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

3 REPORTER'S TRANSCRIPT: Trial - Day 7
 4 August 9, 2011

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

13 The trial in the above-entitled matter,
 14 having commenced on Monday, August 1, 2011, was
 15 reconvened on Tuesday, August 9, 2011, at 1437 Bannock
 16 Street, Courtroom 424, Denver, Colorado 80202, before
 17 the Honorable Sheila A. Rappaport, Judge of the
 18 District Court.

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

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

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1 I N D E X

2 WITNESSES: PAGE

3 For the Plaintiffs:

4 John Barry
 Direct Examination by Mr. Kawanabe 1746
 5 Cross-Examination by Ms. Markel 1815
 Redirect Examination by Mr. Kawanabe 1841
 6 Recross-Examination by Ms. Markel 1847

7 Lisa A. Escarcega
 Direct Examination by Mr. Klingsporn 1851
 8 Direct Examination by Ms. Bono 1891
 Cross-Examination by Ms. Weston 1912

9

10 Lucinda Hundley
 Direct Examination by Ms. Bezoza 1913
 Cross-Examination by Mr. Heinke 2005
 11 Redirect Examination by Ms. Bezoza 2025

12 Margaret McLaughlin
 Direct Examination by Ms. Bezoza 2027

13

14 EXHIBITS: RECEIVED

15 4901 1856

16 10450 1747

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1 MORNING SESSION, TUESDAY, AUGUST 9, 2011

2 WHEREUPON, the court reconvened at

3 8:31 a.m., and the following proceedings were had:

4 * * * * *

5 THE COURT: Calling up 05CV474. Parties

6 are present. We did put a note on the witness box,

7 "Please slow down," in red. So I hope the people will

8 notice it. Are we ready to proceed then?

9 MR. KAWANABE: We are.

10 THE COURT: Okay.

11 MR. KAWANABE: Plaintiffs call

12 Superintendent John Barry to the stand.

13 THE COURT: Thank you.

14 MR. KAWANABE: Mr. Barry, that note is for

15 you.

16 THE COURT: It's for all the witnesses.

17 Raise your right hand.

18 JOHN BARRY,

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

20 testified as follows:

21 THE COURT: Thank you, sir. Please be

22 seated. And you can adjust that mic. And then if you

23 would state your full name and spell your last name for

24 the record.

25 THE WITNESS: John Barry. J-o-h-n,

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1 B-a-r-r-y. Superintendent, Aurora Public Schools.
 2 THE COURT: Thank you.
 3 DIRECT EXAMINATION
 4 BY MR. KAWANABE:
 5 **Q. Good morning, Mr. Barry.**
 6 A. Good morning.
 7 **Q. Would you do me a favor and pull that**
 8 **microphone a little closer to you? Thank you very**
 9 **much. Mr. Barry, what do you do?**
 10 A. I'm the Superintendent of Aurora Public
 11 Schools, the sixth largest school district in the state
 12 of Colorado.
 13 **Q. Approximately how many students are in**
 14 **Aurora Public Schools?**
 15 A. We're anticipating going over 39,000 this
 16 year. We have 59 schools. And, as I said, we're the
 17 sixth largest school district in the state.
 18 MR. KAWANABE: And, Your Honor,
 19 Plaintiffs' Trial Exhibit 10450 is the resume of John
 20 Barry.
 21 **Q. (BY MR. KAWANABE) Mr. Barry, let me show**
 22 **you this exhibit, the first page, as I'd like to go**
 23 **through some of these. Would you please identify this**
 24 **document.**
 25 A. This is my resume. It dates -- and it is

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1 current. I'm currently the superintendent. And before
 2 that, I had served in the military for 30 years and
 3 then retired as a two-star general, and then also in
 4 business.
 5 MR. KAWANABE: All right. And before we
 6 go into more detail, Your Honor, we would move for the
 7 admission of Plaintiffs' Trial Exhibit 10450.
 8 THE COURT: Any objection?
 9 MS. MARKEL: None, Your Honor.
 10 THE COURT: 10450 will admitted.
 11 MR. KAWANABE: Your Honor, we also intend
 12 to use other trial exhibits that have already been
 13 entered into evidence, namely, 10057, 10058, 10059,
 14 320, 10083, and Trial Exhibit 306. Again, these
 15 exhibits, I believe, have been entered into evidence.
 16 And may I approach the witness? And we have an extra
 17 copy for you as well, Your Honor.
 18 THE COURT: Thank you.
 19 MR. KAWANABE: I apologize, Your Honor,
 20 the resume lacks an exhibit sticker. But other than
 21 that, it is a true and accurate copy.
 22 THE COURT: Thank you.
 23 **Q. (BY MR. KAWANABE) Mr. Barry, let's go**
 24 **over your resume for a bit, please. And let's start**
 25 **with your education. Tell us about your educational**

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1 **background.**
 2 A. Well, I went to -- I grew up in The Bronx
 3 and graduated from high school at Cardinal Spellman
 4 High School. Just happens to be Judge Sotomayor's high
 5 school. You know, she was a freshman when I was a
 6 senior. Went to the Air Force Academy in 1969,
 7 graduated in '73. Received a master's in public
 8 administration from Oklahoma University in 1980. And
 9 I've been fortunate to be part of a number of
 10 fellowships that have been very important in my life,
 11 and we can talk about those if you want.
 12 **Q. Okay. Let's start with the National**
 13 **Security Fellowship. What is that?**
 14 A. That is at Harvard University. I was
 15 selected as -- when I was a colonel in the United
 16 States Air Force. That was one of our professional
 17 development kind of cycles. So instead of going to Air
 18 War College or National War College, I was selected to
 19 go to Harvard.
 20 **Q. White House Fellow?**
 21 A. That was in 1985, 1986, competitive
 22 submission. We had 14 in our class that year. This is
 23 where you can compete from any venue in the country,
 24 and I was fortunate to serve as a White House Fellow at
 25 NASA. That was the year the Challenger blew up.

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1 **Q. You were involved with the Challenger**
 2 **investigation in some respect; is that correct?**
 3 A. In 1986, when Challenger blew up, I was
 4 the special assistant to the administrator. The
 5 administrator is the person who runs NASA in
 6 Washington, D.C. So when that happened, I was a
 7 liaison between the investigation team and the
 8 administrator.
 9 **Q. We're going to come back to the Broad**
 10 **Urban Superintendents Academy shortly. Okay,**
 11 **Mr. Barry? After receiving your initial college**
 12 **degrees, what did you do?**
 13 A. After I graduated in the Air Force
 14 Academy, went to pilot training. I was a fighter pilot
 15 in the air force for pretty much 30 years. I was in
 16 different command levels and served as a squadron
 17 commander and group commander, wing commander twice,
 18 once overseas. Spent two-and-a-half years in combat
 19 flying over Iraq.
 20 The advantage that I had was I had -- I
 21 had the privilege to go through the TOPGUN school in
 22 the air force and retired as a two-star general in the
 23 air force.
 24 **Q. Was that the first war in Iraq?**
 25 A. It actually was the second. So it was a

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1 combination from 1990 to 2003.

2 **Q. Okay. And so you were an air force**

3 **pilot; is that correct?**

4 A. Correct.

5 **Q. Let's take a look at your resume, please.**

6 **From 1990 to 1992, you were military assistant to the**

7 **secretary of defense; is that correct?**

8 A. That's correct. There are two military

9 assistants. I was one. That's where Secretary of

10 Defense Chaney was the secretary of defense at the

11 time. And I served with him from 1990 to 1992.

12 **Q. All right. And were you working at the**

13 **Pentagon at that time?**

14 A. That's right. Secretary's office is here,

15 the assistant's office is right next to it.

16 **Q. Commander of -- what is that air force**

17 **base?**

18 A. Incirlik Air Force Base in Turkey. That

19 is when we were flying over Iraq from the north. So I

20 was the commander of the base there for joint

21 operations for the Turkish, French, American, and

22 British Air Forces.

23 **Q. Mr. Barry, what about the Luke Air Force**

24 **Base?**

25 A. That was a second wing command that I had

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1 That's when you're -- wing commander is kind of like

2 the mayor of everything there. You're not only the

3 combat leader, but also you're in charge of finance and

4 housing and contracting, police department, fire

5 department, all those kinds of things. So Luke Air

6 Force Base is one of the larger air force bases in the

7 air force. In fact, it's the sixth largest air force

8 in the world if you just counted the airplanes.

9 So it is west of Phoenix. It is the

10 largest training base for F16 aircraft, the same

11 airplanes that are flown in Buckley.

12 **Q. Director of plans and programs for Europe,**

13 **what did you do there?**

14 A. There's one two-star general in the air

15 force that's selected as the strategic planner for the

16 air force. I served in that position for two years.

17 That was also a time when we were attacked in the

18 Pentagon, 9/11.

19 **Q. September 11 attacks?**

20 A. Uh-huh.

21 **Q. At that time it says brigadier general,**

22 **one star. Had you become a two-star general yet?**

23 A. I was a one-star while I served at Luke

24 Air Force Base and was promoted out of that assignment

25 into the Pentagon position as strategic planner. So I

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1 was a two-star in the Pentagon.

2 **Q. And under -- on the first page of your**

3 **resume, it states, "Vice president for defense and**

4 **security, SAP." Is that the private sector?**

5 A. That's correct. I retired in January of

6 2004. I was subsequently hired by SAP. SAP is like

7 Oracle, if you think of it. Big industrial software

8 for finance, logistics, HR, and transportation. And I

9 was the vice president for defense and security for

10 this country -- for this company that had -- they

11 have -- their outreach is in 120 countries in the

12 world, \$7 billion company. Very large.

13 **Q. And if you go to the next page, while you**

14 **were one of the vice presidents at SAP, under**

15 **"Accomplishments" it says, "Produced the first**

16 **strategic plan for the air force after the September 11**

17 **attack." What does that refer to?**

18 A. Actually, that goes back to my time in the

19 Pentagon, when I was still on active duty.

20 **Q. My apologies. What does that line refer**

21 **to?**

22 A. After 9/11, obviously quite a few things

23 changed throughout the country, particularly in the

24 militaries. So I was charged to revise the strategic

25 plan for the United States Air Force, which was a 10-

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1 to 20-year plan, after 9/11, and readjusting our focus

2 on how we were going to approach that.

3 **Q. So how many years did you serve in the**

4 **military?**

5 A. 30 years.

6 **Q. And you retired as a two-star general; is**

7 **that correct?**

8 A. Correct.

9 **Q. Then you moved into the private sector,**

10 **SAP, as a vice president for defense and security; is**

11 **that right?**

12 A. Correct.

13 **Q. SAP is an international company; is that**

14 **right?**

15 A. It is.

16 **Q. And then you decided to return to public**

17 **service; is that correct?**

18 A. That's correct.

19 **Q. Tell us about the Broad Urban**

20 **Superintendents Academy, please.**

21 A. After I retired and I was subsequently

22 hired by SAP, I received a letter in the mail from the

23 Broad Fellowship. The Broad Fellowship was started by

24 Eli Broad. Eli Broad helped hire Governor Romer to be

25 the superintendent of schools in Los Angeles. And he

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1 thought that it was a good idea to hire non-traditional
 2 people who have been in charge of large organizations.
 3 So I was -- I received a letter. I still
 4 don't know who it was from, you know, who put my name
 5 in for it. I was grateful for it. I didn't know that
 6 was a possibility, to be a superintendent of schools.
 7 So I applied, and luckily I was accepted. And it's a
 8 one-year fellowship, where you spend ten months, one
 9 weekend a month, in a different city studying school
 10 districts. They bring the best teachers, principals,
 11 superintendents, budget managers, curriculum directors,
 12 even headhunters to try to help that transition from
 13 the private sector.
 14 So in my class, there were CEOs of
 15 companies, there were obviously military generals and
 16 admirals, we had three of them, and then we had
 17 subsequent people who had run other large
 18 organizations.
 19 So at the end of that ten-month, I
 20 realized that a lot of the skill sets that I had
 21 developed in the military and business were
 22 transferable. But there was about 15 or 20 percent of
 23 that that I didn't understand. So that was an
 24 excellent way for me to know the significant challenges
 25 and differences and cultural elements of a school

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1 district. So I felt very comfortable applying for
 2 Aurora Public Schools when the opportunity presented
 3 itself.
 4 **Q. Were you attending the Broad**
 5 **Superintendents Academy while being a vice president of**
 6 **SAP?**
 7 A. That's correct. I had enough control of
 8 my calendar where I made sure I was available one
 9 weekend a month for those ten months. So it worked out
 10 real well.
 11 **Q. And what was your commitment? So the**
 12 **Broad Superintendents Academy accepted you into the**
 13 **academy. What was your and others' commitment with**
 14 **regard to what you do after you finished with the**
 15 **academy?**
 16 A. One of the agreements, and really it's a
 17 gentleman's agreement, is that you will apply for a
 18 superintendency somewhere in the country within 15
 19 months after finishing the Broad Academy. And I did
 20 achieve that, in meeting that requirement.
 21 **Q. And you applied and were selected as**
 22 **superintendent where?**
 23 A. Well, actually, I applied at Tacoma,
 24 Washington, and was not selected. And then, you know,
 25 fate has a funny way of working. I was always going to

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1 come back to Colorado, since I went to school here and
 2 my kids went to school here, and I had land in Colorado
 3 since 1973. So it just worked out great. You know,
 4 there was an opening Aurora. I applied then, after not
 5 getting the job in Tacoma, and it worked out great.
 6 **Q. And you referred to a gentleman's**
 7 **agreement or a handshake agreement. What type of**
 8 **school district did you and other Broad Academy fellows**
 9 **agree to try and help lead?**
 10 A. Well, again, there's no written agreement
 11 that you have to adhere to. They want you to go to a
 12 Broad district. A Broad district is defined as an
 13 urban district with at least 25 percent poverty and at
 14 least 20 to 25 percent free and reduced English
 15 language learners.
 16 So it turns out that Aurora Public Schools
 17 is, qualifies as a Broad district. And the advantage
 18 of being in a Broad district after you finished the
 19 Broad Academy is they provide you some assistance on
 20 audits, mentorship. Basically, if you ask for some
 21 advice, they're available. So it's not like you just
 22 finish the Broad Academy and they say good luck, don't
 23 mess it up. They do provide you substantive support
 24 after.
 25 **Q. Before we describe the current state of**

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1 **Aurora Public Schools, tell us about the state of**
 2 **Aurora Public Schools when you took over, was it five,**
 3 **six years ago?**
 4 A. Well, just a little antidote. We started
 5 school yesterday. And one of the things, just to
 6 describe a little bit about Aurora, we have a
 7 back-to-school day in Aurora Central High School, which
 8 is a large track and field that we use outside. We had
 9 over 8,000 people show up. And what we do on that
 10 Saturday is we give out backpacks with school supplies,
 11 provide free food. We have bands and cheerleaders.
 12 And it's a nice, great event. But it really does
 13 indicate the need of Aurora Public Schools.
 14 So I knew what I was walking into in 2006;
 15 high poverty, high issues with English language
 16 learners, and certainly from the standpoint of students
 17 of color, which allowed me to be able to meet what my
 18 personal ambition was, to try to get to a school
 19 district that had high needs and be able to help turn
 20 it around.
 21 **Q. Generally, can you describe the**
 22 **achievement levels of students in Aurora Public Schools**
 23 **five years ago?**
 24 A. Well, when I first got there, it was
 25 clearly evident to me that the elephant in the room was

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1 student achievement. We were in the bottom 10 percent
 2 for literacy and the bottom 18 percent for math. That
 3 was the bad news. The good news was the district
 4 people had not given up. We had incredibly talented
 5 individuals. We had passed bonds in the past. So the
 6 schools were on the order of 30 years old, in general.
 7 But they weren't in bad shape. So a lot of positive
 8 things. But clearly the elephant in the room was in
 9 student achievement.

10 **Q. You mentioned people had not given up. Why was that the first thing that you mentioned that was a positive?**

11 **A.** It was curious, because they were in the
 12 bottom 10 percent and bottom 18 percent for literacy
 13 and math, and it was going down. So I was curious to
 14 see if people had given up. And when I looked people
 15 in the eye, it was pretty evident to me they had not.
 16 So we had the makings, I think, of an excellent
 17 opportunity to have some great success for kids.

18 **Q. Fair to say that you and your staff have helped turn around Aurora Public Schools to some extent?**

19 **A.** Well, we're very proud of the fact that we
 20 have turned around the school. The growth rates have
 21 been significant, in the sense that we have beat the

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1 state in reading, writing, math, and science for four
 2 years. We have beat on the achievement levels, and we
 3 have beat the state on the growth rate for three years
 4 in reading, writing, and math. They don't do science.

5 So the state average for the entire state
 6 of Colorado in reading, writing, and math this year,
 7 we're still below it, but we've turned the number, the
 8 growth, from going down to going up. And we're closing
 9 in on the average for the state. So we're proud of
 10 that.

11 **Q. Okay. Great. Congratulations. And you -- since the trial record can't record where your hand was, fair to say still got a ways to go with regard to achievement? If the state averages are here, instead of declining, you are increasing, but not quite at state average achievement levels for students in Aurora Public Schools?**

12 **A.** We're hoping to be able to bust through
 13 that state average in the next couple of years.

14 **Q. All right. Mr. Barry, tell us -- describe for us Aurora Public Schools. And I'll refer you back to your resume. But talk to us about the students, the schools, and specifically about the demographics. Poverty levels, race.**

15 **A.** Well, Aurora Public Schools is an

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1 incredibly diverse school district. Right now we have
 2 over 96 languages spoken, representing over 120
 3 countries. The demographic breakout is 52 percent
 4 Latino, 22 percent white, 19 percent African American,
 5 4 percent Asian, and 1 percent Native American.

6 Our free and reduced lunch is -- depending
 7 how you look at it, is somewhere between 65 and
 8 69 percent. Our English language learners are
 9 38 percent. We have a mobility rate that is close to
 10 40 percent. That means that every four out of ten of
 11 our students move from one school to another. That is
 12 stabilizing to some extent now, but it's still a
 13 prominent issue in our school district.

14 We are really a district where the
 15 minority is the majority. 80 percent of our students
 16 are students of color. By the way, the diversity is
 17 something we advertise as a strength and not a
 18 weakness. So if you want to see the world with that
 19 many countries represented, that many cultures
 20 represented, that many languages spoken, we advertise
 21 that you need to come to Aurora.

22 **Q. And back to your resume, which is up on the screen. So Aurora has approximately 38,000 students, 38 percent of color, about 40 percent English language learners, and close to 70 percent free and**

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1 **reduced lunch measured by poverty rating; is that correct?**

2 **A.** That's correct.

3 **Q. That last one, how many language -- approximately how many languages are spoken in your schools?**

4 **A.** Again, 96 languages, representing 120
 5 schools.

6 **Q. You also received -- recently received an award for your work as superintendent; is that correct?**

7 **A.** That's correct.

8 **Q. What award was that?**

9 **A.** That was Superintendent of the Year for
 10 the state of Colorado. For 2011.

11 **Q. And do you know who the superintendent of the year was for 2010?**

12 **A.** That was Cindy Stevens (sic) from Jeffco.

13 **Q. You mentioned the Colorado paradox in your CV, that you are attempting -- or the school district is attempting to take on the Colorado paradox. What is that?**

14 **A.** Well, in order to explain that, let me
 15 just talk a little bit about our strategic plan. Our
 16 strategic plan has gravitated from what we called VISTA
 17 2010 to now VISTA 2015. VISTA 2010 I would describe as

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1 a transformation internal to the school district, we
 2 argue on an order of merit that rivals anything in the
 3 country.
 4 Now, that's a pretty big boast. But when
 5 you talk about all of the things that we changed
 6 internally, from a new literacy program, pacing guides,
 7 interim assessments, data teams, data walls, Fifth
 8 Block, which is 23 more days of instruction at the end
 9 of the school year, leadership training for our
 10 principals, equity training for our staff, and all the
 11 way getting down to our students on an incredible
 12 level, our English Language Learning Center of
 13 Excellence, those are about 25 percent of what we
 14 changed.
 15 So we say 2010 -- VISTA 2010 was a major
 16 transformation. VISTA 2015 was building on that, now
 17 going internal into the external. So we are partnering
 18 with companies and organizations to align a P-20
 19 concept. The P-20 concept is preschool to the 20th
 20 grade.
 21 Now, high school only goes to 12th grade,
 22 college goes to 16, master's and Ph.D.s go to 20. So
 23 we're trying to make that alignment all the way through
 24 with pathways. We have four pathways in Aurora Public
 25 Schools. One is health sciences, one is science,

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1 technology, engineering, and math, one is business, and
 2 one is arts and communications.
 3 The reason I'm telling you all this is the
 4 pathways or the P-20 concept is our plan to align
 5 academic and economic development, which unfortunately
 6 we've divorced in this country sometime during the 20th
 7 century. But if we align both the academic and the
 8 economic development, we are taking on as a target the
 9 Colorado paradox.
 10 And the Colorado paradox, we are the
 11 second highest educated. We have the most bachelor's
 12 degrees, master's degrees, and Ph.D.s except for one
 13 other state. So the problem with the paradox is while
 14 we're highly educated, we import most of our talent
 15 from outside the state. And I'm a perfect example of
 16 that. Any time I talk to audiences, I never get
 17 40 percent of the people to say they were originally
 18 from Colorado. So the question is, are we educating
 19 our own children? Are we building within to be able to
 20 afford them the opportunity to compete in this
 21 incredible state that has amazing opportunities?
 22 So VISTA 2015 is meant to align academic
 23 and economic development to take on that paradox.
 24 **Q. Let's turn to the next exhibit.**
 25 **Mr. Barry, Exhibit 10057, you have a hard copy right**

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1 **behind your CV. I will also put this up on the screen.**
 2 **It is the one-year district performance framework**
 3 **report for 2010. And Adams-Arapahoe 28J, that's Aurora**
 4 **Public Schools?**
 5 A. Correct.
 6 **Q. And Aurora Public Schools actually spans**
 7 **two counties?**
 8 A. Arapahoe and Adams County are part of our
 9 school district.
 10 **Q. What other school districts are in either**
 11 **or both of those counties?**
 12 A. In Aurora, the city, the city has two
 13 school districts, Cherry Creek and Aurora Public
 14 Schools.
 15 **Q. And what is a performance framework**
 16 **report?**
 17 A. This is a report that's now required by
 18 Senate Bill 163. This was passed almost three years
 19 ago. That really does move local control into a more
 20 centralized control to a pretty large extent. But
 21 there are four areas that are graded. Three of them
 22 apply to every school, and the fourth one only applies
 23 to high school. So the academic achievement is how the
 24 schools are achieving on performance. So, for
 25 instance, if you have 40 percent achievement levels for

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1 reading, okay, that's your achievement level for being
 2 partially proficient or proficient.
 3 The academic growth is the second one, and
 4 it actually is a unique thing to Colorado that we
 5 started. It is now in 20 states. It is a growth
 6 model. And that really tells you how far the student
 7 has moved from the beginning of the year to the end of
 8 the year. The academic growth gaps is really a measure
 9 of how that the growth has been compared to white
 10 students next to English language learners, white
 11 students next to Hispanic and African American, white
 12 students or students who are SPED and non-SPED and
 13 students who are English language learners and
 14 non-English language learners.
 15 Those three are in every school. The
 16 fourth one is unique to high school only, and that's
 17 postsecondary workforce readiness, and that's
 18 graduation rates, dropout rates, and ACT scores. So
 19 with those four combined, you're able to get a rating.
 20 And there are five: Accredited with distinction,
 21 accredited, accredited with improvement, and accredited
 22 with priority improvement, and accredited with
 23 turnaround plan.
 24 We are in the category of accredited with
 25 improvement as of right now. And that is how every

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1 single school and every single school district is
 2 graded in the state of Colorado.
 3 **Q. So on the left side of the first page,**
 4 **accredited -- accredited with improvement plan,**
 5 **framework points earned says at or above 52 percent,**
 6 **below 64 percent; is that correct?**
 7 A. That's correct.
 8 **Q. And so the state assigns certain points or**
 9 **grading to each of these categories?**
 10 A. Uh-huh. Uh-huh.
 11 **Q. Let's go over each of those. Academic**
 12 **achievement. Where is Aurora Public Schools as far as**
 13 **academic achievement, according to the state?**
 14 A. Well, remember I was telling you we were
 15 in the bottom 10 percent for literary and bottom
 16 18 percent for math. You know, we've made considerable
 17 gains, but we're still below the state average. So
 18 this is the one we have not met for sure. And -- but
 19 we are gaining on in every year.
 20 **Q. Academic growth, tell us about that.**
 21 A. Again, this is the one that's unique that
 22 Aurora -- that Colorado started. And the advantage of
 23 having an academic growth model, it -- let me describe
 24 it this way. If a teacher had students who were at
 25 40 percent proficiency and he or she got it to

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1 60 percent, that's a 20 percent gain. That's a
 2 success. But next year the kids come in at, let's say,
 3 35 percent, and he or she gets up to 55 percent. Well,
 4 that's a 20 percent gain also, and that's a great
 5 success story, but it was less than, you know, last
 6 year.
 7 We have a different set of kids. That's
 8 the way we were graded before, and it really wasn't
 9 fair. It's important to pay attention to it, but the
 10 growth model now allows us to get more specific about a
 11 child's growth in a given year. It has nothing to do
 12 with the kids from the previous year.
 13 So, for instance, if a fifth-grader is
 14 reading at the third grade level, that fifth-grader is
 15 compared with every fifth-grader who's reading at the
 16 third grade level in the entire state. So it really
 17 does show a comparison on how a particular child, with
 18 a particular teacher, is doing on a growth rate. So
 19 it's a much more -- it's a much fairer way of
 20 presenting the information.
 21 So that is the big distinction between
 22 academic achievement and academic growth.
 23 **Q. And how is Aurora Public Schools doing**
 24 **with regard to academic growth? And specifically, it's**
 25 **hard to see with the highlighting, but it states**

1768

1 **approaching.**
 2 A. Right. We are still not at the highest
 3 level, in order to get the most points on that area,
 4 but I will tell you that in 2008, 2007-'8, we had the
 5 second-highest growth rate in the state of Colorado out
 6 of 178 school districts. We had kind of up and down
 7 since then, but we are proud of that fact. So it does
 8 show that we are closing in on the achievement gap. We
 9 have beat the state on their movements. Not every
 10 year, but four to five years. And certainly from the
 11 standpoint of growth, we are making great inroads on
 12 that area.
 13 **Q. Academic growth gaps. What are those and**
 14 **how is Aurora Public Schools doing?**
 15 A. Again, on that one we are making good
 16 progress, because we are closing the gaps on, you know,
 17 poverty, English language learning, certainly from the
 18 standpoint of African American, Latino, students of
 19 color versus white, and SPED.
 20 We're proud of the fact that as our growth
 21 rate has improved, we have not left those kids behind
 22 in English language learners, SPED, or our ability to
 23 deal with students of color. They have grown at the
 24 same rate that we have grown overall.
 25 In other words, if you had a high growth

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1 rate that was good for a lot of kids, let's say the
 2 white students, and you left behind the kids of color,
 3 then I think that would not be a great service. But in
 4 our particular case, we have made advantages on growth
 5 in all levels. So they have kept up with us on the
 6 different kinds of gap areas.
 7 **Q. Fair to say that there are still growth**
 8 **gaps in Aurora Public Schools?**
 9 A. There still are. But we're closing them
 10 every year, so we're proud that have.
 11 **Q. Postsecondary and workforce readiness only**
 12 **applies to high school; is that correct?**
 13 A. Correct.
 14 **Q. Where is Aurora Public Schools as to that**
 15 **category?**
 16 A. Well, on our graduation rates, it is a
 17 story that we're relatively proud of, but still it is
 18 pretty low. We have moved from the 40th percentile
 19 into the 58th percentile. So we made some gains,
 20 certainly, from that standpoint.
 21 We have qualified our graduation rates a
 22 little bit differently. Sometimes you'll see the
 23 graduation represented just in a four-year cohort.
 24 When we have high poverty and we have high English
 25 language learners and we have challenges where students

1770

1 will take more than four years to be able to get a high
 2 school diploma -- in fact, if you can get your high
 3 school diploma before the age of 21, we can continue to
 4 fund their education in high school.
 5 So with that, we say our graduation rate
 6 is 58 percent, and that's considerable gain from where
 7 we started. It's still below the state average and
 8 still below the national average, but we're closing in
 9 on it.
 10 The dropout rates we have reduced from
 11 6.9 percent -- from 9.9 percent to 6.9 percent. Now,
 12 that's a 3 percent gain. That's a positive gain.
 13 Still, 6.9 percent represents about 1200 students a
 14 year that we're losing. So it -- while we've made,
 15 again, progress, it is not on the order of the large
 16 scales that we want to make, it is more incremental as
 17 we go along.
 18 And then finally on the ACT scores, the
 19 third part of the postsecondary workforce readiness,
 20 this area is particularly focused on how we do on ACT.
 21 And right now we're about 17. You need 18 to get into
 22 Metro. You need about 23 to 25 to get into the
 23 universities in Colorado like UCD or CSU as a case in
 24 point.
 25 So we're still below that. The good news

1771

1 is we're taking great advantage of our community
 2 college. You do not need -- you're automatically
 3 accepted in the community college system in the state
 4 of Colorado regardless of how you do on the -- the
 5 Accuplacer Test. Okay? And on your ACT scores. But
 6 then you have to take this remediation if you're not up
 7 to speed.
 8 So bottom line is we have made great
 9 strides, I think, in our dropout. Our graduation rates
 10 have improved considerably, but still below the state
 11 average. Our ACT scores are the ones that probably are
 12 the ones that we've grown the least, but still we have
 13 grown incrementally.
 14 **Q. Okay. Under postsecondary and workforce**
 15 **readiness, according to the state's rating plan, Aurora**
 16 **Public Schools, while making some progress, still does**
 17 **not meet that state requirement; is that correct?**
 18 A. That is correct.
 19 **Q. Mr. Barry, you mentioned that this came**
 20 **from Senate Bill 163, and it moved local control to**
 21 **more of a central -- I think you used the word**
 22 **"standard." What did you mean by that?**
 23 A. Actually, I was a member of -- Dwight
 24 Jones, who was a former commissioner of education in
 25 the state of Colorado, asked me to be on the Race to

1772

1 the Top team. Unfortunately, it was like ten days
 2 before we left. But what I learned there was the clear
 3 movement that we have made in the state of Colorado,
 4 where we've moved the bar to the right, if you want to
 5 use that term, towards more central control, away from
 6 local control.
 7 What this says is if a school is in
 8 priority improvement or in turnaround or a district is
 9 in those two categories, then the state will exercise
 10 certain options. You know, to be able to exercise
 11 control.
 12 Let me give you an example. In -- right
 13 now in the state of Colorado -- it may change a little
 14 bit this next year -- but if you were a school that got
 15 a priority improvement or you were a school that got in
 16 turnaround, you had to submit a Unified Improvement
 17 Plan. Every school had to submit a Unified Improvement
 18 Plan. But the difference with the submission in these
 19 bottom two categories is it was reviewed by a committee
 20 that was organized by CDE, Colorado Department of
 21 Education, and if they didn't agree with the plan, they
 22 would send it back and say you have to do it again.
 23 If you do not have improvement within five
 24 years on a turnaround school, and particularly a
 25 turnaround district, the state does have some definite

1773

1 options, insofar as turning the school into a charter,
 2 closing a school, you know, exercising options of
 3 replacing the principal, and even to the point where it
 4 can be argued they can replace the superintendent.
 5 So there has been a shift in this -- in
 6 this state to the direction of more centralized control
 7 with Senate Bill 163.
 8 **Q. And do you consider any of these**
 9 **categories aspirational goals or requirements?**
 10 A. They are, in my mind, requirements.
 11 **Q. Sticking with the performance indicators.**
 12 **They're broken up by three categories, elementary**
 13 **schools, middle schools, and high schools; is that**
 14 **correct?**
 15 A. That's correct.
 16 **Q. Let's briefly discuss your high school.**
 17 **Let's see if I can zoom in. You have a hard copy,**
 18 **Mr. Barry; is that right?**
 19 A. Uh-huh.
 20 **Q. So these -- these elementary scores are**
 21 **broken out in the same categories that we saw on the**
 22 **first page, including achievement, growth, and gaps; is**
 23 **that right?**
 24 A. That's correct.
 25 **Q. And as far as achievement, how are our**

1774

1 elementary schools doing with regard to proficiency?
 2 A. Again, in all three categories,
 3 elementary, middle, high school, we are not making it
 4 on academic achievement. But you'll see considerable
 5 improvements in specific areas for academic growth,
 6 academic growth gaps.
 7 **Q. And as to growth and growth gaps,**
 8 **depending on the comparison of students, whether they**
 9 **be free and reduced lunch, students of color, students**
 10 **with disabilities, you are meeting some growth goals,**
 11 **but still striving to meet others; is that a fair**
 12 **statement?**
 13 A. Yeah. As you'll see, most of the ratings
 14 on there are approaching or meets.
 15 **Q. Okay. And approaching means you're not**
 16 **quite there yet, and that's what you're striving for**
 17 **there?**
 18 A. Correct.
 19 **Q. Okay. Let's go over middle school. Same**
 20 **type of results. And is it fair to say generally in**
 21 **elementary to middle to high school, there is a lack of**
 22 **proficiency that you're attempting to turn around and**
 23 **growth gaps that you're still trying to close?**
 24 A. Yes. There are gaps, as you can see, for
 25 middle school. I believe we got the middle school up

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1 there. You'll see the -- you'll see the ratings for
 2 academic achievement. We are approaching both science
 3 and mathematics on academic growth. We're meets or
 4 approaching in all categories. And then the academic
 5 growth gaps, we're meeting or approaching in all
 6 categories.
 7 **Q. Mr. Barry, can you turn to the next**
 8 **exhibit in your pile, which is Plaintiffs' Exhibit**
 9 **10058. And it's the same report, but actually over a**
 10 **three-year time period instead of a one-year time**
 11 **period; is that correct?**
 12 A. That's correct.
 13 **Q. And rather than go through each, is it**
 14 **fair to say that the three-year framework report is**
 15 **very similar to the one-year framework report, with**
 16 **lack of proficiency, growth gaps, but, again,**
 17 **approaching or doing better as far as trying to close**
 18 **some of those gaps?**
 19 A. That's correct. And I think what you see
 20 here is a substantive improvement, but incrementally.
 21 And that will be a key point that I'd like to make
 22 throughout my testimony. When we're talking about
 23 thorough and uniform improvement, we are making strides
 24 every year, and with the challenges we have in our
 25 school district, they are incremental.

1776

1 **Q. What do you mean by incremental?**
 2 A. Well, I would describe it this way.
 3 We -- the difference between velocity and acceleration.
 4 In order for us to be able to close the gaps at all
 5 these levels, from moving from the bottom 10 percent
 6 for literacy and 18 percent for math to busting through
 7 the state average on reading, writing, math, and
 8 science, we are on a steady velocity vector. We have
 9 made improvements every year. Okay?
 10 If you're going 55 miles an hour from
 11 point A to point B, you're going to get to B, but it's
 12 going to take you a while to maintain that with a
 13 steady velocity vector, you maintain 55 miles an hour.
 14 We need an acceleration factor. We're leaving kids
 15 behind in a lot of categories because we can't
 16 duplicate the -- what we call the islands of excellence
 17 that we demonstrate, things that are working, and we
 18 need to have an acceleration element that allows us to
 19 be able to move quicker to beating through the state
 20 average, which is certainly one of our goals.
 21 So when I say incremental, it is on a
 22 steady velocity vector, but certainly not at the level
 23 and speed that we want to be able to get to, certainly,
 24 to reach what our vision is. And we'll talk about that
 25 a little later. But the vision is to graduate every

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1 student with a choice to attend college without
 2 remediation. Now, that's a pretty bold vision, and
 3 it's pretty simple to state, but hard to achieve. But
 4 in order to do that, we need to get off the velocity
 5 vector and get on an acceleration vector.
 6 **Q. Mr. Barry, in your opinion, do you know**
 7 **what it takes to get your students to proficiency**
 8 **achievement levels?**
 9 A. We have demonstrated in Aurora Public
 10 Schools a myriad of ways of approaching it, as I
 11 mentioned, in the VISTA 2010 plan, and how
 12 transformation will work with all those different
 13 things that I cited earlier.
 14 When you take a mosaic and you put a
 15 mosaic together, it's got a picture, and the picture is
 16 of students walking across the stage and getting a high
 17 school diploma. And those mosaics have little pieces,
 18 and those pieces represent the initiatives that we
 19 started in Aurora Public Schools. We are confident
 20 that we have identified things that are working.
 21 The challenge is I can't replicate it fast
 22 enough and be able to put it in every single school
 23 quick enough in order to move away from that velocity
 24 vector into an acceleration vector that we certainly
 25 want to be able to do.

1778

1 **Q. So you referred to islands of**
 2 **excellence; is that correct?**
 3 A. Yes.
 4 **Q. Let's go over some of your successes, and**
 5 **then tell me whether that's an island of excellence and**
 6 **whether or not you can expand it to a systemic level.**
 7 **Okay. The pathways program. What is that?**
 8 A. The pathways, as I mentioned, is in our
 9 strategic VISTA 2015 plan. And this is where we are
 10 aligning in a P-20 concept to be able to do away with
 11 these artificial barriers that we systemically have put
 12 into our public education system, barriers on time,
 13 barriers on calendars, barriers on walls. And we're
 14 trying to, in the P-20 concept, with the pathways, give
 15 choices to students, even as early as elementary, but
 16 particularly targeted in middle school, but really
 17 focused in high school.
 18 Imagine an opportunity for a child to make
 19 a choice not just between schools, I can go to a
 20 charter school, I can go to a traditional public
 21 school, I can go to a K-8, I can go to a science magnet
 22 school, I can go to a gifted and talented. Those are
 23 choices between schools.
 24 We're offering, with the pathways, for
 25 students even as early as elementary to be able to pick

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1 between these four pathways: Health sciences; science
 2 technology; engineering, math, business; arts and
 3 communication. This is not like declaring a major in
 4 college. This is an area that we want to ignite the
 5 passion of a child in something that they're interested
 6 in. Instead of the same way, same day, everybody
 7 graduates, high fives, walking out the door, hopefully
 8 you go to college, we want to give them something that
 9 encourages them to come to school from the academic
 10 side.
 11 We all know what sports and, you know,
 12 music and -- and art and all of the elements that
 13 sometimes really attract students to come together. We
 14 want to ignite that passion in specific content areas.
 15 So by offering pathways, we can do that.
 16 Now, let me describe one other thing that
 17 I haven't talked about yet. In order to have a
 18 pathway, you have need a partner. Okay? And that's
 19 when we reach out to the community, 'cause we can't do
 20 this alone anymore. What we state clearly, repeatedly,
 21 is if you're going to be globally competitive in our
 22 country, we have to be able to reach out to the
 23 community. And it is not only asking for money. It is
 24 a true partnership.
 25 So let me give you an example. In Health

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1 Sciences, we have a partnership with Anschutz Medical
 2 Center. This is part of the University of Colorado on
 3 Colfax. \$4.2 billion facility right smack in the
 4 middle of our city. Not to take advantage of that for
 5 our students I think would be irresponsible.
 6 What that partnership looks like is we
 7 have Saturday classes, summer internship programs. We
 8 have abilities to go through med school in six weeks.
 9 So our kids can -- they actually get white smocks.
 10 They feel like they're part of the campus. They get a
 11 taste of what it's like to go to med school in six
 12 weeks. This gives them more of a representation of
 13 what is in the art of the possible. Okay? As opposed
 14 to reading about it in a book, they can feel it, touch
 15 it, smell it, see it, and they can talk to people who
 16 are engaged in that community.
 17 So it can be mentoring, internships,
 18 externships. It can be the issue of allowing us to go
 19 through certification programs, and real certification
 20 programs, where OSHA or Microsoft or Cisco, or in the
 21 case of arts and communication pathway, we have an
 22 agreement with Denver Art Museum where they're going to
 23 develop a certificate. So the certificate will say
 24 that this student has been able to demonstrate
 25 expertise in organizing tours -- I mean leading tours.

