
 16 MS. BONO: I have no questions, Your  
 17 Honor.  
 18 THE COURT: Cross-examination?  
 19 MR. FERRO: We do have questions, Your  
 20 Honor. I know we just took a break, but might we have  
 21 a brief recess? I believe this is the last witness of  
 22 the day. Is that right, Counsel?  
 23 MR. KAWANABE: Yes. May I just ask a  
 24 quick question? Ms. Kennedy, I know you had meeting  
 25 issues, and so I want to be respectful of --

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1 THE WITNESS: I'm okay.  
 2 THE COURT: Is ten minutes enough time,  
 3 just until 4:00?  
 4 MR. FERRO: Plenty of time.  
 5 THE COURT: Just ten minutes. Thank you.  
 6 (Recess taken, 3:48 p.m. to 4:02 p.m.)  
 7 THE COURT: Cross-examination?  
 8 MR. FERRO: Thank you for the recess, Your  
 9 Honor.  
 10 THE COURT: No problem.  
 11 MR. FERRO: We'd ask to be heard on a brief  
 12 matter before we commence cross-examination, it would  
 13 relate to that; and that is defendants believe that  
 14 plaintiffs have opened the door to the evidence that  
 15 they sought to have excluded and which you excluded in  
 16 your order on the motion in limine in this case; and  
 17 briefly, Your Honor, we did not make any objection. Of  
 18 course, we believe, as we've argued, that that evidence  
 19 is favorable to our position in this case, and we do  
 20 believe that the evidence is relevant. I just would  
 21 like to note for the record that we are in no way  
 22 waiving any appellate options that we may have as to  
 23 your ruling on the motion in limine; but I did want to  
 24 also argue, as well, that plaintiffs, in their motion,  
 25 had said that the evidence -- any evidence or argument

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1 related to TABOR's limitations is irrelevant, therefore  
 2 inadmissible until CRE 401.  
 3 Well, today we've actually presented a lot  
 4 of evidence that TABOR's revenue restrictions  
 5 are relevant, they believe they are relevant today.  
 6 The "opening the door" doctrine is an effort by courts  
 7 to prevent one party from gaining an unfair advantage  
 8 by presenting evidence that without being placed in  
 9 context would create a misleading impression, and I'd  
 10 refer the court to the Rincon case of the Colorado  
 11 Court of Appeals, 140 P.3d 979, as well as the Wright  
 12 and Miller treatise on federal practice and procedure,  
 13 Section 5039 and at pages 199 to 200.  
 14 Even if the evidence that this court ruled  
 15 would be inadmissible was relevant, what the plaintiffs  
 16 have done today is they've changed this irrelevant  
 17 evidence into relevant evidence because they have used  
 18 the revenue restrictions in TABOR as a sword for their  
 19 case, and it would be unfair if the defendants are not  
 20 able to use that same evidence as a shield.  
 21 THE COURT: Did you want to respond,  
 22 Counsel?  
 23 MR. KAWANABE: Yes, Your Honor, if I may.  
 24 I wasn't sure if Mr. Fero was done.  
 25 MR. FERRO: I just would like to mention,

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1 as well, that I believe Ms. Kennedy mentioned "TABOR,"  
 2 the TABOR amendment approximately 19 times during her  
 3 direct examination today, and I have that written down,  
 4 several passages from the transcript, if you're  
 5 interested, Your Honor. We've also been keeping a  
 6 running list through the trial to date, and I believe  
 7 that the defendants have tried to comply with your  
 8 order. If we had known that the plaintiffs intended to  
 9 present this evidence today, we certainly would have  
 10 liked to have raised this issue to the court earlier  
 11 and even perhaps had the opportunity to present  
 12 argument on it even in our opening statements. Thank  
 13 you.  
 14 THE COURT: Thank you.  
 15 MR. KAWANABE: Your Honor, if I may  
 16 respond. First, I -- this is new. I wish we had a  
 17 chance to confer even during the break about this  
 18 motion. At a minimum, we would ask for time to brief  
 19 this issue if this court does not simply deny this  
 20 motion.  
 21 Having not had time to prepare a response,  
 22 this court should deny this motion, and here is why:  
 23 One, if the defendants were keeping track of when TABOR  
 24 was mentioned, why didn't they raise this issue in  
 25 prior testimony and wait until now to raise this issue

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1 about TABOR and opening the door? Two, there is a  
 2 difference between TABOR and noneducational  
 3 expenditures and to -- as to whether they are a legally  
 4 rational relationship or relate to a rational  
 5 relationship between the Public School Finance Act of  
 6 today and a thorough and uniform system of free public  
 7 schools. It is a different issue when historically you  
 8 look back as to why there has been a shift from the  
 9 local share to more of a state share.  
 10 The state's opening argument, and their --  
 11 part of their defense seems to be that out of  
 12 generosity, they have shifted and paid more moneys to  
 13 local school districts. That simply is not the case;  
 14 and so the evidence today was historically to set the  
 15 record straight that that is because the local share,  
 16 the ability to raise local money, has shrunk. It is a  
 17 historical perspective, not the legal question of  
 18 whether or not there is a rational relationship between  
 19 the Public School Finance Act and a thorough and  
 20 uniform system of free public schools.  
 21 So, Your Honor, finally, again, in the  
 22 vein of springing the trap, if this is what they  
 23 intended to do and would object to this, they should  
 24 have raised the issue when Ms. Kennedy first talked  
 25 about it in her testimony, when prior witnesses that

