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STATE OF MICHIGAN

IN THE SUPREME COURT

PENNIE MARIE DAVIS,

Plaintiff-Appellee,

v

JACKSON PUBLIC SCHOOLS,

Defendant-Appellant.
_____/

Supreme Court No. _____

COA # 344203

LC #16-344-CZ

MEGAN A. BONANNI (P52079)
BETH M. RIVERS (P33614)
CHANNING E. ROBINSON-HOLMES (P81698)
PITT, McGEHEE, PALMER & RIVERS, P.C.
Attorneys for Plaintiff-Appellee
117 West Fourth Street, Ste. 200
Royal Oak, MI 48067
(248) 398-9800
mbonanni@pittlawpc.com
brivers@pittlawpc.com
crobinson@pittlawpc.com

TIMOTHY J. MULLINS (P28021)
JOHN L. MILLER (P71913)
GIARMARCO, MULLINS & HORTON, P.C.
Attorneys for Defendant-Appellant
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020
tmullins@gmhlaw.com
jmiller@gmhlaw.com

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT IDENTIFYING ORDER APPEALED, INTRODUCTION AND THE RELIEF SOUGHT

Plaintiff Pennie Davis is a former art teacher no retired from Jackson Public Schools. Plaintiff filed a police report and sought a PPO after she alleged that student M.H.[1] bruised her hand while both grabbed for a piece of artwork. The School District transferred Plaintiff to a different building within the District to separate Plaintiff from M.H. In complying with the PPO, the School District sought to balance Plaintiff's PPO with M.H.'s right to a free and appropriate education under the Michigan Constitution and Revised School Code. The School District simply complied with the PPO and sought to ensure that Plaintiff was safe and protected. When M.H. was no longer in High School, Plaintiff requested a transfer from the Middle School back to the High School; the School District accommodated this request and transferred Plaintiff back to the High School. Throughout this period up to her voluntary retirement, Plaintiff was always an employee of the School District, receiving her full salary and benefits. Despite this, Plaintiff filed suit under the Whistleblower Protection Act ("WPA"), alleging that she suffered a retaliatory adverse employment action.

Defendant is seeking leave to appeal two issues decided by the Court of Appeals. First, the Court of Appeals affirmed the lower court's decision to use the

[1] Due to FERPA (Family Educational Rights and Privacy Act), the School District will refer to said student as "M.H." throughout this Appeal Brief.

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lessened, and incorrect, "motivating factor" causation standard. The WPA provides that "[a]n employer shall not discharge, threaten, or otherwise discriminate against an employee…***because the*** employee" engages in protected activity. MCL 15.362 (*emphasis added*). The statutory language "because the" has been held to be "but for" causation by the U.S. Supreme Court, the Sixth Circuit, and this Court. The failure to properly instruct the jury allowed Plaintiff to repeatedly assert the lessened standard in closing arguments.

Nationally, there has been a steady trend to dispose of the "motivating factor" standard because it is not derived from the plain and unambiguous language found in our civil rights' statutes. A dissenting opinion in this Court made this point just two years ago, stating that this Court should clearly determine whether Michigan will align with the U.S. Supreme Court and Sixth Circuit and interpret "because of" to be "but-for" causation. *Hrapkiewicz v Wayne State Univ Bd of Governors*, 501 Mich 1067, 910 NW2d 654, 655 (2018) (*Markman, C.J. dissenting*). Similarly, the Court of Appeals *in this case* noted that "recent developments" have shown that the "'but-for' standard may seem more viable or consistent with the statutory language of MCL 15.362," but that such declaration needed to come from the Supreme Court. **Exhibit A – COA Opinion, p. 10**. Defendant submits that now is the time to review the meaning of "because of." Plain and ambiguous language should have one

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meaning. Without one meaning, Michigan precedent will undermine faith in the judiciary, as identical words are interpreted differently by federal and state courts.

The late U.S. Supreme Court Justice Anthony Kennedy, in a critique of the "motivating factor" standard, stated that "[a]ny standard less than but-for, however, simply represents a decision to impose liability without causation…" *Price Waterhouse v Hopkins*, 490 US 228, 282, 109 S Ct 1775, 1807,104 L Ed 2d 268 (1989) (*Kennedy, A.M., dissenting*). The *imposition of liability without causation* is clear in this case. "But-for" cause would have required a determination as to whether "even if all of the other contributing or but-for factors remained, the prohibited conduct…would have occurred but for or in the absence of [the protected activity]." *United States v Miller*, 767 F3d 585, 606 (6th Cir 2014). Instead, the lower court and the jury only had to consider whether the Plaintiff's protected activity was *one of several reasons* that the School District moved Plaintiff to another building. Both decisionmakers were able to disregard the great weight of evidence, including Plaintiff's continued employment and salary, as well as the School District's compliance with the PPO, and accordingly reached erroneous and inequitable conclusions. A reversal of the lower court's rulings, and requiring the "but-for" standard, will result in different outcomes at summary disposition and at trial.

Second, Defendant seeks appeal of the lower court's denial of a new trial after Plaintiff committed reversible error during opening statements. At trial, Plaintiff's

opening statement tainted the jury when Plaintiff repeatedly told the jury they must "send a message to [defendants]," that school districts around Michigan were watching this case, and that the jury must protect Michigan teachers. The bell had been rung, and the jury was thereafter biased against the School District. The Court of Appeals stated that this line of comments was "questionable." Defendant submits that continuing to condone this improper line of argument runs the risk of allowing further improper conduct with impunity.

Leave to Appeal should be granted in this case under MCR 7.305(B)(1),(2), (3), and (5). The questions presented for appeal involve a substantial question about the plain and unambiguous meaning of the WBPA. This issue is one of significant public interest involving a public-school district and its public officers. It is also an issue that has been noted in the dissenting opinions of this Court and in the Court of Appeals. Only this Court can fix further confusion on this issue.

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QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE: The Whistleblower Protection Act requires that an employer shall not retaliate against an employee "because the employee" engaged in protected activity. MCL 15.362. Did the lower court commit error when it used the lessened "motivating factor" causation standard rather than the higher "but for" causation standard and (1) denied Defendant School District's Motion for Summary Disposition and (2) instructed the jury on this lessened standard?

- APPELLANT-DEFENDANT ANSWERS "YES"
- THE LOWER COURTS ANSWERED "NO"
- APPELLEE-PLAINTIFF ANSWERED "NO"
- THIS COURT SHOULD ANSWER "YES"

QUESTION TWO: A new trial should be granted in cases where improper, punitive arguments changed the outcome of a trial. Did the lower courts err where it denied a motion for new trial?

- APPELLANT-DEFENDANT ANSWERS "YES"
- THE LOWER COURTS ANSWERED "NO"
- APPELLEE-PLAINTIFF ANSWERED "NO"
- THIS COURT SHOULD ANSWER "YES"

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CONCISE STATEMENT OF PROCEEDINGS BELOW

Defendant filed its Motion for Summary Disposition on March 9, 2017. Plaintiff filed her Response on April 13, 2017. The lower court heard oral arguments on April 20, 2017 and denied Defendant's Motion from the Bench. The Court held that there was a "causal connection between the protected activity and the employment action." **Exhibit B, MSD Transcript, 4/27/2018, at 35.**

Plaintiff's lawsuit proceeded to trial on February 26, 2018. Plaintiff's opening statement included the inflammatory "send a message to [Defendant]" directive, telling the jury they must protect Michigan teachers by returning a verdict. (**Exhibit C - 2/26/2018 Trial Transcript at 116**). At the close of trial, despite Defendant's objections, the lower court provided jury instructions on the lessened "motivating factor" standard of causation. (**Exhibit C, 3/6/2018 Transcript, at 154).** The Court instructed the jury that "because of" means "that protected activity must be one of the motives or reasons defendant [discharged/or/threatened/or/discriminated against] the plaintiff." M Civ JI 107.03. Plaintiff's counsel relied on this instruction to repeatedly assert that causation required that the protected activity only be "one of the reasons," and not the "but-for" cause. **Exhibit C – Transcript, 3/7/2018, at 48, 50.** The jury issued a verdict on behalf of Plaintiff. Defendant filed posttrial motions for New Trial and Remittitur, which were denied by the Court. (**Exhibit D – Order Denying Motion for New Trial).**

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Defendant filed a Claim of Appeal on June 11, 2018. The case was argued before the Court of Appeals on March 3, 2020. The Court of Appeals issued its written opinion on July 2, 2020, affirming the lower court's decisions. (**Exhibit A – CoA Opinion**):

1. *The WPA causation standard*. The Court of Appeals affirmed the lower court's denial of Defendant's Motion for Summary Disposition, holding that there was evidence demonstrating causation. **Exhibit A, p. 4.** The Court of Appeals used the lessened "motivating factor" causation standard. *Id*. The Court of Appeals also rejected Defendant's claim of instructional error regarding the "motivating factor" jury instruction. **Exhibit A, p. 10**. The Court of Appeals indicated that there were recent developments in the law suggesting that the "'but-for' standard may seem more viable or consistent with the statutory language of MCL 15.362." **Exhibit A, p. 10**. While the Court of Appeals could not "anticipatorily ignor[e]" Michigan Supreme Court precedent, these "recent developments in the law have 'undercut the foundation'" of the precedent. **Exhibit A, p. 10.**

2. *Attorney Misconduct*. The Court of Appeals held that the trial court did not abuse its discretion by denying defendant's motion for a new trial. The Court of Appeals stated that plaintiff's counsel's "send a message" comments during opening statements were "questionable" but did not rise to the level of misconduct. **Exhibit A, p. 20.**

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CONCISE STATEMENT OF MATERIAL FACTS

1. Plaintiff's Interaction with Student M.H.

Plaintiff Pennie Davis is a retired art teacher at Jackson Public Schools. Plaintiff alleges that on October 12, 2015, a student M.H bruised her hand. (Compl at ¶¶ 9 and 12.) When Plaintiff raised the allegation, the School District immediately investigated the incident and obtained statements from (1) Plaintiff, (2) M.H., and (3) multiple student witnesses. (**Exhibit E** – S**chool District Investigation; Exhibit F – Superintendent Beal's Dep at 41-44.**)

Assistant Principal Joe Zessin memorialized his investigation in **Exhibit A**. He indicated that, when he walked into the classroom, "several students immediately blurted out to [him] that [M.H.] did not hit Plaintiff." (***Id* at page 260.**) Mr. Zessin interviewed student M.H. who indicated that Plaintiff tried to remove artwork from his hand, and he pushed her hand off his art. (***Id.***) Mr. Zessin also interviewed four student witnesses who all confirmed that "it did not appear that M.H. hit Plaintiff." "Instead, what they saw was that he made contact with her hand as she was taking away his art project."[2] Student M.H. was disciplined. And, at Plaintiff' request, student M.H. was removed from her class. (**Exhibit F: Superintendent Beal's Dep**

[2] After the above incident, a student alleged that Plaintiff threw a book at a student out of frustration. (**Exhibit Q: Investigation and Statements**.) This was corroborated by witness statements. Despite this fact, Plaintiff was not terminated. If there was retaliatory animus, this substantiated misconduct would have served as a basis of termination.

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at 68; Exhibit G: Exclusion request.) The School District ultimately concluded that student M.H. should not be expelled because he did not intend to harm Plaintiff. Superintendent Beal testified that:

> The school's results were that there was no intent to do injury or harm, that some incidental contact between M.H. and Plaintiff did take place but that it was not as a result of some violent act.

(***Id* at 33-34**.) Plaintiff alleged that, because of this incident, she sustained a bruise. (**Exhibit H—Medical Record**).

2. Plaintiff Filed a Police Report

Plaintiff filed a police report against M.H. Jackson Police officers interviewed witnesses and Plaintiff. (**Exhibit I—Police Report**). The officer reported that there was no "visible injury" or swelling to Plaintiff's hand. The officer interviewed the High School principal, who indicated that Plaintiff said she was uninjured after the incident. (***Id.***) The officer interviewed several students. (***Id.***) Consistent with statements obtained by the School District, each student advised the officer that student M.H. did not "hit" Plaintiff; rather, as Plaintiff tried to pull artwork from M.H.'s hand, there was contact with his hand. (***Id***.)

3. Plaintiff Obtained a PPO

At Plaintiff's request, on October 13, Circuit Court Judge McBain (also the "lower court" in this WPA action) issued a PPO, which is attached as **Exhibit J**. This PPO provided, in part, <u>that MH could not be in Plaintiff's place of employment</u>.

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Plaintiff testified that she wanted student M.H. removed from the workplace. (**Exhibit K—Plaintiff's Deposition at 23**).

Initially, the Superintendent tried to follow the PPO by removing M.H. from Plaintiff's class. (**Exhibit F—Superintendent Beal's Dep at 60**). However, Plaintiff filed a motion for a modified PPO because Plaintiff still crossed paths with M.H. in the school building and felt uncomfortable and scared. (**Exhibit L—PPO Modification**).

The School District has a legal obligation to provide an education to M.H. Because of the PPO and Plaintiff's ongoing concern of having M.H. in the same building, Superintendent Beal transferred Plaintiff to an art class in a different building.[3] (**Exhibit F: Superintendent Beal's Dep at 67**). Superintendent Beal explained the reason why as follows:

> The PPO instigated a change of placement for her, a change of location**. So we followed the PPO to provide for her safety and moved her from the high school to the middle school classroom location**. [Dep at 67.]
>
> Given the PPO that Ms. Davis filed, or the amended PPO. Ms. Davis filed, **I don't know that there's an appropriate response to that other than to transfer her**. [Dep at 83.]

Similarly, Assistant Superintendent Ben Pack testified that

> We did not want to move her. Our reaction was to the modification

[3] Under the terms of the Collective Bargaining Agreement, the School District retained the authority to transfer teachers. Transfers are common in school districts; there are no guaranteed assignments.

> because the first plan was obviously not satisfying the court's needs, the court's request, and that's how the transfer came about. [**Exhibit M: Asst Superintendent Ben Pack's Deposition at 92**.]
>
> . . . at this particular point from the PPO that was originated in the fall to keep the student away from Ms. Davis we've already followed the judge's request and, number one, he was moved from her class and then with a followup to that, the amendment of that PPO, Ms. Davis -- that sort of put us in a situation where we had to follow the judge's order to make sure that Ms. Davis and the student didn't have contact. [**Id at 72**.]

Mr. Pack explained that the District's "concern was for Plaintiff' safety" and that the District wanted to make sure it followed Judge McBain's Order. (**Id at 90**.) Plaintiff agreed that, after she sought to amend the PPO because she was still afraid at the sight of the student, the School District separated student M.H. and Plaintiff by having them in separate buildings. (**Exhibit K – Plaintiff's Deposition at 26**.)

Through her transfer to the Middle School, (1) Plaintiff still received the same salary and benefits exceeding $100,000; (2) Plaintiff still taught art for Jackson Public Schools, (3) Plaintiff still worked during normal school hours; and (4) Plaintiff still had a fully vested pension, and she retired following the trial.

Superintendent Beal testified that, since the PPO has dissolved and because M.H. no longer attended the High School, Plaintiff could be transferred back to the High School upon a request for such transfer. (**Exhibit F—Superintendent Beal's Dep at 95-96**.) When such request was made, Plaintiff was transferred back to the high school.

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4. Plaintiff's Lawsuit

Plaintiff filed a one-count lawsuit alleging violation of the Whistleblower Protection Act. Plaintiff alleged that, because she filed a police report and obtained a PPO against a student, she was retaliated against by the School District: Plaintiff sought and received a PPO saying that M.H. and Plaintiff could not be in the same building, but when the School District followed Plaintiff's PPO, she alleged retaliation. In order to meet its obligation to educate M.H. and at the same time handle Plaintiff's demand that M.H. not be present at her workplace, the School District honored Judge McBain's Order and transferred Plaintiff to a separate building earning the same salary and benefits.

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LEAVE TO APPEAL SHOULD BE GRANTED FOR THE FOLLOWING REASONS

MCR 7.305(B)(1)-(6) outlines the grounds for appeals to the Michigan Supreme Court. The following grounds, as will be discussed in greater detail below, are applicable to this Leave to Appeal:

> (B)(1) The issue involves a substantial question about the validity of a legislative act;
>
> (B)(2) The issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
>
> (B)(3) The issue involves a legal principle of major significance to the state's jurisprudence;
>
> (B)(5) In an appeal of a decision of the Court of Appeals,
>
> (a) the decision is clearly erroneous and will cause material injustice, or
>
> (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

First, this case invokes (B)(1) and (B)(3), because it involves a substantial question about the interpretation of the Whistleblower Protection Act, MCL 15.362. The present interpretation of the WPA contradicts the plain and unambiguous language of the statute. This point has been made by the U.S. Supreme Court, the Sixth Circuit, this Court, and the Court of Appeals in this action. Second, under (B)(3), this case is one of significant public interest involving a public school district and its public officers who sought to ensure the safety of its teacher and the

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constitutional promise of education to its student. Third, under (B)(5), the Court of Appeals erred when it utilized the lessened causation standard and allowed Plaintiff's counsel's "questionable" comments about "sending a message."

1. THE PLAIN LANGUAGE OF THE WPA REQUIRES "BUT FOR" CAUSATION

The Whistleblower Protection Act states as follows:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment **<u>because the</u>** employee or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

M.C.L. § 15.362 (emphasis added).

Defendant seeks leave from this Court to give the phrase "*because the*" its proper and plain meaning of "but for" causality.

A. The United States Supreme Court Interprets "Because of" to Mean "But-For"

The United States Supreme Court interprets "because of" in employment statutes to mean "but for" causation. In *Gross v FBL Fin Services, Inc*, 557 US 167; 129 S Ct 2343; 174 L Ed 2d 119 (2009) the U.S. Supreme Court sought to interpret the meaning of "because of" within the ADEA, and stated that "[s]tatutory construction must begin with the language employed by Congress and the

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assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Id*. at 175. The U.S. Supreme Court explained that the ordinary meaning of "because of" is "by reason of" or 'on account of." *Id.* at 176, 129 S Ct 2343 (*citing* 1 Webster's Third New International Dictionary 194 (1966); 1 Oxford English Dictionary 746 (1933); The Random House Dictionary of the English Language 132 (1966)(emphasis in original). The U.S. Supreme Court held that the ordinary meaning of "because of" is that the employee's age was "the 'reason' that the employer decided to act." *Id*. Therefore, the plaintiff retained the burden of proving "but-for" causation. *Id*. at 177. *See also Safeco Ins Co of America v Burr,* 551 US 47, 63–64, and n. 14, 127 S Ct 2201, 167 L.Ed.2d 1045 (2007) (noting that "because of" means "based on" and that " 'based on' indicates a but-for causal relationship"); *Holmes v Securities Investor Protection Corp,* 503 US 258, 265–266, 112 S Ct 1311, 117 L Ed 2d 532 (1992) (equating "by reason of" with " 'but for' cause"); *Gentry v E W Partners Club Mgmt Co Inc,* 816 F3d 228, 234 (4th Cir 2016) (the Fourth Circuit denied the plaintiff-appellant's argument that the ADA required the "motivating factor" causation, instead holding that the ADA's "on the basis of" required "but-for" causation).

The U.S. Supreme Court in 2013 clarified the causation standard **in retaliation cases**. In *Univ of Texas Sw Med Ctr v Nassar*, 570 US 338; 133 S Ct 2517; 186 L Ed 2d 503 (2013), the Supreme Court expressly rejected the EEOC's

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view that a Title VII retaliation plaintiff need demonstrate only that retaliation was one of several motivating factors in the employer's decision, instead deciding that such a plaintiff must prove that the employer's retaliatory motive was the "but for" cause of the adverse employment action. Retaliation plaintiffs must satisfy what the Court described as a "more demanding" standard than the "motivating factor" standard that some courts had been using. *Id*. at 362.

The respondent in the case, Naiel Nassar, was a physician employed by the University of Texas who accused his supervisor of racial and religious bias. *Id*. at 338. Nassar planned to resign his position at the University and seek employment directly with the medical center (which would result in a change of supervisors). *Id*. Nassar alleged that after he complained about the purported discrimination, University officials prevented him from being hired by the center, in retaliation for his allegations. *Id*. The University argued that, even without the alleged retaliation, Nassar would not have been hired by the center because its agreement with the center required that all physicians be members of the University faculty. As a result, the alleged retaliation could not be the so-called "but for" cause of his loss of the position—that is, Nassar could not show that the center would have hired him but for the retaliation. A jury found for Nassar, and the Fifth Circuit affirmed. *Id*. at 345. The U.S. Supreme Court reversed the Fifth Circuit's decision and determined that Title VII retaliation claims must be proved according to traditional principles of "but

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for" causation, not the "lessened" motivating factor standard. *Id*. at 339.

Since *Nassar*, the U.S. Supreme Court has applied but-for causation across the board to statutes with phrases "because of," "results from," and "based on." In *Burrage v United States*, 571 US 204, 134 S Ct 881, 187 L Ed 2d 715 (2014), the U.S. Supreme Court sought to determine the meaning of "results from" within the Controlled Substances Act. The U.S. Supreme Court stated that "[g]iven the ordinary meaning of the word 'because,' we held that [Title VII] 'require[s] proof that the desire to retaliate was [a] but-for cause of the challenged employment action." *Id*. at 212. The Court explained that "[o]ur insistence on but-for causality has not been restricted to statutes using the term 'because of.'" *Id*. at 213. But-for causality has been extended to the phrases "based on" and "by reason of." *Id*. In this case, "results from" required but-for causation. *Id*.

Through the U.S. Supreme Court's latest term, "because of" remains to be interpreted as "but-for" causation. "In the language of law, this means that Title VII's " 'because of' test incorporates the 'simple' and 'traditional' standard of but-for causation." *Bostock v Clayton Cty, Georgia*, 140 S Ct 1731, 1739 (2020) (*citing Nassar*, 570 US at 346); *see also, Passmore v Mapco Express, Inc*, No 3:16-CV-01746, 2017 WL 4176268, at *9 (MD Tenn Sept 19, 2017), fn 6 ("But for" causation is the same thing as " 'because of,' 'by reason of,' or 'based on' causation.") (*citing Gentry v E W Partners Club Mgmt Co Inc*, 816 F3d 228, 234 (4th Cir 2016) (**Exhibit**

N).

In this case, the Court of Appeals noted these changes in the law in its Order, but stated it was restrained by this Court's precedent:

> Whatever persuasive value *Gross* and *Nassar* may have toward recognizing a more precise "but-for" standard for WPA claims in Michigan, we are not at liberty to disregard our Supreme Court's clear and settled pronouncement of the causation standard applicable to a WPA claim, even if a "but-for" standard may seem more viable or consistent with the statutory language of MCL 15.362. In *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016), our Supreme Court cautioned this Court from "anticipatorily ignor[ing]" decisions from the Michigan Supreme Court, even if more recent developments in the law have "undercut the foundation" on which a case has stood.
>
> **Exhibit A – COA opinion, p. 10.**

B. Michigan law needs uniformity

This Court has held that "because of" means "but-for causation." *See, Hecht v Nat'l Heritage Acads, Inc*, 499 Mich 586, 606, 886 NW2d 135, 146 (2016) (interpreting the MCRA). Following *Hecht*, a dissenting opinion in this Court acknowledged the need to address "because of" in Michigan statutes. *Hrapkiewicz v Wayne State Univ Bd of Governors*, 501 Mich 1067, 910 NW2d 654 (2018), (Markman, C.J. dissenting). The dissenting opinion held that there is a difference between the "motivating factor" and "but-for" causalities. *Id*. Most importantly, the dissenting opinion highlighted that "because of" has been held to be "but-for" causation in the U.S. Supreme Court in *Gross*, in the Sixth Circuit in *Lewis v Detroit*,

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702 Fed Appx 274, 278 (CA 6, 2017), and in the Michigan Supreme Court in *Hecht*, and that the Michigan Supreme Court should address the inconsistencies in the law.

Undersigned submits that this Court should, like the U.S. Supreme Court, invoke a uniform interpretation of "because of" across all statutes, including the WPA. The causation standard currently applied by Michigan courts in retaliation actions, however, is the intermediate "significant factor" standard. This remains to be a higher standard than that invoked by the lower court, but nevertheless is not in conformity with a plain language reading of "because of." Our Courts have held numerous times that "[t]o establish causation, the plaintiff must show that his participation in a [protected activity] was a significant factor in the employer's adverse employment action, not just that there was a causal link between the two." *Rymal v Baergen*, 262 Mich App 274, 303; 686 NW2d 241 (2004) (citations omitted). In fact, after the model instructions at issue in this case were drafted, the Michigan Supreme Court in *Debano-Griffin v Lake County Bd of Comm'rs*, 493 Mich 167, 181-182 (2013) held that the plaintiff must prove that an employee's protected activity be "<u>the</u> motivating factor for the board's adverse decision." (*emphasis added*).[4]

[4] The use of the word "the" instead of "a" is significant. As the Court of Appeals has explained in the interpretation of the governmental immunity statute, "the Legislature's use of the definite article 'the' as opposed to 'a' clearly evinces an intent to focus on **<u>one</u>** cause. The phrase "the proximate cause" is best understood as meaning the **<u>one</u>** most **immediate, efficient, and direct cause preceding an injury.**" *Smith v Jones*, 246 Mich App 270, 280 (2001) (citing *Robinson*, 462 Mich at 458-459)(emphasis added).

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In *Thompson v Dept of Corr*, No. 319668, 2015 WL 1261539, at *5 (Mich Ct App March 19, 2015), (**Exhibit O**) the Court of Appeals highlighted three standards in retaliation actions:

> While there is authority that states an employer is liable if discrimination is a motivating factor, *Lytle v. Malady*, 458 Mich. 153, 175–176; 579 NW2d 906 (1998), retaliation cases continue to require a showing that retaliation must be a significant factor, *Barrett*, 245 Mich.App at 315. See also *Univ. of Tex Southwestern Med. Ctr. v. Nassar*, —— U.S. ——; 133 S Ct 2517, 2532–2533; 186 L.Ed.2d 503 (2013) (instructing that in retaliation claims, as opposed to discrimination claims, the "traditional principles of but-for causation" not the "motivating factor" standard would apply).

The Court of Appeals affirmatively cited to the U.S. Supreme Court's opinion in *Nassar* and the "but-for" standard. The Court of Appeals ultimately held that the "motivating factor" standard is not appropriate under existing Michigan case law. *Id*. at 6. Michigan retaliation claims have required, at a minimum, showing that the protected activity was a "significant factor," not merely a "motivating factor." *Id*.

Michigan law currently attaches different meanings to the same words. Without a uniform interpretation, the law runs the risk of reaching anomalous results. Justice Markman pointed to this in *Hrapkiewicz*, explaining that there are presently two Michigan Supreme Court cases which require different standards: the Court in *Hazle v Ford Motor Co*, 464 Mich 456, 628 NW2d 515 (2001) required the "motivating factor" causation, while the Court in *Hecht v National Heritage Academies, Inc* required but-for causation. Furthermore, federal law and Michigan

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law currently give different meanings to the phrase "because of." Imagine a jury hearing a case involving federal and state retaliation claims. A court would have to instruct the jurors that, despite identical language, the plaintiff is required to prove different legal burdens. Words have meaning. The same words should mean the same thing. Otherwise, there is no such thing as Positive Law.

C. But-for Causation Is the Proper Standard

The lower court and the jury utilized the wrong, lessened legal standard. In *Price Waterhouse v Hopkins*, 490 US 228, 282, 109 S Ct 1775, 1807,104 L Ed 2d 268 (1989), U.S. Supreme Court Justice Anthony Kennedy expressed his concern for "the motivating factor" standard in a dissenting opinion when he stated that "[a]ny standard less than but-for, however, simply represents a decision to impose liability without causation…[a]n act or omission is not regarded as a cause of an event if the particular event would have occurred without it." *Price Waterhouse*, 490 US at 282 (*citing* W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton, *Law of Torts 265* (5th ed. 1984)). This logic applies specifically in this case, where a public school district was held liable for actions taken pursuant to a PPO, while protecting the rights of its teacher and its student.

The proper causation standard should be "but-for" causation. The lower court's error was significant and not harmless. The lower court denied summary disposition by utilizing this lessened standard, and the case proceeded to trial with

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the same lessened standard. The lower court's jury instruction gave Plaintiff's counsel the green-light to utilize the lower standard in closing arguments:

> They knew she had engaged in Protected Activity and the evidence – you know, because of one of the reasons. It doesn't have to be the main reason. Just one of the reasons that made a difference.
>
> **Exhibit C – Transcript, 3/7/2018, at 48**
>
> Okay, and remember, because she engaged in Protected Activity. For these reasons – again, the motive, "because of," it doesn't have to be the main reason just one of the reasons – but please read that instruction again and again.
>
> **Exhibit C – Transcript, 3/7/2018, at 50.**

To only be "one of the reasons," quoting Justice Kennedy, "impose[s] liability without causation." The proper analysis under the "but-for" standard considers "even if all of the other contributing or but-for factors remained, the prohibited conduct…would have occurred but for or in the absence of [the protected activity]." *United States v Miller*, 767 F3d 585, 606 (6th Cir 2014). In this case, the School District did not transfer Plaintiff because she filed a police report or because she sought a PPO. Rather, Plaintiff was transferred because a court issued an Order saying that M.H. could not be at Plaintiff's place of employment, and Plaintiff continued to object to M.H.'s presence in the building. Plaintiff continued to vocalize her fear.

Superintendent Beal explained the reason for the transfer as follows:

> The PPO instigated a change of placement for her, a change of location**.**

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> **So we followed the PPO to provide for her safety and moved her from the high school to the middle school classroom location**. [**Exhibit F, Dep at 67.**]
>
> Given the PPO that Ms. Davis filed, or the amended PPO. Ms. Davis filed, **I don't know that there's an appropriate response to that other than to transfer her**. [**Id at 83.**]

The School District's action was a consequence of the court's Order and Plaintiff's subjective announcements of ongoing fear; it was not retaliation for reporting an alleged "assault."

Initially, the School District removed MH from Plaintiff's class and instructed M.H. to stay away from Plaintiff. (**Exhibit P—Email from Union**.) This action was taken ***after Plaintiff filed a police report, after the police conducted interviews, and after Plaintiff's first PPO***. If the District wanted to retaliate against Plaintiff, it would have done so at that time. But it didn't. Rather, Plaintiff sought an amended PPO from the trial court indicating that she still "felt unsafe" and still had "fear." (**Exhibit L**.) As such, to comply with the trial court's Order that said M.H. could not appear at Plaintiff's "workplace," Plaintiff was transferred to an equivalent position in a building away from M.H. Based on the undisputed evidence—and the lower court's Order—Plaintiff was not retaliated against for protected activity. Plaintiff was transferred to accommodate her ongoing complaints of a hostile work environment. This was not retaliation; it was a business decision designed to separate a student and teacher and balance competing interests.

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As further proof of the School District's legal motivation, Superintendent Beal testified that, since the PPO had dissolved and because M.H. was no longer attending the High School, Plaintiff could be transferred back to the High School if she made a request for such transfer. (**Exhibit F—Superintendent Beal's Dep at 95-96**.) This testimony confirmed that the only motivation to transfer Plaintiff was the PPO—not retaliation for any report. Likewise, Plaintiff had previously obtained a PPO against a fellow teacher, with no allegation of retaliation. (**Exhibit J—Prior PPO; Exhibit K—Pl's Dep at 51**). Had the lower court required the proper legal burden, (1) Defendant's Motion for Summary Disposition would have been granted, and (2) the jury would not have ruled in Plaintiff's favor at trial.

2. Plaintiff Counsel's Improper Argument During Opening Statement Necessitated a New Trial

MCR 2.611(A)(1)(b) authorizes a new trial due to attorney misconduct. When reviewing an appeal asserting misconduct by an attorney, an appellate court must first decide whether the claimed misconduct was actually error and, if so, whether it was harmless. If the error was not harmless, the court must decide if the error was properly preserved in the trial court. If it was preserved, it may be reviewed on appeal. If it was not properly preserved, the court may nevertheless grant a new trial if the error caused the outcome, or "played too large a part" in the outcome, and may have denied the appellant a fair trial. *Hilgendorf v St John Hosp*, 245 Mich App 670, 682–683, 630 NW2d 356 (2001).

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During Plaintiff's opening statement, numerous highly prejudicial and improper arguments were made, including:

(1) The jury should "send a message" to the school district and other school districts, (**2/26/2018 Transcript at 116**);

(2) Send a message to teachers that we applaud their courage (**2/26/2018 Transcript at 116);**

(3) Other schools are watching this case (**2/26/2018 Transcript at 116);** and

(4) You need to make sure our teachers are protected and you can protect them by returning a verdict. (**2/26/2018 Transcript at 135-136).**

Defendant preserved the issue at trial, and the Court did offer a curative instruction (**Exhibit C, 2/26/2018 Transcript, at 137**).

The "cumulative effect of an attorney's misconduct…" require retrial where the statements sought to "prejudice the jury and divert the jurors' attention from the merits of the case." *Yost v Falke*r, 301 Mich App 362, 366, 836 NW2d 276, 278 (2013) (*quoting Kern v St Luke's Hosp Ass'n of Saginaw*, 404 Mich 339, 354, 273 NW2d 75 (1978). Plaintiff's arguments about safeguarding teachers, in the shadow of the Parkland school shooting in Florida,[5] was ill-advised and knowingly improper. The Court of Appeals deemed that these arguments were "questionable;" The repeated directive to send a message, multiple times over, made these "questionable"

[5] The tragic Stoneman Douglas High School Shooting took place on February 14, 2018, in Parkland, Florida. The shooting occurred just before the trial in this lawsuit.

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comments highly prejudicial. *See*, *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 106, 330 NW2d 638, 643–44 (1982) (while one improper statement is not prejudicial, several improper statements during one closing argument is sufficiently prejudicial to warrant a new trial). Considering the verdict, although Defendant need not " 'demonstrate affirmatively' that the statements had a prejudicial effect," it appears that the jury was moved by passion and prejudice. *Yost*, 301 Mich App at 366 (*citing Wayne Co Bd of Rd Comm'rs v GLS LeasCo, Inc*, 394 Mich 126, 138, 229 NW2d 797 (1975)).

The arguments used in this case were similar to those used by Plaintiff's attorney in *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 770, 685 NW2d 391 (2004). In that sexual harassment case, Plaintiff's counsel made arguments such as: (1) "send a message," (2) "they are going to have to recognize, hopefully today by your verdict, that not only must they face justice in this case, they must obey the law"; (3) "I can assure that verdict will be heard from the floor of that plant on Jefferson to the board room in Auburn Hills . . . once they hear in Auburn Hills and in Germany about Linda . . . it will stop." Defendant objected to these arguments because they were advocating for punitive damages, which were not allowed. The trial court did give a curative instruction. Despite the curative instruction, the Supreme Court held that such inflammatory argument required a new trial. The same result is required in this matter.

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RELIEF REQUESTED

For the reasons argued above, the lower court committed reversible error when it (1) required only the lessened, "motivating factor" causation standard at summary disposition and at trial, and (2) denied Defendant a new trial after Plaintiff's improper opening statement. Defendant requests that this Court grant Leave to Appeal these decisions.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendant-Appellant
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020
tmullins@gmhlaw.com
P28021

DATED: August 11, 2020

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B. MSD Transcript
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EXHIBIT A

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

PENNIE MARIE DAVIS, Plaintiff-Appellee,	UNPUBLISHED July 2, 2020
v	No. 344203 Jackson Circuit Court
JACKSON PUBLIC SCHOOLS, Defendant-Appellant.	LC No. 16-000344-CZ

Before: STEPHENS, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Defendant, Jackson Public Schools, appeals as of right a judgment entered in favor of plaintiff, Pennie Marie Davis, following a jury trial in this action for unlawful retaliation under the Whistleblowers' Protection Act (WPA), MCL 13.361 *et seq.* For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Plaintiff, a teacher at Jackson High School (JHS), was assaulted by a student, MH, in her high school art class on October 12, 2015. Plaintiff reported the assault to the police and obtained a personal protection order (PPO) against the student. Plaintiff filed this action for violation of the WPA, alleging that defendant unlawfully retaliated against her for reporting the assault to the police and obtaining the PPO.

At the time of the assault, plaintiff had been teaching in defendant's school system for 29 years. Before the assault, she had received exemplary evaluations for her performance, and she had received an evaluation rating of "highly effective" for the immediately preceding school year. At the time of the assault, plaintiff was curriculum chair of the art department at JHS. In the fall of 2015, MH was in plaintiff's Beginning Art 2D class. Plaintiff described MH as a tenth-grade student who was 6 feet tall, 250 pounds, and a football player. According to plaintiff, she had ongoing behavioral issues with MH in the class which became worse as the year progressed. According to plaintiff, she attempted to reach out to other school administrators, as well as MH's mother, but was not successful in dealing with his behavior.

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On October 12, 2015, when MH entered plaintiff's classroom, she overheard him say that "he wanted to hurt and beat and something like kill the teacher at that point." After plaintiff instructed the students about their assignment for the day, plaintiff overheard MH say "that he wants to, you know, hurt and threatens [sic] me." According to plaintiff, she calmly put her hand on MH's desk and told him he would need to stop speaking that way or he would have to leave the classroom. MH refused to stop, so plaintiff asked him to go to the office. At that point, MH said some "choice words" and refused to go to the office. According to plaintiff, when she threatened to call security, MH stated, "I'm not going" and swung his closed fist into plaintiff's hand in a manner that plaintiff described as "forceful." When plaintiff's initial attempts to seek assistance from school administrators regarding this incident were unsuccessful, she reported the matter to the police. Plaintiff also independently sought medical attention and obtained a PPO.

Defendant placed plaintiff on paid administrative leave so that it could complete an investigation. School administrators and the police interviewed students who were present in plaintiff's classroom at the time of the altercation, and they reported that the physical contact between plaintiff and MH appeared to be accidental. When plaintiff returned to work, a plan was devised whereby plaintiff and MH avoided each other to comply with the terms of the PPO. According to plaintiff, however, she observed MH unsupervised near her classroom, so she filed a motion to modify the PPO because she felt unsafe. Shortly thereafter, but before any modification of the PPO, school administrators transferred plaintiff to Parkside Middle School ("Parkside") to teach sixth grade art. Parkside was a school that focused on the International Baccalaureate (IB) curriculum, and plaintiff asserts that she had not received instruction or training regarding the IB curriculum before the transfer, or in the time period following her transfer. Plaintiff also lost her position as curriculum chair of the art department. While at Parkside, plaintiff was told that her performance was substandard and she was placed on an Individual Development Plan (IDP). She received a poor evaluation at the end of the 2015-2016 school year.

Plaintiff filed this lawsuit alleging that defendant retaliated against her, in violation of the WPA, for reporting the matter involving MH to the police. After defendant unsuccessfully moved for summary disposition, the trial court held an eight-day jury trial. The jury found that defendant violated the WPA and awarded plaintiff $10,290 in economic damages, $2,240 in future economic damages, past noneconomic damages of $150,382, and future noneconomic damages of $225,573. The trial court entered a judgment in favor of plaintiff consistent with the jury's verdict. Defendant filed a motion for a new trial or remittitur, which the trial court denied. Defendant thereafter filed this appeal.

II. DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Defendant first argues that the trial court erred by denying its motion for summary disposition. We disagree.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Wurtz v Beecher Metro Dist*, 495 Mich 242, 249; 848 NW2d 121 (2014). Although defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10), defendant submitted evidence in support of its motion, and defendant argues on appeal that the submitted evidence showed that it was entitled to summary disposition. Therefore, it is appropriate to review defendant's motion under MCR 2.116(C)(10).

> A motion under MCR 2.116(C)(10), . . . tests the factual sufficiency of a claim. *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id*. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Johnson*, 502 Mich at 761 (quotation marks, citation, and brackets omitted in original). [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).]

Plaintiff alleged that defendant retaliated against her for contacting the police and obtaining a PPO, by harassing, ridiculing, and demeaning her, transferring her to an inferior position at Parkside, and subjecting her to a hostile work environment. MCL 15.362 provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

A prima facie case of retaliation is established under the WPA if the plaintiff can demonstrate that (1) the plaintiff engaged in an activity protected by the WPA, (2) the plaintiff was discharged or otherwise discriminated against by the plaintiff's employer, and (3) "a causal connection exists between the protected activity and the discharge or adverse employment action." *West v Gen Motors Corp*, 469 Mich 177, 183-184; 665 NW2d 468 (2003). On appeal, defendant does not challenge the first two requirements, but argues that plaintiff did not make the requisite showing of causation. Defendant observes that "a temporal relationship, standing alone, does not demonstrate a causal connection between the protected activity and any adverse employment action." *Id*. at 186. As explained in *West*,

> [s]omething more than a temporal connection between protected conduct and an adverse employment action is required to show causation where discrimination-based retaliation is claimed. . . . Plaintiff must show something more than merely a coincidence in time between protected activity and adverse employment action. [*Id*. (citations omitted).]

In *Debano-Griffin v Lake Co*, 493 Mich 167, 171; 828 NW2d 634 (2013), our Supreme Court, in addressing the causation element of a WPA claim, observed that WPA claims are similar "to other antiretaliation employment claims brought under employment discrimination statutes prohibiting various discriminatory animuses," and accordingly, stated that such a claim should be considered in accordance with the same standards of proof applicable to those analogous claims. *Id*. at 175-176. Therefore, WPA claims are also subject to the burden-shifting framework

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established in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Debano-Griffin*, 493 Mich at 176. As explained by our Supreme Court:

> Absent direct evidence of retaliation, a plaintiff must rely on indirect evidence of his or her employer's unlawful motivations to show that a causal link exists between the whistleblowing act and the employer's adverse employment action. See [*Hazle v Ford Motor Co*, 464 Mich 456, 462-463; 628 NW2d 515 (2001)]. A plaintiff may " 'present a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful [retaliation].' " *Id.* at 462, quoting *DeBrow v Century 21 Great Lakes, Inc* (*After Remand*), 463 Mich 534, 537-538; 620 NW2d 836 (2001)]. Once a plaintiff establishes a prima facie case, "a presumption of [retaliation] arises" because an employer's adverse action is "more likely than not based on the consideration of impermissible factors"—for example, here, plaintiff's protected activity under the WPA—if the employer cannot otherwise justify the adverse employment action. *Hazle*, 464 Mich at 463 (citations and quotation marks omitted). [*Debano-Griffin*, 493 Mich at 176.]