1781

1 you know, helping set up displays, work for the
 2 different kinds of parts that any museum might be
 3 engaged in.
 4 So when we talk about pathways, right now,
 5 we have them in about 20 schools. I've got 59. And to
 6 truly get to the point where all four pathways are in
 7 every school, we have only one campus, that's the P-20
 8 campus, Vista Peak, that has all four pathways
 9 throughout the -- what you would recognize as an
 10 elementary building and you would recognize as a high
 11 school building. We don't think building-centric, we
 12 think pathway-centric.
 13 That's the only place that's got all four.
 14 There are some others that have at least one. You
 15 know, 20 have at least one, and some have two. But I'm
 16 not able to replicate that quick enough because of the
 17 cuts that we went through. And \$17 million cut last
 18 year and we had \$24 million cut this year, makes it
 19 very difficult.
 20 **Q. When you say \$17 million cut this year and**
 21 **\$24 million cut last year, cut by whom?**
 22 A. It was a combination, certainly, what the
 23 state has to do. I mean, I give great credit to our
 24 legislature and our governor and governors. They have
 25 tried to stay away from public education cuts as best

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1 they could. But when they're 43 percent of the general
 2 fund, I understand that. But when we take 6 percent,
 3 6.2 percent cut last year and an 8 percent cut, you
 4 know, for this year, that's an incredibly hard hit on
 5 public education.
 6 So it is one of those things where
 7 combination of higher energy costs, higher PERA costs
 8 for the retirement system, higher health care costs
 9 have all combined to be able to put us in a position
 10 where we had to cut \$17 million last year, 24 this
 11 year.
 12 **Q. So pathways is an example of islands of**
 13 **excellence? You know how it works, you cannot expand**
 14 **it systemically; is that fair?**
 15 A. That's true.
 16 **Q. And specifically with, say, the Anschutz**
 17 **campus, is that funded through grants, gifts, or**
 18 **donations?**
 19 A. We have been able to get a grant for
 20 \$3.9 million from federal funds from Health and Human
 21 Services that have carried us through the last couple
 22 years. That money is running out as of December. And
 23 the good thing about grants is it can help you get
 24 started, but it will not sustain, and certainly not
 25 allow you to probably get to the point of replicating a

1783

1 program that you know is working.
 2 So we've been very aggressive in trying to
 3 be responsible with taxpayers' money, to be able to get
 4 out there and take advantage of grants and be very
 5 aggressive about going after them. But, again, there
 6 is limits on their ability to have a sustained,
 7 systemic change in a school district
 8 **Q. The Fifth Block. That's your summer**
 9 **classes; is that correct?**
 10 A. That's correct. That's 23 --
 11 **Q. I'm sorry. Is that an example of an**
 12 **island of success?**
 13 A. It is.
 14 MS. MARKEL: Objection, Your Honor.
 15 Leading.
 16 THE COURT: It is. Sustained.
 17 **Q. (BY MR. KAWANABE) What is the Fifth**
 18 **Block?**
 19 A. The Fifth Block is 23 days of instruction
 20 at the end of our normal school year. The reason we
 21 start so early in Aurora, 'cause we just started school
 22 yesterday, was to allow room for our ability to have
 23 this Fifth Block. It is 23 days of instructions
 24 specifically focused on literacy and math. We do have
 25 some science elements. It is not summer school. It is

1784

1 a full day of school. For all of our students in all
 2 of our schools, but only for 4,000. I can only have
 3 enough money to give it for 4,000. Now, this is
 4 completely voluntary, it's not mandatory.
 5 **Q. 4,000 kids?**
 6 A. 4,000 students. Now, we keep all of our
 7 schools open for those 23 days. Now, that was not the
 8 most cost-effective element for energy purposes. The
 9 traditional way of doing summer school is we'll stick
 10 our kids in one or two particular schools and let them
 11 go to some strange place. But we've found out that the
 12 value of having the students go to the school that they
 13 know and see teachers they recognize and pick up on
 14 their learning right off the bat for 23 days is a much
 15 more effective way of dealing with student achievement.
 16 **Q. Would you like to extend the Fifth Block**
 17 **program to more students if you could?**
 18 A. We would. The -- we do have parents that
 19 constantly are asking us for an ability to do that. We
 20 have an opportunity for our gifted students that we'd
 21 like to expand to more. Our focus is more on the
 22 students that are near or close to the partially
 23 proficient level that can get over that point that we
 24 try to do. Because we do have programs for the ones
 25 that are really on the low scale, we have gifted and

1785

1 talented programs on the high scale, but we don't have
 2 programs for the middle. So this is where we try to
 3 concentrate in the summer. I'd like to expand that to
 4 even more.
 5 In Aurora Public Schools, we have 175 days
 6 of student instruction days. We are trying to think
 7 about being innovative on expanding, again, trying to
 8 get away from calendars and clocks and walls, to more
 9 days, realizing that students in India and China, you
 10 know, they are in school, you know, well over 200 days
 11 a year. So it is one of those things, again, with
 12 thinking about being globally competitive and trying to
 13 afford our students the best chance to be successful
 14 when they become adults.
 15 **Q. You said you have the students for how**
 16 **many days, 178?**
 17 A. 175.
 18 **Q. 175 out of the school year. Do you**
 19 **believe every student can learn?**
 20 A. I do. And that's embedded in our vision.
 21 You know, to say that every student -- graduate every
 22 student with a choice to attend college without
 23 remediation, but that true passion and that true
 24 understanding of really believing that every child can
 25 learn is absolutely essential, now, to be successful in

1786

1 a diverse, challenging environment that we work in in
 2 Aurora.

3 **Q. And, Mr. Barry, regardless of family
 4 circumstance, do you believe that Aurora Public Schools
 5 can help every student achieve?**

6 A. I do. I qualify that by sometimes people
 7 will talk about the poverty challenges we have, and
 8 they are challenges, and you can't mitigate them, but
 9 they are something that is -- can affect elements of a
 10 student's ability to learn. Certainly for English
 11 language learning that's true also, but we can't use
 12 them as excuses.

13 We have the children 175 days a year for
 14 eight hours a day, and the reason I'm so passionate
 15 about the fact that this can never be used as excuses
 16 was because no only with the belief of truly
 17 understanding that every child can learn, but there's a
 18 gentleman named Doug Reeves, who is very prolific in
 19 the education environment, he's written a number of
 20 books and heads up a center, and he actually originally
 21 is from Colorado.

22 He has done a study, what we call the
 23 90/90/90 Studies. 90 percent students of color,
 24 90 percent students of poverty, 90 -- color --
 25 90 percent of color, 90 percent of poverty, 90 percent

1787

1 achievement. And he's documented hundreds and hundreds
 2 of schools in this country that have met that mark. So
 3 it can be done. He's documented it clearly. And we
 4 can never excuse poverty and even English language
 5 learners as an excuse for not believing that every
 6 child can learn.

7 **Q. Mr. Barry, we're going to turn to the next
 8 exhibit, Exhibit 10059, which is already into evidence.
 9 It is entitled the "Unified Improvement Plan." What is
 10 a Unified Improvement Plan?**

11 A. Again, this is a requirement that was
 12 dictated by Senate Bill 163. This is a more systemic
 13 report on how you're going to move your school or your
 14 school district in trying to improve student
 15 achievement in closing the gaps. By the way, you have
 16 to do both; you can't just do one or the other. You
 17 can't just improve student achievement and leave kids
 18 behind. You can't just close the gaps and reduce
 19 standards. You have to accelerate student achievement
 20 and close the achievement gap at the same time, and
 21 that's the focus of what is embedded in this Unified
 22 Improvement Plan.

23 **Q. It goes over your graduation and dropout
 24 rates as well as ACT scores by your, I mean Aurora
 25 Public Schools. And, again, this is the 2002-2011**

1788

1 **Unified Improvement Plan?**
 2 A. 2010-2011.

3 **Q. I'm sorry, 2010-2011. Thank you. What is
 4 the graduation rate of Aurora Public Schools, and
 5 compare that to the state requirement, please.**

6 A. The state requirement is 80 percent, and I
 7 think it's a valid requirement, and certainly one that
 8 I support. But right now we are not there. We -- as
 9 this indicates here, we're at 54.1 percent. I will
 10 tell you that when we count all of our students that we
 11 have in extra programs that count till their age of 21
 12 instead of just four years, we get up to 58 percent.

13 So we have a number of programs in Aurora
 14 that are not reflected, necessarily, in the hard number
 15 of graduation rates, our Futures Program and our
 16 Rebound Program, which actually we knock on doors and
 17 ask students to come back to school. In two
 18 categories: Some have high credit and high age, you
 19 know. In other words, they've got 19 credits and they
 20 need 22 to graduate, and we say hey, if you come back
 21 to school now to get the extra credits, you can get a
 22 high school diploma before you turn 21. That's the
 23 Rebound Program.

24 And then the Future Program is high age,
 25 low credit. That means that they probably only have

1789

1 4 credit hours or something like that. There's no way
 2 that they're going to be able to get 22 by the time
 3 they're 21. So we help them with a GED, and we help
 4 them with the Accuplacer Test to get accepted into the
 5 community college, because as I stated earlier, you do
 6 not need a high school diploma to go to a community
 7 college.

8 **Q. So your graduation rate, if you include
 9 those other programs, still hovers less than
 10 60 percent?**

11 A. That's correct.

12 **Q. And mean ACT composite score, what is the
 13 state requirement, and does Aurora Public Schools
 14 currently meet that?**

15 A. Well, you can see there 20.1. We're at
 16 16.9. We do not meet that yet. We are still working
 17 very hard on the elements of building our elementary
 18 and middle school cohorts to be much more competitive
 19 when they get to high school. So we're hoping to get
 20 those scores up quite a bit.

21 **Q. Mr. Barry, let's go to the third page of
 22 the uniform (sic) improvement plan. As to English
 23 language development and attainment, what are the state
 24 requirements, and is Aurora Public Schools at this
 25 point meeting those yet?**

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1 A. Well, you can see it's mixed. We are in
 2 some and not in others. The AMAOs are way
 3 over-identifying that. But instead of addressing the
 4 specifics on the Unified Improvement Plan, let me go
 5 back to another program that we are convinced works,
 6 but I'm not able to replicate it as fast or as
 7 aggressively as we would like, and that's our English
 8 Language Learning Center of Excellence.
 9 Our English Language Learning Center of
 10 Excellence, to show our commitment to this, is embedded
 11 in the following main points: We have a condition of
 12 employment in Aurora Public Schools that you have to be
 13 English language learning-certified to be a teacher in
 14 our school district. If you have it and you come to
 15 us, that's fine. If you don't, with the mill levy
 16 override we passed in 2008, we committed to the
 17 citizens that we're going to devote some of that money
 18 to English language learning.
 19 So we will pay for a teacher, if you are
 20 right out of college, you have three years, and if
 21 you're an experienced teacher, you have two years to be
 22 able to get the certification. That's one item. The
 23 second item on English Language Learning Center of
 24 Excellence is the issue of demonstration classrooms in
 25 every school for English language learning. We have

1791

1 teacher leaders now in every school. For English
 2 language learners we have a program called EL Achieve
 3 that we adopted from California. And the fifth one is
 4 we have 40 minutes devoted to English language learning
 5 every day for elementary, 45 for middle, and 50, every
 6 day, for high school.
 7 And we do that as part of our overall
 8 context of embedding our English language learners.
 9 We're very pleased with the results we got from our
 10 CELA testing this year. We're showing good progress on
 11 closing the gaps there and making improvement. So when
 12 we look at that Unified Improvement Plan, it doesn't
 13 capture the full essence, because there's no room to
 14 fill that in there, on how we're approaching English
 15 language learning. Again, it is not -- it is a program
 16 we know is working, but we're not able to replicate it
 17 as fast.
 18 And the reason is there's two parts to our
 19 theory of action for English language learning. One is
 20 the ELD, the English language development. And I
 21 already told you about, 40 minutes, 45 minutes, and
 22 50 minutes every day we have students engaged in
 23 English language learning who are in the categories
 24 that need it.
 25 What we're not doing is the second part of

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1 the theory of action as much as we want, and that's
 2 called sheltering. That means we do English language
 3 learning in every classroom on every content area to
 4 some extent. So we've, you know, been able to work on
 5 one side of the equation, but not the second side that
 6 we know works. So that is another example where this
 7 Unified Improvement Plan helps us focus on key areas,
 8 but it is also an area that we know is working that we
 9 can't replicate and sustain right now.
 10 **Q. Because of a lack of resources?**
 11 A. That's correct.
 12 **Q. All right. Oh, and finally, root causes**
 13 **in the Unified Improvement Plan. What does the state**
 14 **allow you to consider as far as root causes and what**
 15 **does the state not allow you to consider?**
 16 A. Well, this is one of the more powerful
 17 things that I think is part of the Unified Improvement
 18 Plan. And when we talk about root causes, it really
 19 gets to the issue of answering the why question. Why?
 20 And then you answer it. Then you ask again why, then
 21 you answer it. You get down to the final why, until
 22 you, you know, exhaust yourself on those kinds of
 23 things. And it can get to issues like expectations.
 24 While some people will say that every
 25 child can learn, not every individual truly believes

1793

1 it. And there's all these different excuses that can
 2 be used, as I mentioned earlier. So I think for the
 3 Unified Improvement Plan, one of the key strengths that
 4 I clearly see and our -- our staff at Aurora clearly
 5 sees is the development and the focus on root cause.
 6 **Q. And the root causes are things that you**
 7 **can control; is that correct?**
 8 A. They are. And as our ability to -- if we
 9 have the resources to be able to move in the correct
 10 direction and accelerate student achievement and
 11 closing the achievement gap.
 12 **Q. Mr. Barry, let's talk about the resources**
 13 **you have and the resources Aurora Public Schools does**
 14 **not have. Turn to your summary budget, please.**
 15 **Exhibit 10083. What is this document?**
 16 A. This is our budget in Aurora Public
 17 Schools. Right now, we have -- I'll characterize it as
 18 two major areas. Our general fund is roughly about
 19 \$258 million. When you add all the other sources of
 20 revenue, like for federal funding, title fundings,
 21 things like that, we're just a little below half a
 22 billion dollars. This document summarizes that.
 23 **Q. Sorry. I didn't mean to cut you off.**
 24 **Does that also include gifts, grants, donations, all**
 25 **other sources of funding?**

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1 A. That's correct.

2 **Q. Okay. Tell us about what's happened to**

3 **Aurora Public Schools' budget over the past few years.**

4 A. Well, we have cut the budget every single

5 year I've been there. And this is now my sixth year.

6 The first year was actually a cut that we took to be

7 able to initiate the kick-off for VISTA 2010, our

8 strategic plan. So we cut 2 percent across the board

9 in non-education school areas.

10 I needed something to be able to start the

11 program as we went along here. The second year was

12 that we had a decline in enrollment. The third year

13 was part of the budget in the state, and then really

14 characterized it with \$17 million last year and

15 \$24 million for this year.

16 So we have been on a steady decline on our

17 resources available to move student achievement and

18 close the achievement gap. I've been surprised,

19 frankly, with all the background that I have in the

20 military and business, you know, with 85 percent of our

21 budget being devoted towards salaries and benefits, we

22 don't make widgets. You know, we are a people

23 organization. It really makes it very difficult when

24 you're talking about taking that money, with all those

25 cuts, and try to sustain programs that you know work,

1795

1 to be able to go beyond and have a systemic five-year

2 plan that you can be able to rely on in the future to

3 make good management and resource allocation

4 decisions.

5 **Q. And, Mr. Barry, you said that the budget's**

6 **declined over the past five years since you started,**

7 **correct?**

8 A. Uh-huh.

9 **Q. Approximately what was the total amount of**

10 **decline from the state funding?**

11 A. If you counted the moneys that we would

12 have gotten for Amendment 23 had the factors not been

13 taken out -- that's one of those conversations that I'm

14 not an expert on, Amendment 23. But our analysis from

15 our chief financial officer is that it's about

16 \$70 million total.

17 Just counting last year and this year, you

18 know, 17 and this year, up to 41. And the other ones,

19 you know, I lost -- we lost \$10 million when the

20 enrollment went down, and I cut 2 percent, was about

21 4 million. When you count the factors in, you quickly

22 get to \$70 million over the time since I've been

23 there.

24 **Q. And the approximate amount of funding from**

25 **the state this year is down to what -- approximately**

1796

1 **what number?**

2 A. \$24 million is what we had to cut.

3 **Q. Cut. Okay. And that was for -- is that**

4 **up to today? What do you expect in the future?**

5 A. Well, I'm hopefully optimistic. Up until

6 yesterday. So I'm not sure where we're going to go. I

7 know the state's going to get hit with certainly the

8 challenges we have in this entire country, as evidenced

9 here in the last couple days.

10 I know with the increases in electricity

11 and power and increases in PERA, 'cause PERA is

12 increasing from 12 percent this year to 20 percent in

13 the next three years. And I know what we're also doing

14 insofar as our challenges in increasing in our

15 maintenance requirements.

16 We're anticipating starting out, without

17 even the state, you know, hitting us with a deficit or

18 a rescission, probably about \$8 million, you know, for

19 next year, that's school year '12-'13. So I'm

20 certainly not as optimistic as I was a few days ago,

21 you know, that maybe we could keep it in single digits.

22 **Q. In Aurora Public Schools, at least up to**

23 **this point, have you had to do a reduction in force?**

24 A. We're proud of the fact that we have not.

25 And we have made every effort not to do that. I've

1797

1 learned in my years of leadership and in charge of

2 large organizations, it's incredibly devastating to

3 organizations to do that.

4 So we have made conscious efforts to go

5 every single place other than the classroom and in the

6 RIF to be able to meet the requirements of balancing

7 our budget, which legally we have to do every year, the

8 state has to do every year. Of course, the federal

9 government does not. To be able to keep our team

10 together. 'Cause we've spent a lot of money and

11 resources on training and professional development on a

12 core team that we've developed over the years, and it

13 is our intent to try to keep that team together as much

14 as we possibly can.

15 Why? Because we have been showing

16 significant gains in areas, albeit incrementally and

17 not acceleration mark. But in order to keep even the

18 acceleration achievements that we want to continue to

19 focus on, you know, it is advisable and prudent to try

20 to keep your team together.

21 **Q. And what happens if Aurora sustains**

22 **another 17, \$24 million cut?**

23 A. I absolutely don't see any other way that

24 we're going to be able to avoid a RIF, because we have

25 cut to the bone on our ability to go everywhere we

1798

1 could possibly go to find every dollar under every
 2 rock.
 3 **Q. Does Aurora Public Schools efficiently**
 4 **manage its money?**
 5 A. We're very proud of the fact that we are
 6 good managers of taxpayers' money. I think we've
 7 proven that recurringly, on how we have been aggressive
 8 not only with the moneys that have been given us, but
 9 also the moneys that we aggressively go out for grants,
 10 go out for partners that we're trying to get in
 11 pathways.
 12 We're trying to figure out every which way
 13 possible that we could to engage as many stakeholders
 14 as we can, instead of just a traditional way of getting
 15 money from the state, from the federal government, to
 16 try to be responsible in engaging all the community to
 17 try to help us meet the needs of our students.
 18 **Q. You had mentioned Amendment 23 factor**
 19 **money. Had Aurora Public Schools been receiving funds**
 20 **from the state for Amendment 23 and its factors?**
 21 A. We had. Up until when Governor Ritter
 22 made the decision that the factors were not mandatory
 23 under Amendment 23. And I know there was a lot of
 24 legal issues on that. I'm not a lawyer, and I don't
 25 pretend to be a CFO in a lot of areas, but I certainly

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1 have gotten advice from excellent people, and we had
 2 been receiving moneys from Amendment 23 for the
 3 factors, and that was not as of last year.
 4 **Q. And was that unexpected, not receiving**
 5 **that money for the Amendment 23 factor?**
 6 A. It was a surprise.
 7 **Q. What are midyear rescissions?**
 8 A. Midyear rescissions is -- for instance,
 9 let me use this year as an example. We have
 10 \$67 million that the legislature has put in escrow, if
 11 you want to think of it that way. In anticipation of
 12 more rescissions that might come for this year.
 13 When we get the final October counts, when
 14 we get the final, you know, challenges that even the
 15 state will face from the federal government, that money
 16 might be used to help pay for that. If that's not
 17 enough money to pay for it, then they're probably going
 18 to knock on our door again, to be able to say okay, you
 19 have to pony up for -- more money for school year
 20 '12-'13, because the state, again, has to balance their
 21 budget too.
 22 **Q. And has Aurora Public Schools suffered**
 23 **from or experienced midyear rescissions during your**
 24 **tenure?**
 25 A. We have. And we've had that a couple

1800

1 years, where, again, it was a surprise. Last year, it
 2 was -- we started out with about a \$332 million
 3 rescission for the entire K-12 education, and with good
 4 leadership at our legislature, particularly our
 5 chairman in the house education committee,
 6 Representative Massey, I think he did a great job in
 7 getting that down, you know, to about 225 million, I
 8 think was what it ended up with.
 9 But still, the previous year was 260 that
 10 we got hit for the entire state. Last year was 220.
 11 It was 332, so everybody was happy it got down to 220,
 12 225. But at the same time, that's still an amazing
 13 amount of money that we had to dig in to be able to
 14 balance our budgets and the state's.
 15 **Q. Mr. Barry, you mentioned efforts to raise**
 16 **local moneys. Let's shift over into that topic. Has**
 17 **Aurora Public Schools raised local moneys either**
 18 **through bonds and mill levies, and if so, please**
 19 **describe those efforts?**
 20 A. We have. In 2008, we passed a bond and a
 21 mill levy override. Bond was for \$215 million and mill
 22 levy override was for 14.7 million. And you know what
 23 happened in September 2008, everything started going
 24 down, with the recession that we had in this country.
 25 We were still able to sell it to the

1801

1 populous. It didn't win by much. The bond won by
 2 53 percent and the mill levy override won by 51.7, but
 3 we were able to pass it. And to the credit of our
 4 electorate, they saw enough progress and potential in
 5 our ability, even in 2008, to see that, okay, we're
 6 going to give you a chance. So we have been
 7 aggressive, again, on trying to reach out to the
 8 community as best we could to be able to get resources.
 9 **Q. And do those mill levy overrides, do they**
 10 **compensate for the losses sustained from budget cuts?**
 11 A. Well, if you just talk about what we just
 12 went through in the last two years, I mean, 17 and 24,
 13 that's \$41 million. When you -- of course, bonds don't
 14 help you on operational funding. So the only thing
 15 that counts towards that is the mill levy overrides.
 16 So 14.7 was completely wiped out, you know, by the
 17 41 million that we've had to cut in just the last two
 18 years, never mind the 70 million that my CFO and my
 19 experts from RBC, Royal Bank of Canada, which is our
 20 bond advisors, have estimated that is the total amount
 21 of funding that we have lost in the last five years.
 22 **Q. And I'm sorry, the mill. So you've lost**
 23 **70 million over the last five years, and how much have**
 24 **you raised from the local community?**
 25 A. Well, really, the only part that helps you

1802

1 in operations is the mill levy overrides, 14.7 million.
 2 **Q. Right.**
 3 A. So that essentially was wiped out.
 4 **Q. Thank you. Mr. Barry, you had mentioned**
 5 **dropout rates previously, and you put it in the numbers**
 6 **of students that you're losing every year.**
 7 **Approximately how many students per year drop out?**
 8 A. Well, again, it's about 1200 this year.
 9 But we moved it from 9.9 percent to 6.9 percent, which
 10 is an amazing, you know, change in our school district.
 11 But, again, this is another one of those programs that
 12 we know works, but we're not able to replicate it and
 13 expand it and sustain it as well as we want.
 14 Again, this is a program for our dropout
 15 that has 18 facets. 18 facets that we've put -- this
 16 is -- you know, complicated systems fail in complicated
 17 ways, requiring complicated solutions. There's no one
 18 silver bullet. And truancy is a perfect example of
 19 that. We have partnerships with the magistrate in the
 20 18th District Court, Rebecca --
 21 UNIDENTIFIED WOMAN SPEAKER: Moss.
 22 A. -- Moss. Rebecca Moss. Thank you. The
 23 element of -- you know, we have a principal program in
 24 our school district where you cannot leave high school
 25 for lunch as a freshman period. But as sophomores,

1803

1 juniors, and seniors, you can if you earn a principal
 2 pass, and a principal pass is 93 percent attendance,
 3 2.75 GPA, and you're not in trouble, like fights and
 4 things like that.
 5 We have truancy specialists that I can't
 6 get enough of. You know, to be able to work these
 7 programs with the family. They have a caseload of
 8 about 20 to 25. We have truancy specialists in our
 9 middle and high schools. And we even have dropout
 10 challenges, which is usually a parent problem, you
 11 know, in elementary. We have mentoring programs. I
 12 can go on and on with these 18 different facets. We
 13 know this works, but I can't expand it quick enough.
 14 And we've gone after grants. Like we have
 15 a early intervention grant for \$670,000 that we were
 16 able to be fortunate to get. Another example of how
 17 we've been aggressive about seeking other kinds of
 18 funds. But, again, that looks like that'll dry up, and
 19 then, you know, that's going to cut us off on our
 20 ability to sustain a workable, effective program that
 21 we put together.
 22 So I use that as another example on our
 23 truancy, to be able to say we have made improvements,
 24 albeit incremental, but we still are losing 1200
 25 students a year, and that keeps me up at night.

1804

1 **Q. (BY MR. KAWANABE) Do you have an opinion**
 2 **as to the cost of dropouts?**
 3 A. Let me put it this way. Right now, this
 4 last year, we were getting \$7,017 per-pupil revenue.
 5 This year we're getting 6,710. Okay? That's what it
 6 costs for the student for per-pupil revenue.
 7 My understanding from my research is in
 8 order to incarcerate someone in jail, it costs about
 9 \$36,000 a year, and I think that's conservative. So
 10 the combination of we know that persistent dropouts
 11 have a high potential for unemployment and for getting
 12 in trouble, eventually ending up in jail.
 13 So my argument in -- when we talk about it
 14 in our community is that we need to stop thinking about
 15 the money that we spend on education as a bill and
 16 start thinking more of it as an investment. You know,
 17 to be able to get to the future.
 18 Because even if you don't have children in
 19 school, your property values will increase, your
 20 ability to not have to pay as much taxes for
 21 incarceration, unemployment, health. We know health
 22 gets affected when you obviously are not employed and
 23 you don't have a good education. So all those things
 24 combined allow for, I think, a better balance, you
 25 know, for us to understand this investment now, you pay

1805

1 now smaller, or you have pay later larger.
 2 **Q. You also mentioned mentorship and truancy**
 3 **programs. Do you and your staff personally engage in**
 4 **these mentorship or truancy programs?**
 5 A. In our leadership program, which there are
 6 ten of us, including me, each one of us has a mentee.
 7 We set the example for the district. Our variance on
 8 mentees and mentors within our school employees has
 9 varied from over 800 some years to somewhere between
 10 200 and 800 it's varied as we've gone along here.
 11 But I'm on the board of directors for the
 12 Big Brothers and Big Sisters. We have a great
 13 partnership with them, also, to come into our schools.
 14 So that is a very vital part of our 18-faceted program
 15 in dealing with truancy.
 16 **Q. How is Aurora Public Schools doing with**
 17 **regard to special education?**
 18 A. You know, special education has really
 19 been an eye-opener. I would offer for the Court's
 20 consideration, you know, the fact that I am not a
 21 traditional educator. I have not been in education all
 22 my life, as some of my colleagues and certainly some of
 23 the members of our excellent team have been.
 24 I've been able to look behind the curtain
 25 now in a very deliberate and systemic way for five

1806

1 years, going on my sixth year. Special ed has been an
 2 interesting eye-opener for me. One of the things that
 3 surprised me is that the state provides 21 percent of
 4 the funding needed for special ed. I'm sorry, the
 5 federal government does. 21 percent. The state
 6 provides 16. You get to 37 percent of what's needed.
 7 We can come up with the rest of it as best we can.
 8 It is interesting that if we're at
 9 37 percent, the average in the country is 63 percent
 10 that comes from the federal and the state level. So we
 11 are, you know, instead of 30-some-odd percent short,
 12 we're 60 percent short.
 13 In my research, the question oftentimes is
 14 how is our state compared to other states in the nation
 15 on per-pupil revenue? All right. I'm also talking
 16 about SPED. Per-pupil revenue, people argue we're
 17 45th, we are 47th. We're in the bottom five. In
 18 special ed, in my opinion, we are dead last in this
 19 country for how we spend for special ed.
 20 So while we're meeting the legal
 21 requirements as we go along here, I will tell you that
 22 each one is an IEP that needs to be reviewed and taken
 23 into consideration. But the reality is we're not
 24 meeting the needs of our special needs kids because we
 25 have other requirements besides IDEA, which is the

1807

1 federal law. We have No Child Left Behind, we have,
 2 you know, CAP4K, you know, Colorado Achievement Plan
 3 for Kids, we have all these other requirements that
 4 come on top of that.
 5 So I would say we're doing the best we
 6 can, but certainly not anywhere near what's required
 7 for this community of special needs children.
 8 **Q. What about gifted and talented?**
 9 A. Gifted and talented is something we pay
 10 attention to as best we can. We have a gifted and
 11 talented program in every single school. We have --
 12 because the bond was passed in 2008, we built a gifted
 13 and talented K-8, you know, which by the way, we're
 14 proud of the fact that that K-8 is the best K-8 in the
 15 entire state of Colorado.
 16 We were either one or two the last couple
 17 years, but this year we're No. 1. So we're proud of,
 18 again, trying to do the best we can, and we have these
 19 islands of excellence. Certainly K-8, this is Vista
 20 Quest that we have in our school district, that's our
 21 K-8. We have programs in every school. They -- I
 22 would say based on the resources we get, we have these
 23 islands of excellence, but certainly not the
 24 sustainment. They're not thorough and not uniform all
 25 the way through our district.

1808

1 **Q. Early childhood education.**
 2 A. Early childhood education is a key focus
 3 on our part. Again, to prove how we've been trying to
 4 be very focused on this, but also respectful of
 5 taxpayer money. With the mill levy override that we
 6 passed in 2008, we have full-day kindergarten
 7 throughout the school district that we have for
 8 traditional schools in Aurora.
 9 We're proud of that. We made that a
 10 specific item on the mill levy override ballot that was
 11 voted on by our citizens. And we're proud to be able
 12 to say we've done that. We've also taken the bond and
 13 built our third school that is just devoted entirely to
 14 preschool. We have three buildings now that are just
 15 preschool. And we have preschool in -- out of our 32
 16 elementaries, I think it's 22 or 23 preschools. But we
 17 have three buildings that are just strictly devoted to
 18 preschool.
 19 So with that focus and on full-day
 20 kindergarten, we have made a very concerted effort to
 21 use our resources to be able to focus on early
 22 childhood education.
 23 But right now, there is over 480 students
 24 on the waiting list for preschool in our school
 25 district. We only have 1383 CPP funds. This is where

1809

1 we get funding for students of poverty and need to be
 2 able to put them in preschool. And -- and we have 1868
 3 total students in preschool now. That -- that's with
 4 tuition and certain issues on Medicaid, that we get to
 5 allow them to be able to go there.
 6 But there's still a large waiting list,
 7 and it's growing each year in Aurora, as we increase in
 8 our population. So, again, I would say that we're --
 9 we're showing good evidence of responsible use of
 10 taxpayer money to the max extent we can. We have
 11 islands of excellence that are demonstrating this, but
 12 we can't replicate it as fast as we need to.
 13 **Q. Mr. Barry, in your non-legal opinion, is
 14 Aurora Public Schools providing a thorough and uniform
 15 system of public schools to all of its students?**
 16 A. My answer to that is no.
 17 **Q. Why not?**
 18 A. You know, I know there's all sorts of
 19 definitions, and I'm not a lawyer. I certainly wasn't
 20 around when that language was developed in 1880 or
 21 whenever. I know in Section 2, was it, you know,
 22 Article IX, it talks about thorough and uniform. But
 23 the only thing I can tell you is I know it when I see
 24 it, and I'm not seeing it. I see pockets of excellence
 25 around our ability to work in the school district in

1810

1 Aurora with our large challenges. Not problems, but
 2 challenges.
 3 But I don't see a replication
 4 sustainability. And I know we're leaving kids behind.
 5 We're losing kids because we can't replicate and get
 6 the programs we know that are working to every single
 7 child in the school district as quickly as we want.
 8 We're on that velocity vector of incrementalization.
 9 We're making progress, but we're not making it fast
 10 enough to be able to be thorough and uniform by any
 11 stretch.
 12 **Q. What are the results of the systemic**
 13 **failure, in your opinion?**
 14 A. Well, when we look at the elements that
 15 keep me up at night. I mean, people ask me sometimes
 16 what surprised you, you know, coming into education,
 17 not having been in it all your life. And it's one of
 18 those things where I invite people to be
 19 non-traditional, a lot of times, coming into our school
 20 district, 'cause you can see the rock in the road that
 21 even I can't see anymore, because I step over it out of
 22 habit. I don't see that rock. But you bring somebody
 23 new in, they'll see that rock and say what's that doing
 24 this. Oh, jeez, I've forgotten all about that.
 25 The end result of not having the school

1811

1 district that we know we want, we know we can achieve,
 2 we know we can accomplish with the right resources and
 3 replication, sustainability, is that we have that
 4 dropout rate of 1200 kids that choose not to stay in
 5 our school district, and as soon as they make that
 6 decision, I mean, their life becomes exceedingly more
 7 difficult. Not only for them, but also for the
 8 citizens of this city and state, because we have to
 9 pick up the bill for unemployment, health issues that
 10 go on, and certainly from the issue of crime. There is
 11 a direct correlation between students who drop out and
 12 students who end up incarcerated.
 13 So -- but the other one that I would bring
 14 into the Court's attention is the issue that we live in
 15 an entirely different environment now than any of us
 16 who are probably any older than 25, and that is the
 17 issue that our students are going to be competing on a
 18 global level.
 19 They're not going to compete for jobs in
 20 Aurora, they're not going to compete for jobs in
 21 Colorado, they're not even going to compete for jobs in
 22 the United States, they're going to compete for jobs
 23 globally. To be truly globally competitive, you need
 24 some postsecondary education. You not only need to
 25 graduate from high school, you need to take some

1812

1 courses and get other postsecondary education to be
 2 truly competitive in this environment.
 3 When we look at -- I'll give India and
 4 China as an example. There are over 225 million
 5 students in the K-12 education in those two countries.
 6 We have 58 million total. So 225/58 million. Now, if
 7 you just take the top 15 to 20 percent of India and
 8 China, they exceed -- the top 15, 20 percent, these are
 9 the ones, kids who are really being successful, are
 10 going to be a success for their country, they exceed
 11 the total number of students we have in our country.
 12 So we can't afford to lose 1200 kids. We
 13 can't afford to lose one. We truly need to believe
 14 that every child can learn. And it'll be good for our
 15 city, our state, and our country if we have that
 16 improvement that clearly accelerates student
 17 achievement.
 18 And the word's "accelerate." It doesn't
 19 mean, you know, velocity vector. It means accelerate
 20 student achievement and close the achievement gap.
 21 **Q. You retired as a two-star general; is that**
 22 **correct?**
 23 A. Correct.
 24 **Q. In your opinion, what effect does an**
 25 **inadequate public education system have on national**

1813

1 **security?**
 2 A. Well, there are two issues that I think,
 3 and one is one that clearly you'll hear numbers. I'm
 4 not sure they're quite as high as that. Some people
 5 say that 80 percent of the applicants that go into the
 6 military are not qualified. They're not qualified
 7 educational-wise, because of health, because of weight,
 8 things like that. You know, but let's, for argument's
 9 sake, say it's not 80 percent, say it's 50 percent.
 10 That's an incredible, large number, and that has dire
 11 consequences on our national security.
 12 The other one is I think that education is
 13 the equal rights element for the 21st century. If we
 14 are truly going to be a country that doesn't leave
 15 anybody behind, and I'm using that term from the
 16 standpoint of not the legislation, but just the fact
 17 that you can't hide kids in this country anymore, and
 18 that's a powerful thing about -- one thing I'd say
 19 about No Child Left Behind.
 20 There's plenty of things wrong with that
 21 legislation, but it's gotten to the point you can't
 22 hide a child anymore. Before we would say doing great,
 23 85 percent of our kids go to college. What about those
 24 kids over there? Well, you know, they're not college
 25 material, they're not going to go anywhere. But

1814

1 85 percent of the kids that graduate.
 2 That's not the focus we have now. You
 3 can't hide a child in this country anymore, and I think
 4 that's a positive thing. To be truly competitive both
 5 on a national security level and also on an equal
 6 rights level, I think we have to do a considerably
 7 better job on how we systemically approach K-12
 8 education, and I would argue P-20 education.
 9 (Discussion off the record between
 10 Mr. Kawanabe and Ms. Gebhardt.)
 11 MR. KAWANABE: Thank you, Mr. Barry. I
 12 appreciate your time.
 13 THE COURT: We'll go ahead and take the
 14 morning recess. Let's say 10:20. We'll reconvene
 15 then.
 16 (Recess taken, 9:57 a.m. to 10:21 a.m.)
 17 THE COURT: Direct examination on behalf
 18 of the plaintiff-intervenor.
 19 MS. BONO: We have no questions, Your
 20 Honor.
 21 THE COURT: All right. Thank you.
 22 Cross-examination.
 23 MS. MARKEL: Thank you, Your Honor.
 24
 25

1815

1 CROSS-EXAMINATION
 2 BY MS. MARKEL:
 3 **Q. Good morning, Superintendent Barry.**
 4 A. Good morning.
 5 **Q. It's good to see you again.**
 6 A. Thank you.
 7 **Q. I have just a few questions for you this**
 8 **morning. When you first became superintendent of**
 9 **Aurora Public Schools in 2006, I believe you testified**
 10 **that the district was on a downward spiral in**
 11 **achievement; is that correct?**
 12 A. That's correct.
 13 **Q. And as part of taking over the leadership**
 14 **in the district, you engaged in a 90-day listening**
 15 **tour?**
 16 A. Correct.
 17 **Q. And as part of that listening tour, you**
 18 **engaged with members of the community not only within**
 19 **the schools, such as the school district personnel, but**
 20 **you also met with chambers of commerce, legislators?**
 21 A. Yes.
 22 **Q. City councils?**
 23 A. Yes.
 24 **Q. Mayor?**
 25 A. Yes.

1816

1 **Q. Members of the business community? And I**
 2 **think your words were anyone who would meet with you**
 3 **and listen, that was part of your 90-day listening**
 4 **tour; is that correct?**
 5 A. That's correct.
 6 **Q. And as a result of the 90-day listening**
 7 **tour, part of that was implementing coming up with a**
 8 **strategic plan known as VISTA 2010, correct?**
 9 A. Correct.
 10 **Q. The district's vision, as I understand it,**
 11 **and as you testified earlier this morning, is to**
 12 **graduate every child with the choice to attend college**
 13 **without remediation, correct?**
 14 A. That's correct.
 15 **Q. And the district's mission is PACE, and**
 16 **PACE means people, achievement, community, and**
 17 **environment?**
 18 A. Yes.
 19 **Q. And that mission, as I understand it, is**
 20 **on every employee of Aurora Public Schools' I.D. card?**
 21 A. We distribute that card with every new
 22 employee. So as part of when they carry it around,
 23 that is correct.
 24 **Q. And so would it be fair to say that's part**
 25 **of embedding the mission in every employee in the**

1817

1 **district, whether it's the bus driver, the cafeteria**
 2 **worker, the teacher, every school -- every school**
 3 **district employee has that mission?**
 4 A. I've learned over the years that it's very
 5 important for everybody to understand what the big
 6 picture is, and in our particular case, as you
 7 mentioned, strategy is connecting ends with means. And
 8 our end is the vision, graduate every student with the
 9 choice to attend college without remediation. And the
 10 goals and objectives are the means. And we've tied
 11 them under PACE. So every one of our goals and
 12 objectives are tied under one of those letters,
 13 P-A-C-E, for people, achievement, community, and
 14 environment. So it makes it easy for people to make
 15 the connection.
 16 **Q. In developing the VISTA 2010 strategic**
 17 **plan, the litmus test was it had to be tied to**
 18 **improving student achievement and it had to be tied to**
 19 **closing the achievement gap?**
 20 A. That is correct.
 21 **Q. And some of the things you were able to**
 22 **implement, the district was able to implement that**
 23 **first year, or to focus on, was recruiting and**
 24 **retaining the best quality teachers that Aurora Public**
 25 **School District could find, correct?**

1818

1 A. Yes.

2 **Q. There was also a goal set of improving**

3 **student achievement by 3 percent that first year?**

4 A. That is correct.

5 **Q. And for the community, there was a clear**

6 **focus on improving the environment, and for the**

7 **environment, it was a focus on looking at the equity**

8 **elements and the diversity of the school district,**

9 **correct?**

10 A. Yes.

11 **Q. And the diversity within Aurora Public**

12 **Schools is an asset to the district, correct?**

13 A. We value that as a strength, yes.

14 **Q. And despite the -- I believe that you**

15 **testified that there was a 2 percent reduction across**

16 **the board, other than in the classroom, in order to get**

17 **the funding, the kick-start funding, for implementing**

18 **the first year of VISTA 2010; is that correct?**

19 A. That is correct. That is the funding I

20 used for the first year.

21 **Q. And with regard to the implementation of**

22 **2010, that was a five-year plan, correct?**

23 A. That was a five-year plan that we

24 accomplished 93 percent in four years.

25 **Q. So we heard of the 2 percent reduction in**

1819

1 **funding, and then the subsequent year there was a drop**

2 **in enrollment, which resulted in a drop in PPOR, which**

3 **you equated to a \$10 million drop to the school**

4 **district, correct?**

5 A. That's correct.

6 **Q. And even so, with that cut in revenue, the**

7 **district was still able to move forward with the VISTA**

8 **2010 plan. Some of the things the district**

9 **accomplished were instead of having data silos, so to**

10 **speak, the district now has data teams, where teachers**

11 **are collaborating and sharing data across the board,**

12 **correct?**

13 A. Correct.

14 **Q. And it was at that point that the district**

15 **was also able to introduce elements of the Fifth Block?**

16 A. Correct.

17 **Q. The district also implemented a leadership**

18 **training program for your principals, I believe it's**

19 **called the National Institute of Leadership?**

20 A. Of school leadership. National Institute

21 of School Leadership, yes.

22 **Q. Every principal in Aurora Public Schools**

23 **is required to participate in that?**

24 A. Correct.

25 **Q. And at Montview Elementary School, the**

1820

1 **district introduced a new literacy program?**

2 A. The new literacy program was adopted

3 district-wide.

4 **Q. So that was in the second year of VISTA**

5 **2010?**

6 A. That's correct.

7 **Q. A new literacy program was adopted**

8 **district-wide?**

9 A. Yeah. The program was called Mondo for

10 elementary and Readers/Writers Workshop for middle and

11 high school.

12 **Q. And pacing guides were developed for**

13 **teachers to let them know what they needed to cover**

14 **over the course of the year, correct?**

15 A. That's correct.

16 **Q. And in addition to the state assessment,**

17 **the district implemented on its own interim assessments**

18 **so that the district could get a pulse of where its**

19 **students were along the way, correct?**

20 A. That's correct.

21 **Q. And in addition to all of that, the**

22 **district was able to implement pilot schools, correct?**

23 A. Correct.

24 **Q. Describe, please, what pilot schools are.**

25 A. Think of pilot schools as a charter

1821

1 school, but within the school district. So we have in

2 that particular agreement with the teachers union, they

3 have -- Aurora Education Association, AEA, we were able

4 to arrive at an MOU, memorandum of understanding, that

5 relaxed some of the work rules in the master agreement

6 we have with the -- the association. And that allowed

7 us more flexibility. So the best way to describe it is

8 think of a charter school inside a school district with

9 the partnership of the teachers union.

10 **Q. You spoke with Mr. Kawanabe a little bit**

11 **about the English language learners services that the**

12 **district is providing to its population of students,**

13 **and I believe that the ELL population is approximately**

14 **38 percent?**

15 A. Correct.

16 **Q. You also discussed -- or described the**

17 **implementation or requirement that every teacher in**

18 **Aurora Public Schools will become ELL certified; is**

19 **that correct?**

20 A. It is now a condition of employment.

21 We're trying to get the teachers who were previously

22 hired before we made that determination certified, but

23 it has not been possible because of funding reductions.