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1 they've referred to unnamed raised it in their  
 2 testimony rather than raise it after the complete  
 3 direct examination. So, at a minimum, we would ask  
 4 that the court simply deny this motion. It is not  
 5 inconsistent -- the evidence presented is not  
 6 inconsistent with the court's order, and if this court  
 7 is inclined to hear further argument, we certainly  
 8 would ask for an opportunity to brief this issue.  
 9 MS. BONO: And we'd like the opportunity  
 10 to be heard on this issue, just to make a record, since  
 11 it will affect our case, as well.  
 12 In addition to what Mr. Kawanabe argued,  
 13 we'd like to state that if the state has an objection  
 14 to her testimony, they should have made it at the time  
 15 during her testimony when they felt the objection  
 16 should have been raised. For example, if they had some  
 17 other objection to her testimony, the court certainly  
 18 wouldn't be entertaining it now, after her testimony  
 19 had been concluded; and on that basis, we -- we would  
 20 argue that it's been waived.  
 21 THE COURT: All right. I'm going to allow  
 22 inquiry, and for the following reasons: Number one, I  
 23 don't think counsel's under any obligation to object  
 24 when the door is opened. I think it's a trial  
 25 strategy, and if counsel chooses not to object -- I was

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1 somewhat concerned that we did get into TABOR, even  
 2 though it was limited inquiry. I will allow  
 3 cross-examination on it.  
 4 The other issue is, and I can't speak for  
 5 Ms. Kennedy, if you want her to come back next week and  
 6 further inquire into it because you weren't prepared  
 7 for this, perhaps, Counsel -- based on the court's  
 8 prior ruling. So I'll leave that up to you, but I  
 9 don't want to stop right now today and allow further  
 10 briefing because I think the arguments have been made  
 11 and they were made in the motion in limine, and so I  
 12 will allow inquiry; and if you certainly want to defer  
 13 redirect or however you want to handle it, I'm open to  
 14 that, and I'm sure Ms. Kennedy would hopefully work  
 15 with you on that.  
 16 MR. KAWANABE: Thank you, Your Honor. May  
 17 I ask one clarification?  
 18 THE COURT: Yes.  
 19 MR. KAWANABE: This is strictly for  
 20 Ms. Kennedy, correct?  
 21 THE COURT: Yes. I'm not -- yes, because  
 22 she's the witness who got into it, obviously, given her  
 23 position.  
 24 MR. KAWANABE: Thank you.  
 25 MR. FERRO: And, Your Honor, may I also

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1 clarify? It would be the defense's position that the  
 2 time for us to present affirmative evidence would  
 3 obviously be in our own case, and we reserve the right  
 4 to ask the court for permission to present affirmative  
 5 evidence on these matters that were excluded because  
 6 plaintiffs may have opened the door.  
 7 THE COURT: Well, we can deal with that  
 8 when we come to it.  
 9 MR. FERRO: Thank you very much.  
 10 THE COURT: Thank you.  
 11 CROSS-EXAMINATION  
 12 BY MR. FERRO:  
 13 **Q. All right. Hello, Ms. Kennedy. How are**  
 14 **you this afternoon?**  
 15 A. I'm fine. Thank you.  
 16 **Q. Thank you for being patient. Now, you**  
 17 **were talking about the BEST program; is that right?**  
 18 A. Yes.  
 19 **Q. And the BEST program, as you understand**  
 20 **it, was designed to help districts that cannot raise**  
 21 **enough money locally to replace old buildings; is that**  
 22 **correct?**  
 23 A. Yes.  
 24 **Q. And it was the General Assembly that**  
 25 **enacted the BEST program?**

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1 A. Yes.  
 2 **Q. Now, you were also talking about -- I**  
 3 **believe you said \$10 billion in facility needs for all**  
 4 **178 school districts?**  
 5 A. I indicated I don't remember the specific  
 6 number, but I believe it was around that.  
 7 **Q. Okay.**  
 8 A. It's a report that was prepared as part of  
 9 the BEST legislation that assessed the facility needs  
 10 of all the school districts in the state.  
 11 **Q. And you were also talking -- I believe you**  
 12 **said there were approximately a hundred or so districts**  
 13 **that, just based on their local tax -- local capacity,**  
 14 **they can't raise enough to even build a building; is**  
 15 **that right?**  
 16 A. Yes.  
 17 **Q. Now, that \$10 billion, that wasn't limited**  
 18 **to just that 100 group of districts that couldn't raise**  
 19 **a building locally; is that right?**  
 20 A. That's correct. It was statewide.  
 21 **Q. So that -- that \$10 billion would include**  
 22 **districts that do have the capability to raise funds**  
 23 **locally to build new facilities; is that right?**  
 24 A. Yes.  
 25 **Q. You were also talking about the School**