A plaintiff presents direct evidence of retaliation when the evidence is such that, if believed, it requires a conclusion that an unlawful discriminatory animus was "at least a motivating factor in the employer's actions." *Rivera v SVRC Indus, Inc*, 327 Mich App 446, 457; 934 NW2d 286 (2019). However, when a plaintiff relies on circumstantial evidence of retaliation to establish the prima facie case, the plaintiff must utilize the burden-shifting framework of *McDonnell Douglas*. *Id*. at 458.

However, an employer may still be entitled to summary disposition if it provides a legitimate reason for its employment action, and the plaintiff cannot establish that a reasonable fact-finder would nonetheless conclude that the plaintiff's protected activity "was a 'motivating factor' in the employer's [adverse] action." *Id*. To avoid summary disposition, then, the plaintiff must present evidence raising a genuine issue of material fact concerning whether the employer's reason for taking the action it did was merely pretextual for otherwise unlawful retaliation. *Id*.

> A plaintiff can establish that a defendant's articulated legitimate . . . reasons are pretexts (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision. [*McNeill-Marks v MidMich Med Ctr-Gratiot*, 316 Mich App 1, 18; 891 NW2d 528 (2016), quoting *Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998).]

This Court will not second-guess the employer's decision to determine if it was " 'wise, shrewd, prudent, or competent.' " *McNeill*, 316 Mich App at 18, quoting *Hazle*, 464 Mich at 476. Instead, the pivotal inquiry is whether the employer's decision was motivated by discriminatory animus. *McNeill*, 316 Mich App at 18.

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A. A PRIMA FACIE CASE UNDER THE WPA

Defendant, citing *West*, argues that the trial court erred by concluding that plaintiff presented evidence to establish a causal connection between her protected activity and the resulting adverse employment actions. Noting that a plaintiff is required to show more than a simple coincidence in time between an adverse employment action and the protected activity, defendant relies on the deposition testimony of Jeffrey Beal, defendant's superintendent, who explained that the reason plaintiff was transferred to Parkside was to comply with the terms of the modified PPO, and to ensure plaintiff's safety at her place of employment. According to defendant, it had to make a "business decision designed to separate a student and teacher," and if it had intended to retaliate unlawfully against plaintiff, it could have done so when she first went to the police and obtained the PPO after the October 12, 2015 assault by MH. Defendant also observes that plaintiff was free to transfer back to JHS after MH was no longer attending JHS, which defendant claims further undermines plaintiff's position that she was a victim of unlawful retaliation.

Initially, with respect to causation, we agree with the trial court that plaintiff demonstrated that "a causal connection exists between the protected activity and the discharge or adverse employment action." Plaintiff presented evidence from which a reasonable fact-finder could conclude that there was a causal nexus between her contact with defendant's high-level administrators in relation to her report of MH's assault to the police and the subsequent employment actions that were taken. *West*, 469 Mich at 184. Plaintiff testified that the day after the assault, Benjamin Pack, defendant's assistant superintendent of human resources, and Beal both visited her in her classroom and "demanded" that she take the bandage off her hand. When plaintiff refused because the medical professionals who examined her the night before had instructed her not to take it off, she was berated by Beal and Pack, who were very upset with her. According to plaintiff, it was clear from Beal's and Pack's conduct and statements that they did not believe that MH had assaulted her.

According to the affidavit of Amy Gish, plaintiff's union representative, she was present on October 15, 2015 when plaintiff met with Beal and Pack. Gish swore that Pack suggested that plaintiff could have hit herself with a hammer in an effort to cause the injury to her hand. Gish recalled that, during the meeting, Pack and Beal were "visibly angry" and they spoke to plaintiff in a loud, confrontational, and accusatory manner. According to Gish, it was apparent that both Pack and Beal were angry with plaintiff for going to the police and obtaining the PPO. They placed plaintiff on administrative leave.

On November 4, 2015, plaintiff filed a motion to modify the PPO, alleging that MH's behavior at JHS caused her to continue to feel unsafe. Plaintiff also informed the principal of JHS, Barbara Baird-Pauli, as well as Gish, in a written correspondence dated November 5, 2015, that she was still concerned about her safety because MH was wandering around the school unsupervised and she believed he had banged on her classroom door. On November 13, 2015, plaintiff was notified that she was being transferred to Parkside. According to plaintiff, at a meeting on November 16, 2015, Pack was very angry with her, apparently for seeking to modify the PPO, and he told her, "We do not go to the police here." Plaintiff further testified that "if I didn't go to the police and kept everything in school then Ben Pack said he wouldn't have moved me but since I went to the police then he was going to move me [to a different school]."

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Gish averred in an affidavit that the decision to transfer plaintiff to Parkside immediately followed plaintiff's action of seeking to modify the PPO, and took place after school officials were made aware of the proposed modification. Plaintiff testified that Parkside is a school with an IB curriculum, which she had never taught, and she did not receive the necessary training before the transfer, or in the period following the transfer. Within a short time after arriving at Parkside, plaintiff was deemed a "failing teacher," and during an IDP meeting the Parkside school principal, Jeremy Patterson, told her and Gish in a negative and accusatory tone, "I know what happened at the high school." In the school year preceding the assault by MH, plaintiff had received a rating of "highly effective," and she had received similarly favorable evaluations throughout her 29-year career with defendant. However, in her evaluation for the 2015-2016 school year, she received an "ineffective" evaluation.

The evidence, viewed in the light most favorable to plaintiff, showed that after plaintiff reported the assault by MH to the police and obtained a PPO, she was repeatedly treated in a highly unprofessional manner by Pack and Beal, who voiced their displeasure that she decided to report the matter to the police rather than deal with defendant's administration. Within a month of the October 12, 2015 assault, and a mere matter of days after plaintiff moved to modify the initial PPO, she was transferred to a different school and assigned to teach a specialized curriculum for which she had not received appropriate training. Shortly after arriving at Parkside, the school principal classified plaintiff as a "failing teacher," and then subsequently gave plaintiff an unfavorable evaluation for the 2015-2016 school year. Before the 2015-2016 school year, plaintiff had received exemplary evaluations. Beyond the temporal proximity of these employment actions to plaintiff's decisions to contact the police and obtain a PPO, plaintiff also presented evidence that Pack accused her of (1) fabricating her own her injury, and (2) having a "beef" against MH. In addition, plaintiff testified that Pack told her that if she had not gone to the police and had kept matters within the school, she would not have been transferred. Thus, plaintiff presented evidence of (1) behavior and conduct by high-level school administrators indicating that they were upset that plaintiff reported an assault to the police and obtained a PPO, and (2) the involvement of those administrators in the decision to transfer plaintiff to Parkside.

In sum, plaintiff's evidence supported an inference that defendant's employment actions were taken because it was upset about her decisions to report the assault to the police and to pursue the PPO within the court system. The evidence was sufficient to demonstrate that defendant "took adverse employment action *because of* plaintiff's protected activity." *West*, 469 Mich at 185. Thus, the trial court properly determined that there were genuine issues of fact with respect to the causation element of a WPA claim.

B. PRETEXT

Defendant also argues that it was entitled to summary disposition because it transferred plaintiff to Parkside for the legitimate reasons of ensuring her safety and to comply with the PPO, and because plaintiff failed to otherwise raise a genuine issue of material fact that these reasons were a mere pretext for unlawful retaliation. We disagree.

Once plaintiff established a prima facie case, a rebuttable presumption arose that defendant's adverse employment actions were more likely than not based on an impermissible consideration, such as plaintiff's protected activity under the WPA. *Debano-Griffin*, 493 Mich at

176. However, once defendant put forth a legitimate reason for its employment action, plaintiff was required to demonstrate that her protected activity "was a 'motivating' factor'" for defendant's employment decision. *Id*.

Plaintiff testified that Pack informed her that if she had not gone to the police and kept all matters related to the assault by MH "in school," then she would not have been transferred to Parkside. Pack, who plaintiff described as "angry" during this conversation on November 13, 2015, also told plaintiff "we do not go to the police here." Gish averred in her affidavit that plaintiff's transfer to Parkside, which offered an IB curriculum, immediately followed plaintiff's decision to seek to modify the PPO. Beal acknowledged that neither he nor Pack attempted to meet with plaintiff to determine if her safety concerns could be alleviated without necessitating a transfer to Parkside.

Moreover, plaintiff pointed out that the decision to transfer her was made on November 13, 2015, before the PPO was actually modified on November 19, 2015. Plaintiff also pointed out that the original PPO likewise prohibited MH from appearing at plaintiff's workplace, but that defendant did not transfer her as a result of that language; instead defendant devised a plan in which plaintiff and MH would avoid each other at JHS.

This evidence challenged the credibility of defendant's proffered justification for the transfer, namely, that a transfer was necessary to comply with the PPO and to ensure plaintiff's safety. The evidence that defendant failed to meet with plaintiff to discuss her safety concerns before the transfer, and the evidence of Pack's statements to plaintiff that she would not have been transferred if she had kept the matter "in school" and had not gone to the police, placed the credibility of the proffered justification for the transfer squarely at issue, and created a genuine issue of material fact whether this reasoning was actually legitimate. Accordingly, the trial court properly denied defendant's motion for summary disposition.

III. DEFENDANT'S CLAIMS OF INSTRUCTIONAL ERROR

Defendant next argues that the trial court erroneously instructed the jury on the causation element of a WPA claim when it instructed the jury in accordance with the model civil jury instruction, M Civ JI 107.03. Defendant contends that the model instruction is inconsistent with United States Supreme Court precedent, and thus, does not accurately state the causation standard for a WPA violation. We review the trial court's jury instructions de novo to determine whether the instructions, examined in their entirety, adequately presented each party's theory of the case and accurately stated the prevailing law. *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 326 Mich App 684, 707; 930 NW2d 416 (2019).

Model Civil Jury Instructions must be given in each action if they (1) are applicable; (2) accurately state the applicable law, and (3) are requested by a party. MCR 2.512(D)(2). The trial court instructed the jury consistent with M Civ JI 107.03 (Whistleblowers' Protection Act: Causation), which provides:

> When I use the term "because of" I mean that protected activity must be one of the motives or reasons defendant [discharged / or / threatened / or / discriminated against] the plaintiff. Protected activity does not have to be the only reason, or even

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> the main reason, but it does have to be one of the reasons that made a difference in defendant's decision to [discharge / or / threaten / or / discriminate against] the plaintiff.

At trial, defendant requested that the trial court, in lieu of giving M Civ JI 107.03, instead instruct the jury in the following manner:

> When I use the term "because of" I mean that [p]laintiff would not have been retaliated against *but for* her "protected activity."

Defendant argued that this requested instruction was appropriate in light of recent United States Supreme Court authority imposing a "but-for" standard of causation in the context of federal employment discrimination and retaliation statutes. The trial court disagreed and instructed the jury in accordance with M Civ JI 107.03.

On appeal, defendant notes that MCL 15.362 prohibits an employer from taking adverse employment action against an employee "because" the employee "reports . . . a violation . . . of a law[.]" Defendant argues that the term "because" imposes a "but-for" standard of causation, and to the extent that the model civil jury instruction is consistent with such a standard, the trial court erred by relying on it to instruct the jury. In support of its argument, defendant relies on *Univ of Texas Southwestern Med Ctr v Nassar*, 570 US 338, 342-343; 133 S Ct 2517; 186 L Ed 2d 503 (2013), in which the Supreme Court was asked to consider the causation standard applicable to claims of unlawful employer retaliation under Title VII of the Civil Rights Act of 1964, 42 USC 2000e *et seq*. The respondent in *Nassar* was a physician of Middle Eastern descent who alleged that he was unlawfully retaliated against in his employment after he complained about racial harassment by his supervisor. *Id*. at 344-345. The pertinent statutory provision at issue in *Nassar*, 42 USC 2000-3(a), provided, in pertinent part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

The *Nasser* Court looked to its earlier decision in *Gross v FBL Fin Servs, Inc*, 557 US 167; 129 S Ct 2343; 174 L Ed 2d 119 (2009), in which it interpreted "a separate but related statute," the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC 623(a)(1). *Nassar*, 570 US 343. In *Gross*, the Supreme Court was presented with the question "whether the burden of persuasion ever shifts to the party defending an alleged mixed-motives discrimination claim brought under the ADEA." *Gross*, 557 US at 173. However, the Court determined that the ADEA did not allow for mixed-motives discrimination claims at all. In reaching this conclusion, the Court interpreted 29 USC 623(a)(1), which provides:

> It shall be unlawful for an employer -
>
> (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms,

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> conditions, or privileges of employment, *because of* such individual's age[.] [Emphasis added.]

Consulting the dictionary definition of "because of[,]" the Court concluded that "the ADEA's requirement that an employer took adverse action 'because of' age is that age was the 'reason' that the employer decided to act." *Gross*, 557 US at 176. The Court determined that:

> under § 623(a)(1), the plaintiff retains the burden of persuasion to establish that age was the "but-for" cause of the employer's adverse action. [*Gross*, 557 US at 176-177.]

Therefore, the Court held that the burden of persuasion in an alleged mixed-motives case is the same heightened standard as in a disparate treatment claim, and that the plaintiff bore the burden of establishing, by a preponderance of the evidence, that age was the "but-for" cause of the employer's adverse employment decision. *Id*. at 178.

In *Nassar*, after observing that it had concluded in *Gross* that the ADEA, which did not have "any meaningful textual difference" from 42 USC 2000-(3)(a), "requires proof that the prohibited criterion was the but-for cause of the prohibited conduct[,]" the Court held that the logical conclusion was that Title VII retaliation claims likewise "require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Nassar*, 570 US at 343, 352. In reaching this conclusion, the Court noted that status-based discrimination on the basis of race, color, religion, sex, and national origin, addressed in 42 USC 2000e-2, was treated differently under amendments enacted in 1991:

> So, in short, the 1991 Act substituted a new burden-shifting framework for the one endorsed by [*Price Waterhouse v Hopkins*, 490 US 228; 109 S Ct 1775; 104 S Ct 268 (1989)]. Under that new regime, a plaintiff could obtain declaratory relief, attorney's fees and costs, and some forms of injunctive relief based solely on proof that race, color, religion, sex, or nationality was a motivating factor in the employment action; but the employer's proof that it would still have taken the same employment action would save it from monetary damages and a reinstatement order. See *Gross*, 557 US at 178, n 5; see also *id*., at 175 n 2, 177, n 3. [*Nassar*, 570 US at 349.]

We acknowledge that the federal statutes at issue in *Gross* and *Nassar* contain language that mirrors that of § 2 of the WPA. And the Michigan Supreme Court has recognized that United States Supreme Court precedent is not controlling, but may be considered persuasive, regarding the interpretation of state law. In *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 283; 696 NW2d 646 (2005), our Supreme Court explained:

> While federal precedent may often be useful as guidance in this Court's interpretation of laws with federal analogues, such precedent cannot be allowed to rewrite Michigan law. The persuasiveness of federal precedent can only be considered after the statutory differences between Michigan and federal law have been fully assessed, and, of course, even when this has been done and language in

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> state statutes is compared to similar language in federal statutes, federal precedent remains only as persuasive as the quality of its analysis.

See also *Sharp v Lansing*, 464 Mich 792, 802-803; 629 NW2d 873 (2001).

MCL 15.362 precludes an employer from taking adverse employment actions against an employee "*because* the employee . . . reports . . . a violation of a law[.]" Addressing how a plaintiff can establish a prima facie claim under MCL 15.362, our Supreme Court has held that the causation element requires a plaintiff to present evidence demonstrating that "a causal connection exists between the protected activity and the discharge or adverse employment action." *West*, 469 Mich at 184. The Michigan Supreme Court has also described the requisite showing as a "causal nexus" that must be made, *id*., and further clarified that a plaintiff must "show that his employer took adverse employment action *because of* [the] plaintiff's protected activity[.]" *Id*. at 185. Moreover, rather than interpreting MCL 15.362 in a manner that requires a "but-for" causation standard, the Michigan Supreme Court has held that a plaintiff must "demonstrate that the adverse employment action *was in some manner influenced by the protected activity*[.]" *West*, 469 Mich at 185 (emphasis added). Put another way, to establish a prima facie case under the WPA, a plaintiff must put forth evidence "from which a reasonable juror could conclude that any adverse employment action directed at [the] plaintiff *was related to* the [protected activity made by the] plaintiff." *Id*. at 187 (emphasis added). See also *Debano-Griffin*, 493 Mich at 175 (stating the "causal connection" requirement of a prima facie case under the WPA and recognizing that in showing that a claimed employment decision is mere pretext, the plaintiff must show that his or her protected activity under the WPA "was a motivating factor for the employer's adverse action") (citation and quotation marks omitted).

Whatever persuasive value *Gross* and *Nassar* may have toward recognizing a more precise "but-for" standard for WPA claims in Michigan, we are not at liberty to disregard our Supreme Court's clear and settled pronouncement of the causation standard applicable to a WPA claim, even if a "but-for" standard may seem more viable or consistent with the statutory language of MCL 15.362. In *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016), our Supreme Court cautioned this Court from "anticipatorily ignor[ing]" decisions from the Michigan Supreme Court, even if more recent developments in the law have "undercut the foundation" on which a case has stood. The Supreme Court stated:

> The Court of Appeals is bound to follow decisions [from the Michigan Supreme Court] except where those decisions have clearly been overruled or superseded and is not authorized to anticipatorily ignore our decisions where it determines that the foundations of a Supreme Court decision have been undermined. [*Id*.]

Because the trial court instructed the jury on the causation element of a WPA claim in a manner consistent with Michigan Supreme Court precedent, which we are bound to follow, we are compelled to reject defendant's claim of instructional error.

IV. DEFENDANT'S CLAIMS OF EVIDENTIARY ERROR

Defendant next argues that multiple evidentiary errors by trial court warrant reversal of the judgment for plaintiff. We disagree.

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When an evidentiary issue is properly preserved, we review the trial court's decision to admit or exclude evidence for an abuse of discretion. *Nahshal v Fremont Ins Co*, 324 Mich App 696, 710; 922 NW2d 662 (2018). However, "preliminary legal determinations of admissibility are reviewed de novo." *Id*. (citation and quotation marks omitted). If an error is found, we must determine whether the error "was harmless error or reversible error under MRE 103(a)." *Id*. at 717.

> A trial court's error is harmless if, based on review of the entire record, it is more probable than not that the error was not outcome determinative; if the probability runs in the other direction, then it is reversible error. *Barnett v Hidalgo*, 478 Mich 151, 172; 732 NW2d 472 (2007); see also MCR 2.613(A)[1]; *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 157-158; 908 NW2d 319 (2017). [*Nahshal*, 324 Mich App at 717 (footnote added).]

See also *Augustine v Allstate Ins Co*, 292 Mich App 408, 424; 807 NW2d 77 (2011) (an evidentiary error will not require disturbing a judgment unless failure to do so is inconsistent with substantial justice). Where an evidentiary challenge was not properly preserved below, we review the issue to determine whether a plain error affected a party's substantial rights. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

A. POLICE REPORT

Defendant first argues that the trial court abused its discretion by refusing to admit the police report of Jackson Police Officer Scott Goings on the basis that it was inadmissible hearsay. Defendant argues that the police report was not hearsay because it was not offered to prove the truth of its contents, but to assist the jury in understanding defendant's motivations for and reasons why the administrators acted in the manner they did after plaintiff contacted the police and obtained a PPO.

Under MRE 801(c), hearsay "is a statement, other than the one made by the declarant while testifying at the trial . . . offered in evidence to prove the truth of the matter asserted." Unless otherwise provided by the rules of evidence, hearsay is not admissible. MRE 802. Generally, police reports are considered inadmissible hearsay. *Maiden v Rozwood*, 461 Mich 109, 125; 597 NW2d 817 (1999); *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 254; 805 NW2d 217 (2011). But when evidence of out-of-court statements is offered to demonstrate the effect of the statements on the hearer, "then it is not offered for a hearsay purpose because its value

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[1] MCR 2.613(A) provides:

> An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, *unless refusal to take this action appears to the court inconsistent with substantial justice*. [Emphasis added.]

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does not depend upon the truth of the statement." *People v Lee*, 391 Mich 618, 642; 218 NW2d 655 (1974).

Initially, we question defendant's assertion that it sought to admit the police report merely to show how its school administrators conducted themselves and interacted with plaintiff following her allegation of assault by MH, and not for the truth of its contents. Specifically, to the extent that defendant sought to rely on the police report to explain why administrators may not have taken plaintiff's allegations more seriously, or to illustrate the motivations of its administrators in the aftermath of plaintiff's allegations of assault, the relevancy of the evidence for this purpose would have been dependent upon the truth of the statements recounted in the police report because it was being offered to essentially explain defendant's determination that an assault did not occur. In particular, defendant sought to rely on the portions of the police report describing that tenth-grade principal Joe Zessin and Officer Goings interviewed students to show that the consensus among those who witnessed the interaction between MH and plaintiff was that MH had merely pushed plaintiff's hand away and an assault did not take place. Therefore, we agree with the trial court that defendant sought to admit the document for the truth of its contents, despite of defendant's protestations to the contrary. Accordingly, the trial court did not abuse its discretion by excluding the report as inadmissible hearsay.

Furthermore, even if the police report did not qualify as hearsay, any error in excluding the evidence was harmless. The alleged purpose of the police report was to explain why defendant acted in the manner it did following plaintiff's allegations of assault. However, defendant was able to present substantial other evidence on this subject during trial. Baird-Pauli testified that Zessin conducted interviews of the students present in the classroom at the time of the interaction between plaintiff and MH, and Baird-Pauli interviewed two of the students herself. According to Baird-Pauli, the consensus was that "any contact between [MH] and [plaintiff] was inadvertent." Baird-Pauli also testified that the students who were interviewed by Officer Goings gave the officer information consistent with what they had relayed to Zessin and Baird-Pauli. Moreover, during his testimony, Pack confirmed that he concluded, on the basis of the witness statements collected by Zessin, that "this would have been an issue that could have been addressed at the building administration level," rather than going to the police. Accordingly, because defendant was able to present other evidence of its understanding of the altercation between plaintiff and MH, any error in the trial court's exclusion of the police report did not affect defendant's substantial rights and this Court's failure to reverse on that basis would not be inconsistent with substantial justice. *Augustine*, 292 Mich App at 424. Thus, any error does not require reversal.

B. TESTIMONY OF GISH

Defendant also asserts that the trial court abused its discretion by allowing Gish to testify regarding plaintiff's low evaluation score after discussing it with other union leaders across the state. Defendant argues that this allowed Gish to effectively compare plaintiff to hundreds of teachers around the state through inadmissible hearsay statements, under circumstances where it did not have the opportunity to cross-examine these other individuals. Defendant also challenges Gish's testimony that a student's complaint against plaintiff was not legitimate or believable, arguing that it was not able to counter this "highly prejudicial" evidence by producing its own witnesses, or cross-examining the students and teachers involved in the incident giving rise to the complaint.

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The record discloses that defendant did not object to Gish's testimony that other teachers in Michigan did not receive evaluation ratings as low as plaintiff's rating. Although defendant asserts that it raised this issue in a motion in limine, that motion was directed at Gish's averments that she had not seen defendant's administrators treat an employee within defendant's district as rudely and unprofessionally as they treated plaintiff. Because defendant's appellate objection involves entirely different testimony and defendant did not object to that testimony at trial, this evidentiary claim is unpreserved. *Nahshal*, 324 Mich App at 709-710. Accordingly, our review is limited to plain error affecting defendant's substantial rights.

Defendant claims that Gish's testimony was improper because it was hearsay and because it was unable to present evidence that other teachers throughout the state who did not receive a score of one on their evaluation were not similarly situated to plaintiff. We note that in cases alleging employment discrimination, a plaintiff can "attempt to prove discrimination by showing that the plaintiff was treated unequally to a similarly situated employee who did not have the protected characteristic." *Hecht v Natl Heritage Acads, Inc*, 499 Mich 586, 607; 886 NW2d 135 (2016).

> An employer's differing treatment of employees who were similar to the plaintiff in all relevant respects, except for their race, can give rise to an inference of unlawful discrimination. In order for this type of "similarly situated" evidence alone to give rise to such an inference, however, our cases have held that the "comparable" employees must be "nearly identical" to the plaintiff in all relevant respects. [*Id*. at 608.]

Initially, defendant's contention that Gish's testimony amounted to inadmissible hearsay under MRE 802 is dubious, given that Gish's testimony was not offered to establish the truth of any out-of-court statement, but rather to demonstrate her knowledge of and familiarity with the evaluation process for teachers across Michigan. Gish only testified that she had not personally heard of a teacher receiving an evaluation score of one, not that a teacher had never received a score of one on an evaluation. Likewise, plaintiff was not attempting to establish that she was discriminated against by comparing herself to other teachers across Michigan, which would require a showing that other teachers were similarly situated to plaintiff in almost all respects. *Hecht*, 499 Mich at 608. Instead, plaintiff was simply eliciting from Gish that, in her experience in dealing with other school districts around the state, an overall score of one on an evaluation is rare. Accordingly, defendant's claim that Gish's testimony amounts to plain error affecting defendant's substantial rights is unavailing. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001)

Defendant also complains that Gish was improperly allowed to testify about another teacher's description of the veracity of a complaint about plaintiff made by another student at Parkside. We agree with defendant that Gish's testimony involved inadmissible hearsay. According to Gish's testimony, the other teacher described the student's account of the matter that formed the basis for the complaint and then remarked that the student's account was not plausible. The other teacher's account of the student's description of the incident giving rise to the complaint qualifies as hearsay because it was introduced for the purpose of establishing the truth of the other teacher's statement questioning the veracity of the student's account. We do not agree with the trial court's ruling that the challenged testimony was admissible to show the effect upon the

listener. Indeed, plaintiff seems to concede that this testimony was erroneously admitted, but argues that any error was harmless. We agree that the error in admitting this evidence was harmless.

That a complaint was made against plaintiff by another student at Parkside was not a key disputed issue at trial, and the veracity of the student's complaint did not figure prominently into plaintiff being able to establish a prima facie claim under the WPA, or in defendant's proffered reasons for undertaking adverse employment actions against plaintiff. During the eight-day trial, plaintiff presented voluminous evidence documenting a concerted pattern of retaliatory conduct by defendant that predated the student complaint at Parkside. Thus, the complaint could not have been a factor in the jury's consideration of defendant's proffered reasons for its actions against plaintiff. Specifically, plaintiff presented evidence that shortly after she contacted the police and obtained the PPO following the October 12, 2015 assault, she experienced angry and confrontational behavior by Pack and Beal. Even before her transfer to Parkside, she was accused of fabricating her hand injury, placed on leave during the period in which defendant purportedly undertook to investigate the matter further, docked pay during her leave, and on her return to work she was abruptly transferred to another school after she sought to modify the PPO, which resulted in her losing her position as curriculum chair of JHS's art department. Shortly after arriving at Parkside, she was told by Patterson that she was a failing teacher and then she received her first ineffective evaluation in almost three decades. The evidence of the student complaint was peripheral and tangential to the core issues in dispute that the jury was required to decide. Accordingly, it is not more probable than not that the isolated testimony related to the veracity of the student complaint was outcome-determinative. *Nahshal*, 324 Mich App at 717. Because the testimony did not undermine defendant's substantial rights in any manner, it would not be inconsistent with substantial justice to not reverse the jury's verdict on the basis of the improper admission of this evidence.

C. HARASSMENT COMPLAINT AGAINST ERIC WEATHERWAX

Defendant next argues that a harassment complaint form regarding an administrator at Parkside Middle School, Eric Weatherwax, was improperly admitted because it contained hearsay and "allowed [p]laintiff to improperly argue that numerous teachers have complaints" against defendant, "when such fact was neither probative nor properly supported."

We disagree with defendant's assertion that the document was inadmissible hearsay. The record supports plaintiff's counsel's assertion at trial that the document was introduced to highlight its effect upon plaintiff, rather than to establish the truth of its contents. Specifically, plaintiff's counsel drew attention to the document to showcase "the disrespect within the administration" that plaintiff felt she was subjected to working for defendant, particularly when she sought an evaluation score of effective and a transfer back to JHS. Plaintiff did not offer it to substantiate

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the truth of the allegations that plaintiff and the other two teachers advanced against Weatherwax. Therefore, the trial court did not abuse its discretion by admitting this evidence.[2]

D. MH'S DISCIPLINARY HISTORY

Defendant next challenges the trial court's decision to allow a redacted copy of log entries pertaining to MH's behavioral and disciplinary history at JHS into evidence. Defendant contends that the fact that MH may have committed other infractions at JHS was not relevant to any contested issue at trial and was "highly prejudicial" because it likely "confused the issues before the jury" and was calculated to garner the jury's sympathy. Defendant argues that the evidence was not relevant under MRE 401,[3] and was inadmissible under MRE 403 and MRE 404. We disagree.

MRE 404(b)(1) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. *It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident* when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case. [Emphasis added.]

As the rule plainly provides, MRE 404(b)(1) prohibits evidence of a person's prior wrongs or acts to prove the character of the person in order to show action in conformity therewith, but permits such evidence for a "proper noncharacter purpose[.]"[4] *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998). The test for admitting evidence under MRE 404(b)(1) is as follows:

> First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury. [*People v Denson*, 500 Mich 385, 398; 902 NW2d 306

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[2] Defendant also makes a fleeting reference to the fact that "[t]his is the exact sort of evidence that MRE 404 seeks to exclude," but defendant has not supported this bare allegation with citation to legal authority or factual support in the record. Therefore, any argument in this regard is effectively abandoned. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008) ("A party abandons a claim when it fails to make a meaningful argument in support of its position.")

[3] MRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

[4] The rule applies to the prior bad acts of a third party who is not a defendant, witness, or victim. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

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> (2017), quoting *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).]

However, "merely *reciting* a proper purpose" under MRE 404(b)(1) is not sufficient to render other acts evidence admissible; instead, a "trial court must closely scrutinize the logical relevance of the evidence" to determine whether it is relevant under MRE 402. *Denson*, 500 Mich at 398, 400.

We disagree with defendant's claim that the evidence of MH's prior disciplinary issues was introduced for the impermissible purpose of establishing that MH had a propensity to engage in certain types of behavior. Instead, the evidence was offered for its relevancy to the manner in which defendant's school administrators conducted their investigation of plaintiff's reported assault by MH and their subsequent discipline of MH. Plaintiff's counsel questioned Baird-Pauli regarding whether, in the course of the school's investigation of plaintiff's allegations, Baird-Pauli had reviewed plaintiff's prior allegations regarding MH's behavior in plaintiff's class, and whether MH's prior conduct violated provisions of defendant's code of conduct for students. As evidence was introduced throughout trial to establish that (1) defendant's school administrators were concerned that plaintiff may have fabricated, or at least exaggerated, her account of the assault, and (2) witnesses had stated that MH did not actually hit plaintiff, the evidence of MH's prior behavior at JHS, particularly as documented by plaintiff, bolstered plaintiff's credibility concerning her report of the assault by showing that she and MH had a turbulent history, her prior attempts to seek assistance from school administrators were not fruitful, and she had documented prior behavior by MH that she had experienced. "Evidence bearing on a witness's credibility is always relevant." *In re Dearmon*, 303 Mich App 684, 696; 847 NW2d 514 (2014).

Defendant also advances a cursory argument that the admission of the disciplinary log "confused the issues before the jury and invoked [the jury's] sympathy[,]" and was therefore admitted in violation of MRE 403.[5] MRE 403 does not prevent the admission of any evidence that could be considered prejudicial, only evidence that is "unfairly" prejudicial. *Crawford*, 458 Mich at 398. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *Id*. In our view, the risk that the jury would give the evidence of MH's prior disciplinary history any weight in deciding its verdict was minimal, particularly because plaintiff's counsel, while questioning Baird-Pauli, did not spend a significant amount of time asking her about the substance of MH's disciplinary history, and the questions concerning his prior history were aimed at understanding defendant's investigation into the October 12, 2015 assault, rather than to illustrate that MH had a propensity to engage in violent and assaultive behavior. Additionally, while plaintiff was also questioned about MH's prior disciplinary history during her direct examination, the purpose of that line of questioning was to

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[5] MRE 403 provides:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

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bolster her credibility. Accordingly, we are not persuaded that the evidence of MH's prior disciplinary history was inadmissible under MRE 404(b)(1) or MRE 403.

E. INCOMPLETE FAX TRANSMITTAL DOCUMENTS

Defendant next argues that the trial court erred by admitting two documents related to faxes that plaintiff had sent to defendant's school administrators related to her medical records without the accompanying medical documentation. The thrust of defendant's argument on appeal is that because the fax transmission documents were introduced without the supporting medical documentation, plaintiff was able to use the "facially inaccurate and incomplete" evidence to support her theory that she complied with the requests of defendant's school administrators to provide them with her medical records. Defendant argues that admission of only the fax transmission documents violated MRE 106, which provides:

> When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Even if we were to credit defendant's argument that admitting the fax transmission documents violated this rule of evidence, we would nonetheless conclude that the error was harmless. Notably, the medical documentation at issue, plaintiff's medical records from Med Plus, as well as from Allegiance Occupational Health, had already been admitted into evidence and presented for the jury's review, and plaintiff, during her prior direct examination testimony, clearly informed the jury regarding what specific medical documents she faxed to defendant's school administrators and when. Additionally, plaintiff's counsel sought introduction of the fax documentation *to confirm the dates and times of the transmissions* plaintiff made in response to Pack's request that her x-ray results and medical documentation be provided to him, *as opposed to the substance of the documents that were transmitted*. Under these circumstances, any error was harmless, particularly because the dates and times that plaintiff faxed the medical documentation to defendant's school administrators, while arguably relevant to defendant's decision to place plaintiff on paid administrative leave, were peripheral to the central issue at trial, that being whether plaintiff was retaliated against for going to the police and obtaining and modifying a PPO against MH. After a review of the entire record, it is more probable than not that any error was not outcome-determinative. *Nahshal*, 324 Mich App at 717.

F. TRIAL COURT'S STATEMENT FROM THE PPO PROCEEDINGS

Defendant next argues that the trial court erred by admitting evidence related to the proceedings in which plaintiff secured, and sought a modification of, the PPO against MH. The trial judge who presided over this case was the same judge who handled the PPO proceedings. Defendant challenges testimony by plaintiff in which she stated that when the trial court issued the PPO, it informed her that it would speak to the principal of JHS if necessary.

We agree with plaintiff's characterization of this evidence as "innocuous," because, contrary to defendant's suggestion, it did not result in the trial court becoming "an out-of-court" witness." This is because the evidence was not introduced for the truth of its contents. It was *not*

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introduced to demonstrate whether the trial court had instructed plaintiff to consult with the principal of JHS regarding any concerns she had about the PPO, but rather to confirm the temporal proximity of her filing a motion to modify the PPO in relation to the decision by defendant's school administrators to remove plaintiff from JHS. Contrary to defendant's assertion, this evidence was relevant to a fact in issue at trial because it was probative of plaintiff's allegation that defendant took unlawful retaliatory action against her shortly after she sought to modify the PPO that she had initially obtained against MH. While defendant characterizes the evidence as "highly prejudicial[,]" this characterization is simply not supported by the record. Plaintiff merely testified about the trial court's instructions to her when she initially sought the PPO, and nothing in her testimony suggested that the court "was aligned with" plaintiff in opposing defendant. Accordingly, we are not persuaded that the trial court abused its discretion by allowing the challenged testimony. *Nahshal*, 324 Mich App at 710.

V. ATTORNEY MISCONDUCT

Defendant next argues that the trial court erred by denying its motion for a new trial on the basis of misconduct by plaintiff's counsel during opening statements. We disagree.

This Court reviews a trial court's decision in response to a motion for a new trial under MCR 2.611 for an abuse of discretion. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761; 685 NW2d 391 (2004). The trial court abuses is discretion when its decision falls outside the range of reasonable and principled outcomes. *Zaremba Equip, Inc, v Harco Nat'l Ins Co*, 302 Mich App 7, 21; 837 NW2d 686 (2013). In *Guerrero v Smith*, 280 Mich App 647, 651-652; 761 NW2d 723 (2008), this Court, quoting *Reetz v Kinsman Marine Transit Co,* 416 Mich 97, 102-103; 330 NW2d 638 (1982), set forth the standard for reviewing claims of attorney misconduct in civil cases:

> When reviewing an appeal asserting improper conduct of an attorney, the appellate court should first determine whether or not the claimed error was in fact error and, if so, whether it was harmless. If the claimed error was not harmless, the court must then ask if the error was properly preserved by objection and request for instruction or motion for mistrial. If the error is so preserved, then there is a right to appellate review; if not, the court must still make one further inquiry. It must decide whether a new trial should nevertheless be ordered because what occurred may have caused the result or played too large a part and may have denied a party a fair trial. If the court cannot say that the result was not affected, then a new trial may be granted. Tainted verdicts need not be allowed to stand simply because a lawyer or judge or both failed to protect the interests of the prejudiced party by timely action.

Defendant moved for a new trial under MCR 2.611(A)(1), which provides, in pertinent part:

> A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:
>
> * * *

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(b) Misconduct of the jury or of the prevailing party.

(c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

Addressing first the alleged attorney misconduct under MCR 2.611(A)(1)(b), in *Zaremba*, 302 Mich App at 21, this Court stated:

> An attorney's comments do not normally constitute grounds for reversal unless they reflect a deliberate attempt to deprive the opposing party of a fair and impartial proceeding. *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996). "Reversal is required only where the prejudicial statements" reveal a deliberate attempt to inflame or otherwise prejudice the jury, or to "deflect the jury's attention from the issues involved." *Id*.

This Court must review the record as a whole to discern "the cumulative effect" of an attorney's alleged misconduct, and discern whether counsel sought to prejudice the jury and distract the jury from the substance and merits of the lower court proceedings. *Yost v Falker*, 301 Mich App 362, 365-366; 836 NW2d 276 (2013). Additionally, when a trial court provides a curative instruction in response to an improper comment, this Court presumes that the jury followed its instructions, which "are presumed to cure most errors." *Zaremba*, 302 Mich App at 25. Comments that are "isolated, brief," and do not appear to have figured prominently in the jury's verdict, may be considered harmless. *Id*. at 28.

Plaintiff's counsel's comments during opening statement were questionable to the extent that they insinuated the jury should send a message to other school districts in Michigan. However, the comments were confined to opening statement. Plaintiff's counsel did not continue to promulgate this kind of message throughout the trial. Furthermore, upon timely objection by defense counsel, the trial court acted to immediately provide a contemporaneous curative instruction, and then later provided an additional curative instruction during the final jury instructions.

In support of its argument that a new trial is warranted, defendant attempts to compare the comments by plaintiff's counsel to the comments found to be objectionable in *Gilbert*. We find no merit to this comparison. In *Gilbert*, counsel for the plaintiff inflamed the jury by "supplanting law, fact, and reason with prejudice, misleading arguments, and repeated *ad hominem* attacks against [the] defendant based on its corporate status." *Id*. at 770. For example, counsel for the plaintiff repeatedly attempted to equate the plaintiff's treatment by the defendant with the victims of the Holocaust and compared the defendant, an American automaker that had recently merged with a German automaker, with the Nazis. *Id*. at 771-773. The plaintiff's counsel also insinuated repeatedly that the defendant believed that it did not need to comply with the law, which was particularly objectionable because no evidence was adduced at trial to support that assertion. *Id*. at 773-775. The plaintiff's counsel requested that the jury "send a message" to the defendant with its verdict, and the Court observed that the jury did so by awarding the plaintiff an amount that exceeded what was necessary to fully and fairly compensate her. *Id*. at 776. Moreover, the comments by the plaintiff's counsel were not "fleeting and unintentional." *Id*. at 777. Thus, the Court could not conclude that the conduct by the plaintiff's counsel was "innocuous" or

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"unintended." *Id*. As a result, the Michigan Supreme Court overturned a verdict in favor of the plaintiff, concluding that "it should have been apparent to the trial court that the persistent and calculated efforts of plaintiff's trial counsel to thwart the jury's fact-finding role had borne fruit." Because the jury's deliberations had been "palpably affected" by the misconduct of counsel for the plaintiff, and "this wrought substantial harm to [the] defendant's right to a fair trial[,]" a new trial was ordered under MCR 2.611(A)(1)(c). *Id*. at 793.

In this case, the comments by plaintiff's counsel during opening statement, while questionable, do not rise to the level of the concerted, insidious, and deliberate pattern of misconduct that the plaintiff's counsel exhibited in *Gilbert*. Although plaintiff's counsel did urge the jury to "send a message" to (1) school districts across Michigan that teachers could not be retaliated against for speaking up about physical abuse by students, and to (2) teachers across Michigan that their courageous actions would be applauded and supported, the remarks were made in the context of explaining to the jury the importance of its function in hearing this case and administering justice. The comments were not made in the context of encouraging the jury to render an award of damages that would send a message to school districts because of its verdict. Further distinguishing this case from *Gilbert* is that the conduct by plaintiff's counsel was not repeated after defendant raised an objection, and the court gave curative instructions advising the jury that it was not its role to "send a message" to other school districts in Michigan in deciding this case, or to send a message to defendant through any award of damages to plaintiff. Under these circumstances, the trial court did not abuse its discretion by denying defendant's motion for a new trial.

VI. REMITTITUR

Finally, defendant argues that the trial court abused its discretion by denying its motion for remittitur. We disagree.

We review a trial court's decision regarding a motion for remittitur for an abuse of discretion. *Pugno v Blue Harvest Farms, LLC*, 326 Mich App 1, 30; 930 NW2d 393 (2018). A court abuses its discretion when "it chooses an outcome outside the range of reasonable and principled outcomes." *Andreson v Progressive Marathon Ins Co*, 322 Mich App 76, 84; 910 NW2d 691 (2017). When reviewing the trial court's decision, this Court must review the evidence in the light most favorable to the plaintiff. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 499; 668 NW2d 402 (2003).