24 So we're trying to inch into that as best we can. But

25 certainly eventually, with all the new teachers, the

1822

1 turnover, we'll get to a point we'll be 100 percent.
 2 **Q. At this point there's 33 percent, I**
 3 **believe, of your teachers are ELL certified?**
 4 A. It's closer to 40 now.
 5 **Q. So it's grown since we last talked --**
 6 A. That's correct.
 7 **Q. -- at your deposition?**
 8 A. Right.
 9 **Q. When we were talking -- when you were**
 10 **talking with Mr. Kawanabe about some of the achievement**
 11 **measures for your ELL students, one of the things that**
 12 **I wanted to ask you about is to clarify that with**
 13 **regard to some of the state's targets of exiting the**
 14 **program, it's my understanding that Aurora Public**
 15 **School students have met the state's target of**
 16 **6 percent exiting ELL -- the ELL program, correct?**
 17 A. In 2009 we had 7 percent, in 2010 we had
 18 8 percent.
 19 **Q. So not only have you met it, but you've**
 20 **exceeded it since that point?**
 21 A. I would say we've exceeded it
 22 incrementally.
 23 **Q. And would you agree that you've gotten a**
 24 **steady kind of a velocity of improvement, but you don't**
 25 **have the acceleration in meeting those goals that**

1823

1 **you've set for your ELL program?**
 2 A. I think the point that you're making with
 3 all of these programs that I described as part of a
 4 mosaic, with all of that, I would put our team up
 5 against anybody. It is still only garnering us
 6 incremental improvements in achievement.
 7 We are still 20 percent below the state
 8 average in reading, writing, math, and science. While
 9 I'm exceedingly proud of the improvements we've made,
 10 but with all of those things combined, which I think is
 11 monument on how we have changed the school district on
 12 an order of magnitude that rivals anything in the
 13 country, it still has only garnered us incremental
 14 improvement.
 15 **Q. And when you were referring to rivals**
 16 **anything in the country, would you agree that the**
 17 **ASCENT program that Aurora is offering is one of**
 18 **the -- one of perhaps less than a handful of programs**
 19 **of its kind in which Aurora Public Schools' high school**
 20 **teachers who have master's degrees and have the -- are**
 21 **adjunct faculty with Aurora Community College, are able**
 22 **to offer college-level classes to high school students,**
 23 **so when those students graduate, they hold not only a**
 24 **high school diploma, but they also hold either an**
 25 **associate's degree or a good deal of college credit?**

1824

1 MR. KAWANABE: Objection. Form.
 2 Compound.
 3 THE COURT: It is compound. Sustained.
 4 If you want to rephrase.
 5 MS. MARKEL: Sure.
 6 **Q. (BY MS. MARKEL) The Aurora Public Schools**
 7 **has the ASCENT program, correct --**
 8 A. Correct.
 9 **Q. -- Superintendent Barry? And with regard**
 10 **to the ASCENT program, is it true that that program has**
 11 **been accredited?**
 12 A. The ASCENT program -- what you're
 13 describing is really two programs that we have in
 14 Aurora. One is dual credit, and one is the ASCENT
 15 program. The dual credit program is another example of
 16 us reaching out to partners to be good stewards of
 17 taxpayer money.
 18 We have a written agreement that we call
 19 PACEsetter with the Community College of Aurora. Linda
 20 Bowman is president, and Dr. Bowman and I have agreed
 21 that when we have teachers in our school district who
 22 are qualified to be adjunct professors, they can teach
 23 courses in our high schools that have dual credit for
 24 not only high school, but also college.
 25 In addition to that, the state passed the

1825

1 ASCENT law that applies to all school districts, not
 2 just to Aurora, and we have taken great advantage of
 3 that by having students who right now there were
 4 700 -- over 700 students who were qualified or their
 5 names were submitted. 'Cause you have to have 12
 6 college credits by your senior year to qualify to stay
 7 a fifth year in high school. There were 780. We had
 8 520 of those of the 780 in the entire state. So we're
 9 very aggressive about going after this.
 10 With that, students make choices. You
 11 know, some of those students are qualified to go to
 12 college right away, and some choose to do that. So
 13 next year, we have -- we have a thousand and ten
 14 students in the total program of dual credit in ASCENT.
 15 So, again, this is an example, I think, of a good
 16 partnership and trying to reach out to a community
 17 partner to help us with state asset approval, and the
 18 legislation they approved two years ago to take
 19 advantage of that as much as we possibly again.
 20 **Q. Again, that was a partnership with**
 21 **Community College of Aurora?**
 22 A. That's right.
 23 **Q. In your most recent graduating class, I**
 24 **believe 25 students graduated with associate's degrees?**
 25 A. Not only did 25 students graduate with

1826

1 associate's degrees, but 75 percent of our students who
 2 graduated all of last year were able to graduate having
 3 taken at least one college course and passed.
 4 **Q. Do you believe that Aurora is competitive**
 5 **with other Denver metro area districts in being able to**
 6 **recruit and compensate teachers?**
 7 A. I think we try to be as much as we
 8 possibly can.
 9 **Q. And the average teacher salary or average**
 10 **teacher compensation in Aurora is \$56,000 a year?**
 11 A. That's correct.
 12 **Q. You talked a little bit with Mr. Kawanabe**
 13 **about the professional development opportunities that**
 14 **are provided through Aurora Public Schools. It's my**
 15 **understanding that in addition to the -- the things**
 16 **that you discussed with Mr. Kawanabe, Aurora Public**
 17 **Schools does a number of things, one would be the**
 18 **two-day transition for its new teachers --**
 19 A. Uh-huh.
 20 **Q. -- is that correct?**
 21 A. That's correct.
 22 **Q. And there are mentors assigned for new**
 23 **teachers?**
 24 A. That's correct.
 25 **Q. There's professional development for**

1827

1 **counselors each month?**
 2 A. Yes.
 3 **Q. And there's professional development for**
 4 **principals each month?**
 5 A. Yes.
 6 **Q. And then we've already mentioned the**
 7 **National Institute of School Leadership. Could you**
 8 **describe what this is?**
 9 A. The National Institute of School
 10 Leadership was a challenge that I saw evident when I
 11 first got here, that we were not training principals
 12 successfully enough to be strategic leaders. We
 13 were -- if you're a teacher and you did well, we made
 14 you a teacher leader. If you're a teacher leader and
 15 you did well, we made you assistant principal. If you
 16 did that well, we made you principal. Good luck, and
 17 don't mess it up.
 18 It's got to be more, you know, systemic
 19 than that. So we introduced the National Institute of
 20 School Leadership, to teach people not only to be
 21 managers of buildings, but also the lead instructor in
 22 the building for just not next year, but five years
 23 down the road to be strategic leaders, and that program
 24 has helped us do that.
 25 **Q. And as I understand it, on the topic of**

1828

1 **leadership, you believe that it needs to be the right**
 2 **leadership?**
 3 A. In all cases, we all strive to get the
 4 best leader for the best position, correct.
 5 **Q. For example, with regard to the principals**
 6 **in Aurora Public Schools, it's my understanding that**
 7 **the challenge that is given to the principals is that**
 8 **they must move students academically within three**
 9 **years; is that correct?**
 10 A. Each principal that I've hired over the
 11 last four years, we have given them that challenge.
 12 And it really is the preponderance of evidence of
 13 moving the students on student achievement and closing
 14 the gaps.
 15 **Q. And when that doesn't happen, if the**
 16 **principal is not able to demonstrate through the**
 17 **preponderance of evidence the movement of students**
 18 **academically, a conversation occurs between district**
 19 **leadership and the principal, correct?**
 20 A. That's correct.
 21 **Q. And in some instances, the district has**
 22 **actually let principals go?**
 23 A. Yes, we have.
 24 **Q. Let's shift gears and talk a little bit**
 25 **about VISTA 2015.**

1829

1 A. Yes.
 2 **Q. VISTA 2015 is the current strategic plan**
 3 **for the district, correct?**
 4 A. That's correct.
 5 **Q. In addition to the partnership that you**
 6 **described with the Anschutz Medical Campus, other**
 7 **partnerships that the district has developed include**
 8 **partnerships with regard to the business pathway with**
 9 **corporations such as Northrop Grumman, Raytheon,**
 10 **Lockheed Martin, ProLogis, Staples, and Buckley Air**
 11 **Force Base, correct?**
 12 A. Yes.
 13 **Q. And for the arts and communications**
 14 **pathways, the partners are Denver Art Museum, the**
 15 **Denver Nature and Science Museum, and the Center for**
 16 **Performing Arts?**
 17 A. Correct.
 18 **Q. And the vision here, as I understand it,**
 19 **for Aurora Public School students, is that they**
 20 **graduate not only with a high school diploma, but they**
 21 **graduate with experiential learning and perhaps an**
 22 **associate's degree in some of these domains; is that**
 23 **correct?**
 24 A. That is our goal.
 25 **Q. And if they don't receive an associate's**

1830

1 **degree, again, they'll at least have a lot of college**
 2 **credit?**
 3 A. College credit that is acceptable in any
 4 four-year institution in Colorado.
 5 **Q. And with regard to all of those pathways**
 6 **that we just discussed, Aurora Public Schools is only**
 7 **one year into implementing VISTA 2015, correct?**
 8 A. That's correct. It was approved August of
 9 2010.
 10 **Q. And while not intending to in any way make**
 11 **light of the funding situation, the funding cuts that**
 12 **you described to Mr. Kawanabe, isn't it true that one**
 13 **of the things that APS, Aurora Public Schools, is**
 14 **trying to do to address the funding situation, the**
 15 **funding cuts that have occurred and have impacted the**
 16 **district, is that you're moving the district from a**
 17 **monolithic approach to education; is that correct?**
 18 A. "Monolithic" is a term that was titled in
 19 a book called Destructing Class by a gentleman named
 20 Christensen. And what it does is talks about moving
 21 away from the teacher being the dispenser of all
 22 knowledge to using technology to record, not in the
 23 20th century framework or just a lecture, but also
 24 using the tools, VODcasts, to be very dynamic. And the
 25 students can move from monolithic to student-centric

1831

1 education that actually allows a student to be able to
 2 do the homework in the class and review the VODcasts,
 3 you know, at their own leisure. So it's actually what
 4 they call flipping.
 5 Now, this is not embedded in our VISTA
 6 2015, this is just something that we've become aware of
 7 in the last year or so, and we're having conversations
 8 in our school district about trying to move in that
 9 direction.
 10 **Q. Let's talk a little bit about education**
 11 **reform, Superintendent Barry. In your discussions**
 12 **around the accountability statutes, it's my**
 13 **understanding that with regard to the Senate Bill 163,**
 14 **you believe it's an excellent piece of legislation?**
 15 A. I agree with almost all of it, and I do
 16 find it to be very helpful for the state.
 17 **Q. Your concern is the funding resources**
 18 **around implementing Senate Bill 163?**
 19 A. I'm always concerned with unfunded
 20 mandates.
 21 **Q. With regard to other pieces of**
 22 **legislation, for example, the CAP4K, Senate Bill 212,**
 23 **is it fair to say that with regard to the Aurora Public**
 24 **Schools' opening of the Vista Peak P-20 campus, Aurora**
 25 **Public Schools is leading the state in implementing**

1832

1 **CAP4K?**
 2 A. We can argue that we have deliberately
 3 taken that legislation from an idea to an
 4 implementation. So we're proud of that.
 5 **Q. And with regard to the education reform**
 6 **statute of Senate Bill 191, it's my understanding that**
 7 **you testified before the general assembly in favor of**
 8 **that piece of legislation?**
 9 A. I did.
 10 **Q. And that's otherwise known as the Educator**
 11 **Effectiveness Bill?**
 12 A. Correct.
 13 **Q. It's also my understanding that when you**
 14 **testified before the general assembly on Senate Bill**
 15 **191, you indicated that you would not be seeking**
 16 **additional state moneys, or Aurora Public Schools would**
 17 **not be seeking additional state moneys in order to**
 18 **implement Senate Bill 191?**
 19 A. I testified to the fact that I would not
 20 ask for additional resources for the school district's
 21 implementation. But I also recognize the issue that in
 22 order to get to that point, we had to have the state
 23 funded properly so they could provide the resources and
 24 the finished products on certainly like interim
 25 assessments, that are in non-traditionally scored areas

1833

1 outside of reading, writing, math, and science.
 2 The ability to set up the rules that would
 3 be set up that they're going through right now with
 4 Senate Bill 191, to establish a process that would
 5 allow for appeals and make sure that was clear and
 6 understood throughout the district. But by staying
 7 true to the three pillars of 191, which is annual
 8 reviews for teachers and principals, 50 percent of
 9 evaluations tied to student achievement, and the tenure
 10 system, non-probationary system, that is argued would
 11 go away to a much more progressive element, those are
 12 things that need to be funded properly at the state
 13 level.
 14 Once that was handed to us, I said
 15 publicly that I could implement it without adding
 16 additional resources.
 17 **Q. And as I understand it, those levels of**
 18 **implementation are underway by the state, to some**
 19 **degree?**
 20 A. To some degree. We've got a long way to
 21 go.
 22 **Q. In addition to the pilot schools that you**
 23 **mentioned earlier, the district also has this Vista**
 24 **Peak P-20, campus which is an innovation school,**
 25 **correct?**

1834

1 A. Correct.

2 **Q. And the district also serves students**

3 **through the Rebound Ombudsman program, correct?**

4 A. Correct.

5 **Q. That's a program that reclaims kids who**

6 **have dropped out of school and gives them an**

7 **opportunity to complete their high school education?**

8 A. Correct. In my previous testimony, I

9 talked about those are the high age, but also high

10 credit, that just need to get to 22 credits to graduate

11 from high school.

12 **Q. And that's being implemented through a**

13 **partnership with Colorado Youth for Change?**

14 A. Again, I would use that program as an

15 example on how we have partnered with outside resources

16 to make up for funding gaps that we would not, by

17 ourselves, be able to do. So that particular program

18 is a partnership with Ombudsman that provides the

19 teachers, the computers, and the curriculum.

20 Colorado Youth for Change is Steve Dobo,

21 and he helps us go out and bang on doors politely to

22 recruit students, to remind them they have an option to

23 come back before they're age 21. We have faith-based

24 partnerships. We have partnerships with Community

25 College of Aurora, particularly in getting them ready

1835

1 for the Accuplacer, to go through and be able to get

2 community college credit as we go along.

3 So that's another example of us trying to

4 be responsible in going out and making access available

5 to our school district from outside resources that we

6 wouldn't normally be able to do because of the funding

7 cuts.

8 **Q. And in your discussions with Mr. Kawanabe,**

9 **you stated that Aurora Public Schools is a good fiscal**

10 **steward of the public moneys that it has, and one of**

11 **the examples of that would be your current bond**

12 **construction program, in which \$29 million in savings**

13 **were achieved through good fiscal management of -- of**

14 **construction projects that have taken place at Aurora**

15 **Public Schools?**

16 A. That is correct.

17 **Q. And through those \$29 million in savings,**

18 **there will be additional new construction projects**

19 **taking place over the course of the next few years,**

20 **correct?**

21 A. That is correct. But it still leaves us

22 with about a \$250 million deficit in our abilities of

23 recognized construction programs that we're not able to

24 be able to meet, 'cause when the \$215 million bond was

25 approved, we identified over \$450 million worth of

1836

1 requirements.

2 **Q. Now, Aurora Public Schools receives**

3 **86 percent of its funding from the state, correct?**

4 A. That is correct.

5 **Q. And it receives 10 percent from local**

6 **property taxes?**

7 A. That's correct.

8 **Q. And the rest of it, Aurora Public Schools**

9 **receives minor amounts from the federal government and**

10 **other sources?**

11 A. That's correct.

12 **Q. Is it your suggestion that Aurora Public**

13 **Schools should be 100 percent funded by the state?**

14 A. What I have recently become is a much

15 better educated person on the history of the state. In

16 my research, I've come to realize that this state was

17 about in the middle of 50 states insofar as per-pupil

18 revenue in the 1980s.

19 Since the 1980s, the funding has switched

20 completely, where 65 percent used to come from property

21 tax, 35 percent came from the state, to today, as a

22 state, it's exactly the opposite; 65 percent comes from

23 the state and 35 percent comes from property taxes.

24 But not in Aurora. In Aurora, we get

25 86 percent of our funding from the state, about

1837

1 10 percent from property taxes. And why? That's

2 because of our low valuation that we have in our

3 community. There are two school districts in the City

4 of Aurora; one is Cherry Creek, that has a much higher

5 valuation and much more resources available to them for

6 companies and -- and establishments that -- residential

7 properties, and in Aurora we have a lot less. So when

8 the state takes a hit, we really take a hit.

9 **Q. Thank you for that, Superintendent Barry.**

10 **I'm not sure I heard a response to my question.**

11 A. Okay. Could you restate the question,

12 please.

13 **Q. Whether it's your expectation that the**

14 **state should fund 100 percent of Aurora Public Schools'**

15 **budget.**

16 A. No.

17 **Q. You mentioned earlier in your testimony**

18 **with Mr. Kawanabe the 90/90/90 work that Mr. Reeves has**

19 **done. Are -- do you recall the commonalities he found**

20 **among schools?**

21 A. The commonalities, one in particular was

22 the true belief that every child can learn. And this

23 is one of those things where you didn't use excuses

24 which are hard, you know, realities, poverty, English

25 language learning, and things -- you know, family

1838

1 issues. But the element is you didn't use that excuse
 2 for not enabling an opportunity for every child to
 3 learn.
 4 **Q. At the beginning of your testimony today**
 5 **with Mr. Kawanabe, you indicated that you are still**
 6 **hoping to bust through the state average in student**
 7 **achievement?**
 8 A. Correct.
 9 **Q. Do you believe that Aurora Public Schools**
 10 **will be able to do that despite the budget situation?**
 11 A. Again, I go back to my issue on we are
 12 making incremental improvements every year. We're very
 13 proud of that. Some of which you have stated. It
 14 takes that complexity, you know, to get the incremental
 15 gains that we've gotten, with all of the responsible
 16 programs that we've established, with partnerships
 17 outside the school district, as well as good stewards
 18 of the taxpayer money.
 19 We are very proud of our leadership in
 20 Aurora Public Schools, but it still is only allowing us
 21 to not accelerate, but have a constant velocity vector.
 22 And my concern is I'm leaving a lot of students behind.
 23 You know, how long would it take us to get to where we
 24 need to go on this kind of velocity vector? It
 25 certainly will not be in my lifetime, at the rate we're

1839

1 going. Okay?
 2 So we need to accelerate so we don't leave
 3 those children -- every year I'm leaving children
 4 behind who are not benefiting from programs that I know
 5 work, that I know if they're implemented in these
 6 schools, will benefit them and certainly improve our
 7 ability to accelerate student achievement and close the
 8 achievement gap and improve our school performance
 9 framework where we want to get to the highest level.
 10 But right now, we're in the improvement and, you know,
 11 we -- we did that with a lot of conversation with
 12 CDE.
 13 **Q. But you're still hoping to bust through**
 14 **the state average within the next couple of years for**
 15 **your students, correct?**
 16 A. I'm hoping to do that, but right now I'm
 17 not very optimistic, particularly in light of the
 18 current economic situation. And if we take another
 19 \$24 million hit for this next year, it is actually
 20 going to set us back in our ability to do that.
 21 This year, I'll be frank with you, our
 22 achievement levels were stable. They were flat. Okay?
 23 And the combination of a lot of reasons. I mean,
 24 clearly we have made improvements over the last five
 25 years in total. But we were not satisfied with our

1840

1 results this year. They were flat. They were stable.
 2 They didn't get us any closer to the state average.
 3 Okay?
 4 I'm hoping that with the additional help
 5 in our initiative, in trying to go anywhere and
 6 everywhere we can to be responsible to bring in
 7 resources. I think we've done a good job. We've got
 8 to break this cycle of incremental change, and we've
 9 got to be able to accelerate it so we don't leave those
 10 kids home.
 11 I lose sleep every night that I know of
 12 1200 kids that are still dropping out of school in
 13 Aurora Public Schools. 1200 students, okay, that are
 14 probably going to be in challenges for poverty,
 15 challenges for crime, challenges for health, and
 16 certainly challenges for jobs.
 17 And if we can accelerate the student
 18 achievement with proper funding that is thorough and
 19 uniform, I am more optimistic that we can get to the
 20 goal of busting through the state average, but
 21 certainly meeting the vision of graduating every
 22 student with a choice to attend college without
 23 remediation more readily if we're able to get that
 24 level.
 25 MS. MARKEL: I have no further questions

1841

1 THE WITNESS: Thank you.
 2 THE COURT: Thank you. Redirect.
 3 MR. KAWANABE: Thank you, Your Honor.
 4 REDIRECT EXAMINATION
 5 BY MR. KAWANABE:
 6 **Q. Superintendent Barry, you mentioned a**
 7 **\$250 million deficit in capital construction needs.**
 8 **What did you mean by that?**
 9 A. We have a committee that is made up of
 10 citizens in our community, the long-range facilities
 11 planning committee. That is a committee made up of
 12 about 20 to 25 people. We present them with all of the
 13 requirements that are requested by individual schools,
 14 buildings, construction, maintenance and operations,
 15 IT, bus transportation. And then we had hired a
 16 company that allowed us to be able to put that in some
 17 kind of context, you know, to see if these were viable
 18 concerns or they were nice to have.
 19 With all that done over these many years,
 20 they have had a conclusion that we have about
 21 \$450 million worth of needed assets. This was in 2008,
 22 by the way. This was not today. And because of our
 23 mill restrictions on trying to keep the mill levy for
 24 bonds at 15 mills, so we could argue in front of our
 25 community that is very poor, 'cause we have 69 percent

1842

1 free and reduced lunch, that gives you an education.
 2 Also, the story I told on last Saturday,
 3 about how many kids stood in line, 8,000-plus, to get
 4 backpacks gives you an indication. But when we went
 5 for the bond, we said there'll be no tax rate increase.
 6 In other words, as we pay down one bond, we want to
 7 keep the mills the same. We could only get 215 million
 8 as a target. We got that approved in 2008. But it
 9 still left over 250 million -- close to 250 million
 10 unfunded requirements.
 11 **Q. Ms. Markel asked you about the Ombudsman**
 12 **program. What is Ombudsman? Is that a company?**
 13 A. Ombudsman is a company, national company,
 14 that works with dropout students in particular.
 15 They've had tremendous success. You actually bring
 16 them in and pay them PPR, but they take about
 17 85 percent, and it's kind of a win-win for us. Again,
 18 a good indication of our attempt to try to be good
 19 stewards of taxpayers' money. By taking 85 percent,
 20 that leaves us with 15 percent.
 21 But they bring in their own computers,
 22 they bring in their own teachers, they pay for their
 23 own capabilities for benefits. They have their own
 24 curriculum. So it is a good partnership that they do
 25 in a blended mode. It's a blended model, where the

1843

1 students are working on computer curriculum with a
 2 ten-to-one student-teacher ratio, so ten students to
 3 every one teacher.
 4 So it's an interesting model that we've
 5 been able to do, and it's had pretty good success with
 6 our dropouts.
 7 **Q. And, Mr. Barry, you're certainly proud of**
 8 **Aurora Public Schools's successes?**
 9 A. We are.
 10 **Q. In your opinion, are mill levies, grants,**
 11 **private companies, are they a systemic solution?**
 12 A. I don't mean to be disrespectful, but it's
 13 not a way to run a railroad, you know. And not to say
 14 that school districts are railroads. But the
 15 euphemism, I think, is appropriate. By going back to
 16 the electorate every four, five, six years and asking
 17 them for an increase in taxes is burdensome. It is
 18 very, very challenging for us to be able to do that,
 19 'cause it takes a lot of manpower and a lot of effort
 20 on our part to get that done. And it really is not
 21 a -- a sustainable program that allows me to be able to
 22 make commitments for years out.
 23 I certainly can't say, well, we'll pass a
 24 mill levy override in a year or two, and then we can
 25 plan on having that money to be able to do X. I can't

1844

1 do that until it's actually approved. Even then you're
 2 behind the eight ball. Now you have the money, you
 3 have to be able to fit it in.
 4 So in running any kind of a business --
 5 and, again, school districts are not businesses, but it
 6 is a large enterprise, you know, half a billion
 7 dollars, almost, with 6,000 employees, 59 schools,
 8 38,000 students, you need to have more sustainable and
 9 assured avenues of resources so you can do what's
 10 proper for students.
 11 **Q. Ms. Markel asked you about teacher**
 12 **compensation and professional development. For Aurora**
 13 **Public Schools, what are the challenges you face**
 14 **retaining the teachers that you train?**
 15 A. Aurora, even before, well before I
 16 arrived, has always had a good reputation insofar as
 17 their abilities to, you know, do curriculum and
 18 instruction. Oftentimes, that's one of the reasons we
 19 have a high average pay scale for our teachers, because
 20 you need to be able to attract people to come into
 21 pretty demanding environments. So it's that
 22 combination that we want to be able to retain teachers.
 23 Now, the good news is that we're building
 24 a good reputation in the state of a good place to work.
 25 So we're getting more people knocking on our doors, and

1845

1 that's a positive thing. So I don't see the exodus as
 2 much as we had seen. People would come in, they would
 3 learn to operate in a pretty demanding environment, and
 4 they would be recruited out.
 5 So we work very hard to retain our
 6 teachers. And the economy's helped, frankly. You
 7 know. Lately. Certainly with the cuts. But we always
 8 want to be able to hire the best teachers and retain
 9 that. And that goes back to that issue about not
 10 having a RIF. We've identified this wonderful team
 11 that we've put together that is working incredibly hard
 12 to make incremental changes with all these programs
 13 that we've put together, with this amazing leadership
 14 that we've established in Aurora Public Schools.
 15 It's not perfect, by any stretch of the
 16 imagination, and again, it supports the issue that I
 17 think we're being responsible about working incredibly
 18 complex systems to fix challenges and complex failures
 19 and still only getting incremental gains.
 20 **Q. Mr. Barry, finally, Ms. Markel asked you**
 21 **about certain pieces of legislation for education**
 22 **reform, and you mentioned that you were always**
 23 **concerned with unfunded mandates. Is Senate Bill 163**
 24 **good legislation, in your opinion?**
 25 A. Yes.

1846

1 **Q. Is Senate Bill 163 an unfunded mandate**
 2 **from the state, in your opinion?**
 3 A. Yes.
 4 **Q. What about Senate Bill 212?**
 5 A. I -- again, on both pieces of legislation,
 6 I agree with almost all of it. There's a few things I
 7 have some challenges with. So I don't a hundred
 8 percent agree with it, but in both cases they're
 9 unfunded mandates.
 10 **Q. Senate Bill 191, you mentioned, the state**
 11 **is currently implementing, but we have, quote, "A long**
 12 **way to go." What did you mean by that?**
 13 A. Well, one of the disappointing things for
 14 the state is we were not a winner of Race to the Top.
 15 And I was on that team. And it was really a shock to
 16 us all that we didn't get it. Because of this
 17 legislation that we passed, that money would have gone
 18 towards a long way in helping us implement on a state
 19 level Senate Bill 163, 212, and 191.
 20 Since we did not get that money, it's
 21 going to be a lot tougher for the state to be able to
 22 give us the resources. And I've said I can implement
 23 it once it's given to us, but the package has to be
 24 delivered for me to implement. And if I can't get that
 25 funded as a state, you know, to give me the package,

1847

1 it's going to be very difficult for me to implement it.
 2 MR. KAWANABE: No further questions.
 3 Thank you.
 4 THE COURT: Thank you. Recross.
 5 MS. MARKEL: Just briefly, Your Honor.
 6 RE-CROSS-EXAMINATION
 7 BY MS. MARKEL:
 8 **Q. Superintendent Barry, in response to**
 9 **Mr. Kawanabe's questions regarding whether mill levies,**
 10 **grants, and private partnerships are a systemic**
 11 **solution, you stated -- and I don't want to put words**
 12 **in your mouth -- you stated it's not a good way to run**
 13 **a railroad and that it's not a sustainable program. Am**
 14 **I -- is that what you stated?**
 15 A. Generally correct, yes.
 16 **Q. What is a sustainable program, in your**
 17 **view?**
 18 A. One of the things that I would like the
 19 Court to consider is the following: I'm not an expert
 20 in making analysis of what is the right amount of money
 21 to be able to fund the school district to be
 22 successful. But I do know that APA has gone through
 23 some constructive elements in trying to be able to put
 24 a number, and they said somewhere about 3 to
 25 \$4 billion.

1848

1 Let's put that aside for a minute. My
 2 understanding, and what I have been good at in these
 3 many years of being in the military and in business and
 4 in education, is knowing what good comparative analysis
 5 is. I know we're in the bottom four to five states in
 6 the nation. And I know we're in the top five states in
 7 the nation for per-capita income.
 8 What I would look for is a better balance,
 9 a better balance that allows us to take advantage of
 10 the richness in this state, to get us out from in the
 11 bottom five of the states in the nation for per-pupil
 12 revenue. That would provide our students, I think,
 13 with a more favorable environment that's properly
 14 funded. And it's one of those things I can just tell
 15 you, with now 37 years of experience in the military,
 16 business, and in education, I will tell you that you
 17 know it when you see it.
 18 I'm not seeing it now. And I know we're
 19 not there at that proper level. I'm not going to
 20 pretend to say I'm going to put a number on it and say
 21 I got to have this amount of money to be able to be
 22 successful. But I know what we have now is not
 23 working. And we've got to do something different,
 24 because the definition of insanity is to continue to do
 25 the same thing and expect different results.

1849

1 We're not getting the results we need for
 2 our children, and in Aurora Public Schools, we have a
 3 very simple saying. We begin every conversation and we
 4 end every conversation talking about the students.
 5 **Q. Do you have an opinion, Superintendent**
 6 **Barry, as to why we don't have that balance that you**
 7 **referred to?**
 8 A. The only thing I know is what I've stated
 9 earlier. We were in about the middle for per-pupil
 10 revenue for the states in the 1980s. We are now in the
 11 bottom, you know, five, if not the bottom two. And I
 12 would say right now that the issue that I would offer
 13 for consideration is we get back to a more balanced
 14 element.
 15 Maybe the issue, we switch from
 16 65 percent, you know, from property taxes to 35 percent
 17 being funded by the state, now completely opposite for
 18 the entire state, and we're particularly vulnerable in
 19 Aurora, because we have such a low valuation in our
 20 school district.
 21 But my recommendation is that this state
 22 take a better look at how to balance that closer to --
 23 certainly what we're doing now is not working.
 24 MS. MARKEL: I have no further questions,
 25 Your Honor.

1850

1 THE COURT: Thank you. Thank you, sir.
 2 You may step down.
 3 THE WITNESS: Thank you.
 4 THE COURT: Thank you.
 5 THE WITNESS: Thank you, Judge.
 6 MR. KLINGSPORN: Your Honor, Geoffrey
 7 Klingsporn for the plaintiffs. Plaintiffs would call
 8 Dr. Lisa A. Escarcega as the next witness.
 9 THE COURT: Yes. Would you raise your
 10 right hand.
 11 LISA A. ESCARCEGA,
 12 having been first duly sworn to state the whole truth,
 13 testified as follows:
 14 THE COURT: Thank you. Please be seated.
 15 And then once you're seated, if you could state your
 16 full name. And why don't you spell both your first and
 17 last name for us.
 18 THE WITNESS: Certainly. It's Lisa Ann
 19 Escarcega. L-i-s-a, middle initial A., last name
 20 E-s-c-a-r-c-e-g-a.
 21 THE COURT: G what?
 22 THE WITNESS: A.
 23 THE COURT: Thank you.
 24 THE WITNESS: There's an accent over the
 25 first A

1851

1 THE COURT: Thank you.
 2 DIRECT EXAMINATION
 3 BY MR. KLINGSPORN:
 4 **Q. Good morning, Dr. Escarcega.**
 5 A. Good morning.
 6 **Q. Would you please begin by telling us where**
 7 **you currently work.**
 8 A. I work for the Aurora Public Schools.
 9 **Q. And what is your position at Aurora Public**
 10 **Schools?**
 11 A. I am the chief accountability and research
 12 officer.
 13 **Q. Please describe your responsibilities as**
 14 **the chief accountability and research officer.**
 15 A. There's quite a few. The -- if I go
 16 through my list of people, we are responsible, first
 17 off, and I think primarily, for monitoring the success
 18 and implementation of our district's strategic plan, so
 19 the accountability. I have staff that do all of the
 20 data analysis particularly for A, the achievement part
 21 of our school district. And we will report out, you
 22 know, to the board, to the public, to schools, to
 23 families.
 24 I have staff that do data submissions to
 25 Colorado Department of Ed, the student data

1852

1 submissions, just about all of them but special
 2 education. So our October count, which includes ELPA,
 3 our end-of-year count, our data submissions for
 4 assessment.
 5 I have staff that oversee assessment for
 6 the district. We oversee all assessment, district --
 7 state assessment, district assessment, school
 8 assessment. And then I also do the shared
 9 responsibility oversight for our charter schools. So
 10 our legal office, finance office, and myself all
 11 support and have oversight for those.
 12 THE REPORTER: Can we break for one
 13 second? My equipment has stopped.
 14 THE COURT: No problem.
 15 THE REPORTER: Thank you.
 16 (Pause in the proceedings.)
 17 THE COURT: Thank you. No problem.
 18 **Q. (BY MR. KLINGSPORN) Were there any other**
 19 **responsibilities?**
 20 A. Certainly. The -- we also support all the
 21 other divisions, of course, with whatever data that
 22 they might need. And then I, during the break, had a
 23 moment to think. Perhaps my biggest responsibility
 24 is -- where I spend a great deal of my time is on the
 25 district leadership team.

1853

1 So there is a ten-member cabinet in which
 2 we will meet weekly. We're presented with and go
 3 through pretty much all of the issues that a district
 4 might face in any given moment in time. We do the
 5 planning, we respond. And I've been doing that part
 6 for about three years.
 7 **Q. What are your particular responsibilities**
 8 **in regards to students who are unaided speakers of**
 9 **English, English language learners, or EL students?**
 10 A. We -- our division does the -- I guess you
 11 would call it the formal certification of students that
 12 are English language learners or limited English
 13 proficient. We -- I actually have a staff member who
 14 does -- collects home language surveys and is
 15 responsible for putting that data into the system. We
 16 are responsible for tracking that data over time,
 17 submitting it to the Colorado Department of Ed, and
 18 then, of course, checking those edits come back.
 19 I also do quite a bit of work with
 20 our -- our English language acquisition department
 21 around all the aspects of their program. We just met
 22 the other day to kind of go through, again, some of
 23 our -- the exit redesignation criteria, to make sure
 24 that we had those set. We wanted -- we have staff
 25 coming on. Today's the first -- yesterday was the

1854

1 first day of school, and we're going to have an
 2 opportunity to do some training. These are some things
 3 we have to do annually. We just wanted to kind of
 4 touch back on that.

5 Also, my division is responsible, and I
 6 should have mentioned this, for program evaluation. We
 7 do a great deal of program evaluation for most of the
 8 programs in the district that you can define, such as
 9 the Fifth Block, the ones that John, Mr. Barry, had
 10 mentioned.

11 We also are responsible, and I just
 12 completed, in fact, it's almost complete, our annual
 13 evaluation of our -- we call it the GELD program,
 14 English Language Development Program, for the Aurora
 15 Public Schools.

16 **Q. And in that context, can you briefly**
 17 **describe the demographics, population of Aurora Public**
 18 **Schools?**

19 A. Sure. Mr. Barry was accurate, that's good
 20 news. Exactly. We have -- we're -- we're a little
 21 over 80 percent students of color, 55 percent --
 22 52 percent Hispanic, the 22 percent white, 19 percent
 23 black, 4 percent Asian, less than 1 percent Native
 24 American. There's also a new category which has come
 25 in this year, which is 2.8 percent other, two or more

1855

1 that they can classify themselves. And we're less
 2 than -- far less than 1 percent of the native Hawaiian.

3 Our free and reduced lunch count, this is
 4 as of last October, was about 65 percent. And our
 5 English language learners are about 38 percent of the
 6 school district.

7 **Q. And how many different languages are**
 8 **spoken by students at Aurora Public Schools?**

9 A. I just updated that for our valuation
 10 report. We're now at 100 languages spoken from 125
 11 different countries.

12 **Q. I'd like to talk briefly about your**
 13 **qualifications, background, and experience. I'm**
 14 **putting up on the screen a copy of Exhibit 4901. It's**
 15 **a copy of your CV.**

16 A. I -- as you can see, I started a
 17 bachelor's in psychology. I have a master's and an
 18 educational degree in school psychology. And then I
 19 have a Ph.D. in quantitative research methods from the
 20 University of Denver.

21 **Q. Before we talk about that, let me back up**
 22 **a second. Is this a copy of your CV?**

23 A. It is.

24 **Q. And did you create this document?**

25 A. I did.

1856

1 **Q. Is it complete and accurate?**

2 A. It's accurate. Complete, I -- as complete
 3 as I can get it. There are several things that I have
 4 found, as we discuss and I've been asked questions,
 5 that may not be on here, things that I have done that I
 6 have not listed, maybe a committee or something that
 7 I've just sat on and haven't put in there. But for the
 8 most part, this is the bulk of my work.

9 MR. KLINGSPORN: Your Honor, I would offer
 10 Plaintiffs' Exhibit 4901. I believe it's stipulated
 11 to.

12 MS. WESTON: No objection.

13 THE COURT: It will be admitted. Thank
 14 you.

15 **Q. (BY MR. KLINGSPORN) You began to describe**
 16 **your education, and you noted your Ph.D. from the**
 17 **University of Denver in quantitative research methods.**
 18 **What was the subject of your dissertation?**

19 A. Professional learning and the impact in
 20 the classroom on teachers.

21 **Q. And is that one of your responsibilities**
 22 **today in your -- in the Aurora Public Schools?**

23 A. It is. I do support the -- as I said, all
 24 departments with their programs. With our professional
 25 learning department. I do support their evaluation of

1857

1 the impact. And it's really a broad evaluation. But,
 2 yes, I do support that currently.

3 **Q. And how long have you been chief**
 4 **accountability and research officer at Aurora?**

5 A. About four years.

6 **Q. And what was your position prior to that?**

7 A. I was the director of assessment and
 8 research for the school district of Aurora in about
 9 2002 through 2007.

10 **Q. And how would you describe your**
 11 **responsibilities in that position?**

12 A. On that, similar to what I have now, with
 13 the exception of the data submissions we took on. That
 14 was actually my idea, that we do that centralization.
 15 So the data submissions, we did some of them, we did
 16 not do all of them. We only had one charter school at
 17 that point, so we did not have responsibility for that.
 18 I still did a -- responsible for all assessment,
 19 cooperative research, research that we do with
 20 universities or external people who come in to request
 21 research, I did it then, I still do that now. That's
 22 another piece that I would mention. I was not on the
 23 cabinet at that point.

24 **Q. Did you have a position within education**
 25 **prior to that position as director of assessment and**

1858

1 **research?**
 2 A. I did. From -- I came from Boulder prior
 3 to Aurora. I was there about two-and-a-half years.
 4 And there I worked primarily in the English language
 5 acquisition department. Every department changes their
 6 name every few years, so I would have to actually go
 7 back and see what the department name in Boulder was at
 8 the time. It is not the same as it is now.
 9 I was -- I was brought in to -- I
 10 considered it like a post-doc, where I was brought in
 11 to look at their English language development program,
 12 their ESL, and their bilingual program, and help
 13 restructure evaluation processes for that and their
 14 assessment processes for that. And I did -- they had
 15 been under an Office of Civil Rights court order. They
 16 were out from under it formally, but really wanted and
 17 needed support around the data collection and around,
 18 you know, the evaluation piece. And so I did that for
 19 approximately two years.
 20 **Q. You called that your post-doc. Was that**
 21 **position immediately after your doctoral program?**
 22 A. It was. It was. I call it -- actually, I
 23 call it post-doc because it was such a low salary. But
 24 I really wanted to do the work, and it was needed, and
 25 it was right up into what my -- my interests were. So

1859

1 I call it -- kind of call it my post-doc. But it's
 2 informally.
 3 **Q. In the years leading up to that position**
 4 **you were a doctoral student at the University of**
 5 **Denver?**
 6 A. Yes. For three years prior to that.
 7 **Q. Did you work while you were a doctoral**
 8 **student as well?**
 9 A. I did -- I did not. I did some consulting
 10 prior to that. While I was a doctoral student, I was a
 11 full-time student. I did work with other doctoral
 12 students with their work. I would support them in the
 13 data and analysis of their work.
 14 The -- my doctoral work, right, correct,
 15 started in 1996. So when you're looking at the list,
 16 these are all the things that I have done since those
 17 times. Most of those are starting -- for instance,
 18 like the Colorado I Have a Dream. I don't have dates
 19 on these. Yes, I did that during that time while I was
 20 a doctoral student. I worked with Ken Seeley out of
 21 the Colorado Foundation for Family and Children and did
 22 that work.
 23 The work I did for Cherry Creek was
 24 exactly during my doctoral work, my dissertation, as a
 25 matter of fact. I did it there at that school

1860

1 district. The bottom one -- I guess they are somewhat
 2 in chronological order. The school-based health care
 3 clinic in Denver Public Schools, I also did that during
 4 my years as a doctoral student.
 5 **Q. Continuing on with your experience and**
 6 **your current work responsibilities, you mentioned**
 7 **you're on the cabinet, so to speak, at the Aurora**
 8 **Public Schools, the district leadership committee. Are**
 9 **you on any other committees?**
 10 A. Right now, at the moment, I am not. The
 11 last one I -- you mean state level, like a state-level
 12 committee? Because I served on so many. The latest
 13 one was within the past year I was on the state's
 14 review panel for the district's Unified Improvement
 15 Plan, and Mr. Barry referred to that.
 16 So schools and districts that had
 17 turnaround priority improvement plan ratings needed to
 18 have their plans evaluated by a committee. So I was
 19 one of the members that was asked to serve. I was
 20 invited by the Colorado Department of Ed, and
 21 specifically to evaluate the plans from Denver Public
 22 Schools and Pueblo. Pueblo County Schools.
 23 **Q. Any other committees or review teams**
 24 **you've served on in the past?**
 25 A. In the past in general?