2806

1 **Trust Lands fund. Do you recall that?**  
 2 A. Yes.  
 3 **Q. And you would agree that the School Trust**  
 4 **Lands fund established in the constitution provides**  
 5 **only a -- a very small amount of funding for education;**  
 6 **is that right?**  
 7 A. Yes.  
 8 **Q. Now, you talked about what you've seen in**  
 9 **school districts in Colorado; is that fair to say?**  
 10 A. Yes.  
 11 **Q. And you've seen impacts of state funding**  
 12 **cuts, correct?**  
 13 A. Many of my visits to schools around the  
 14 state preceded the most recent cuts, so I've seen the  
 15 impact of the deterioration over time, not necessarily  
 16 the immediate cuts.  
 17 **Q. Okay. Fair enough. And -- but the**  
 18 **different -- you've seen -- the impacts you've seen**  
 19 **have differed in their magnitude in different**  
 20 **districts; is that correct?**  
 21 A. Yes.  
 22 **Q. And that would be because of local**  
 23 **control; is that right?**  
 24 MR. KAWANABE: Objection, calls for a  
 25 legal conclusion.

2807

1 THE COURT: Overruled. If she knows or  
 2 has an opinion.  
 3 You can answer it, if you have an opinion.  
 4 A. It's -- it's due to a variety of reasons.  
 5 Again, the -- some districts have override revenues  
 6 that others don't.  
 7 **Q. (BY MR. FERRO) And really what I'm asking**  
 8 **is school boards make the decision how they're going to**  
 9 **absorb budget cuts; would you agree?**  
 10 A. Yes.  
 11 **Q. And some will choose to increase class**  
 12 **size, some might cut programs, some might delay**  
 13 **textbook repurchases?**  
 14 A. Yes. That's accurate.  
 15 **Q. And all of those choices would be their**  
 16 **exercise of local control, as you understand it?**  
 17 A. Yes.  
 18 **Q. You were also talking about mill levy**  
 19 **overrides; is that right?**  
 20 A. Yes.  
 21 **Q. And you're aware that there are many**  
 22 **districts in Colorado that have never even asked their**  
 23 **voters for a mill levy override, correct?**  
 24 A. I believe that to be true, yes.  
 25 **Q. Now, I believe you were also testifying**

2808

1 **that the local share for school finance has been**  
 2 **eroding over time in Colorado?**  
 3 A. The local share as a percentage of the  
 4 total has eroded over time, and the local rates,  
 5 property tax rates, have eroded over time.  
 6 **Q. And what you -- the rates going down, that**  
 7 **downward trend, that's because of the Gallagher**  
 8 **amendment, correct?**  
 9 A. It's because of both the Gallagher  
 10 amendment and the TABOR amendment.  
 11 **Q. All right. And both Gallagher and the**  
 12 **TABOR amendments are part of the Colorado constitution,**  
 13 **correct?**  
 14 A. Yes; and if I can clarify, the issue that  
 15 was at the court on the mill levy stabilization  
 16 legislation was the authority of the General Assembly  
 17 to stop the decline of those local levies in districts  
 18 that had authorized -- the voters had authorized them  
 19 to keep TABOR surplus.  
 20 **Q. Thank you, and I'm just asking you about**  
 21 **the decline itself, and you would agree that Gallagher**  
 22 **was passed by the Colorado voters; is that right?**  
 23 A. Yes.  
 24 **Q. And as was the TABOR amendment?**  
 25 A. Yes.

2809

1 **Q. Can the General Assembly repeal Gallagher,**  
 2 **if it wants to?**  
 3 A. No.  
 4 **Q. Can the General Assembly repeal TABOR, if**  
 5 **it wants to?**  
 6 MR. KAWANABE: Your Honor, if I may have a  
 7 standing objection to Gallagher or TABOR's  
 8 noneducational expenditures as to current time frames  
 9 just to make a record under Rule 403, relevance, as  
 10 well as -- excuse me, 401, 402 and 403. If I may have  
 11 that standing objection.  
 12 THE COURT: Yes. Do you want to join in?  
 13 MS. BONO: We'll join the objection.  
 14 Thank you.  
 15 THE COURT: I'll note the standing  
 16 objection. Thank you.  
 17 **Q. (BY MR. FERRO) I believe my question was**  
 18 **as far as you know, the General Assembly cannot repeal**  
 19 **TABOR if it wants to; is that right?**  
 20 A. They could not. They would need to refer  
 21 that to the voters.  
 22 **Q. And you mentioned that TABOR was also**  
 23 **responsible in part for that downward trend in the**  
 24 **local -- the local share; is that right?**  
 25 A. Yes.