MCR 2.611(A)(1)(d) provides that a new trial may be granted if a verdict is "clearly or grossly inadequate or excessive." Likewise, MCR 2.611(E)(1) provides:

> If the court finds that the only error in the trial is the inadequacy or excessiveness of the verdict, it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest (if the verdict was inadequate) or highest (if the verdict was excessive) amount the evidence will support.

MCL 15.363 provides that "[a] person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, *or actual damages*, or both within 90 days after the

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occurrence of the alleged violation of the [WPA]." (Emphasis added.) "[A]ctual damages . . . include compensation for mental distress and anguish." *Veselenak v Smith*, 414 Mich 567, 572, 574; 327 NW2d 261 (1982) (citation omitted). This Court has also held that "emotional distress damages are awardable in a claim brought under the WPA." *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997), overruled on other grounds by *Garg*, 472 Mich at 290.

Remittitur is a procedural process in which the jury's verdict is "diminished by subtraction." *Andreson*, 322 Mich App at 84. In determining whether remittitur is warranted, the dispositive inquiry is whether the jury's award falls within the range of the evidence presented at trial, "and within the limits of what reasonable minds might deem just compensation for such imponderable items as . . . pain and suffering." *Id.*, quoting *Pippen v Denison Div of Abex Corp*, 66 Mich App 664, 674; 239 NW2d 704 (1976). A trial court may consider whether the jury's verdict was the result of "improper methods, prejudice, passion, partiality, sympathy, corruption, or mistake of law or fact," but when the court considers a motion for remittitur, "its inquiry should be limited to *objective* considerations related to the actual conduct of the trial or to the evidence adduced." *Palenkas*, 432 Mich at 532; *Diamond v Witherspoon*, 265 Mich App 673, 694; 696 NW2d 770 (2005).

The role of an appellate court in reviewing a jury's verdict is limited. It is the jury's role to determine the amount of damages, and it is not for this Court to usurp the role of the jury "to decide what amount is necessary to compensate the plaintiff." *Landin v Healthsource Saginaw, Inc*, 305 Mich App 519, 547; 854 NW2d 152 (2014). Consequently, the power of remittitur is to be exercised with significant restraint. *Andreson*, 322 Mich App at 84. As this Court observed in *Diamond*:

> [T]he question of the excessiveness of a jury verdict is generally one for the trial court in the first instance. The trial court, having witnessed all the testimony and evidence as well as having had the unique opportunity to evaluate the jury's reaction to the proofs and to the individual witnesses, is in the best position to make an informed decision regarding the excessiveness of the verdict. Accordingly, an appellate court must accord due deference to the trial court's decision and may only disturb a grant or denial of remittitur if an abuse of discretion is shown. [265 Mich App at 692-693, quoting *Palenkas*, 432 Mich at 531]

Because this Court's review is limited to the written record of the trial proceedings, it "can only speculate about the jury's actual reaction to testimony,"; therefore, this Court is "obliged to give the trial court the benefit of the doubt" with respect to its assessment of the evidence and whether the jury acted out of prejudice, bias, and anger. *Palenkas*, 432 Mich at 536-537.

In this case, the jury awarded plaintiff $10,290 in economic damages, $2,240 in future economic damages, $150,382 in noneconomic damages, and $225,573 in future noneconomic damages. On appeal, defendant only challenge the jury's award of $225,573 for future noneconomic damages.

At trial, plaintiff presented extensive testimony regarding the extended and ongoing embarrassment, stress, humiliation, trauma, and mental pain and anxiety she experienced because of defendant's retaliatory conduct, for which she had sought professional treatment from Dr.

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Mitchell S. Weisbrod, a clinical psychologist. Plaintiff shared that she feels discriminated against at work and still feels like she has a "target" on her back while at work. She continues to struggle with a high level of anxiety for which she requires medication. Plaintiff also explained that the stress from work had resulted in depression, sleep disturbance, and prevented her from enjoying activities that she formerly participated in during her personal time at home, particularly creating her own art. According to Dr. Weisbrod, at the time of trial, plaintiff was still struggling tremendously emotionally and mentally because of the retaliation. He explained:

> I think persistently [plaintiff has] felt that she's been treated poorly, she's been treated differently than other teachers in similar situations. Her anxiety has at times gotten better, but because of continued stressors or new things [sic] have gotten progressively worse.
>
> * * *
>
> [Plaintiff] has described it and the way she describes it says that she is given criteria for success and the bar continues to move and she feels she's been set up to fail. And therefore, you know, it's two steps forward, three steps back and she – then we've been working hard just for her to maintain her composure, maintain her ability to function and keep going to and keep working, so.

After reviewing the record, we are satisfied that the jury's award of future noneconomic damages, while sizable, is within the range of the evidence presented at trial; it is "within the limits of what reasonable minds might deem just compensation for such imponderable items as . . . pain and suffering." *Andreson*, 322 Mich App at 84, quoting *Pippen*, 66 Mich App at 674.

Although defendant briefly asserts that the jury's verdict was swayed by "improper argument, passion, or prejudice," defendant does not elaborate on this allegation. This Court's inquiry is limited to "objective considerations" regarding the actual conduct of the trial and the evidence presented. *Palenkas*, 432 Mich at 532. The record discloses the existence of factual support for plaintiff's noneconomic damages, and defendant has not established objective factual support for its claim that the jury's verdict was the product of improper argument, passion, or prejudice. Accordingly, the trial court properly declined to interfere with the jury's verdict. Thus, the trial court did not abuse its discretion by denying defendant's motion for remittitur.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto

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EXHIBIT B

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE JOHN G. McBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Thursday, April 20, 2017

APPEARANCES:

For the Plaintiff: MEGAN A. BONANNI (P52079)
Pitt McGehee Palmer & Rivers PC
117 W. 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant: TIMOTHY J. MULLINS (P28021)
Giarmarco Mullins & Horton PC
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7020

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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WITNESSES: PLAINTIFF PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT

None

EXHIBITS: INTRODUCED ADMITTED

None

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1 Jackson, Michigan
2 Thursday, April 20, 2017 - 2:35:57 p.m.
3 (Transcriber Note: Judge's Clerk Indicated
4 Beginning of Hearing Not Recorded - Judge's
5 Microphone Not Turned On)
6 THE COURT: -- exhibits that were attached
7 thereto and plaintiff's filed their response to the
8 defendant's motion for summary disposition. I've had an
9 opportunity to review and tab both of your respective
10 briefs. So at this time we're ready for oral arguments.
11 This is the defendant's motion, I'll hear from the defense
12 first. Go ahead.
13 David, would you just get my glasses for me
14 there --(inaudible). Thank you.
15 Go ahead, counsel.
16 MR. MULLINS: Thank you, your Honor. I know
17 the court reviews the briefs and the attachments and
18 therefore, I won't overly belabor the point. Simply put,
19 this is a one count Whistleblower Protection Act case
20 arising out of an incident that occurred at the school on
21 October 12th of 2015 between a student and plaintiff-
22 teacher. Plaintiff suggests that she was retaliated against
23 as a result of having made a police report against this
24 student who she alleges assaulted her.
25 The school district response to that is that

1 it did not retaliate against her. Indeed, as indicated in
2 the matters before you, she was retained as an employee and
3 from that date up to the present date continues to be
4 employed under all terms and conditions of the collective
5 bargaining agreement at the school district and her
6 employment has not been affected.
7 The -- giving rise to the suit is the fact
8 that subsequent to her having filed the complaint against a
9 student she was transferred from the high school to the
10 middle school and that appears to be the basis of her
11 complaint of retaliation. As you, I'm certain, are aware
12 from a review of the pleadings she was transferred
13 subsequent to --
14 THE COURT: Because this court issued a
15 personal protection order and an amended PPO, I understand
16 --(inaudible).
17 MR. MULLINS: Correct. And that initial PPO
18 indicated that the student, M.H. should not appear at her
19 workplace. Now initially, the school responded to that by
20 immediately taking the student out of her class and they
21 were, if you will, separated within the building. On
22 November the 4th she then filed and made the administration
23 aware of a motion to amend the PPO where she indicated the
24 mere sight of this student gives her fear. So, on the 15th
25 the school, okay, how do I do this? I've got a statutory

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1 obligation to educate this student, they've made a decision
2 not to expel him. Plaintiff has indicated right up through
3 her deposition not taken that long ago that she wants him
4 expelled but the school has made a legitimate business
5 decision to continue to educate the student as they are
6 required by law to do.
7 So, how will we make sure that she's not
8 afraid, has no reason to fear from M.H. still being a
9 student at the high school? They take an art teacher being
10 employed under the same terms and conditions under the
11 collective bargaining agreement, transfer that person to the
12 high school, transfer her to the middle school. That's
13 based on a desire to A, comply with her stated wishes, I
14 fear at the very sight of the student, and B, not to be held
15 in violation of your court order. Those are the documents
16 that are served upon the school. The school is simply
17 trying to comply with them.
18 As I've cited a number of cases, simply
19 transferring her is not a material adverse employment
20 action. And certainly, the dual basis --
21 THE COURT: Well, let me ask --
22 MR. MULLINS: Certainly.
23 THE COURT: -- because when I first reviewed
24 your brief, of course, I reviewed -- the one that files it
25 first, one of the things I found when I read the plaintiff's

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1 response was that as a result of this she actually lost her
2 curriculum chair position on the Jackson Public School --
3 High School Arts to an inferior, far less assignment (ph),
4 so did she, in fact, lose her position as curriculum chair?
5 MR. MULLINS: Well --
6 THE COURT: And I understand that that
7 attended certain financial consequences as well.
8 MR. MULLINS: There is a small monetary
9 stipend that goes with being the chair and she was no longer
10 the chair, meaning the senior teacher in that department at
11 the middle school.
12 THE COURT: Okay, go ahead.
13 MR. MULLINS: That is true. But otherwise,
14 same job and the school is simply trying to comply with your
15 order and not be found in contempt or in violation of that
16 order. Is there a legitimate business reason for it? A,
17 the desire to comply with your order, and B, to meet its
18 obligation to educate students. Plaintiff claims that she
19 was somehow or another subject to losing her job. She's
20 not. Plaintiff suggests that she was rated ineffective, not
21 as a result of retaliation but as a result of not turning in
22 all of the objective data which the modern school teacher
23 reviews require and will reduce in and of itself her rating
24 by 25 percent. And she, for reasons right up until the
25 review hearing, which occurred in March, just a month ago,

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1 didn't turn in that objective data to the superintendent
2 until the review meeting was held at the administrative
3 building, and you have before you the letter from the
4 superintendent indicating that -- dated March 17th, 2017
5 that he's raising her rating based on the fact that she did
6 turn that material in, but she's been in that building and
7 that should have been turned in to the principal at the end
8 of the school year, or any time in the ensuing 10 or 11
9 months that she's been going to school, she could have
10 turned that in at any time.
11 So, it appears that there's an attempt here
12 on the plaintiff's part to actually sabotage her status as
13 an employee for reasons unbeknownst, it can only be surmised
14 as to why that would be, but, you know, no explanation has
15 ever been given.
16 So, now M.H. is no longer there. If she
17 desires to transfer back to the school district the
18 superintendent told her at that meeting, and prior thereto,
19 all's you go to do is submit a formal request, we reassign
20 people -- teachers are reassigned all the time in schools.
21 There's no guarantee that you maintain a certain assignment.
22 And she can apply to go back to the high school because that
23 student is no longer there and we're now advised that the
24 PPO has been dissolved, so for either of those reasons
25 that's not a problem anymore.

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1 But, she doesn't have a material adverse
2 employment con -- consequence, continues to be employed and
3 the causal connection just isn't there. There's not one but
4 two very legitimate business reasons for the transfer that
5 took place, to comply with your order, which the school is
6 required to do, and to relieve her written and stated
7 objections of fear of being in the very presence of the
8 student. When I took her deposition a couple months ago I
9 asked her, "You wanted this student out of the school didn't
10 you," and her was, "Yes," that's entirely what she intended.
11 So, the school has done more than to take two
12 people and -- to comply with her wishes, that she not deal
13 with or even be in sight of this student, and comply with
14 her desire, as well as your court order. That's more than a
15 legitimate business reason for the action that they took.
16 I would argue to you that they were compelled
17 to take that action under your court order, which says shall
18 not be in the workplace of the plaintiff. He's in the same
19 building that she's in and you don't, you know, have a leash
20 on a student or something like that, that's the literal --
21 the old axiom, is that a court speaks through its order,
22 that's the order under which the school district was
23 operating and even trying to accommodate both people she
24 then files a motion saying, "I have fear at the very sight
25 of him," and the only way to deal with that is to put them

1 in two different physical locations so that she won't see
2 him at her workplace. And she hasn't ever since then.
3 Unless the court has questions?
4 THE COURT: I'll give you some -- I will ask
5 you one question.
6 MR. MULLINS: Yes.
7 THE COURT: It seemed that -- and certainly
8 relied heavily on by the plaintiff, is she's a 29 year
9 teacher, up until this transfer she apparently largely had,
10 I guess we could call it a stellar institutional record as
11 an educator, but it was only after within virtually months
12 of this that she's first essentially disciplined, I think
13 you alluded to that in your argument, and then was deemed
14 essentially I guess it would be, you know, a teacher on
15 probation, if you will, with a year which she could be
16 terminated, would you agree with that?
17 MR. MULLINS: I would not. And let me
18 respond to that.
19 THE COURT: Okay.
20 MR. MULLINS: Number one, within months
21 nothing negative has happened to her. She's just placed in
22 a different building. She's trying to claim that somebody
23 said you're ineffective immediately, but that's just not
24 true. And your rating doesn't occur until your statutorily
25 required review occurs after the end of the school year,

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1 which is in June.

2 THE COURT: Okay.

3 MR. MULLINS: Now, that's what I was talking

4 about, is that we have -- they've -- and I understand this

5 is something of a specialty, but they have changed and put

6 objective factors. It used to be very subject and teacher

7 reviews didn't -- you know, they were, whatever you want to

8 say, less formal. In the last couple of years they have

9 objective standards that you have to meet, one of those is

10 reviewing objectively what your student accomplishment is.

11 Now that requires compiling data as to your students and

12 submitting that as part of the review process. Well, when

13 you withhold that data, which she did, and withheld it all

14 the way up until March of this year, for no reason. I mean,

15 she was asked at that hearing in the superintendent's

16 office, why are you -- why are you handing this to me now in

17 March of 2017 when we're talking about June of the previous

18 year, why am I getting this now?

19 That's 25 percent of your evaluation right

20 there. It automatically puts her down into this lower

21 rating, and the superintendent said now that I have this

22 data, and you've, in essence, completed that, you know, one

23 of the highest, most heavily weighted objective components

24 of the review process I can raise your rating up, so she's

25 not on probation, there's no aspect that would cause her to

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1 lose her job and it was based on her withholding that
2 material, and that's a question he asked, which, as I stand
3 here today, still has not been answered. Why didn't you
4 take this data as the result of showing what your students
5 had done and not turn it in until we've finally had this
6 review, which was put off again and again and again? No
7 explanation for it.
8 So no, she wasn't sanctioned in any way, and
9 when she finally turned in what every single teacher has to
10 do, there's certain steps that you go through in the review
11 process, and turning that objective data is one of the most
12 basic things at the start of it, it's like somebody not
13 handing in their homework and then complaining about getting
14 a bad grade. That's quite simply what it is, if that
15 answers your question.
16 THE COURT: It does, thank you. And I'll
17 give you some opportunity for rebuttal as well.
18 MR. MULLINS: And just that March 17th letter
19 that I attached in our reply, that's in answer to that
20 question.
21 THE COURT: All right, thank you.
22 All right, Ms. Bonanni?
23 MS. BONANNI: Thank you. Your Honor, I
24 appreciate the time you've clearly taken in advance of the
25 hearing to look at our materials. I know it means a lot to

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1 both parties. Our submission is exhaustive and what I'll do
2 is focus on the things that Mr. Mullins brought up in the
3 reply brief, as well as in oral argument today. I think in
4 terms of the Whistleblower Protection Act, you know, we've
5 cited the Act on page 13 of our brief for a reason. It's a
6 specific Act that outlines what constitutes an adverse act.
7 And I think, you know, a lot of the cases that are cited in
8 terms of retaliation are looking at the Elliott-Larsen Civil
9 Rights Act, which is less specific, but, in fact,
10 Whistleblowers outlines specifically that any one of the
11 following acts is an adverse in -- is an adverse act, and
12 that includes compensation, and that includes change in
13 location.
14 So our position is, and this is a position
15 that defendant has not addressed either in their briefing or
16 today in oral argument, the very change of location is a per
17 se violation of the Whistleblower Protection Act. And, you
18 know, it's within the Act so we don't need to look at case
19 law because it's specifically contemplated by the
20 legislature.
21 THE COURT: Let me ask you this question
22 because I know you're close to that area.
23 MS. BONANNI: Yes.
24 THE COURT: With respect to obviously
25 location, we can all agree that there was a location change

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1 in the teacher from the high school to the middle school,
2 but it was also a different type of teaching --
3 MS. BONANNI: Yes.
4 THE COURT: -- and I mean different -- can
5 you --
6 MS. BONANNI: Yes. So that was going to
7 segue into my -- my next area, which is, not only is this
8 just a mere change in location, which we say is a per se
9 violation, but this is a completely different assignment, a
10 less prestigious assignment, and, you know, I think that the
11 terms, the material change in her position is illustrated so
12 beautifully by the fact that when they transfer her they
13 don't train her, and she goes to an IB (ph) school, and I am
14 -- when I came into this case I'm familiar with IB, just
15 from a personal standpoint because I've got little kids and
16 we studied that curriculum. And, you know, the school
17 districts embrace IB because it's a very interesting,
18 specific, different kind of curriculum than that is
19 available in other schools.
20 So, there is exhaustive training and for
21 schools, they -- it takes them years to obtain IB
22 certification. They have to submit so many different things
23 to prove that IB certification.
24 So, for Ms. Davis, she went from being the
25 curriculum chair for an art program that was a studio art

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1 program, an elective, so it's students that have a
2 particular interest in art and that may be pursuing art as a
3 career, and she's curriculum chair earning more money.
4 Material change. She goes to a middle school where
5 everyone's taking art in a curriculum that she is not
6 trained in, and it is different, and it's a different kind
7 of way of teaching and it's a different kind of art, and
8 she's losing money, which is another area, a material change
9 in her job that defendant does not address. That money --
10 that's a material change, and that title change.
11 So, our position is, you know, the defendants
12 cite the case of *Hart*, it's unpublished, but *Hart* cites *Chen*
13 *versus Wayne State*, and that was actually a case that we
14 worked on in our office, and I like this case, it's an
15 interesting case because it talks about how you really need
16 to look at, as a trier of fact, embrace and look at the
17 unique features of a person's job in order to make that
18 determination whether there's been an adverse -- material
19 adverse act, and whether the change in the job or the change
20 has been materially adverse to the plaintiff, and that's
21 what needs to happen in this case too.
22 It's not just the change, it's the change in
23 status, the change in curriculum, and also, the fact that
24 this materially adverse ness, if you want to call it that,
25 is shown by the fact that she's so ill equipped to deal with

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1 this new curriculum that within 32 days she is deemed by the
2 principal as a failing teacher. And this is not something
3 that she just conjured up, this is something that her union
4 president is aware of. It's something that Pennie Davis was
5 aware of. And it's a -- for a person who has behind her.
6 Thirty years of outstanding, objectively outstanding
7 performance. This is not just a downgrade, this is like
8 plummeting, plummeting.
9 And, in fact, the statement made to her
10 within 32 days is -- ends up being true because she's rated
11 for the first time in her career ineffective. So she starts
12 out at the beginning of the school year, as the year before,
13 the highest rating, highly effective. She ends her school
14 year, next rating, ineffective. And there is no dispute
15 between these parties that two ineffective ratings can
16 result in a termination, so, that was looming.
17 Yes, she was recently bumped up a tick. I
18 call it a tick because it is a tick, she's not even
19 effective. She's now deemed minimally effective. So she's
20 still in this danger zone, particular --
21 THE COURT: Let me ask you, plaintiff -- or
22 the defendant represents that at any time she could have
23 filed for reinstatement of her teaching position back at the
24 high school.
25 MS. BONANNI: So this is actually a function,

1 in my opinion, of this lawsuit, because the union made an
2 inquiry about her coming back and she was informed that you
3 have to wait til there's an opening, okay? And you have to
4 follow that process, and that's sort of what we've come to
5 know about the union and the union process, so that was not
6 unfamiliar I think to Ms. Davis during the deposition of Mr.
7 Beal. I asked him if he would entertain that because I want
8 her to be back in the high school, and he said he would.
9 So, to that point, and I have -- I printed
10 these off because I think it's an important point, I've got
11 the communications between Mr. Pack, the union rep --
12 THE COURT: If you could give that to my
13 court officer?
14 MS. BONANNI: Yes, your Honor, if I may
15 approach?
16 THE COURT: My court officer can come pick it
17 up.
18 MS. BONANNI: Oh. So there's three of them
19 and they start as of February of this year, which is soon
20 after I took the depositions of Mr. Pack and Beal, and, you
21 know, the official request isn't made at that point. Yes,
22 my -- just for the record, my deposition of Mr. Pack was on
23 February 10th, so within 12 days the official request is
24 made to put her back in the high school. So nothing has
25 happened as of yet.

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1 And I really raise that to respond to the
2 court's inquiry but also because within the reply brief it
3 suggested that we are trying to push some sort of
4 termination for Ms. Davis and that's just simply not the
5 case, trying to get her back to the high school.
6 I think it bears sort of emphasizing again
7 the order of events in this case. We're talking -- we
8 allege that the terms and conditions in Ms. Davis's
9 employment have been affected by ongoing harassment, and the
10 harassment has continued, so, you know, we believe the
11 harassment starts really the day after she goes to the
12 police when she's angrily confronted by administrators, and
13 I would urge the court to pay close attention to the
14 affidavit of Amy Gish, who's been with the District 17
15 years, is the union president and it's her testimony that
16 these exchanges between Ms. Davis -- not exchanges between
17 Ms. Davis really, they're meetings where she's present
18 because she's not really talking that much, but the meetings
19 where her situation and the PPO and the police are discussed
20 were the most aggressive meetings that she's ever observed
21 that she couldn't believe that the school administrators
22 were acting in this way.
23 It builds up from this nonsensical 10 day
24 suspension where the District is saying we're going to
25 investigate this further but nothing is done to investigate

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1 further. No statements are taken, Ms. Davis isn't
2 consulted, she's just off work. Yes, she's paid, but it's a
3 slap. Off work for 10 days. She comes back to work, the
4 PPO's been in place for 16 days. She comes back to work and
5 the school has nothing in place how to handle it, what the
6 plan is for this student. So as a result, she returns on
7 the 29th. On the 4th she raises the issue of, look, he's
8 loitering next to me, I don't feel safe, and that is what
9 prompts her --
10 THE COURT: That was in the room next door?
11 MS. BONANNI: Yeah, and all she's asking --
12 and I really want to make this crystal clear, I urge the
13 court to compare the original PPO with the modification, and
14 she's a lay person and she didn't have an attorney, she
15 circled modified PPO because that's her only choice. But
16 the words within that modification of PPO make clear what
17 she wants and she said, I just want a plan so that he's not
18 in the room near me. She didn't ask for him to be gone, she
19 didn't ask for anything.
20 And it's not really a modification, it was
21 really an enforcement request. And soon after that PPO is
22 given to the administrators that's when they blew up, and
23 that's when really, everything happens. Now, within the
24 school itself they make a plan and from my counting and
25 looking at the dates it appears that --

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1 THE COURT: So was the transfer actually a
2 day before the modified PPO?
3 MS. BONANNI: So the request --
4 THE COURT: Was the court correct when --
5 MS. BONANNI: Yeah, I'm gonna walk you
6 through it, if you don't mind, because I --
7 THE COURT: Sure, go ahead.
8 MS. BONANNI: -- think it's pretty stunning.
9 So on the 4th she turns in the modified P -- the paperwork,
10 so that's given to the school. The school is also given a
11 letter saying, hey, this is happening, this kid's loitering,
12 we need to do something. On November 6th Amy Gish, the
13 union rep -- the union president, follows up with the
14 school. In between November 6th and November 12th the school
15 principal -- there's a plan in place and the minor, M.H.,
16 knows about the plan because he testified about it in your
17 courtroom, and by the time that hearing rolled around,
18 because as you know, you file for a modified PPO and a
19 hearing is set for a point in the future, by the time the
20 November 11th hearing date had rolled around these parties
21 had a plan in place and it was working, and on the 12th,
22 this is the day before her transfer, the school met with the
23 teacher from the middle school and apparently made this
24 plan.
25 And I raise this date, November 12th, because

1 in defendant's reply brief they state that there's a letter
2 from the union, and it's Exhibit N, there's a letter from
3 the union and the defendant alleges that this letter somehow
4 represents that as of November 12th Davis still felt unsafe
5 in the high school. That is untrue and it is a
6 misrepresentation of this letter, and I urge the court to
7 carefully read Exhibit N, because, in fact, Exhibit N is
8 dated November 12th, it's a letter from Amy Gish to Ben Pack
9 and Amy Gish is referencing Deb, who's actually a teacher in
10 the middle school who felt unsafe, who had problems in the
11 middle school with violence. She's not talking about Pennie
12 Davis feeling unsafe.
13 In fact, at the end of her letter, I'll read
14 this quote, quote, "Barb," Barb Pauli, who's the high school
15 principal, "Barb has already addressed the issue with
16 Marcus," M.H., "in terms of avoiding the hallway where
17 Pennie's room in. There are ways for him to access all of
18 his classes and avoid that area. Barb and I already met
19 about that." She is telling Ben Pack that the issue is
20 resolved. She is telling Ben Pack that if he genuinely is
21 trying to insure Pennie Davis's safety, which is what the
22 school's arguing, then sending her to a middle school where
23 the other teacher, art teacher was repeatedly assaulted,
24 doesn't seem to make a lot of sense. That's what the
25 letter's saying.

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1 Ben pack responds, "The District will study
2 the information and develop a plan, you will be made aware."
3 So, I just urge the court to read that. So that's what's
4 happening on November 12th. And on the 13th Pennie Davis is
5 told that she's being transferred.
6 Now, by the time the 19th rolls around, which
7 is the date of the PPO, we've attached the hearing
8 transcript, Pennie Davis, M.H., everyone is in accord that
9 the school had made a plan and had put it in place, and it
10 was being adhered to. And the court was actually inquiring
11 to Pennie Davis what she wanted, did she want the court to
12 contact the school, and she said no, and she was very, I
13 think, as I read the transcript, I thought she was very kind
14 to the student and she said, "I am not saying he's a bad
15 kid, I just want to feel safe." I mean, she was assaulted
16 and she had an injury that, for some reason, the school
17 thought she did to herself. This is all -- all of their
18 bizarre reactions and violent reactions are because she
19 filed a police report.
20 And I think the one thing I need to make
21 crystal clear to this court is, let's not lose sight of the
22 direct evidence here. And I don't think I maybe highlighted
23 it even enough in the brief, but when she's being told that
24 she's trans -- being transferred. Ben Pack tells her, it's
25 almost as if he can't not tell her, he says, "I wouldn't

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1 have moved you if you would have kept everything in school
2 because we do not go to the police here." That's page 86 of
3 Pennie Davis's deposition. And when I confronted Ben Pack
4 about that statement he said, "I don't recall saying that."
5 "I don't recall," but she does.
6 Your Honor, this transfer to this inferior
7 position with less pay and all of the harassment that we've
8 described so exhaustively in the brief, that is the picture
9 and we believe it is sufficient under the Act to establish a
10 violation of the Whistleblower Protection Act.
11 Unless the court has any questions I am
12 requesting that defendant's motion be denied in its
13 entirety. Thank you.
14 THE COURT: All right, briefly in rebuttal.
15 MR. MULLINS: Thank you, your Honor. I would
16 like to make clear that one of the first assertions, and
17 largest assertions relied on by the plaintiff, is that she's
18 received an ineffective rating. That's not true. That's
19 the whole point of this letter. Her rating for that year is
20 minimally effective. That's not ineffective. All of the
21 things that could or would possibly flow from --
22 THE COURT: Let me ask you this question, in
23 her 29 year career has she ever been rated minimally
24 ineffective before this?
25 MR. MULLINS: No, and in her 29 year career,

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1 ever since it's required that you turn in this statute --
2 THE COURT: I get it. It's just a simple
3 question, yes or no.
4 MR. MULLINS: That material has never been
5 withheld, and in the day, if the court thought that there
6 was some improper motive, why would the superintendent
7 immediate -- as he indicated in the letter, immediately,
8 this is -- this is the day after having had the hearing in
9 his office, as soon as she turned that material in he said,
10 thanks. I don't know why I'm getting it so late in the
11 game, but this gives you a 25 percent improvement in your
12 score and you're not minimally ineffective anymore. So,
13 that's number one.
14 Number two, this suggestion -- there's
15 nothing in the record to suggest that the position that she
16 was transferred to is in any way less prestigious. In fact,
17 on the one hand she's saying an international baccalaureate
18 curriculum is more difficult or harder, which I don't think
19 that's true, but there's no suggestion that there's
20 something less prestigious about teaching middle school art
21 than there is in teaching high school art. That's not
22 suggested anywhere in the record.
23 Secondly, this whole issue about the PPO,
24 again, the school only has your order which says M.H. cannot
25 be at her workplace. Now, they're trying to work with that.

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1 Then the only other document that they receive is the motion
2 that says I have fear at the sight of him. Now, he's near
3 me. Well, he's in the same building. So, what is -- he's a
4 student, he's a high school student, that's the only high
5 school that they have, so the obvious, simple, legitimate
6 business reason that happens quite often with teachers,
7 let's resolve this problem, let's -- you have specific fear
8 as to this specific student who you say is a danger to you,
9 so they are put in separate buildings.
10 Shortly after she's, in her own handwriting
11 says, "I have fear. I feel unsafe with him being so close,
12 so near." So, they're responding to her.
13 This whole thing about a transcript or
14 discussions with you, that transcript was just printed out
15 recently. None of that dialogue comes to the school. And
16 when the question came up in colloquy here, "Well, what
17 should we tell the school?" "Oh, don't bother the school,
18 don't tell the school." Any direction that this court would
19 have given to the school relative to the situation they
20 would have followed.
21 Not having such direction, even at the
22 request of the plaintiff, which we now know to be the case,
23 they have to legitimate business purpose, decide how do I
24 respond to her written request that I am threatened by the
25 student, I have fear at this student? So, that's clearly

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1 the basis of the transfer. And now, finally, she submits a
2 formal request at the end of the school year, April 17th,
3 "I'd like to be transferred." Fine. But, you know, is it
4 advisable to all of the students in both classrooms for no
5 real reason other than personal desire to pull them out of
6 the class that they had all year, in both classes and change
7 teachers? So, as was indicated at the depositions, put in a
8 request, transfers are made, reassignments are made all the
9 time with teachers, and he'd indicated it looked favorably,
10 the student is no longer in the school, B, the PPO is --
11 we've been advised it's been dissolved, so fine. It looked
12 fine in sending her back to school.
13 So, she suffered no material adverse
14 consequence as a result of even a temporary, whatever her
15 rating is, she's still getting the full benefit of her
16 collective bargaining agreement. She's under no egis of
17 being suspended, being laid off, being terminated, not even
18 on the table anymore. The indication or suggestion that
19 that is is just not true and you have the documentation
20 before her, and if she so desires, indicated that they would
21 love to transfer her back to the high school in the Fall.
22 So, it's not a material adverse employment,
23 and the -- objectively, it's all unquestionably a legitimate
24 business purpose, which the court isn't supposed to subject
25 its judgment for. I mean, here, the court has ordered this

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1 person isn't supposed to be in her workplace and the school
2 is simply trying to comply both with the court's written
3 order and her written request, "I'm fearful of this
4 student." So they're separated. That's -- how more
5 legitimate can a business purpose be?
6 And there she is teaching and she can teach
7 as long as she wants. She's got the job, she's had it all
8 these years, whatever the rating is, she's still got the
9 collective bargaining agreement and that hasn't changed, and
10 she doesn't get more, doesn't get less based on whether
11 she's effective or minimally effective.
12 And the fact of the matter, it's minimally
13 effective. It's not ineffective. That's just not true.
14 THE COURT: So what's the ramifications if
15 she gets a second minimally effective at the end of this
16 year?
17 MR. MULLINS: Nothing. Absolutely nothing.
18 THE COURT: Counsel, anything further you
19 would like to respond to?
20 MS. BONANNI: Just briefly. As to this
21 hearing where she was minimally effective and now it's been
22 upgraded to one tick, Tim Mullins and I were in attendance
23 as silent observers to that process, and what I observed --
24 and we don't have any testimony on it because we didn't --
25 it happened after the depositions, but what I observed was

1 almost two hours, hour and a half of Ms. Davis responding to
2 various deficiencies in her performance, and her -- yes, it
3 took her a while to compile, and also, she's -- I think
4 there was some emotional component to that as well, that
5 resulted in delay, and I think there was also a delay on the
6 school's behalf of getting it scheduled.
7 In any event, what I observed for an hour and
8 a half was her defending herself, okay? What I observed
9 during that hearing was not, oh, you didn't turn in
10 paperwork, here it is, okay, we're done, it was an hour and
11 a half of her defending herself. So, we're happy that she's
12 been upgraded but still it is not enough.
13 The PPO was always -- it always indicated,
14 because the boxes were all checked, that they can't be in
15 the same vicinity as one another. The original PPO said
16 that. But the way they determined to handle it, and I think
17 you -- you are probably in the best position more than any
18 of us, I think people mark those boxes and then there's a
19 discussion about how it's handled. And this school, Jackson
20 Public Schools, decided the way to handle it was to have
21 these parties no be in contact. And that is, in fact, the
22 way that feature of the PPO was handled from October when it
23 was initially ordered by this court.
24 The modification was merely a request for
25 enforcement and there's nothing in the record to suggest

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1 that she wanted to be away from him, and, in fact, reading
2 the court -- the transcript where M.H. is there and the
3 teacher's there, she says nothing of the sort. All parties
4 agreed that a plan was now finally in place, and, in fact,
5 we would argue that the lack of plan, when she comes back
6 after this crazy 10 day suspension, the school's failure to
7 even give or put a plan in place is this almost passive
8 aggressive approach that they're not doing anything to make
9 sure that this goes smoothly for this teacher, because
10 they're so angry, and let's not forget what Ben Pack said
11 when he transferred her, "If you hadn't -- we keep things
12 here, we keep things in-house, if you hadn't gone to the
13 police you wouldn't be transferred."
14 MR. MULLINS: If I could just briefly?
15 THE COURT: All right, go ahead.
16 MR. MULLINS: I understand we've spent some
17 time, but I want to point out that this review that she has
18 the right to request on her evaluation was originally
19 scheduled at the start of the school year. I was present at
20 it and the plaintiff asked that it be put off, first because
21 I was present and continually put off until finally it was
22 conducted in March. So, any delay was at the request of the
23 plaintiff. And again, during that entire period of time
24 she's withholding the objective data that underlies the
25 matter.

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1 Number two, she keeps mentioning a
2 suspension, she's just on paid leave, she's not suspended,
3 she's on paid leave while the school is trying to determine
4 how do I comply with your PPO and investigating looking at
5 all the different statements and what did happen, what
6 didn't happen, what are we gonna do here? So, she's always
7 paid, full -- and the cases address the difference there
8 between being paid and not.
9 And again, Ben Pack has testified very
10 clearly in his deposition why he did what he did, and it's
11 not because somebody filed a PPO or that -- he indicated
12 it's because of our desire to comply with the orders of the
13 court and her expressions of fear at the presence of the
14 student that we resolved it in that fashion without having
15 any other direction than her motion written out as to what
16 her fears are and what the court's PPO is. Thank you.
17 THE COURT: Thank you. All right. Well, the
18 court's -- obviously, this lawsuit is a one-count lawsuit
19 allegation of the Whistleblower Protection Act, and clearly,
20 the court is understanding that -- Whistleblower Protection
21 Act states, "An employer shall not discharge, threaten or
22 otherwise discriminate against an employee regarding an
23 employee's compensation terms, conditions, location or
24 privileges of employment." That's kind of a central area
25 the court's looked at in beginning some review of this

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1 motion for summary disposition.

2 Of course, this motion is here under MCR

3 2.116(C)(8), which tests the legal sufficiency of the

4 complaint citing *Mazen (sic) versus Rozwood*, 461 109 a

5 (1999) decision.

6 And a motion under 2-11 -- or 2-16(C)(8) may

7 only be granted where the alleged claims are so

8 unenforceable as a matter of law that no factual development

9 could possibly justify recovery. And then it goes on to

10 talk about how the court's obligation is to review the

11 pleadings, affidavits, depositions, admissions and any other

12 evidence, and the court, of course, must view this evidence

13 in a light most favorable to the non-moving party.

14 The trial court is not permitted to assess

15 credibility, weigh the evidence or resolve factual disputes,

16 and if material evidence conflicts it is not appropriate to

17 grant a motion for summary disposition.

18 The court must view all the facts and

19 inferences drawn therefrom in the plaintiff's --

20 (undecipherable)-- citing another case.

21 So essentially, the court knows that there's

22 some things that are going on here. First of all, it's not

23 an unusual climate for courts to issue personal protection

24 orders. I mean, I've had Jackson Public Schools come in

25 here, and other ones, when they're between two students,

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1 they want clarification on how they could be enforced.
2 Sometimes they get their school of attorneys or whatever
3 involved in it, but, you know, it's not unusual -- this is a
4 little bit more situation in that it's a PPO involving a
5 student against a teacher. And in this case, an assault,
6 and what's kind of significant, and -- but certainly alluded
7 to, I can't remember from specific knowledge of M.H. but
8 represented in the briefs it doesn't appear to be disputed,
9 pretty big kid, about 6 foot, 200 pounds, allegedly hits and
10 strikes a teacher with sufficient force to cause some
11 measure of injury to her hand. I think significantly he
12 entered a plea to a criminal case later on and was, in fact,
13 incarcerated for 32 -- approximately 30 days.
14 So, there appears to be some situation,
15 whether the school was trying to determine whether she was
16 struck or not. Clearly, she apparently goes to her own
17 medical treatment, then at one point there's some exchange
18 between the school administrator, vice principal or whatever
19 that wants her to open the wrap and she doesn't want to
20 because she said she's had it wrapped and shouldn't remove
21 it, asks her if she showers with that on, she says she does
22 but she doesn't put the Ace bandage or whatever underneath
23 the thing, and then later on she proceeds to get further
24 documentation of the injury.
25 Somewhat as an anecdote as well, and maybe a

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1 footnote, is that M.H. apparently has a long history in the
2 school system of confrontation, bullying type activity,
3 assaultive type of behavior activity, even to the point
4 where the school has apparently suspended him on a number of
5 occasions and even looked at potential expulsion from the
6 school district. And there doesn't really appear to be any
7 real dispute about that.
8 I asked the plaint -- the defendant right at
9 the beginning, it would be one thing, I think if they
10 transferred her, but the one thing that the plaintiff has to
11 concede, it has -- or the defense has, in fact, conceded, is
12 that when she was moved to the JPI -- when she was removed
13 from her position as curriculum chair of the Jackson Public
14 School High School Art Department to an inferior and far
15 less desirable as a middle school art teacher, at least we
16 know now that that -- that she did not get the position as
17 curriculum chair and she did not get the other attendant
18 compensation otherwise associated with that.
19 And moreover, we know that we're dealing with
20 the plaintiff who has a history of approximately, let me
21 make sure I get that right for the record, 29 years as an
22 educator. So we have a PPO that's issued, rather routine
23 situation, really, when it comes to a PPO, and then within a
24 very short period of time this M.H. is apparently, I don't
25 want to say lurking, maybe -- in the area shortly outside

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1 the very classroom of this teacher, you know, which is
2 obviously should have brought some concern.
3 I've actually had other school districts to
4 the point where they actually walk some of these students
5 from room to room for a period of time until they understand
6 that certain other interaction with other students is either
7 not going to occur or with some other person protected by a
8 PPO. So it's certainly not unusual for courts to get
9 further clarification on a PPO.
10 And certainly, the court wasn't trying to
11 trigger some response when there was a request to modify the
12 personal protection order, but then the court would note
13 that -- that we've got this period of time where apparently
14 Jackson Public wasn't satisfied with an explanation of her
15 injuries so they go ahead and she's suspended for a 10 day
16 period.
17 You know, she's -- apparently she's never
18 taught sixth grade students at any point during her 29 year
19 tenure with JPS. Furthermore, according to the -- and this
20 really hasn't been controverted, that the plaintiff has
21 never taught under an international baccalaureate
22 curriculum, a specialized curriculum far different from the
23 typical curriculums used in the public school, to-wit: in
24 this case, Jackson Public School.
25 In fact, the curriculum is so distinctive

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1 that it requires preliminary and ongoing training, and
2 apparently this wasn't really disputed either, that JPS
3 failed to provide the teacher, Davis or plaintiff, with any
4 of the required training prior to her transfer or in several
5 months that followed.
6 And then as plaintiff counsel has pointed
7 out, after only 32 days there's a determination that this 29
8 year teacher is essentially giving a minimally effective
9 assessment in this new responsibility. I make that kinda
10 akin maybe, counsel, if they took you and stuck you in the
11 tax department of maybe a major law firm and you all of a
12 sudden had to perform up to those levels that somebody might
13 have with an LOM in taxation or something. I mean, even
14 within the law we can have radically different
15 responsibilities in areas of specialized teaching, and
16 clearly, I think that there was some conduct here that stuck
17 her in an environment that was very diff -- that was
18 difficult for her to prosper in the manner that she had, and
19 had done for many, many years.
20 It's also certainly been -- there could be --
21 I guess I'm not -- if it's I guess unclear to the court now
22 there's a second minimally effective review of her. Whether
23 she can, in fact, be terminated or not, I don't know if
24 that's the case or not.
25 Specifically, when the court looks engaged in

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1 a protected activity in an adverse employment action and a
2 causal connection between the two, I mean, clearly, we have
3 her engaging in protected activity. I certainly think it's
4 a protected activity for a teacher to call and make a report
5 about assaults. Moreover, I think a teacher has the to
6 secure a personal protection order without the requirement
7 of having to have it approved by their employer, and that
8 there's -- that that's appropriate action that can be
9 pursued by anyone.
10 And then when, of course, we look at is there
11 a causal connection between the protected activity and the
12 employment action, I think that there is. I think there is
13 a connection between, you know, her -- it's very evident to
14 the court in reviewing this that they're, for whatever
15 reasons, highly suspicious that she received these injuries
16 in the manner that she did. At one point apparently one
17 even offers to suggest that it was self-inflicted by a
18 hammer or something else, that it wasn't as serious as it
19 was being represented to be even though there had been two
20 other medical assessments of the situation, that clearly she
21 was moved to a far different teaching environment with a
22 very different set of responsibilities than she had before
23 without the required training that would normally be
24 associated with that kind of reassignment.
25 And based on that the court is going to make

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1 a finding -- first of all, and I'm not -- in this case the
2 Jackson Public Schools has cited two reasons for its
3 transfer to Davis Middle School, number one, compliance with
4 the court's PPO. Well, number one, the court's PPO didn't
5 direct the Jackson Public School that the only way that they
6 could comply with that was by transferring the teacher to
7 another school district. And I can't help but wonder if
8 that's somewhat maybe a pretext that they're just falling on
9 that.
10 But -- and moreover, because Davis raised
11 concerns for her safety. Again, I think after the initial
12 PPO had the District had an adequate safety plan in place at
13 that time I think that they could have had something in
14 place where she felt sufficiently protected within the high
15 school that would not have necessitated, you know, the
16 modified PPO that was basically -- alleged to be coming on
17 the heels of an alleged violation that occurred shortly
18 after the court's issuance of the initial PPO.
19 So at this point the court is satisfied in
20 reviewing the evidence in the light most favorable to the
21 non-moving party, specifically, the plaintiff, as the court
22 is required to do at this juncture, that there's sufficient
23 issues of genuine issues of material fact that would require
24 the court as a matter of fact and law to deny the motion for
25 summary disposition. It was very well briefed by both sides

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1 and the court spent a great deal of time studying all the
2 exhibits but the court's satisfied that there's sufficient
3 genuine issues of material fact that the case should proceed
4 forward.
5 All right? Thank you.
6 MR. MULLINS: Thank you, your Honor.
7 (At 3:28:25 p.m., hearing concluded)
8

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of thirty-eight (38) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Thursday, April 20, 2017

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 5, 2018

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EXHIBIT C

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,
Plaintiff

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.
_____/

JURY TRIAL, VOLUME I OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Monday, February 26, 2018

APPEARANCES:

For the Plaintiff: MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant: TIMOTHY MULLINS (P28021)
JOHN L. MILLER (P71913
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7020

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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WITNESSES: PLAINTIFF

None

WITNESSES: DEFENDANT

None

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EXHIBITS:	INTRODUCED	ADMITTED
None		

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1 Jackson, Michigan
2 Monday, February 26, 2018 - 10:47:02 a.m.
3 THE COURT: Okay, we've got some time. I
4 know there's a number of pretrial matters that we've got.
5 The Court has had an opportunity to read the trial briefs,
6 also plaintiff's objection to defendant's some exhibits and
7 then I've also had a chance to review defendant's motion in
8 limine and plaintiff's response. Any particular one we want
9 to lead off with first?
10 By the way, we're going to have counsel rise
11 and state your formal appearances for purposes of the record
12 and P numbers.
13 MS. BONANNI: Good morning. Your Honor,
14 Megan Bonanni, P number 52079. I am joined today by my co-
15 counsel, Channing Robinson-Holmes. I do not know her P
16 number.
17 Channing?
18 MS. ROBINSON-HOLMES: 81698, your Honor.
19 THE COURT: See, ever since that new John
20 Grisham book people were impersonating lawyers and on the
21 record, so we're going to have those P numbers. Thank you.
22 And your full name again?
23 MS. ROBINSON-HOLMES: Is Channing Robinson-
24 Holmes, your Honor.
25 THE COURT: All right. And from the defense?