1861

1 **Q. Yes.**
 2 A. As far as the last decade, many.
 3 Starting, really, in 2000 -- this'll take a bit, so
 4 I'll try to get through it. But . . . In 2002, when I
 5 was working for Boulder, is when the Colorado
 6 Department of Ed asked me to start sitting on
 7 committees. The guidebook was one of the many that I
 8 sat on. The -- to support the development of that,
 9 particularly as an assessment consultant and an expert
 10 in the identification of ELA, the redesignation, the
 11 progress monitoring of ELA.
 12 I also sat on the committee that -- well,
 13 actually, we started out -- the state decided to join
 14 the consortium, the Mountain West Consortium. And back
 15 in -- the years will not flow well -- probably 2002
 16 or '3, our state joined that consortium. I was the
 17 state's representative, the assessment representative
 18 to that consortium. We had received -- the consortium
 19 had received a federal grant to develop a measure of
 20 English language acquisition.
 21 We contracted with Measured Progress to do
 22 that. We were one of the ten states. The assessment
 23 was built. It was piloted. At that point the state
 24 decided, and I agreed with it, the quality of the
 25 assessment was not of high enough quality, and for

1862

1 whatever reasons, the Colorado department decided that
 2 they would first go ahead and choose which -- under the
 3 purview, they could choose just a certain number of
 4 assessments. So I was on that committee that reviewed
 5 what language proficiency assessments are out there.
 6 And then the -- the state decided to go to
 7 one language proficiency assessment. And there was a
 8 small group of individuals throughout the state, and we
 9 were on that -- I guess -- I don't know if you call it
 10 an RFP committee, where we were sequestered and we went
 11 through the process of selecting what we now have as
 12 the Colorado English Language Assessment, CELA.
 13 **Q. That is a long list.**
 14 A. It is. I'm not done. So we also --
 15 **Q. Before you go on --**
 16 A. Okay.
 17 **Q. -- the first one you mentioned was the**
 18 **committee for the guidebook?**
 19 A. Uh-huh.
 20 **Q. Which guidebook was that?**
 21 A. The Colorado Guidebook for English
 22 Language Learners that's produced by the Colorado
 23 Department of Ed. It was initially -- there was
 24 actually a draft of a book before I came on, but we
 25 redid that draft it in total, and then it's since been

1863

1 revised. So there's a current 2011 edition out.
 2 **Q. Thank you for clarifying that.**
 3 A. No problem.
 4 **Q. Please continue.**
 5 A. All right. So then I worked with a
 6 committee for the determination of what -- what Annual
 7 Measurable Achievement Objectives, AMAOs, under
 8 Title III. I was asked to sit on that committee and
 9 what would be -- what would be the development of the
 10 targets. The state had to come up with its own
 11 targets. So I sat on that committee.
 12 **Q. Let me stop you again.**
 13 A. Please.
 14 **Q. Would you mind moving the microphone a**
 15 **little closer to your mouth for the benefit of the**
 16 **reporter and the audience?**
 17 A. No problem.
 18 **Q. Thank you.**
 19 A. Another committee I sat on was one of the
 20 last as far as the ELL. State 2007 was a redesignation
 21 committee, and I'm thinking it's a little more
 22 informal, but it was around having -- supporting the
 23 state. There was a group of us to support the -- the
 24 state in coming up with recommendations for districts
 25 to use when they decide to redesignate the student.

1864

1 During all of this time, I think from
 2 about -- I know it was five years, approximately. Then
 3 there was the ELA Advisory Council. The state has a
 4 general council, they still have this council, it may
 5 have a different name. My husband is on it now. I
 6 don't know what the change is now. But there was a
 7 about five years there where I sat on that council just
 8 doing general advisement to the state.
 9 **Q. Do you teach in this area as well?**
 10 A. I -- I did. For a number of years. For
 11 Regis University, I was an adjunct professor for about
 12 five years. And you'll notice a lot of this ends up
 13 right when I became chief accountability officer.
 14 There's a -- a time management issue that came into it.
 15 And -- but I did teach for Regis. They offer a
 16 three -- well, they offer a certificate course. That's
 17 one of the universities we use in Aurora Public
 18 Schools, to -- with our staff. They offer a
 19 certificate, and they also offer endorsement classes.
 20 And all of the certificate courses are
 21 graduate-level classes, and there's generally a series
 22 of three that we have students go through: A
 23 linguistics class, A foundations class, and then a
 24 third one is the assessment class, and that's the one I
 25 taught, and for about five years, a couple semesters

1865

1 each year.
 2 MR. KLINGSPORN: Your Honor, at this time
 3 the plaintiffs would offer Dr. Escarcega as an expert
 4 in programs, funding, state and federal standards and
 5 requirements for Colorado students learning English as
 6 a second or non-native language, as well as the
 7 effectiveness of such programs, funding, standards, and
 8 requirements.
 9 MS. WESTON: No objection.
 10 THE COURT: She will be admitted as an
 11 expert in those areas. Thank you.
 12 MR. KLINGSPORN: Thank you, Your Honor.
 13 **Q. (BY MR. KLINGSPORN) Dr. Escarcega, I'd**
 14 **like to begin now by discussing the standards and**
 15 **requirements for Colorado ELL students. What does the**
 16 **State of Colorado require school districts to provide**
 17 **for ELL students?**
 18 A. Directly, they require, under ELPA, that
 19 we have a process in place for the identification of
 20 English language learners. That we use the state
 21 identified tool or system, in this case it's the CELA
 22 screener, as we call it. That we certify them to the
 23 state. That we track that number and certify to the
 24 state annually for purposes of funding for ELPA those
 25 number of students by language level. And then it

1866

1 requires us to implement and provide a research-based
 2 program to serve our English language learners.
 3 So that's -- that's the direct ELPA
 4 requirements. We also have related to just -- just ELL
 5 students, we have rules for the CELA assessment, and
 6 that is the Colorado English Language Assessment. We
 7 call it the CELApro, to distinguish it from the
 8 screener test. We are required to assess all of our
 9 ELL students annually with that assessment.

10 **Q. And what standards -- what state standards
 11 must these ELL students meet?**

12 A. We have targets under language
 13 proficiency. The targets are the annual measurable --
 14 Annual Measurable Achievement Objectives. But in
 15 general, our ELL students are held to the same
 16 standards that all students are held to. Through
 17 reaching proficiency, there -- what we would call
 18 adequate progress within three years or by tenth grade,
 19 and they're held to the same expectations as far as
 20 graduation rates.

21 **Q. So they're held to the same standards as
 22 English-speaking students?**

23 A. They are. They're held -- not only held
 24 to the English language acquisition standards, but held
 25 to the Colorado content standards

1867

1 **Q. And could you go into a little more
 2 detail, please, about the English proficiency standards
 3 you mentioned.**

4 A. Language proficiency standards. The --
 5 you have to help me here. The AMAO, the targets that
 6 we have -- and I believe Mr. Barry spoke to those. We
 7 have targets to meet for moving students in
 8 proficiency, and those targets are generally -- right
 9 now they're talking about just overall levels of
 10 proficiency. There's the five levels, and there's an
 11 expectation that students will move across levels
 12 generally within a certain period of time.

13 But the targets are set up right now so
 14 that they're just asking about a certain percentage of
 15 students. But when you -- when you look at them, if a
 16 student were to start at the beginning and move through
 17 the levels, as they have stated out in the
 18 expectations, they would move through from beginning to
 19 advanced in about a six-year period.

20 **Q. Those are the state requirements. Are
 21 there additional requirements, for instance federal
 22 requirements?**

23 A. The Title III also has additional
 24 requirements, which, frankly, for a good program, we
 25 just -- we do. Such as the parental involvement piece.

1868

1 the parental notification piece. Progress monitoring.
 2 Having a way of designating students as fully
 3 proficient. Exiting those students. Monitoring them
 4 for two years. They -- those are generally under
 5 title. But we -- we -- we fulfill those.

6 **Q. What difference does it make to the
 7 district, if any, whether a requirement comes from the
 8 federal government or the state government?**

9 A. It comes in the matter of funding. And
 10 what we pay for what with. That's where we really pay
 11 attention to it. So the ELL director and I often will
 12 discuss needs that she may have and what funding I
 13 have, what funding she has, what we can pay for. The
 14 general consensus of what we need is not dependent on
 15 where the funding comes from, but it just has to do
 16 with from where we're going to pull and try to find the
 17 money.

18 **Q. So the standards are the same?**

19 A. The standards are the same.

20 **Q. And what challenges do English language
 21 (sic) students face trying to meet these standards and
 22 requirements?**

23 A. Well, the challenges for -- unique to an
 24 English language learner that would not -- I would
 25 expect to be typically thought of with an English

1869

1 speaker. Social, cultural challenges revolve around
 2 coming from a different culture, coming from a
 3 different language, sometimes coming from a different
 4 state or country.

5 So you have -- especially in the
 6 beginning, when students come into school, there's an
 7 adjustment period, there's what we call degree of
 8 acculturation that they must go through, a process they
 9 must go through. It can be challenging for not only
 10 the school, but for the student as well.

11 And it will vary. There's -- it's hard to
 12 speak in generalities. You hear those of us who know
 13 English language learners well almost always want to
 14 couch what we say with boy, they're such a varied
 15 group. And that's part of the challenge, is they are
 16 such a varied group. You can't just say this is what
 17 we're going to do for this student. The next student
 18 that comes up from behind them from the same place,
 19 same number of years of English, produces totally
 20 different challenges.

21 But in general, they will need time and a
 22 degree of acculturation. And then they often -- they
 23 have economic challenges as well. The correlation for
 24 second language learning and free and reduced lunch is
 25 very high. And in the Aurora Public Schools, it's

1870

1 75 percent of our second language learners are free and
 2 reduced lunch. So we have the dual issue of second
 3 language and then economics.
 4 The part -- the third, one of the major
 5 parts for me, is the academic piece. And the challenge
 6 that -- it's -- it's probably at the core of what we
 7 try to do, is taking a student who has limited or no
 8 English and presenting them and working with them
 9 around curriculum and state standards and trying to
 10 maintain and develop their knowledge of those standards
 11 and of the content at the same time that they're
 12 learning English.
 13 So students may come in with prior content
 14 knowledge. One of the challenges is trying to figure
 15 that out. You know, and you need to -- some of these
 16 countries, there's just no way. We do our best to try
 17 to figure out what they're coming in with.
 18 But there's always the issue of
 19 maintaining even what they walk in with during that
 20 time in which they're learning English. Particularly
 21 the first couple of years, there can be a lot of loss
 22 of knowledge.
 23 **Q. Are there certain categories of EL**
 24 **students who face other different challenges?**
 25 A. Of the range that I talked about, there's

1871

1 always a range. I think students on the -- the end of
 2 needing more challenge would be our -- our
 3 immigrant -- well, refugee, immigrant. The definition
 4 is vague; born outside the United States, they've been
 5 here less than three years. But the immigrant -- or
 6 the refugee and the migrant certainly are two that --
 7 refugee is an immigrant -- that pose challenge. And
 8 specifically districts can, without even knowing,
 9 suddenly receive large groups of refugees.
 10 We try our best, and we try to communicate
 11 with the agencies that bring these students over. They
 12 don't always know when students are coming over, and a
 13 school can get an influx of refugees that will provide
 14 a serious challenge and strain to their school.
 15 We've had -- I've seen instances where an
 16 elementary school has gone to suddenly 10 percent of
 17 their population is refugees, one out of ten that they
 18 are working with. Sometimes, if they happen to be from
 19 the same area, it can easier. But the challenge of
 20 acculturating that child and that family to an American
 21 school, in addition to the language, in addition to
 22 economics, very difficult.
 23 Many of these children experience trauma.
 24 I've got lots of examples I can share with you of
 25 individual students' stories. And so they often need

1872

1 mental health in addition to that. Sometimes the
 2 agencies can support it. But we still have them every
 3 day in the classroom. And they are challenged.
 4 Migrant is the other group that
 5 has -- their primary challenge, as -- as can be for any
 6 student, but within the definition of migrant is their
 7 mobility. And they're moving around from district to
 8 district for the work. So that can provide a challenge
 9 to students coming in and out of the classroom. They
 10 may be in several schools in one year's time. So
 11 that's a challenge.
 12 **Q. Still, do all these EL students need to**
 13 **meet the same state requirements for proficiency?**
 14 A. They do. Under the -- I can be very
 15 specific here. Under the Unified Improvement Plan,
 16 under Senate Bill 163, under our district -- our
 17 district performance framework, I believe it was
 18 brought into evidence, any student who is in our school
 19 attending as of October 1 is in that performance
 20 framework. And they are held immediately to the same
 21 proficiency standards as any other student, to the same
 22 graduation rate as any other student.
 23 **Q. And are EL students required and their**
 24 **districts required to meet the same academic standards**
 25 **as non-ELL students?**

1873

1 A. Yes.
 2 **Q. In the same amount of time?**
 3 A. They are. There is no -- that's -- that's
 4 the part. There's no time variance given for those
 5 students.
 6 **Q. I'd like to shift to talk about how these**
 7 **EL programs are paid for.**
 8 A. Okay.
 9 **Q. Now, in your current position, chief**
 10 **accountability and research officer, in your prior**
 11 **positions, have you had any experience budgeting for,**
 12 **implementing EL programs?**
 13 A. I have. I have.
 14 **Q. Generally speaking, how are EL programs**
 15 **funded?**
 16 A. They -- they come -- they -- you'll find
 17 what they are is they're a combination of sources where
 18 the Title III and those allocations are -- are from --
 19 through the Colorado Department of Ed. Districts will
 20 get a Title III allocation. Districts will then get a
 21 ELPA allocation for students. And I'll get back to
 22 that in a moment.
 23 And then the migrant program has a -- has
 24 a small allocation. It's not generally directed
 25 towards students, but to resources and recruiting

1874

1 support for them. And those -- but it's
 2 generally -- Title III and ELPA funds are the major
 3 source of external funding, in addition, then, to
 4 general funds. So whatever the district needs to
 5 support that program will come from general fund.
 6 So the ELPA, I think, is -- Title III is
 7 based on the number of students you have, so it's an
 8 allocation by numbers. ELPA is an allocation that is
 9 given to districts for students that are certified as
 10 being year one or year two. And it is for just the two
 11 years, and it's for the two years at which they have
 12 been within an October count within the state of
 13 Colorado, not your school district.
 14 So a student comes in, they come in -- if
 15 they come in in the beginning of the year, they're in
 16 the first October count. District will receive funding
 17 for that student. The following year, they'll become
 18 an ELPA 2, and the funding is reduced dramatically, but
 19 there is a small amount of funding for that student.
 20 And then the funding will end. The state department,
 21 with the implementation of state I.D. numbers, is able
 22 to track students across the state, and although they
 23 may not be continuously enrolled in a school district,
 24 once they're claimed for funding, that's it, you get
 25 those two years of funding

1875

1 **Q. Is two years enough time for an EL student**
 2 **to meet the standards set by the state?**
 3 A. I have not seen any proposed program or
 4 theory that states as a program goal that students will
 5 be English proficient within a two-year period.
 6 **Q. Specifically in Aurora Public Schools,**
 7 **then, what fraction of your EL students actually**
 8 **qualify for ELPA funding?**
 9 A. It was for 2000 -- it's called 2011
 10 funding. We had 4,668 students, I believe, funded.
 11 It's roughly a third of our students. And if
 12 you -- just knowing the demographics and knowing when
 13 children come in, the vast majority of these children
 14 are going to be kindergarteners and first-graders.
 15 It's the first two years they've been in the state of
 16 Colorado, their first two years of school.
 17 And I know in a district like Aurora, and
 18 this would be true for most districts across the state,
 19 but in a district like Aurora, out of that 4,668, still
 20 going, based on our enrollment numbers, you're going to
 21 have about 3,000 of those students are going to be
 22 kindergartener and first-graders, so the remainder are
 23 students that are grades 2 through 12.
 24 **Q. So if -- if two-thirds of your EL students**
 25 **no longer qualify for ELPA funding, where's the funding**

1876

1 **coming from for their English language development?**
 2 A. The direct service for our program has to
 3 come from general fund.
 4 **Q. What sort of EL student-to-teacher ratio**
 5 **does that fund in Aurora?**
 6 A. I've -- our budget sheets that I have seen
 7 for the -- the current school year, that just kicked
 8 underway, we were able to provide to each school a 0.5
 9 TE as a base. So this is ELPA and general fund. We've
 10 even had to pull a little of our general fund in just
 11 to do that. So a 0.5 teacher means a half-time teacher
 12 at a school.
 13 We have range of 45 to 50 schools. So
 14 that would be a half-time teacher. Then we require,
 15 immediately require, what we call below the line. Each
 16 school is required to give out of their general fund a
 17 match to that. They must match the other half of that
 18 teacher. You have to have at least one teacher, and
 19 that teacher is responsible for all the program --
 20 program management at that school, including seeing
 21 that students are properly identified, screened, that
 22 they are appropriately placed in program, that they're
 23 being monitored. That they have to sit as part of a
 24 review committee to determine at the end of year if any
 25 students are eligible for redesignation.

1877

1 And at a -- an example that I have is we
 2 have a high school that -- one of our more impacted
 3 high schools has 800 ELL students, and we were able to
 4 give to that building one-and-a-half teachers to
 5 support the entire program. Most of our elementaries,
 6 you're looking at -- I know our district averages
 7 38 percent, but at the elementary level we're at 50.
 8 So for every elementary school that might have 500,
 9 there's at least 250 students, and it's one teacher.
 10 And the funding that we get from the state is funding
 11 about half. So a half-time person for that.
 12 **Q. Now, you've testified that your expertise**
 13 **also includes evaluating these EL programs?**
 14 A. Yeah. Yes.
 15 **Q. Do we know what a successful EL program**
 16 **looks like?**
 17 A. We do. And it's hard -- it's harder for
 18 me to -- without knowing each program's goals, to say
 19 this is -- this is a successful program, this is not.
 20 Because programs will be -- successful programs will be
 21 those that are tailored to the community and to the
 22 students for which it serves.
 23 But in general what we're looking for is a
 24 seamless and thorough process for identifying students.
 25 Students aren't left behind, they're not mislabeled.

1878

1 they're placed. We're looking for a program that is
 2 research-based and one that is monitoring the students
 3 across language proficiency. And a successful program
 4 has to be -- it just can't be anything but one that
 5 addresses both acquisition -- language acquisition and
 6 proficiency and moving toward content standards. So it
 7 has to be academic achievement and language
 8 proficiency. It can't be just one, has to be both.
 9 That program's going to service those
 10 students and provide supports, interventions where
 11 needed. And then once the students have -- are deemed
 12 successful, and there's quite a review process that
 13 needs to occur, a body of evidence that needs to be
 14 brought together and supported for the students to say
 15 with certainty that this student can succeed in a
 16 general classroom without the needed support, a
 17 successful program's going to be exiting students.
 18 And a successful program is going to be
 19 moving them across language proficiency levels at a
 20 fairly good rate. That rate which is out in the
 21 research, I don't know -- it kind of comes back to the
 22 question about the time period. Anywhere from four to
 23 ten years, I will see the -- one of the most recent --
 24 I do read a lot of research in the area, and in all
 25 areas of education

1879

1 But the -- there was a June article in the
 2 American Educational Research Association Journal, it's
 3 a journal I've belonged to for over a decade the
 4 organization. Well, almost all of us researchers
 5 belong to it. And Hakuto, which is a well-known
 6 researcher in the field, has an extensive article that
 7 he kind of combs back through his three decades of
 8 research in the area, and his research is quoted much
 9 of the time as four to seven, four to ten. And he
 10 says -- and he's done recent research, and that he has
 11 not changed his mind, that everything he sees from the
 12 meta-analysis studies all through the last decade seem
 13 to support the same conclusion: Four is on the early
 14 end, because if -- oral language proficiency is one
 15 thing, but full English proficiency across reading and
 16 writing as well is closer to the seven years.
 17 **Q. What are the additional costs of**
 18 **implementing a program like this?**
 19 A. Well, the direct costs that we have, of
 20 course, have to do with all aspects, everything from
 21 the beginning to the end of what I spoke to you about.
 22 Direct costs of having people and staff to do the
 23 identification, to check through the home language
 24 surveys, to meet with the families. Families need to
 25 know the intent of the program, how long their child is

1880

1 going to be there, what you're going to do, et cetera.
 2 And then you have the -- the cost of the
 3 staff. And it depends on the model. Different models
 4 use staffing different way, but all have costs. And
 5 the -- to -- to develop -- and you asked me before
 6 about a successful program. It has to be one that's in
 7 depth and it is well-run.
 8 People in a district would have
 9 components, we see this all the time, where a school
 10 may have components of a program and say I'm doing it,
 11 but the data doesn't support that it's being done well.
 12 Generally, it comes back to professional learning and
 13 the staff that you have. They need to be well
 14 developed.
 15 And as you mentioned, my dissertation work
 16 is in the area. There's a sense amongst, I think, the
 17 general public, well, you just attended a training,
 18 isn't that enough? What more could you need? You just
 19 spent a year in school, what more could you need? And
 20 quality professional learning requires not only just
 21 the instruction and the studying of the topic, but it
 22 requires dedicated practice. It requires coaching in
 23 the classroom by a knowledgeable other to support. And
 24 it needs to be continuing. 'Cause typically you do not
 25 pick up everything you need to know the first time

1881

1 through. It takes years of practice.
 2 So we talk about even when we have our
 3 teachers that go through initial certification, what
 4 we're already finding, and from the feedback I'm
 5 getting from teachers is they're getting back in the
 6 classrooms and they're not getting enough support.
 7 They want more.
 8 So you'll have professional learning and
 9 you'll have a -- a program that is built on the needs
 10 of your student. And then -- I got lost in the
 11 question. Sorry.
 12 **Q. Any other costs besides these professional**
 13 **development and the setting up the program, identifying**
 14 **and assessing students?**
 15 A. Yeah, uh-huh. Well, and there is the dual
 16 cost of assessment, as far as you are monitoring -- a
 17 good program monitors not only movement toward content
 18 standards, but movement toward language proficiency
 19 standards. And you may have -- and depending upon the
 20 program, you may have dual languages being taught, so
 21 you need additional resources there.
 22 Those are direct costs. Okay? Those are
 23 the things that when you asked me about where our money
 24 comes from. I can show you a district will have very
 25 well spelled out, here's where I spend this money.

1882

1 here's where I spend this money. I think the costs
 2 that most of us in the field recognize and deal with
 3 every day are the indirect costs, and that to me is
 4 time, time on the behalf of almost all of the staff,
 5 from front office staff to district-level staff, my
 6 time.
 7 I spend a great deal of time, gladly, and
 8 based on need, I spend a great deal of time continuing
 9 to support, based on our numbers, our ELE or ELD
 10 program. But it's the teacher time that when I've
 11 worked with teachers, whether it be in the classes that
 12 I taught or the classes that I have subsequently taken.
 13 So our district offers, you know, these professional
 14 learning classes. I've taken these with classroom
 15 teachers. I've taken the foundation's classes.
 16 I've -- our ELD department provides some of those.
 17 And it's the time for planning for a
 18 teacher and a team when you have the additional
 19 challenges to meet for a second language student. Time
 20 that across grade levels or across classrooms that
 21 you're not just planning a lesson, but you're planning
 22 a lesson with the need of the ELD student in mind.
 23 That takes a very high level of sophistication and
 24 continuing professional learning.
 25 And it simply just does take more time

1883

1 We have a number of interventions that we have tried
 2 that we are trying to bring in now, because it -- it
 3 seems like it can flow, and it can flow very well,
 4 until you have a student that isn't making progress,
 5 and when it's an ELD student who's not making progress,
 6 it suddenly becomes very complicated. What is it? Is
 7 it language? Is it achievement? How do I know? Well,
 8 we have to bring a specialized team in. Let's talk
 9 about this. What additional supports can we have that
 10 take language into consideration. Simply on a
 11 day-to-day basis, the education takes more time.
 12 **Q. We heard some testimony this morning about**
 13 **Aurora's Center for Excellence. Have you had**
 14 **successful programs at Aurora?**
 15 A. The Center of Excellence Mr. Barry was
 16 discussing started out with the receiving of a grant,
 17 and we were able to do research across even the nation.
 18 We tried to find places in which we could see some
 19 excellent programs. We decided to base the
 20 revision -- I would say revision of the Aurora Public
 21 Schools' entire English language development program on
 22 a model out of California that's actually labeled
 23 "English Language Development."
 24 So we went through and implemented the
 25 curriculum materials. It's call ELA Achieve. We

1884

1 rolled those out. Along with knowing that the state
 2 was moving to new standards, we're trying to align
 3 these things and roll them out all together.
 4 But we did do some of our initial
 5 professional learning in those -- for that curriculum
 6 and that coursework in 2008. And that's also when we
 7 started our condition of employment. We put into place
 8 all the components that we -- that Mr. Barry, you will
 9 hear him having discussed.
 10 And we're very anxious to evaluate the
 11 program. And what we were missing is not just
 12 the -- the AMAOs are a general indicator as far as
 13 moving across categories, but a lot of people will be
 14 critical of that, because students -- we may have a big
 15 group at the top end of a category, next year they all
 16 suddenly move over, and the next year you don't have
 17 any movement.
 18 It's not a very discrete and precise
 19 measurement of movement. So the Colorado Department of
 20 Ed, at -- certainly at the request of its own people
 21 and people in the field, went ahead and ran the growth
 22 model, Colorado Growth Model that you see on the
 23 Colorado School Assessment Program, CSAP. They ran it
 24 on data from the Colorado English Language Acquisition
 25 Assessment.

1885

1 Again, not perfect, but what it does is it
 2 provides for us a indicator of where our students are,
 3 but how much they have grown on the assessment. How
 4 much they have improved across not only the overall
 5 score, but each of the component areas compared to all
 6 the rest of the students in the state of Colorado.
 7 A student in the state of Colorado, just
 8 like the Colorado Growth Model, would be a 50. I mean,
 9 that's the typical growth. So we are very anxiously
 10 waiting for this. About two, three weeks ago, it may
 11 have been a little longer, maybe four, the Colorado
 12 Department of Ed released what they call specimen files
 13 to us. Several districts were able to download this
 14 growth data. And they ran it for all the back years
 15 that they could.
 16 So I think CELA started in 2006, and we
 17 may have gotten four, possibly five years of data. I
 18 did not run the data file. But I did ask them to look
 19 at our district and run that data for 2008, 2009, and
 20 2010. They were able to do that, and I saw a report
 21 just last week, and while there's no perfect trend, it
 22 definitely -- we saw an improvement in our growth
 23 percentiles in 2009 and 2010, directly after we
 24 implemented the program, which the baseline would have
 25 been 2008.

1886

1 And what we're really hoping for, and I
 2 was really pleased to see, was the majority of the
 3 growth. All students grew, but the improvement in the
 4 growth happened primarily at secondary, in the middle
 5 and the high school levels, which is prior to 2008,
 6 where we had our weakest program. We did not service
 7 all of our students in a program.
 8 **Q. What other successful programs have you**
 9 **seen throughout Colorado?**
 10 A. Throughout the 10 years, 12 years now that
 11 I've worked with districts across the state, worked
 12 with staff across, coordinators, directors of ELA, the
 13 various directors of the state department, and
 14 while -- what we find is you have a school that -- or
 15 maybe -- I know there are classrooms, but you'll have a
 16 school, has a good year or two of data, and it doesn't
 17 maintain. But besides some pockets of schools that we
 18 have seen over time, I am unaware of a district that
 19 has provided a report or has indicated to me that they
 20 deem that they have a successful ELA program for their
 21 students in which they are meeting their program goals.
 22 Program goals may be different and will be
 23 different for a dual language program versus an ESL
 24 program. But I don't know of a district that has made
 25 claim to that in the last ten years

1887

1 **Q. Including your own, Aurora?**
 2 A. Oh, absolutely.
 3 MR. KLINGSPORN: Your Honor, I'm about to
 4 start a new line of questioning. But if you --
 5 THE COURT: I think we can take a break
 6 then. It's right at noon. If that's okay with
 7 everybody.
 8 MR. KLINGSPORN: Okay. Thank you.
 9 THE COURT: We'll start up again at
 10 1 o'clock then. Is that fine?
 11 THE REPORTER: Fine. Thank you.
 12 THE COURT: Okay. 1 o'clock then. Thank
 13 you.
 14 (Recess taken, 11:57 a.m. to 1:01 p.m.)
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1888

1 AFTERNOON SESSION, TUESDAY, AUGUST 9, 2011
 2 THE COURT: We'll go back on the record.
 3 05CV4794. And we're on direct examination of the
 4 witness.
 5 MR. KLINGSPORN: Thank you, Your Honor.
 6 **Q. (BY MR. KLINGSPORN) Dr. Escarcega, when**
 7 **we broke for lunch, you just testified that you didn't**
 8 **know of any district in the state that had a successful**
 9 **EL program. So speaking generally, what is the status**
 10 **of EL achievement in Colorado today?**
 11 A. The -- the state of the state, as
 12 presented by Dr. Medina from Colorado Department of Ed,
 13 with 2010 data, that's not the most current, but I
 14 think shows across at least the last decade, when we've
 15 had consistent assessments --
 16 THE COURT: Could you speak up a little
 17 bit? I'm sorry. 'Cause I know with the hammering.
 18 Thank you.
 19 A. The years we've had the Colorado state
 20 assessment, there is a significant and large
 21 achievement gap between second language learners, ELLs,
 22 and English speakers. And it covers all content, and
 23 it tends to widen as students get older. That's a
 24 trend I've seen.
 25 In addition, the graduation rates, they

1889

1 have changed so many times in the last several years
 2 that we're not really supposed to show trend data with
 3 them. So even just looking at the last two years,
 4 there is a significant gap between the percentage of
 5 students that are graduating who are English learners
 6 versus none. ACT. It's the exact same gap across the
 7 number of years that we've had Colorado ACT program.
 8 **Q. (BY MR. KLINGSPORN) How consistent are**
 9 **those gaps across the state?**
 10 A. To a district that would have enough of a
 11 number of students who reliably report over a number of
 12 years, I don't see differences across districts. Like,
 13 for example, Aurora and Denver have a third of the
 14 students in the state of Colorado, very similar data.
 15 **Q. And do you attribute these gaps to the**
 16 **lack of successful EL programs --**
 17 A. I do.
 18 **Q. -- in districts?**
 19 A. I do.
 20 **Q. So in your experience specifically at**
 21 **Aurora Public Schools, with the current resources as**
 22 **provided by the general assembly, is Aurora capable of**
 23 **equipping its EL students with the knowledge and skills**
 24 **required by the state?**
 25 A. Not within the time frame that we have

1890

1 been set forward with, no.
 2 **Q. And in your expert opinion, again, with**
 3 **the resources as currently provided by the general**
 4 **assembly, is any district in Colorado capable of**
 5 **equipping its EL students with the knowledge and skills**
 6 **required by the state?**
 7 A. No.
 8 **Q. Does the funding of EL education in**
 9 **Colorado at all reflect the cost of meeting the**
 10 **standards and requirements mandated by the state?**
 11 A. In my opinion, absolutely not.
 12 **Q. Specifically, are you aware of any reason**
 13 **why, if all the experts agree it takes four to seven**
 14 **years for EL students to reach proficiency and meet**
 15 **those standards, the state limits EL funding to only**
 16 **two years?**
 17 A. I do not. And I -- I, again, will
 18 reiterate that I am under no -- I have no knowledge of
 19 anyone claiming that they have a program or services
 20 that will move a student from beginning English
 21 speaking to fluent English speaking in both academic
 22 and language proficiency standards in two years.
 23 Absolutely not.
 24 MR. KLINGSPORN: Thank you for your time,
 25 Dr. Escarcega. I have no further questions.

1891

1 THE COURT: Thank you. Yes.
 2 MS. BONO: Thank you.
 3 DIRECT EXAMINATION
 4 BY MS. BONO:
 5 **Q. Good afternoon, Dr. Escarcega. To your**
 6 **knowledge, has the percentage of enrolled English**
 7 **language learners increased in Aurora over the past**
 8 **five years?**
 9 A. It has.
 10 **Q. Can you describe that growth?**
 11 A. The -- the growth trajectory, I look at
 12 this every year, and generally the graph I -- I
 13 present -- in fact, I'll be presenting to the board
 14 tonight -- will be from 2002 through 2011. And that
 15 percentage has increased from about 17 to 39. It's
 16 been about a hundred percent doubling of the percentage
 17 of students that are what we categorize as NEP and LEP.
 18 **Q. And is that a doubling since 2002?**
 19 A. '2.
 20 **Q. And what about the percentage of enrolled**
 21 **students who qualify for free and reduced lunch? Has**
 22 **that population grown over the past five years?**
 23 A. It has. And it -- significantly. It goes
 24 up about three to four, we've even seen a jump of
 25 5 percent in a year. And the difference that we're

1892

1 seeing, perhaps over the last five years in particular,
 2 is at middle and high school.
 3 **Q. Can you describe -- well, do -- do -- does**
 4 **the growth trend for ELL students, has that presented**
 5 **any challenges to the Aurora School District?**
 6 A. It has. I think in particular, there
 7 seems to be a -- this has always been my perception.
 8 My husband and I, he's been in the business even longer
 9 than I, we always talk about this. There seems to be a
 10 tipping point in a school or a district, that when you
 11 get around perhaps even 15 percent English language
 12 learners, it really does start to impact, and you lose
 13 traction, so to speak. And we've got so many schools
 14 now that are well beyond that, that it isn't just a few
 15 students, it's -- it needs to change the way you do
 16 business every day for students that it changes, yes.
 17 So it becomes a challenge.
 18 **Q. Well, you've described and you were**
 19 **present when Dr. -- when Mr. Barry was here, correct?**
 20 A. Correct.
 21 **Q. He certainly described some of the**
 22 **strategies that the district has implemented in**
 23 **providing for the needs of ELL students. Are -- are**
 24 **there -- are you saying there are additional strategies**
 25 **that the district would like to implement for those**

1893

1 **students?**
 2 A. There are. I think for both our -- for
 3 both our ELL and our students at risk, for whatever
 4 reason, the -- the No. 1 thing that we as a leadership
 5 team have talked about over the past four years has
 6 been time, buying more time somehow. Extended learning
 7 opportunities, summer school, beyond what we were able
 8 to do with our mill levy override. Quality before- and
 9 after-school programs. The extension. Increasing
 10 the -- increasing interventionists for students that
 11 show some of our dual need or come in behind, in order
 12 to accelerate.
 13 What the district is really trying to
 14 focus on even in this next year is K-2. The idea is to
 15 prevent the gap from happening. But the resources
 16 there would need to be intensive.
 17 **Q. You mentioned dual -- the phrase "dual**
 18 **need" just now.**
 19 A. Yes.
 20 **Q. What did you mean by that?**
 21 A. There's a couple different ways, but for
 22 us, the English language learners that we have in our
 23 district, 75 percent of them are free and reduced
 24 lunch. It goes hand in hand, high correlation. So
 25 they typically come in at least with two needs. We

1894

1 also have a percentage of those students who will be
 2 special ed, so they'll be across the three.
 3 **Q. And why hasn't the district implemented**
 4 **those strategies for -- those additional strategies for**
 5 **ELL students?**
 6 A. Limited funding.
 7 **Q. How do you know the strategies would be**
 8 **successful?**
 9 A. We -- where -- we've seen within the
 10 district where we're able to have done some of these
 11 things, we have seen -- I call them pockets of success.
 12 And we -- like, for instance, the summer school, where
 13 we have been able to implement it to a certain
 14 percentage of our students, those students are also ELL
 15 students, to the same percentage that the district is.
 16 And they have seen accelerated growth on the state
 17 assessment. So we know this is going to work. But we
 18 cannot -- we do not have the funds to do that for all
 19 students that need it.
 20 **Q. And how about the growth in your**
 21 **low-income student population? Has that growth**
 22 **presented any challenges to the district?**
 23 A. I would say the same types of challenges,
 24 around -- if you think about the achievement gap, our
 25 data is reflective of the state data, as far as gaps

1895

1 between students that qualify for free and reduced
 2 lunch and students that do not. That gaps walks in, it
 3 shows up typically at kindergarten. Quality preschools
 4 are something that we want to expand, to try to reduce
 5 that somewhat.
 6 But once they get into kindergarten, we
 7 want to take the next three years as much as possible
 8 and give them extended time, accelerate student
 9 learning to try to prevent it as much as possible. And
 10 then once it's beyond third grade, you're into
 11 remediation and attempting to remediate.
 12 **Q. And does that -- did you just touch on, I**
 13 **think, some of the additional strategies the district**
 14 **would want to implement in order to meet the needs of**
 15 **low-income students?**
 16 A. Yes.
 17 **Q. Are there any others that you can think**
 18 **of?**
 19 A. Well, the quality of our programs that we
 20 even have we would like to improve, obviously. And as
 21 I think I testified earlier, you can have components of
 22 a program, and they're there, and you can see that
 23 they're there. But one of the criterias to a quality
 24 program is that you evaluate that program and you make
 25 adjustments. And we know, based upon what we're

1896

1 seeing, that there's a great need for us to improve
 2 what we are doing today in Aurora Public Schools.
 3 **Q. And why hasn't Aurora increased the**
 4 **breadth and intensity of those programs?**
 5 A. It is funding. It is staff. It's
 6 funding.
 7 **Q. Earlier in your testimony you mentioned a**
 8 **high school in Aurora that had, I think, and correct me**
 9 **if I'm wrong, but I think you said 1.5 FTEs to support**
 10 **800 ELL students; is that accurate?**
 11 A. That's correct.
 12 **Q. But earlier today, Dr. Barry testified**
 13 **that it was a requirement of every teacher in the**
 14 **school district to be ESL certified. So doesn't that**
 15 **provide additional support for your ELL students?**
 16 A. It does. If -- for those students that
 17 have that certification within their classroom, they
 18 may be able to provide strategies for sheltered
 19 instruction. And there's something that sometimes is
 20 quoted as being a program and sometimes it's being
 21 quoted as a strategy. Sheltered instruction to me is
 22 more of a strategy.
 23 But those -- those teachers are not all at
 24 that high school. Those 40 are across those -- those
 25 40 percent that we have, of course, are across the

1897

1 district. And their training, as I discussed earlier,
 2 three certificated courses, is a great start. But they
 3 need additional support, continued support in order to
 4 be able to maintain and understand and to apply what
 5 they have learned with all the students that they have.
 6 **Q. Earlier today, Dr. Barry, I think he**
 7 **testified that approximately 40 percent of the teachers**
 8 **in the school district have ESL certification, and that**
 9 **percentage had increased since his deposition from**
 10 **35 percent. Does that percentage typically fluctuate?**
 11 A. It could. I'm thinking that it was
 12 probably the last cohort that went through that got
 13 certified that was then added to the percent that he
 14 had. But it will, because we have turnover. And I
 15 believe that approximately 33 percent of our teachers
 16 in Aurora Public Schools are in their first three years
 17 of teaching, and so that is the kind of -- it used to
 18 be 50. And we have seen a slight slow-down, but we do
 19 have a continual turnover of teachers. So we bring
 20 several hundred on every year.
 21 **Q. At this time, does the district have any**
 22 **ability to control the permanent number of teachers who**
 23 **are ESL certified in the district?**
 24 A. No.
 25 **Q. As chief academic and research officer for**

1898

1 the district, are you familiar with how ELL students
 2 perform in the district on the CSAP in relation to
 3 non-ELL students?
 4 A. I am.
 5 Q. I'm showing you what's been marked as
 6 Trial Exhibit 20131, which reflects the 2010 CSAP
 7 writing scores for ELL versus non-ELL students in your
 8 district. And I'll represent this is a demonstrative
 9 we created using CSAP data from your district. From
 10 what you can tell, does this chart fairly and
 11 accurately represent CSAP performance in your district?
 12 A. It does.
 13 Q. And would this exhibit help you describe
 14 how ELL students perform in your district in comparison
 15 to non-ELL students on the 2010 CSAP writing test?
 16 A. It does. And I think it confirms my
 17 statement earlier, that there is a large gap. We do
 18 see at times a slight reduction in it, but you can see
 19 that general achievement for these students fall at the
 20 secondary.
 21 Q. And you had mentioned that achievement in
 22 all subject areas typically tends to fall as the grade
 23 level increases?
 24 A. It -- it -- except for reading. Reading,
 25 we tend to see that the English speakers will maintain

1899

1 a steadier percent proficient in general. And then the
 2 gap gets even bigger for second language learners in
 3 reading.
 4 Q. What do you attribute the stability in
 5 reading to?
 6 A. The -- generally what you'll see is once a
 7 student becomes proficient in reading, over time they
 8 tend to stay proficient on the state assessments.
 9 About 80 percent is what I've heard. I've been able to
 10 document that within our own district about 80 percent
 11 of the students from year to year who are proficient
 12 stay proficient. Once you reach that bar, you seem to
 13 be able to maintain it.
 14 Q. So looking at this chart, it appears -- it
 15 appears that the largest gap between limited English
 16 proficient, or LEP, students and non-ELL students was
 17 in seventh grade, where the gap was 41 percent; is that
 18 correct?
 19 A. In this chart, yes.
 20 Q. And the largest gap between non-English
 21 proficient, or NEP, students and non-ELL students was
 22 in fifth grade, and that gap was almost 50 percent,
 23 correct?
 24 A. Correct.
 25 Q. In fact, no NEP students achieved

1900

1 proficiency in CSAP writing in 2010, except for
 2 1 percent in ninth and tenth grade respectively, right?
 3 A. Correct.
 4 Q. And in tenth grade, only 1 percent of LEP
 5 students achieved proficiency in CSAP writing?
 6 A. That is correct.
 7 Q. What is the likelihood in your district of
 8 an ELL tenth-grader going from non-proficient to
 9 proficient in writing by the time they graduate?
 10 A. Within two years, so if they were at the
 11 end of tenth grade and they had only two more years, I
 12 think the -- the odds would be very small that they
 13 would achieve proficiency.
 14 Q. And why is that?
 15 A. Particularly in writing, it tends to be
 16 one of the most demanding of the areas for language
 17 proficiency. And it's the -- it's the area that I
 18 think in general takes the longest. But it is the one
 19 area that kind of incorporates the reading and
 20 everything in language proficiency.
 21 So there's just -- a student that is going
 22 from unsatisfactory to move to proficiency I would
 23 imagine would have to have a growth rate medium
 24 percentile well above -- up to 99, is probably what we
 25 would see.

1901

1 Q. I'm showing you now what we've marked as
 2 Trial Exhibit 20129, which represents the CSAP
 3 performance between ELL and non-ELL students in the
 4 area of math in 2010. And I'll represent this is
 5 another chart that we created using data from your
 6 district. Does it look like a fair and accurate
 7 representation of the ELL versus non-ELL CSAP
 8 performance in 2010?
 9 A. It does.
 10 Q. And here we see similar gaps in
 11 proficiency between ELL and non-ELL students the way we
 12 did in writing, correct?
 13 A. Correct.
 14 Q. And, again, over grade level, the gaps
 15 generally increase?
 16 A. They do.
 17 Q. Here it looks like the largest proficiency
 18 gap between non-ELL and LEP students was in ninth
 19 grade, where there was a gap of approximately
 20 46 percent?
 21 A. Did you say -- say that again.
 22 Q. That the largest gap in this chart was
 23 between non-ELL and LEP students, and that was in ninth
 24 grade, where the gap was 46 percent?
 25 A. I -- I'm not following you. I'm sorry.