2810

1 **Q. Now, TABOR also reduced the amount of**  
 2 **funding that would have been available to the state to**  
 3 **support education; is that right?**  
 4 A. Yes.  
 5 **Q. And you -- you mentioned the word**  
 6 **"backfill" and that the General Assembly had backfilled**  
 7 **the reduced local share at points in time; is that**  
 8 **right?**  
 9 A. Yes.  
 10 **Q. And the General Assembly -- their ability**  
 11 **to backfill, though, became restricted by TABOR; is**  
 12 **that correct?**  
 13 A. Yes.  
 14 **Q. And there was a period of time when the**  
 15 **state was refunding almost a billion dollars to**  
 16 **taxpayers because of the TABOR amendment, correct?**  
 17 A. Yes.  
 18 **Q. And that refund created an enormous hole**  
 19 **in the state general fund?**  
 20 A. Yes.  
 21 **Q. And, again, I'm talking -- I'm asking**  
 22 **you -- I believe we're on the same page. We're talking**  
 23 **about that time period between TABOR, when TABOR was**  
 24 **enacted, and when Amendment 23 was enacted?**  
 25 A. Yes. That's accurate.

2811

1 **Q. Okay. And the prevailing understanding in**  
 2 **the General Assembly was there wasn't anything anyone**  
 3 **could do; is that right?**  
 4 MR. KAWANABE: Objection, foundation.  
 5 THE COURT: Sustained.  
 6 **Q. (BY MR. FERRO) You worked as a -- you**  
 7 **staffed legislators during that time period, did you**  
 8 **not?**  
 9 A. I did.  
 10 **Q. And to your knowledge, legislators were**  
 11 **told by their staff that there wasn't anything they**  
 12 **could do about the state general fund, correct?**  
 13 MR. KAWANABE: Same objection, foundation  
 14 and hearsay.  
 15 THE COURT: I think you have to lay a  
 16 further foundation. Sustained.  
 17 **Q. (BY MR. FERRO) What legislators did you**  
 18 **staff, Ms. Kennedy?**  
 19 A. Between 1995 and 1998, I was staff in  
 20 Governor Roy Romer's office; and from 2004 and 2005, I  
 21 was the policy director for House Speaker Andrew  
 22 Romanoff.  
 23 **Q. And you mentioned that you worked with**  
 24 **Senator Norma Anderson, as well; is that right?**  
 25 A. I worked with her on school finance

2812

1 issues, yes.  
 2 **Q. Uh-huh. And did you -- did you personally**  
 3 **advise anyone in the legislature that there wasn't**  
 4 **anything they could do about the state of the general**  
 5 **fund?**  
 6 A. No.  
 7 **Q. And do you have knowledge of such advice**  
 8 **being given to legislators?**  
 9 A. Directly, no.  
 10 **Q. But you have some knowledge?**  
 11 MR. KAWANABE: Same objection; no  
 12 foundation, Your Honor. She's answered as to personal  
 13 knowledge.  
 14 THE COURT: Okay. I'm going to sustain  
 15 the objection.  
 16 **Q. (BY MR. FERRO) Ms. Kennedy, would you**  
 17 **agree that during that time period between TABOR and**  
 18 **Amendment 23, that the General Assembly's options were**  
 19 **limited?**  
 20 MR. KAWANABE: Same objection, Your Honor.  
 21 No foundation.  
 22 THE COURT: Overruled. This is different.  
 23 Overruled.  
 24 A. You want me to answer that?  
 25 **Q. (BY MR. FERRO) Please do.**

2813

1 A. That was a -- a period of time where TABOR  
 2 had only recently passed and it had clearly limited  
 3 what the General Assembly could do with respect to  
 4 raising funding for schools.  
 5 **Q. And one thing the General Assembly could**  
 6 **have done was cut a variety of state services; you**  
 7 **would agree?**  
 8 A. Yes.  
 9 **Q. And when I say "a variety of state**  
 10 **services," you would agree that would mean noneducation**  
 11 **state services?**  
 12 A. Yes.  
 13 **Q. Now, you always believed during that time**  
 14 **that school districts could maintain their mill levy**  
 15 **rates if they had attained voter approval to retain**  
 16 **excess revenues?**  
 17 A. Yes.  
 18 **Q. And the 1994 School Finance Act as**  
 19 **originally enacted didn't recognize that authority; is**  
 20 **that right?**  
 21 A. That's correct.  
 22 **Q. And what year was it that you -- that the**  
 23 **mill levy override legislation was enacted?**  
 24 A. I'm worried. I have a hard time  
 25 remembering the specific years. I believe it was 2007.