1 MR. MILLER: Good morning, Judge. John
2 Miller on behalf of Jackson Public Schools.
3 THE COURT: Okay.
4 MR. MILLER: P number 71913.
5 MR. MULLINS: And Timothy Mullins, P 28021.
6 Also on behalf of the school district.
7 THE COURT: Okay. Who is this gentleman at
8 counsel table with you?
9 MR. MULLINS: This is Jeff Beal, he's the
10 superintendent of the school district.
11 THE COURT: Very good.
12 Okay, well why don't we start with the motion
13 in limine. And we can go ahead and start with the first
14 issue on the statute of limitations. So why don't I hear
15 first from the defense on that.
16 MR. MILLER: Good morning, Judge. Thank you.
17 The first motion in limine is to bar claims barred by the
18 statute of limitations. The Whistle Blower Protection Act
19 15.363 has a ninety day statute of limitations. Any claim
20 must be filed ninety days after the alleged violation.
21 In plaintiff's complaint, particularly
22 paragraphs 29, 30 and 32, she alleges a slew of things that
23 occurred between October 15th and October 28th, including
24 being disciplined, a slight loss of pay for a day I believe
25 and being placed on leave. About a decade ago the Michigan

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1 Supreme Court considered whether the Continuing Violations
2 Doctrine was viable in Michigan and in a rather succinct
3 holding the Supreme Court held, we conclude that the
4 Continuing Violations Doctrine has no continued place in the
5 jurisprudence of this State. And that's at page 290 of the
6 Supreme Court's opinion.
7 This is one of the few aspects of civil
8 rights law that the Michigan Judiciary has departed from our
9 federal counterparts. And in response plaintiff essentially
10 cited a bunch of federal cases, even though the Supreme
11 Court said we aren't following federal law here. And then
12 cited one Michigan case saying that in appropriate
13 circumstances you can't recover for it, but it can be used
14 for background evidence.
15 I would suggest that that might have some
16 relevance in a case if it's a race discrimination case or a
17 gender discrimination case where the plaintiff is saying,
18 there's been racially charged statements for years, there's
19 been sexual statements for years. A jury might need to hear
20 that to understand the employer's motivation in taking
21 whatever the disputed employment action is.
22 But these are just discreet adverse
23 employment actions and essentially plaintiff wants to still
24 sue for them even though they're barred for it. If the
25 Court was in any way inclined to allow anything before

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1 November 12th, which is the statute of limitations cutoff,
2 there should be a very clear instruction to the jury that
3 you're going to hear evidence of things that happened before
4 November 12th, plaintiff cannot recover for any complaint
5 that she has before that date.
6 The defendant doesn't think it should be
7 allowed at all, but if the Court was going to allow --
8 THE COURT: So again, what are the outer
9 boundaries, November 12th to outside what's the first date?
10 MR. MILLER: The first date is October 15th.
11 THE COURT: Okay.
12 MR. MILLER: And November 12th is when the
13 statute I mean cuts it off. This was essentially filed on
14 the ninetieth day of the reassignment that's primarily at
15 issue in this lawsuit, Judge.
16 THE COURT: Okay. And you've extensively
17 briefed it in your additional reply, so I'll go ahead and
18 hear from the plaintiff on that issue.
19 MS. ROBINSON-HOLMES: Your Honor, while it is
20 true that the Michigan Supreme Court in its guard decision
21 did prohibit a use of evidence preceding the statute of
22 limitations as it applied to actual actionable adverse
23 actions. It's not true that the guard decision prohibits
24 any use of background evidence.
25 In fact, there was a footnote in the original

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1 decision that did prohibit the use of background evidence,
2 but it has since been stricken from the decision, ostensibly
3 removing any legal significance from that footnote. And in
4 fact, Court of Appeals decisions afterward, specifically in
5 *Campbell v Human Services Department,* 286 Mich App 230,
6 specifically examines the guard decision and its removal of
7 footnote 14 and determined that while acts outside the
8 statute of limitations are not actionable, there is no
9 reason why such actions cannot be used as background
10 evidence.
11 THE COURT: Okay, so you are kind of in
12 agreement with the kind of alternative position of the
13 defense, correct, that admissible for context but not
14 necessarily action?
15 MS. ROBINSON-HOLMES: Absolutely. And we
16 haven't ever asserted that they are actionable adverse
17 actions. We simply sought to introduce them as background
18 evidence, which is clearly relevant to defendant's attitudes
19 towards plaintiff's protected activity and later motivation
20 in its adverse action against plaintiff.
21 THE COURT: All right. Well the Court is
22 going to -- I think the Court is bound to follow the time
23 windows in this case of October 15th to November 12th. I'm
24 going to allow some of those other incidents to be admitted
25 for the limited purpose of context.

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1 I think your limiting instruction would
2 probably be appropriate. All right. So if you want to
3 craft that up or type it up or give it to my court officer.
4 I don't know at what point you would want the Court to give
5 that, maybe at the time we're beginning to receive some of
6 that testimony.
7 Okay. The next issue was the issue about
8 using the Court's -- essentially the Court had a I think
9 some type of hearing on the Personal Protection Order that
10 clarified how the Court wanted it handled. Again, both
11 sides have briefed it. I'll go ahead and hear from the
12 defense first then on that.
13 MR. MILLER: Thanks again, Judge. I think
14 every attorney in this room will agree that in an employment
15 discrimination or retaliation case what's relevant is the
16 employer's motivation. There's no such thing as negligent
17 discrimination or negligent retaliation. An employer needs
18 to be motivated by retaliatory animus.
19 In this case there is absolutely no
20 suggestion that the school district was present at this
21 hearing. In fact, the transcript wasn't prepared until a
22 year ago after this lawsuit had been pending for a year and
23 the plaintiff had long ago been reassigned. But is since
24 back in the high school her requests now that the student is
25 no longer there.

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1 So first and foremost, it's just not
2 relevant. It couldn't have gone into the employer's
3 decision making process in this case. They weren't there,
4 they didn't know. They were only provided a copy of the PPO
5 and a motion to modify the PPO saying I'm afraid, I have
6 fear. That's what the motion to modify the PPO said.
7 The employer made a business judgment, we
8 need to separate these people, we can't I mean arbitrate or
9 dispute every week between these two. She can teach the
10 exact same subject over in the middle school, earn the same
11 salary, still have summers off, still have Christmas off and
12 she can be in the middle school.
13 We can't assign a student that's a high
14 school student to the junior high. So that's one basis that
15 this shouldn't be allowed. Two, they're essentially trying
16 to make, your Honor, a witness to this action. You
17 essentially would be testifying about what your writ and
18 order meant and about what was said at this hearing. The
19 6th Circuit Court of Appeals in interpreting the identical
20 rule of evidence, the federal counterpart with the same
21 language, it was *U.S. v Lichens,* and that case to me was
22 somewhat of an innocuous statement.
23 The District Court Judge instructed the jury
24 that defendant had moved to suppress the evidence from
25 October 12th, 2011 search and the court denied that motion.

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1 It was automatic reversible error in the 6th Circuit because
2 it was impermissible judicial testimony talking about prior
3 actions it had taken.
4 We're essentially not allowed to call the
5 Judge as a witness because of course you would be
6 disqualified from the case if we were to call you in, ask
7 you what you meant, why doesn't the order say this, why did
8 you say this, why wasn't it in the order? It's an untenable
9 situation.
10 And the third issue is, it's two layers of
11 hearsay. We have a typed transcript that's -- we don't have
12 a certified copy. We have statements from the plaintiff, we
13 have statements from the child, we have statements from the
14 child's mother and we have statements from, your Honor. All
15 of those are hearsay, they weren't part of this proceeding
16 and they're out of court statements by the declarant so
17 they're also hearsay.
18 For all three of those reasons we think the
19 transcript shouldn't be allowed.
20 THE COURT: All right, thank you.
21 Plaintiff's response to the whole argument in
22 that issue?
23 MS. ROBINSON-HOLMES: First, your Honor, I'd
24 like to say that while plaintiff cannot anticipate how this
25 Court's statements would be used to impeach a witness, for

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1 example, a ruling on such evidence should be deferred until
2 such a time that it becomes an issue rather than completely
3 striking the use of the transcript throughout the course of
4 trial when it may become relevant and pertinent to this
5 litigation.
6 Secondly, just as this Court expects its
7 written orders to be enforced, it likewise expects its oral
8 rulings to be enforced and there's case law, specifically
9 *McClure v H.K. Porter Co.*, 174 Mich App that stands for that
10 exact proposition, an oral ruling has the same force and
11 effect as a written order.
12 So I imagine that the statements you made
13 during that hearing you meant to have just as much force as
14 the written order. Thirdly, the transcript is admissible
15 evidence under the rules governing hearsay. The transcript
16 is admissible in all courts and proceedings under MCL
17 600.2107 and MCL 600.2138. 2107 is titled, Public Records;
18 Certified Transcript as Evidence and clearly includes the
19 transcript at issue and ruling as admissible evidence.
20 And the second, 2138, is filed or recorded
21 documents; copy or replacement; certification; admissibility
22 as evidence; transcript or certified copy. Again,
23 establishing that transcripts are admissible as evidence.
24 THE COURT: All right. Well first of all,
25 the Court was unsure in this issue because sometimes

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1 principals do come to Court, especially they might seek some
2 clarification on what happens with a PPO. I don't recall
3 whether one was present, it certainly doesn't appear that
4 there's been a transcript of it. So should there be
5 evidence that, you know, some school personnel was actually
6 here or something, I don't know.
7 But I would otherwise agree with the
8 defendant's position. I think just carte blanche allowing
9 the transcript it will be in fact having the Court testify
10 as a witness the Court speaks through its orders. And if
11 that was really critical to the, you know, to the plaintiff
12 I guess they should have asked me to be disqualified because
13 I could then become a witness and you could get another
14 Judge.
15 So at least preliminarily, unless you lay a
16 foundation that there was some specific knowledge of Jackson
17 Public Schools officials knowing or attending that hearing
18 and/or getting a transcript of it, you know, then it might
19 have some limited admissibility issues there.
20 MS. ROBINSON-HOLMES: Thank you, your Honor.
21 THE COURT: Okay, so the next concern, which
22 was real easy for the Court, was the one about the
23 defendant's criminal history or any juvenile adjudications.
24 Does anybody want to make any further argument on that?
25 They're normally not admissible, so.

1 Okay, which one do we want to take next?
2 MR. MILLER: I'd defer to, your Honor. The
3 next on my list I guess is the student at issues
4 disciplinary history prior to th8is incident.
5 THE COURT: Okay. All right, we'll go ahead
6 and hear your arguments on that.
7 MR. MILLER: I mean, Judge, I guess this is
8 just classic 404(b), propensity of the evidence. They want
9 to introduce evidence that, boy it looks like this kid did a
10 bunch of bad stuff in the past, he must have done something
11 bad in this instance.
12 In response, I'll grab plaintiff's response
13 brief here, the response verbatim is, not disputing that
14 yeah, if it's propensity evidence probably not allowed, but
15 such evidence is relevant to and probative of defendant's
16 knowledge of M.H.'s disciplinary history and decision
17 nonetheless to disbelieve plaintiff. This is on page 8.
18 The problem with that argument is, plaintiff
19 asked school administrators involved in their deposition A,
20 did you look at this before you made any sort of decision?
21 Superintendent Beal that's sitting here was asked, were you
22 aware at the time that M.H. had a history of sexual
23 misconduct as well as other incidents of physical behavior,
24 assaultive behavior? No.
25 Didn't you think to look at his history

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1 before making this determination? I mean better than a lot
2 of attorneys, he essentially cites the propensity rule, this
3 is an isolated incident with one teacher, one student. His
4 previous actions not withstanding, they wouldn't necessarily
5 bare on whether or not this incident rose to the level of an
6 assault.
7 The superintendent didn't consider this. He
8 didn't look at it. Again, the load star on this case is,
9 what did the employer know, what were they motivated by?
10 Well just like logic, you can't be motivated by something
11 that's unknown. For that reason it shouldn't be allowed.
12 Additionally, it's unfairly prejudicial under
13 MRE 403. This student's disciplinary history, I mean
14 plaintiff essentially wants to turn this into a trial
15 against this child saying he's a bad kid, look at all these
16 things he's done, he shouldn't have been in school. They
17 should have just kicked him out. They want to make everyone
18 feel bad for the plaintiff.
19 This isn't a trial about the kid, so it
20 shouldn't be allowed. Thanks, Judge.
21 THE COURT: Okay.
22 MS. ROBINSON-HOLMES: First, your Honor, as
23 plaintiff stated in her brief, we're not using this as
24 propensity evidence. And we understand that propensity
25 evidence is impermissible. That is not the purpose here.

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1 And --

2 THE COURT: So what is your permitted purpose

3 that you think it comes in under MRE 404(b)?

4 MS. ROBINSON-HOLMES: Absolutely. So this

5 disciplinary log is a log maintained by the school. And

6 though defendant's agents Pack and Beal have both stated in

7 their dep that they did not actually review the log, it's

8 maintained by the school and they clearly had constructive

9 knowledge of it and could have accessed the log at anytime

10 prior to persecuting the plaintiff in this case.

11 And instead of asking the plaintiff for

12 example, what's your beef with this student, they could have

13 perhaps looked at the disciplinary log and, you know,

14 determined that in any way she had ground to stand on to say

15 this student assaulted me. And I think that instead of

16 propensity it's something that could have indicated and I

17 think the jury would find it relevant that there are some

18 leg to stand on there when the plaintiff says that some

19 issue occurred.

20 THE COURT: So what is your -- I'm trying to

21 understand, what is your proper permitted purpose under

22 404(b) besides propensity, which we all know is prohibited

23 for this.

24 MS. ROBINSON-HOLMES: Well another reason,

25 your Honor, is the plaintiff's state of mind. When the

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1 plaintiff knows that the defendant has a long history of
2 disciplinary issues and in fact has written him up for
3 disciplinary issues, she then is clearly afraid when she's
4 assaulted by the defendant and brings that to the attention
5 of the defendant -- or I'm sorry, assaulted by the student
6 and brings it to the attention of the defendant.
7 Your Honor, and she also accessed the log
8 prior to that, so she knew about the disciplinary issues.
9 And again, it was maintained by the defendant, they had
10 constructive knowledge of it and could have at any time
11 accessed the disciplinary log.
12 MR. MILLER: May I briefly respond, Judge?
13 THE COURT: Sure.
14 MR. MILLER: I mean the argument now is kind
15 of like the Greek hydra. I mean when one head is lopped off
16 another one is popping up. Plaintiff had our response
17 briefs for -- or our motions for four months. They asserted
18 one reason it should be admissible saying, hey the
19 defendant's knew about this, it's relevant for that reason.
20 We pointed out the testimony, actually they
21 didn't know about it. Now it's, well plaintiff I mean knew
22 about it and she was afraid. That's not part of the prima
23 facie case. The prima facie case is, did she report a
24 violation or suspected violation of the law and was she
25 retaliated because of it and were there damages? That's

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1 what is at issue.

2 Her subjective belief, in fact it's part of

3 this model civil jury instructions now from the *ShaLaw* case

4 that the plaintiff's subjective motivations are irrelevant.

5 It's in the model jury instruction. It shouldn't be

6 allowed, plaintiff's new argument that she was afraid and

7 this is why she reported it. It's not in the responsive

8 papers, I mean that argument should be waived.

9 THE COURT: Anything further?

10 MS. ROBINSON-HOLMES: Yes, your Honor. I

11 think this is precisely why the courts have indicated that

12 motions in limine should be granted sparingly, because you

13 never know how evidence may be relevant throughout the

14 course of trial. And so for defense counsel to say that

15 we're coming up with different reasons, well I think that

16 indicates the relevance of this evidence that we're trying

17 to bring.

18 You know, and other reasons as I stand here

19 thinking are, the defendant is going to call witnesses. The

20 principal for example, who supposedly investigated the

21 October 12th, 2015 incident and also had access to the

22 disciplinary records and did he in fact interview the

23 student? He knew of the disciplinary issues the student

24 had, how was the student disciplined, all of which is

25 relevant again to defendant's state of mind when they're

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1 going through the investigation and disciplining the
2 plaintiff later on in her transfer.
3 THE COURT: All right, well at this point I'm
4 not going to admit it such that, you know, I want to hear
5 about it in opening statement. But at this point, you're
6 right, I think this is one of those rulings that the Court
7 depending on how the evidence develops may rule on it at the
8 time that it's actually before the Court.
9 Although, I'm going to indicate right now,
10 I'm really struggling hard to see what your permitted
11 purpose is and how it substantially is more probative than
12 it is prejudicial, but I'll deal with that issue as it
13 arises.
14 So we dealt with the PPO hearing. I guess we
15 can do evidence of insurance. There doesn't really appear
16 to be an issue with that when I read each of your briefs,
17 correct? So both sides agree that that's not something that
18 should be brought out to the jury in any way, shape or form.
19 MS. ROBINSON-HOLMES: Correct, your Honor.
20 THE COURT: Okay. Improper -- okay, I guess
21 the next one we can deal with is the opinion testimony from
22 plaintiff's union representative.
23 MR. MILLER: Thanks, Judge. In opposing
24 defendant's motion for summary disposition that was
25 previously heard plaintiff submitted an affidavit of the

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union president, Amy Gish. As part of that affidavit there's just general statements, I have been involved in all kinds of disciplinary meetings and hearings over the years and I've never seen a teacher treated this poorly.

In employment cases there's one rule that's pretty widely accepted that you can't compare yourself to other employees unless you're similarly situated in all relevant aspects. Because if a principal in one of the nine buildings over here is confronted with an incident, takes some action, it's not necessarily a fair comparison to what happened over in another elementary school, what that principal did.

So it has to involve the same conduct, same decision makers and same surrounding facts and circumstances. We cited a whole bunch of cases in our motion. In response -- the response is essentially, all the cases cited, Judge, were Title Seven, Elliott Larsen and Age Discrimination and Employment Act, they're entirely irrelevant, ignore and deny the motion.

It sounds like the Court has had an opportunity to look at our reply brief, it's the same admissible rule in lower cases. We cited three or four cases from just the last two years with the exact same rule. Plaintiff's union representative can't just offer this vague testimony that a bunch of other employees have done similar

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1 things and been treated better.

2 I mean if that testimony is going to be

3 admissible you need to lay an actual foundation about how

4 the conduct is exactly the same or very, very similar, same

5 decision maker, same surrounding facts and circumstances,

6 time line, everything else. She can't get up there and just

7 say, boy I've been involved in a whole lot of this and

8 they've never treated anyone this poorly.

9 THE COURT: Okay.

10 MS. ROBINSON-HOLMES: Essentially, your

11 Honor, the defense is arguing that a witness who when called

12 to testify will testify to events she observed and provide

13 an opinion as to those observed events cannot so testify.

14 Such an assertion runs counter to the Michigan Rules of

15 Evidence, particularly rule 701, which permits opinion

16 testimony by a lay witness if it is A, rationally based on

17 the perception of the witness and B, helpful to a clear

18 understanding of the witness' testimony or the determination

19 of a fact in issue.

20 In this case the witness will testify to

21 prior interactions with defense agents like Beal and Pack,

22 events between defendant and plaintiff which she observed

23 and opinions from what she made because of her experiences.

24 Plaintiff is not eliciting testimony from this witness

25 regarding being similarly situated to other employees.

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2 Frankly, plaintiff is not required to make

3 that showing that she is similarly situated to demonstrate

4 that she suffered an adverse action. Now the cases that

5 defendant cited previously were part of a theory and it was

6 essentially that for example, in the ADA claim one of the

7 elements plaintiff was required to show is that she was

8 replaced by someone outside of her protected class, which

9 the 6th Circuit asserts may be proven by showing that she

10 was treated differently from similarly situated employees

11 outside the protected class.

12 So essentially it's how you prove that

13 element, a potential way to prove it. This is not that

14 case, this is simpler than that. We're saying that

15 plaintiff was transferred because of her protected activity.

16 We're not trying to compare her to all of the employees

17 throughout the district, it's just not something that is

18 necessary and it's not something that we plan to do.

19 THE COURT: How is this union

20 representative's opinions go to that?

21 MS. ROBINSON-HOLMES: So one of the things is

22 based on her observations. Let's say how she's previously

23 interacted with Beal and Pack and in an altercation where

24 they both raised their voice. In her opinion and based on

25 her observation is that she's never seen that before. And

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she, you know, believes it was because of the plaintiff's protected activity based on what they said and her previous experience.

So which is completely relevant because one, it speaks to their motivation and it's also permissible because it's what she's observed and experienced.

THE COURT: Does it also tread on one of the ultimate issues as well?

MS. ROBINSON-HOLMES: Well, your Honor, the lay opinion testimony rule specifically states that if it's helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. And the motivation of the defendants in treating the plaintiff adversely is a fact in issue.

THE COURT: All right, thank you.

Any further argument?

MR. MILLER: Just for the record, the recent case is *Krawczyk v City of Dearborn*, which is a 2015 case, *Schaefer v Plymouth Township*, 2016 case and *Toward v City of Warren*, a 2015 case, again all held with varying language that for example, the record is inadequate to allow a conclusion that plaintiff and the other officer were so similarly situated that any disparity in their treatment establishes that the treatment of the plaintiff was pretext for unlawful retaliation.

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1 You don't cure that problem by making the
2 testimony squishier and just saying in general, the only way
3 you cure that is I mean nailing it down, no, they're
4 similarly situated. It's going in the exact opposite
5 direction of where these cases are telling us to go. It
6 shouldn't be allowed. Thanks, Judge.
7 THE COURT: All right, well the Court is of
8 the mind with the case law cited that I think is a matter of
9 predicate. Maybe you can do it that your union
10 representative is similarly situated in all relevant
11 circumstances such that would be permissible to allow that.
12 I am also concerned that it kind of intrudes as well,
13 doesn't intrude as well and I guess I'll hear further
14 argument on ultimate issues.
15 So at this point I'm not necessarily going to
16 prohibit it, but, you know, you may have to lay further
17 foundation to the Court to have it, you know, deemed
18 admissible.
19 Okay, what's the remaining ones?
20 MR. MILLER: The last one, Judge, is
21 speculative testimony that plaintiff might be terminated or
22 laid off in the future.
23 THE COURT: Okay, both sides have briefed
24 that. I'll let you go ahead and respond by way of oral
25 argument.

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1 MR. MILLER: I mean I'll be pretty brief
2 here, Judge. We have certain disability principles I mean
3 to file a lawsuit in this State. You need an injury in
4 fact, it needs to be a right claim and it can't be moot.
5 This is essentially saying yeah, I'm still being paid every
6 penny of my salary, I'm still getting summers off, I still
7 have health insurance, I can retire anytime I want, but
8 there's a chance in the future I might have an adverse
9 employment action, you should award me damages in case I
10 have an adverse employment action in the future.
11 That's what a new lawsuit is for, if she's
12 fired a year from now or laid off from now, that's a new
13 adverse employment action, statute of limitations starts to
14 run, you file a lawsuit. That's not the lawsuit that
15 plaintiff filed, she's an employee of the school district,
16 always has been, still is until she I mean decides to stop
17 working. That's the lawsuit we have and that's what it
18 should be limited to.
19 THE COURT: Okay.
20 MS. ROBINSON-HOLMES: Frankly, your Honor,
21 plaintiff is unsure what defendant is thinking. Plaintiff
22 is offering a speculative evidence. Of course plaintiff is
23 going to offer testimony about her state of mind and the
24 emotional distress that she's experienced and she'll also be
25 testifying to the poor performance evaluations that she's

1 received and potentially how that could suggest she would be
2 laid off in the future.
3 But that does not mean that she's going to
4 say, I fear that I'm going to be terminated tomorrow. She's
5 simply going to lay out the facts of what she's experienced
6 and her current state of mind, which is all relevant to the
7 emotional damages that she could be entitled to.
8 We're not asking or suggesting to the jury
9 that she be terminated tomorrow and you should compensate
10 her in future. So nothing is speculative about what she's
11 experiencing. And defendant will of course have the
12 opportunity to cross-examine her and offer any witnesses and
13 evidence that they have to demonstrate that what she's
14 experiencing or feeling is what I'm going to assume they're
15 going to say is not legitimate or something.
16 So it's not speculative, it's what she's
17 feeling and what she's experienced that we're going to offer
18 into evidence.
19 THE COURT: Any response?
20 MR. MILLER: Yeah, very briefly, Judge. Last
21 time we were here there was an allegation that plaintiff had
22 been evaluated ineffective, which under the revised school
23 code that has a meaning, you can lose your job if you're
24 evaluated ineffective so many years in a row. But as of
25 we're sitting here now, she has never had an ineffective

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1 evaluation.

2 To suggest that, well I mean next year or the

3 year after or 2019, 2020, 2021, I might have two back to

4 back ineffective ratings because these are really bad people

5 and I might lose my job. That's trying to change the

6 lawsuit that they filed. If that happens she can file a new

7 lawsuit, but that's not why we're here right now.

8 THE COURT: All right, well the Court is

9 going to rule, and again this may be one of these issues

10 that depends how the facts come in, but I don't think it's

11 fair under a justiciability argument to allow the plaintiff

12 just to speculate what's going to happen to her in the

13 future.

14 I mean if there hasn't already been adverse

15 action, you know, it's difficult for the defense to respond

16 to that. You know, it's one thing if she was written up,

17 it's another thing if she had an ineffective evaluation.

18 They're saying she doesn't even have one of those. So I'm

19 going to grant that motion in limine at least in part at

20 this point.

21 Okay, anything further?

22 MR. MILLER: No, Judge. When you did mention

23 the stuff that you had in front of you to go through this

24 morning, defendants also filed an objection to plaintiff's

25 proposed exhibits some time ago. So I don't know if the

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1 Court also has that or had an opportunity to look at it.
2 THE COURT: I do, I have that before me as
3 well.
4 MR. MILLER: Okay.
5 MS. ROBINSON-HOLMES: Your Honor, I just want
6 to clarify if we are going over objections to exhibits,
7 because plaintiff has raised an objection that we fear may
8 go into the opening argument, which is the issue of a PPO
9 regarding the plaintiff from about twenty plus years ago and
10 we're just asking that that not be included in the opening
11 statement if objections are not to be able to be brought up.
12 THE COURT: Just I guess help me understand
13 the PPO from twenty years ago?
14 MS. ROBINSON-HOLMES: Absolutely. It's
15 regarding against a male co-worker based on sexual assault,
16 a male adult co-worker. So it has no bearing on the current
17 litigation and it's not somewhere in any way that was maybe
18 against a student or something to that effect. It's against
19 a male adult for sexual assault twenty plus years ago.
20 THE COURT: Okay and this is one petition
21 your plaintiff had taken out?
22 MS. ROBINSON-HOLMES: Yes.
23 THE COURT: Okay.
24 MR. MILLER: As long as plaintiff is not
25 talking about this lawsuit she had twenty years ago against

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1 the school district we had no intention of talking about the
2 PPO at opening. If it comes up we're happy to sidebar with
3 the Court and discuss it before.
4 THE COURT: All right.
5 MR. MILLER: It's in front of the jury.
6 THE COURT: Okay, all right. It sounds like
7 they're not going there. It sounds like it's probably not
8 something relevant to this lawsuit.
9 MS. BONANNI: Your Honor, I have one
10 clarifying question --
11 THE COURT: Sure.
12 MS. BONANNI: -- about one of your rulings in
13 the motions in limine. I want to clarify something about
14 the law, student law. In my opening I intended to address
15 the fact that when Ms. Davis started to have issues with
16 this student she not only put entries in the student log
17 herself, but she also reviewed the log.
18 And in reviewing the log made decisions about
19 reaching out to various people within the school and
20 administration in terms of giving them notice as to what she
21 was experiencing in her classroom. Reviewing the kid's
22 challenges and various things contributed to her decision to
23 do that.
24 Now I don't intend to show them the log, I
25 don't intend to go into great detail about the log, but I

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1 don't think I should be prohibited from raising the fact
2 that she saw that he had a four page log of entries that
3 exhibited repeated problems in the classroom, including
4 defiance, that's a word in the log, aggressive, etcetera. I
5 don't think that because she, herself accessed it and it
6 contributed to her decisions about addressing the kid's
7 behavior.
8 THE COURT: Okay.
9 MR. MILLER: Judge, I mean this is the motion
10 we just argued. I mean it's the exact same argument. And I
11 just went and got a copy of the jury instructions, it's
12 model civil jury instruction 107.02, the copy submitted by
13 plaintiff actually, that the employee's motive does not
14 matter and you should not consider it in determining whether
15 the employee engaged in protected activity.
16 Her looking at this log and saying, boy bad
17 kid in the past, I mean really bad kid, that's not relevant
18 to this lawsuit. And it's trying to submit incredibly
19 prejudicial information to the jury to make everyone feel
20 bad for plaintiff. All teachers have a tough job in dealing
21 with difficult students from time to time, that's part of
22 the job.
23 It's the Court's prior ruling was a hundred
24 percent correct and it shouldn't be changed.
25 MS. BONANNI: Well the testimony from Ms.

1 Davis is not going to be, he's a bad kid. The testimony
2 from Ms. Davis is that she saw he needed intervention and
3 that's what she sought to do by taking even more formalized
4 steps than she would have done otherwise.
5 MR. MILLER: Her motivation for doing that is
6 not what's important. What's important is she's alleging
7 she filed a police report and she's alleging she came to see
8 you and asked for a PPO. That's what matters.
9 THE COURT: Okay, I agree with the defense on
10 this. You're treading to closely violating my rule about
11 the juvenile's past history. So I am going to grant a
12 motion in limine on that for opening argument.
13 MS. BONANNI: Can I at least in the opening I
14 can mention of course the fact that she put entries in the
15 student log?
16 THE COURT: Sure, I don't see a problem with
17 that.
18 MS. BONANNI: Okay.
19 THE COURT: Okay, so we're going straight
20 down the -- going through I've got plaintiff's objections to
21 defendant's exhibits. So do we want to go straight down
22 that list? And I don't know if all of those you just want
23 to address as we go on. So is there any further ones either
24 side wants to address before we bring the jury in and start
25 jury selection? Okay, all right.

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1 MS. BONANNI: I do have a question about jury
2 selection before you bring people in.
3 THE COURT: Okay, actually and I'm going to
4 allow the parties, I'll probably have a few questions but I
5 normally allow the attorneys to be intricately involved in
6 jury selection. So I usually start with the plaintiff would
7 obviously first and then the defense can follow up on any
8 questions as well.
9 MS. BONANNI: So my question is, do we seat
10 eight and have six deliberate and have it be six out of
11 eight? How does your court?
12 THE COURT: Well I'm open to input on that.
13 MS. BONANNI: I mean I feel -- I guess I feel
14 pretty strongly and if we're going to ask eight people to
15 sit that we allow eight to participate. And then I guess my
16 position would be the verdict would be six out of eight.
17 THE COURT: Okay. What does the defense say
18 about jury composition?
19 MR. MILLER: I defer to my boss over here to
20 my right.
21 MS. BONANNI: The man.
22 MR. MULLINS: Your chart looks like you had
23 seven in mind. I don't think that's going to be that long,
24 seven --
25 THE COURT: Seven and I've done it both ways.

MR. MULLINS: -- seems fine.

THE COURT: So is --

MR. MULLINS: Seven is fine with me and --

THE COURT: Is it five?

MS. BONANNI: Five out of seven. That's fine.

MR. MULLINS: I don't think we're going to be here more than two days.

THE COURT: Okay. All right, then why don't we leave it five out of seven.

MS. BONANNI: Okay.

THE COURT: All right. And I hope I clarified further about jury selection -- or I mean voir dire questions.

MS. BONANNI: Yes.

THE COURT: And so are we ready to have a panel now? It will take about ten minutes or so for them to get them down here.

MS. BONANNI: Sure. Thank you, Judge.

THE COURT: Okay. Everybody take a brief recess and we'll get the jurors in here.

(At 11:25:24 a.m., court recessed)

(At 12:01:01 p.m., court reconvened)

THE CLERK: All rise. The 4th Judicial Circuit Court is now in session, Honorable John G. McBain

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1 presiding.

2 THE COURT: All right, thank you. You may be

3 seated. All right, the Court is going to call up the next

4 matter scheduled for jury trial on its Docket. The matter

5 of Pennie Marie Davis versus The Jackson Public Schools,

6 file number 16-344-CZ.

7 Ladies and gentlemen, I'd like to welcome you

8 to my courtroom. I'm Circuit Judge John McBain and we're

9 here to try a civil case. I'm anticipating the case is

10 probably going to go about three days. In just a moment I'm

11 going to introduce all of the participants, but first of all

12 I'd like to thank you for showing up for your jury service

13 it is truly one of the higher callings of citizenship.

14 And frankly, our criminal system and even our

15 civil court system would not be able to function effectively

16 and correctly without the services of jurors. So at this

17 time I'm going to have all of you stand to be sworn as the

18 venire in this matter.

19 THE CLERK: Please raise your right hand.

20 You do solemnly swear or affirm that you will truthfully and

21 completely answer all questions about your qualifications to

22 serve as jurors in this case, so help you God?

23 MULTIPLE JURORS: I do.

24 (At 12:02:14 p.m., prospective jurors sworn)

25 THE COURT: All right, thank you. You may be

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1 seated. All right, at this time I'm going to start with
2 this is a civil case so it's a little bit different than a
3 criminal case and we'll go over with you the different
4 standards, burdens of proof. Initially we're going to go
5 ahead and seat seven jurors and so we don't have to have the
6 full compliment of twelve that we normally would have to
7 have for a criminal case.
8 But are all of residents of Jackson County?
9 So there's not anybody that's not a resident of Jackson
10 County, correct? Okay. And I'm going to do my very best, I
11 have a sealed envelope and some information about your
12 questionnaires.
13 I do appreciate you filling out the
14 questionnaires because it saves us from having to ask a lot
15 of unnecessary, well I wouldn't call them necessarily
16 unnecessary questions, but as an example, it's relevant to
17 the attorneys sometimes, you know, what's your occupation,
18 what your spouse's occupation is, there's certain other
19 questions about lawsuits, there's other questions that go to
20 certain biographical information that it's just much easier
21 for us to collect by way of a questionnaire as opposed to
22 questioning.
23 So ultimately what's going to happen is I'm
24 going to initially place seven of you in the jury box and
25 then ultimately the plaintiff is going to have an

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1 opportunity to question you, the defense is going to have an
2 opportunity to ask you some questions and I'm going to begin
3 with some foundational questions for each one of you.
4 The one thing that I'm going to ask that all
5 the rest of you do since one of the things that's going to
6 happen, we have seven jurors that will initially be
7 selected. I anticipate that those seven are not actually
8 going to be the final ones that are going to compose the
9 entire panel because we have a certain amount of what are
10 called peremptory challenges for cause.
11 As an example, there may be something about
12 your background such that it would be difficult for you to
13 be a fair and impartial juror. In that case I would excuse
14 you for cause and you'd go back up and see Jackie on the
15 fifth floor. And each side has a certain -- an equal amount
16 of what we call peremptory challenges.
17 Peremptory challenges are for really
18 strategic reasons, they're based on your answers to the
19 attorneys' questions if they think that you're going to be a
20 good juror for their side. In the end both sides usually
21 share the same goal or has the same one as well. We
22 ultimately want seven citizens that can be a fair and
23 impartial juror to the plaintiff and to the defendant.
24 And since each one can exercise, you know, an
25 equal amount of peremptory challenges they're probably just

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not going to get up here and say, Judge, we're happy with the first seven. There's probably going to be some jurors that are excused either for cause or peremptory challenges. And the reason that I tell you that is when I reseat juror number eight I'm going to go to you and I'm going to say, well were you able to hear all the questions that I asked, were you able to hear all the questions that the attorneys asked.

And I'm hoping that that answer is going to be yes because you're following along back there. So as an example, one of my questions would be, have you ever served on jury duty before? So if I ask that to the first seven jurors I obviously intend that to be a question for you if you're a new juror.

It might be that you know one of the parties to the lawsuit. Then, you know, obviously you'd come up here, that question had some application to you, then you'd let me know that and any other ones that might have some specific application. That way we don't have to go through the same qualification questions with each specific juror as they either exercise a peremptory challenge or I excuse a juror for cause.

So at this time I'm going to go ahead and I'm going to have plaintiff's counsel go ahead and introduce themselves and their party.

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1 And so, counsel, if you'd like to rise and
2 introduce yourself?
3 MS. BONANNI: Thank you so much, your Honor.
4 Hello, my name is Megan Bonanni and I am one
5 of the attorneys representing plaintiff and her name is
6 Pennie Davis.
7 MS. ROBINSON-HOLMES: And my name is Channing
8 Robinson-Holmes and I am the other attorney representing Ms.
9 Pennie Davis.
10 THE COURT: Okay. And could I have the
11 defense rise and introduce your respected members at counsel
12 table?
13 MR. MULLINS: Good afternoon. My name is
14 Timothy Mullins, representing the Jackson Schools. And with
15 us here today is Jeff Beal who is the school district's
16 superintendent, chief administrative officer and my partner
17 John Miller, co-counsel.
18 THE COURT: Okay. And I also want to
19 introduce my clerk. This is Laurie Davis, she's the one
20 that's responsible for all the record. Everything that we
21 do in Circuit Court, other than the adoption of a minor
22 child and the testimony of a minor child, everything occurs
23 on the record. It's very easy for us to run a disk of
24 whatever occurred.
25 That's sometimes good in a jury trial too,

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because as an example, if you want to watch the testimony of a witness over again we can very easily burn you a copy of the DVD. I'd just like to explain a little bit. Laurie is also responsible for all the docketing, the Court's Dockets, I handle a wide variety of different cases. I handle criminal cases, I handle some civil cases, I handle some family law cases and some limited Probate jurisdiction as well. So this is one of the civil cases that's on my Docket and it's on schedule for a jury trial today.

All right, so with that I also want to introduce David, he's hard for you to miss. He's my law clerk, he's in his second year of law school and he's actually the one most responsible, you'll have the most interaction with David. He'll ultimately be taking you to the jury room, from the jury room, he'll be attending to your needs as a juror.

So at this time I'm going to go ahead and call the first juror and I'm going to open up a sealed envelope that I have. And only myself and the clerk have this envelope, so what's happened is the jury coordinator has essentially put all of your names into a computer and it directs it -- the clerk directs it to randomly assign each one of you. So each one of you is somewhere between one and thirty-five. I think actually there's a few more jurors today that have been brought down.