1902

1 **Q. In ninth grade, was there a 46 percent gap**
 2 **between LEP and non-ELL students?**
 3 A. I see what you're saying. Yes.
 4 **Q. And in tenth grade, was there a gap -- was**
 5 **there a 47 percent gap between NEP and non-ELL**
 6 **students?**
 7 A. I'm seeing 17. I'm sorry.
 8 **Q. In tenth grade?**
 9 A. In tenth grade. I mean, I'm seeing a gap
 10 of about 17. I'm seeing zero and 17.
 11 **Q. Yes. That's right. Thank you.**
 12 A. That's why I had to go back.
 13 **Q. And in grades 3 through 10 -- in 2010,**
 14 **what percentage of third grade LEP students were**
 15 **proficient or higher in CSAP math?**
 16 A. For the LEP group it was 45.
 17 **Q. And what percentage of LEP students**
 18 **achieved proficiency in tenth grade?**
 19 A. Two.
 20 **Q. What percentage of NEP students achieved**
 21 **proficiency in math in the third grade?**
 22 A. NEP?
 23 **Q. That's right.**
 24 A. 8 percent.
 25 **Q. And what was the percentage for tenth**

1903

1 **grade?**
 2 A. Zero.
 3 **Q. Did the percentage of NEP students**
 4 **achieving proficiency in math ever increase over**
 5 **8 percent?**
 6 A. No. Not from the original first year.
 7 **Q. It looks like the gap between LEP and**
 8 **non-ELL students was 30 percent in seventh grade?**
 9 A. Correct. From 39 to 9.
 10 **Q. And the largest gap between NEP and**
 11 **non-ELL students was 52 percent in fourth grade?**
 12 A. Yes. 42.
 13 **Q. I'm showing you what we've marked as Trial**
 14 **Exhibit 20130. And it represents the CSAP performance**
 15 **of ELL students versus non-ELL students in the area of**
 16 **science. And, again, I'll represent that this is a**
 17 **demonstrative we created using data from your district.**
 18 **And all of the demonstratives I'll show you in the**
 19 **course of our conversation I'll represent are charts we**
 20 **created using data from your district. Does this look**
 21 **like a fair and accurate representation of the**
 22 **performance on science in your district?**
 23 A. It does.
 24 **Q. Is it fair to say that not over 5 percent**
 25 **of ELL students reached proficiency in science in any**

1904

1 **grade level?**
 2 A. That is correct.
 3 **Q. And during the same time period, the**
 4 **percentage of non-ELL students achieving proficiency in**
 5 **science never rise -- rose above 35 percent?**
 6 A. For non? You mean for English speakers?
 7 **Q. For non-ELL students.**
 8 A. For non-ELL. Correct.
 9 **Q. Did -- did similar gaps exist between ELL**
 10 **and non-ELL students in your district before 2010?**
 11 A. They did.
 12 **Q. In all CSAP subjects?**
 13 A. Yes.
 14 **Q. As the chief academic and research officer**
 15 **of Aurora, are you familiar with the graduation rates**
 16 **of students in your district?**
 17 A. I am.
 18 **Q. I'm showing you what we've marked as Trial**
 19 **Exhibit No. 20138. Does this chart fairly and**
 20 **accurately represent the graduation rates for LEP**
 21 **students and also for the district averages in 2008**
 22 **through 2010?**
 23 A. I believe it does.
 24 **Q. Between 2008 and 2010, the graduation**
 25 **rates for LEP students never met or exceeded the**

1905

1 **district averages; is that right?**
 2 A. That is correct.
 3 **Q. In fact, in 2010, only one-third of LEP**
 4 **students graduated?**
 5 A. 30 percent.
 6 **Q. And that was down from 48 percent in 2008?**
 7 A. I believe that the state had made some
 8 changes to the way graduation rates were calculated
 9 which also impact this. But when we ran the rates the
 10 same way, yes, you would see a decline in our
 11 graduation rates.
 12 **Q. Are you familiar with the dropout rates**
 13 **for ELL students in your district?**
 14 A. I am.
 15 **Q. I'm showing you what we've marked as Trial**
 16 **Exhibit 20139. Does this chart look like an accurate**
 17 **representation of the dropout rates for LEP students**
 18 **and the dropout rates for the district averages in**
 19 **Aurora?**
 20 A. It does.
 21 **Q. And here it appears that between 2008 and**
 22 **2010, the dropout rates for LEP students were**
 23 **significantly higher than the district averages; is**
 24 **that correct?**
 25 A. Correct.

1906

1 **Q. In fact, for most years, LEPs dropped out**
 2 **at twice or almost twice the rate of the district**
 3 **average?**
 4 A. It is. It is approaching twice.
 5 **Q. In light of the data that we've reviewed**
 6 **today, do you have an opinion as to whether or not the**
 7 **funds made available to Aurora through ELPA are**
 8 **sufficient to help the district provide ELL students**
 9 **with the tools they need to reach proficiency?**
 10 A. I do.
 11 **Q. And what is your opinion?**
 12 A. My opinion is that the funding that we
 13 receive through the ELPA act, through the state
 14 department of Colorado, does not meet the needs and
 15 does not provide sufficient funding for our students,
 16 our ELL students, to meet standards.
 17 **Q. And do you believe that the additional**
 18 **strategies and tools that we discussed earlier would**
 19 **support ELL students in closing the achievement gap?**
 20 A. Absolutely.
 21 **Q. Are you concerned about the district's**
 22 **ability to maintain its current level of support for**
 23 **ELL students?**
 24 A. I am.
 25 **Q. And what are your concerns?**

1907

1 A. Well, what we're -- the additional -- the
 2 cuts that we've received, we've been able to not cut
 3 our ELD program at this point. Even if we maintain
 4 that and we continue to receive cuts, if we maintain
 5 our TE ratio, we are going to have to let staff go, we
 6 are going to have a reduction in force. So we will see
 7 an increase in our class sizes. Whether or not
 8 the -- the funding for that specific teacher for ELD
 9 has changed, their caseloads, everybody's work will go
 10 up.
 11 **Q. Has the district -- you mentioned earlier**
 12 **that Title III is one of the primary sources of funds**
 13 **for ELL students in the district; is that right?**
 14 A. It's a -- it's a supplemental source of
 15 funding for us.
 16 **Q. Has the district experienced any**
 17 **reductions in Title III funds over the years?**
 18 A. I -- I believe so. I can't speak
 19 specifically to the exact amount we received this year.
 20 **Q. As chief academic and research officer,**
 21 **are you familiar with the CSAP performance of**
 22 **low-income students or students who qualify for free**
 23 **and reduced lunch in comparison to non-low-income**
 24 **students?**
 25 A. I am.

1908

1 **Q. I'm showing you what we've marked as Trial**
 2 **Exhibit 20127. Is this chart a fair and accurate**
 3 **representation of the performance of low-income**
 4 **students on the 2010 CSAP writing test in comparison to**
 5 **non-low-income students?**
 6 A. I just need to check your header. So I
 7 have the red is the non-free and reduced, the blue
 8 start is free and reduced, and then the light blue at
 9 the bottom is reduced, correct?
 10 **Q. Actually, the light blue is in the middle.**
 11 A. Right. That was free and reduced, right?
 12 **Q. That's right. And then the dark blue is**
 13 **free lunch.**
 14 A. Free. Yes. Okay. So that is accurate.
 15 **Q. And earlier this morning, Dr. Barry**
 16 **testified that the district has been able to close the**
 17 **achievement gap in some areas for low-income students,**
 18 **and it looks like we can see that on this chart, with**
 19 **the gap being closed towards eighth, ninth, and tenth**
 20 **grades?**
 21 A. Yes. And what we're tending to see, is
 22 we'll see a year where we see an achievement gap, and
 23 then the next year it's gone. The reduction expands.
 24 We're seeing some -- I don't want to say --
 25 inconsistent reduction where we do see it.

1909

1 **Q. In 2010, it appears that less than**
 2 **32 percent of students who qualified for free lunch**
 3 **achieved proficiency in CSAP writing at any given grade**
 4 **level; is that correct?**
 5 A. You need to restate that. Now I'm getting
 6 a little tired, but I'm going to keep going.
 7 **Q. Sure. Students who qualified for free**
 8 **lunch in 2010 never reached proficiency at a percentage**
 9 **greater than 32 percent at any given grade level; is**
 10 **that right?**
 11 A. Correct.
 12 **Q. And only 16 and 12 percent of students who**
 13 **qualified for free lunch reached proficiency in writing**
 14 **in grades 9 and 10 respectively; is that correct?**
 15 A. That is correct.
 16 **Q. And it does appear that there is a**
 17 **persistent gap between low income and non-low-income**
 18 **students achieving proficiency in writing in every**
 19 **grade level; is that right?**
 20 A. That is correct.
 21 **Q. The largest gap between non-low-income**
 22 **students and students who qualify for free lunch is**
 23 **32 percent in seventh grade?**
 24 A. Yes.
 25 **Q. And the largest gap between non-low-income**

1910

1 students and students who qualify for reduced lunch is
 2 in the third grade, at 20 percent?
 3 A. Correct.
 4 Q. I'm showing you what we've marked as Trial
 5 Exhibit 20124. Does this look like a fair and accurate
 6 representation of the performance of low income versus
 7 non-low-income students in CSAP math in 2010?
 8 A. It does.
 9 Q. And, again, there are gaps between low
 10 income and non-low-income students at every grade
 11 level; is that right?
 12 A. That is correct.
 13 Q. In sixth grade, for example, 25 percent
 14 more non-low-income students reached math proficiency
 15 in relation to students who qualified for free lunch?
 16 A. Correct.
 17 Q. This is the last one.
 18 A. That's fine.
 19 Q. This is Trial Exhibit 20126. Does this
 20 look like a fair and accurate representation of the
 21 performance of low income versus non-low-income
 22 students on the 2010 CSAP science test?
 23 A. It does.
 24 Q. In 2010, not more than 20 percent of
 25 students who qualified for reduced lunch ever reached

1911

1 proficiency in science?
 2 A. Tenth grade.
 3 Q. At any grade level.
 4 A. Any grade level. Yes.
 5 Q. And less than a third of eighth grade
 6 students who qualified for free lunch scored proficient
 7 or higher in CSAP science?
 8 A. That's correct.
 9 Q. And 45 percent of non-low-income students
 10 reached proficiency the same year?
 11 A. In eighth grade, yes.
 12 Q. Did similar gaps in CSAP performance exist
 13 between low income and non-low-income students before
 14 2010?
 15 A. Yes.
 16 Q. In all subject areas?
 17 A. Yes.
 18 Q. In light of this data, do you have an
 19 opinion as to whether or not the funds made available
 20 to Aurora through the PSFA formula and the additional
 21 at-risk funding are sufficient to help you provide the
 22 tools necessary to get low-income students to
 23 proficiency and close the achievement gap?
 24 A. My opinion is that those funds do not
 25 provide enough.

1912

1 Q. And you believe that the additional
 2 strategies and tools that we discussed earlier would be
 3 enough to get the kids there?
 4 A. They will be adequate to, yes. To
 5 accelerate their growth, yes. Toward proficiency, yes.
 6 MS. BONO: That's all the questions I have
 7 for you today. Thank you for your time.
 8 THE COURT: Cross-examination?
 9 MS. WESTON: Yes, Your Honor.
 10 CROSS-EXAMINATION
 11 BY MS. WESTON:
 12 Q. Good afternoon, Dr. Escarcega.
 13 A. Good afternoon.
 14 Q. On your direct examination, you mentioned
 15 Dr. Barbara Medina.
 16 A. Yes.
 17 Q. You generally respect her, don't you?
 18 A. I do.
 19 MS. WESTON: That was all the questions I
 20 had.
 21 THE COURT: Thank you. Any redirect?
 22 MR. KLINGSPORN: No, Your Honor.
 23 THE COURT: Any redirect?
 24 MS. BONO: No, Your Honor.
 25 THE COURT: Thank you. Thank you. You

1913

1 may step down. Thank you.
 2 MS. BEZOZA: Plaintiffs call Lucinda
 3 Hundley.
 4 THE COURT: If you'd raise your right
 5 hand.
 6 LUCINDA HUNDLEY,
 7 having been first duly sworn to state the whole truth,
 8 testified as follows:
 9 THE COURT: Thank you. Please be seated.
 10 And then you can adjust that microphone so it's
 11 comfortable. And then if you would state your full
 12 name, and please spell both your first and last name
 13 for us.
 14 THE WITNESS: My name is Lucinda Hundley.
 15 First name L-u-c-i-n-d-a. Last name H-u-n-d-l-e-y.
 16 THE COURT: Thank you.
 17 DIRECT EXAMINATION
 18 BY MS. BEZOZA:
 19 Q. Good afternoon, Ms. Hundley.
 20 A. Good afternoon.
 21 Q. Ms. Hundley, do you recognize the document
 22 marked as Exhibit 6101 that I just put on the Elmo?
 23 This document has already been admitted into evidence.
 24 A. I do.
 25 MS. BEZOZA: Your Honor, may I approach to

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1 give a copy, please.
 2 THE COURT: Yes. Thank you.
 3 **Q. (BY MS. BEZOZA) This is a copy of your**
 4 **CV?**
 5 A. Yes.
 6 **Q. Does your CV accurately reflect your**
 7 **credentials and experience to date?**
 8 A. Yes. With the exception I am no longer
 9 assistant superintendent in Littleton Public Schools,
 10 having just finished a retirement -- or started a
 11 retirement.
 12 **Q. Congratulations.**
 13 A. Thank you.
 14 **Q. Would you briefly describe for the Court**
 15 **your educational background.**
 16 A. I'm trained as a speech pathologist, both
 17 undergrad, bachelor's degree, and master's degree from
 18 the University of the Pacific in Stockton, California.
 19 **Q. And what area was your master's degree in?**
 20 A. The title is communicative disorders,
 21 which is essentially speech and language pathology.
 22 **Q. And can you please describe your**
 23 **professional experience after graduate school.**
 24 A. I was a speech and language pathologist
 25 for a number of years. Then I became an administrator

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1 for students with speech and language disabilities in
 2 Santa Ana. I became their director of special
 3 education in 1986 through 1998, when I moved to
 4 Colorado. You want me to keep going?
 5 **Q. Yes, please.**
 6 A. When I came to Colorado, I became the
 7 director of special programs in Littleton for about six
 8 months, then I became executive director of special
 9 education programs, and then in 2000, I was named
 10 assistant superintendent of student support services,
 11 and I also remained the director of special education
 12 for Littleton.
 13 **Q. And for how many years were you the**
 14 **director of special education in Santa Ana?**
 15 A. 12.
 16 **Q. Can you please describe the demographics**
 17 **of that district.**
 18 A. About 54,000 kids. At the time I was
 19 there, about 54,000 kids. 72 percent limited English
 20 proficient, 78 percent free and reduced lunch. High
 21 minority, high immigrant population. I think the
 22 immigrant population at the time was about 40 percent.
 23 And our special education pupil count was about 4,000
 24 kids.
 25 **Q. Were you at one time a consultant for CDE?**

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1 A. Yes, I was. January of 1998 until July of
 2 1998.
 3 **Q. And can you generally describe your job**
 4 **responsibilities as a consultant for CDE?**
 5 A. That was my title, consultant. And I was
 6 in charge of providing technical support to the field
 7 in speech pathology and assistive technology for
 8 students who have communication challenges and need
 9 technology to communicate with their world.
 10 I was also a representative from CDE to
 11 the metro special education directors' monthly
 12 meetings.
 13 **Q. What were your job responsibilities as**
 14 **assistant superintendent of student support services at**
 15 **Littleton Public Schools?**
 16 A. Well, as I said, I was director of special
 17 education, and in addition to that, I had oversight for
 18 alternative education, gifted and talented, English
 19 language learners, discipline, including suspensions
 20 and expulsions, health services, Section 504 supports.
 21 I'm rattling them off the top of my head. That's all I
 22 can think of at the moment.
 23 **Q. It's a lot of areas. And can you briefly**
 24 **describe what your responsibilities were with respect**
 25 **to those areas?**

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1 A. Other than special education, or including
 2 special education?
 3 **Q. Why don't we take the others first.**
 4 A. Okay.
 5 **Q. And then you can address special**
 6 **education.**
 7 A. My initial charge in 2000, when I was made
 8 assistant superintendent, was to build an alternative
 9 education program, create one. We didn't have
 10 alternatives for kids who were at risk of expulsion or
 11 who were expelled. So I wrote a grant and obtained
 12 funding to develop a program called the Direction
 13 Center, which is both a day and an evening program.
 14 Was grant-funded for kids who have been expelled or at
 15 risk of expulsion.
 16 We also developed an online program with
 17 Arapahoe Community College for kids who aren't
 18 traditional learners as part of our alternative
 19 education supports. I was in charge of overseeing
 20 gifted and talented, though I had a coordinator who
 21 reported to me who had direct oversight, day-to-day
 22 oversight.
 23 In terms of English language acquisition,
 24 I also had a coordinator in that area who did
 25 day-to-day, but I had oversight in terms of compliance

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<p>1 for English language acquisition.</p> <p>2 I think I left home bound off of my list.</p> <p>3 I was in charge of assigning home-bound instructors to</p> <p>4 students who were too ill to attend school by a</p> <p>5 doctor's order.</p> <p>6 Discipline. In charge of the code of</p> <p>7 conduct. Interpreting cases where a school might be</p> <p>8 recommending -- a principal might be recommending</p> <p>9 expulsion to the superintendent and acting as</p> <p>10 superintendent's designee. Helping schools sort</p> <p>11 through discipline consequences and application of the</p> <p>12 code of conduct.</p> <p>13 Health services. Littleton contracts with</p> <p>14 Children's Hospital. We have had slightly less than</p> <p>15 four FTE of nurses for 15,500 kids, and that day-to-day</p> <p>16 oversight was to work with these nurses and their</p> <p>17 assignments, which were pretty tough. Each of them had</p> <p>18 roughly five schools, some had six schools. This is</p> <p>19 still current. I guess I'm talking in past tense</p> <p>20 because I'm no longer there.</p> <p>21 They had to develop a variety of responses</p> <p>22 to kids with health needs, predominantly health care</p> <p>23 action plans. So I was the district representative to</p> <p>24 the nurses in interpreting requirements around children</p> <p>25 with health needs in the schools.</p>	<p>1 reports both in terms of funding as well as pupil</p> <p>2 count. End-of-year reports. Overseeing hiring of</p> <p>3 staff. Overseeing development of new positions.</p> <p>4 Position descriptions. Overseeing compliance.</p> <p>5 Monitoring student achievement.</p> <p>6 Working with our curriculum instruction</p> <p>7 staff around how we were helping students with</p> <p>8 disabilities have greater access to the curriculum as</p> <p>9 it applied to state standards. Supporting principals</p> <p>10 in their oversight and supervision of special education</p> <p>11 staff.</p> <p>12 Q. Have you served on any state education</p> <p>13 committees in Colorado?</p> <p>14 A. Yes, I have. As I said, when I began in</p> <p>15 Colorado with the department, I was -- I was the</p> <p>16 representative to the metro directors special</p> <p>17 education -- metro special education directors' monthly</p> <p>18 meetings. But in addition, I was a representative to</p> <p>19 what was then called the Forum. And it was a very</p> <p>20 specific way that CDE gave communication and got</p> <p>21 communication to/from the field, with representatives</p> <p>22 from each region to meet with CDE representatives,</p> <p>23 including the state director, monthly.</p> <p>24 That group is now called the State</p> <p>25 Directors Leadership Team And I continued to be on</p>
<p>1 What have I left out. Section 504.</p> <p>2 Direct oversight for training, implementation of 504</p> <p>3 plans. Monitoring of 504 implementation at school</p> <p>4 sights. What are 504 plans?</p> <p>5 Q. Yes.</p> <p>6 A. Students with a disability. It's a</p> <p>7 different standard. It's very similar to the Americans</p> <p>8 with Disabilities Act. And it's students who might</p> <p>9 have a disability that prohibits them from accessing</p> <p>10 their education. For example, a child with allergies,</p> <p>11 significant allergies, might need to have a health care</p> <p>12 plan, which would be considered a 504 eligibility, to</p> <p>13 help them get the required medical support they need at</p> <p>14 school in order to access their education, meaning in</p> <p>15 order to feel well enough to be in school.</p> <p>16 Another example might be a child in a</p> <p>17 wheelchair who would require curb cuts in order to have</p> <p>18 access to their school building. Those would be just</p> <p>19 two very simplistic examples.</p> <p>20 Q. And what were your responsibilities with</p> <p>21 respect to special education in Littleton?</p> <p>22 A. Day-to-day oversight for special education</p> <p>23 programs. Development of the budget. Allocation of</p> <p>24 resources. Monitoring -- monitoring the way the budget</p> <p>25 was being utilized. Completing state and federal</p>	<p>1 that through June of 2011. I was on the P-20 Council</p> <p>2 appointed by Governor Ritter.</p> <p>3 Q. Can you tell us what the P-20 Council is?</p> <p>4 A. Governor Ritter had something called</p> <p>5 Colorado Promise, which was to cut the dropout rate in</p> <p>6 half and improve the -- and cut the achievement gap in</p> <p>7 half within ten years, as well as to double the number</p> <p>8 of certificates in postsecondary degrees. And so what</p> <p>9 it was was a group of educators and business people,</p> <p>10 folks from a variety of sources in the community who</p> <p>11 cared greatly about K-12 and postsecondary education.</p> <p>12 And we were charged by the governor to not</p> <p>13 think about resources, we were charged by the governor</p> <p>14 to dream big, I think were his words. And some of the</p> <p>15 recommendations ended up in CAP4K. There were some</p> <p>16 standards around preschool through grade 3 education,</p> <p>17 aligning accountability measures K-12, defining</p> <p>18 postsecondary readiness, alternative compensation</p> <p>19 systems. Those are some of the highlights of things</p> <p>20 that the group addressed.</p> <p>21 Q. And so you were an appointed member of</p> <p>22 that committee by the governor?</p> <p>23 A. Yes, I was, uh-huh.</p> <p>24 Q. And what's your opinion of the work that</p> <p>25 was done by the P-20 Council?</p>
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1 A. I think it was a group of very
 2 well-intentioned people, and I believe that there was a
 3 greater understanding of the various pressures that
 4 were on the K-12 system by folks in higher ed and those
 5 in the business community. And I think there was a
 6 greater understanding of folks in the education
 7 community, K-12 education community, of the pressures
 8 on higher ed and postsecondary folks.
 9 I believe that we -- CAP4K was one
 10 outcome, I believe. There was also an emphasis on
 11 concurrent enrollment. But I think the elephant in the
 12 room that we weren't really speaking about was
 13 insufficient resources to really do the job that some
 14 people thought we needed to do. And I think in some
 15 ways that may have inhibited that dreaming big, as
 16 Governor Ritter asked us to do.
 17 **Q. We have talked about two committees, the**
 18 **state directors leadership team and the P-20. Were**
 19 **there any other state education committees that you've**
 20 **served on?**
 21 A. Yes. The statewide directors, special ed
 22 directors consortium, I'm not sure what the legal title
 23 of it is, but it's a special ed directors consortium.
 24 It was something that I became aware of as a concern in
 25 the early 2000s, having been asked to testify on

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1 various things that were coming before the state board
 2 and the legislature.
 3 And in 2004, I developed a model that I
 4 took to some fellow directors with the idea of having
 5 each region appoint a representative for us to
 6 volunteer our time, as a group of practitioners in the
 7 field, who could inform, educate, be a resource to the
 8 state board of education, as well as the legislature,
 9 on various matters that might come before them that
 10 they wanted to get a viewpoint of the world of
 11 disabilities. And so the consortium was formed in
 12 2004, and that group continues today, and I'm still a
 13 member of the consortium.
 14 **Q. And your role with respect to the**
 15 **consortium?**
 16 A. Today?
 17 **Q. What was your role initially? Did you**
 18 **start the consortium?**
 19 A. Yes, I started the consortium and helped
 20 with that leadership. It was a very cooperative
 21 effort, but I would say I was probably viewed as a
 22 leader or the co-leader of the group.
 23 **Q. And your CV also mentions Special**
 24 **Education Fiscal Advisory Committee. What was your**
 25 **role on that committee?**

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1 A. As a result of the change of funding for
 2 special education in 2006, that legislation also
 3 required this Special Education Fiscal Advisory
 4 Committee, which was essentially made up of the
 5 regional representatives, just as the consortium was
 6 designed. And so the net effect of that was initially
 7 that the Special Ed Fiscal Advisory Committee was made
 8 up of consortium members, as well as two business
 9 representatives, as well as a representative from CDE,
 10 at least one representative from CDE. And I continued
 11 to serve on that until June of 2011.
 12 **Q. And have you been a member of that**
 13 **committee since it was created?**
 14 A. Yes.
 15 MS. BEZOZA: Your Honor, plaintiffs move
 16 to have Ms. Hundley qualified as an expert in special
 17 education in Colorado.
 18 MR. HEINKE: No objection, Your Honor.
 19 THE COURT: She'll be admitted as an
 20 expert in that area. Thank you.
 21 **Q. (BY MS. BEZOZA) Thank you. Ms. Hundley,**
 22 **what does the term "special education" mean?**
 23 A. It means that a child has been identified,
 24 using a very formal process, as a child with a
 25 disability who then needs prescribed -- who has

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1 prescribed, identified needs and prescribed, identified
 2 supports to meet those needs through a defined system
 3 of -- I don't want to define it with itself. Through a
 4 prescribed system of specially designed instructors or
 5 support personnel in order for them to receive
 6 educational benefit.
 7 **Q. And by "educational benefit," is that a**
 8 **term of art?**
 9 A. I don't know what you mean by term of art.
 10 **Q. Is "educational benefit" a term that's**
 11 **defined in law?**
 12 A. Most of us would say educational benefit
 13 means demonstrating some kind of achievement according
 14 to that child's needs, but demonstrating achievement
 15 over time.
 16 **Q. And what laws govern the provision of**
 17 **special education in Colorado?**
 18 A. There are essentially two. I mean,
 19 there's more than two, but the cornerstone for special
 20 education is IDEA, which the genesis from PL94-142 in
 21 1975. But it's now IDEA. Colorado has elected to
 22 align itself with federal legislation with the
 23 Exceptional Children's Education Act, or ECEA, which is
 24 the Colorado version.
 25 **Q. Let's step back a second. What does IDEA**

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<p>1 stand for?</p> <p>2 A. Individuals with Disabilities Education</p> <p>3 Act.</p> <p>4 Q. And that's a federal law?</p> <p>5 A. Yes.</p> <p>6 Q. And then Colorado state law is ECEA. What</p> <p>7 does that stand for?</p> <p>8 A. Exceptional Children's Education Act.</p> <p>9 Q. And can you explain the relationship</p> <p>10 between those two laws, please.</p> <p>11 A. Well, as I said, Colorado elected to align</p> <p>12 most of its laws with the federal statute. The federal</p> <p>13 statute makes the state education agency, which in this</p> <p>14 case would be Colorado Department of Education, in</p> <p>15 charge of implementation of the federal laws for that</p> <p>16 state. And that's true for any state in the country.</p> <p>17 Q. And are there any instances in which</p> <p>18 Colorado's special education law differs from federal</p> <p>19 special education law?</p> <p>20 A. There are two that come to mind</p> <p>21 immediately. One is that Colorado has not had the same</p> <p>22 eligibility criteria -- I'm sorry, eligibility</p> <p>23 categories or disability categories as the federal law.</p> <p>24 This was modified in the last legislative session by</p> <p>25 the addition of a disability category that Colorado's</p>	<p>1 children's -- children with disabilities. In Colorado,</p> <p>2 any law that impacts students in -- in education -- in</p> <p>3 the K-12 educational system applies also to children</p> <p>4 with disabilities, unless it clearly exempts them.</p> <p>5 And I'm not aware of any -- I'm not aware</p> <p>6 off the top of my head of laws that would exempt them.</p> <p>7 So accreditation requirements, anything related to</p> <p>8 student achievement, the CAP4K, anything related to</p> <p>9 student achievement would also apply to children with</p> <p>10 disabilities as well.</p> <p>11 Q. So does that include state standards?</p> <p>12 A. Yes.</p> <p>13 Q. What is an administrative unit?</p> <p>14 A. An administrative unit could be a single</p> <p>15 school district or it could be a consortium or a group</p> <p>16 of smaller school districts who come together to create</p> <p>17 what I'd call an economies of scale to more efficiently</p> <p>18 provide specific services to kids.</p> <p>19 There are 58 administrative units in</p> <p>20 Colorado, and that's a mix of single districts, like</p> <p>21 Littleton, or small districts that have come together</p> <p>22 who don't have the resources and funds to provide</p> <p>23 certain services such as special education. Those are</p> <p>24 typically called BOCES, or Boards of Cooperative</p> <p>25 Services</p>
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<p>1 never had before called other health impaired. And the</p> <p>2 other area is -- I'm trying not to get too bogged down</p> <p>3 here in detail.</p> <p>4 There is a requirement for kids with</p> <p>5 disabilities under the federal law around transition</p> <p>6 planning for students towards a postsecondary outcome.</p> <p>7 And the age in the federal law for that is 16.</p> <p>8 Colorado elected to begin it one year earlier, at</p> <p>9 age 15.</p> <p>10 Q. So in both those instances, is it fair to</p> <p>11 say that Colorado's law goes beyond what the federal</p> <p>12 law requires?</p> <p>13 A. Colorado's law for disability categories</p> <p>14 is different. It goes beyond federal law for that age</p> <p>15 distinction by starting those requirements one year</p> <p>16 earlier than the federal law.</p> <p>17 Q. And does Colorado's special education law</p> <p>18 include everything that's required in federal special</p> <p>19 education law?</p> <p>20 A. Absolutely does.</p> <p>21 Q. Are there any other laws that govern the</p> <p>22 education provided to children with disabilities in the</p> <p>23 state?</p> <p>24 A. No Child Left Behind and their adequate</p> <p>25 yearly progress target is a federal law that impacts</p>	<p>1 Q. Who is eligible for special education</p> <p>2 services under federal and state law?</p> <p>3 A. As I said before, under that definition of</p> <p>4 special education, it's a child who's been identified</p> <p>5 through a formal process as having a disability</p> <p>6 according to prescribed eligibility criteria. And once</p> <p>7 they're determined eligible for special education, as a</p> <p>8 child with an identified disability, then a written</p> <p>9 plan is developed for them.</p> <p>10 Q. And is that an Individualized Education</p> <p>11 Program?</p> <p>12 A. Yes.</p> <p>13 Q. IEP --</p> <p>14 A. Yes.</p> <p>15 Q. -- is that how it's known? And can you</p> <p>16 explain a little bit more about what an IEP looks like?</p> <p>17 A. Essentially, an IEP is a contract between</p> <p>18 the school district and the parent, and it identifies</p> <p>19 the child and their disability, highlights what their</p> <p>20 needs are, and challenge -- and -- and translates those</p> <p>21 needs into educational challenges. Identifies their</p> <p>22 strengths, identifies annual goals that that child is</p> <p>23 expected to achieve, outlines the accommodations that</p> <p>24 are going to be made in the general education program,</p> <p>25 if any, for that child, and then defines what services</p>

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<p>1 and supports that child is going to get and in what</p> <p>2 settings.</p> <p>3 Q. And how is an IEP developed?</p> <p>4 A. It's developed by a community of -- a</p> <p>5 committee of individuals that includes the parents and</p> <p>6 the educators -- in our -- in Littleton, at that school</p> <p>7 site who were part of the assessment and who would know</p> <p>8 that child.</p> <p>9 Q. How are the decisions with respect to</p> <p>10 services supposed to be made at an IEP meeting? Are</p> <p>11 there laws that govern those decisions?</p> <p>12 A. A couple things come to mind. One is an</p> <p>13 identification what the child's needs are and then what</p> <p>14 services and supports are reasonably calculated to meet</p> <p>15 that child's needs. And in doing that, show</p> <p>16 educational benefit.</p> <p>17 Q. And is there an order to the process that</p> <p>18 you're supposed to follow in an IEP meeting?</p> <p>19 A. Yes. After following -- after determining</p> <p>20 eligibility, the IEP team convenes to identify the</p> <p>21 needs, identify the strengths, write the goals and</p> <p>22 objectives, and write what accommodations are needed in</p> <p>23 general education. And then all of those things feed</p> <p>24 what services and supports -- the decision about what</p> <p>25 services and supports the child will receive.</p>	<p>1 A. Absolutely.</p> <p>2 Q. And is there a continuum of placements?</p> <p>3 Can you describe what the continuum is?</p> <p>4 A. A child with a real mild disability, like</p> <p>5 let's say an articulation problem, might be in general</p> <p>6 education full time with a pullout of speech and</p> <p>7 language therapy. That would be a very mild example.</p> <p>8 And the continuum gets progressively more and more</p> <p>9 restrictive, to the point where a student might be in a</p> <p>10 center-based program because they have significant</p> <p>11 disabilities. That's a much higher cost type of</p> <p>12 placement for that child because of the special</p> <p>13 education supports.</p> <p>14 Q. Can you just explain what a center-based</p> <p>15 program is?</p> <p>16 A. A center-based program would be in -- in a</p> <p>17 particularly identified school, where a classroom is</p> <p>18 set up for a mix of children with disabilities, either</p> <p>19 a heterogeneous mix of different kinds of disabilities,</p> <p>20 some districts have programs that are a homogeneous</p> <p>21 mix, perhaps kids with autism. But it's specially</p> <p>22 designed around children with disabilities, and it is</p> <p>23 less about general education and it's more about a</p> <p>24 center-based program.</p> <p>25 And then that continuum can go all the way</p>
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<p>1 Q. What does the term "least restrictive</p> <p>2 environment" mean?</p> <p>3 A. LRE is what we call it shorthand. Least</p> <p>4 restrictive environment is a cornerstone, I believe, of</p> <p>5 federal law and state law. And what it presumes is</p> <p>6 that every child with a disability has the right to be</p> <p>7 educated to the greatest extent possible for them</p> <p>8 alongside their general education peers.</p> <p>9 So least restrictive -- least restrictive</p> <p>10 environment is going to look different for different</p> <p>11 children, depending on their own disability and their</p> <p>12 own ability to be in as inclusive an environment as</p> <p>13 possible for them.</p> <p>14 When I say cornerstone, I also want to</p> <p>15 say, there's a value around LRE, or least restrictive</p> <p>16 environment, embedded in the law that isn't always</p> <p>17 shared by some, particularly parents. For example, in</p> <p>18 the deaf community, there are some parents who want</p> <p>19 their children educated solely in a deaf community, and</p> <p>20 so some of the high costs kinds of things that</p> <p>21 districts get involved in sometimes speak to priorities</p> <p>22 around how much general education the parents want</p> <p>23 their children to have access to.</p> <p>24 Q. So least restrictive environment is an</p> <p>25 individualized determination, right?</p>	<p>1 to the most restrictive placement, which could be in a</p> <p>2 facility school, which in some cases could include a</p> <p>3 residential placement outside of the home, and in at</p> <p>4 least one case in Colorado, outside the state.</p> <p>5 Q. So how do costs change as you move along</p> <p>6 the continuum?</p> <p>7 A. Typically costs for kids who are in</p> <p>8 general education programs without much special</p> <p>9 education support, those costs are typically the least</p> <p>10 costly special education services. And then as you get</p> <p>11 more and more restrictive, that center-based program is</p> <p>12 going to have costs attached to instructional support</p> <p>13 as well as speech language folks, psychologists, maybe</p> <p>14 some paraprofessionals. And then the most restrictive,</p> <p>15 for example, in a -- in a facility, are going to be the</p> <p>16 most costly, be a day -- day program or a residential</p> <p>17 program.</p> <p>18 Q. What is Child Find?</p> <p>19 A. Child Find is an obligation that school</p> <p>20 districts have for children ages zero to 21, to</p> <p>21 ident -- to find, hence Child Find, to find and</p> <p>22 identify any child with a disability in that district's</p> <p>23 or administrative unit's catchment area or boundaries.</p> <p>24 Q. So there's an affirmative obligation on</p> <p>25 districts to find kids who might be in need of</p>

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1 **services?**
 2 A. Yes.
 3 **Q. And what are related services?**
 4 A. Related services are things like
 5 psychological support, speech and language therapy,
 6 occupational therapy, transportation that a child might
 7 need in order to receive benefit from their special
 8 education.
 9 **Q. So was that a catch-all term --**
 10 A. Yes.
 11 **Q. -- for some of the services they might**
 12 **need?**
 13 A. Yes.
 14 **Q. What is a Free Appropriate Public**
 15 **Education, known as FAPE?**
 16 A. Cornerstone of IDEA. Free Appropriate
 17 Public Education is a guarantee in the IDEA
 18 legislation, and I think of it as two-pronged. One is
 19 around compliance. Are we meeting all the compliance
 20 requirements of the federal and state law. And then
 21 the other one, the other prong, I would say, is is the
 22 child receiving educational benefit? Are you seeing
 23 student outcomes that are demonstrating student
 24 progress in their academic or educational world?
 25 **Q. Is FAPE also part of state special**

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1 **education laws, as well as federal special education**
 2 **laws?**
 3 A. Yes, it is.
 4 **Q. What are the potential consequences if a**
 5 **district is not providing FAPE to all of its students?**
 6 A. If it were not providing FAPE for all of
 7 its students, the ultimate could be loss of federal
 8 funds, potentially loss of state funds. It could mean
 9 the state could come in and take over special
 10 education. It could mean a class action suit at an
 11 individual level. It could be parent complaints or
 12 legal action brought against the district.
 13 **Q. As you sit here today, are you able to say**
 14 **whether FAPE is being provided to every student with a**
 15 **disability in Littleton?**
 16 A. No. I can't.
 17 **Q. Why is that?**
 18 A. Without looking at each child's IEP,
 19 Individualized Education Plan, and comparing the
 20 written plan to the child's disability and their needs,
 21 was it designed to meet that child's needs, and then
 22 looking at that child's educational outcomes, are they
 23 demonstrating educational benefit, I would have to do
 24 that on an individual level with each child's IEP in
 25 order to determine whether they're getting FAPE, in

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1 addition to are the -- are the services being
 2 implemented as written on the IEP.
 3 **Q. What role, if any, do state accountability**
 4 **requirements play in assessing whether a student with**
 5 **disabilities is getting an appropriate education?**
 6 A. The achievement measures that districts
 7 are judged by also apply to children with disabilities.
 8 So the AYP targets at the federal level, the
 9 accreditation standards around student achievement,
 10 identification of gaps of children with disabilities in
 11 their academic achievement, what their gap -- what the
 12 gap is and whether there's growth in closing the gap
 13 between the child with disabilities and the overall
 14 district population, those all apply to children with
 15 disabilities as well, as does the calculation around
 16 graduation rate, dropout rate. Those would be
 17 examples.
 18 **Q. Is that information you would look at when**
 19 **trying to make a determination whether an individual**
 20 **child is getting an appropriate education?**
 21 A. I would absolutely look at their student
 22 achievement. It's hard to -- depending where they are
 23 in their education, it's hard to look at their dropout
 24 and their graduation rate, depending.
 25 **Q. Can a district refuse to provide special**

1937

1 **education services based on resources?**
 2 A. Absolutely not. A district has an
 3 obligation to provide whatever a child requires to
 4 benefit from their education.
 5 **Q. What are the sources of revenue for**
 6 **special education in Colorado?**
 7 A. There's federal funding, there's state
 8 funding, and then there's what I call the local share.
 9 **Q. Approximately what percent of special**
 10 **education funding in Colorado is provided by the**
 11 **federal government?**
 12 A. Now, about 14 percent. I'm saying now,
 13 because I've tracked it, and in -- I go back as far as
 14 2000, and it was 9 percent then.
 15 **Q. And do you have an understanding as to why**
 16 **the percent has increased?**
 17 A. I don't think I could comment on that.
 18 **Q. Are there any restrictions on the use of**
 19 **federal special education money?**
 20 A. This is -- yes. This is a pet peeve of
 21 mine. They are restricted to solely be used for
 22 children with disabilities. And there's a basic legal
 23 concept in funding for kids with disabilities, and this
 24 is true for both state and federal funding, and it's
 25 supplant versus supplement. And the idea behind that

1938

1 is is that any funds you get for a child with
 2 disabilities must be above and beyond what they would
 3 get through the general education program.
 4 So you can't use special education funding
 5 for anything that isn't above and beyond specific to
 6 that child's disability. Does that make sense?
 7 **Q. Yes. And is there also a concept called**
 8 **maintenance of effort?**
 9 A. Yes.
 10 **Q. Can you explain what that is?**
 11 A. How to simplify this one. Again, another
 12 fiscal and legal concept, and the idea behind that is
 13 is that the money I spend this year out of my general
 14 fund will not be any less than the money I spent last
 15 year. Therefore, I will maintain the same level of
 16 fiscal effort per child with disabilities as I had last
 17 year.
 18 It gets to supplant. You can't use your
 19 special education funds to backfill and reduce your
 20 local -- your local share.
 21 **Q. And you mentioned that the federal**
 22 **restrictions on the use of special education funding is**
 23 **a pet peeve of yours. Can you explain why you said**
 24 **that?**
 25 A. Well, the most recent one is the ARRA

1939

1 funds. When the ARRA funds came out, we -- many
 2 districts were excited about being able to infuse money
 3 into general education interventions, to hopefully
 4 intervene with children early. And we were told
 5 absolutely not, the ARRA funds were to be used
 6 exclusively for children who had already been
 7 identified with a disability.
 8 And this is -- the other piece to this is
 9 why I -- while I believe there is insufficient funding,
 10 period, there are opportunities in schools to create
 11 economies of scale. For an example, if you had a
 12 special educator who had a particular skill in literacy
 13 instruction and you put them in a general education
 14 program to co-teach with a teacher, that special
 15 educator could also teach other children, general
 16 education children, who are struggling readers, and you
 17 could create a mini economy of scale in that classroom,
 18 so more children would benefit from that one
 19 specialist.
 20 We're not allowed to do that if the person
 21 is being funded with state or federal special education
 22 funds.
 23 **Q. And is that just a federal restriction, or**
 24 **are there state restrictions on the use of funding?**
 25 A. Same restriction by the state as well.