2814

1 **Q. And so in between that time and when TABOR**  
 2 **was enacted, another option by the legislature would**  
 3 **have been to ask the voters of the state to retain**  
 4 **excess revenue; is that right?**  
 5 A. I'm sorry. Could you repeat the question  
 6 with the dates, the time frame?  
 7 **Q. Yeah, I'm sorry. So between the -- after**  
 8 **TABOR was enacted, up until that time of the mill levy**  
 9 **override legislation you talked about, the -- the**  
 10 **General Assembly could have gone to the voters and**  
 11 **requested permission to retain excess revenues; is that**  
 12 **right?**  
 13 A. Yes, and they did.  
 14 **Q. They did in 1998, correct?**  
 15 A. Yes.  
 16 **Q. That was Referendum B?**  
 17 A. Yes.  
 18 **Q. It would have allowed the state to retain**  
 19 **a billion dollars over five years to be spent for**  
 20 **transportation, higher education, and K-12 education?**  
 21 A. Yes.  
 22 **Q. But that measure was rejected by the**  
 23 **voters; is that right?**  
 24 A. Yes.  
 25 **Q. 61 percent voted no?**

2815

1 A. I don't recall the specific --  
 2 **Q. You believe that the General Assembly**  
 3 **tried to protect schools as much as it could during**  
 4 **that time; isn't that right?**  
 5 A. If your question is do I believe the  
 6 General Assembly did everything they could have to  
 7 protect education funding from the time TABOR passed  
 8 until 2007? No.  
 9 **Q. This isn't the first time you and I have**  
 10 **talked; is that right?**  
 11 A. That's correct.  
 12 **Q. I took your deposition earlier this year?**  
 13 A. Yes.  
 14 **Q. And there was a court reporter present?**  
 15 A. Yes.  
 16 **Q. She recorded what you said and what I**  
 17 **said?**  
 18 A. Yes.  
 19 **Q. All right. You took an oath to tell the**  
 20 **truth that day, correct?**  
 21 A. I did.  
 22 **Q. Just as you did today?**  
 23 A. Yes.  
 24 MR. FERRO: May I approach the witness,  
 25 Your Honor?

2816

1 THE COURT: Yes.  
 2 **Q. (BY MR. FERRO) Ms. Kennedy, I just handed**  
 3 **you a certified copy of that deposition, and if you**  
 4 **would actually please turn to page 75. I know the page**  
 5 **numbers are a little hard to find there. It's what**  
 6 **they call a condensed transcript.**  
 7 A. Okay.  
 8 **Q. All right. And -- and do you see at**  
 9 **line 3 where I asked you about years before 1998, where**  
 10 **the legislature was returning large surpluses?**  
 11 A. Yes.  
 12 **Q. And then if you look down further on the**  
 13 **page, I asked you about reallocating funds from K-12**  
 14 **into other programs during that time period; do you see**  
 15 **that, as well?**  
 16 A. Yes.  
 17 **Q. And do you see that your answer at the**  
 18 **bottom of -- line 24 at the bottom of page 75 reads,**  
 19 **"It's hard for me to recall the budget negotiations**  
 20 **that went on during that time, but I think the general**  
 21 **assembly did that to try to protect schools as much as**  
 22 **they could." Did I read that correctly?**  
 23 MR. KAWANABE: Your Honor, that's not  
 24 impeachment. That's not contrary to what she testified  
 25 to.

2817

1 THE COURT: Overruled.  
 2 **Q. (BY MR. FERRO) Did I read that correctly,**  
 3 **Ms. Kennedy?**  
 4 A. Yes.  
 5 **Q. And that was your testimony when I deposed**  
 6 **you earlier this year?**  
 7 A. Yes.  
 8 **Q. Do you stand by that statement today?**  
 9 A. I do stand by that statement, and in the  
 10 context of the conversation we were having about how  
 11 this was early in the implementation of TABOR and the  
 12 General Assembly -- and I believe it was a referred  
 13 measure -- placed that on the ballot to avoid cuts that  
 14 would otherwise come about at that time in education,  
 15 higher education, and transportation.  
 16 **Q. But one thing the General Assembly did not**  
 17 **do at that time was enact the mill levy override**  
 18 **legislation that you've talked about; is that right?**  
 19 A. They did not at that time.  
 20 **Q. And even though they hadn't done it at**  
 21 **that time, you still stated that the General Assembly**  
 22 **tried to protect schools as much as it could?**  
 23 A. I mean, again, that was early on, so the  
 24 impact of the declining mill levies was starting to  
 25 take effect at that time, and you had school districts

2818

1 going to their voters on overrides around that time, so  
 2 it was still very early, I guess is what I'm saying.  
 3 **Q. And you would also agree that had the**  
 4 **resources been there, you believe the General Assembly**  
 5 **would have funded new students and funded programs in**  
 6 **education?**  
 7 A. Are you referring to something in here or  
 8 just generally do I think, if the revenues had  
 9 supported it, that the General Assembly would have  
 10 appropriated more to schools?  
 11 **Q. Is that what you believe?**  
 12 A. Yes.  
 13 **Q. Now, in 2008, the legislature considered**  
 14 **another -- another referendum that was sponsored by**  
 15 **Speaker Romanoff; is that right?**  
 16 A. Yes.  
 17 **Q. It didn't actually pass the legislature,**  
 18 **but it did make the ballot as a citizen initiative,**  
 19 **correct?**  
 20 A. Yes.  
 21 **Q. And it was known as Amendment 59; is that**  
 22 **right?**  
 23 A. Yes.  
 24 **Q. And Amendment 59 would have amended both**  
 25 **Amendment 23 and TABOR, correct?**