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1 And again, I know those but the counsel
2 doesn't know you. I'm going to try my best to try to
3 pronounce your name correctly, if for some reason I don't if
4 you'll just correct me on the way up or otherwise I promise
5 you the attorneys will only compound the problem.
6 All right, so our first juror is Vince
7 Mottes. Juror number two is Peggy Heator, H-E-A-T-O-R.
8 Juror number three is Jessica Medley. Juror number four is
9 Andrew Curl.
10 THE CLERK: No.
11 THE COURT: What?
12 THE CLERK: (Inaudible).
13 THE COURT: I'm sorry, it will be Cecilia
14 Bailey and then Andrew Curl. So Cecilia Bailey is number
15 four, Andrew Curl is number five. Juror number six is Amy
16 Bretz (ph). Juror number seven is Eliott West.
17 Okay, ladies and gentlemen, as I indicated to
18 you before this is a civil case and so it ultimately
19 involves a dispute between the plaintiff who's a teacher,
20 ultimately the school district, Jackson Public Schools. So
21 first of all I want to start, do any of you know any of the
22 parties to the lawsuit, do you know the plaintiff, do you
23 know the defendant, do you know the superintendent, do you
24 know any of the parties?
25 I'm going to at this time have each plaintiff

and defendant read your witness lists. So let's start with plaintiff and have you go ahead and read your witness list. And read it loud so if any other members keep in mind can hear towards the back too.

MS. BONANNI: Sure. Pennie Davis, Jeffrey Beal, Benjamin Pack, Amy Gish, Doctor Mitchell Weisbrod.

THE COURT: Okay.

MS. BONANNI: Your Honor, may I approach?

THE COURT: Sure, come on up.

This is what's called a sidebar. Sometimes the attorneys will approach.

(Bench Conference Held from 12:11:18 p.m. to 12:11:32 p.m.)

THE COURT: Okay, so you have one more witness there?

MS. BONANNI: Yes. Marcus Gideon (ph).

THE COURT: Okay. And can I have the defense go ahead read their witness list?

MR. MULLINS: Additionally, your Honor, Principal Barbara Baird-Pauli, Jeremy Patterson and possibly Joe Zesson (ph), it's with a Z.

THE COURT: Okay. So does anyone recognize any of the witnesses? Do you know any of the attorneys I think are largely out of the greater metro Detroit area, they're not local lawyers? Do any of you know any of the

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1 lawyers, do any of you have any pending business with either
2 of the lawyers' law firms?
3 Have any of you ever served on a jury before?
4 All first time jury service. Okay. And this is a civil
5 case, have any of you ever been a party to a lawsuit before
6 either as a plaintiff, a defendant?
7 So we can start with in the back row, is it
8 Ms. Heator?
9 JUROR TWO: Heator.
10 THE COURT: Can you go ahead and tell me what
11 kind of lawsuit you were involved in?
12 JUROR TWO: It was for the Department of
13 Corrections.
14 THE COURT: Okay, you can go ahead and have a
15 seat, that's okay, unless you feel more comfortable standing
16 up. So, all right.
17 JUROR TWO: I was just trying to respect you.
18 THE COURT: Oh, that's fine.
19 JUROR TWO: The Department of Corrections
20 they summon us to witness things that happen at the prison.
21 THE COURT: Okay. So were you actually a
22 named defendant by one of the inmates in a lawsuit or were
23 you just a witness in a civil case?
24 JUROR TWO: A witness.
25 THE COURT: A witness, okay.

Okay. And I thought I saw another hand up on the front? Ms. Bretz, welcome to our jury panel. And can you go ahead and tell me your involvement with that?

JUROR SIX: I worked for the sheriff's office.

THE COURT: Called as a witness a few times probably?

JUROR SIX: A couple.

THE COURT: A couple, all right. But have you been involved individually in any lawsuits in the course of your -- as a sheriff's department deputy?

JUROR SIX: One was settled and one that was not settled.

THE COURT: All right. Okay, the attorneys may have some further follow up on that.

Have any of you actually attended the Jackson Public Schools either as a student -- why don't we start with the front.

So, Mr. Curl, would that apply to you?

JUROR FIVE: Yes, I went there through my freshman year. Sorry.

THE COURT: Okay. That's okay.

And anybody else in the front row went to the Jackson Public Schools? Okay. In the back row anybody else from the Jackson Public Schools? Okay.

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UNIDENTIFIED JUROR: I did back in the '70's.

THE COURT: Okay. And what grades as you recall?

UNIDENTIFIED JUROR: Seventh.

THE COURT: Seventh, okay.

UNIDENTIFIED JUROR: Yeah.

THE COURT: This is just a question that I have to ask, are any of you a convicted felon and if you are, you know, and your rights have not been restored by something like an expungement or a dismissal letter, it goes to your fundamental qualifications as a citizen and by the way if it is and you want to come up and talk to me sidebar -- if there's ever a question by the way that I ask, the attorneys ask and you'd feel, Judge, I'd feel a little bit more comfortable talking to you at the sidebar rather than in front of everybody in the court, that's always good.

Because in the end we're just here about your jury service, your ability to give both the plaintiff and the defendant a fair trial and the last thing in the world we want to do is embarrass you about something that's personal. But sometimes there's some things like as an example, the felony conviction that would go towards you would no longer be considered a qualified juror with that.

As I indicated this case in a -- a civil case is a little bit different than a criminal case, so none of

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1 you have ever served on a criminal jury either, correct?
2 Well in a criminal case if you think about the metaphorical
3 scales of justice, in a criminal case if the State charges
4 the defendant, you know, potentially they could lose their
5 liberty or freedom interests, so they have to prove beyond a
6 reasonable doubt. It's the highest standard of proof known
7 to the law.
8 So essentially the scales would have to come
9 almost down with a resounding, you know, on behalf of the --
10 before you could convict the defendant of a crime. In a
11 civil case it's by a preponderance of the evidence and we'll
12 get more into that specifically, but either the plaintiff or
13 the defendant if they kind of move the scales, you know, by
14 more evidence than the other party is the prevailing party
15 and we'll talk specifically about that.
16 So I think I went over with you, none of you
17 have ever been a plaintiff where you've brought a lawsuit
18 against others that we haven't already talked about,
19 correct? And we've already went over the fact that none of
20 you have been a defendant in a lawsuit that we haven't
21 talked about that. Ms. Bretz I understand has a couple,
22 she's probably going to explain in a little bit.
23 Now I anticipate that this case is going to
24 take about three days. Is there anything going on in your
25 life such that you wouldn't be able to give this case your

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1 undivided attention for the next three days? I can't
2 guarantee how long you're going to deliberate, it may be
3 quick, it may be long, but I think the attorneys and I
4 concur that the case will probably conclude sometime on
5 Wednesday.
6 And unfortunately I don't have exclusively
7 all time dedicated, I still have some pretrials, I still
8 have some sentencings on Wednesday morning and some other
9 things that I have to work the jury trial around. So
10 anybody have any problems with those dates and times?
11 Does anybody have any problem with following
12 the law as I give it to you? Obviously as a juror, you
13 know, you don't interpret -- you interpret and apply the law
14 as the Court gives it to you. Other than medical marijuana
15 cases I've not had a lot of difficulty with this with
16 jurors. But do all of you understand that it's not the
17 province of the jury to change the law?
18 I mean obviously that's what we have
19 legislators for, that's what we have a governor that signs
20 laws into effect. So would all of you be able to follow the
21 law as I give it to you? Okay.
22 At this point I'm going to go ahead and turn
23 the questioning over to the plaintiff. And does the
24 plaintiff have some questions you'd like to ask of the
25 prospective jurors?

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MS. BONANNI: I do.

THE COURT: Ms. Bonanni, if it's helpful and you want to move the lectern about feel free.

MS. BONANNI: I was a little afraid, I didn't want to break it.

THE COURT: It's got a little bit of reach.

MS. BONANNI: It's got a little pull. Okay, great.

THE COURT: There you go.

MS. BONANNI: Thanks, Tim.

MR. MULLINS: Just don't trip on it.

MS. BONANNI: Okay. Hi, everybody. So I'm going to ask you questions. Some of them I'm going to direct to each of you and some I'm going to ask everybody, okay. So let's start with number one, Mr. Mottes.

UNIDENTIFIED JUROR: Is that Mr. Curl?

MS. BONANNI: Number one is Mr. Mottes. Forgive me.

JUROR ONE: It's Mottes.

MS. BONANNI: Mottes.

THE COURT: Mottes.

MS. BONANNI: So you're an athletic trainer?

JUROR ONE: Correct.

MS. BONANNI: So tell me, what do you do in your job?

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1 JUROR ONE: I work for the community of Homer
2 High School, I'm the athletic trainer. So I cover all
3 sporting and practice events that go on at the school,
4 varsity and JV and we do have some freshman teams as well.
5 Under that I try to provide the best possible care to keep
6 our athletes safe. And acting as emergency as needed.
7 MS. BONANNI: So have you had similar jobs in
8 athletics in the past?
9 JUROR ONE: No, not necessarily. I've
10 coached a few teams, but this is my third year at Homer,
11 it's my first job since college.
12 MS. BONANNI: I was going to say you look
13 young. How old are you?
14 JUROR ONE: I'm twenty-five.
15 MS. BONANNI: Okay. Did you go to college?
16 JUROR ONE: Yes, I went to Northern Michigan
17 University.
18 MS. BONANNI: And what did you study?
19 JUROR ONE: Athletic training.
20 MS. BONANNI: At school are you in the union?
21 JUROR ONE: No.
22 MS. BONANNI: Is there a union?
23 JUROR ONE: I'm not quite sure, there's
24 organizations such as Michigan Athletic Training Association
25 and National Athletic Training Association, but as a union,

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1 no.

2 MS. BONANNI: Okay. So are you currently

3 married?

4 JUROR ONE: No, I'm single.

5 MS. BONANNI: Any kids?

6 JUROR ONE: No.

7 MS. BONANNI: Okay, so I know you're involved

8 in the educational world. Any family members of yours

9 involved in education?

10 JUROR ONE: What do you mean by education, as

11 teachers or --

12 MS. BONANNI: Teachers, principals?

13 JUROR ONE: No.

14 MS. BONANNI: Do you have any religious or

15 ethical beliefs that you think might interfere in your

16 ability to be on a jury?

17 JUROR ONE: No, not at all.

18 MS. BONANNI: Or to stand in judgment?

19 JUROR ONE: No.

20 MS. BONANNI: Does anybody on this jury have

21 that kind of feeling? Have you ever had an unpleasant

22 experience with an attorney or a Judge?

23 Do you want to tell me about that, Ms. Bretz?

24 JUROR SIX: No, no specific.

25 MS. BONANNI: I'm assuming you're probably

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1 interfacing with attorneys and --
2 JUROR SIX: Yes, yeah, I don't have any
3 specifics.
4 MS. BONANNI: So no specific memory?
5 JUROR SIX: No.
6 MS. BONANNI: Okay.
7 JUROR SIX: It's not all pleasant.
8 MS. BONANNI: I'm sorry?
9 JUROR SIX: Just not all pleasant.
10 MS. BONANNI: I agree. Okay.
11 Back to Mr. Mottes. I'm sorry about that. I
12 know the Judge asked you about bias, but do you think
13 there's anything within you, within your heart that might
14 interfere with your ability to be objective?
15 JUROR ONE: No, I prefer to be objective than
16 subjective.
17 MS. BONANNI: Okay. How about anybody else,
18 anyone have something in their heart that might interfere
19 with their ability to be objective? What's your source of
20 news, radio, TV?
21 JUROR ONE: Facebook, Twitter, social media.
22 MS. BONANNI: That's right, you're twenty-
23 five.
24 JUROR ONE: Correct.
25 MS. BONANNI: Do you read magazines?

JUROR ONE: No.

MS. BONANNI: Do you have a bumper sticker?

JUROR ONE: I do not.

MS. BONANNI: How about read books?

JUROR ONE: No, not really.

MS. BONANNI: Okay. What web sites do you like?

JUROR ONE: I mean I like outdoor sporting goods stores like MC Sports, well I guess they're out of business now, but just any kind of sporting web site I would say.

MS. BONANNI: Do you ever volunteer?

JUROR ONE: I do volunteer with coaching every now and then.

MS. BONANNI: And do you have any bumper stickers on your car?

JUROR ONE: I do not have any bumper stickers.

MS. BONANNI: Does anybody have a bumper sticker on their car?

THE COURT: I think juror number seven nodded his head.

MS. BONANNI: Oh, I'm sorry I did not see you. Why didn't you tell me -- I'd love -- could you pass the microphone?

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Ms. Heator.

Oh, I'm sorry, I thought Ms. Heator had the bumper sticker.

JUROR SEVEN: That's okay.

MS. BONANNI: Okay, I'm sorry. Eliott West?

JUROR SEVEN: Yes.

MS. BONANNI: Old people too, okay.

JUROR SEVEN: Yeah, I just have a couple of political bumper stickers and the University of Michigan on there.

MS. BONANNI: What do the political bumper stickers say?

JUROR SEVEN: About pro-life and adoption.

MS. BONANNI: Okay, that's it, so let's talk to Ms. Heator. Thanks so much.

JUROR TWO: Yeah, I've just got two. One is for Detroit Tigers and the other is for our U.S. Military., some gave all.

MS. BONANNI: So here's one of my favorite questions that I ask jurors, it's a little oddball but I think it's fun. If you could have lunch or dinner with anyone living or deceased who would it be? We're going to talk to Mr. Mottes first.

JUROR ONE: Probably Coach K from Duke University, Mike Krzyzewski.

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1 MS. BONANNI: Now let's go around the horn
2 and everybody tell me?
3 JUROR TWO: My mother.
4 JUROR THREE: My mom.
5 JUROR FOUR: My mom.
6 JUROR FIVE: My uncle.
7 JUROR SIX: My grandma.
8 JUROR SEVEN: My dad.
9 MS. BONANNI: My dad too. And this is funny,
10 I'll say this is the first time I've ever heard a jury, so
11 many wanting to have dinner or lunch with their family
12 members. Usually it's a celebrity or something. I feel the
13 same.
14 Okay, here's some questions for everybody.
15 Raise your hand if you feel that lawsuits are fair and just?
16 Okay. Raise your hand if you feel that most lawsuits are
17 unfair or frivolous? Does anyone feel that the justice
18 system is weighted in favor of one side or another?
19 Why don't you share your -- explain a little
20 for me if you would?
21 UNIDENTIFIED JUROR: I just feel that
22 sometimes people who like are marginalized by society have
23 an under representation, they don't get a fair shot, it's
24 whoever has the money and the power is going to, you know,
25 win that just because they have better attorneys, you know.

They can pay off witnesses or stuff like that. I just feel like that not everybody gets a fair shot.

MS. BONANNI: That it's not a level playing field all the time?

UNIDENTIFIED JUROR: No. And that's the way it should be.

MS. BONANNI: Anybody else? Some people, I believe this and others do too, that most of the time juries do the right thing. Does anyone have a strong opinion about that that they'd like to share?

Mr. Mottes, do you think juries do the right thing?

JUROR ONE: I think they try.

MS. BONANNI: Okay.

JUROR ONE: I really don't know, I really don't have an opinion.

MS. BONANNI: Okay. Does anyone have an opinion about juries one way or another? Okay. Does anyone have a sense of a particular lawsuit that they just do not like or do not believe in? If you have a strong opinion about particular lawsuits just raise your hand?

Do you think that, Mr. Mottes, you may be able to file a lawsuit?

JUROR ONE: I think so if I talked to the right people.

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MS. BONANNI: Ms. Heator, do you think that you would be able to file a lawsuit?

JUROR TWO: Sure, yes.

MS. BONANNI: Ms. Medley?

JUROR THREE: Yes.

MS. BONANNI: Ms. Bailey?

JUROR FOUR: Yes.

MS. BONANNI: Mr. Curl?

JUROR FIVE: Yes.

MS. BONANNI: Ms. Bretz?

JUROR SIX: Yes.

MS. BONANNI: And, Mr. West?

JUROR SEVEN: Absolutely.

MS. BONANNI: I want to go around the horn again, just pass the microphone if you would. There is an ongoing discussion in legal circles, some people -- and actually not just legal circles, but everywhere, some people think there are way too many lawsuits. Some people think that people don't have access to justice. Some people think that lawsuits should be resolved in other ways.

And other people think that lawsuits can be justified and that the courts provide a remedy for conflict. Based on your experience what do you think?

JUROR ONE: I really don't have that much experience, so I don't know.

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MS. BONANNI: Okay. How about you, Ms. Heator?

JUROR TWO: Like he said, not knowing just -- I mean there's so many lawsuits out there you have to judge each individual one by itself. So I wouldn't want to expound on that.

JUROR THREE: I kind of feel the same as the last two, I don't have much knowledge of lawsuits. I really don't have much to kind of say in reference to that.

MS. BONANNI: Okay. How about you, Ms. Bailey?

JUROR FOUR: I agree with what they say.

MS. BONANNI: Okay.

JUROR FOUR: I've never been involved, so I don't know.

MS. BONANNI: Okay.

JUROR FIVE: I do think there are lots of like frivolous lawsuits out there that do take away from the more serious ones and the more pressing matters.

MS. BONANNI: Okay.

JUROR SIX: I agree, they kind of go across the board.

MS. BONANNI: Okay.

JUROR SEVEN: Yeah, I think you have to have lawsuits, it's part of our system. They're an essential

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1 part of our justice system.

2 MS. BONANNI: Some people are uncomfortable

3 about maki8ng a decision about a lawsuit that might have an

4 affect on their community. Others are okay with it. Which

5 are you closer to?

6 We'll start with Mr. Mottes?

7 JUROR ONE: I'm sorry, what were the two

8 options again?

9 MS. BONANNI: Well you can just -- you don't

10 have to take either option, you can just tell me your

11 opinion, but the idea is that some people are uncomfortable

12 about making a decision about a lawsuit that might have an

13 affect on their community and others are okay with it.

14 Which are you closer to?

15 JUROR ONE: I feel like I'm closer to I'm

16 being okay with it.

17 MS. BONANNI: Okay. Ms. Heator?

18 JUROR TWO: Like again I said, it depends on

19 the lawsuit, but if it's going to affect, you know, people I

20 know and people I love I think they would have a, you know,

21 conflict against it.

22 MS. BONANNI: Okay. So what you're telling

23 me is you're going to assess the situation --

24 JUROR TWO: Absolutely.

25 MS. BONANNI: -- each individual situation?

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JUROR TWO: Absolutely.

MS. BONANNI: Okay. How about you?

JUROR THREE: I would also assess it depending on what the nature of the lawsuit would be and how it would affect it.

MS. BONANNI: Okay.

JUROR FOUR: I feel that I could make a decision based on the facts the Judge presented to me and with my own gut feeling the way I feel.

MS. BONANNI: Okay, thank you.

JUROR FIVE: I would assess each individual situation and how it affected like my community or me or anybody that I knew and make decisions based off each individual case.

MS. BONANNI: Okay.

JUROR SIX: My decision would be based on what was presented.

JUROR SEVEN: My decision would be based on all the facts and everything that we're presented and then we can make a decision from that point.

MS. BONANNI: Does anyone have a strong opinion about rendering a verdict against a public institution like the Jackson Public Schools?

Ms. Heator, I feel like you want to tell me something?

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JUROR TWO: Well I mean these are just such ambiguous questions.

MS. BONANNI: Yes.

JUROR TWO: I mean you have to have the facts --

MS. BONANNI: Yes.

JUROR TWO: -- before you could say yes or no.

MS. BONANNI: Okay. Yes, okay, thank you.

Have any of you heard of the phrase, preponderance of the evidence? And you understand that preponderance of the evidence does not mean a hundred percent, it means fifty-one percent? It means meaning slight like a feather, that's like the tip. The example is, the scales of justice and then you put a feather on the one side, that's the standard, the burden in this case.

Does this concept sound logical to all of you? Does anyone have trouble with this concept as the rule?

Mr. Mottes, do you have any thoughts about the size of jury awards?

JUROR ONE: I'm not sure what you mean.

MS. BONANNI: Okay. Well let me ask it to you this way, try to be more specific. I'm thinking about what Ms. Heator is saying, the questions are general, we try

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1 to be more specific for you. When a person has been injured
2 because of a bad act money is the only form of compensation
3 for harms and losses that a person can seek under our system
4 of justice.
5 What do you think about a system that awards
6 money for the harms and losses for injury caused by bad
7 acts? Does anyone think they might have trouble with this
8 concept? During this trial --
9 Oh, I'm sorry.
10 JUROR SEVEN: No, you're fine. I was
11 involved in a head on collision about a year ago and I
12 suffered a broken hip and leg and I had to go through about
13 a year and a half of extensive physical therapy and there
14 still hasn't been anything done and mostly all I've gotten
15 has been compensation from that. But you can't take away
16 all that pain, the suffering, the hard work and everything
17 I've had to get to to go back to where I was and just
18 throwing a check in somebody's face is sort of like it
19 doesn't really do much for you, you know.
20 Like I wish I could, you know, never have
21 that happen to me instead of just here, here's a check for
22 your pain and suffering or here's a check for your car that
23 was totaled.
24 MS. BONANNI: I know what you're saying. And
25 in this case, you know, Ms. Davis has injuries, harms and

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1 losses, but there's nothing on paper. There's not a
2 particular price attached to those harms and losses. So if
3 you decide that the defendant's actions caused Pennie Davis
4 harm and losses would anyone have a problem, even a little
5 one, including money in your verdict?
6 So Mr. West shared with us the fact that he
7 had experienced pain and suffering. In terms of everyone
8 else on this jury do you have yourself or loved ones, family
9 members that you know that has experienced emotional
10 distress, pain and suffering?
11 I want to ask Ms. Medley, you're kind of
12 shaking your head. Do you have --
13 JUROR THREE: Like I mean do you mean as to
14 the point where it would cause a lawsuit or just in general?
15 MS. BONANNI: Just in general.
16 JUROR THREE: Well yeah, I mean I think that
17 at some point everybody experiences some kind of hurt or
18 pain or anything like that and that sucks.
19 MS. BONANNI: Okay. I want to ask Ms. Heator
20 a few questions. So are you retired from the Department of
21 Corrections?
22 JUROR TWO: Yes, Ma'am.
23 MS. BONANNI: What was your job?
24 JUROR TWO: I had several, but I retired as a
25 drill sergeant at Camp Cassidy Lake.

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MS. BONANNI: I'm sorry, I didn't hear you.

JUROR TWO: I retired as a drill sergeant at Camp Cassidy Lake.

MS. BONANNI: How long had you been with the department?

JUROR TWO: Twenty-one and a half years.

MS. BONANNI: Okay. What did you do before that?

JUROR TWO: I worked for General Motors for twenty-two and a half years.

MS. BONANNI: What did you do for GM?

JUROR TWO: I sewed for GM and I also was a supervisor.

MS. BONANNI: What plant?

JUROR TWO: The Fisher Body plant was closed in Tecumseh and then I went to Toledo for a little bit and then I got hired into the Department of Corrections.

MS. BONANNI: In those two jobs were you ever a member of a union?

JUROR TWO: Yes, Ma'am.

MS. BONANNI: And in the union did you ever have a -- I'm sorry, a leadership role like a steward or --

JUROR TWO: No, Ma'am.

MS. BONANNI: Did you ever file grievances?

JUROR TWO: Yes, Ma'am.

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MS. BONANNI: Has anyone on this jury ever felt that they were discriminated against either at work or at school? Okay, let's pass the microphone to Ms. Medley.

Why are you -- right, she's giggling.

Ms. Heator?

JUROR TWO: In this day and age I think everybody just gets discriminated once in a while.

MS. BONANNI: What do you mean, I want to hear what you mean by that?

JUROR TWO: Look at the news, I mean you can't even look at somebody cross eyed anymore and they get offended by it. It's all out there if you listen to the news, you know, poor, poor, poor, pitiful me.

MS. BONANNI: Okay. Let's talk about you, Ms. Medley. How old are you?

JUROR THREE: Twenty-three.

MS. BONANNI: And you work as a customer service rep?

JUROR THREE: For Alorica at the Commonwealth Building downtown.

MS. BONANNI: Okay. How long have you done that?

JUROR THREE: Almost three years. It will be three years in October, but I started working for a new company within that building back in May.

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1 MS. BONANNI: Okay. So tell me, are you a
2 customer service rep on the phone?
3 JUROR THREE: Yes.
4 MS. BONANNI: Okay.
5 JUROR THREE: I work for a company based in
6 Pennsylvania, it's a utility company.
7 MS. BONANNI: Okay. So are you talking to
8 angry customers a lot?
9 JUROR THREE: Yes. I am also a supervisor
10 for one of our low income programs, so I get a lot of angry
11 customers.
12 MS. BONANNI: Okay. Did you go to college?
13 JUROR THREE: Not really, I went like for
14 like a semester or two, but that's about it.
15 MS. BONANNI: So do you enjoy your job?
16 JUROR THREE: In all honesty no, but it
17 presents a paycheck so I go.
18 MS. BONANNI: And you're twenty-five, so you
19 can always change your career?
20 JUROR THREE: Exactly.
21 MS. BONANNI: Yeah. I don't suppose you've
22 been in a union?
23 JUROR THREE: No.
24 THE COURT: Are you married?
25 JUROR THREE: No.

MS. BONANNI: What about your parents, what do they do for a living?

JUROR THREE: My mom is a CENA for Jackson County Medical Care Facility and my dad works at Menards.

MS. BONANNI: At Menards?

JUROR THREE: Mm-hmm.

MS. BONANNI: Do you have any family members that are teachers or educators?

JUROR THREE: No.

MS. BONANNI: Okay. Could you pass the microphone to Ms. Bailey.

Hi.

JUROR FOUR: Hi.

MS. BONANNI: Ms. Bailey, I saw your husband is a farmer?

JUROR FOUR: Yes.

MS. BONANNI: Tell me about that, what does he farm?

JUROR FOUR: He does crops.

MS. BONANNI: Okay. And tell me about yourself, you're a custodian?

JUROR FOUR: Yes, I work for Mason Public Schools.

MS. BONANNI: Okay. How long have you been a custodian?

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JUROR FOUR: I've been with the school systems for about twenty-two years.

MS. BONANNI: What did you do before being at the schools?

JUROR FOUR: My parents own a party store here in town and I worked there, I worked at Polly's.

MS. BONANNI: Okay.

JUROR FOUR: I worked at a tavern.

MS. BONANNI: Okay.

JUROR FOUR: I worked at Elaine Powers years ago.

MS. BONANNI: Okay.

JUROR FOUR: I owned my own business, J and L Video. Just kind of a little bit of everything until I found my feet.

MS. BONANNI: Yeah, just settled down?

JUROR FOUR: Yeah, yeah, finally. When you have kids you do.

MS. BONANNI: Do you enjoy it?

JUROR FOUR: I do.

MS. BONANNI: Any -- well do you have kids?

JUROR FOUR: I do, they're grown.

MS. BONANNI: What do they do?

JUROR FOUR: My daughter works for DHS, my son works for the DNR.

MS. BONANNI: Okay. What does he do for the DNR?

JUROR FOUR: He works up in Sebawing, it's all about the ducks. He farms up there and they have duck hunts and stuff like that.

MS. BONANNI: Okay. Anyone else have kids?

Ms. Heator, how old are your kids?

JUROR TWO: My son is forty-six years old.

MS. BONANNI: And what does he do for a living?

JUROR TWO: He's an associate engineer.

MS. BONANNI: Okay.

JUROR TWO: Land surveyor.

MS. BONANNI: Okay.

JUROR TWO: That's what he would tell me what he was, a land surveyor.

MS. BONANNI: Ms. Bretz?

JUROR SIX: A twenty-two year old daughter, she's a -- works for (inaudible) -- and as a cosmetologist. I have an eighteen year old son who goes to school and is an intern at Caster Concepts, which is a manufacturing facility.

MS. BONANNI: Does anyone else have kids, I thought I saw one more hand?

UNIDENTIFIED JUROR: I have a two year old,

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1 eight year old and a thirteen year old.
2 MS. BONANNI: Okay. You're busy?
3 UNIDENTIFIED JUROR: Yeah.
4 MS. BONANNI: I can understand that.
5 Okay, let me ask Mr. Best, I'm sorry, Mr.
6 West a couple questions. Thanks.
7 So I just quickly looked at these jury
8 questionnaires and I think you're a production trainer?
9 JUROR SEVEN: Yes, that's correct.
10 MS. BONANNI: What is that?
11 JUROR SEVEN: Basically it's like an
12 assistant manager, you know all the different -- I work at
13 Steak and Shake as you saw, so I know all the different
14 stations, know how to run the service floor and just make
15 sure everybody is doing their jobs according to the
16 specification that is set up by Steak and Shake.
17 MS. BONANNI: How many places are you
18 supervising?
19 JUROR SEVEN: Like separate stores or just
20 different stations?
21 MS. BONANNI: Stores.
22 JUROR SEVEN: Just one store in Jackson.
23 MS. BONANNI: All the different stations?
24 JUROR SEVEN: Yeah, just different stations
25 throughout the whole store.

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MS. BONANNI: I understand. Tell me about your educational background?

JUROR SEVEN: I'm currently a student at Spring Arbor University studying accounting.

MS. BONANNI: How old are you?

JUROR SEVEN: Twenty-two.

MS. BONANNI: Are you a full time student?

JUROR SEVEN: Yes.

MS. BONANNI: And how much are you working?

JUROR SEVEN: About twenty-five to thirty hours a week.

MS. BONANNI: Is serving on a jury going to impact your school?

JUROR SEVEN: I'm doing online classes this semester, so I can work my schedule around that.

MS. BONANNI: Okay. Have you ever been in a union?

JUROR SEVEN: No.

MS. BONANNI: I know you're only twenty-five, but did you have a job prior to your production trainer job?

JUROR SEVEN: No, I worked my way up at Steak and Shake.

MS. BONANNI: Okay.

JUROR SEVEN: And I'm twenty-two.

MS. BONANNI: Since you were twenty-two?

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JUROR SEVEN: No, I am twenty-two, you said it was twenty-five. I'm sorry.

MS. BONANNI: Oh, twenty-two. Okay, sorry. How long have you been with Steak and Shake?

JUROR SEVEN: About six years.

MS. BONANNI: Okay. At the same store?

JUROR SEVEN: Yes, yep.

MS. BONANNI: Okay, will you kindly pass the microphone to Ms. Bretz?

Ms. Bretz, tell me about your educational background?

JUROR SIX: I have an associates in criminal justice.

MS. BONANNI: Okay. And how long have you been with the sheriff's office?

JUROR SIX: I've been employed by the county for almost fourteen years. Next month it will be fourteen years and I've served with the road patrol unit for twelve years.

MS. BONANNI: You indicated you had a couple of experiences with lawsuits?

JUROR SIX: Correct.

MS. BONANNI: And I'm trying to read my scribble, because it's hard to keep track of so many people, but you said one is ongoing?

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JUROR SIX: Correct.

MS. BONANNI: And one was resolved?

JUROR SIX: Yes.

MS. BONANNI: Do you want to tell me about the one that was resolved?

JUROR SIX: The one that was resolved was from an arrest and I was sued for excessive force and kidnaping and assault and it was settled outside of court.

MS. BONANNI: Okay. What about the ongoing?

JUROR SIX: The ongoing is the result of a drug seizure. I was on the narcotics team for four years and that has been going on -- there's been some issues with that case, it's been delayed. So that's been ongoing for about a year.

MS. BONANNI: Okay, that's a civil case?

JUROR SIX: Yes.

MS. BONANNI: Okay. Now in your job with the sheriff have you been in a union?

JUROR SIX: I am in a union now, yes.

MS. BONANNI: Okay. And in the union have you ever filed a grievance?

JUROR SIX: I think I probably have, I don't recall one though.

MS. BONANNI: Okay. Any management role in the union?

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JUROR SIX: I was just elected as treasurer of our union, but I haven't really officially taken over so I haven't had any duties yet.

MS. BONANNI: Okay. How about your parents, what do they do for a living?

JUROR SIX: My dad retired from a foundry in Albion and actually he retired twice from another manufacturing facility there. My mom was a stay at home parent and now she works for Henry Ford Allegiance.

MS. BONANNI: Okay. What about sources of information, do you watch the news?

JUROR SIX: My information is from multiple sources.

MS. BONANNI: Yeah, where do you get your news?

JUROR SIX: Television, Internet, I read magazines.

MS. BONANNI: What magazines do you have?

JUROR SIX: Anything.

MS. BONANNI: Okay. Now let's go to Mr. Curl.

Do you work at Sparrow?

JUROR FIVE: Yes.

MS. BONANNI: Tell me what you do there?

JUROR FIVE: I work in the IT department.

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MS. BONANNI: I'm sorry?

JUROR FIVE: The IT department.

MS. BONANNI: Okay. Tell me about your educational background?

JUROR FIVE: Well I did -- I have a general associates from Jackson and then I have various IT certifications.

MS. BONANNI: Do you like your job?

JUROR FIVE: Yeah, I love it.

MS. BONANNI: So when you say you do IT for Sparrow, specifically what kind of work are you doing?

JUROR FIVE: Currently right now I'm a field service tech who sits on the help desk, so I can do first call resolution, so take care of our doctors, our nurses right away.

MS. BONANNI: And how long have you been with them?

JUROR FIVE: Six years.

MS. BONANNI: How old are you?

JUROR FIVE: Thirty-two.

MS. BONANNI: And how long -- so six years, what did you do before Sparrow?

JUROR FIVE: Before Sparrow I did work for Motor Quest, which was a dealership here before Chrysler lost their franchise. So I worked there for three years,

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then went back to school. I'm sure there was some babies born around that time and then here I am.

MS. BONANNI: And it's all a blur?

JUROR FIVE: Yeah. This is kind of relaxing here today.

MS. BONANNI: I totally understand what you're saying right now. Where do you get your news?

JUROR FIVE: Solely the Internet. Reddit I use a lot, Google feeds will come in, I'll see some stuff there. I try to get, you know, a wide variety of what I'm reading. I don't look at any social media news, fake news usually is what that is.

MS. BONANNI: All right. Mr. West, where do you get your news?

JUROR SEVEN: Watching TV, Facebook, Twitter.

MS. BONANNI: And one of the answers that you had to one of our questions was you felt there were a lot of frivolous lawsuits. Can you just expound on that a little for me, what do you mean by that?

JUROR SEVEN: I mean I guess sometimes it's for like, you know, sorry.

MS. BONANNI: Go ahead.

JUROR SEVEN: No, just sometimes it's things like petty things, you know, a husband and wife fighting over something when it could have been resolved out of court

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1 or they're just doing it out of spite to spite the other
2 person or like the McDonald's hot coffee lawsuit, just
3 things that, you know, should have been -- you should have
4 used common sense, but sometimes it's like you're just
5 looking for a payday sometimes.
6 MS. BONANNI: I understand.
7 Your Honor, I don't have anymore questions --
8 THE COURT: Okay.
9 MS. BONANNI: -- at this time.
10 THE COURT: Questions from the defense?
11 MR. MULLINS: Good afternoon.
12 THE COURT: Ladies and gentlemen, anytime
13 anybody needs a break, we'll probably wait until after they
14 get done with voir dire and we'll take a break at that
15 juncture. But, you know, your comfort is always the
16 paramount of my concerns. If anybody needs a break, that
17 includes all of you, just slip your hand up, David will come
18 and see what it is. Maybe you just need to get out and make
19 a phone call or something. I just wanted to let you know
20 that, all right.
21 So go ahead, Mr. Mullins.
22 MR. MULLINS: Mr. Mottes, did I get Mottes?
23 JUROR ONE: Mottes.
24 MR. MULLINS: Mottes. I couldn't quite hear,
25 you're a trainer and it sounds like you go to different

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1 facilities and do --

2 JUROR ONE: Correct, I work for Orthopaedic

3 Rehab Specialists which is here in Jackson and we have

4 multiple contracts at different schools in the Jackson and

5 Lansing area. I work at -- I'm contracted to be at Homer

6 full time, Homer Community Schools, which is just west of

7 here.

8 MR. MULLINS: Sure. And so you would be the

9 onsite athletic trainer for all their various teams, go to

10 the games and deal --

11 JUROR ONE: Correct.

12 MR. MULLINS: -- with injuries and things

13 like that? Okay. And Orthopaedic Rehab Specialists is an

14 overall -- is that like a physical therapy facility?

15 JUROR ONE: Yes.

16 MR. MULLINS: So they would have a site, but

17 then you would also --

18 JUROR ONE: Correct, they have three clinics

19 here in Jackson County, or just in Jackson and they are a

20 physical therapy rehabilitation center.

21 MR. MULLINS: And I know it was touched upon,

22 that's a Bachelor of Science certification you get in order

23 to do that?

24 JUROR ONE: Correct, yep, and then you're

25 licensed through the State and you take a board

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1 certification exam after you graduate.
2 MR. MULLINS: Just out of curiosity, you got
3 your training where, your BS?
4 JUROR ONE: Excuse me?
5 MR. MULLINS: Your training certification,
6 where did you get that?
7 JUROR ONE: It's through the board of
8 certification, it is the overall governing of athletic
9 training.
10 MR. MULLINS: I know it's a certification,
11 but your academic training you got at which institution?
12 JUROR ONE: Oh, excuse me, Northern Michigan
13 University.
14 MR. MULLINS: Oh, you did say that. Thanks.
15 Did you play on the hockey team?
16 JUROR ONE: I did not. I was actually the
17 athletic trainer on the hockey team.
18 MR. MULLINS: Oh.
19 Ms. Heator, so you're retired now as a
20 corrections officer as I understand, is that right?
21 JUROR TWO: That is.
22 MR. MULLINS: Okay. Are you enjoying your
23 retirement?
24 JUROR TWO: Pardon?
25 MR. MULLINS: Are you enjoying your

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retirement?

JUROR TWO: Yes, I am.

MR. MULLINS: Not bored?

JUROR TWO: No. It's a hard job, not everybody can do it.

MR. MULLINS: Prior to that you'd indicated you had worked as a supervisor in some capacity for GM?

JUROR TWO: Yes, Fisher Body.

MR. MULLINS: And it sounded like that was in the seating, in the upholstery area?

JUROR TWO: Yes.

MR. MULLINS: Okay. And in the position of the supervisor did you hire or fire or discipline anybody, did that come in the line at all of your job?

JUROR TWO: Yes.

MR. MULLINS: Okay.

JUROR TWO: It also -- in the Department of Corrections I was a supervisor too. A sergeant.

MR. MULLINS: Okay. Did that involve you --

JUROR TWO: Yes.

MR. MULLINS: -- hiring people and --

JUROR TWO: Yes.

MR. MULLINS: And or firing them and or writing them up --

JUROR TWO: Yes.

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MR. MULLINS: -- or disciplining them?

JUROR TWO: Yes.

MR. MULLINS: Which job did you like best?

JUROR TWO: I liked both of them, they were both fun.

MR. MULLINS: You like to work then?

JUROR TWO: Huh?

MR. MULLINS: You like to work?

JUROR TWO: Yeah, I just -- you know, I've been -- yeah, I liked both of them.

THE COURT: Can you tell counsel a little bit about the boot camp, he probably doesn't know what that is? The Judge knows all about the boot camp.

JUROR TWO: It's the best thing the State has got going.

MR. MULLINS: The drill sergeant part for the boot camp, is that for the kids who need a little help?

JUROR TWO: Yes, it's for -- well now they opened it up to it's all ages, you know, if you can do the physical part, then you can come to our boot camp.

MR. MULLINS: Did you have any of the kids that he sent over?

JUROR TWO: Probably.

THE COURT: I sent adults too.

MR. MULLINS: Okay, Ms. Medley, so you do

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1 customer service work for --
2 JUROR THREE: Alorica, which is a company at
3 the Commonwealth Building, it has multiple utility companies
4 within that facility.
5 MR. MULLINS: Okay. But you also indicated
6 that you did supervisory work too, is that right?
7 JUROR THREE: Yes.
8 MR. MULLINS: So are you doing -- is it like
9 contracting, having people contract for utility services, is
10 that what I understand it to be?
11 JUROR THREE: So with my supervisor position,
12 with the utility companies that I work for in Pennsylvania
13 we have a customer assistance program which is for eligible
14 low income customers. So what they would have to do is send
15 in their proof of income as well as an application and then
16 we would review it to see if they were qualified for our
17 program.
18 MR. MULLINS: Okay.
19 JUROR THREE: And that's kind of what I deal
20 with. I deal with escalated calls, but I also do the back
21 office work too where I process their documents.
22 MR. MULLINS: Okay. So this would be like a
23 grant program for people to help them with their utility
24 bills?
25 JUROR THREE: Yes, we could possibly provide

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1 them with credits to help with their bills.
2 MR. MULLINS: Okay. And in your supervisory
3 position do you hire people or fire people?
4 JUROR THREE: No.
5 MR. MULLINS: Okay, what is it that you do in
6 the supervisory, training?
7 JUROR THREE: I do escalated calls. So if
8 they're calling in and they're not getting --
9 MR. MULLINS: Is that when people are real
10 mad?
11 JUROR THREE: Yes, and they're asking to
12 speak to a supervisor, then I handle their call.
13 MR. MULLINS: Okay.
14 JUROR THREE: And try to de escalate the call
15 as best as I can.
16 MR. MULLINS: Ms. Bailey, so you're at MESA
17 now?
18 JUROR FOUR: Yes.
19 MR. MULLINS: Okay. And prior to that you'd
20 been at Northwest?
21 JUROR FOUR: Yes.
22 MR. MULLINS: Same type of work?
23 JUROR FOUR: Yes.
24 MR. MULLINS: How many years do you have at
25 Northwest?

JUROR FOUR: I was at Northwest for twenty-one and a half years.

MR. MULLINS: Okay, so combined you have?

JUROR FOUR: About twenty-two years. I used to drive bus and I worked in food service in a supervisory --

MR. MULLINS: Oh, you covered it all?

JUROR FOUR: Yep.

MR. MULLINS: How was the bus driving?

JUROR FOUR: I loved it.

MR. MULLINS: Did you? Yeah.