1940

1 **Q. When was the current special education**
 2 **funding system in Colorado developed?**
 3 A. 2006.
 4 **Q. And did you play any role in the**
 5 **development of that system?**
 6 A. I did, as a member of the consortium, yes.
 7 **Q. Can you explain your participation?**
 8 A. We were approached by Representative Jack
 9 Pommer and asked -- we, the consortium, was approached
 10 by Representative Jack Pommer after the legislative
 11 session had started asked if we would work with him to
 12 develop a new special education funding model in light
 13 of some potential Referendum C money that was going to
 14 become available.
 15 **Q. And can you briefly tell us what**
 16 **Referendum C is?**
 17 A. I'm not going to be able to give you the
 18 best legal definition. It was an infusion of new money
 19 for special education that the voters in Colorado voted
 20 in or authorized.
 21 **Q. And by "we," when you said that you were**
 22 **approached, are you talking about the consortium?**
 23 A. The consortium was approached, yes.
 24 **Q. How was the new special education funding**
 25 **system developed?**

1941

1 A. I believe that Representative Pommer
 2 brought to us the concept of a tiered system, and there
 3 were some political realities around expectations from
 4 both parties, individuals from both parties, who wanted
 5 there to be a weighted system. And so I believe he did
 6 bring to us this concept of weighting.
 7 We also had a very short time to develop
 8 it in, because of the term of the legislative session.
 9 We had very limited data available to us in terms of
 10 what the real costs were. And we did not have
 11 available to us any studies related to existing funding
 12 models that were effective around the country. So we
 13 worked with Representative Pommer to do the best we
 14 could with what we thought would be a better model than
 15 what was in place before.
 16 **Q. When you talk about time constraints, can**
 17 **you give us a sense of how much time you had?**
 18 A. I think our work was about a month and a
 19 half, about 45 days.
 20 **Q. And when -- and when you say that the**
 21 **concept of a tiered system was brought to you, can you**
 22 **explain what you mean by that?**
 23 A. The idea behind it was that every child
 24 with a disability would be -- from a census-based model
 25 would be eligible to have their district receive X

1942

1 amount of dollars for every child with a disability.
 2 And then the second tier -- that would be the first
 3 tier, or Tier A, is what it's called.
 4 And then the second tier idea was are
 5 there some particular children or particular areas of
 6 disability who are typically more expensive to serve.
 7 And those students would be -- that count would drive
 8 additional funding according to certain identified
 9 disabilities.
 10 And then there was a third component that
 11 we had great concern about, and that was what we called
 12 high-cost kids, who were exorbitantly outside of
 13 anybody's norm for costs to educate them due to a
 14 variety of factors, and so that was the third component
 15 at the time of the initial conversation.
 16 **Q. Was there any information the consortium**
 17 **was lacking at the time that it developed the new**
 18 **funding system that you wish you had?**
 19 A. We knew it at the time, and in hindsight,
 20 we still believe it to be important, and that's what
 21 are the actual costs of educating a child with
 22 disability in Colorado. Both individually as well as
 23 in the aggregate, what does it cost in Colorado. The
 24 other thing we were lacking, and we just knew it, just
 25 didn't have time, was were there any studies relating

1943

1 to funding models anywhere in the country. We were
 2 aware of it. We didn't have the opportunity to
 3 research or seek it, nor was there information
 4 forthcoming.
 5 **Q. So you didn't have any information about**
 6 **what the actual costs of serving kids with disabilities**
 7 **in the state were?**
 8 A. No.
 9 **Q. And do you think that information would**
 10 **have been helpful?**
 11 A. Yeah. I think any time you build a system
 12 based on -- I think we built the system based on what
 13 was available, money that was available, and I think
 14 there's a flaw in any system when you don't build it on
 15 actual need. We didn't know what the actual need was.
 16 **Q. And do you know today what the actual need**
 17 **is?**
 18 A. We know -- we believe we know at least
 19 what it is because of what districts report as their
 20 expenses, and the high-cost information has given us
 21 more -- more information. But I would put that in an
 22 at least we know how much it cost.
 23 **Q. And we're going to look at some of that**
 24 **data in a few minutes.**
 25 A. Okay.

1944

1 **Q. So you started talking about some of the**
 2 **tiers that were created, and I'd like to talk about the**
 3 **system that was created in 2006. Can you start with**
 4 **the first tier, Tier A, and explain how that works?**
 5 A. The idea behind it was that every child
 6 with a disability would generate X number of dollars,
 7 and for purposes of the first year, it was \$1250 per
 8 child. That includes every child with an
 9 identified -- with an identified disability.
 10 **Q. So no matter what the disability, every**
 11 **child in the state is entitled to \$1250, and is that on**
 12 **top --**
 13 A. The district is entitled?
 14 **Q. Right, the district.**
 15 A. Uh-huh.
 16 **Q. Is that on top of the per-pupil funding**
 17 **they get?**
 18 A. That's on top of the district's PPOR,
 19 per-pupil operating revenue.
 20 **Q. And is that still the amount today --**
 21 A. Yes.
 22 **Q. -- that's allocated to Tier A students?**
 23 A. Yes.
 24 **Q. And can you tell me about Tier B?**
 25 A. Tier B, the idea that we developed was

1945

1 that some disability areas are typically more expensive
 2 to serve. And we identified eight disability areas
 3 which still exist today, and the optimum dollar amount
 4 that we attached to them was to work towards \$6,000 per
 5 child in the Tier B category, and that would be on top
 6 of the \$1250 that they would already be generating
 7 because they're included in the Tier A.
 8 **Q. And only for people that have -- students**
 9 **that have disabilities that fall into one of those**
 10 **eight categories?**
 11 A. Correct.
 12 **Q. Does every Tier B student get \$6,000?**
 13 A. It started with, I think, 5 percent the
 14 first year. And now we're at, I think, 15 percent. It
 15 translates to \$917 per child.
 16 **Q. So 15 percent of the \$6,000?**
 17 A. Correct.
 18 **Q. And you said that's \$919?**
 19 A. 917, I believe. I'd have to read one of
 20 our reports, but I believe that's the correct amount.
 21 **Q. And then you mentioned the high-cost pool.**
 22 **Can you explain that, please.**
 23 A. The consortium knew that there were some
 24 students that had tremendously high-cost educations
 25 attached to them in order for them to receive

1946

1 educational benefit, and we thought if we could
 2 convince the legislature to create a pool of \$2 million
 3 and create an application process, that districts might
 4 be able to get immediate relief because of the -- for
 5 these really high-cost kids that we thought were more
 6 of an outlier concept than the norm.
 7 And so the first year, our recommendation
 8 was \$2 million for out-of-district high-cost kids.
 9 **Q. Why would a district serve a student out
 10 of district in a high-cost placement?**
 11 A. Typically kids that are being served in
 12 facilities have -- out-of-district placements have
 13 a -- usually it's because of a behavioral or a mental
 14 health challenge that poses a risk to them or a risk to
 15 other kids, and their needs -- or to adults, and their
 16 needs are so intensive that a district doesn't have the
 17 resources to meet those child's -- that child's
 18 educational needs.
 19 **Q. So the district couldn't serve that child
 20 within the district programs?**
 21 A. Without perhaps creating their own
 22 customized program to meet that child's needs.
 23 **Q. Can you give some examples of some
 24 high-cost placements?**
 25 A. Placements? In the Denver metro area,

1947

1 three come to mind. One is Laradon, another is the
 2 Tennyson Center, and another is The Joshua School.
 3 **Q. Can you give us a sense of what one of
 4 those placements would typically cost in a year?**
 5 A. Probably anywhere from 28, 29,000 a year,
 6 upwards of 75, 80,000. And that would be a typical
 7 range.
 8 **Q. And are districts also reimbursed for
 9 in-district high-cost placements?**
 10 A. An unintended consequence of that first
 11 year was creating -- two things that happened. We were
 12 creating winners and losers, which we didn't intend,
 13 because there just wasn't enough money to go around for
 14 out-of-district placements. But we also realized
 15 pretty quickly that especially rural districts didn't
 16 have access to any facilities, and, in fact, they were
 17 having to develop in-district high-cost programs to
 18 serve students because there was no other place to
 19 contract, serve their needs in perhaps a more
 20 cost-efficient manner.
 21 So in 2008, I believe it was 2008, we
 22 recommended that a second high-cost pool be created,
 23 really merging the two, and create a \$2 million
 24 in-district high-cost pool to be added to the
 25 \$2 million out-of-district high-cost pool.

1948

1 **Q. So there's 2 million allocated for
 2 out-of-district high-cost placements and 2 million
 3 allocated for in-district high-cost placements?**
 4 A. Yes. And I believe, even though there
 5 were economic hardships in the state at the time, it
 6 was very clear from the legislators who were
 7 representing rural areas that they had heard from their
 8 districts that there was no relief coming to them for
 9 these high-cost kids.
 10 **Q. How are high costs defined for purposes of
 11 allocating the high-cost pool?**
 12 A. There's two different thresholds. For an
 13 out-of-district child, the threshold that we set was
 14 \$40,000. So it's a student whose educational costs or
 15 costs to educate them are at or above or exceed
 16 \$40,000. A high-cost in-district child would be whose
 17 educational costs are at or exceed 25,000 per year.
 18 **Q. And are you familiar with the process for
 19 distributing the funds that are in the high-cost pool?**
 20 A. Yes, I am.
 21 **Q. Can you please explain that process.**
 22 A. Do you want me to explain? There's an
 23 application process so that in a given spring,
 24 districts are applying on an individual student basis
 25 according to their costs for the previous school year

1949

1 So it's always one year in arrears. And there is a
 2 calculation -- keep in mind this Special Education
 3 Fiscal Advisory Committee includes two business folks,
 4 one from rural, one from larger urban/suburban, and
 5 they helped us develop this formula.
 6 And the idea is to look at the impact of
 7 that child's high costs against the entire district or
 8 administrative unit's operating budget. So it's part
 9 to whole. Impact of that child's costs on the
 10 district's operating or administrative unit's operating
 11 costs. Or operating revenue. I'm sorry, operating
 12 budget.
 13 **Q. You talked about Tier A, Tier B, and the
 14 high-cost pool. Are there any other additional
 15 components to the special education funding structure
 16 that was created in 2006?**
 17 A. There's a concept called educational
 18 orphans, and there's money allocated to address the
 19 needs of children whose parents are incarcerated, whose
 20 parents have lost parental responsibility. Basically,
 21 a child who does not have a parent to advocate for them
 22 in the educational system. And there's also a shared
 23 responsibility for Child Find between school districts
 24 and the Department of Human Services.
 25 **Q. And how much state funding is available to**

1950	1952
<p>1 serve educational orphans?</p> <p>2 A. I believe it's \$500,000.</p> <p>3 Q. Is the 2006 special education funding</p> <p>4 structure that you just laid out, is that still in</p> <p>5 effect today?</p> <p>6 A. Yes.</p> <p>7 Q. Have there been any significant changes to</p> <p>8 the structure since 2006?</p> <p>9 A. The addition of the in-district high-cost</p> <p>10 pool.</p> <p>11 Q. And is that the only significant change</p> <p>12 since then?</p> <p>13 A. Yes.</p> <p>14 Q. Have there been any significant changes in</p> <p>15 state mandates that affect children with disabilities</p> <p>16 since 2006?</p> <p>17 A. Student achievement targets have certainly</p> <p>18 ramped up because of the state's decision to, as I</p> <p>19 said, change the age for looking at transition to</p> <p>20 age 15, that's an increase. The answer to your</p> <p>21 question is yes, there have been an increase.</p> <p>22 Q. What is your opinion of the structure of</p> <p>23 the current special education funding system in</p> <p>24 Colorado? And by structure, I'm bifurcating the amount</p> <p>25 of funding versus just the way the system was set up.</p>	<p>1 And there certainly wasn't money coming from the state.</p> <p>2 Q. So we talked about the structure. Now</p> <p>3 focusing on the sufficiency of funding, do you have an</p> <p>4 opinion as to the sufficiency of special education</p> <p>5 funding in Colorado?</p> <p>6 A. I do.</p> <p>7 Q. What is that opinion?</p> <p>8 A. It's insufficient.</p> <p>9 Q. And why do you say that?</p> <p>10 A. I'll use Littleton as an example. In</p> <p>11 2010, 17 percent of our actual costs were funded from</p> <p>12 the state and 14 percent of our actual costs were</p> <p>13 federally funded, which left approximately, if you do</p> <p>14 the math, 69, 70 percent of our costs were from the</p> <p>15 local share.</p> <p>16 Q. And what impact has that had on Littleton?</p> <p>17 A. There's a -- there's a concept that I've</p> <p>18 always used called payer of last resort, and that's</p> <p>19 that under federal and state law, we must do whatever</p> <p>20 we need to do for a child with a disability for them to</p> <p>21 receive educational benefit. And so the net effect of</p> <p>22 that is that the school district must fund whatever</p> <p>23 services and supports are written in that child's IEP,</p> <p>24 and oftentimes I believe it's to the detriment of</p> <p>25 general education students.</p>
1951	1953
<p>1 So first I'd like you to address the way the system was</p> <p>2 set up.</p> <p>3 A. It was set up with good intentions. It</p> <p>4 was the best we could do at the time. It's never gone</p> <p>5 to scale, meaning Tier B has never been fully funded</p> <p>6 for us to know if that concept even works.</p> <p>7 Q. With the benefit of hindsight, is there</p> <p>8 anything you would change now about the special</p> <p>9 education funding system that you were involved in</p> <p>10 creating?</p> <p>11 A. If there -- if there were a means, and I</p> <p>12 think we've recommended it, we would -- we would still</p> <p>13 recommend a study of what the actual costs are</p> <p>14 particularly around those Tier B kids and whether</p> <p>15 that's the appropriate model. We would like to know</p> <p>16 what the actual costs are of serving kids with</p> <p>17 disabilities in Colorado. And I believe there is an</p> <p>18 interest in are there other funding models that are</p> <p>19 proven elsewhere in the country that are also</p> <p>20 effective.</p> <p>21 Q. And you didn't have an opportunity to look</p> <p>22 at those other funding models when you --</p> <p>23 A. Didn't have an opportunity. And to do so,</p> <p>24 had we had time, would have cost money. And I didn't</p> <p>25 see districts stepping up to fund that kind of thing.</p>	<p>1 When I look at the budget reduction</p> <p>2 efforts in Littleton, there was greater pressure on the</p> <p>3 general education side, raise class size, eliminate</p> <p>4 literacy specialists, reduce instructional coaches,</p> <p>5 than there was on special education, because we had</p> <p>6 IEPs that had to be implemented. And when you lay them</p> <p>7 end to end, they're a certain number of hours in the</p> <p>8 week, so you have to have a certain number of staff in</p> <p>9 order to implement those contracts.</p> <p>10 So I think the net effect has been taking</p> <p>11 resources from general education to fund or backfill</p> <p>12 the special education shortfall.</p> <p>13 Q. Are you aware of any state studies on</p> <p>14 special education funding in Colorado?</p> <p>15 A. The only formal one I'm aware of is the</p> <p>16 Mountain Plains study in 2000.</p> <p>17 Q. Can you please look at Exhibit 28. Which</p> <p>18 has been admitted into evidence. On the Elmo.</p> <p>19 A. Oh. Okay.</p> <p>20 Q. Is this the study you're referring to?</p> <p>21 A. Yes.</p> <p>22 MS. BEZOZA: Your Honor, may I approach?</p> <p>23 THE COURT: Yes. Thank you.</p> <p>24 Q. (BY MS. BEZOZA) So the study was</p> <p>25 completed in 2000?</p>

1954

1 A. Yes.

2 **Q. Who conducted the study?**

3 A. Mountain Plains Regional Resource Center.

4 And I think it's Spectrum Consulting.

5 **Q. Can you look now at page L2993. Can you**

6 **please read for us the executive summary of the study.**

7 A. "The Colorado State Legislature mandated

8 that the Colorado Department of Education conduct a

9 study of funding education programs for children with

10 disabilities. In this study, we: No. 1, describe the

11 characteristics of the special education students

12 served; No. 2, review Colorado's current system of

13 funding special education; No. 3, review the results of

14 a survey given to representatives of each of the 54

15 administrative units and members of the Colorado

16 Special Education Advisory Committee; No. 4, evaluate

17 the current system of funding; No. 5, review the

18 special education funding systems utilized by the other

19 states; and No. 6, provide recommendations for reform."

20 **Q. Are you familiar with what this study**

21 **found with respect to special education in Colorado?**

22 A. Yes.

23 **Q. Ask you to look at . . . If you look at**

24 **Section 1.3, how is the effectiveness of Colorado's**

25 **special education funding rated?**

1955

1 A. As I interpret this, there were 13

2 criteria, and they -- they identified that five of the

3 13 criteria were in place or were passed, but that

4 eight -- in eight of the 13 criteria, the funding

5 system failed.

6 **Q. And can you tell us the eight areas in**

7 **which Colorado's special education funding system**

8 **failed?**

9 A. Do you want me to read them?

10 **Q. Yes, please.**

11 A. "The current funding system is not

12 understandable. The ability to pay for special

13 education services has become dependent on local

14 wealth, and is therefore potentially inequitable.

15 No. 3, the amount of ECEA moneys," that's Exceptional

16 Children's Education Act, "moneys distributed to each

17 administrative unit is inadequate. No. 4, students

18 must be labeled prior to being eligible to receive

19 special education services. No. 5, the amount of money

20 received from the state ECEA funds is not linked to

21 actual costs. No. 6, the cost control criteria are not

22 meant for high growth districts and out-of-district

23 placements. No. 7, school districts are neither

24 punished nor rewarded for student outcomes. And No. 8,

25 regular and special education funding sources are not

1956

1 integrated."

2 **Q. Do these eight issues that were identified**

3 **in 2000, the areas in which Colorado failed in the**

4 **study, are they still issues today?**

5 A. I believe they are.

6 **Q. All eight of them?**

7 A. I believe they're all still issues.

8 **Q. Can you please look at the first paragraph**

9 **in Section 1.5, and tell us what the contractor**

10 **recommended in this study.**

11 A. I think the most critical sentence is the

12 first one, and it's that they are recommending that

13 Colorado increase their state funding to reduce the

14 local cost share closer to the national average, which

15 was 32 percent at the time.

16 **Q. And has that happened?**

17 A. No. That hasn't. In fact, my own

18 observation would be it's interesting that the costs

19 of -- the revenue from the state and the feds together

20 are close to that 32 percent. It's almost the reverse

21 of the recommendation is the case today.

22 **Q. So you mean it's a flip of who's paying?**

23 A. Above, yes.

24 **Q. Have there been any subsequent studies in**

25 **Colorado of this type?**

1957

1 A. I'm not aware of any.

2 **Q. To your knowledge, is there any more**

3 **recent statewide data on special education costs**

4 **available to the legislature today?**

5 A. The only -- only data I'm aware of is in

6 the Special Ed Fiscal Advisory Committee reports.

7 **Q. And is that CFAC?**

8 A. Yes, CFAC.

9 **Q. And I believe you -- you testified earlier**

10 **that you're a member of CFAC; is that correct?**

11 A. Yes. Through June of 2011.

12 **Q. Can you please describe the work of the**

13 **CFAC committee.**

14 A. It's twofold. One is to analyze the

15 applications for high cost, make sure they're accurate,

16 and then have CDE do the calculations around percentage

17 of the impact of that individual application cost to

18 that district or administrative's -- the administrative

19 unit's total budget. The second is to analyze the

20 applications and analyze trends and prepare an annual

21 report to the state board and to the legislature.

22 **Q. Can you please look at Exhibit 92, which**

23 **has been admitted into evidence. What is this**

24 **document?**

25 A. It's the December 2010 CFAC report to the

1958

1 state board and legislature.
 2 MS. BEZOZA: May I approach, Your Honor?
 3 THE COURT: Yes.
 4 **Q. (BY MS. BEZOZA) Is this the most recent**
 5 **CFAC report that has been issued?**
 6 A. Yes. The next one will be either November
 7 or December of this year.
 8 **Q. And what was your role, if any, in**
 9 **drafting this report?**
 10 A. I was one of the authors.
 11 **Q. So you laid out for us earlier what the**
 12 **different tiers are. Can you please tell me your**
 13 **opinion of the sufficiency of the \$1250 for each Tier A**
 14 **student.**
 15 A. I believe it's insufficient. It has
 16 remained unchanged since 2006. And costs have clearly
 17 continued to increase.
 18 **Q. And what about Tier B? What's your**
 19 **opinion on the sufficiency of the amount of funding for**
 20 **Tier B?**
 21 A. It's -- it's tremendously underfunded and
 22 doesn't begin to meet the intent of the \$6,000 per
 23 pupil.
 24 **Q. And why is that?**
 25 A. Insufficient funds.

1959

1 **Q. Can you look at page 5 of the CFAC report,**
 2 **please. At the paragraph above the section entitled**
 3 **"High Cost Out-of-District and In-District**
 4 **Reimbursement." Can you explain what -- what you were**
 5 **talking about in that paragraph?**
 6 A. This was data that the Colorado Department
 7 of Education staff brought to the CFAC committee. And
 8 basically, it talks about this legislative council, the
 9 Colorado Legislative Council's report, this was July of
 10 2009, related to the excess costs for children of
 11 disabilities. What it identified was a 66 percent gap
 12 between the available funding and the average cost to
 13 educate a child with disabilities in Colorado.
 14 **Q. And what's the significance of that gap?**
 15 A. That 66 percent funds, and I think there's
 16 a dollar figure here, it equates to 523,143,000, that
 17 that money must come from the local district share.
 18 **Q. And that's -- and I believe you testified**
 19 **earlier --**
 20 A. The local share.
 21 **Q. -- the impacts that having to fund those**
 22 **costs from the general fund have?**
 23 A. And that's general fund money that has to
 24 come from somewhere. And typically what we've heard
 25 over the years is that it comes from redirection of

1960

1 resources from other intended purposes for general
 2 education programs.
 3 **Q. Can you look now, please, at page 11. And**
 4 **can you explain this chart on "High Cost Reimbursement**
 5 **for Special Education Students in Out-of-District**
 6 **Placements"?**
 7 A. For this particular year, in the "Amount
 8 Funded" column, it lists how much each administrative
 9 unit was going to get or was being recommended to be
 10 given for their -- in response to their high-cost
 11 applications. And then the far right column that says
 12 "Amount Not Funded" is the amount that those same
 13 districts were not -- that had -- they had applied for
 14 that money, but they were not going to receive any of
 15 that money in reimbursement for high costs.
 16 And essentially what you see is in the
 17 "Amount Funded" column, that's -- that's the money that
 18 was being recommended to go back to school districts
 19 until the 2 million ran out. So it wasn't stating that
 20 the amount not funded wasn't a significant need for
 21 those school districts, but using the formula of
 22 percent to the whole, percent of impact of the
 23 individual high-cost student to the district's total
 24 operating budget, those to the far right were less
 25 impactful, but not necessarily not impactful. Do I

1961

1 make myself -- does that make sense?
 2 **Q. So let's take Denver for example. Denver**
 3 **was not -- didn't receive any funding from the**
 4 **high-cost pool in that year; is that correct?**
 5 A. Correct.
 6 **Q. And what's your understanding of why that**
 7 **is?**
 8 A. Because they're a larger system and their
 9 budget is higher. You have to realize that amount not
 10 funded, at one seventy-one seven, that's maybe one
 11 child, but it also may be multiple applications. And
 12 so each percent impact, the percent to the whole
 13 impact, is judged on an individual student application.
 14 So a larger district is going to have a
 15 less -- less of an impact than a smaller district.
 16 **Q. So there are a number of districts that**
 17 **receive no money from the high-cost pool even though**
 18 **they have high costs?**
 19 A. Yes. And you can see those districts
 20 listed on this chart. And what we aren't sure about is
 21 if there are other districts who also may have decided
 22 not to request high-cost reimbursement. Because they
 23 didn't think they were going to get reimbursements, so
 24 they didn't submit an application.
 25 **Q. In this particular year, how much was not**

1962

1 **funded for out-of-district placements?**
 2 A. 2,237,000.
 3 **Q. And what is your opinion on the**
 4 **sufficiency of \$2 million for high-cost out-of-district**
 5 **placements?**
 6 A. It's insufficient. What we know for this
 7 particular year and for those districts applying, this
 8 is at least how much high-cost kids are costing
 9 districts. And that's a threshold of \$40,000 or more.
 10 That totally ignores kids who were in a -- what I call
 11 high cost, but still under the 40,000, kids in the
 12 \$30,000 range, \$20,000 range. That doesn't even factor
 13 those kids in, and many districts would call them high
 14 cost as well.
 15 **Q. Because the district can't apply for those**
 16 **kids because they don't meet the threshold?**
 17 A. They don't meet the threshold of 40,000.
 18 **Q. Why did you use the words "at least"?**
 19 A. Because we believe there may be -- even
 20 for those districts who applied -- and I'll speak for
 21 Littleton. There were a couple of kids who were right
 22 at the \$40,000 threshold that I did not submit
 23 applications for, because I knew that weren't going to
 24 have the impact of -- percent impact to our budget that
 25 the higher cost kids were -- would have. And I believe

1963

1 in talking to other directors, they made the same
 2 choices. The same concerns.
 3 It's a lot of work to submit an
 4 application. We believed there may be districts, as I
 5 said, who aren't submitting applications at all because
 6 they don't think they will receive any money from the
 7 reimbursement pool.
 8 **Q. Let me look now at the high-cost**
 9 **reimbursements for in-district placements. Can you**
 10 **explain what this chart shows?**
 11 A. Same chart as the out of district. The
 12 amount funded lists the districts or BOCES that were
 13 receiving reimbursement up to 2 million for high-cost
 14 kids being served in district who cost \$25,000
 15 threshold or more. And then the far right column lists
 16 high-cost -- the cumulative high-cost applications for
 17 each of those districts or BOCES that were not funded.
 18 **Q. And how much was not funded in this**
 19 **particular year?**
 20 A. 8,376,900. So 8,377,000.
 21 **Q. What is your opinion on the sufficiency of**
 22 **\$2 million for in-district high-cost placements?**
 23 A. Tremendously short.
 24 **Q. What are the impacts, if any, of**
 25 **insufficient state funding for high-cost kids?**

1964

1 A. It's like I said before, there's no such
 2 thing as a district saying we're not going to serve
 3 you. And many of these kids, if not all, represent
 4 kids with significant disabilities, which commonly
 5 represent safety issues for themselves or for others.
 6 Or their health needs are so severe that they need
 7 really intensive support. So the district has no
 8 choice; they must pay for these costs. And there's
 9 only one other place for these costs to come from, and
 10 that's from their general fund.
 11 **Q. Can you look now at the recommendations on**
 12 **page 14? Can you please explain why the committee**
 13 **decided to make two sets of recommendations, short term**
 14 **and long term.**
 15 A. We debated about this and thought that it
 16 was important to recognize the current economic
 17 uncertainties, and so we decided to -- to do -- on two
 18 tiered, or short-term, long-term set of
 19 recommendations.
 20 **Q. Can you please -- can you please walk us**
 21 **through the long-term recommendations of the committee.**
 22 A. The first one was related to Tier A
 23 funding and that it should increase with the same
 24 percentage increase as the total ECEA allocation or at
 25 the rate of inflation, whichever is less. And then any

1965

1 appropriation beyond that should be applied to Tier B.
 2 The second recommendation is to continue
 3 to seek additional funding for Tier B so that higher
 4 than that 15 percent could be applied towards a greater
 5 share of the \$6,000, in other words, more than 917 per
 6 child. And then No. 3 is the obvious, as a result of
 7 those applications for in-district and out-of-district
 8 high-cost kids, to increase the funding appropriation
 9 for high-cost reimbursements.
 10 **Q. Are these recommendations consistent with**
 11 **prior recommendations --**
 12 A. Yes.
 13 **Q. -- of CFAC to legislature?**
 14 A. Yes, they are.
 15 **Q. Have they ever been implemented?**
 16 A. No.
 17 **Q. Can you please look at Exhibit 91, which**
 18 **has been admitted into evidence. And tell us what this**
 19 **document is.**
 20 A. It's a PowerPoint presentation that in
 21 February 2008 was presented to the state board of
 22 education. And then it was also used in 2009 for a
 23 presentation to the Interim School Finance Committee.
 24 **Q. And what was your role with respect to**
 25 **this presentation?**

1966

1 A. I helped develop it as one of the
 2 consortium members, and I was also one of the
 3 co-presenters.
 4 MS. BEZOZA: Your Honor, May I approach,
 5 please.
 6 THE COURT: Yes.
 7 **Q. (BY MS. BEZOZA) Can you please look at**
 8 **the page marked "Committee Recommendations." And there**
 9 **are two pages of recommendations. We'll start with the**
 10 **first page and then look at the second. Can you tell**
 11 **me whether any of these recommendations have been**
 12 **implemented?**
 13 A. The third bullet, keeping eligible Tier B
 14 categories as currently defined, was implemented.
 15 Tier C, retaining the current definition for high-cost
 16 out-of-district students was also implemented.
 17 **Q. So the recommendations to keep definitions**
 18 **status quo have been implemented. What about the other**
 19 **recommendations to increase funding?**
 20 A. No, they were not implemented.
 21 **Q. And can you explain the recommendation**
 22 **about conducting a further study?**
 23 A. Yeah. I think I mentioned this earlier.
 24 Because of the context with which we worked with
 25 Representative Pommer to develop the funding model, we

1967

1 thought at some point we should recommend let's do
 2 further study. Are these Tier B -- is this Tier B
 3 category, is it the right one, and what about the
 4 intensity of need. We needed to do further study
 5 related to the appropriateness of this decision around
 6 Tier B.
 7 **Q. And has a study ever been conducted, to**
 8 **your knowledge?**
 9 A. No, it hasn't.
 10 **Q. Here's the second page of recommendations.**
 11 **Same question. Have any of those recommendations been**
 12 **implemented?**
 13 A. The high-cost in-district funding was
 14 agreed to, and \$2 million was appropriated.
 15 Educational orphans has been kept the same in
 16 accordance with those recommendations.
 17 **Q. And, again, what's your opinion of the**
 18 **sufficiency of the \$2 million for in-district**
 19 **placements?**
 20 A. Tremendously short.
 21 **Q. Did you write an expert statement in the**
 22 **Lobato case?**
 23 A. Yes.
 24 **Q. This is Exhibit 4800, which has already**
 25 **been admitted into evidence. Can you look at No. 13 on**

1968

1 **page 17 of Exhibit 4800. Does this appear to be the**
 2 **expert statement that you wrote in this case?**
 3 A. Yes, it does.
 4 MS. BEZOZA: Your Honor, may I approach,
 5 please.
 6 THE COURT: Yes.
 7 **Q. (BY MS. BEZOZA) So I've given you an**
 8 **excerpt from the exhibit, which is your statement in**
 9 **this case. And if you'll turn to page 18, please. At**
 10 **the end of the paragraph that begins "State studies,"**
 11 **there's a lists of costs that you state have**
 12 **continually increased over time. I'd like to walk**
 13 **through some of these costs.**
 14 **Can you start with the first one, legal**
 15 **obligations under IDEA, and explain what you mean by**
 16 **the costs related to those?**
 17 A. That basic concept of FAPE, Free
 18 Appropriate Public Education, and the concept of zero
 19 reject means you have to provide whatever it takes for
 20 that child to benefit from their education. A
 21 phenomenon we're seeing, and I think it's true across
 22 the country, it certainly is in Colorado, is that we're
 23 seeing kids with increasing complex disabilities that
 24 are more costly to serve. And so you go to the
 25 fundamental requirements of IDEA. It's costing us more

1969

1 money to serve more complex disabilities, as well as
 2 just inflationary cost.
 3 **Q. So your costs to serve the special**
 4 **education population have gone up --**
 5 A. Yes.
 6 **Q. -- due to changing demographics?**
 7 A. Yes.
 8 **Q. Can you explain the second one on that**
 9 **list, increased state and federal legal requirements?**
 10 A. Let me give you a couple of examples.
 11 IDEA, the federal law, was reauthorized in 2006.
 12 There's a couple of pieces I'll just give you as
 13 example. School districts are obligated to identify
 14 and provide supports for any child with a disability
 15 who's attending a private school in their school
 16 district regardless of where the child lives.
 17 We have obligations for evaluations that
 18 are continuous year, calendar year. They used to be
 19 driven by a school year. So you have 60 days to do an
 20 evaluation, and if you get the referral on June 1, but
 21 you were out of school May 15, you have to incur costs
 22 for staff to do the evaluation once the parent signs
 23 their consent, regardless of whether you have staff on
 24 or not.
 25 The response to intervention, which we may

1970

1 talk about a little bit later, researched-based
 2 interventions certainly are costly, to research and
 3 implement. Professional development being that.
 4 **Q. And is that a new requirement?**
 5 A. Yes, it is. It's a new requirement.
 6 State requirements have to do with what I'd mentioned
 7 before, around accreditation and student achievement
 8 outcomes. Any of the state -- state requirements, in
 9 addition to the indicators that the -- I'm getting --
 10 **Q. Can you tell us what you mean by**
 11 **indicators?**
 12 A. Yeah. There are 20 federal indicators
 13 that the state has identified with the feds that they
 14 will monitor school districts or administrative units
 15 on. So we are being held to the standards that are set
 16 by those indicators. And they haven't anything to do
 17 with graduation rate, dropout rate, disproportionality,
 18 meaning are we over-identifying children of certain
 19 ethnicity compared to their membership in the whole.
 20 That transition piece, do we have IEPs
 21 written a certain way within a certain time frame for
 22 kids that are transitioning to postsecondary starting
 23 with the age of 15. How quickly are we resolving
 24 disputes. A lot of it is timeline and
 25 compliance-based

1971

1 **Q. So these are requirements that the federal**
 2 **government requires of the state and the state, in**
 3 **turn, requires of its districts?**
 4 A. Yes. That the state is required to
 5 oversee as part of their state education agency
 6 responsibilities.
 7 **Q. Are there any other state requirements**
 8 **that you can think of that have increased since the**
 9 **special education funding system was developed in 2006?**
 10 A. The fact that you're asking me says there
 11 probably is, but my mind is blank.
 12 **Q. Is CAP4K a requirement that applies to**
 13 **kids with disabilities?**
 14 MR. HEINKE: Objection, Your Honor.
 15 Leading.
 16 THE COURT: It is. Sustained. Why don't
 17 you rephrase the question.
 18 **Q. (BY MS. BEZOZA) Can you think of any**
 19 **other state requirements?**
 20 A. Yes.
 21 **Q. Can you tell us what some of those are?**
 22 A. As I had said, any laws that are passed
 23 related to any student in the K-12 system, unless it
 24 specifically excludes children with disabilities, which
 25 I doubt that it would, applies to children with

1972

1 disabilities as well. So that will also include 191,
 2 which is on the horizon, CAP4K, and others.
 3 **Q. What is your opinion with respect to the**
 4 **increase in compliance requirements?**
 5 A. I believe that accountability measures are
 6 important, but I think they need to be the right ones
 7 related to student outcomes. And when we're held
 8 accountable for compliance that has very little to do
 9 with an outcome of a student's -- evidence of that
 10 child receiving educational benefit, then I push back
 11 on that, and I'm not sure that's the best use of
 12 limited resources.
 13 **Q. How do you think the focus on compliance**
 14 **impacts your ability to serve kids with disabilities?**
 15 A. It takes -- it takes resources away from
 16 our ability to create programs that -- what I would say
 17 truly meet children's needs.
 18 **Q. How, if at all, would additional resources**
 19 **help with respect to the compliance requirements?**
 20 A. We would be able to -- ask me the question
 21 again, if you don't mind.
 22 **Q. What additional resources have an impact**
 23 **on your ability to meet compliance requirements?**
 24 A. They would have an impact on our ability
 25 to meet compliance requirements because they would

1973

1 bring us necessary resources. For example, to purchase
 2 a data collection system and train through professional
 3 development staff to collect data over time. But it
 4 would also free up local resources to create necessary
 5 programs to do what I would consider truly meet the
 6 needs of children with disabilities.
 7 **Q. The next cost on the list is impact of**
 8 **critical judicial decisions. Can you explain what you**
 9 **mean there?**
 10 A. Yeah. I can give you three right off the
 11 top of my head. One is called -- they were U.S.
 12 Supreme Court. One is Timothy W. from 1989, and that
 13 finding was that no child is too disabled to be in an
 14 educational system. I'm paraphrasing. The next one I
 15 would say is Garrett F., which is 1999, and that's that
 16 a school district must provide up to any medical
 17 service, but not including a physician, but up to any
 18 medical service that a child needs in order to be in
 19 their educational system. That's resulted in full-time
 20 nurses for children who meet the criteria under
 21 Garrett F.
 22 And then a recent one in 2009, Forest
 23 Grove, and that was that reimbursement to a parent for
 24 a private placement is not conditioned upon that child
 25 having to have received services from a school

1974

1 district.

2 **Q. And going down the list, the next you**

3 **mention is cost shifting from other agencies. Can you**

4 **explain what you mean there?**

5 A. We've seen as a function of probably --

6 I'd call it managed care and limited resources, that

7 agencies such as Department of Human Services or mental

8 health have changed their eligibility criteria to

9 narrow it, or perhaps they've capped the amount of

10 service they'll provide, and if a child is receiving

11 therapy and they need that mental health support to

12 benefit from their education, and the agency, mental

13 health or human services, has terminated it, it falls

14 to the school district to pick up those costs if, in

15 fact, that therapeutic approach or whatever it is the

16 agency was providing is necessary for the child to

17 receive educational benefit.

18 **Q. And you've seen increased costs in that**

19 **area?**

20 A. An example of that would be a child in a

21 facility where the district was picking up educational

22 costs and human services was picking up the therapeutic

23 costs. Human services terminates it. The school

24 district's then obligated to pick up both therapeutic

25 and educational costs, oftentimes without any prior

1975

1 notice.

2 **Q. The next one on the list is trends of**

3 **students with increasingly complex and more costly**

4 **disabilities. Can you explain what you mean there?**

5 A. As I said, we are seeing an increase in

6 the numbers of kids with complex disabilities.

7 Probably the most commonly recognized one is children

8 with autism, and that's a very complex disability to

9 serve. In Littleton, we're seeing an increase in

10 children with physical disabilities, multiple

11 disabilities, and what that means is more than one

12 disability identified. Those are kids that are costly

13 to serve and are increasing in numbers.

14 **Q. Next on the list is shortage of qualified**

15 **special education personnel. Can you explain that one,**

16 **please.**

17 A. There is a shortage across the country,

18 especially in Colorado, of special education providers.

19 And costs related to that are incentives to attract and

20 retain staff. Might be loan forgiveness, it might be a

21 different salary schedule for people to come to

22 Colorado to be paid as a speech pathologist. This

23 is -- is a big issue for school districts, and it's

24 compounded for rurals, as I've been told by colleagues

25 of mine on the consortium, to create even greater

1976

1 incentives to get folks to come to rural areas and away

2 from the urban areas.

3 **Q. In what areas are there shortages of**

4 **special education personnel?**

5 A. A couple years ago there was only one

6 teacher candidate in the area of visually impaired

7 graduated in the entire state of Colorado. Common

8 areas are speech and language pathologists,

9 occupational therapists, certain types of special

10 education licensed teachers, deaf and hard-of-hearing

11 interpreters. If anybody wants to know a career to go

12 into, those would be the ones.

13 **Q. The next one on the list is the effect of**

14 **charter schools on local district funding. Can you**

15 **explain what you meant there?**

16 A. What I've seen is that charter schools for

17 the most part serve mildly disabled children, and they

18 don't -- they don't incur costs, the total costs, of

19 providing special education, which includes supports

20 for kids with more complex disabilities. That they're

21 only typically -- there's some exceptions, but

22 typically they're only serving kids with mild

23 disabilities.

24 **Q. What are the obligations of a charter**

25 **school with respect to special education?**

1977

1 A. They have the same obligations as a public

2 school system under federal and state law.

3 **Q. To what extent are charter stools in**

4 **Littleton serving your population with disabilities?**

5 A. We have two, and they're only serving kids

6 with mild disabilities in both school sites.

7 **Q. Are you familiar with the term "counseling**

8 **out"?**

9 A. I am.

10 **Q. Can you explain what that means, please.**

11 A. The idea behind that would be -- and we

12 particularly see this with kids in Littleton who are

13 applying from outside the district to enroll in one of

14 our charter schools, where the parent dearly wants that

15 charter school's methodology or size.

16 We have K-8 models. They like that idea,

17 and they have done whatever they've needed to do to get

18 the child in the program. And then what I see, and

19 this has been pretty consistent over the years, is a

20 message given to parents or students, your needs are

21 greater than we thought; we can't accommodate you here,

22 we can't allow your continued disciplinary infractions

23 to impact these other students. We're going to have to

24 counsel -- they don't say counsel you out. We're going

25 to help you find an alternative setting to meet your

1978

1 needs.

2 **Q. Are you aware of instances of counseling**

3 **out happening in Littleton?**

4 A. Yes.

5 **Q. Have you seen any trends in the numbers of**

6 **counseling out in Littleton?**

7 A. I would say it's stayed about the same.

8 I've seen two or three a year in Littleton.

9 **Q. Do you know whether counseling out is**

10 **currently happening in other districts in the state?**

11 A. The metro special education directors meet

12 monthly, and this is something that comes up from time

13 to time, where there's comments about "would you

14 believe" and "now what am I going to do" and "how do we

15 provide these supports," and I believe it is

16 continuing.

17 **Q. The last one on the list, costs of dispute**

18 **resolution, can you explain what you meant there?**

19 A. A due-process hearing typically can cost a

20 school district -- that's a dispute resolution concept,

21 where a parent can file a complaint against a school

22 district. Typically the costs for a due-process

23 hearing are about a hundred thousand dollars, give or

24 take. And if a school district loses it, they also

25 have to pay the parent's legal fees.

1979

1 What I'm seeing, and we did this in

2 Littleton, is that it's cheaper to settle a disputed

3 claim and reach a settlement agreement and contain your

4 costs than it is to go to a due process or some more

5 protracted expensive legal action. And it's a

6 cost-containment step in many cases for school

7 districts. It certainly has been in Littleton.