2819

1 A. Yes.  
 2 **Q. And the voters rejected that?**  
 3 A. Yes.  
 4 **Q. 55 percent voted no, correct?**  
 5 A. Again, I don't remember the specific vote.  
 6 **Q. You were talking -- when you were talking**  
 7 **about Amendment 23, do you recall testifying about that**  
 8 **Denver-Boulder metro area Consumer Price Index measure?**  
 9 A. Yes.  
 10 **Q. And I believe you said that that true --**  
 11 **that that wasn't a true cost to school districts?**  
 12 A. That's correct.  
 13 **Q. But you were the one that chose the**  
 14 **Denver-Boulder CPI as the relevant metric in**  
 15 **Amendment 23, correct?**  
 16 A. Yes.  
 17 **Q. Now, you view Amendment 23 as a first**  
 18 **step, right, to restore education funding back to the**  
 19 **level it had been at before TABOR?**  
 20 A. Yes.  
 21 **Q. And Amendment 23 set a funding floor, in**  
 22 **your view; is that right?**  
 23 A. That's correct.  
 24 **Q. And you've testified today that that floor**  
 25 **was not meant to correspond to the education clause as**

2820

1 **mandated of a thorough and uniform system of free**  
 2 **public schools?**  
 3 A. That's correct. There's no relationship  
 4 between the two.  
 5 **Q. And you -- you say that because you**  
 6 **drafted Amendment 23, correct?**  
 7 A. Yes.  
 8 **Q. Back in 2002?**  
 9 A. 1999. It was on the ballot in 2000.  
 10 **Q. Thank you. So that was over 10 years ago?**  
 11 A. Yes.  
 12 **Q. And to you, a thorough and uniform system**  
 13 **means resources sufficient to meet the goals, standards**  
 14 **and objectives identified by the General Assembly and**  
 15 **established by local school boards?**  
 16 A. Yes.  
 17 **Q. Your testimony is that Amendment 23 was**  
 18 **not intended to provide such sufficient resources?**  
 19 A. No. It was not.  
 20 **Q. You believe the Blue Book would support**  
 21 **that?**  
 22 A. Yes.  
 23 **Q. And you consider the Blue Book to be**  
 24 **authoritative, correct?**  
 25 A. Yes.

2821

1 **Q. And that would be because the Blue Book is**  
 2 **objective, it's reviewed, it's an independent analysis?**  
 3 A. Yes.  
 4 **Q. And you helped draft the Blue Book**  
 5 **statement in favor of Amendment 23; is that right?**  
 6 A. Yes.  
 7 **Q. And, Ms. Kennedy, you are aware -- you are**  
 8 **aware that the -- excuse me, that the arguments in**  
 9 **favor -- the arguments in favor of Amendment 23 stated**  
 10 **that the best way to infuse the school system with the**  
 11 **necessary level of funding is for voters to approve**  
 12 **this proposal; is that right?**  
 13 MR. KAWANABE: Your Honor, I would object  
 14 to publishing this document that I don't believe is an  
 15 exhibit, but -- please correct me if I'm wrong,  
 16 Mr. Fero.  
 17 MR. FERRO: It's not a stipulated exhibit,  
 18 Your Honor. I'm not offering it for admission at this  
 19 time.  
 20 THE COURT: If you want to show it to her  
 21 rather than publicize it.  
 22 MR. FERRO: Sure.  
 23 **Q. (BY MR. FERRO) Ms. Kennedy, I just handed**  
 24 **you an excerpt copy from the Blue Book for the entire**  
 25 **ballot that year, and what you have before you is a**

2822

1 **photocopy of the portion of the Blue Book that related**  
 2 **to Amendment 23. Take a moment to review it, if you**  
 3 **need to.**  
 4 A. Yes.  
 5 **Q. Does that appear to be a true and accurate**  
 6 **copy, as far as you know, of that document?**  
 7 A. Yes.  
 8 **Q. And that document is available publicly,**  
 9 **isn't it?**  
 10 A. Yes.  
 11 **Q. I asked you about that document at your**  
 12 **deposition, correct? Do you remember that?**  
 13 A. I'm sorry. You probably did.  
 14 **Q. All right. And you see the portion that**  
 15 **I've highlighted on page 12, and so you would agree**  
 16 **that a portion that you helped draft stated that the**  
 17 **best way to infuse the school system with the necessary**  
 18 **level of funding is for voters to approve this**  
 19 **proposal?**  
 20 MR. KAWANABE: Your Honor, objection.  
 21 This is not an exhibit, and he's reading from the  
 22 exhibit (sic). He hasn't -- it's not introduced into  
 23 evidence.  
 24 THE COURT: Well, I don't think he has to  
 25 introduce it. He can ask her if she agrees with a