JUROR FOUR: Yeah. Nothing better than to be with kids.

MR. MULLINS: And I understand you went to Jackson Public Schools for a period of time?

JUROR FOUR: Yes, I don't remember what grade actually, but my mom lived in Jackson and I moved in with her and then I moved back to my dad's.

MR. MULLINS: So you were pretty young at the time?

JUROR FOUR: Yes.

MR. MULLINS: You've got a lot of memories it sounds like?

JUROR FOUR: Not really.

MR. MULLINS: Just another school. You've

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been to a few.

And, Mr. Curl, so when we say Sparrow are we talking about Sparrow Hospital?

JUROR FIVE: Yeah.

MR. MULLINS: So are you like tangled up in the whole electronic records thing and everything like that and all the doctors being mad about having to put everything on the computers?

JUROR FIVE: You bet, yeah, that's my life.

MR. MULLINS: That's what you do?

JUROR FIVE: Yeah. We use -- (undecipherable the transition.

MR. MULLINS: Okay. How far along are they in the transition?

MR. MULLINS: Oh, we're three years transition.

MR. MULLINS: Everybody is all happy now, right?

JUROR FIVE: No.

MR. MULLINS: I kind of got that. And you were at Jackson Schools for a short -- for a period of time it sounded like, a short period?

JUROR FIVE: All the way until high school.

MR. MULLINS: Okay. Which were some of the buildings that you were in?

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JUROR FIVE: I was at Northeast for elementary, Parkside for middle school.

MR. MULLINS: Okay.

JUROR FIVE: That's it.

MR. MULLINS: Okay. How do you recall your experiences, okay?

JUROR FIVE: Great.

MR. MULLINS: Apparently they moved you along pretty well in your education?

JUROR FIVE: Yeah.

MR. MULLINS: You went somewhere else for high school?

JUROR FIVE: Yes, I did, I went to East Jackson.

MR. MULLINS: Okay. How was that?

JUROR FIVE: Great. Not that different than JPS.

MR. MULLINS: Ms. Bretz, I see your husband works for MACI?

JUROR SIX: Michigan Automotive Compressor Incorporated.

MR. MULLINS: Compressor Incorporated?

JUROR SIX: Yeah.

MR. MULLINS: Okay.

JUROR SIX: A Japanese manufacturing

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1 facility.

2 MR. MULLINS: Okay.

3 JUROR SIX: Air compressors.

4 MR. MULLINS: Is that like industrial air

5 compressors for running tools or stuff like that?

6 JUROR SIX: No, for automotive.

7 MR. MULLINS: Okay. And what kind of

8 position is he in there?

9 JUROR SIX: He's assistant manager of the

10 assembly area.

11 MR. MULLINS: I don't think you said so, but

12 how long have you been with the sheriff's department?

13 JUROR SIX: Fourteen years.

14 MR. MULLINS: Mr. West, I didn't know Steak

15 and Shake had been in Michigan here that long. I thought it

16 was kind of new?

17 JUROR SEVEN: Well my store has been open

18 since 1999, so it's been there for a while and then we sort

19 of just branched out.

20 MR. MULLINS: Is that one of the first ones

21 here?

22 JUROR SEVEN: It's one of the first, not the

23 actual first one though.

24 MR. MULLINS: And I know you're a production

25 trainer, so is that a supervisory position?

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JUROR SEVEN: It is, but the only I guess authority that I have is like to discipline people like through write ups or verbal discipline. I don't have the ability to hire or fire anybody.

MR. MULLINS: Okay.

JUROR SEVEN: I would go to my upper management for that.

MR. MULLINS: That would be for just basically not doing their job?

JUROR SEVEN: Yeah, it's not doing their job or, you know, not finishing their work or coming in undressed or things like that.

MR. MULLINS: Okay. Thanks, I have nothing further, Judge.

THE COURT: Okay. All right, this is going to take a little while, why don't we go ahead and take a ten minute recess for everybody so everybody can have a little stretch. And if you all will just remember where you're sitting at, because that way we've all got a chart and we're all keeping track of you by way of your seat too.

That way everybody can do that and then we're going to come back and they're going to have some challenges and then I'm probably guessing in maybe the next half hour, forty-five minutes we'll get the selection process done. All right. So we'll reconvene in about ten minutes.

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1 THE CLERK: All rise.
2 (At 1:04:34 p.m., court recessed)
3 (At 1:22:43 p.m., court reconvened)
4 THE COURT: Okay, it appears we've got
5 everybody back.
6 Let's start with the plaintiff, any
7 challenges for cause, Ms. Bonanni?
8 MS. BONANNI: I do have one challenge for
9 cause.
10 THE COURT: Okay.
11 MS. BONANNI: Juror number two, Ms. Heaton.
12 THE COURT: Ms. Heator?
13 MS. BONANNI: The cause is based just I think
14 her really strong opinion about poor, poor, pitiful me felt
15 like it would be a barrier to hearing evidence. That sort
16 of struck me.
17 THE COURT: All right. Mr. Mullins, any
18 comment on that?
19 MR. MULLINS: I can't see as -- I'm not sure
20 I even understand the challenge for cause, but I think she'd
21 be a fine juror.
22 THE COURT: Okay. I didn't see anything that
23 rose to the level of her being excused for cause, obviously
24 it's one for a peremptory. Let me ask you, any further
25 challenges for cause then?

MS. BONANNI: No.

THE COURT: Mr. Mullins, any --

MR. MULLINS: No, your Honor.

THE COURT: Okay. So peremptories back to the plaintiff then for their first peremptory?

MS. BONANNI: So thank you, Ms. Heaton.

JUROR TWO: No problem.

MS. BONANNI: I'd like to thank and excuse Ms. Heaton.

JUROR TWO: It's Heator by the way.

THE COURT: It's Heator.

JUROR TWO: H-E-A-T-O-R.

MS. BONANNI: It's my bad writing, I apologize.

JUROR TWO: That's okay, I get called worse.

THE COURT: All right.

JUROR TWO: Do I leave now or do I --

THE COURT: No, you're all set. Just check up with Jackie, that may well conclude your jury service. She'll let you know if there's any further need.

JUROR TWO: All right, thank you.

THE COURT: All right. And that will apply by the way for anybody that the Court excuses for either a peremptory or cause, just check back in with Jackie.

Our next juror is Douglas Garman. Mr. Garman

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1 is in seat number two.

2 Mr. Garman, welcome to our jury panel. Were

3 you able to hear all the questions that I asked and those of

4 the two attorneys?

5 JUROR TWO: Yes.

6 THE COURT: Would you have found any of those

7 questions that you would have been responding yes or replied

8 to any of those questions?

9 JUROR TWO: No.

10 THE COURT: Okay, which ones do you think

11 would have applied to you?

12 JUROR TWO: I wouldn't have any issues with

13 the law at all.

14 THE COURT: Okay. You've never been sued,

15 correct, in any lawsuit?

16 JUROR TWO: No.

17 THE COURT: And never been a plaintiff in a

18 lawsuit?

19 JUROR TWO: Nope.

20 THE COURT: Have you ever been affiliated in

21 any way with the Jackson Public Schools?

22 JUROR TWO: No.

23 THE COURT: Okay. Any of those other

24 questions, mine or either of the lawyers' questions you

25 would have been eh, that kind of applies to me and I think

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1 that I do have some strong feelings about one of the
2 questions that they asked one way or the other?
3 JUROR TWO: I did not.
4 THE COURT: Okay. Further follow up on our
5 newest juror?
6 MS. BONANNI: Thank you so much, your Honor.
7 Mr. Garman, hello.
8 JUROR TWO: Hi.
9 MS. BONANNI: You are a mechanical technician
10 for Consumers?
11 JUROR TWO: Correct.
12 MS. BONANNI: And tell me what that means, I
13 think I know but I don't want to assume?
14 JUROR TWO: We're technicians in the garage.
15 MS. BONANNI: Okay. Are you in the field at
16 all or in the garage?
17 JUROR TWO: In the field and in the garage,
18 we're both.
19 MS. BONANNI: Okay. Are you in a union?
20 JUROR TWO: Yes.
21 MS. BONANNI: Is it CWA?
22 JUROR TWO: I'm sorry?
23 MS. BONANNI: CWA?
24 JUROR TWO: We are the -- it's Local Utility.
25 MS. BONANNI: Okay, Local Utility. Are you

1 married, Sir?

2 JUROR TWO: Yes.

3 MS. BONANNI: How long have you been married?

4 JUROR TWO: Twenty years this year.

5 MS. BONANNI: Do you have kids?

6 JUROR TWO: Three.

7 MS. BONANNI: How old are they?

8 JUROR TWO: Eighteen, twenty-five, twenty-

9 eight.

10 MS. BONANNI: Tell me what they do for a

11 living?

12 JUROR TWO: Still in school, eighteen,

13 graduating this year, my twenty-five works at Shaheen

14 Chevrolet in Lansing, he sells parts and the other one is

15 self-employed.

16 MS. BONANNI: How about your parents, what

17 did they do for a living?

18 JUROR TWO: My father passed away about a

19 month ago and my mother lives in Florida.

20 MS. BONANNI: I'm sorry about that. Do you

21 have any family members or friends that have worked in jobs

22 as teachers or in the schools?

23 JUROR TWO: My brother.

24 MS. BONANNI: Okay, what does he do?

25 JUROR TWO: He runs the arts -- he works in

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the arts field in California and he's basically -- (inaudible). Basically a theater in -- (inaudible) -- California and he sort of helps the director of -- (inaudible).

MS. BONANNI: Okay. Tell me about your own educational background?

JUROR TWO: Just high school.

MS. BONANNI: Okay. Where did you go to high school?

JUROR TWO: Northwest, that's where I graduated.

MS. BONANNI: Okay.

JUROR TWO: We traveled throughout the country, so.

MS. BONANNI: Yeah. Tell me where you get your information from in terms of the news, do you keep up with the news?

JUROR TWO: Yes, a little bit of radio, a little bit of TV and a little bit online. That's about it.

MS. BONANNI: On TV what station do you listen to for news?

JUROR TWO: Just local.

MS. BONANNI: Okay.

JUROR TWO: It could be Fox, it could be anything, just local news, just about a few minutes is all

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1 you can take.
2 MS. BONANNI: Okay. So, I'm sorry?
3 JUROR TWO: I said just about a few minutes
4 is all you can take.
5 MS. BONANNI: I know. It's always busy,
6 story after story. But local news, you like to stick with
7 the local?
8 JUROR TWO: I do. I listen to a lot of 970
9 -- (undecipherable).
10 MS. BONANNI: I'm sorry?
11 JUROR TWO: 970 a.m. -- (undecipherable).
12 MS. BONANNI: Okay. So do you have any
13 bumper stickers on your car?
14 JUROR TWO: No.
15 MS. BONANNI: Do you think the justice system
16 is weighted one way or another?
17 JUROR TWO: That's not a question I could
18 answer, I'd have to be involved in how that case was ruled,
19 but I don't have a direct answer for that.
20 MS. BONANNI: Okay. How do you feel about
21 awarding a verdict against a public institution like the
22 Jackson Public Schools?
23 JUROR TWO: There's no answer to that either.
24 I -- (undecipherable) -- the case. I mean, actually being a
25 part of it --

1 MS. BONANNI: Okay.
2 JUROR TWO: I couldn't --(inaudible)-- that.
3 MS. BONANNI: So you are willing to listen to
4 the facts and make an independent decision based on what you
5 hear in this court?
6 JUROR TWO: Yes.
7 MS. BONANNI: Have you, a family member or
8 someone that you know ever experienced pain and suffering,
9 emotional or psychological distress?
10 JUROR TWO: Yes.
11 MS. BONANNI: Has that experience impacted
12 your thinking in any way?
13 JUROR TWO: No.
14 MS. BONANNI: Nope. Some people might have
15 trouble awarding money damages for harms and losses caused
16 by pain and suffering. Would you have a problem awarding
17 money damages under that circumstance?
18 JUROR TWO: No, because there's sort of one
19 going on right now with my grandmother who passed away.
20 MS. BONANNI: So you can relate to that?
21 JUROR TWO: Yes.
22 MS. BONANNI: Okay.
23 I have nothing further, your Honor. Thank
24 you.
25 THE COURT: Mr. Mullins, any follow up with

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1 our newest juror?

2 MR. MULLINS: Thanks, Judge.

3 So did your family invent those computer

4 plotters, is that the Garman Company?

5 JUROR TWO: Yeah, yeah. No.

6 MR. MULLINS: No. At Consumers do you work

7 on the electrical or on the gas side?

8 JUROR TWO: No, we're just in the mechanical

9 field as in the equipment.

10 MR. MULLINS: Okay.

11 JUROR TWO: We take care of the trucks and

12 the equipment.

13 MR. MULLINS: Okay. The stuff that goes out

14 to the field?

15 JUROR TWO: Yeah.

16 MR. MULLINS: Deals with it if they have a

17 problem with it out there? Okay, thanks.

18 Nothing further. Thanks.

19 THE COURT: Okay, any challenges of our

20 newest juror for cause? Okay, hearing none, peremptories to

21 the defense.

22 MR. MULLINS: No, your Honor, I'm satisfied

23 with the jury.

24 THE COURT: Defense tenders.

25 Peremptories back up to the plaintiff.

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MS. BONANNI: Your Honor, we would like to thank and excuse Ms. Bretz.

THE COURT: Ms. Bretz, thank you very much for your jury service. If I can just have you check in with Jackie she'll let you know if there's any further need for your service as a juror.

Okay, our next juror is Rose Loughlin (ph).

Ms. Loughlin, were you able to hear all the questions that I asked and those questions asked by the two attorneys?

JUROR SIX: I believe so.

THE COURT: Okay, were there any special ones that you found had any application to you?

JUROR SIX: I am a care provider for my two disabled siblings and I had set up an appointment but I was -- (undecipherable) -- and I already just missed it to get excused. I thought I had to get one from their doctor, I don't have a doctor, so I had to wait to get it so I've been talking to my sister and if I'm -- you know, if I'm chosen for this I'm going to try to figure something out, but that is certainly --

THE COURT: Is there a degree of difficulty in doing that?

JUROR SIX: They have -- (undecipherable) -- syndrome so they're like adult babies, they can't eat or

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1 walk or do anything.

2 THE COURT: Do you think you're going to be

3 able to give this case your undivided attention should you

4 be selected as a juror or is there some concern about that

5 based on these other considerations?

6 JUROR SIX: I'm just a little bit worried

7 because I don't -- she's their guardian and I don't have

8 anyone to watch them tomorrow. Today she has the day off,

9 so I'm a little bit concerned about that, but I mean I can

10 try to figure something out if necessary.

11 THE COURT: All right. Well I'm going to see

12 if the other counsels wants to follow up on that or whether

13 they think that that's grounds for cause.

14 So, go ahead.

15 MS. BONANNI: Good afternoon, Ms. Loughlin.

16 JUROR SIX: Good afternoon.

17 MS. BONANNI: So your job is a home health

18 provider and that's for your siblings?

19 JUROR SIX: Yeah.

20 MS. BONANNI: How old are they?

21 JUROR SIX: One is twenty-one, one is twenty-

22 three.

23 MS. BONANNI: How old are you?

24 JUROR SIX: I'm twenty-nine.

25 MS. BONANNI: Where did you graduate high

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school?

JUROR SIX: Columbia Central, City of Brooklyn.

MS. BONANNI: How long have you been charged with taking care of your siblings?

JUROR SIX: It blends together, I don't know. My mom used to do it, but she passed away here two years ago, so I've been doing it probably for the last three years or so.

MS. BONANNI: You've heard my questions about bias, have you been listening?

JUROR SIX: Yes.

MS. BONANNI: Okay. So instead of repeating those questions I'm just going to ask you a broad question.

JUROR SIX: Okay.

MS. BONANNI: Is there anything in your mind or in your heart that you think would stop you from making a fair decision in this case?

JUROR SIX: No, I don't think so. My brother does work for JPS, he's a fourth grade teacher.

MS. BONANNI: Okay.

JUROR SIX: I don't know if that's --

MS. BONANNI: What school?

JUROR SIX: He's worked at quite a few of them, right now he's at Hunt and he's worked at Bennett,

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1 Northeast and McCulloch.

2 MS. BONANNI: I don't have anything further,

3 your Honor.

4 THE COURT: All right, thank you.

5 Mr. Mullins, any questions for our newest

6 juror?

7 MR. MULLINS: Yes.

8 Ms. Loughlin?

9 JUROR SIX: Loughlin.

10 MR. MULLINS: Okay. So if you had to be here

11 for three or four days would that be a worry or a

12 distraction to you?

13 JUROR SIX: Yeah, I'm a little bit worried

14 about it. I set an appointment today in hopes that, you

15 know, but then they called me in. So I --

16 MR. MULLINS: But the number wouldn't come

17 up?

18 JUROR SIX: Yeah, the number came up so I

19 looked -- (undecipherable).

20 MR. MULLINS: Okay. And day by day it would

21 be a problem making arrangements to take care of your

22 siblings?

23 JUROR SIX: Yeah, I mean I do it all day, you

24 know. I haven't had a day off since July 2017.

25 THE COURT: Mr. Mullins, I'm really leaning

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heavily towards a cause dismissal. Do you have any objections?

MR. MULLINS: Absolutely not.

THE COURT: Does the plaintiff have any objections?

MS. BONANNI: Absolutely not.

THE COURT: All right. Well I just want, you know, it seems to me that you've got some compelling things that are on your mind. I'm going to go ahead and excuse you for cause. Okay, so you can go up and check up with Jackie since the other major criminal cases I think empaneled, it may very well be the end of your jury duty, but she can let you know upstairs. Okay. All right, so if you'll just check up on the fifth floor.

And our next juror is -- is it Sadulle Gerth?

Ms. Gerth, I'm just going to have you state your full name for the record.

JUROR SIX: Sadulle Gerth.

THE COURT: Okay. And, Ms. Gerth, have you been able to hear all the questions that I asked, the questions of the attorneys?

JUROR SIX: Yes.

THE COURT: Would you have found yourself answering yes to any of those questions?

JUROR SIX: Yes.

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1 THE COURT: Let's start with the first one,
2 was there a question that you would have answered yes to,
3 served on a jury before, have strong feelings about
4 lawsuits, any of those questions?
5 JUROR SIX: I understood everything so I
6 believe --
7 THE COURT: Okay, you didn't find that any of
8 those questions would have stood out to you in any way,
9 shape or form, correct?
10 JUROR SIX: Correct.
11 THE COURT: Is there any concerns at all I
12 should have as a Judge about your ability to be fair and
13 impartial to both sides?
14 JUROR SIX: No.
15 THE COURT: You think you can do that?
16 JUROR SIX: Yes.
17 THE COURT: Okay, further follow up by the
18 plaintiff, Ms. Bonanni?
19 MS. BONANNI: Good afternoon, Ms. Gerth.
20 JUROR SIX: Good afternoon.
21 MS. BONANNI: So you're a nurse assistant?
22 JUROR SIX: Yes.
23 MS. BONANNI: Where do you work?
24 JUROR SIX: I was working at Care Link.
25 Actually, I'm from Brazil and my first job was as a sitter,

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then I became a nurse assistant, now I'm transferred to --

MR. MULLINS: I'm sorry, but could you just -- you have a pretty soft voice.

THE COURT: Yeah, David, can you give her the --

MR. MULLINS: You have a pretty soft voice, if you could just project a little. Thanks.

JUROR SIX: So I got transferred to the VA Hospital. Thank you. Now I'm working on the seventh floor at northwest. So I'm like two years in the health area.

MS. BONANNI: Okay. So when did you come here from Brazil?

JUROR SIX: Three years ago.

MS. BONANNI: Are you married?

JUROR SIX: No, I'm single.

MS. BONANNI: So did you come as an au pair?

JUROR SIX: Well actually my father is from Jackson.

MS. BONANNI: Okay.

JUROR SIX: So then we were having problems in Brazil, so he told me to come. So I'm living with him right now.

MS. BONANNI: Okay.

JUROR SIX: So then I decided to work in the health area here in Jackson.

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MS. BONANNI: Do you like your job?

JUROR SIX: Yes, I do. I do.

MS. BONANNI: And how do you like our weather?

JUROR SIX: I don't like the cold weather at all. It's too much.

MS. BONANNI: We could use a little Brazil. Do you know anyone in your life around you that's ever had emotional distress?

JUROR SIX: Not really.

MS. BONANNI: Okay.

THE COURT: Ms. Gerth, you're a full citizen now, correct?

JUROR SIX: I have dual citizenship.

THE COURT: I'm sorry?

JUROR SIX: I have dual citizenship.

THE COURT: Dual citizenship. Okay, very good.

Go ahead.

MS. BONANNI: If you felt someone had wronged you or a loved one would you be able to sue someone to recoup your losses?

JUROR SIX: I think it depends.

MS. BONANNI: Depends on what?

JUROR SIX: If the person really needs my

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1 help or something like that I would.
2 MS. BONANNI: Do you think there's too many
3 lawsuits?
4 JUROR SIX: I can't answer that, I don't
5 know.
6 MS. BONANNI: Okay. Is there anything you
7 can think of in your heart, in your mind that would stop you
8 from fairly considering this evidence and deliberating on
9 this jury?
10 JUROR SIX: No.
11 MS. BONANNI: Thank you.
12 THE COURT: Ms. Bonanni.
13 Mr. Mullins, any follow up of our newest
14 juror?
15 MR. MULLINS: Ms. Gerth, I couldn't hear you
16 too well at first, so you're a nursing assistant at
17 Allegiance Health, is that it?
18 JUROR SIX: Yes, Henry Ford.
19 MR. MULLINS: And so do you work on the
20 floor?
21 JUROR SIX: Yes.
22 MR. MULLINS: Okay. And which ward or area
23 do you work in?
24 JUROR SIX: Well I work on the surgical area,
25 so on the seventh floor northwest, but they always pushing

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me all around southeast, so it just depends how it is every night.

MR. MULLINS: So some days you'll be in pre-op, some days you'll be in recovery, you're checking people's vitals?

JUROR SIX: Vitals, accu cheks, turning, cleaning, taking care, twelve hour shifts.

MR. MULLINS: Okay. And you've been doing that for how long?

JUROR SIX: Two years.

MR. MULLINS: Okay. And when did you get your certification?

JUROR SIX: I got it here in Career Center here in Jackson.

MR. MULLINS: Okay. At the community college?

JUROR SIX: Yeah. I'm not sure about that, I know it's close to the college.

MR. MULLINS: Okay. And did you do that in Brazil before you came here?

JUROR SIX: No, I was working in another area and when I came here I decided like to go to the health area here in United States.

MR. MULLINS: Okay. Okay, thank you.

JUROR SIX: You're welcome.

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1 THE COURT: Okay, any challenge of our newest
2 juror for cause?
3 MR. MULLINS: No, your Honor.
4 MS. BONANNI: No, your Honor.
5 THE COURT: I think we're back to
6 peremptories by the defense.
7 MR. MULLINS: None, your Honor.
8 THE COURT: Back to the plaintiff.
9 MS. BONANNI: None, your Honor.
10 THE COURT: So we have a jury, correct?
11 MS. BONANNI: We have a jury.
12 MR. MULLINS: That's correct.
13 THE COURT: All right. Ladies and gentlemen,
14 I see some sighs of disappointment back in the back and some
15 sighs of relief. So I'm going to have the rest of you check
16 in with Jackie and she'll let you know if there's any
17 further need for your service as a juror. We do have nine
18 courtrooms in the courthouse, but I know the other major
19 trial that they had selected I think is already done.
20 But I'm going to have you check up with
21 Jackie. I really appreciate your, you know, willingness to
22 serve as a juror. By they way, I'm the Judge that has to
23 follow up on all the jurors that don't show up for their
24 jury duty, so I appreciate all of you coming down and being
25 here. All right.

Ladies and gentlemen, I'm going to have all of you rise to be sworn in this matter.

THE CLERK: Please raise your right hand. You do solemnly swear that you will well and truly try the issue joined in the cause now pending unless discharged by the Court, a true verdict therein delivered and that you will do so solely on the evidence and in accordance with the instructions of the Court so help you God?

MULTIPLE JURORS: I do.

(At 1:44:11 p.m., jury panel sworn)

THE COURT: All right. Thank you, ladies and gentlemen. Just be seated here for a minute. Ladies and gentlemen, we're going to go ahead and take our afternoon recess. I'm going to take about a forty minute break. I will tell you that the Y next door has got a close little place if you want to get a cup of soup or a sandwich or that kind of thing.

But I'm going to try to keep the case moving along if we can. If everybody is here by forty-five minutes. Do you think you need an hour or is everybody okay with forty-five minutes? Forty-five minutes work okay?

Counsel, does that work okay with everybody?

All right, so I'm going to have -- David is going to give you your jury badges and he's also going to take you to the jury room. And when you come back I'm going

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1 to have some preliminary instructions for you, but one of
2 the instructions that I will tell you is that at this point
3 from all further contact with respect to any of the
4 witnesses that might be there, any of the attorneys at this
5 point, you really can't be having any interaction with them,
6 except as it would otherwise occur in the courtroom.
7 So what sometimes happens is all of a sudden,
8 you know, one of the parties sees you talking to a witness
9 or the other side and then I have to hold a hearing and
10 ninety-nine percent of the time it, you know, doesn't
11 concern anything, but just to avoid the appearance of
12 impropriety.
13 So as an example, if you're riding down in
14 the elevator with counsel they're probably going to, you
15 know, politely smile at you and that kind of thing, but
16 they're probably not going to be talking about the NCAA
17 bracketing and, you know, other local issues of note, okay,
18 because that's exactly what they're not supposed to be
19 doing, okay. So just if you can be mindful of that.
20 The other thing, if you want to bring
21 something back from work, you might notice I have a cup of
22 coffee up here and by all means you can bring back -- I
23 can't anticipate all your drinking needs, whether it's Red
24 Bull or Mountain Dew, whatever, I can provide coffee, okay.
25 So as long as it's non alcoholic and you want to bring it

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1 back and you're careful with bringing it, you know, not
2 spilling it on your fellow juror, if you want to bring
3 something back from lunch, you know, that's okay with the
4 Court too.
5 All right. So when we get back we're going
6 to have some preliminary instructions, then we're going to
7 have opening statements about the case, we're going to learn
8 far more about the case. And then I'll give you a little
9 bit more information on the order of proofs and whatnot when
10 you get back.
11 All right, so all rise for the jury.
12 (At 1:46:18 p.m., jury exited)
13 THE COURT: All right, we'll see everybody in
14 about forty minutes.
15 MR. MULLINS: Thanks, Judge.
16 THE COURT: Any other housekeeping matters,
17 anything else we need to attend to before everybody is on
18 lunch? Okay.
19 MR. MULLINS: The only thing I'd raise is,
20 once we get going I'd like to invoke the sequestration.
21 THE COURT: Okay.
22 MR. MULLINS: No witnesses be in the
23 courtroom.
24 THE COURT: Obviously the Court will go ahead
25 then and rule for the sequestration of all witnesses.

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1 Obviously you two know both a lot more who your witnesses
2 are going to be than I will, so if you can just both be
3 mindful that the Court has invoked that ruling. All right.
4 MR. MILLER: Lastly, Judge, if I may. We
5 have both submitted proposed jury instructions. I think
6 there might be some issues about which ones are read now and
7 I don't know when the Court wants to --
8 THE COURT: Okay, well I was going to look
9 over those. I've already got ones marked for working on the
10 composite ones, but I'll look over both instructions before
11 I get back and probably we'll settle and go over with you
12 briefly the preliminary instructions before. All right.
13 MR. MILLER: Okay, thanks, Judge.
14 (At 1:47:35 p.m., court recessed)
15 (At 2:49:12 p.m., court reconvened)
16 THE COURT: Okay, we're going to go back on
17 the record. I had a copy and had a chance to review
18 actually all of the jury instructions, both the composites
19 for the final and the -- is there any objections by way of
20 preliminary instructions to the defendant's proposed
21 preliminary instructions?
22 MS. BONANNI: No, your Honor.
23 THE COURT: Okay. And I'm trying to get my
24 hands on where I set them. Do you mind if I use your --
25 have you got another copy of those, they were attached to

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your --

MR. MILLER: Oh.

THE COURT: And I wanted to make sure there was an explanation in there about whistle blowing, you had an opportunity to look at that, you're comfortable with their --

MR. MILLER: You're asking for another packet?

THE COURT: Yeah, if you've just got another copy, just of the preliminary is all, I've got the other ones.

MR. MILLER: Oh, all right, just the preliminaries. May I approach?

THE COURT: You may.

Okay and they were all pretty standard, but I just wanted to go through the -- did either side want me to give anything about the whistle blowing explanation as part of the preliminary instructions or just the standard preliminary instructions?

MS. BONANNI: Just the standards.

MR. MULLINS: I'm satisfied with that.

THE COURT: Okay, all right, great.

All right, go ahead and bring the jury in.

THE CLERK: All rise for the jury.

(At 2:51:46 p.m., jury entered)

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1 THE COURT: All right, thank you. You may be
2 seated.
3 The record should reflect the presence of all
4 the jurors, parties, their respective counsel.
5 Ladies and gentlemen, you have before you
6 what's called it's just a standard notebook that we give out
7 for jury trials. It has a number of the standard
8 instructions in them. Although, at the conclusion of the
9 trial I will give you a very detailed packet of all of the
10 instructions that apply in this case.
11 I'm now going to give you some of the
12 preliminary instructions to begin the case. I am now going
13 to briefly explain to you my responsibilities as the Judge
14 and your responsibility as jurors.
15 My responsibilities as the Judge in this
16 trial are to make sure that the trial is run fairly and
17 efficiently, to make decisions about the evidence and to
18 instruct you about the law that applies to the case. You
19 must take the law as I give it to you. Nothing I say is
20 meant to reflect my own opinions about the facts of the
21 case.
22 Your responsibility as jurors is to decide
23 what the facts of the case are. This is your job and no one
24 else's. You must think about all the evidence and all the
25 testimony and then decide what each piece of evidence means

1 and how important you think it is.

2 Now I will briefly explain the general order

3 of procedure in the trial from this point forward. First,

4 the lawyer for the plaintiff makes an opening statement in

5 which she outlines her theory of the case. The lawyer for

6 the defendant's can then make an opening statement or they

7 can wait until later. These opening statements are not

8 evidence, they are only intended to assist you in

9 understanding the viewpoints and claims of the parties.

10 After the opening statements we will begin

11 the taking of evidence. The plaintiff's lawyer will present

12 evidence first. She may call witnesses to testify and may

13 also offer exhibits such as documents or physical objects.

14 The defendant's lawyer has the right to cross-examine the

15 witnesses called by the plaintiff.

16 Following the plaintiff's presentation the

17 defendant has the opportunity to present evidence. The

18 plaintiff's lawyer has a right to cross-examine the

19 witnesses called by the defendant. After all the evidence

20 has been presented the lawyers for each side will make their

21 closing arguments to you in support of their case.

22 You are reminded that the statements of the

23 lawyers are not evidence, but are only intended to help you

24 in understanding the evidence and the way each side sees the

25 case. You must base your decision only on the evidence.

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1 In this case the plaintiff has brought claims
2 involving her termination from the Genessee --
3 Is that correct?
4 MS. BONANNI: No.
5 THE COURT: Okay. So strike that.
6 Okay, I'm just going to move back into the
7 standard jury instructions. After all the evidence has been
8 presented and the lawyers have given their arguments I will
9 give you detailed instructions about the law that applies to
10 this case. Then you will go to the jury room to decide on
11 your verdict.
12 The responsibility of the jury is to
13 determine the facts. You are the judges of the facts. You
14 determine the weight, effect and value of the evidence as
15 well as the credibility of the witnesses. You must consider
16 and weigh the testimony of all witnesses who appeared before
17 you and you must determine whether to believe any witnesses
18 and to the extent to which that witness should be believed.
19 It is your responsibility to consider any
20 conflicts in testimony which may arise during the course of
21 this trial. Your decision as to any fact in this case is
22 final. On the other hand, it is your duty to accept the law
23 as I instruct.
24 Your determination of the facts in this case
25 must be based upon the evidence. Evidence consists of the

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1 sworn testimony of the witnesses. It also includes exhibits
2 which are documents or other things that are introduced as
3 evidence. It may also include things which I specifically
4 tell you to consider as evidence such as stipulations.
5 The questions which the lawyers ask the
6 witnesses are not themselves evidence. It is the answers
7 that provide the evidence.
8 A trial follows established rules of
9 procedure and evidence. During the trial the lawyers might
10 make objections and motions. I will rule on these
11 objections and motions according to the law. Don't conclude
12 from any of my rulings that I have an opinion on the case or
13 that I favor one side or the other.
14 If I sustain an objection to a question or do
15 not permit a witness to answer, don't guess what the answer
16 might have been or draw any inferences from the question
17 itself.
18 Sometimes the lawyers and I are required to
19 consider objections and motions outside your hearing. We
20 may have to take care of these matters at the bench or in my
21 chambers or I may excuse you so that we can take care of
22 them in the courtroom. It is impossible to predict when
23 such conference may be required or how long it will last. I
24 will conduct these conferences so as to use as little of
25 your time as possible.

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1 I may also have to take care of other matters
2 which have nothing to do with this case. Do not concern
3 yourself with any of these matters which must be decided out
4 of your presence or hearing.
5 I might give you more instructions during the
6 course of the trial and at the end of the trial as I've
7 indicated I will give you detailed instructions about the
8 law you are to follow in this case. Please let me know
9 immediately if you can't hear a witness or see what is being
10 demonstrated.
11 Okay and at this point are both sides
12 satisfied with the preliminary instructions?
13 MS. BONANNI: Yes.
14 MR. MULLINS: Yes.
15 THE COURT: All right and with that we're now
16 going to hear the opening statement of the plaintiff. And
17 then the defense will either give their opening statement or
18 they can reserve their opening statement until the
19 conclusion of the plaintiff's case.
20 So, Ms. Bonanni, we're ready to hear the
21 opening statement of the plaintiff.
22 MS. BONANNI: Thank you, your Honor.
23 Hello again everyone. This is my opening
24 statement, it's my chance to tell you what we intend to
25 prove and what we'll prove through evidence. But before I

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1 talk about that I want to thank you for your service. This
2 is a very important role that you're playing and we
3 appreciate your time and attention that you will give this
4 matter.
5 I know it is a sacrifice for all of you to be
6 here. And most sincerely I will try to do my best to put
7 the evidence in efficiently. And while this is a sacrifice,
8 serving on a jury, this is also a privilege and an
9 opportunity. You have an opportunity to do something that
10 most people don't do in a lifetime. It's an opportunity to
11 effectuate justice, administer justice.
12 And at the end of this trial I think you will
13 be proud of what you've done not just for Pennie Davis, but
14 you will be sending a message, a message to school districts
15 throughout the State, and believe me they're watching, that
16 it's not okay to retaliate against a teacher who had the
17 courage to stand up.
18 And your verdict after you hear this evidence
19 will send a message to the teachers in this State sending a
20 powerful message to them that we applaud their courage, we
21 need their courage and we support their courage. We support
22 a teacher's right to stand up and report a violation of the
23 law that it is a right that is valued, it is important and
24 it must be upheld.
25 On October 12th, 2015 Pennie Davis who was a

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1 twenty-nine year veteran of the Jackson Public Schools was
2 assaulted by a student. She has an impeccable record and
3 you will hear about that. Twenty-nine years. She asserted
4 the right that we have as citizens of this country and of
5 this State to file a police report and to report a violation
6 of the law.
7 She also asserted her right as someone who
8 lives in this State to file a Personal Protection Order, you
9 may have heard of this, it's called a PPO, related to the
10 assault. The evidence will show you that as a result of
11 those reports and that PPO and that police report Pennie
12 Davis was retaliated against by the Jackson Public Schools.
13 The laws in this State protect people like
14 Pennie Davis. The legislature felt it was so important to
15 give people the right to go to the police, get a PPO without
16 fear of reprisal, threats or retaliation from their
17 employer.
18 Now we believe that the evidence is going to
19 show you that the Jackson Public Schools was so blindingly
20 angry about this report, this police report and this PPO,
21 they were angry that Pennie didn't keep it private,
22 contained within the district and swept under the rug.
23 After both sides have the opportunity to
24 submit their evidence, Judge McBain is going to give you
25 some very specific instructions and show you what the legal

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1 standards are. But for now I'll go into that in my closing,
2 we'll explain it in full. But for now I just want you to
3 understand that the law that we are addressing in this case
4 is called the Michigan Whistle Blower's Protection Act.
5 This act makes it illegal for an employer to
6 threaten or discriminate against an employee for engaging in
7 a protected activity. What you will learn when we go
8 through these instructions is that a protected activity
9 includes things such as filing a police report and obtaining
10 a PPO.
11 As I thought about this case in presenting my
12 opening statement to you something rang clear to me, there's
13 two time lines. Pennie Davis' life before the retaliation
14 and Pennie Davis' life after. So let me tell you about
15 Pennie Davis before. Twenty-nine years with the Jackson
16 Public Schools. Head of the art department, so curriculum
17 chair, which is a promoted position where she earns more
18 than the rest of the art teachers in the department.
19 She is a Master's level educator. And one
20 fact that is undisputed is that throughout these twenty-nine
21 years before the assault Pennie Davis was rated highly
22 effective or effective. And you will learn that these are
23 the highest ratings a teacher can receive.
24 Consistently throughout those years she was
25 also the recipient of district commendations for her

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1 teaching as well as various art awards. So Pennie will tell
2 you, she will testify about what made teaching art as the
3 curriculum chair in high school so special. She described
4 it to me as the top assignment in the district.
5 And, you know, on the one hand as the head of
6 the department she's looking at curriculum, she's shaping
7 curriculum, she's responsible for a lot of things, but she's
8 also passionate about art and passionate about educating.
9 And she says, she will tell you that having students at this
10 age at the fork in the road where they're maybe going to go
11 to college, maybe not, she was able to help them get
12 scholarships.
13 It was her passion, obtaining scholarships,
14 helping them go on their way. So the kids that were in her
15 classroom were kids that chose art for the most part as an
16 elective because of their interest. And I'm sure that
17 everyone in this courtroom can relate to the concept of a
18 teacher, that teacher that touched your life that made the
19 difference and Pennie's personal passion without her job
20 made her that teacher for so many kids.
21 And this is Pennie Davis for twenty-nine
22 years within this district, measured by the district's own
23 policies.
24 Let me talk about Pennie after the
25 retaliation. September of 2015, so the 2015-2016 school

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1 year started off as any year, she's the department chair.
2 In fact, her rating for the previous school year was highly
3 effective. So the top, the top rating. And that year she
4 had a student in her class, it was a new student to her, but
5 not to the district and we will refer to him as M.H.
6 throughout this trial.
7 We may slip up every now and then, but we're
8 determined we're going to call him M.H. M.H. was a large
9 boy, six feet tall, a two hundred pound sophomore. On the
10 football team, did not want to be in the class. Pennie will
11 tell you about that. From the get go he was brazen, he was
12 defiant, he was aggressive, swore, refused to work, walking
13 in and out of class.
14 Pennie Davis watched him as the weeks went
15 by. She will explain to you the steps that she took to
16 address this and to try to defuse what she saw as an ever
17 increasing problem with him. She followed the district
18 rules.
19 In fact, she went beyond them. She reported
20 her observations to the principal, the head of the school,
21 the principal for his grade, she looked at his -- she
22 submitted referrals, they're called referrals when things
23 were happening in the classroom and that is an official
24 notation about a teacher's observation that stays in a
25 record.

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1 What Pennie is going to tell you is that she
2 was trying to get someone to act, get someone to diffuse.
3 And in fact she was so concerned that she was calling people
4 like crazy, not only administrators, but also counselors.
5 She called his mom, M.H.'s mom. She called his football
6 coach. She was just looking for someone to assist. And she
7 was also following school policies by writing him up and
8 sending him to the office.
9 On October 12th, 2015 she was assaulted in
10 the class. That day, and Pennie is going to walk you
11 through that day, that day M.H. walked into the classroom,
12 made comments under his breath about hurting kids, made
13 comments under his breath, but loud enough for Pennie Davis
14 to hear, that he wanted to quote, "hit and beat the
15 teacher", end quote.
16 She, Pennie Davis, calmly told him that he
17 had to leave the classroom, he wasn't permitted to threaten
18 her and he kept saying, no, no, no. She had her hand on the
19 table, he took his hand with a balled fist and sideswiped it
20 and hit her in the hand.
21 I will tell you that as a result of that
22 contact Pennie Davis suffered a contusion in her hand. Had
23 to go to the doctor, was actually seen by two clinics and
24 her hand was wrapped. It wasn't broken, but it was injured.
25 That day Pennie Davis followed the rules again. She filled

1 out the necessary paperwork, again the referral. And the
2 referral going into the student log indicating what had
3 happened, the basics of what had happened.
4 She also filled out a incident report, which
5 was also a report given to the school and she did that
6 timely. It has to be done within twenty-four hours and she
7 did that. She also called people. She called the
8 superintendent, Mr. Beal. She called the Assistant
9 Superintendent, Mr. Pack, and you will meet both of these
10 gentlemen during this trial.
11 She called the principal of the school, Barb
12 Pauli, and she also called the head of his grade, Mr.
13 Zesson. She alerted these administrators to what had
14 happened in the classroom and she alerted that she was going
15 to the police to file a report. There's no substitute sent
16 to her class.
17 And what I forgot to tell you was, this
18 assault took place in third hour. Third hour is before
19 lunch. Pennie Davis the constant professional twenty-nine
20 years, puts her hand under her arm because it's throbbing
21 and she works the rest of the day. She has a brief exchange
22 with the principal, they acknowledge that she's -- there's
23 been an incident, but not enough time to even discuss it,
24 but other than that no contact with anyone.
25 So she finishes her day and she does three

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1 things. She goes to the police, she files a report. The
2 police suggests she gets a PPO so she does that too. And
3 then she goes back home to Brooklyn where she lives and she
4 goes to a clinic and has the hand looked at and x-rayed.
5 Now the PPO, this will make sense to you
6 later but I'm going to tell you for now about the PPO, it
7 never changed. She obtained a PPO. She sought it on the
8 12th, it was approved by actually Judge McBain on the 15th.
9 She provided it to her employer on the 15th and the terms of
10 what the PPO required never changed from October 15th until
11 November when Pennie Davis was demoted.
12 So what this PPO required was no threats of
13 violence from M.H. to the teacher, couldn't appear at her
14 work or her home, M.H. couldn't have contact with her and
15 M.H. couldn't follow her or appear in her sight. And what
16 this means or what this meant to Pennie Davis and M.H. and
17 the school is that they would avoid each other and if they
18 saw each other walking in the hall M.H. would go the other
19 way.
20 The terms of the PPO and the requirements
21 never changed. And at no time from October 15th when the
22 school was given the PPO until she was demoted in November
23 at no time did anyone from the school or the district tell
24 Pennie Davis that the PPO couldn't be complied with for some
25 reason, it couldn't be honored or that Pennie couldn't be

1 safe in the school. No one ever said that and Pennie never
2 said that she wanted to leave the school.
3 The day after the assault, October 13th,
4 2015, now mind you Pennie has left messages for
5 administrators about the incident and about going to the
6 police. The next day Assistant Superintendent Beal and
7 Superintendent Pack -- I'm sorry, Superintendent Beal and
8 Assistant Superintendent Pack come to Pennie Davis'
9 classroom in the morning, remove her from the class, talk to
10 her in the hall and you would think that administrators with
11 a twenty-nine year veteran, highly rated employee, would be
12 concerned about her.
13 I mean, she's the department head, which she
14 was appointed to, but they weren't. They were angry, they
15 ordered her to take off her Ace bandage that had been put on
16 by a doctor and when Pennie Davis indicated that she was
17 instructed by a doctor to keep that bandage on these
18 administrators then quizzed her as to whether she took a
19 shower with her bandage, testing whether it were legitimate.
20 And in fact, the Assistant Superintendent
21 when Pennie Davis informed him that she did not want to
22 remove the bandage, the response of the Assistant
23 Superintendent was, I can take you out of the school. Would
24 make her leave for insubordination. So this was Pennie
25 Davis' first substantial interaction with Jackson Public

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1 School administrators after the assault.