8 **Q. What is -- you just identified a number of**

9 **costs that have increased. What's the significance of**

10 **the fact that special education costs have continually**

11 **increased over time?**

12 A. Well, if you look at the revenue from the

13 state and the revenue from the feds, there is an

14 ever-widening gap of costs compared to revenue. And so

15 all that's left, then, is for local school districts to

16 continue to pick up a greater and greater share of

17 those costs.

18 MS. BEZOZA: Your Honor, I'm at a good

19 breaking point, if you're at a good breaking point.

20 THE COURT: Okay. That's good. It's

21 3 o'clock. Let's take about 20 minutes. 3:20, if that

22 works for everybody. Thank you.

23 (Recess taken, 2:58 p.m. to 3:23 p.m.)

24 THE COURT: Thank you. We're back on the

25 record. We are still on direct.

1980

1 **Q. (BY MS. BEZOZA) Ms. Hundley, please look**

2 **at Exhibit 10084. This exhibit has previously been**

3 **entered into evidence. Can you please tell us what**

4 **this is.**

5 A. It's the cover page to -- for a

6 presentation I made to the Littleton School District

7 Board of Education in May of this year.

8 MS. BEZOZA: Your Honor, May I approach,

9 please.

10 THE COURT: Yes.

11 **Q. (BY MS. BEZOZA) What was the purpose of**

12 **this presentation?**

13 A. They had asked for additional information

14 because of the increasing costs in special education

15 and the increased -- what I'd called encroachment into

16 the general fund. And they wanted some background.

17 **Q. Can you please look at page L5681. Can**

18 **you please explain what this slide shows?**

19 A. It's just a summary slide that picks up

20 our annual pupil count. For purposes of special

21 education, every December 1 there is a pupil count

22 conducted that's sorted by students by -- sorted by

23 student disability areas. So this represents our

24 infants through 21-year-olds by disability areas. And

25 I just picked the two bracketed years that we had and a

1981

1 midpoint.

2 **Q. And what does this chart show with respect**

3 **to trends in the different disability categories?**

4 A. Overall it shows the pupil count in

5 Littleton is decreasing. But if you look at some

6 particular disability areas, such as autism, multiple

7 physical, I believe, you'll see that since 1998, the

8 count has gone up.

9 **Q. And how has that affected costs?**

10 A. The costs have gone up. Even while the

11 pupil count has gone down. It also shows a trend of a

12 reduction in children with learning disabilities, which

13 is what I would hope, as well as for kids with speech

14 and language disabilities.

15 **Q. And what are the cost implications of**

16 **those decreases?**

17 A. Those are typically more mildly involved

18 kids who are less costly to serve.

19 **Q. Can you look now at L5684? Can you please**

20 **explain this slide, entitled "Impacts."**

21 A. I was trying to identify a couple of key

22 points for our board to understand related to both the

23 pupil count as well as the costs.

24 **Q. And so can you explain some of those**

25 **points that you made to the board?**

1982

1 A. So the second bullet on the left side made
 2 the point that we're doing a better job of identifying
 3 kids with learning needs at a younger age, and they're
 4 not being identified as kids with learning
 5 disabilities. But right below that, the piece about
 6 kids with complex disabilities increasing by such a
 7 significant percentage, 213 percent.
 8 And then I also wanted to point out to
 9 them that we've been very deliberate in trying to
 10 reduce our number of kids placed outside the district
 11 in high-cost facilities. And that shows that from 50
 12 kids in 2004, we've decreased the number of kids in
 13 facilities to 22 in this past school year.
 14 And then the last one is that in spite of
 15 all of that and the general decrease in the pupil
 16 count, I was giving them an average cost for students
 17 with disabilities in a facility over a 12, 13-year
 18 period, so that they would see even with the decrease
 19 in the total number of kids in a facility, 50 to 22, I
 20 wanted them to see the difference in cost and how it
 21 has increased.
 22 **Q. And so what is the average cost of a**
 23 **student in one of those facilities in Littleton?**
 24 A. Right now, \$28,349. Which, as any
 25 district director would tell you, is below the

1983

1 threshold for the out-of-district high-cost
 2 reimbursement pool.
 3 **Q. And that threshold is \$40,000?**
 4 A. 40,000.
 5 **Q. Can you look at L5688, please. This slide**
 6 **is entitled "ECA Expenditure/Revenue Comparison, 2000**
 7 **to 2010." Can you please tell us what this bar graph**
 8 **shows.**
 9 A. At a glance, what it was intended to show
 10 was the relatively flat revenue from the state and the
 11 continually increasing costs for special education
 12 students. And what it shows is the increasing gap
 13 between revenue and expenses, the gap which has to be
 14 picked up from general fund or local share funding.
 15 **Q. Can you please look at L5689. Can you**
 16 **tell us what this slide entitled, "Some Critical**
 17 **Comparisons," shows?**
 18 A. In the first set, it's intended to show
 19 the change in an average cost of a child with a
 20 disability. So in 2000, 6,137 was an average cost; in
 21 2010, 11,619. And those are all kids with disabilities
 22 in Littleton. So it's to show that increase.
 23 And I think a priority for me in giving
 24 the board this information was if you go back to that
 25 basic concept of supplement versus supplant, this

1984

1 average cost is on top of the general ed expenditures
 2 that are already allocated for that child for whatever
 3 access to general education. This is above and beyond.
 4 It's the special ed specific cost.
 5 **Q. So that's in addition to the per-pupil**
 6 **revenue --**
 7 A. Yes.
 8 **Q. -- for a child?**
 9 A. Yes.
 10 **Q. And what, approximately, is the per-pupil**
 11 **revenue?**
 12 A. In Littleton it's over 6,000, under 7.
 13 I'm not exactly sure what the current PPOR rate is.
 14 **Q. So, for example, in 2010, you would spend**
 15 **the approximately 6,000 per-pupil revenue plus 11,619,**
 16 **on average, per student?**
 17 A. Yeah. If you go back to that least
 18 restrictive environment value, you've got to look at
 19 how you can help these kids get into a general
 20 education program, and you to have to bear some of
 21 those general costs that comes from PPOR. The 11,619
 22 average cost is all supplemental, it's all special
 23 education-related, and it's on top of the basic
 24 educational funding stream for general education.
 25 **Q. So if that's an average cost, can you give**

1985

1 **us a sense of how high those costs can go per student?**
 2 A. Without breaching confidentiality, we have
 3 a couple of in-district kids who cost over \$50,000 to
 4 serve. We have several out-of-district kids who are
 5 over \$80,000 to serve.
 6 **Q. Why has the overage cost per child with a**
 7 **disability increased by 52 percent from 2005 to 2010?**
 8 A. As I said about the complex disabilities,
 9 and you saw them in the pupil count, that the kids with
 10 complex disabilities are increasing in number. And the
 11 cost to serve a child with autism, as an example, is
 12 much greater than serving a child unable to say their
 13 Rs, just as kind of a gross example. But there's such
 14 a range of need. And complex disabilities cost a lot
 15 more to serve.
 16 **Q. Looking at the decrease in pupil count,**
 17 **why has there been a decrease in the special education**
 18 **pupil count in Littleton?**
 19 A. Two reasons, I believe. One, we have
 20 really put an emphasis in special education to try and
 21 support general educators to intervene earlier with
 22 kids and not wait for them to fail. And that's a trend
 23 across the country. But we've tried to reduce the
 24 number of kids identified as learning disabled, and I
 25 think we've done that.

1986	<p>1 Also in this same period of time, 2 Littleton has been a district with decreasing 3 enrollment. So it's also a function of fewer kids. 4 Q. In the last section, how do you explain a 5 30 percent increase in district special education costs 6 in the last five years given that decline in 7 enrollment? 8 A. As I said, we have to do whatever it takes 9 to implement those IEPs, regardless of the costs. We 10 can't refuse to serve kids or refuse to implement 11 aspects of their IEP. So this is a reflection of what 12 the true costs are in Littleton to at least at a -- at 13 a basic level implement the IEPs as they're written. 14 Q. Let's now shift gears to achievement. Do 15 you believe the needs of all students with disabilities 16 in Colorado are currently being met? 17 A. No. 18 Q. And why is that? 19 A. If you think of student achievement as an 20 accountability tool and you look at the student 21 achievement data for students with disabilities, 22 there's a tremendous gap between students with 23 disabilities and all other kids, the aggregate for the 24 state. 25 Q. To what extent are districts held</p>	1988	<p>1 achievement, not outcome measures that truly are 2 compliance. Did you do that evaluation in 61 days as 3 opposed to 60, I think those aren't quite as 4 beneficial. 5 Q. Are you generally familiar with the 6 outcome data for students with disabilities in 7 Colorado? 8 A. Generally, yes. 9 Q. And what does that data show? 10 A. That there's a tremendous gap between 11 students with disabilities and all students in Colorado 12 in both literacy and in math. 13 Q. And what about growth? 14 A. It's relatively flat. 15 Q. And how would you describe the achievement 16 of students with disabilities in Littleton? 17 A. It's higher than the state average for 18 kids with disabilities. But there's still a 19 significant gap below the total -- the total 20 achievement rates for students that are in Littleton. 21 There is a gap between students with disabilities and 22 all other kids. 23 Q. And are you meeting AYP targets for 24 students with disabilities in Littleton? 25 A. No, we are not.</p>
1987	<p>1 accountable for the performance of students with 2 disabilities? 3 A. Well, starting with the adequate yearly 4 progress measurement, school districts are -- are 5 public -- they're publicly listed, in terms of whether 6 they meet their adequate yearly progress targets. So 7 that's one. The accreditation standards include the 8 student achievement scores, as well as the growth over 9 time, as well as the closing the gap. And there's 10 always been a gap between students with disabilities 11 and other kids. So that's a measurement that is there 12 as well. And then the fourth with the accreditation, 13 of course, is postsecondary readiness, and that's 14 something, also, that we are rated on. 15 Q. So are students with disabilities included 16 in all aspects of the state's accountability systems? 17 A. I believe they are, yes. 18 Q. In your -- excuse me. In your opinion, 19 how important is it that districts be held accountable 20 for the performance of students with disabilities on 21 state outcome measures? 22 A. I think it's very important. 23 Q. Why is that? 24 A. The outcome measures I'd qualify, though, 25 to be student performance around educational</p>	1989	<p>1 Q. And what does growth look like for kids 2 with disabilities in Littleton? 3 A. It's pretty flat. 4 Q. Do you believe Littleton could improve the 5 achievement of students with disabilities with more 6 resources? 7 A. Absolutely, I do. 8 Q. And why do you say that? 9 A. It would be very beneficial for us to have 10 embedded staff development for both general education 11 and special education staff working with kids with 12 disabilities. 13 Q. Can you explain what that means, "embedded 14 professional development"? 15 A. It's pretty well acknowledged that 16 conferences or one-time staff development offerings, a 17 workshop, if you may, are not an effective tool. And 18 we have found that embedding staff development on the 19 same topic over the course of a year, collecting data, 20 teachers sharing data, coming to conclusions together, 21 embedding it in their day, embedding it in their work 22 year, coaching them, mentoring them over time, are 23 really important and effective tools. 24 You add to that identification of 25 research-based strategies that are proven. You don't</p>

1990	1992
<p>1 just hand somebody a strategy and say go do it. It 2 takes tremendous training, ongoing coaching, ongoing 3 mentoring, teaching somebody what fidelity looks like, 4 teaching them how to effectively collect data, and then 5 what do you do with the data. Those would be examples 6 of how we would use greater resources.</p> <p>7 Q. How would you describe the level of 8 professional development you're currently offering in 9 Littleton in special education?</p> <p>10 A. With the minimum amount of funding we 11 have, it's the best we can do. But it's certainly not 12 at the level we would expect, and I think it's in part 13 why we have flat scores.</p> <p>14 Q. Are you able to redirect any professional 15 development dollars to special education?</p> <p>16 A. To date, no. With ten new standards on 17 the horizon, absolutely not. We're all competing for 18 the same pot of money that's pretty minimal.</p> <p>19 Q. Are you familiar with how Littleton's 20 achievement results for students with disabilities 21 compares to state averages for students with 22 disabilities?</p> <p>23 A. I believe we have a higher performance 24 than the state.</p> <p>25 Q. What's your understanding of why that is?</p>	<p>1 might need some level of intervention that's still 2 general education, but more targeted to their specific 3 needs at what's called Tier 2. Then there's about 4 5 percent of kids who might need a more intensive 5 targeted intervention, still, in many models, general 6 education, that's to have them be -- targeted 7 intervention to address whatever their learning 8 challenges are that are interfering with their ability 9 to make progress.</p> <p>10 Q. What is the relationship, if any, between 11 RtI and special education?</p> <p>12 A. In Colorado, RtI is required. Response to 13 Intervention is required to show that you've attempted 14 or implemented researched-based interventions for a 15 child over time prior to referring and considering them 16 as a child with a specific learning disability.</p> <p>17 Q. So is it only required with respect to 18 students with specific learning disabilities?</p> <p>19 A. It's encouraged strongly by CDE as a 20 generic model across the board, but it's required prior 21 to identifying a child with a specific learning 22 disability, yes.</p> <p>23 Q. Is that requirement under federal and 24 state law?</p> <p>25 A Yes States were given the option to do</p>
1991	1993
<p>1 A. Littleton is fortunate, in that many of 2 the kids who come to our schools have had some 3 foundational experience that others of higher poverty 4 or higher transiency or mobility may not have had. We 5 have parents who will seek out preschool. We have 6 parents who will pay for additional therapies for their 7 child. I think the -- the raw material, as it were, is 8 one component.</p> <p>9 We also have stability amongst our 10 educational staff who stay. We don't have a high 11 turnover in our educational staff in Littleton. I 12 guess those would be two basic reasons.</p> <p>13 Q. Now let's talk about response to 14 intervention. Can you tell me what that is?</p> <p>15 A. It's a concept that is in the federal law, 16 and the idea behind it is a tiered -- not funding now, 17 it's about interventions -- a tiered model of 18 intervening. And it's based on the concept that the 19 basic educational program, the basic regular classroom, 20 called the universal level or Tier 1, is designed or 21 calculated to meet the needs of approximately 22 80 percent of the kids. And then that leaves 23 20 percent.</p> <p>24 So typically 15 percent -- this is all 25 hypothetical in this model, but typically 15 percent</p>	<p>1 that, and Colorado elected to.</p> <p>2 Q. What types of resources are needed to 3 implement an RtI model?</p> <p>4 A. I call it the mythical 80 percent. 5 Because if you think about 80 percent of a classroom, 6 that's a mix of kids with a variety of learning styles 7 and learning needs. And it implies that every general 8 education teacher has the skills to individualize or to 9 differentiate, differentiate meaning to adapt, the 10 basic material for your need and your need and your 11 need, but make it individualized and present it in an 12 alternative way. And it just assumes that all general 13 education teachers can meet the needs of 80 percent of 14 kids.</p> <p>15 So that's one challenge. And there are 16 big implications there for professional development for 17 Tier 1, universal design. And then it -- it assumes 18 that there are identified and implemented 19 research-based interventions at Tier 2. There's some 20 challenges with that concept. It assumes that you have 21 staff to deliver it. It assumes you have professional 22 development money to develop that staff. And it 23 assumes that you've identified, purchased whatever the 24 costs are attached to that research-based intervention. 25 Tier 3, same thing. This assumes you have</p>

1994

1 staff, it assumes you have professional development
 2 over time, it assumes you have the research-based
 3 intervention to implement.
 4 **Q. So is it fair to say that you need to**
 5 **invest resources to provide those elements in order to**
 6 **implement an RtI framework?**
 7 A. Yes. Some people mistaken believe you
 8 just buy a program off the shelf and hand it to
 9 somebody. There are tremendous professional
 10 development implications over time to implement
 11 research-based interventions with fidelity, they way
 12 they were designed, the way the research says they need
 13 to be implemented.
 14 **Q. To what extent has Littleton implemented**
 15 **an RtI model?**
 16 A. I would say our primary focus continues to
 17 be at Tier 1. We believe that without a solid Tier 1,
 18 you can't implement Tier 2 and Tier 3. You've got to
 19 be able to address the bulk of your population's needs
 20 at Tier 1. Tier 2 and Tier 3 -- what I have heard
 21 consistently from my special education staff is that
 22 they are, by default, becoming the implementors for
 23 Tier 2 and Tier 3, because there are no
 24 interventionists, there are no specialists left,
 25 because of budget cuts, to implement interventions at

1995

1 Tier 2 and Tier 3. That's on top of their special
 2 education mandated caseloads.
 3 **Q. So it's the special education providers**
 4 **that are providing those interventions on top of their**
 5 **caseloads?**
 6 A. Yes.
 7 **Q. Are you generally aware of how RtI is**
 8 **being implemented in other districts across the state?**
 9 A. Based on -- on conversations we've had in
 10 the consortium and CFAC, the metro directors, and the
 11 leadership team, we compare notes all the time, what
 12 are you doing, what are your results, how's it going,
 13 and I think there's a varied result in districts across
 14 the state. Nobody is in lockstep with anybody else.
 15 I think everybody's giving it their best
 16 effort. Some districts are further along than others.
 17 Others are kicking and screaming every step of the way.
 18 But the requirement for specific learning disabilities
 19 is very much in law, and people are very cognizant of
 20 that.
 21 **Q. What types of assistance does CDE provide**
 22 **to districts with respect to special education?**
 23 A. It's primarily compliance. We have a
 24 joke: I'm here from CDE, and I'm here to help. Well,
 25 that's pretty much how it is right now. It's primarily

1996

1 around compliance. And the old days of technical
 2 support in hearing, vision, whatever area of
 3 disability, aren't as available to the field now. And
 4 in fairness to CDE, with the focus on increased
 5 compliance, they've had to reorganize. So they've
 6 taken specialists from specific areas and redirected
 7 them towards focusing on particular compliance areas.
 8 **Q. And so how does that translate to the**
 9 **district? How have you been impacted, if at all, by**
 10 **their reorganization?**
 11 A. We know they'll be there on time to
 12 monitor our compliance. We know that they'll be there
 13 with a quick report on what we did or didn't do. But
 14 in terms of technical support, I think they try,
 15 particularly in the area of autism, but I would say
 16 technical support from CDE is very minimal. It's not a
 17 criticism, it's an observation. That there's not staff
 18 to do it.
 19 **Q. Ms. Hundley, I'd like to look back at your**
 20 **expert report now. I apologize, I don't have the**
 21 **exhibit number, but this is your expert report, and**
 22 **there's the sentence that's highlighted, "In addition,**
 23 **there is insufficient funding to adequately plan for**
 24 **and meet the needs of children with significant health**
 25 **needs while at school, students with disabilities who**

1997

1 **require 504 plans, as well as students presenting a**
 2 **variety of discipline and attendance issues."**
 3 **I'd like to have you unpack each of those**
 4 **things. So let's start with students with significant**
 5 **health needs. Can you have explain what those**
 6 **challenges are?**
 7 A. There's an increase in juvenile diabetes
 8 in Colorado, particularly in the Denver metro area, and
 9 as an example, a child with juvenile diabetes has to
 10 have what's called a written health care action plan by
 11 a nurse.
 12 Keep in mind, Littleton, 15,500 kids, less
 13 than four FTE nurses. They have to consult with a
 14 child's physician, identify what their health need is
 15 and how that health need is going to be addressed in
 16 the school day. So a child with juvenile diabetes who
 17 is maybe 7 or 8 years old, that means delegating to
 18 office staff, because there's nobody else, to identify
 19 how to help that child do their own blood testing and
 20 how to regulate their blood sugar level according to
 21 whatever their treatment plan is.
 22 Another example would be a child with an
 23 allergy to, fill in the blank, peanuts, milk products.
 24 A net effect is peanut products are -- I can think of
 25 four schools in Littleton where the kitchen has to

1998	2000
<p>1 provide a dual set of menus, a dual set of offerings in 2 the cafeteria because of kids with peanut or nut 3 allergies. That includes pans, you name it, all 4 the -- all the utensils have to be free of 5 contamination. 6 The nurse will have written a health care 7 plan, and certain people need to know what the needs 8 are of the child. There is a legislator this last year 9 who sponsored legislation that regardless of the age of 10 the child, that child ought to be able to self-carry an 11 EpiPen, which is a needle stick for -- in the event of 12 an allergic reaction that's potentially 13 life-threatening. 14 That has huge ramifications about an 15 8-year-old, a 7-year-old carrying their own EpiPen, in 16 terms of needle sticks of other children. Well, the 17 nurse has to write a health care plan, educate others, 18 help that child learn to be responsible. These would 19 be quick examples. Littleton has about 900 health care 20 plans out of 15,000 kids. 21 Q. And what is your opinion of the 22 sufficiency of funding that Littleton gets to -- to 23 develop those plans and implement them? 24 A. The nurses were cut in a 1990s budget cut, 25 and the restoration is what I told you, and it's a</p>	<p>1 Q. Just to be clear, 504 refers to 2 Section 504 of the Rehabilitation Act -- 3 A. Yes. 4 Q. -- is that right? 5 A. Yes. 6 Q. And when you say there's no funding, do 7 you receive money from the state to provide 504 8 services? 9 A. No. 10 Q. And what challenges, if any, does 11 Littleton confront with respect to provision of 12 504 services? 13 A. I believe we write 504 plans primarily 14 around accommodations and modifications to the program 15 and rarely around direct services to kids because of 16 the limited services. I'm sorry, because of the 17 limited resources. 18 Q. Next on the list is students presenting a 19 variety of discipline and attendance issues. Can you 20 start first with the discipline issues and explain what 21 you were referring to there? 22 A. As I said, I was in charge of expulsions, 23 and Colorado has a requirement that a child who's 24 expelled still must be educated by their school 25 district. Because of the nature of most kids who have</p>
<p>1 contract, and it's an outside contract with Children's 2 Hospital, and it's the best we could do. It's 3 insufficient. It's the best we could do. 4 Q. And next on that list is students with 5 disabilities who require 504 plans. Can you tell us 6 what a 504 plan is? 7 A. It's a child with a disability who 8 has -- whose disability -- I'm giving you legal 9 language now -- that impacts the major life activity 10 of, and it could be breathing, eating, learning, that 11 kind of thing. So a child -- I gave the example 12 earlier of a child who is in a wheelchair and needs 13 additional support in terms of being able to access a 14 building. A child with epilepsy whose physician has 15 authorized them to have a service animal. 16 That's a 504 accommodation, for that child 17 to have a service animal in the building. There's all 18 kinds of implications for that service animal in the 19 building for kids who might have allergies to dog 20 dander or inordinately be afraid of dogs. So you have 21 to write a 504 plan, identifies the disability and 22 talks about how that disability is going to be 23 accommodated in the school setting. 24 And there's no funding for Section 504 or 25 504 requirements. No funding stream</p>	<p>1999</p> <p>1 2001 2 been expelled, they cannot be on a comprehensive 3 campus. So we've been -- so school districts are 4 required to develop alternative means of educating kids 5 who have been expelled. That would be an example of a 6 child with a discipline issue. 7 Another example would be child who is at 8 risk of expulsion. If they keep going on the track 9 they're going on, they're going to be expelled. So 10 we've attempted to intervene, and we've developed, as I 11 said earlier, through some grant funding, what we call 12 the Redirection Program, and it's an attempt to keep 13 kids in school, keep them on track, or get them on 14 track for learning. But there's no funding stream for 15 it, except for grant funding or if the school district 16 general fund is reallocated to that priority. 17 Q. And is that grant that you currently have 18 sustainable? 19 A. No. Most grants that I've written are 20 competitive, and embedded in the grant application you 21 have to show how you will maintain the service beyond 22 the life of the grant. That was a three-year grant 23 that we were able to convince the grantor to give us a 24 fourth year. And it is no longer in place. 25 Q. So how will those programs be funded, if at all?</p>

2002	2004
<p>1 A. Class sizes have gone up at our</p> <p>2 comprehensive schools in order to create staffing for</p> <p>3 our alternative education programs.</p> <p>4 Q. And lastly, students with attendance</p> <p>5 issues. Can you explain what you were referring to</p> <p>6 there?</p> <p>7 A. Truancy, as most people might understand,</p> <p>8 is a quick way towards dropping out. And we've --</p> <p>9 we've had research or been involved in research that</p> <p>10 missing more than ten days of school in a year for a</p> <p>11 child, especially at the middle or high school level,</p> <p>12 they'll never get back on track.</p> <p>13 And so we did some analysis around</p> <p>14 attendance issues, and Littleton doesn't have the same</p> <p>15 issues as some school districts, but we have kids that</p> <p>16 are truant. And to be truant, you are missing more</p> <p>17 than 24 hours of school. And so we have developed a</p> <p>18 truancy intervention program, again through a</p> <p>19 competitive grant, because there was no funding for it.</p> <p>20 We have two truancy intervention specialists who go out</p> <p>21 to schools and to kids and to families and bang on</p> <p>22 doors and do what they can do to get kids back in</p> <p>23 school.</p> <p>24 I've also formed an all-volunteer board of</p> <p>25 community members called SARB. School Attendance Review</p>	<p>1 for school to have meaning, which means take apart</p> <p>2 who's going south for them in school and create</p> <p>3 something that will be an incentive to bring them back</p> <p>4 into the school setting.</p> <p>5 Q. What is the significance of the</p> <p>6 insufficiency of funding for all of these categories of</p> <p>7 students that you've described in that last paragraph</p> <p>8 in your statement?</p> <p>9 A. For kids where the mandates are clear,</p> <p>10 like students with disabilities, we have to provide</p> <p>11 those services whether the money is there or not. For</p> <p>12 programs like truancy, where the mandate isn't there,</p> <p>13 except the kids have to be in school if they're between</p> <p>14 the ages of 6 and 17 -- I'm trying to slow down. I'm</p> <p>15 sorry -- we do the best we can. We go for competitive</p> <p>16 grants or we redirect resources, we increase class</p> <p>17 sizes.</p> <p>18 In our Redirection Program, for kids</p> <p>19 with -- who have been expelled, we increase those</p> <p>20 ratios, and we believe it's compromising the</p> <p>21 effectiveness of those services. But to keep the</p> <p>22 program open, versus losing the program entirely, we</p> <p>23 feel like we have to keep the services going, so we're</p> <p>24 compromising the quality of the program just to keep</p> <p>25 it -- keep it open</p>
2003	2005
<p>1 Board, that meets once a month to meet with families</p> <p>2 and kids to try and connect them to community</p> <p>3 resources. Truancy's just -- just a tip-of-the-iceberg</p> <p>4 representation of a larger problem. It's rarely just</p> <p>5 truancy.</p> <p>6 Q. And what is your opinion of the</p> <p>7 sufficiency of funding to provide truancy services?</p> <p>8 A. There isn't. There isn't any funding. So</p> <p>9 you redirect your existing funding or you go for</p> <p>10 competitive grants like we did. Which are</p> <p>11 time-limited.</p> <p>12 THE REPORTER: Ma'am, if I can have you</p> <p>13 speak a little slower for me.</p> <p>14 THE WITNESS: Oh, I'm sorry.</p> <p>15 Q. (BY MS. BEZOZA) What additional programs</p> <p>16 or services would you like to provide for truant</p> <p>17 students if you had additional funding?</p> <p>18 A. We would probably go after the whole</p> <p>19 family. We would probably look at mental health</p> <p>20 supports, drug and alcohol counseling, incentives for</p> <p>21 kids to come to school even two days in a row.</p> <p>22 Incentives that are somehow tangible.</p> <p>23 For so many truant kids, there's something</p> <p>24 else that's drawing them out of school and school</p> <p>25 doesn't have meaning, so you've got to figure out a way</p>	<p>1 Q. You've talked about a number of different</p> <p>2 types of students, special education students, students</p> <p>3 with 504 plans, students with health needs, truant</p> <p>4 students, and students with discipline problems. What</p> <p>5 is your opinion of the sufficiency of funding to meet</p> <p>6 all those students' needs?</p> <p>7 A. It's either non-existent or it's</p> <p>8 insufficient.</p> <p>9 Q. What impact does that have on the services</p> <p>10 you can provide to those kids?</p> <p>11 A. It severely limits them, including kids</p> <p>12 with disabilities, because we can't capitalize on</p> <p>13 sufficient resources to deliver what kids truly need.</p> <p>14 MS. BEZOZA: That's it. I have nothing</p> <p>15 further. Thank you.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 THE COURT: Any questions?</p> <p>18 MS. BONO: None, Your Honor. Thank you.</p> <p>19 THE COURT: Okay. Cross-examination.</p> <p>20 MR. HEINKE: Thank you, Your Honor.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. HEINKE:</p> <p>23 Q. Good afternoon, Ms. Hundley.</p> <p>24 A. Hello.</p> <p>25 Q. It's nice to see you again.</p>

2006

1 A. Nice to see you.

2 **Q. You and Ms. Bezoza talked a bit about the**

3 **tiered funding system that exists in Colorado.**

4 A. Uh-huh.

5 **Q. I just want to make sure I've got my**

6 **timeline right. You were the leader of the -- or one**

7 **of the leaders of the consortium in -- around '05-'06,**

8 **when that funding model was developed, correct?**

9 A. Correct.

10 **Q. And Representative Pommer, I think you**

11 **testified, brought the tiered funding concept?**

12 A. I believe he approached us with the tiered

13 model already in mind.

14 **Q. You didn't have any concerns with the idea**

15 **of a tiered system when he approached you, did you?**

16 A. The concern I had didn't even -- didn't

17 even have an opportunity to approach that. The concern

18 I had was that there was such a short time available to

19 create something, we had to agree to something. So the

20 idea of analyzing whether a tiered system or some other

21 system would be better, the opportunity wasn't there.

22 And we knew we had to seize the opportunity, so we went

23 with that model for the reasons I've already said.

24 **Q. But the -- the concept of a tiered system**

25 **itself wasn't something you disagreed with?**

2007

1 A. We said let's try it. The idea being,

2 though, that it would go to scale, and we would be able

3 to see if our -- if the concept would, in fact, meet

4 the need.

5 **Q. So let's stick with structure of tiered**

6 **funding versus -- excuse me, tiered system versus the**

7 **funding. You think that the structure of the tiered**

8 **model is a pretty good model; wouldn't you agree?**

9 A. As I said, it hasn't gone to scale. I

10 personally think it has promise, but because it hasn't

11 gone to scale, there's no way to know if the model

12 works. And as I said before, we haven't analyzed other

13 funding models, and I'm sure there are other funding

14 models in other states that could also be -- could have

15 been considered.

16 **Q. You, though, think that the tiered funding**

17 **model was an improvement over the prior system,**

18 **correct?**

19 A. Yes, I do.

20 **Q. You wouldn't consider the tiered funding**

21 **model to be an inappropriate model, would you?**

22 A. I don't know.

23 **Q. Would you consider it to be an ineffective**

24 **model?**

25 A. I don't know. For the same reasons I've

2008

1 said.

2 **Q. Ms. Hundley, do you recall giving your**

3 **deposition in this case?**

4 A. Yes.

5 **Q. Ms. Hundley, I've handed you a copy of**

6 **what I believe is a transcript of your deposition. If**

7 **you could just take a look and confirm that's what it**

8 **is.**

9 A. My name's on it.

10 **Q. Okay. I have not doctored it, I promise.**

11 **Ms. Hundley, if you'll look on the bottom of page 16.**

12 **And these are -- it's actually -- we'll say 4, and then**

13 **pages 13 to 16.**

14 A. Uh-huh.

15 **Q. And why don't we do this. Starting at**

16 **line 21, the question says, "Putting the amount of**

17 **money aside and simply looking at the structure of**

18 **Tier A, Tier B, and high-cost, do you have concerns**

19 **with the structural setup of special ed funding?"**

20 **And turning over to page 17, your answer**

21 **is, "I wouldn't presume to say it's the only model out**

22 **there. I suspect there may be effective funding models**

23 **in other parts of country. I think it's a pretty good**

24 **shot at an improvement over what we had in Colorado, so**

25 **I wouldn't say it's the only funding model that's**

2009

1 **possible, but I also wouldn't say that it's an**

2 **inappropriate or insufficient -- inappropriate or**

3 **ineffective funding model." Did I read that correctly?**

4 A. Yes.

5 **Q. Okay.**

6 A. But I also didn't say that I thought it

7 was an appropriate or sufficient funding model.

8 **Q. I appreciate that clarification. But you**

9 **did say that it wasn't inappropriate or insufficient,**

10 **correct?**

11 A. I have a double negative in there.

12 **Q. Talking about the Tier B funding**

13 **specifically, Ms. Hundley, remind me what that tier**

14 **covers, please.**

15 A. Tier B?

16 **Q. Yes, ma'am.**

17 A. You mean the disabilities areas?

18 **Q. Yes, ma'am.**

19 A. There are eight disability areas, and

20 without looking at the list, I don't want to trust my

21 memory.

22 **Q. And those are disability areas that**

23 **represent a more costly need to serve; is that correct?**

24 A. Typically. Those disability areas are

25 costlier to serve. like a blind child is more costly to

2010	2012
<p>1 serve than a child with a mild learning disability.</p> <p>2 Q. And I understand that in any case there</p> <p>3 may be outliers?</p> <p>4 A. Certainly.</p> <p>5 Q. But typically that's going to cover the</p> <p>6 higher cost disabilities?</p> <p>7 A. That's the concept, yes.</p> <p>8 Q. And you believe that Tier B has the</p> <p>9 correct disability categories?</p> <p>10 A. Our committee recommendations were to</p> <p>11 continue those, but I believe the 2008 report</p> <p>12 recommended to study them, and that has never been</p> <p>13 done.</p> <p>14 Q. Do you recall if in 2010 the committee</p> <p>15 recommended that the categories be continued?</p> <p>16 A. Without looking at that report, I can't</p> <p>17 say.</p> <p>18 Q. We'll take a look at it in just a moment.</p> <p>19 But I did want to follow up a bit on the questions</p> <p>20 Ms. Bezoza discussed with you around your role on the</p> <p>21 CFAC. Do you still have what's marked Exhibit 91 in</p> <p>22 front of you? And this is the 2008 PowerPoint.</p> <p>23 A. Yes.</p> <p>24 Q. You and Ms. Bezoza discussed a few of</p> <p>25 these recommendations. The second bullet point down</p>	<p>1 there was some increased percentage in funding, Tier B</p> <p>2 disability categories were kept the same, and the</p> <p>3 Tier C, high-cost out-of-district, the current</p> <p>4 definition is retained, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And those were decisions by the</p> <p>7 legislature?</p> <p>8 A. I believe so.</p> <p>9 Q. Turning to the second page. You discussed</p> <p>10 with Ms. Bezoza of the four recommendations, I believe</p> <p>11 that all of them were put into place, the Tier C</p> <p>12 funding was increased by \$2 million for in-district</p> <p>13 high-cost students, correct?</p> <p>14 A. Correct.</p> <p>15 Q. There was a \$25,000 threshold established,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Educational orphans, the allocation was</p> <p>19 kept at \$500,000?</p> <p>20 A. Yes.</p> <p>21 Q. And the distribution process was kept the</p> <p>22 same, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Ms. Hundley, do you still have Exhibit 92</p> <p>25 in front of you?</p>
2011	2013
<p>1 that says, "Seek additional Tier B funding to increase</p> <p>2 percentage of eligible students funded," it's true,</p> <p>3 isn't it, that there has been an increase in the</p> <p>4 percentage of Tier B funding over the years; is that</p> <p>5 correct?</p> <p>6 A. It started at roughly 5 percent, and this</p> <p>7 last round was about 15 percent. So yes.</p> <p>8 Q. So there has been additional Tier B</p> <p>9 funding?</p> <p>10 A. And it's currently \$917 out of 6,000.</p> <p>11 Q. These recommendations, they were made</p> <p>12 to -- to whom?</p> <p>13 A. Originally, the first -- the first</p> <p>14 presentation was to the state board of education. The</p> <p>15 second presentation was to the Interim School Finance</p> <p>16 Committee.</p> <p>17 Q. And ultimately isn't it right that in</p> <p>18 statute, the CFAC is to make recommendations to the</p> <p>19 legislature? Is that -- do I understand that</p> <p>20 correctly?</p> <p>21 A. Yes. CDE's interpreted as both, that we</p> <p>22 were obligated to make recommendations to both the</p> <p>23 state board and the state legislature.</p> <p>24 Q. Okay. So of the recommendations -- of the</p> <p>25 six recommendations on this page, I believe you said</p>	<p>1 A. What is that?</p> <p>2 Q. Sorry. This was the 2010 CFAC report.</p> <p>3 A. Yes.</p> <p>4 Q. If you'll turn to page 5 of that report.</p> <p>5 I believe one of the things you and Ms. Bezoza</p> <p>6 discussed was the threshold amounts that were set for</p> <p>7 high-cost students?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall that conversation? And as I</p> <p>10 read the highlighted sentence here, it is CFAC itself</p> <p>11 that sets those thresholds; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And CFAC continued to set the threshold at</p> <p>14 40,000 for out of district and 25,000 for in district?</p> <p>15 A. And the reason for that is that we had</p> <p>16 done a preliminary study on both, preliminary,</p> <p>17 broad-brush, and there was such a large number of what</p> <p>18 I would also call high-cost kids below 40,000 or below</p> <p>19 25,000. There's already insufficient funds to meet the</p> <p>20 need at those thresholds, so we felt that it was common</p> <p>21 sense not to lower the threshold and increase</p> <p>22 the -- create an even greater gap between need and</p> <p>23 funding.</p> <p>24 Q. And so using that common sense, you kept</p> <p>25 the thresholds where they are?</p>

2014	2016
<p>1 A. Yes.</p> <p>2 Q. Okay. If you'll turn to page 14.</p> <p>3 A. Same report?</p> <p>4 Q. Yes, ma'am. These are the short-term and</p> <p>5 long-term recommendations.</p> <p>6 A. Yes.</p> <p>7 Q. And am I correct, again, these are the</p> <p>8 recommendations to both the state board and to the</p> <p>9 legislature?</p> <p>10 A. Yes.</p> <p>11 Q. I think you may have discussed it with</p> <p>12 Ms. Bezoza, but tell me again why you made both</p> <p>13 short-term and long-term recommendations?</p> <p>14 A. The short-term recommendations, in a</p> <p>15 nutshell we're saying don't cut it. Don't cut the</p> <p>16 funding. Because it was a time of tremendous economic</p> <p>17 shortfall. The long-term recommendations were because</p> <p>18 we felt like -- we felt that our charge -- even in a</p> <p>19 time of economic hardship, that our charge was still to</p> <p>20 make recommendations based on need, and so we felt we</p> <p>21 still needed to put the long-term recommendations in</p> <p>22 there, thinking that perhaps down the road additional</p> <p>23 funds might become available.</p> <p>24 Q. And the short-term recommendations were</p> <p>25 for the '11-'12 budget year; is that correct?</p>	<p>1 \$500,000 allocation for educational orphans. Was that</p> <p>2 recommendation followed?</p> <p>3 A. Yes.</p> <p>4 Q. And the fourth, what is for the Part C, or</p> <p>5 birth to 3 evaluations, no changes to the statute. Was</p> <p>6 that recommendation followed?</p> <p>7 A. Yes.</p> <p>8 Q. So the legislature followed all four of</p> <p>9 the short-term recommendations of the committee?</p> <p>10 A. Yes.</p> <p>11 Q. You and Ms. Bezoza also discussed certain</p> <p>12 funding challenges in Colorado. Is it fair to say that</p> <p>13 your position is that the mandating body ought to be</p> <p>14 providing the funds to comply with the mandates?</p> <p>15 A. That's my personal belief, yes.</p> <p>16 Q. You mentioned that districts can't refuse</p> <p>17 to provide special education services based on</p> <p>18 resources. Did I understand that testimony correctly?</p> <p>19 A. Based on lack of resources.</p> <p>20 Q. Littleton's not refusing to provide</p> <p>21 special education services based on lack of resources,</p> <p>22 is it?</p> <p>23 A. Littleton has never refused to provide</p> <p>24 services to an eligible child. But whether the</p> <p>25 services are adequate for that child to receive</p>
<p>1 A. Yes.</p> <p>2 Q. And the long term, then, would be after</p> <p>3 that, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And of the short-term</p> <p>6 recommendations --</p> <p>7 A. Let me back up.</p> <p>8 Q. Yes, ma'am. Please.</p> <p>9 A. The '11-'12 budget year is to cover costs</p> <p>10 for the '9-'10 fiscal year. Does that make sense?</p> <p>11 Q. It does.</p> <p>12 A. So this wasn't about expenses that are for</p> <p>13 the year we're currently in, they're for expenses that</p> <p>14 are for the year we just finished.</p> <p>15 Q. Okay. Appreciate the clarification. And</p> <p>16 of the short-term recommendations, the first one notes,</p> <p>17 "Maintain current levels of funding for Tier A, Tier B,</p> <p>18 and high cost." Was that recommendation followed?</p> <p>19 A. I believe so.</p> <p>20 Q. The second notes that the committee</p> <p>21 doesn't recommend changes to categories for Tier B.</p> <p>22 Was that recommendation followed?</p> <p>23 A. Yes.</p> <p>24 Q. The third and the highlighted portion,</p> <p>25 you'll see a recommendation of no changes to the</p>	<p>1 educational benefit, I have concerns on the aggregate</p> <p>2 that our scores do not indicate that all children are</p> <p>3 receiving educational benefit.</p> <p>4 Q. But the district hasn't refused to provide</p> <p>5 any special education service because of lack of</p> <p>6 resources; is that right?</p> <p>7 A. We're not allowed to.</p> <p>8 Q. Okay. You also mentioned a few times in</p> <p>9 your testimony a focus on compliance requirements. Do</p> <p>10 you remember that conversation?</p> <p>11 A. Yes.</p> <p>12 Q. Is that a federal government-driven focus</p> <p>13 on compliance requirements?</p> <p>14 A. It's both -- it's both federal and state.</p> <p>15 Q. I thought I heard you say that the federal</p> <p>16 government -- because of the federal government's</p> <p>17 focus, the state has had to reorganize their</p> <p>18 department. Did I hear that testimony?</p> <p>19 A. That's one reason.</p> <p>20 Q. Okay.</p> <p>21 A. But if you look at the accreditation rules</p> <p>22 that came from the state, there's also some compliance</p> <p>23 requirements there around gap analysis and looking at</p> <p>24 progress, hopefully steady progress, of children with</p> <p>25 disabilities. That's not federal, that's state.</p>