2823

1 prior statement, so overruled.  
 2 A. Yes. I was involved in drafting that  
 3 statement, and it qualifies the previous sentence which  
 4 says funding for public schools may continue to fall  
 5 behind and the best way for -- to infuse the school  
 6 system with the necessary level of funding is for  
 7 voters to approve this proposal, so it's in the context  
 8 of avoiding additional cuts.  
 9 **Q. (BY MR. FERRO) But, again, that was a**  
 10 **statement that you helped draft, correct?**  
 11 A. Yes.  
 12 **Q. And you drafted it for voters to consider**  
 13 **when deciding to vote in favor of Amendment 23?**  
 14 A. Yes.  
 15 **Q. Now, you also testified about the -- the**  
 16 **negative factor; is that right?**  
 17 A. Yes.  
 18 **Q. And I believe that you were testifying**  
 19 **that that -- that negative factor was against what you**  
 20 **intended when you drafted Amendment 23; is that fair to**  
 21 **say?**  
 22 A. Yes. I think it's against the intent and  
 23 purpose.  
 24 **Q. And you -- that's your testimony even**  
 25 **though Amendment 23 does not require increased funding**

2824

1 **of factors, correct?**  
 2 A. Yes.  
 3 **Q. Now, when you drafted Amendment 23, you**  
 4 **did not intend to subject the factors to any formula**  
 5 **increase, correct?**  
 6 A. That's correct. They're there to  
 7 accomplish equity in purchasing power across districts,  
 8 and we wanted to preserve that purpose.  
 9 **Q. And you wanted to preserve the ability of**  
 10 **the factors to adjust themselves based on changes in**  
 11 **student populations?**  
 12 A. Yes.  
 13 **Q. And you would agree that you could have**  
 14 **drafted Amendment 23 to include a provision saying that**  
 15 **the factors could not be reduced except in the event of**  
 16 **reduced at-risk population, for example?**  
 17 A. It was a long time ago, but if I recall,  
 18 we talked about that and it was hard to come up with  
 19 any -- recognizing that we were writing constitutional  
 20 language -- to not destroy what the factors are, in  
 21 essence, intended to do. They are a formula that  
 22 per-pupil funding flows through in order to equalize  
 23 the purchasing power based on economic and demographic  
 24 districts. It would have required, you know, almost an  
 25 impossible -- I don't know how you -- I -- at the time.

2825

1 I didn't know how to do that, how to write it; and  
 2 today, if you were to ask me could I write that, I  
 3 don't think that I could. I don't know how you do  
 4 that. They are, by their very nature, established as  
 5 part of that formula simply to take the funding, run it  
 6 through those adjustments to build equity in purchasing  
 7 power across the state.  
 8 **Q. So are you saying that that would not have**  
 9 **been an easy provision to draft?**  
 10 A. Yes.  
 11 **Q. Was the rest of Amendment 23 easy to**  
 12 **draft?**  
 13 A. Easier than that.  
 14 **Q. Now, at a 1999 legislative hearing, you**  
 15 **referred to base per-pupil funding when you were**  
 16 **talking about the then-proposed Amendment 23, correct?**  
 17 A. Yes.  
 18 **Q. And, in hindsight, you can see how using**  
 19 **that phrase, "base per pupil," may have created some**  
 20 **confusion at the legislature?**  
 21 MR. KAWANABE: Objection, foundation.  
 22 What legislators were confused?  
 23 THE COURT: Sustained.  
 24 **Q. (BY MR. FERRO) Ms. Kennedy, are you**  
 25 **familiar with what's known as the King memo?**

2826

1 A. Yes.  
 2 **Q. And do you believe that your -- does the**  
 3 **King memo recount that statement you made at the 1999**  
 4 **legislative hearing?**  
 5 A. It recounts a portion of the -- of the  
 6 testimony, the discussion at that hearing, yes.  
 7 **Q. And you believe that what you said was**  
 8 **misunderstood at that time?**  
 9 A. I apologize. I -- I'd have to refresh my  
 10 memory with what the Keith King memo said. I haven't  
 11 read it in a while.  
 12 **Q. Do you recall talking about this at your**  
 13 **deposition?**  
 14 A. Yes, if you say so.  
 15 **Q. Okay. Well, would your deposition**  
 16 **transcript refresh your recollection?**  
 17 A. Yes. Thank you.  
 18 **Q. Okay. I would direct your attention to**  
 19 **page 120.**  
 20 MR. KAWANABE: Your Honor, objection. A  
 21 deposition is to be used for impeachment. There is no  
 22 pending question and answer to be impeached.  
 23 THE COURT: Well, I think he's trying to  
 24 lay a foundation as to whether or not she remembers  
 25 certain statements. So at this point, I'll overrule