2 Now after this incident on the 13th outside

3 of her classroom Pennie Davis once again acted consistently

4 with her behavior throughout the twenty-nine years, total

5 pro. She provided them with medical documentation from the

6 clinic that she went to. This documentation indicates that

7 she had a contusion and it should be noted that she also

8 appeared at a clinic when the employer requested she go.

9 That second appointment confirmed the

10 contusion. And actually the employer's doctor put on a more

11 heavy duty wrap for her, because obviously the contusion

12 needed to be wrapped for a few days. The next day, October

13 14th, Pennie took a sick day. She was upset, she was

14 stressed, especially because of this incident. She's going

15 to tell you everything that was going on that prompted her

16 to take that day and she's allowed sick days.

17 So her first day back after the sick day is

18 the 15th. She walks in her classroom, turns on her

19 computer, picks up her phone to hear voice mail and she

20 hears a voice mail from Assistant Superintendent's Office,

21 the secretary, telling her to call her. She also sees

22 emails from, her name is Jessica, from the office telling

23 her to go to Workwell.

24 These emails came in on the 14th and the

25 morning of the 15th. Pennie wasn't at school on the 14th.

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1 The voicemail I'm telling you about was left after Pennie
2 had gone for the day. So she didn't get it until the 15th,
3 but once she got word that she had to go to Workwell she
4 complied. Now it took some time for the office to find a
5 sub, but after that she went. Again, like I told you,
6 contusion confirmed. Once again Pennie complied.
7 But the administrators were angry with her.
8 And you're going to see a piece of evidence, you're going to
9 find out that the Assistant Superintendent actually
10 contacted IT and had them check to see when Pennie accessed
11 this voicemail. And when they found out that she accessed
12 the voicemail on the 15th like she told them, they still
13 didn't take away the write ups for insubordination that they
14 gave her, because that's what they did, they gave her a
15 write up claiming she was insubordinate.
16 Pennie knew there was trouble. Now that
17 afternoon of the 15th Davis during lunch gets the PPO that's
18 been signed and immediately provides it to the
19 administrators, Mr. Pack and Mr. Beal. She also has her
20 union president with her. As soon as Mr. Beal saw the PPO
21 he immediately ordered them into a room and said, get in
22 there.
23 Mr. Pack was called and a very aggressive,
24 angry, accusatory meeting took place. They put Pennie on an
25 indefinite suspension. And Mr. Pack, and he's not going to

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1 deny this, during the meeting he said how do we know you
2 didn't just hit your hand with a hammer? He doesn't deny
3 it.
4 That day -- actually I should mention, that
5 afternoon, that October 15th, that meeting I'm telling you
6 about, this is during parent teacher conferences. Pennie
7 was in the middle of them. She wasn't even allowed to
8 finish her parent teacher conferences, she was told to leave
9 the school for an indefinite period for this suspension
10 because of the medical appointment that they claim she
11 should have gone to and also because they're going to
12 investigate.
13 Now I told you why the medical appointment
14 insubordination concept doesn't make any sense, because the
15 moment Pennie got notice she went and obviously the medical
16 records substantiated Pennie's story. But this
17 investigation, investigation into the incident, at no time
18 did anyone from the Jackson Public Schools take Pennie
19 Davis' statement about the assault which took place on
20 October 12th, at no time.
21 And in fact, you will be able to look at
22 those investigation documents and you're going to see that
23 after October 12th there was no investigation, there was no
24 further investigation. Nothing happened. The investigation
25 that took place on October 12th was cursory. You will find

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1 that it was a departure from Jackson past practice when it
2 comes to these kinds of allegations and the manner in which
3 investigations take place.
4 Didn't follow customary protocol, only talked
5 to a few students. These students you can see, you're going
6 to read these statements, they don't go all the way. They
7 talk about her tapping -- that him tapping or pushing her.
8 They hear, I don't take threats, they hear that Pennie tells
9 him don't threaten me. They hear that M.H. was muttering
10 something, but they didn't hear what it was.
11 Look, Pennie is going to explain to you why
12 number one, they should have talked to everybody, number
13 two, there's reasons why these kids didn't go all the way in
14 their statements. But the contusion that the school heard
15 about, that the administration heard about is evidence,
16 evidence of touching, evidence of contact of a certain
17 force.
18 But the school never reconsidered its
19 conclusion about the contact with Pennie Davis. The
20 school's conclusion that they made on the day of the assault
21 after this cursory investigation was that it was only
22 incidental touching, a brush. But Pennie had a wrapped hand
23 and medical evidence of a contusion. Never changed their
24 minds, no further investigation.
25 So Pennie is on suspension for indefinite

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1 time. It lasts two weeks. During the time that she's off
2 work on suspension you will learn about further acts of
3 retaliation. Sending her letters to her address when she
4 has a P.O. box, so it doesn't get there on time. Sending
5 her letters, request that she provide certain documentation
6 with deadlines that are impossible to meet.
7 Now she met the deadline, but she got the
8 letter within an hour or so of the deadline expiring. And
9 perhaps one of the weirdest things that happened was when it
10 was time for her to return to work a phone call was made
11 from the district, return to work tomorrow at 7:00 with your
12 union representative. Pennie didn't have enough time to get
13 a union representative, let them know that she was having
14 trouble, so they wrote her up for insubordination and docked
15 her pay again.
16 When Pennie finally returned to work on
17 October 29th the PPO was still in place. No one told her,
18 we cannot meet this PPO. This PPO, we can't keep you two
19 apart. It was understood they were to avoid each other and
20 it was working. And then Pennie noticed on November 4th
21 that M.H. was being permitted by the school to just run
22 around during this third hour. So he was in and out of
23 classrooms.
24 She doesn't know why he wasn't assigned to a
25 class, but he wasn't. And he went by her door and banged

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1 it. So again, following the rules Pennie let the principal
2 at the Jackson Public High School know. And she and her
3 union made plans to sit down and talk to the principal and
4 come up with a comprehensive travel plan so that was quickly
5 dealt with.
6 But that same day when he hit the window
7 Pennie didn't have the most confidence that the school would
8 meet with her, she didn't know. So she also filed a motion
9 to come before the Judge to make a report and hopefully get
10 some support about how this student couldn't bang on the
11 door and needed to have somewhere else to be.
12 But before going to court, before even
13 appearing in court Pennie and the school worked out a
14 comprehensive plan that was working, that was satisfactory.
15 She felt safe. And that plan was made on the 10th. And
16 you'll read the notes and you'll see how comprehensive the
17 discussion was.
18 On November 16th Pennie Davis is informed
19 that she's being demoted. Demoted from her curriculum chair
20 position to the middle school. During that meeting Mr. Pack
21 once again let it all hang out and he said quote, "we do not
22 go to the police here", end quote.
23 We believe when you hear all this evidence,
24 everything that led up to this demotion that you will agree
25 that this was in retaliation for Pennie Davis going to the

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1 police and getting a PPO.

2 The transfer to the middle school, the

3 retaliation continued. Pennie was sent to a middle school

4 that has a curriculum that is distinctly different from any

5 curriculum she's ever had to deal with, it's called IB. And

6 there's actually two schools within the district that have

7 this curriculum, but it's a specialized curriculum and every

8 teacher who teaches within the confines of this IB

9 curriculum, they're trained and it's extensive training.

10 Pennie was not given that training until the

11 end of the year. So to look at our time line, she goes over

12 there the end of November and she's not given training until

13 the end of that 2015-2106 school year. And even then she's

14 going to describe it's not as much training as everyone else

15 got.

16 But within thirty-two days of her transfer in

17 December of 2015 she was designated as a failing teacher.

18 After twenty-nine years of being highly effective,

19 effective, she transfers to a school where she doesn't even

20 get training and within thirty-two days she's officially

21 labeled failing. And Pennie is going to tell you that it's

22 that moment when she realized she needed to seek legal help.

23 The head of that school, Parkside, is named

24 Mr. Patterson. And during the meeting with Mr. Patterson

25 where Pennie's failing performance was discussed, he looked

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1 at her and her union president and he told them quote, "I
2 heard about what happened at the high school." So Pennie
3 knew at this point that she was a target and it was going to
4 be rough for her. And this is not an easy school. So not
5 trained and it's not an easy school.
6 Pennie is going to tell you and the union
7 president too, that it had been a failing school, lots of
8 parent complaints, lots of issues at that school. Pennie
9 was complained -- people complained, parents, someone said
10 she threw a book at them. And even when an administrator
11 said -- stood up for her -- someone at the school stood up
12 for her and said, why is she being -- why is she getting in
13 trouble for this book thing, it couldn't physically happen,
14 it's not humanly possible?
15 But Pennie Davis had a target on her head, so
16 no one was taking her seriously, even when a student
17 threatened to kill her at the Parkside. You know, he
18 admitted it, this kid. Pennie is going to tell you she
19 wasn't scared, but I tell you this, I share this evidence
20 with you because it just shows you what it was like over
21 there.
22 At the end of this year at Parkside, her
23 first year, so not even a full year, her rating is quote,
24 "ineffective." She's given a one, which is like the lowest,
25 it's like a zero but they don't have zeroes, so one is the

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1 lowest in every single category in her review. And that has
2 never happened to Pennie. And I can't -- I've never heard
3 of it before.
4 Pennie remained at Parkside for the 2016-17
5 year, she's rated minimally effective. And all the while
6 what Pennie will tell you is that she kept asking to be
7 transferred back. Bring me back, bring me back, bring me
8 back and it was denied. And the denials were -- she'll have
9 to testify, I can't remember the language, but it's just
10 they don't have to entertain a transfer request.
11 So Pennie is going to tell you that this
12 legal challenge is partially responsible for getting her
13 back to the high school. That's her belief. But even a
14 return to work at the high school, which she came back this
15 year, this school year, even that has been a continuing
16 struggle.
17 Let me explain. They refused to put her back
18 in the room she'd had for all these years. They put her in
19 a room completely far away from the art department. A room
20 that had exposed electrical outlets, pipes, hazardous and no
21 water source or a faulty water source. She had to grieve
22 all those things to get it fixed.
23 And now there's three teachers that are
24 teaching art when traditionally there has always been two.
25 So when Pennie Davis got her letter saying you're going to

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1 come back to the high school that's not actually what
2 happened. The other teachers that were there remain and now
3 Pennie comes, so now they've got a lot of art teachers.
4 So now Pennie is teaching gym, Pennie is
5 teaching one art -- some art classes, but gym as well. It's
6 a constant struggle. And what you're going to hear about,
7 what I think your take away will be with Pennie is that
8 she's a fighter, she's a survivor, she's passionate about
9 her job, but this experience has also caused her pain, it
10 has caused her injury, she's had physical manifestations
11 from this.
12 She's had to fight to save her job. It's a
13 demotion that she had for two years. She's going to
14 describe for you what she's gone through. This experience
15 required her to seek treatment and you're going to meet
16 Doctor Mitchell Weisbrod, he's not an expert, he's a treater
17 and he's going to explain the connections, the major
18 depression and anxiety that she now has that she's being
19 treated for and that she is fighting back to get back to
20 where she was before.
21 And she's had medical issues that are
22 associated with this as well and he will share those too.
23 So there is a high cost, there has been a high cost to
24 Pennie for standing up for what's right. So this is what
25 this case is about.

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1 When we're done submitting the facts to you
2 we're going to ask you to evaluate the facts through the law
3 and we'll talk more about this in the close, but ultimately
4 the question for you is going to be whether one of the
5 reasons that motivated the threats and the discrimination
6 were the police reports and the PPO that Pennie Davis filed.
7 Now whether the district was more concerned
8 that a public record like a police report or a PPO might
9 become known to the media or to parents or whether they
10 wanted to make sure that a football player on the high
11 school team didn't get pulled, whatever the reason, the
12 evidence will show that Pennie Davis took proper steps to
13 protect herself and her students and she was punished for
14 it.
15 We're going to talk about jury instructions,
16 I'm going to share one with you. And the reason why I want
17 to share it now is because it's a guiding principle. You
18 know, we want you as a jury to use your own experiences in
19 life. This instruction is really important. It says you
20 have a right to consider all the evidence in the light of
21 your own general knowledge and experience in the affairs of
22 life and to take into account whether any particular
23 evidence seems reasonable and probable.
24 So we want you to ask -- I'm going to ask you
25 all as you're watching this evidence come in and hearing it,

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1 does this make sense? This is your community of Jackson,
2 this is your kids, these are your kids', these are your
3 parents, your relatives, this is your community.
4 And at the end of this trial I'm going to ask
5 you for a verdict and when I do I'm going to ask you to
6 think about something as you render your verdict, how do you
7 feel about a district that is not protecting their teachers?
8 Thank you very much.
9 THE COURT: Thank you, Ms. Bonanni.
10 What's the pleasure of the defense, would you
11 like to go ahead at this time?
12 MR. MULLINS: I would like to make an
13 opening, but if I could request five minutes, Judge?
14 THE COURT: Five minutes, sure.
15 Ladies and gentlemen, we're going to take
16 about a five minute recess then and then we'll hear the
17 opening statement of the defense.
18 All rise for the jury.
19 (At 3:38:05 p.m., jury exited)
20 THE COURT: Anything further we've got to
21 discuss or just --
22 MR. MULLINS: I've just got to use the john.
23 THE COURT: Oh, okay.
24 MS. BONANNI: At my age, yeah.
25 THE COURT: Sure.

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1 (At 3:38:46 p.m., court recessed)
2 (At 3:50:56 p.m., court reconvened)
3 MR. MULLINS: I do have something of an
4 objection to the opening that was made by plaintiff's
5 counsel in that she said to the jury at least once if not
6 twice that she wanted them to send a message. And that's
7 improper, it's not proper damages.
8 There's case law that says telling a jury
9 that you should send a message or ring the bell, that's
10 reversible error and so it's not appropriate compensation.
11 If there are damages and she's suffered injury she should be
12 compensated for it. But sending a message has been held by
13 the Supreme Court and by the Court of Appeals.
14 I can provide the case to you tomorrow, but
15 it's improper. And --
16 THE COURT: Ms. Bonanni?
17 MS. BONANNI: What I believe I said was that
18 a verdict. I'm not asking them to create a message that --
19 a verdict would send a message and that's not improper, a
20 verdict in her favor.
21 MR. MULLINS: Well the verdict --
22 THE COURT: Okay, the Court is going to --
23 MR. MULLINS: I won't interrupt.
24 THE COURT: The Court is going to give a
25 curative instruction and I'm not really sure what you're

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1 going to ask the Court to do at this point. I guess you can
2 look at your case and further clarify that tomorrow, all
3 right. But I will go ahead and give a curative instruction
4 that clearly it's not the province of the jury to be
5 thinking about a message to other school districts or to the
6 county or anything else, all right.
7 MR. MULLINS: Fair enough.
8 THE COURT: Ms. Bonanni, would you want me to
9 craft that?
10 MS. BONANNI: I feel like --
11 THE COURT: Well he's practically asking for
12 a mistrial here.
13 MS. BONANNI: Yeah, I mean --
14 THE COURT: -- so I need you to --
15 MS. BONANNI: Yeah, yeah.
16 THE COURT: Okay. All right. And I think a
17 curative instruction would probably handle it, but I'll
18 listen to counsel further about that tomorrow on the case.
19 All right.
20 MR. MULLINS: I just wanted to make my record
21 because I've had this issue, I've been to the appeals, I
22 know the case, I can --
23 THE COURT: I understand. And the Court is
24 going to give a curative instruction. It's, you know, so
25 we'll go ahead and address it further from there.

1 Okay, so let's bring the jury in.
2 THE CLERK: All rise for the jury.
3 (At 3:53:31 p.m., jury entered)
4 THE COURT: All right, thank you. Everyone
5 may be seated. The record should reflect the presence of
6 all the jurors, both counsel and the plaintiff, defendant
7 and their respective counsel.
8 Ladies and gentlemen, there's a couple things
9 I want to tell you, they're just kind of housekeeping anyway
10 and I see that many of you have taken advantage of the pad
11 of paper and it's totally okay for the jury to take notes,
12 but the one thing I just caution you, don't later on during
13 the trial allow that to distract you from what's going on
14 with the witness.
15 And actually there's another thing that I
16 always allow my jurors to do and it's kind of a more novel
17 thing with the Michigan Supreme Court. About the last three
18 years they've allowed the Judge to allow the jury to ask
19 questions. So as an example, if we get done, you have
20 direct examination and cross-examination and everything is
21 done with that witness, I'm going to ask you if you've got
22 any questions for that witness, okay.
23 Now the one thing is is you have to write the
24 question down and I do have to review its admissibility by
25 the two lawyers. And what I actually find in doing this is

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1 a very large percentage of the questions that the jury asks
2 are in fact good questions, okay. And especially since
3 you're on this fact finding, you know, mission to do your
4 job it also gives the attorneys some indication about what's
5 going on.
6 You may also recall that I told you what the
7 attorneys say in opening statements isn't evidence. And I
8 did want to correct one thing that plaintiff counsel said
9 and that's that in this case if there's damages and they're
10 properly sound as a matter of law and you award them that's
11 one thing, but you shouldn't be thinking about this case in
12 terms of sending a message to other schools in Jackson
13 County. The only message that would be appropriate would be
14 to the specific school district where the plaintiff is
15 employed.
16 Okay, so I just wanted to give the jury that
17 curative instruction. With that we're now ready for the
18 opening statement of the defense.
19 So, Mr. Mullins, go ahead.
20 MR. MULLINS: Thank you, your Honor.
21 And good afternoon. As you know I'm Tim
22 Mullins, I represent the school district and this is my
23 opportunity to talk directly with you now as we start the
24 case and I get to talk to you again directly one time as we
25 end the case.

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1 As the Judge has pointed out and I'd like to
2 emphasize, what we as attorneys say it's not evidence. The
3 evidence comes from there. Whoever sits there raises their
4 right hand and says I swear to tell the truth. That's the
5 evidence and that's what you should pay attention to and
6 rely upon whatever documentary evidence is put into.
7 The purpose of the opening statement is for
8 us to outline to you so you can have some kind of an
9 understanding of what we think that you're going to hear.
10 And I would say to you, pay attention to what each of us has
11 said and hold us to if we told you that we're going to show
12 you something and prove something, you know, whether or not
13 it really did get proved later on when we talk about this
14 later on, because it's your verdict as he will tell you, the
15 Judge, later on needs to be based on the evidence not on the
16 arguments of the attorneys.
17 This is just arguments to give our
18 perspective of the case. It also -- it's late, I don't want
19 to on, but let me make clear and I will give some examples.
20 I don't agree with all of the factual assertions or
21 conclusions that were made to you and we will put forth our
22 evidence. And I won't rebut every single one of them
23 because it would take a long time. But let's talk about the
24 case.
25 Counsel did indicate Pennie Davis, you know,

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1 it's now almost two and a half years since the incident
2 that's complained of and she said we should take a look at
3 her life before this occurred and after this occurred. So
4 let's talk about this in a common sense fashion.
5 Let's clearly understand she's an art teacher
6 with Jackson Public Schools. She was an art teacher with
7 Jackson Public Schools, she is a teacher with Jackson Public
8 Schools. She's employed pursuant to contract, she's paid
9 entirely in accordance with the contract. She's always been
10 paid, she's paid at the highest level with the number of
11 years that she's worked there at the highest level that she
12 can be paid for the job that she's in.
13 My point is, she has not been retaliated
14 against. In fact, she's making more money now than she's
15 ever made before in the thirty-two years that she's worked
16 at the school district. She's currently earning more than
17 seventy-six thousand dollars a year in a salary, she's
18 getting more than nineteen thousand dollars a year paid
19 towards her retirement that she's fully vested in and can
20 take it anytime that she wants.
21 And she gets more than seven thousand dollars
22 a year paid towards Blue Cross Blue Shield healthcare
23 coverage that she'll have for the rest of her life, either
24 as a result of working there as long as she wants to or that
25 will come along with her retirement.

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1 She hasn't been retaliated against, she
2 hasn't been discriminated against, she hasn't been treated
3 badly. She's never been laid off, she's continuously had a
4 job. Again as to her job, both before and now it's a good
5 job being a teacher. The State requires a hundred and
6 eighty-five days of instruction to kids a year.
7 Between taking vacation days or personal
8 leave time or personal business days she's worked between a
9 hundred and thirty and a hundred and fifty of those hundred
10 and eighty-five days that the school is in session that she
11 is actually there working.
12 Today is a work day and they're teaching over
13 there, but we're here. But that's fine. The point is, it
14 wasn't a bad job before, it's not a bad job now. Nobody is
15 retaliating against her, nobody is discriminating against
16 her.
17 As indicated the one thing that did happen to
18 her is that she was transferred from the high school as an
19 art teacher to Parkside Middle School as an art teacher and
20 since then has been transferred back to the high school.
21 And she hasn't just been an art teacher over the years,
22 she's certified to teach art all grades K through 12.
23 She's been an athlete in the past as you'll
24 hear from various different sources, she's certified to
25 teach PE, she does teach a session of PE and I'm not aware

1 of there being any problem with it and she's equally
2 compensated for doing that.
3 So with those basic facts let's talk about
4 what happened two and a half years ago. She complains she
5 had -- says assault, okay. We don't accept that there's an
6 intent to harm in this incident. And you're going to see
7 statements, you're going to hear about Barb Pauli, the
8 principal who talked to her and to students that day.
9 You're going to hear from Joe Zesson, the assistant
10 principal who was there and talked to her and talked to
11 students that day.
12 She went and she said, I'm going to go and
13 make a police report and file a complaint against this
14 student. Fine. She says there's no investigation. There
15 was an investigation by the principal, there's an
16 investigation by the assistant principal. We've even got
17 their notes, got their reports. Police officer comes to the
18 school and talks to the principal, talks to kids, go get
19 these kids, I want to talk to these kids and find out what
20 happened.
21 And the kids say -- Jos Zesson, the assistant
22 principal says, who went in right after this event occurred,
23 you know, disputes the fact. She says the student hit me as
24 in, you know, attack or struck me. The students said that
25 he didn't. And as they talked apparently he's working on

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some kind of a project, she is unhappy with him, she goes to grab that -- what he's working on, he goes to grab what he's working on, their hands hit.

So there is contact between the two people and as the police officer has recorded in his report the consensus of the people who are talked to is that there wasn't any intent to injure. He didn't attack her. So that's it, there is an investigation.

But the point of the matter is, people looked into it, kids are talked to, administrators look into it and she can go ahead and file her police report. The school completely cooperates with the officer that comes to the police department. Fine. And she is working, was working and is still working. That I believe will be established by the evidence.

Now she does make a report of an injury. She says I'm hurt she says to -- you'll again hear from Barb Pauli. Barb goes and talks to her that afternoon, she's the principal of the school, the person in charge of the building. So how are you? Barb records, well I'm okay. I've got a bruise on my hand, my hand hurts. But she stays and finishes the day, takes the next day off.

So you have an employer, what is the reasonable action or reaction of an employer? I heard that somebody at work got hurt. The proof will show that the

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1 head of human resources and the superintendent went down.
2 What happened? Let's find out what happened. Let's see
3 what she's got to say about it.
4 You've got a bandage on your hand. Okay.
5 They wanted to know, how badly is she injured. Now this is
6 not a Worker's Compensation case, but we know that now two
7 and a half years later, but at that time when you're an
8 employer if someone has fallen down the steps or done
9 whatever and you say that I have been hurt, maybe some of
10 you have had this experience and that's why we're happy to
11 have you here, we rely upon the common sense and the
12 interpretation of the jury.
13 So what happens when something happens at
14 work, what do employers do? Go to the clinic, go to
15 Allegiance. We've got a clinic you can go there, it won't
16 cost you any money. We want to know. We want you to be
17 better and we don't want to find out six months from now or
18 a year from now that you've got some unhealed fracture in
19 one of the small bones of your hand or whatever. We want to
20 understand what is the situation.
21 It also gives you some reflection on how
22 serious of an event this might be in trying to decide how
23 we're going to run a school. We've got five thousand, two
24 hundred kids, we've got three hundred teachers, there's
25 going to be situations that occur virtually everyday in the

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1 school and ask yourself, is the employer reasonably managing
2 the situation?
3 So they give her a directive, go to
4 Allegiance. It had a different name at the time, it's
5 Allegiance Henry Ford Healthcare System. She doesn't get
6 there for a day, there's confusion about whether she's got
7 e-mail or whether she got a phone message or not. Okay, but
8 then she finally does go to Allegiance and the doctor there
9 says that you'll see in the records, well I can't really
10 assess what's, you know, wrong or not wrong with your hand
11 without taking an x-ray. She doesn't want to take an x-ray.
12 So that's where we get into the discussion
13 between the employer and her, until I get a clearance, I get
14 a, you know, a report on what your x-ray is we're going to
15 put you on paid leave. She's paid, she's on leave. We want
16 to make sure that it's clear for you to go back to work.
17 And therein is this dispute, which to me is nothing more
18 than, go see a doctor, get an x-ray.
19 Once they get the x-ray, you'll see the
20 record 11/2, okay to return back to work, Allegiance reports
21 that into the school district, she's back to work. And
22 during the period of time that she's off she's on paid
23 leave.
24 Now again, there's no retaliation. So
25 there's this student, Marcus, probably not going to be the

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1 -- or M.H., probably not going to be the valedictorian of
2 the class, but we're a Michigan Public School District.
3 Every student in Michigan has a right by federal and by
4 state law to get a free and appropriate public education.
5 We don't get to pick and choose, kids come to school, some
6 are better, some are worse, our job is to try to get them
7 through school, educate them, teach them how to act
8 appropriately and go on to whatever they might come on and
9 be a better person in society.
10 You don't always succeed, but it's our job to
11 try. So what happens in this case? She does not like the
12 student. Okay. She does not want the student in her class.
13 Immediately after this occurs he's out of the class. And
14 afterwards and Barb Pauli the principal will testify that we
15 made arrangements, he's in orchestra or band, that's a room
16 or two down the hall, even went so far as to say you can
17 only enter this classroom through the auditorium, to come in
18 that door so that you won't even go down the hallway where
19 her class is.
20 I mean she makes -- goes out of her way to
21 try to make sure that there's no further contact under any
22 circumstance between these two. But as she indicated she
23 did get a PPO. And as she indicated that says that this
24 young man is not supposed to be at her workplace, so the
25 school district is like, well I've got a teacher and I've

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1 got a student, I've only got one high school, they've made a
2 determination that we don't think that the incident that
3 occurred requires him to be expelled.
4 And that's really what brings us here today.
5 She thinks that he should have been expelled. She thinks
6 out, you're done, I don't want you in the building again.
7 The school, we want to try to work with this kid. We want
8 to try to save this kid, so we try to create a plan.
9 And she indicates as you heard, she still saw
10 him or she thinks he banged on her door even though nothing
11 further occurred between the two of them she still said, I
12 have fear. And you'll see court documents we'll show you.
13 I won't bore you with it now, where she even after getting
14 the first PPO she says she continues to have fear of this
15 student.
16 So you'll hear the boss, the superintendent
17 here indicate, I've got a student, I've got a teacher, I've
18 got an obligation to teach, I've got an obligation to
19 employ. So what should I do? All right, he makes a
20 business decision, a management decision. I've got an arts
21 teacher at Parkside, I've got an art teacher -- actually
22 there's two art teachers as you heard at the high school.
23 The department is really the splitting of a
24 stipend between two teachers, there's really no department
25 or department chair, but he makes a decision. Okay, we're

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1 talking art, we're talking sixth grade art, you can go over
2 to Parkside and teach sixth grade art at Parkside. The
3 teacher at Parkside can come over to the high school, can
4 take over your art class, the kid can go to school.
5 That's a business decision, it's not
6 retaliation. She's still being employed under the same
7 contract, she's still getting all that pay, she's getting
8 all that benefits, as the years go by the raises that come
9 in. She's still occurring her pension, all of the benefits
10 and it's not a bad job.
11 Off at Thanksgiving, off at Christmas, off at
12 Easter, off all Summer long and getting the pay and benefits
13 that I outlined to you. I don't see the retaliation, but
14 that's for you to decide. She indicated, I request he be
15 removed immediately. I do not feel safe with him being at
16 our school.
17 So what choice -- you know, he can either
18 kick a kid out of school, and he'll tell you what the
19 statistics are for a kid who's a sophomore, sixteen years
20 old, when you're out of school it goes bad. I mean your
21 future percentages in life are down. So they've got to try.
22 He'll tell you A, we're obligated. And B, we've got to try
23 to do the best that we can with these kids.
24 So that's the business decision that he made.
25 She's teaching at another building, Parkside Elementary, a

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1 nice building, one of the more modern buildings in the
2 district and certainly the equivalent of anything else.
3 And had there really been any -- I mean
4 number one, the contract which you'll hear about and you'll
5 see the contract and you'll see specific provisions, you
6 have a collective bargaining agreement, some of you might
7 work pursuant to a collective bargaining agreement, where a
8 teacher works, where the assignment of their job duties that
9 is reserved or it's a decision that management is entitled
10 to make.
11 You don't own the sixth grade English class.
12 If the school needs something that you're certified for and,
13 you know, we've got more kids here and less kids here and
14 we've got to transfer, that's something that they're allowed
15 to do.
16 And secondly, if you really think that
17 there's something bad, I mean again it's the school district
18 that's being sued here, if he's a bad guy or if he's doing
19 something wrong or you think he's made an illegal decision
20 I'm sure one or more of you realize there's a school board,
21 the real boss in Michigan, schools are run by the school
22 board.
23 And you can take your grievances up if you
24 have a grievance, file a grievance, pursue a grievance and
25 if you don't like his decision at step three, then go to the

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1 school board. And if you don't like the school board, go
2 take it to arbitration. And I'm sure somebody might have
3 been at a school board meeting at some time, you can show up
4 and make public comments or you can have your union person
5 show up or you could just say this isn't right, I'm not
6 being treated appropriately.
7 But that didn't happen. But it could have
8 happened. And I appeal to your common sense that it's just
9 not that hard to show up at a school board meeting and go to
10 that jury that's elected by the community and say, I've been
11 a teacher here for going on thirty years, I don't think I'm
12 being treated appropriately, tell him to make a different
13 decision.
14 And so when you look at the contract that
15 entitles him to make that decision and where we're at here
16 today, where we're at, we've got a lawsuit over somebody who
17 has still got a job and has always been paid and is getting
18 paid more.
19 Counsel also touched upon another thing. She
20 said that when she was transferred over to Parkside teaching
21 sixth grade art she said she got an ineffective evaluation
22 and she'd never had an ineffective evaluation before.
23 However, again as you may or may not know, public schools
24 are governed by the Michigan Department of Education. Okay.
25 There are evaluation tools that are required by law for the

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1 school district to evaluate every teacher every year.
2 Now part of what you have to do and a big
3 part of that evaluation, and you'll hear about that, is at
4 the end of the year you turn in your student data. Here's
5 where my kids started out, here's where my goals are, here's
6 where I ended up. And both the individual teacher and
7 eventually the school, she talked about a school being on
8 the watch list or being a failing school, you look at all
9 that data as a whole and see how are we doing.
10 Well guess what, at the end of the 2016 year
11 she never turned in her student data to the principal. And
12 you'll hear the principal testify to that. So I'm sure some
13 of you have had jobs where you've got to turn in a sales
14 report or maybe when you're in school you've got to write a
15 term paper or I don't know what analogy you want to give to
16 it, but you've got to do your job.
17 And when you're a student you've got to take
18 your tests. When you're a teacher you've got to turn in
19 your results. And if you don't do those things it's like,
20 well I got a bad grade in English, but I never turned in my
21 term paper. Huh, I wonder why.
22 Well so what happens? So she says to the
23 superintendent, I want a review, which she's entitled to, of
24 her evaluation. And so it gets set for, and he'll give you
25 all the dates, it's set for this date in October and then it

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1 gets moved to -- asks to have it moved again and have it
2 moved again and have it moved again. And she doesn't appear
3 for her review until March of 2017. This is after the
4 school year with the kids' data being due in June of 2016.
5 And finally at that review she sits down at
6 the table and takes her student data, and he'll tell you, oh
7 by the way here's my student data for the end of 2016 in
8 March of 2017. Try doing that with your English teacher
9 when you're trying to turn a term paper in or take the exam
10 that many months later.
11 And so what does he do? He took the
12 ineffective rating that she had and he says well that's
13 great, you know, I've got this. You'll see the letter that
14 he wrote, I'm going to change your ineffective rating. And
15 he asked her, what do you think I should rate you? And she
16 says, well between effective and minimally effective. And
17 he writes her a letter, and you'll see the letter, he raises
18 her to minimally effective.
19 But I'd submit that's pretty generous at that
20 late in the game. And then asks her, you'll hear him say,
21 golly gee, Pennie, why are you giving this to me today, I
22 mean your building principal is Mr. Patterson? Well I
23 wasn't there or I was out sick. You can put it in his
24 mailbox. How about June, how about July, how about August?
25 I mean you're off all Summer, can't pull the student data

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1 together and mail it to him, put it in his mailbox, deliver
2 it at the office, drop it off at the administration
3 building?
4 It isn't given to the superintendent until
5 March '17. I might have the date wrong, but it's March of
6 2017. But the point is, what's going on here? Maybe
7 somebody wants an ineffective rating, wants to have a fight
8 with the school district. That's for you to decide. But
9 those facts are what happened.
10 There's both her request and the PPO which
11 says, M.H. isn't supposed to be at her workplace. Once M.H.
12 is gone she says, can I go back to the high school? He
13 says, no problem, she's back to the high school and that's
14 where she teaches today. Full pay, full benefits. We've
15 done the best we could with M.H., he's gone, you're back to
16 the high school.
17 Again, is this retaliation or is this a
18 reasonable business decision by a public educator attempting
19 to do the best he can with my employees, hundreds of them,
20 and my students, thousands of them, great, mediocre, lousy
21 on both sides. I submit there will be no indication of
22 retaliation.
23 You'll be shown the -- there was a criticism
24 that there was no investigation. There was a report that
25 was written up by the police officer. There's reports that

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1 are written up by Assistant Principal Zesson. In fact, even
2 the human resources department went and said you wrote up
3 all this big report on who said what and what happened and
4 everything like that, I want to make sure I can read this
5 accurately, could you please type it all up? So you'll see
6 both the typed up version and the written up version.
7 And of course they've asked her what she's
8 got to say about it, because that's what I just showed you,
9 her saying I want him out of the building. And you've got
10 Baird-Pauli, Barbara Pauli, Barbara Baird-Pauli who is the
11 principal of the building, who also will testify as to
12 having gone and talked to her that day, having talked with
13 kids, having worked with the police officer.
14 When the police officer came the police
15 officer says, well you know, get me some kids. There's even
16 one kid that Mrs. Davis said child, we're supposed to try to
17 somewhat maintain their confidentiality, so I'm not using
18 names too much, but says talk to this one, talk to that one.
19 But, you know, in the report talked to this student, talked
20 to that student, talked to that student, so they came to the
21 conclusion, the business conclusion, okay this occurred,
22 it's unfortunate, but there's not an intent to harm.
23 She keeps using the word assault. The school
24 came to an administrative decision, a business decision,
25 whatever you want to call it, but it's not an assault. If

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1 it is an assault and she wants to, you know, pursue the
2 matter with the police, that's between the police and
3 Marcus. And whatever happens there, happens there, but that
4 doesn't relieve us of our obligation to make our decision on
5 a day to day basis.
6 And as you can see by the legal system it can
7 take a long time to get something resolved legally. We're
8 here almost two and a half years later, but school starts
9 the next day at 8:00 o'clock in the morning. And so the
10 kids are there, the busses are rolling, the teachers are
11 there, school starts on a certain day, it ends on a certain
12 day, he's got to keep it moving and that's what he did.
13 And I suggest to you the facts will show you
14 that he did it in a reasonable fashion, it had nothing to do
15 with retaliation, she's wonderfully and completely
16 compensated and there's no reason for her not to have a
17 wonderful life and not to have had a wonderful life both
18 before this occurred and since then.
19 At the conclusion of the case I'm going to
20 dismiss the matter finding that he didn't retaliate and that
21 he did act reasonably. Thank you for your attention.
22 THE COURT: Thank you, Mr. Mullins.
23 All right, ladies and gentlemen, that's going
24 to conclude things for today. I understand one of our
25 jurors has been up for a really long time too, so we're

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1 going to get into proofs tomorrow. I'm going to plan on
2 having you here at 10:45. I have a full morning of
3 pretrials and criminal cases that are going to take me
4 probably up to close to 10:30 or so.
5 So rather than having you come back tomorrow
6 at 11:00 o'clock and then working for an hour or whatever
7 and then you're wondering when lunch is and you're wondering
8 when we're going to take a break for lunch, what I often do
9 in that situation is tell you I have a nice refrigerator and
10 stuff in there for you so if you want to have either eaten
11 your lunch or bring something in that you want to put in
12 there, if you want to heat it up or whatever, you know,
13 there's microwaves and stuff around.
14 But that way we're not -- you know, you're
15 here for an hour and all of a sudden breaking for lunch. So
16 is that acceptable with people for tomorrow for lunch to
17 either have had lunch or bring something in and, you know,
18 for the full time you're here if you want to keep some
19 things in the refrigerator we secure that after you're done
20 using the room anyway.
21 So I'll plan on having the party largely back
22 by about a quarter to 11:00 tomorrow and we're going to
23 begin taking witnesses in the plaintiff's case and we'll
24 move through it as quickly and efficiently as we can. All
25 right.

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1 So all rise for the jury.
2 (At 4:24:03 p.m., jury exited)
3 THE COURT: All right, thank you. Everyone
4 else may be seated.
5 Ms. Bonanni, you submitted just a matter
6 about a jury instruction, a couple, has the other side been
7 provided with that? I know a couple pages about --
8 MS. BONANNI: Oh, actually the top page is
9 defendant's.
10 THE COURT: Oh, the defendant's, okay. Is
11 that something that we need to do now, you both want to --
12 MS. BONANNI: I prefer to do --
13 THE COURT: Okay. Do a charged instruction
14 at the end of the case? Okay. So I'll be working on the
15 substantive instructions, they're probably pretty close
16 between what you both have already done. So we'll have a
17 full opportunity to go through all of the jury instructions
18 before they're given to the jury.
19 Okay. All right, well I appreciate seeing
20 everybody up at about a quarter to 11:00. We'll try to get
21 started right about 11:00 o'clock.
22 (At 4:25:17 p.m., hearing concluded)
23

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and sixty (160) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Monday, February 26, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: August 17, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,
Plaintiff

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.
_____/

JURY TRIAL, VOLUME II OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday, February 27, 2018

APPEARANCES:

For the Plaintiff:
MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant:
TIMOTHY MULLINS (P28021)
JOHN L. MILLER (P71913)
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7020

TRANSCRIBED BY:
THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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None

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None

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1 Jackson, Michigan
2 Tuesday, February 27, 2018 - 11:09:12 a.m.
3 THE COURT: All right, thank you. The
4 parties may be seated. We're back on the record in the
5 matter of Pennie Marie Davis versus the Jackson Public
6 Schools, file number 16-344-CZ.
7 And I understand we're still waiting for Mr.
8 Mullins. But there's a couple of matters we can take up
9 outside his presence, is that correct?
10 MR. MILLER: Yes, Judge.
11 THE COURT: All right. Okay, so we've got --
12 why don't I have you go ahead and start with the first one.
13 Go ahead.
14 MR. MILLER: All right, the first one was
15 last night I circulated a couple of special instructions.
16 The primary one, we went back last night and gave serious
17 thought to whether a motion for a mistrial was appropriate.
18 We decided at this point to pursue a curative instruction.
19 Plaintiff as you'll recall in the opening statement made
20 arguments --
21 THE COURT: I recall that.
22 MR. MILLER: -- other districts are watching
23 this. We need to send a message that our teachers are going
24 to be protected. This was --
25 THE COURT: Yep, go ahead.