2018	2020
<p>1 Q. Okay. You and Ms. Bezoza discussed</p> <p>2 504 plans?</p> <p>3 A. Yes.</p> <p>4 Q. Was that a federal law --</p> <p>5 A. Yes.</p> <p>6 Q. -- Section 504? And you also, I think,</p> <p>7 mentioned that in general, the federal IDEA law and the</p> <p>8 state special education law are generally in alignment;</p> <p>9 did I recall that correctly?</p> <p>10 A. Colorado has elected to align its state</p> <p>11 rules with the federal law for the most part.</p> <p>12 Q. Could Colorado have elected to go below</p> <p>13 the requirements of federal law?</p> <p>14 A. No. They could elect, as they have, to go</p> <p>15 beyond the requirements of federal law.</p> <p>16 Q. But in terms of the requirements set out</p> <p>17 in federal law, if the state statute disappeared</p> <p>18 tomorrow, those requirements would still --</p> <p>19 A. Then the federal law would prevail.</p> <p>20 Q. Ms. Hundley, I wanted to finish our</p> <p>21 conversation by talking a little bit about Littleton</p> <p>22 School District itself. You and Ms. Bezoza had some</p> <p>23 conversation around Littleton. One of the things you</p> <p>24 mentioned in your resume is testimony that you provided</p> <p>25 to the U.S. Congress; is that correct?</p>	<p>1 first highlighted portion, which reads, "Our district</p> <p>2 includes 24 schools pre-K through 12 and a district</p> <p>3 model big enough to serve you, small enough to know</p> <p>4 you, is embodied in the comprehensive programming</p> <p>5 offered in a caring and involved, small-town</p> <p>6 atmosphere." Do you recall giving that testimony to</p> <p>7 Congress?</p> <p>8 A. Yes.</p> <p>9 Q. A couple of sentences down, you note that</p> <p>10 at the time, at least, of the testimony last year, the</p> <p>11 high school graduation rate was 90 percent and</p> <p>12 79.2 percent for students with disabilities, and the</p> <p>13 dropout rate being 1 percent?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall giving that testimony to</p> <p>16 Congress?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. You also note that Littleton had added a</p> <p>19 new element to the district's strategic plan to focus</p> <p>20 on student achievement, and you noted two goals of the</p> <p>21 plan, one being ensure that 90 percent of students be</p> <p>22 on or above grade level, and one being cut the student</p> <p>23 achievement gap in half by '09-'10. Then it states,</p> <p>24 "Littleton has made tremendous progress in</p> <p>25 accomplishing these goals." Do you remember giving</p>
<p>1 A. Health, Labor, Education, and Pensions</p> <p>2 Committee. Yes.</p> <p>3 Q. And you actually gave that testimony,</p> <p>4 correct?</p> <p>5 A. Yes, I did.</p> <p>6 Q. I want to direct your attention to</p> <p>7 Exhibit 6102, which has been previously admitted.</p> <p>8 MR. HEINKE: And, Your Honor, if I might</p> <p>9 approach?</p> <p>10 THE COURT: Yes.</p> <p>11 MR. HEINKE: Copy for you as well.</p> <p>12 THE COURT: Thank you.</p> <p>13 Q. (BY MR. HEINKE) Ms. Hundley, Trial</p> <p>14 Exhibit 6102 is a copy of your testimony to the Health,</p> <p>15 Education, Labor, and Pensions Committee; is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. To the best of your knowledge, a true and</p> <p>19 correct copy of that testimony?</p> <p>20 A. Yes. But I -- to be exactly accurate,</p> <p>21 this was a guide. I have a tendency to paraphrase, so</p> <p>22 a recording of my testimony will not be me reading</p> <p>23 this.</p> <p>24 Q. Okay. One of the things noted in</p> <p>25 Exhibit 6102, if I can work the technology, is the</p>	<p>1 that testimony to Congress?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. Progress towards. Haven't achieved it.</p> <p>5 Didn't achieve it.</p> <p>6 Q. But made progress towards?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And speaking specifically about students</p> <p>9 with disabilities, on the second page, you note that</p> <p>10 for students with disabilities, the gains are</p> <p>11 significant. Do you recall giving that testimony to</p> <p>12 Congress?</p> <p>13 A. Yes.</p> <p>14 Q. And that the 2009 data shows a</p> <p>15 district-wide 98 percent participation rate in</p> <p>16 statewide assessments and steady gains in achievement?</p> <p>17 A. Yes. I want to explain something in this</p> <p>18 paragraph. I was referencing our own student growth</p> <p>19 index, achievement index, which has different</p> <p>20 components than the state's. And so there are some</p> <p>21 other elements that are beyond just the CSAP</p> <p>22 measurement in our academic growth index, I think is</p> <p>23 what it's called.</p> <p>24 Q. Okay. Ms. Hundley, if you'll turn to what</p> <p>25 I believe is the third page. At the bottom, you note</p>

2022	2024
<p>1 information about students graduating or exiting</p> <p>2 Littleton. And you note that the district contacts</p> <p>3 each of them and their parents one year after</p> <p>4 graduation and asks them how they're doing?</p> <p>5 A. Yes.</p> <p>6 Q. And you note that after five years of</p> <p>7 collecting the post-school outcome data, you're</p> <p>8 confident to report that the majority of the students</p> <p>9 that have graduated or exited at age 21 are doing quite</p> <p>10 well. Do you recall giving that testimony to congress?</p> <p>11 A. Yes. And it's critical to link that</p> <p>12 sentence to the next one.</p> <p>13 Q. And the next one is that for 2009</p> <p>14 graduates, 52 percent are involved in higher ed and</p> <p>15 44 percent are employed in the work force?</p> <p>16 A. For the 2009 graduates reporting. And</p> <p>17 when you're trying to reach people a year out, you may</p> <p>18 not be able to reach the student, you may not be able</p> <p>19 to reach the family, and so this was a small sample of</p> <p>20 the students we were able to reach.</p> <p>21 I want to -- you haven't asked me this</p> <p>22 question, but I want to mention that one reason this</p> <p>23 testimony had such a positive, highlighted spin is that</p> <p>24 it was a -- it was a time where this committee</p> <p>25 helped -- the HELP Committee had asked for a panel of</p>	<p>1 which was to make the point that all students can</p> <p>2 learn, and that it's important to have accountability</p> <p>3 measures that are beyond the subjective goals and</p> <p>4 objectives that might be written on an IEP. That you</p> <p>5 can use external accountability measures as an</p> <p>6 appropriate accountability tool for all kids, including</p> <p>7 kids with disabilities.</p> <p>8 Q. Do you recall taking an oath to tell the</p> <p>9 truth before you testified to congress?</p> <p>10 A. I -- you asked me that before. And I do</p> <p>11 not recall.</p> <p>12 Q. Would it have made a difference in your</p> <p>13 testimony if you had? I don't mean to suggest anything</p> <p>14 by that.</p> <p>15 A. It would not have made a difference.</p> <p>16 Q. Okay. Okay. You conduct an annual parent</p> <p>17 survey in Littleton; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And one of the questions you ask is do you</p> <p>20 feel that the district is meeting your child's needs?</p> <p>21 A. Yes.</p> <p>22 Q. And a majority of parents to that question</p> <p>23 answered the district was doing either well or very</p> <p>24 well --</p> <p>25 A. Yes.</p>
<p>1 representatives who could talk about a variety of</p> <p>2 at-risk student needs.</p> <p>3 And there was a member of the panel, a</p> <p>4 senator, who wanted accountability measures for</p> <p>5 students with disabilities to be solely progress</p> <p>6 towards goals and objectives on an IEP. And I was</p> <p>7 requested to paint a picture of what high expectations</p> <p>8 can look like. And to be very clear that</p> <p>9 accountability for students with disabilities is both</p> <p>10 important and necessary and can sometimes make a</p> <p>11 difference.</p> <p>12 So the direction was to focus on that kind</p> <p>13 of thing. So there's quite a bit of information that's</p> <p>14 not in here. Omission. Intentionally.</p> <p>15 Q. So you intentionally omitted information</p> <p>16 when you testified?</p> <p>17 A. That would say that we were not making our</p> <p>18 adequate yearly progress targets for any students other</p> <p>19 than third-graders, for example. Or elementary; it's</p> <p>20 third, fourth, and fifth-graders in one group of kids.</p> <p>21 I didn't talk about not making the targets for middle</p> <p>22 school and high school.</p> <p>23 Q. You didn't intend to mislead congress,</p> <p>24 though?</p> <p>25 A. I intended to do what I was asked to do.</p>	<p>1 Q. -- in meeting children's needs? And you</p> <p>2 would agree that parents' perceptions are, for the most</p> <p>3 part, that Littleton is meeting their children's needs?</p> <p>4 A. Yes. We have a high value for parents as</p> <p>5 partners in the educational process, and I think they</p> <p>6 know that.</p> <p>7 Q. And you would agree that parents know</p> <p>8 their children best, wouldn't you?</p> <p>9 A. Not in all -- not necessarily in all</p> <p>10 things. But they certainly know their child's needs</p> <p>11 at -- at the emotional level, that a parent would know</p> <p>12 their child's needs and advocate for their child.</p> <p>13 MR. HEINKE: No further questions. Thank</p> <p>14 you.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 THE COURT: Thank you. Redirect?</p> <p>17 MS. BEZOZA: Just briefly, Your Honor.</p> <p>18 REDIRECT EXAMINATION</p> <p>19 BY MS. BEZOZA:</p> <p>20 Q. Ms. Hundley, is there any information in</p> <p>21 your congressional testimony that is not accurate?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. You and Mr. Heinke talked about some of</p> <p>24 the distinctions between federal law and state law.</p> <p>25 Even without federal law, do you still believe it's in</p>

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1 **a student's best interest to provide special education**
 2 **and related services that's calculated to lead to**
 3 **educational benefit?**
 4 A. Absolutely.
 5 **Q. And Mr. Heinke referred to increases in**
 6 **special education funding. How do those increases**
 7 **compare to the needs required to meet federal and state**
 8 **requirements for kids with disabilities?**
 9 A. They're inadequate. If you look at the
 10 limited increase, if you go back to that presentation I
 11 did for the board, for example, our board of education,
 12 for example, the increases in state revenue in no way
 13 are closing the gap between actual costs and revenue.
 14 And, in fact, the actual costs or actual expenditures
 15 are far outpacing the available revenue.
 16 **Q. And has Tier A -- the 1250 for Tier A**
 17 **students changed to address increasing needs?**
 18 A. No.
 19 **Q. And do you think the increase in Tier B**
 20 **funding from 5 to 15 percent is sufficient?**
 21 A. Well, at the rate it's increasing in terms
 22 of revenue and at the rate the expenses are increasing,
 23 there's never going to be a gap closure, it's only
 24 going to widen.
 25 MS. BEZOZA: Thank you. I have nothing

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1 further.
 2 THE COURT: Thank you. Recross?
 3 MR. HEINKE: No, ma'am. Thank you.
 4 THE COURT: Thank you. You may step down.
 5 Thank you.
 6 MS. BEZOZA: Plaintiffs call Dr. Margaret
 7 McLaughlin.
 8 THE COURT: If you would raise your right
 9 hand.
 10 MARGARET McLAUGHLIN,
 11 having been first duly sworn to state the whole truth,
 12 testified as follows:
 13 THE COURT: Thank you. Please be seated.
 14 And then if you could state your full name and spell
 15 your last name for the record, please.
 16 THE WITNESS: Margaret McLaughlin.
 17 M-a-r-g-a-r-e-t. M-c-l-a-u-g-h-l-i-n.
 18 THE COURT: Thank you.
 19 DIRECT EXAMINATION
 20 BY MS. BEZOZA:
 21 **Q. Good afternoon, Dr. McLaughlin.**
 22 A. Good afternoon.
 23 **Q. Dr. McLaughlin, I've put on the Elmo**
 24 **Exhibit 5702, which has been admitted into evidence.**
 25 **Do you recognize this document?**

2028

1 A. I do.
 2 **Q. What is it?**
 3 A. It's my curriculum vita.
 4 MS. BEZOZA: Your Honor, may I please
 5 approach.
 6 THE COURT: Yes.
 7 **Q. (BY MS. BEZOZA) Does your CV accurately**
 8 **reflect your credentials and experience to date?**
 9 A. Yes, it does.
 10 **Q. Would you briefly describe for the Court**
 11 **your educational background.**
 12 A. I have a bachelor of arts, or B.A., in --
 13 actually, it's elementary education and special
 14 education from the University of Denver. I have a
 15 master's in special education from University of
 16 Northern Colorado. And I hold a Ph.D. in education
 17 with a specialty in special education from the
 18 University of Virginia.
 19 **Q. What was the focus of your doctoral work?**
 20 A. Special education.
 21 **Q. Would you please describe your**
 22 **professional experience.**
 23 A. I started my profession as a teacher of
 24 children with emotional disturbance. Actually, I hold
 25 my first teaching certificate in Colorado. I taught in

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1 institutions and public schools children with emotional
 2 and behavior disorders and learning disabilities. And
 3 then moved into higher education and received my Ph.D.
 4 Did a post-doctoral internship at what was the U.S.
 5 Department of Education. And moved on to the
 6 University of Washington for four years.
 7 And I have been at the University of
 8 Maryland since 1982. I'm a tenured full professor in
 9 special education at the University of Maryland and
 10 currently serve as associate dean for research in
 11 graduate education in the college of education. I'm
 12 also the associate director of an institute we have for
 13 the study of exceptional children.
 14 **Q. Do you currently teach at the university?**
 15 A. I do.
 16 **Q. What type of courses do you teach?**
 17 A. My -- my area, my research and specialty
 18 area, special education policy. I teach doctoral-level
 19 courses in that, and I also teach doctoral-level
 20 courses in empirical design in educational research.
 21 **Q. Can you tell us what you mean by special**
 22 **education policy?**
 23 A. I have studied both the law and the actual
 24 law, legislation, regulation related to special
 25 education, but also the structure of special education

2030

1 policies. And since the late 1980s, a particular focus
 2 of -- and a great deal of funded research on how
 3 special education has interacted with general education
 4 reforms such as standards, assessment, accountability,
 5 governance reforms, finance reforms, et cetera.
 6 **Q. Do you also -- in addition to your**
 7 **teaching, do you also conduct research?**
 8 A. I do.
 9 **Q. What has been the primary focus of your**
 10 **research?**
 11 A. It's primarily been, as I noted, the broad
 12 area of special education policy, standards --
 13 primarily standards, the impact of standards,
 14 assessments, and accountability on both children's
 15 outcomes, but the structure of special education, the
 16 delivery of special education services in districts and
 17 states.
 18 **Q. Can you give some examples of research**
 19 **projects you've directed?**
 20 A. I have directed and been the PI, or
 21 principal investigator, on three major -- actually,
 22 they were national research centers. There was only
 23 one funded by the department of ed in each iteration.
 24 And they involved in-depth case studies of selected
 25 states and local districts within those states to

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1 examine, through interviews, focus groups, examination
 2 of documents, and existing data, what was happening to
 3 students with disabilities in the emerging reforms in
 4 those states.
 5 **Q. Can you give us some examples of states**
 6 **you studied?**
 7 A. The most in intense, intensely studied
 8 states, and this was over two five-year centers, New
 9 York, Maryland, Colorado, Washington, Nebraska, and a
 10 little bit in California, although primarily that was
 11 on the California charter schools, because they were
 12 quite -- really emerging at that time.
 13 **Q. Can you please explain the work you did in**
 14 **Colorado.**
 15 A. This was in the late '90s, mid to late
 16 '90s. It was part of this research that was funded by
 17 the department of education, and it involved looking
 18 at -- primarily at that time, because Colorado and some
 19 of its districts were leaders in implementing
 20 standards-driven reform, so they had new standards.
 21 They had developed the first of several of their
 22 assessments. This is the -- I think two generations
 23 prior to the current assessment.
 24 And they were beginning to hold schools
 25 accountable for the performance of students with

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1 disabilities. So -- and they also were the third state
 2 to have a charter school legislation. So we were
 3 studying all of those reforms.
 4 **Q. And did you focus on any particular school**
 5 **districts in Colorado?**
 6 A. We did our most in-depth study, which
 7 involved interviewing, classroom observations,
 8 examining data, in Douglas, Weld County -- actually,
 9 I'm not sure if -- I can't remember if it was Colorado
 10 Springs or Academy, but I had forgotten that that was a
 11 district that was doing some interesting assessment.
 12 And I think that's it. I can't remember.
 13 **Q. Have you done any research on special**
 14 **education finance?**
 15 A. I have been involved in several studies.
 16 Some -- several I've directed and others I've served as
 17 an expert or expert consultant.
 18 **Q. And have you been involved in any special**
 19 **education -- excuse me -- special education cost**
 20 **studies?**
 21 A. The biggest ones that I've been involved
 22 with, I was special education consultant, expert on the
 23 national special education expenditure study, which was
 24 completed in 2000. It was our last national
 25 expenditure -- special ed expenditure study.

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1 Following that, I served as an expert
 2 consultant on the -- it was a New York state cost
 3 study. It was part of the fiscal adequacy litigation
 4 in the state of New York. And this was to determine
 5 the cost and potential -- and to make a determination
 6 of adequacy for special education.
 7 I also was involved and I am currently
 8 consulting with the University of Connecticut that is
 9 doing a similar study in Connecticut related to a
 10 fiscal adequacy lawsuit in that state.
 11 And I was asked to be the expert who -- I
 12 actually chose to review the data, I didn't actually do
 13 research in New Jersey, related to the Abbott case
 14 there.
 15 **Q. Have you done any consulting work for the**
 16 **United States Government in the area of special**
 17 **education?**
 18 A. To the -- to the government, federal
 19 agencies? Oh, yes. Either directly, in terms of
 20 serving on task forces or advisory groups. I -- I've
 21 served as a reviewer on several major competitions.
 22 The growth model, of which Colorado has one. The
 23 differentiated accountability. These were state-funded
 24 efforts or initiatives under the previous
 25 administration. Too many to -- in terms of the federal

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1 agencies. Also HHS, Health and Human Services,
 2 Department of Labor, Bureau of -- it's actually the
 3 Office of Disability Law and Employment, I think.
 4 ODEP.
 5 **Q. And have you done any consulting work at**
 6 **the state level for -- in the area of special**
 7 **education?**
 8 A. I have. In Colorado, I did -- during the
 9 same period of time Colorado was developing their
 10 standards, I was asked by the then special ed director
 11 here to visit -- actually, I visited several LEAs, or
 12 districts, at that time with some of the people from
 13 the state to discuss what we were learning about how
 14 students with disabilities should be included in these
 15 standards, what adjustments might have to be made to
 16 the standards.
 17 By the way, one of the other districts
 18 that we studied intensely, just dawned on me, was
 19 Aurora, because they were developing and had -- were
 20 one of the first users of standards-based IEPs.
 21 **Q. Have you done any consulting work for**
 22 **school districts in the area of special education?**
 23 A. Mostly in school districts. In fact,
 24 that's where I probably have focused most of my
 25 consulting. I have consulted extensively with

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1 districts, Baltimore, Philadelphia, Miami-Dade, these
 2 are the larger ones. Several of the big counties in
 3 Florida. I'm trying -- blocking on them right now.
 4 Broward is certainly one. Charlotte Mecklenburg,
 5 Montana County, Maryland. In different capacities,
 6 sometimes as a member of a short-term maybe study group
 7 or task force, sometimes over multiple, maybe a year or
 8 so. Always around -- it has always been around these
 9 issues of reform, policy in special education.
 10 **Q. When you study special education at the**
 11 **district level, what methods do you use to collect**
 12 **data?**
 13 A. It really depends on the questions that
 14 are being asked. So if I am looking, for example, at a
 15 question, like to what degree are the standards shaping
 16 IEPs and the delivery of special education, I might in
 17 those cases want to review IEPs. I would. I have. I
 18 would definitely want to visit classrooms, do
 19 structured observations, interview teachers, et cetera.
 20 If, however, I'm looking at policy, that
 21 would be such things as what are the changes in
 22 assessment accommodations, what has that meant in terms
 23 of student achievement, that might -- that certainly
 24 was a yes. What has been the impact of No Child Left
 25 Behind on participation in performance rates, in those

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1 cases I have interviewed and would look at existing
 2 data, existing documents, analyze those, and do
 3 interviews with state and/or local administrators.
 4 Rarely do I, in those kinds of questions,
 5 would I go into the schools. Because you really need
 6 to have multiple school interviews to do that.
 7 **Q. So when you're consulting on issues of**
 8 **policy, do you typically look at IEPs?**
 9 A. No, I would not. Unless it -- well, no, I
 10 would not. Not on policy.
 11 **Q. Approximately how many publications have**
 12 **you authored?**
 13 A. Oh. Probably somewhere 50 or in excess of
 14 50. Total.
 15 **Q. Have you ever served as an expert in**
 16 **connection with litigation?**
 17 A. I have. Actually, I did serve in the
 18 Vaughn decree. This was a Baltimore city consent
 19 decree. And this was way back in the early '90s, when
 20 they were developing a compensatory -- an on-laws
 21 compensatory program as part of their consent decree,
 22 and I advised on that. That was way back.
 23 Most recently, or more recently,
 24 Bridgeport, Connecticut, and Greece School District in
 25 New York. Both were consent decrees where the

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1 plaintiffs and the district were attempting to resolve
 2 the issues. And I was appointed in both cases by the
 3 Court as a joint expert.
 4 **Q. So you were a joint expert in both of**
 5 **those cases?**
 6 A. Yes.
 7 MS. BEZOZA: Your Honor, plaintiff moves
 8 to have Dr. McLaughlin qualified as an expert in
 9 special education finance and policy.
 10 MR. HEINKE: No objection, Your Honor.
 11 THE COURT: She'll be admitted as an
 12 expert in those areas.
 13 MS. BEZOZA: Thank you.
 14 **Q. (BY MS. BEZOZA) Dr. McLaughlin, what has**
 15 **been your role in the Lobato case?**
 16 A. I was asked to be an expert and to review
 17 documents and data and other information relative to
 18 special education funding in Colorado.
 19 **Q. What work did you do in order to render an**
 20 **opinion on special education funding in Colorado?**
 21 A. I reviewed a number of documents,
 22 certainly Colorado documents, Colorado data. I also
 23 reviewed national data that had -- you know, had all 50
 24 states, so that I could compare Colorado to 50 states.
 25 And I did conduct some interviews, and I reviewed the

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1 depositions of other plaintiffs that were involved in
 2 the case.
 3 **Q. Other plaintiffs or --**
 4 A. Well, plaintiffs. The plaintiffs. Not
 5 other, but plaintiffs.
 6 **Q. Did you talk to any special education**
 7 **administrators in Colorado?**
 8 A. I did. Yes, I did.
 9 **Q. Who did you talk to?**
 10 A. I talked to Mr. Boyer in San Juan. I
 11 talked to Ms. Hundley in Littleton. I talked to the
 12 special ed director in Adams 14. I'm sure I'm going to
 13 mispronounce her name. I think it's Loge. And
 14 Ms. Burdelik in Aurora.
 15 **Q. And how did you select those**
 16 **administrative units to talk to?**
 17 A. After I had reviewed a number of the
 18 documents and the data that I was -- I was sent some,
 19 and I also went and sought others from -- on the
 20 website or on different sites that I was aware of
 21 nationally, I decided that it really would -- in fact,
 22 it was necessary to ask questions of local
 23 administrators relative to how they structured their
 24 special education.
 25 And I know from prior experience that the

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1 factors that make a difference are actually the basic
 2 demographics, size of the district, percent of free and
 3 reduced meals, percent of language minority students,
 4 some -- and, of course, rural, more urbanized,
 5 et cetera. So I -- I asked for -- I knew many of the
 6 districts from my prior work here, and I suggested some
 7 districts that I would like to talk to, and I was sent
 8 contact information.
 9 **Q. Did you talk to any of the individual**
 10 **plaintiffs in this case?**
 11 A. I did not.
 12 **Q. And why is that?**
 13 A. I did not feel -- and I -- I did not feel
 14 that it was important to what I was asked to do, and to
 15 the questions that I brought to this, that I would
 16 review at the parent level the individual plaintiffs'
 17 records. And, also, from my prior work, when I have
 18 done that extensively, it requires a number of records,
 19 not just the plaintiffs', but others, and typically, I
 20 would not just look at IEP records or children's case
 21 records, I would also want to visit schools and
 22 interview in the schools.
 23 So given that, it did not seem important
 24 to really substantiate the information that I was given
 25 by the AU directors, and also the extensive information

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1 that I had on hand.
 2 **Q. So you didn't think it was important in**
 3 **order to do the task that you were asked to do in this**
 4 **case?**
 5 A. To form my opinion, no. And to do what I
 6 was asked to do, to answer the question I was asked to
 7 answer.
 8 **Q. Did you talk to any parents of students**
 9 **receiving special education services in Colorado that**
 10 **are not involved in this lawsuit?**
 11 A. I did. One. Frankly, I felt somewhat
 12 being persuaded that I should talk to parents and that
 13 if I was going to talk to parents, I was not -- I
 14 expressly said I cannot just talk to parents who are
 15 plaintiffs in the case, I really do need to talk to a
 16 variety of parents.
 17 I was given the names of several parents,
 18 and I attempted to contact those parents, and only one
 19 responded and was willing to be interviewed, and I went
 20 ahead and did that. The others did not. I basically
 21 did not use -- I mean, that did not inform my opinion.
 22 It did not change my opinion in any way.
 23 **Q. So did you rely on that conversation in**
 24 **forming your expert opinion in this case?**
 25 A. Not at all. Not at all.

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1 **Q. Were you asked by plaintiffs' counsel to**
 2 **render an opinion on whether any individual students in**
 3 **Colorado are receiving appropriate special education**
 4 **services?**
 5 A. I was. On -- oh, the plaintiffs' counsel
 6 on any individual one? No. I'm sorry. No, I was not.
 7 **Q. What would you need to do in order to**
 8 **render that opinion?**
 9 A. To render an opinion on FAPE, whether a
 10 child was receiving Free and Appropriate Public
 11 Education, you would need to have a very extensive
 12 paper trail of that child's IEPs, and not just the IEP,
 13 but the whole documentation on the initial evaluation,
 14 how the child entered special education, all of the
 15 pre-referrals. And you would have to talk to
 16 definitely the parent, the child's parent or guardian.
 17 And then you would have to talk to the school or
 18 schools that were involved. It's a very complicated
 19 determination.
 20 **Q. And in your professional experience, what**
 21 **would a school district need to do in order to render**
 22 **an opinion as to whether individual students in their**
 23 **district are receiving free and appropriate public**
 24 **education?**
 25 A. They would have to do the same thing.

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1 **Q. Dr. McLaughlin, did you write an expert**
 2 **report in this case?**
 3 A. I did.
 4 **Q. Showing you what's been previously**
 5 **admitted as Exhibit 5700. Does this appear to be the**
 6 **expert report you wrote in this case?**
 7 A. It does.
 8 MS. BEZOZA: May I approach, Your Honor,
 9 please.
 10 THE COURT: Yes. Thank you.
 11 **Q. (BY MS. BEZOZA) Does this document**
 12 **accurately state your opinions on special education**
 13 **funding in Colorado?**
 14 A. It does.
 15 **Q. What is your overall opinion with respect**
 16 **to special education funding in Colorado? Which you**
 17 **state on page 3.**
 18 A. In my opinion, the -- both the structure
 19 as well as the level of appropriations for special
 20 education as provided by CDE puts their AUs at
 21 significant risk of being able to provide FAPE to each
 22 eligible -- each eligible student.
 23 **Q. What is the basis for this opinion?**
 24 A. Basically, the state is not providing
 25 either a sufficient amount or providing it in a way

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1 that is reasoned and based on empirical data that will
 2 allow the districts enough resources to provide what
 3 each individual child needs, and as a result, the
 4 districts are relying on general funds, and that
 5 creates some real risks in terms of FAPE.
 6 **Q. And can you define what FAPE is, please.**
 7 A. Free Appropriate Public Education. It is
 8 the center entitlement. It is the centerpiece on the
 9 Individuals with Disabilities Education Act. It is the
 10 core entitlement. It is the civil rights entitlement
 11 that each child with a disability has. It entitles
 12 each child to have an appropriate education at public
 13 expense, or as the law says, at no cost to the parents.
 14 **Q. And are there certain procedural**
 15 **requirements with respect to FAPE?**
 16 A. There are. FAPE is generally determined
 17 or operationalized through something called the IEP, or
 18 the Individual Educational Program, and there are a
 19 number of procedures that are associated with both
 20 determining eligibility for special education and
 21 development of that IEP. It's highly regulated. There
 22 are timelines associated with it. The content is
 23 regulated by federal -- through federal regulation, as
 24 well as the actual -- the membership of the IEP team,
 25 et cetera.

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1 And all of these things are referred to as
 2 procedural requirements of FAPE. These will quickly
 3 get a school district in great trouble. It will get a
 4 state in great trouble if they fail to meet these
 5 procedural obligations.
 6 **Q. And are there also substantive**
 7 **requirements that fall under FAPE?**
 8 A. There are. The substantive requirements
 9 are that -- the reason that we have FAPE and the reason
 10 that we have federal legislation is to permit children
 11 with disabilities to benefit from public education.
 12 That's the core intent of the federal law. Therefore,
 13 the substantive requirements are that the child receive
 14 benefit from his -- his or her education. And
 15 subsequent case law, not Supreme Court, but federal
 16 court law, has established that that benefit must be
 17 more than trivial.
 18 **Q. What are the responsibilities of the state**
 19 **with respect to FAPE?**
 20 A. The state or the state education agency
 21 under the IDEA is responsible for ensuring FAPE for
 22 every eligible child in its jurisdiction. The federal
 23 law specifically requires the SEA be the accountable
 24 party. However, the law -- the federal law gives the
 25 state the right to delegate responsibility to their

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1 local districts.
 2 So the state holds the ultimate
 3 responsibility for ensuring FAPE, and that is why when
 4 there are complaints filed, they are -- the complaint
 5 may come up through the district, but ultimately it is
 6 the state that has the complaint filed against it,
 7 because they are obligated under IDEA to enforce FAPE.
 8 And all other -- actually, all over provisions in the
 9 law.
 10 **Q. And you've been referring sometimes to**
 11 **"districts" and sometimes to "AUs." Can you just**
 12 **define what an AU is?**
 13 A. An AU, in my experience, is a term that's
 14 unique to Colorado. It is a way that they choose to
 15 define their districts. And so it's synonymous with
 16 districts. If you came to my state, Maryland, you
 17 would hear about LEAs, because we're county-wide
 18 districts, and so we're local education agencies. You
 19 go to Florida, they refer to themselves as counties,
 20 not districts. It differs depending on how the state
 21 chose to organize their local . . .
 22 **Q. Are you familiar with the way Colorado**
 23 **funds special education?**
 24 A. I am.
 25 **Q. Can you give your general understanding of**

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1 **Colorado's special education funding system?**
 2 A. My general understanding is that it's a
 3 tiered system, meaning that it has multiple levels and
 4 that it starts with a population-based -- or I'm sorry,
 5 it doesn't -- yes, a population-based, not a
 6 census-based -- population-based tier, first tier,
 7 which provides a set level of funds for every
 8 identified child based on the December 1 -- or the
 9 child count, the number of children with IEPs in the
 10 district.
 11 And then it has a second tier, with a
 12 proposed amount of \$6,000 based on a disability
 13 category. And there are eight of those. And for each
 14 child who has one of those disability categories, he or
 15 she -- the AU is to obtain up to \$6,000 in additional
 16 funds for that.
 17 And then there is a third level, referred
 18 to as the high-cost funding structure.
 19 **Q. Putting aside for now the amount of**
 20 **funding in Colorado for special education, do you have**
 21 **an opinion as to Colorado's structure for funding**
 22 **special education?**
 23 A. I do. First of all, I -- I feel -- I feel
 24 that the basic having multiple levels of funding is not
 25 a problem, and, in fact, it's -- it's probably optimal,

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1 should be optimal. In most states -- in fact, I
 2 believe every state has some way of providing multiple
 3 levels of funding to their districts based on different
 4 criteria. So that in and of itself is not a problem.
 5 I think at the first tier, my one issue
 6 with that, and it's probably -- well, there are
 7 probably two, but one may have to do more with the
 8 sufficiency. There are no -- there is no consideration
 9 for district demographics. And district demographics
 10 play a huge role in provision of special education
 11 services in a number of ways.
 12 Not that every state has a demographic
 13 adjustment, but the federal law does, and I do believe
 14 that more states are beginning to explore at that --
 15 what we would call the population or base level, some
 16 sort of consideration for demographics.
 17 The second level gives me a lot of
 18 problem. There are two reasons for that. One, the
 19 \$6,000 amount, or any amount, it could have been eight
 20 or whatever, is not based on any sort of -- at least it
 21 was not evident to me that it was based on any sort of
 22 cost study or analysis of need.
 23 And secondly, any sort of costing by
 24 disability category is highly, highly risky. There is
 25 more heterogeneity within many of those categories --

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1 not all, but many of those eight categories than you're
 2 going to find across those.
 3 **Q. Can you explain why you say it's risky?**
 4 A. Well, for example, a child who might be
 5 classified -- and the easiest ones are going to look at
 6 the sensory impaired, children with visual or --
 7 impairment or blind, deaf or hard of hearing. Many of
 8 those children, if that is their primary disability,
 9 can function very well with certain accommodations,
 10 technology, for example, text-to-speech, Braille, some
 11 other accommodations, that while they might have some
 12 expense initially, are relatively inexpensive, and
 13 these children can be maintained in general education
 14 classrooms.
 15 Conversely, you can have a child with
 16 learning disabilities or significant -- actually, very
 17 significant speech-language difficulties who more than
 18 likely would be under LD, and I've certainly
 19 encountered many of those, who need extensive -- not --
 20 intensive and extensive support in school, beyond what
 21 they can get in a general education classroom, with
 22 simply a few hours of service.
 23 So given that there's such variety
 24 and -- of -- such difference in need within a category,
 25 I don't think that it's particularly reasoned, unless

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1 there are data to support. And there very well may be
 2 in some cost study. I've never seen -- I've never seen
 3 one yet, with the possible exception of young children
 4 who have speech and language difficulties. Because
 5 typically, if they have more than that, they get in
 6 another disability category.
 7 **Q. So just to be clear, so you don't -- you**
 8 **don't believe that it's reasonable to use disability**
 9 **categories as a proxy for cost?**
 10 A. I do not. Not unless it's backed up with
 11 data that would actually show that in a given
 12 jurisdiction, it is absolutely reliable that any child
 13 that gets label X always -- the costs are always within
 14 this parameter. That may be at a very localized level.
 15 When you move that up to the state or to a national
 16 level, not at all.
 17 **Q. And are you aware of any of that data in**
 18 **Colorado?**
 19 A. I am not. I was not aware that there were
 20 any -- any of those data were available.
 21 **Q. And do you have any concerns with respect**
 22 **to the structure of the high-cost pool?**
 23 A. Well, I do. First of all, it's not
 24 atypical to have a high-cost pool. I think 30, 35
 25 states have some high-cost pool. And, in fact, in the

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1 2004 reauthorization of IDEA, the federal government
 2 says that states may use their Part B, the moneys that
 3 are federal dollars, to help support those high-cost
 4 pools, in recognition of the impact on districts that
 5 these children who have extraordinary costs have.
 6 But my knowledge -- and, again, it's not
 7 of all 30, 30-plus states, it certainly is -- I would
 8 say 10 to 12 states that I'm aware of their high-cost
 9 pool, there were several things. One, the setting of
 10 the benchmark or the trigger at 40,000 is a little
 11 high. I only -- I'm only aware of New Jersey that has
 12 a 40,000 trigger. Now, again, I'm not saying that I
 13 know all 50 states. Or 30-some states.
 14 Some states have no trigger. Some states
 15 have a trigger that is based on an average of prior
 16 year expenditures, and they actually adjust that
 17 trigger over time. So just setting the arbitrary
 18 40,000 without seeing any data to support that, it
 19 seems to me troublesome.
 20 Then within those, most of the states have
 21 additional tiers, if you will, within the high cost.
 22 So that a state may pick up a percentage over the
 23 trigger, and then the district will pick up more, and
 24 then the state. So at the extreme end, when you have a
 25 child who's at 160,000 or 170,000 or whatever, the

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1 state recognizes that at some level, they're going
 2 to -- the district would be bankrupt, and they'll pick
 3 up that level. So this doesn't -- this just does not
 4 have that nuance to it.
 5 **Q. And do you believe that it's important to**
 6 **have those multiple tiers in a high-cost pool?**
 7 A. Absolutely.
 8 **Q. And why is that?**
 9 A. The high cost is very unpredictable, and
 10 that's probably its major -- major factor. It's
 11 unpredictable. And an extraordinary-cost child could
 12 move into a district, and particularly a smaller, even
 13 a mid-size district, and could bankrupt that district.
 14 Unless the state has mechanisms in place to come in
 15 after a certain point.
 16 With the Colorado high-cost pool, you have
 17 a trigger of 40,000, which, by the way, the average
 18 high-cost student in 2000, in the last national
 19 expenditure study, the average was between 30 and
 20 35,000. So --
 21 **Q. That was in 2000?**
 22 A. That was in 2000. Those were in 2000
 23 dollars. So -- I mean in dollars at year 2000 values.
 24 So we have the high-cost trigger being high. We also
 25 don't have the recognition of there are some that are

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1 going to be just over that trigger, and perhaps the
 2 state provides a very small percentage or a limited
 3 percentage. But then after they reach another level,
 4 if you will, another trigger, the state will step in
 5 and pay over that.
 6 I also think adjusting it -- first of all,
 7 basing it on true costs and expenditures, and also
 8 adjusting it, you know, based on some sort of average.
 9 The other issue that I have personally is that -- and I
 10 can understand the rationale of -- of benchmarking this
 11 against total expenditures in a district to some
 12 degree. However, I would like to really see data to
 13 show that indeed those high-cost kids are truly
 14 distributed, shall we say, proportionally across the
 15 state. They tend not to be.
 16 You tend to see -- particularly in those
 17 high behavioral need kids that need residential, you
 18 tend to see a lot more of those in high-poverty
 19 districts. They're just impacted by children who have
 20 multiple emotional -- just because of the whole
 21 community, family issues that are going on, and so a
 22 lot of times the costs can be very high there.
 23 You also have courts that will intervene.
 24 Court -- courts, juvenile courts, will send children to
 25 residential placements because of the severe emotional

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1 needs. Sometimes those -- the educational costs of
 2 those then are borne by the district. And so there's
 3 just a lot of issues in large districts that would say
 4 to me that their needs could be equal to a district
 5 that's smaller and perhaps more affluent.
 6 **Q. You mentioned with respect to Tier A that**
 7 **it was important to consider demographics. Is it also**
 8 **important to consider demographics with respect to the**
 9 **high-cost pool?**
 10 A. I don't think it is. I think if you
 11 structure the high-cost pool in a different way, you
 12 know, that it's -- well, first of all, it appears to me
 13 that the \$40,000 trigger was somewhat arbitrary,
 14 although I have no evidence that it is or isn't. There
 15 was just nothing to suggest that it was based on
 16 anything that was empirical.
 17 But if you had these, shall we call them
 18 tiers, within the high cost, I think you could
 19 accommodate the -- the kinds of, you know, disparate
 20 needs that you would see demographically. So no, I
 21 don't in the high-cost pool.
 22 **Q. And are you aware of other states that do**
 23 **have those tiers within the high-cost pool?**
 24 A. Yes. Yes. And as I said, I'm not aware
 25 of all 30-some states. I'm probably aware of maybe 10

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1 or 12. And they're -- I would just use the term they
 2 are more nuanced. They do -- this appears -- well,
 3 yes.
 4 **Q. And so we talked about the different**
 5 **tiers, Tier A, Tier B, the high-cost pool. What's your**
 6 **overall opinion on the structure of the special**
 7 **education funding system in Colorado? Again, still**
 8 **putting aside the amount of money that's put in.**
 9 A. I -- I think it's rather simplistic. I
 10 don't think it's a reasoned structure. I -- I do
 11 believe that they need a cost study, and they need to
 12 examine some of the assumptions that the current cost
 13 structure is based on.
 14 First and foremost is the one I mentioned,
 15 is the disability categories. It could be that those
 16 disability categories are highly predictive of cost if
 17 they have a cost study to back that up. I haven't seen
 18 it, outside of speech and language, as I said. I
 19 haven't seen it across the age range. So that's just
 20 one example.
 21 MS. BEZOZA: Your Honor, I'm not going to
 22 be able to finish with this witness today, and I'm at a
 23 good breaking point. I don't know if you want to --
 24 THE COURT: Well, probably because I know
 25 there will be cross-examination, I assume. Okay. All

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1 right. You have to come back tomorrow morning.
 2 THE WITNESS: Okay.
 3 THE COURT: Okay. I'm sorry.
 4 MS. BEZOZA: One other housekeeping
 5 matter.
 6 THE COURT: Yes.
 7 MS. BEZOZA: The individual plaintiff we
 8 discussed yesterday, Jessica Spangler, is going to be
 9 testifying tomorrow. Would it be okay with Your Honor
 10 if we take her out of order and do her first thing in
 11 the morning, since we're going to clear the courtroom?
 12 THE COURT: If that's fine with
 13 Dr. McLaughlin, that's fine with me.
 14 THE WITNESS: That's fine.
 15 THE COURT: That works for everybody. We
 16 have a -- we'll put a sign on the courtroom door. That
 17 would be fine. We can do that -- you want to do that
 18 about 8:30?
 19 MS. BEZOZA: Yeah. I just thought it was
 20 easier if we start with her, given her confidentiality
 21 concerns.
 22 THE COURT: If everybody wants to do that,
 23 we will do that. That's fine.
 24 MS. BEZOZA: And I assume that she'll --
 25 her testimony will be under an hour.

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1 THE COURT: All right. Thank you. Thank
 2 you, Doctor.
 3 THE WITNESS: Thank you.
 4 WHEREUPON, the within proceedings were
 5 adjourned at the approximate hour of 4:57 p.m. on the
 6 9th day of August, 2011.
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REPORTER'S CERTIFICATE

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

I, CAROL M. BAZZANELLA, Registered
 Professional Reporter, Certified Realtime Reporter,
 and Notary Public, State of Colorado, do hereby certify
 that the within proceedings were taken in machine
 shorthand by me at the time and place aforesaid and was
 thereafter reduced to typewritten form; that the
 foregoing is a true transcript of the proceedings had.
 I further certify that I am not employed by,
 related to, nor of counsel for any of the parties
 herein, nor otherwise interested in the outcome of this
 litigation.

IN WITNESS WHEREOF, I have affixed my
 signature this 15th day of August, 2011.
 My commission expires February 10, 2012.