2827

1 the objection.  
 2 MR. KAWANABE: Mr. Fero, what page?  
 3 MR. FERRO: 120, going on to the next page.  
 4 **Q. (BY MR. FERRO) All right. And so has your**  
 5 **memory been refreshed, Ms. Kennedy? It actually -- our**  
 6 **discussion continues all the way to page 125.**  
 7 A. Okay. Thank you. I'm sorry. I missed  
 8 that.  
 9 **Q. I didn't tell you. I apologize.**  
 10 A. (The witness perused the document.)  
 11 Okay. I see what you're talking about.  
 12 **Q. All right. So do you believe that you**  
 13 **were misunderstood or misinterpreted when you made the**  
 14 **comments at the 1999 legislative hearing?**  
 15 A. Yes.  
 16 **Q. And, in hindsight, you can see how using**  
 17 **that phrase, "base per pupil," may have created**  
 18 **confusion?**  
 19 A. Yes.  
 20 **Q. When the negative factor was enacted, you**  
 21 **would agree that the State of Colorado was in an**  
 22 **economic free fall, correct?**  
 23 A. Was in a significant economic downturn.  
 24 **Q. A historic economic downturn?**  
 25 A. Yes.

2828

1 **Q. And even though you disagree with the**  
 2 **negative factor, you think that the General Assembly**  
 3 **and the Governor really were trying to do the right**  
 4 **thing, correct?**  
 5 A. Yes.  
 6 MR. FERRO: And this is Trial Exhibit 4603,  
 7 for the record.  
 8 **Q. (BY MR. FERRO) And, Ms. Kennedy, you**  
 9 **respect -- at the time that the negative factor was**  
 10 **passed, you respected the work of the Governor and the**  
 11 **General Assembly that they were doing to balance the**  
 12 **budget; is that right?**  
 13 A. I don't know if, at the time of the speech  
 14 that I gave that this newspaper article is referring  
 15 to, that the factor had been -- the negative factor had  
 16 been adopted yet. I know there was a lot of  
 17 negotiation going on at the capitol about implementing  
 18 it.  
 19 **Q. It was certainly on the table; is that**  
 20 **right?**  
 21 A. It was on the table.  
 22 **Q. And at that time, you recognized that**  
 23 **there were some realities in the budget and that the**  
 24 **proposals were coming forward because they had to; is**  
 25 **that right?**

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1 A. Again, that's qualifying my earlier  
 2 statement, which is I don't believe the state can make  
 3 these cuts without violating Amendment 23.  
 4 MR. FERRO: Thank you for your time. I  
 5 have no further questions at this time.  
 6 THE COURT: Thank you.  
 7 MR. KAWANABE: Your Honor, with respect to  
 8 the redirect, if you'll allow it, I would like to  
 9 redirect specifically on the non-objectionable portion,  
 10 particularly this last exhibit; and then if you will  
 11 allow me to reserve redirect as to the other parts of  
 12 the cross-examination?  
 13 THE COURT: Do you want to do that part  
 14 now, though, that you just referenced?  
 15 MR. KAWANABE: Yes, please.  
 16 THE COURT: All right. Go right ahead.  
 17 REDIRECT EXAMINATION  
 18 BY MR. KAWANABE:  
 19 **Q. Ms. Kennedy, Mr. Fero referred you to**  
 20 **Exhibit 4603; is that correct?**  
 21 A. Yes.  
 22 **Q. And this is an article that he quoted part**  
 23 **of, correct?**  
 24 A. Yes.  
 25 **Q. And he pulled it off the screen just as**

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1 **you were reading a prior reference. He quoted you, "I**  
 2 **respect the work of the Governor and the General**  
 3 **Assembly." Do you recall that?**  
 4 A. Yes.  
 5 **Q. What was the quote right before that**  
 6 **statement?**  
 7 A. "I don't believe the state can make these  
 8 cuts without violating Amendment 23."  
 9 **Q. Thank you, Ms. Kennedy.**  
 10 MR. KAWANABE: At this time, Your Honor,  
 11 we would reserve redirect until a later time.  
 12 THE COURT: All right. Thank you, and you  
 13 might want to coordinate with Ms. Kennedy if -- if you  
 14 want to recall her.  
 15 MR. KAWANABE: I will.  
 16 THE COURT: Do you have any?  
 17 MS. BONO: I don't, Your Honor.  
 18 THE COURT: Thank you.  
 19 Thank you, Ms. Kennedy.  
 20 I guess we're in recess. Is that the last  
 21 witness?  
 22 MR. KAWANABE: We are, Your Honor, until  
 23 Monday.  
 24 THE COURT: Monday at 8:30. All right.  
 25 We'll see you then. Thank you.

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1                   WHEREUPON, the within proceedings were  
 2 adjourned at the approximate hour of 4:43 p.m. on the  
 3 12th day of August, 2011.

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REPORTER'S CERTIFICATE

STATE OF COLORADO            )  
   ) ss.  
 CITY AND COUNTY OF DENVER )

I, LORI A. MARTIN, Registered Merit 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 18th day of August, 2011.  
 My commission expires June 2, 2012.