1 MR. MILLER: With current events with school
2 shootings and teachers being injured, this is the last thing
3 that the jury should be considering. The Whistleblower
4 Protection Act allows for compensatory damages and
5 reinstatement and actual costs and attorney fees if
6 appropriate. It's not putative damages and it's not to send
7 a message.
8 The Court did briefly address it when the
9 jury returned yesterday and correctly said it's not to send
10 a message to other districts, just to Jackson Schools. But
11 we'd suggest it's not to send a message to Jackson Schools
12 either. If the jury finds that Pennie was wronged it's to
13 compensate her for her injury, not to send a message to
14 anyone.
15 And we think it's significant enough that the
16 jury needs to be apprized of that fact now when they're
17 hearing evidence and --
18 THE COURT: Okay. Well I thought the Court
19 covered that in a curative instruction. I mean it went over
20 the fact if there were damages against the -- found on
21 behalf of the plaintiff that the only message it would
22 involve would be a message specifically to the Jackson
23 Public Schools, which I think is, you know, part and parcel
24 of what would happen.
25 So I certainly satisfied the curative

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1 instruction and dealt with that issue. And since you're not
2 moving for a mistrial at this point, then I'm assuming
3 there's some acquiescence on defendant's position on it as
4 well. Okay, anything further?
5 MR. MILLER: The second item was on the order
6 on the motions in limine, which does this Court have a copy
7 in front of it?
8 THE COURT: Yes, I do.
9 MR. MILLER: I put this together last night
10 and it seems like an inconclusive agreement with everything
11 except item number four, which was to my recollection in
12 notes, I mean it was argued a couple of times after the
13 Judge ruled, plaintiff counsel again got up and argued why
14 she should be able to talk about it in the opening and the
15 Court still said it was propensity evidence and not allowed.
16 I did suggest that it could be modified even
17 at the motion in limine regarding student M.H.'s
18 disciplinary history is granted, unless a proper foundation
19 is laid and the Court wants to reconsider it, but there is
20 still an objection to that.
21 THE COURT: Okay. Ms. Bonanni, what's your
22 response to that?
23 MS. BONANNI: So my response is and I just
24 spoke with Mr. Miller about this, I think we're making some
25 progress. We have a student log that's, you know, five or

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1 six pages long. I've agreed to redact or put it in whatever
2 format that we need to to take out everything but the log
3 entries that Pennie Davis made during this time frame as
4 well as the log entries that Mr. Zesson, who will be a
5 witness and Ms. Pauli, who will be a witness.
6 Zesson and Pauli, it goes to the incident,
7 the investigation, their knowledge. I mean there's actually
8 and the student code specifically states that a student's
9 disciplinary history must be considered by administrators
10 when determining what the appropriate penalty is. Now I'm
11 not suggesting that we -- I'm not arguing to bring in all
12 six pages, just this time frame surrounding the report to
13 the police. I think it's relevant.
14 THE COURT: Okay. Further response on that?
15 MR. MILLER: Well and this is exactly what
16 the Court ruled upon yesterday. The Model Civil Jury
17 Instruction says the employee's motivation in making a
18 report isn't relevant. And there is no contemporaneous note
19 from an administrator. There was a note from an
20 administrator Joe Zesson several weeks before this relating
21 to the same student, but not about this exact incident.
22 If plaintiff wants to have her own entry for
23 what she reported and what the concern is, that's fine.
24 That one entry can be redacted, put on one piece of paper,
25 this is what I entered into the system about the incident.

1 But this is just another argument about why don't we really
2 let all this background evidence in.
3 MS. BONANNI: Well let me add this, it also
4 goes to motive. I mean certainly we're arguing that the
5 school board was retaliating against her for going to the
6 police. So to the extent their investigation into this
7 situation and this individual was at all incomplete or
8 cursory, which is what we're arguing, and not following
9 policy because they're supposed to look at the log, they're
10 supposed to look at what's been happening with this student
11 when they make a determination about whether he should
12 receive a penalty. I think it's relevant.
13 MR. MILLER: Judge, I'm sorry to interrupt.
14 MS. BONANNI: No, I mean it's Mr. Zesson's
15 entry --
16 MR. MILLER: I think it's prior.
17 MS. BONANNI: Let me finish. Mr. Zesson's
18 entry is on September 23rd. Pennie Davis makes an entry
19 September 25th. Pennie Davis makes an entry October 12th
20 when she's assaulted. If they're going to bring --
21 THE COURT: And is that things that she's
22 looking at, these entries when she's doing it?
23 MS. BONANNI: Yes.
24 THE COURT: Okay, go ahead.
25 MS. BONANNI: And she's going to testify to

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1 that. And I shared that yesterday that it goes to the
2 reasonableness of her actions. It's important information,
3 it goes to the legitimacy of the investigation into this
4 assault. I mean I agree with the Court's ruling on this
5 history of years.
6 THE COURT: Okay. Well the Court is going to
7 I think mold it under 404(b) as one of the permitted
8 purposes. And to the extent that it's limited to that,
9 especially because she wrote an entry or she looked at an
10 entry immediately before that. I think for those limited
11 purposes it's admissible, but I want to see the proper
12 foundation and stuff laid, but obviously not getting into
13 his, as we've agreed, into his entire disciplinary history.
14 MS. BONANNI: I agree. And also I told Mr.
15 Miller that what I'll do is we'll come to an agreement on
16 presentation in terms of the exhibit. For now I will not
17 show it. For now I will show this redacted version to
18 witnesses if it's pertinent.
19 THE COURT: Okay. And I'm also going to make
20 a finding that it's more -- in this very narrow
21 admissibility it's more probative than it is -- it's
22 probative value outweighs its prejudicial impact with
23 respect to the very limited admissibility that I've granted
24 it on. All right.
25 MS. BONANNI: Thank you.

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MR. MILLER: Thanks, Judge.

THE COURT: Okay. Thank you.

Mr. Mullins, welcome.

MR. MULLINS: My apologies, your Honor, I should have known better.

THE COURT: We had some things --

MR. MULLINS: I got behind every pothole and I know they're out there. I got behind --

MR. MULLINS: Okay, so I --

THE COURT: They let me know that you were a little bit delayed, so that's okay.

MS. BONANNI: So I just have to tell Mr. Mullins that he needs to be staying in town at the hotel like me.

THE COURT: All right.

MR. MULLINS: Well you start giving us more than enough time to get here, so there's no excuse. I mean it just --

THE COURT: That's fine, you're --

MS. BONANNI: Do you need a glass of water?

THE COURT: Co-counsel let me know what was going on and I just appreciated the update. All right, we're kind of waiting on a juror too, so they only got here a few minutes ago.

David, would you bring the jury in?

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1 THE CLERK: All rise for the jury.
2 (At 11:17:47 a.m., jury entered)
3 THE COURT: All right, thank you. Everyone
4 may be seated.
5 The record should reflect the presence of all
6 the jurors, parties, their respective attorneys.
7 Ladies and gentlemen, you'll recall yesterday
8 that we had preliminary instructions and then opening
9 statements by both sides. And at this point in time the
10 plaintiff is going to begin calling witnesses in their case.
11 And so there will obviously be direct examination and cross-
12 examination by the parties.
13 So is the plaintiff ready to call your first
14 witness?
15 MS. BONANNI: I am ready, your Honor. I
16 would like to call Superintendent Jeffrey Beal.
17 THE COURT: All right, Mr. Beal, can I have
18 you come up to the witness stand and I'll get you sworn in
19 for your testimony.
20 UNIDENTIFIED JUROR: Sir, may I ask a
21 question?
22 THE COURT: Yes.
23 UNIDENTIFIED JUROR: Notebooks?
24 THE COURT: Oh yeah. David, can you get the
25 notebooks for me?

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1 Yeah, I'll have my court officer bring them
2 right out to you, okay.
3 MR. BEAL: Can I grab my glasses?
4 THE COURT: We had kind of a packed courtroom
5 this morning.
6 MR. BEAL: Can I grab my glasses?
7 THE COURT: Sure, absolutely, go ahead.
8 And so even though we're starting a little
9 bit late we did deal with a couple of other matters with
10 respect to some hearings we would have had to have anyway.
11 Can I have you raise your right hand? Do you
12 solemnly swear or affirm that the testimony you're about to
13 give this Court will be the truth, the whole truth and
14 nothing but the truth, so help you God?
15 MR. BEAL: I do.
16 JEFFREY BEAL
17 (At 11:19:21 a.m., sworn as a witness, testified as follows:)
18 THE COURT: If you'll have a seat right there
19 and when you get comfortable would you state your full name
20 and spell your last name for the record?
21 THE WITNESS: All right. My name is Jeffrey
22 Edward Beal. Last name is spelled B-E-A-L.
23 THE COURT: All right, thank you, Mr. Beal.
24 Go ahead, Ms. Bonanni.
25 DIRECT EXAMINATION

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1 BY MS. BONANNI:
2 Q Good morning, Mr. Beal.
3 A Good morning.
4 Q Now you are the superintendent of Jackson Public Schools?
5 A I am.
6 Q And you've been in that role since 2014?
7 A That's correct.
8 Q Four years about?
9 A That's correct.
10 Q Now you have a cabinet of close advisors, correct?
11 A I do.
12 Q And those are the individuals that you rely on most to help
13 you in making decisions?
14 A They each take care of a specific operation, absolutely.
15 Q Were you responsible for compiling this group of
16 individuals?
17 A Most of them were there when I arrived.
18 Q Okay. And you kept them there?
19 A Correct.
20 Q They answer to you?
21 A They do.
22 Q Okay. And Mr. Ben Pack is one of the individuals within
23 your cabinet, fair to say?
24 A Mr. Ben Pack has retired, but at the time he was the
25 assistant superintendent for human resources and a member of

1 my cabinet.
2 Q Okay.
3 THE COURT: Ms. Bonanni, just before you get
4 started.
5 Mr. Beal, could you just give us a little bit
6 of a rundown on your qualifications and experience and
7 educational background?
8 THE WITNESS: Yep. So I have been -- in
9 education I have served as a -- I started off as a middle
10 and high school English teacher. From there I moved into an
11 assistant principal job at a middle school, Chippewa Hills,
12 which is between Mt. Pleasant and Big Rapids. During that
13 time I was promoted to elementary principal. And then when
14 times required I served a stint as elementary principal and
15 athletic director.
16 From there I moved to Vestaburg Community
17 Schools and I took over the role of middle school principal
18 and special education director for Vestaburg. And then from
19 there I went into the interim superintendent when the
20 current superintendent retired. And then from the interim
21 superintendent into the superintendent for Vestaburg and
22 then obviously came to Jackson in 2014 as the superintendent
23 as well.
24 THE COURT: Okay, thank you, Mr. Beal.
25 BY MS. BONANNI:

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1 Q Thank you, Sir. So your cabinet of advisors also includes
2 William Patterson?
3 A Doctor Patterson is the assistant superintendent for
4 secondary education. So he's responsible for everything
5 grades sixth through twelve.
6 Q And William Patterson is the brother of another member of
7 the Jackson Public School District Team, Jeremy Patterson,
8 who's the principal at Parkside, is that correct?
9 A That's correct.
10 Q Okay. Now prior to October 2015 is it fair to say you
11 really didn't know Pennie Davis?
12 A I would say that that would be -- you know, we have three
13 other teachers, I would say that I -- I wouldn't say that I
14 know all of them, no.
15 Q Okay. And you didn't know her?
16 A No, I wouldn't say I -- I'd say I had limited interactions.
17 Q Okay. And you are the superintendent, so in order for
18 someone to have interaction with you it has to be at a
19 higher level, is that a fair statement?
20 A You know, I'm in every building every month, so I do visit
21 classrooms quite a bit, but I would say that, you know, for
22 an employee action specifically, you know, I'm invited to
23 come out and participate in lessons. You know, obviously
24 March is reading month, I'll be out reading to students,
25 that type of thing.

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1 Q Okay. Now certain departments within the district have
2 what's called a department chair?
3 A Mm-hmm.
4 Q Correct?
5 A Yes, they do.
6 Q And Pennie Davis was a department chair at the high school?
7 A I believe Pennie Davis was the co-chair of the department.
8 Her and the other art teacher split the responsibilities.
9 Q And that's a position where in terms of doing the curriculum
10 work and the other duties and responsibilities that the
11 chair takes, the district pays them a little bit extra for
12 that, correct?
13 A The teacher would receive a stipend for that additional
14 work.
15 Q That's the word I was looking for, stipend. Do you know how
16 much that stipend is off the top of your head?
17 A I don't.
18 Q Okay. But it's a stipend that acknowledges the additional
19 responsibilities?
20 A It's a stipend that acknowledges the additional work without
21 question.
22 Q Now part of -- something the district also does to motivate
23 teachers is identify certain teachers and provide them with
24 awards?
25 A Not since my tenure.

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1 Q Okay. In the past -- well you've been at least associated
2 with the district in some way, shape or form?
3 A I went to Jackson Public Schools.
4 Q Okay. And you are aware that in the past at the district
5 there have been distinguished service awards given to
6 teachers?
7 A I can't say that I'm aware of any of those, no.
8 Q Okay. The one thing I think you will be familiar with is
9 the rating system, the system that the district uses to
10 evaluate teachers?
11 A Yes.
12 Q And teacher evaluations are conducted on a yearly basis, is
13 that fair to say?
14 A Yes.
15 Q The format is standardized throughout the district?
16 A That's correct.
17 Q And there is a scale of ratings that a teacher can receive?
18 A That is also correct.
19 Q The scale ranges from highly effective on the high end and
20 ineffective on the low end?
21 A That's correct.
22 Q After highly effective the next step down would be
23 effective?
24 A Yes.
25 Q And then the next step down would be minimally effective?

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1 A That's also correct.
2 Q Okay. Now teacher ratings, you agree they're important?
3 A I do.
4 Q And they are important because it's the measure that the
5 district uses to determine if a teacher is doing his or her
6 job?
7 A Absolutely.
8 Q Teacher ratings are used for a lot of different things in
9 addition to just a general measure, isn't that true?
10 A I guess you're going to have give me something more
11 specific.
12 Q Yeah, not the best question. I apologize.
13 A Help me out.
14 Q Layoffs --
15 A Teacher --
16 Q If you have a layoff the district is going to use a
17 teacher's rating as a measure, as a determinative factor in
18 --
19 A By law we have to do that, correct.
20 Q -- selection? Fair to say?
21 A Yes.
22 Q So whereas maybe in the old days seniority might count, it
23 doesn't?
24 A Seniority only can come into effect if all other factors are
25 equal.

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1 Q Okay.
2 A So, yes.
3 Q If all factors are equal?
4 A Correct. So if I'm looking at two teachers and they have
5 exactly the same rating and exactly the same attendance and
6 exactly the same history and those two teachers are
7 essentially equal, then seniority would come into play.
8 Q Now you had some layoffs in 2017-18 scheduled?
9 A No.
10 Q What about the prior year?
11 A We have not done any layoffs since, I want to make sure I
12 get this right, fall of 2015 potentially. It might have
13 been '14. We've only done layoffs once in my tenure here.
14 Q Okay. But by law the layoffs have to be done based on
15 effectiveness?
16 A That would be correct.
17 Q Okay. And also the yearly review is something that is put
18 in a, and you can help me out here, but a system within the
19 State?
20 A That is correct, we have to report by June 30th in the REP,
21 which is the computer database system for the State.
22 Q What is it called?
23 A The REP, you're going to bare with me, I don't want to get
24 into the name of it, it's just REP.
25 Q REP?

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1 A Yeah.
2 Q And so that becomes part of the teacher's permanent record
3 with the State, correct?
4 A That would be correct.
5 Q So if a teacher seeks to move out of the district and go to
6 another district that record would be available for the
7 other district or any district to consult in order to
8 determine whether they're going to hire the teacher applying
9 for a job?
10 A You know, that's a great question. I can tell you that in
11 my tenure in administration I've never looked to see what's
12 available in the REP to see how someone was rated twelve
13 years ago. So you're asking something I can't speak to.
14 Q But you do know that there is a state warehouse that
15 maintains those?
16 A We are required to report to the State, yes.
17 Q And public schools have access to that information?
18 A Not to my knowledge. I couldn't speak to that.
19 Q Okay. So you don't know one way or another?
20 A I can tell you that I have never looked it up. I've never
21 gone in and looked in the REP to see someone's rating.
22 Q A teacher's rating also is important in terms of his or her
23 ability to transfer from one job to another within your
24 district?
25 A I'm going to say that if a teacher is -- you know, I can't

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1 think of a time when we have denied a teacher the ability to
2 move based on a rating, so that's a hard question. Could
3 there be a potential that a fourth grade teacher is
4 struggling and they want to move out of fourth grade? I
5 don't know, we have not denied those. So I'd have a hard
6 time saying that.
7 Q Okay. So it's your testimony that whether or not -- if a
8 teacher is rated ineffective they could still be eligible to
9 transfer to another job, depending on the circumstances?
10 A Depending on the circumstances, absolutely.
11 Q You would consider it?
12 A We have.
13 Q Do you remember communicating or being part of a
14 communication informing Pennie Davis that she would not be
15 eligible to transfer unless she had a rating of effective?
16 A I can't say that I recall that, no.
17 Q I've got a big book of exhibits in front of you to the
18 right. Thank you. I want you to turn to Exhibit 44 please?
19 A Okay.
20 Q I apologize for the format, it's very large font.
21 A I got ya.
22 Q Have you seen anything like this before, is this familiar to
23 you?
24 A I can't say that I've seen this before.
25 Q The name Ben Pack is on the top and it appears to be a

1 communication between Ben Pack and you and others?
2 A I see it's a communication from myself to Amy Gish, our JEA
3 President. I do see that I am CC'd on this along with a
4 couple of other people.
5 Q Okay. And Amy Gish is you said the president of the union?
6 A That would be president of our teacher's association.
7 MS. BONANNI: Okay, I would like to enter
8 this into evidence.
9 (At 11:31:52 a.m., Plaintiff's Exhibit 44 was
10 offered)
11 THE COURT: Any objection?
12 And what's the exhibit number, number 1?
13 MS. BONANNI: Oh, 44.
14 THE COURT: 44.
15 MR. MULLINS: Assuming it's confirmed, you
16 know, conditionally if Mr. Pack confirms the authenticity of
17 it I have no objection.
18 THE COURT: All right, we'll go ahead and
19 conditionally admit it then at this time.
20 (At 11:32:12 a.m., Plaintiff's Exhibit 44 was
21 admitted)
22 BY MS. BONANNI:
23 Q Okay, so this communication between Ben Pack and Amy Gish
24 where you are CC'd, it appears to be discussing the transfer
25 of Ms. Davis. And do you see the last line that Mr. Pack

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1 indicates, he explains quote, "teachers requesting to
2 transfer need to have an effective rating on their
3 evaluation or have successfully completed their IDP", end
4 quote?
5 A That's correct.
6 Q And that's what Mr. Beal said?
7 A Mr. Pack.
8 Q I do that all the time. That's what Mr. Pack said?
9 A In this e-mail, yes.
10 THE COURT: So who is Mr. Pack?
11 THE WITNESS: Mr. Pack --
12 BY MS. BONANNI:
13 Q Mr. Pack, go ahead and explain, he's the -- on your team?
14 A Mr. Pack is the Assistant Superintendent for Human
15 Resources.
16 THE COURT: Okay.
17 BY MS. BONANNI:
18 Q And he is also one of your closest advisors?
19 A He is a senior cabinet member, yes.
20 Q Okay. When you were part of this communication did you --
21 do you recall receiving this?
22 A You know, I can't say that I recall this particular one
23 specifically.
24 Q But you agree your name is on it?
25 A I would agree my name is on it.

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1 Q And when you saw that Mr. Pack was saying that you need to
2 have an effective rating did you write him back and tell
3 him, actually that's not true, we'll consider any transfer?
4 A Well I would say that -- and first of all to answer your
5 question, no. But that's not exactly what he says. He says
6 or successfully completed their IDP. I would say that Ms.
7 Davis was transferred to the high school this year and her
8 current evaluation reflects a minimally effective. So to
9 say that she had to be effective prior to a transfer would
10 be inaccurate.
11 Q Well I was just asking you about policy?
12 A And again, as I stated earlier as I testified to, I don't
13 believe that's the case. I do see what Mr. Pack has
14 written, but what he also said is that she would have to
15 have successfully completed her IDP.
16 Q Okay.
17 THE COURT: And, Mr. Beal, can you just
18 briefly explain what that is?
19 THE WITNESS: An IDP is a development plan to
20 help teachers who are struggling. We created this concept
21 when it came to the district. We worked this out with the
22 Teacher's Association. It was determined that if teachers
23 are struggling the district would provide for a mentor and
24 monthly meetings and direct feedback about performance. And
25 that the Association would then contribute a mentor towards

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1 that practice as well.
2 If the mentor happened to be the same person,
3 then that was fine, we didn't insist on two mentors. We
4 generally get along well with one mentor, but it's a
5 practice that's been very successful in the Jackson Public
6 Schools.
7 BY MS. BONANNI:
8 Q So in terms of policy, to the extent Ms. Davis made requests
9 to transfer back to the high school --
10 A I've seen a request from Ms. Davis.
11 Q Let me finish.
12 A Got ya.
13 Q To the extent that Ms. Davis made requests to return back to
14 the high school and was informed that she had to have a
15 rating of effective, is it your testimony that that does not
16 comport with your understanding of district policy?
17 A Can I get you to ask it one more time? And I'm sorry, I
18 just want to make sure I heard you correctly. What I would
19 say is that first of all, I'm only aware of one request that
20 was granted. And second of all, I can't tell you that we
21 have denied other teachers or Ms. Davis based on her
22 evaluation.
23 Q Transfer requests come to you?
24 A They would go to Mr. Pack.
25 Q And then Mr. Pack brings them to you?

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1 A Not necessarily.
2 Q Okay. What I'm asking you in my question is, assuming that
3 Ms. Davis was told when she made a request to transfer that
4 she would have to have a rating of effective in order to
5 transfer, is that contrary to your understanding of Jackson
6 Public School policy?
7 A Ms. Davis was not told that. I want to be very clear that
8 Ms. Davis was told that she needed to have an effective
9 rating or successfully complete her IDP. I can read the e-
10 mail.
11 Q I'm not asking you --
12 A So I'm just following up on that.
13 Q Sure. I'm not asking you about the e-mail.
14 A Okay. I thought we --
15 Q I'm asking you if Ms. Davis was informed by someone that in
16 order to move back to the high school she would have to have
17 a rating of effective, is that an untrue statement?
18 A I couldn't speak to whether or not she was informed of that,
19 no.
20 Q I'm asking you whether --
21 A She was certainly never informed of that by me.
22 Q So if she was told that by someone else that would be
23 contrary to your understanding of the policies at Jackson?
24 A That would be contrary to what has happened within Jackson
25 Public Schools.

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1 Q So let's talk about student logs. Can you describe for the
2 jury what is a student log? You can put that on the corner
3 or wherever is comfortable actually.
4 A We use a computerized database system, Power School. Every
5 school district uses --
6 THE COURT: David, would you get Ms. Bonanni
7 a couple tissues there to wipe off. Yeah, okay.
8 THE WITNESS: -- a variety of software.
9 Power School is ours. It's a student data management
10 system, it holds everything from name and address to
11 emergency contacts and allergies as well as student
12 discipline, attendance, grades, pretty much anything that
13 would have to do with a student record would be located
14 within that.
15 BY MS. BONANNI:
16 Q And that log becomes part of a student's permanent record?
17 A That's correct.
18 Q And the permanent record is recorded and maintained?
19 A It has to be.
20 Q And isn't it true that as superintendent you expect your
21 administrators to become familiar with a student's log in
22 the event there's issues or concerns that come up?
23 A I would anticipate that my administrators would be
24 interacting with a student's behavior log.
25 Q And teachers must make entries into this log if there's any

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1 kind of infraction of the student code?
2 A So when a teacher would have a concern in class and there
3 would be a need to write up a student they would create a
4 log, they would go in and create a log entry. The referral
5 if you will, the administrator would go into the log and
6 typically enter in what consequence or outcome there would
7 be associated with that behavior.
8 Q Okay. And once that log entry is made, it's made by
9 computer?
10 A That's correct.
11 Q And once the entry is made in the log, that entry, there's
12 an alert that's sent to the principal?
13 A I believe so. I don't participate at that level.
14 Q Okay. But you're familiar with how they work?
15 A To the most part.
16 Q And you do -- while you may not be in the nitty gritty of
17 the log, you do have certain expectations for the people
18 that work under you such as school principals?
19 A Sure.
20 Q And you understand what you expect of them in terms of how
21 they perform their job functions?
22 A Without question.
23 Q So would it be fair to say that your expectation as
24 superintendent would be that your principals would review
25 log entries and take appropriate action?

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1 A Absolutely.
2 Q And in fact, the student code, the handbook outlines and
3 specifically gives administrators guidelines as to what
4 kinds of discipline to level with various infractions?
5 A That's correct.
6 Q Let's take a look at the student handbook, Exhibit 10.
7 A Exhibit what number?
8 Q 10.
9 A Okay.
10 Q And I'll tell you for the record, Mr. Beal, this exhibit is
11 just an excerpt of the handbook.
12 A Okay.
13 Q It's not the whole thing. Can you verify that this is in
14 fact some excerpts from the Jackson High student handbook in
15 effect from 2015 to 2016?
16 A I can.
17 MS. BONANNI: I'd like to move to enter
18 Exhibit 10 into evidence.
19 (At 11:41:06 a.m., Plaintiff's Exhibit 10 was
20 offered)
21 MR. MULLINS: No objection, your Honor.
22 THE COURT: So admitted by way of stipulation
23 of the parties.
24 (At 11:41:11 a.m., Plaintiff's Exhibit 10 was
25 admitted)

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1 BY MS. BONANNI:
2 Q So, Mr. Beal, I'm just looking at page 2 of Exhibit 10, it's
3 the secondary code of conduct for students?
4 A That's correct.
5 Q And the first sentence of this log, I'm sorry, of this page
6 of the handbook indicates quote, "repeat violations will
7 result in progressive consequences", end quote. Can you
8 describe for the jury what that means, progressive
9 consequences?
10 A Okay, that would mean that if a student, I'll use a generic
11 example, but obviously we can talk about more specific, if
12 the student is tardy that first time they might get a
13 warning, the second time they might get an after school
14 detention, the third time they might get an in school
15 suspension, the fourth time they might get an out of school
16 suspension.
17 And obviously that's escalating it rather
18 quickly, but that would be an example of furthering
19 consequences for poor behavior.
20 Q Okay. Now if a teacher or -- well let me ask you a question
21 before I go on. Are teachers the only ones that can put
22 entries in the log?
23 A No, a principal can if they have interaction with a student,
24 absolutely.
25 Q Okay. So if a principal or a teacher puts a log into the

1 student's permanent record and further subsequent
2 investigation shows that that log is somehow inaccurate,
3 isn't it part of Jackson School policy that the principal
4 can log on and adjust that entry?
5 A They can go in and make an amendment to the entry. They
6 should not be going in and necessarily changing the entry,
7 but they can make additional notes down in the entry.
8 Q Okay. To clarify?
9 A That would be accurate.
10 Q To correct the entry to reflect what an investigation
11 revealed?
12 A Potentially, yes.
13 Q And I would think that's important for a principal to do
14 because it is the student's permanent record, do you agree
15 with that?
16 A I would agree.
17 Q Now I know you didn't know Pennie Davis, but you know her
18 now?
19 A I do.
20 Q And have you become aware that prior to the assault on
21 October 12th, 2015 that Pennie Davis had used the student
22 log and had made several entries, do you have any personal
23 knowledge of that?
24 A I have reviewed the log and seen those entries, yes.
25 Q And that was appropriate for her to do if she observed those

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1 behaviors?
2 A Absolutely.
3 Q Okay. And fair to say, to your knowledge have any of those
4 logs been changed or altered?
5 A Not to my knowledge.
6 Q Have any of those logs been amended?
7 A Not to my knowledge.
8 Q Okay. Pennie Davis reported that she was assaulted by a
9 student that we're referring to as M.H. on October 12th,
10 2015 and she made a call to your office, left a message. Do
11 you recall receiving that message?
12 A I do not.
13 Q Now your first act or involvement we'll say in this
14 situation would be the next day, which is October 13th?
15 A That's correct.
16 Q Okay. And that day you and Mr. Pack, your Assistant
17 Superintendent of Human Resources, went to Pennie Davis'
18 classroom?
19 A Yes, we did.
20 Q And you went to the classroom during her instruction time,
21 correct?
22 A That's correct.
23 Q You walked into the classroom while she was instructing
24 students?
25 A Yes.

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1 Q You walked around the room and then asked Ms. Davis to come
2 out in the hall?
3 A We did.
4 Q And you wanted to have a conversation with her because you
5 learned that she'd been injured?
6 A I did.
7 Q Ms. Davis shared with you that she had obtained medical
8 attention for her hand?
9 A She did.
10 Q And Ms. Davis also shared that she had gone to the police
11 because of the assault?
12 A I am aware that she went to the police.
13 Q Okay. So you had that awareness that Pennie Davis had gone
14 to the police on October 13th?
15 A I can't genuinely say that. So that part -- as far as am I
16 aware that she was going to the police, yes. If you're
17 telling me --
18 Q Okay.
19 A -- at that particular time I can't say that.
20 Q Do you remember Pennie telling you that she had gone to the
21 police during that October 13th conversation?
22 A I don't. We were in her room for five minutes, we were in
23 the hall for five minutes or less and so, no.
24 Q Now during that five minutes or less you saw that Pennie
25 Davis had a hand wrapped?

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1 A I did.
2 Q And you asked her to unwrap it?
3 A Ms. Davis had an ace bandage if you will, it wasn't a wrap,
4 but an ace if you will on her hand. And I did ask if I
5 could see the bruising, yes.
6 Q And she let you know that the doctor had wrapped and -- well
7 let me back up. She let you know that the doctor had made
8 the determination that she needed the wrap?
9 A She did.
10 Q And she let you know that she had seen a clinic and that she
11 could not remove that wrap?
12 A She did.
13 Q And did you believe her?
14 A I did. I had no reason not to.
15 Q No reason not to believe her?
16 A That's correct.
17 Q Mr. Pack threatened her with insubordination during that
18 five minutes, do you remember that?
19 A I don't.
20 Q Do you remember Mr. Pack looking at Ms. Davis and saying to
21 her when she refused to unwrap her hand, he said to her I
22 can take you out, Davis, do you remember that?
23 A I don't.
24 Q Now if someone is going to remove Ms. Davis from the school
25 for the day because of an act of insubordination, that would

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1 be within the duties and responsibilities of Mr. Pack, do
2 you agree?
3 A Yes, Mr. Pack has the ability to write up a teacher for
4 insubordination.
5 Q Because he is in charge of human resources?
6 A That's correct.
7 Q And that includes managing the human resources of teachers?
8 A Yes.
9 Q Do you remember asking Ms. Davis whether she showered with
10 the wrapped hand?
11 A I did not ask her that.
12 Q Don't you remember that?
13 A I did not ask her that.
14 Q On the 13th Ms. Davis understood that she would be going to
15 the Workwell Clinic, which is your clinic?
16 A When a student is -- when a student, excuse me. When an
17 employee is injured on the job we consider the concern for
18 what would be Worker's Compensation. And so we send our
19 employees to Henry Ford Allegiance Health, then Allegiance
20 Health the Workwell Clinic downtown to be checked out by our
21 doctor, yes.
22 Q Okay. And in order for Pennie Davis to be checked out by a
23 doctor she needs to be referred to the clinic and she needs
24 to have coverage for the room?
25 A That would be correct.

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1 Q A teacher can't just leave the room unattended?
2 A Definitely not.
3 Q That's a major infraction?
4 A We would prefer they not leave their class unattended.
5 Q Up to and including termination, right?
6 A I wouldn't hardly say that we've ever terminated anyone for
7 that offense.
8 Q But it's definitely something that will result in a
9 discipline?
10 A No, it's not definitely something that would result in a
11 discipline. It would not happen. Typically we would ask
12 teachers to cover or we would cover that. We would ask that
13 the teacher talk to the principal. So I can't say --
14 Q Oh, I understand what you're saying.
15 A -- where you're going with that.
16 Q What you're saying is, it doesn't happen because we give
17 teachers coverage?
18 A That would be accurate.
19 Q And the coverage typically comes from the human resources
20 office that makes that arrangement and it's oftentimes
21 someone named Jessica?
22 A No, Jessica is the secretary in the human resource
23 department. Typically building coverage would be handled by
24 the building principal or if the teacher is going to be gone
25 and we know in advance it would be handled through Aesop,

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1 which is our substitute teacher system to request a sub.
2 Q And that's a woman named Kathleen I believe or Kathy?
3 A I don't deal with Aesop.
4 Q Okay. So that day Pennie understood that she would receive
5 the directive to go to Workwell and have coverage, but she
6 was suspended because she didn't go on the 13th, are you
7 aware of that?
8 A She was not suspended because she did not go on the 13th.
9 And I would say that Ms. Davis has never been suspended.
10 Q Wasn't she threatened with insubordination?
11 A At, you're going to have to be more specific.
12 Q Okay. So there's a letter, let me just locate it.
13 MS. BONANNI: 15? Yeah, can I have it?
14 BY MS. BONANNI:
15 Q I'm going to go back to that.
16 A I'm with you.
17 Q Oh, here we go. Look at Exhibit 14.
18 MS. BONANNI: Can I have 14?
19 BY MS. BONANNI:
20 Q So during your five minute meeting out in the hall on the
21 13th Pennie Davis wasn't immediately sent to Workwell, fair
22 to say?
23 A I believe when we left that meeting she was informed that we
24 were going to be making a referral. Mr. Pack then would
25 have gone back to his office and made that referral.

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1 Q Okay. So I'm showing you Exhibit 14, can you identify this
2 for the record, Sir?
3 A This looks to be a directive, a verbal warning from Mr. Pack
4 to Ms. Davis.
5 Q Okay. And this is -- you've seen this before?
6 A I have.
7 MS. BONANNI: I'd like to move to enter
8 Exhibit 14 into the record.
9 (At 11:53:06 a.m., Plaintiff's Exhibit 14 was
10 offered)
11 MR. MULLINS: No objection.
12 THE COURT: So admitted by way of stipulation
13 of the parties.
14 (At 11:53:11 a.m., Plaintiff's Exhibit 14 was
15 admitted)
16 BY MS. BONANNI:
17 Q I want you to look at the third paragraph and it confirms
18 what you're telling me that later in the day she was
19 referred, directed to go to Allegiance Health?
20 A That's correct.
21 Q And isn't it also true that the way she was referred to go
22 to Allegiance was that Mr. Pack's office left a voicemail
23 for her?
24 A I believe that's the case.
25 Q And the voicemail was left by Jessica who works under Mr.

1 Pack?
2 A I believe that's the case as well.
3 Q That voicemail was left for Ms. Davis after she had gone
4 home for the day?
5 A I don't know the time, but I believe that would be the case
6 as well.
7 Q Now didn't you investigate to try to determine at what time
8 Pennie Davis accessed her voicemail?
9 A I didn't, no.
10 Q And there were also emails that were sent, do you remember
11 those?
12 A I did not send Ms. Davis emails, so I -- you're asking me to
13 respond and I can't say that I did, no.
14 Q Okay. Well you do have a recollection that you did not
15 investigate whether Pennie Davis accessed her voicemail from
16 October 13th?
17 A I can't say. I guarantee I didn't.
18 Q Okay.
19 A Could it have been done? Absolutely, but I guarantee I did
20 not.
21 Q Who is the person that's in charge of the IT work at the
22 Jackson Public Schools?
23 A Jessie Hagenson (ph) is our technology director.
24 Q So if a request for e-mail was made -- or I'm sorry,
25 voicemail access was made it would be through Jessie?

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1 A That would be correct.
2 Q Do you recall making that request?
3 A I don't.
4 Q Okay, let's look at Exhibit 35 then.
5 THE COURT: Ladies and gentlemen, I
6 understand that there's a number of exhibits that we're
7 going through in a notebook and I assume at some point when
8 they've all been admitted the jury is going to probably be
9 compiled in a notebook as well.
10 Is that correct, Ms. Bonanni?
11 MS. BONANNI: Yes.
12 THE COURT: Okay. Go ahead.
13 MS. BONANNI: Several notebooks.
14 THE COURT: Okay.
15 BY MS. BONANNI:
16 Q Sir, could you please identify this for the record, these
17 emails?
18 A It looks to be an e-mail chain between myself and Mr. Pack.
19 Q And there's an e-mail from Jessie to you, do you see that?
20 A I do.
21 Q And Jessie is the head of the --
22 A IT department.
23 Q -- IT department. And you asked Jessie quote -- oh I'm
24 sorry, Jessie is telling you quote, "I have followed up on
25 your request to look into Pennie Davis' processed e-mail

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1 after the Workwell e-mail was sent to her on October 13th.
2 On October 13th Pennie Davis last sent an e-mail at 1:52,
3 nothing else is listed as sent in her in box until October
4 15th at 8:00 a.m.", end quote. So did you ask the IT
5 department to try to access her e-mail to see if she had
6 been on the system?
7 A I did not. As I look at the e-mail, as long as we're on
8 this exhibit between myself and Ben Pack, I asked very
9 specifically I said I would have a hard time -- excuse me,
10 I'm going to have a hard time finding proof that she read
11 her e-mail after work on the 13th.
12 I asked specifically of Mr. Pack, do you have
13 a record of Jessica's call made from that office? I don't
14 have that proof. I didn't request that proof.
15 Q Okay.
16 A But I see Jessie's e-mail.
17 Q But Jessie is emailing you?
18 A Yes.
19 Q And the inquiry to Jessie appears to be, check Pennie Davis
20 and see when she accessed her e-mail on the 13th?
21 A I would stipulate that if Mr. Pack had made that request it
22 would have been ultimately under my behalf.
23 Q Do you see Mr. Pack's name on that e-mail?
24 A I don't.
25 Q Only your name is on that e-mail?

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1 A I do.
2 Q It's an e-mail that's privately between you and Jessie,
3 correct?
4 A That's correct.
5 Q Please look at Exhibit 12.
6 MS. BONANNI: Oh, I'm sorry, I need to move
7 to admit Exhibit 35.
8 (At 11:58:03 a.m., Plaintiff's Exhibit 35 was
9 offered)
10 THE COURT: Any objection to its admission?
11 MR. MULLINS: This is the e-mail of December
12 the 9th, 2015?
13 MS. BONANNI: The exhibit has emails December
14 9th from Jeff and Pack and Hagenson. There's a series of
15 emails.
16 MR. MULLINS: No objection, your Honor.
17 THE COURT: All right, so admitted by way of
18 stipulation of the parties.
19 (At 11:58:34 a.m., Plaintiff's Exhibit 35 was
20 admitted)
21 BY MS. BONANNI:
22 Q Now I think what might be helpful is if you take out Exhibit
23 --
24 MS. BONANNI: If we have an extra 35 if I may
25 approach because I want him to talk about the --

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1 Can you give me that?
2 THE COURT: Sure.
3 THE WITNESS: I'm with you.
4 BY MS. BONANNI:
5 Q It will be easier. So I'm going to give you 35 and you can
6 --
7 A Hold them next to each other.
8 Q -- hold them next to each other. In Exhibit 35, e-mail
9 between you and Ben Pack, you appear to be talking about
10 what time Jessica left word for Pennie Davis to go to the
11 doctor, agreed?
12 A Can you give me a specific, just tell me which one I'm
13 looking at?
14 Q Sure. Looking at the first e-mail between Ben Pack, Jeff
15 Beal dated, December 10th, 2015, 7:23 a.m.
16 A That's correct.
17 Q And what Ben Pack is telling you is quote, "due to being
18 during class Jessica called Krista to call Pennie. I have
19 weak testimony from Krista that she remembers calling. I
20 asked Jessie to retrieve phone record between 10:00 a.m. and
21 1:00 p.m. for these two phones", end quote. So the --
22 A I see that.
23 Q The two of you were talking about to see if Pennie Davis is
24 telling the truth about whether she accessed voice mails or
25 emails on October 13th about going to Workwell, fair to say?

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1 A On December 10th, yes.
2 Q But that's what you're looking at?
3 A At this point absolutely.
4 Q And let's look at Exhibit 12. You find out that Jessica
5 left a message for Pennie. The message says quote, "Hi
6 Pennie, it's Jessica, anytime give me a call as soon as you
7 can please", end quote. That message was sent October 13th,
8 2015 at 2:59 p.m., correct?
9 A I see that, yes.
10 Q And at that time during that time frame high school teachers
11 left at around 2:20, correct?
12 A About the approximate time we would dismiss for the day,
13 that's accurate.
14 Q And that's exactly what Pennie had told you and told Mr.
15 Pack when you confronted her about these emails and voice
16 mails, she indicated that she didn't receive them until she
17 came to work on the 15th. So this voice mail is consistent
18 with what Pennie said, isn't it?
19 A This voice mail dated 2:59 would be consistent that it was
20 left after she left work.
21 Q Now do you remember Ms. Davis being written up because she
22 didn't go to Workwell on the 13th? I think I showed you
23 that exhibit.
24 A Can we go back to that exhibit?
25 Q Yes.

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1 THE COURT: Which number are we on?
2 MS. BONANNI: He's looking at 15, but in the
3 meantime I'm really not doing such a hot job at moving to
4 admit Exhibit 12, so I apologize, that's the voice mail.
5 THE COURT: Any objection to the admission of
6 12?
7 MR. MULLINS: I guess he had indicated he was
8 unaware of it. Until we connect up somebody being aware of
9 it I --
10 THE COURT: So you think we need further
11 foundation on Exhibit 12?
12 MR. MULLINS: Yes. And I'm sorry, lack of
13 foundation.
14 THE COURT: All right. So at least at this
15 point I'll sustain until there's further foundation.
16 BY MS. BONANNI:
17 Q In terms of Exhibit 12 do you remember ever seeing this?
18 A No.
19 Q Have you seen a form like this before coming from the
20 school?
21 A I can't speak specifically to that, no.
22 Q Jessica Carter is one of your employees?
23 A She is the secretary in our human resource department.
24 Q And the phone number for the human resources department is
25 517-841-2155, that's one of the exchanges?

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1 A That would be an exchange.

2 Q And Jcarter@JPSmail.org is --

3 A Jessica Carter.

4 Q -- a consistent JPS e-mail?

5 A That's correct.

6 MS. BONANNI: So I'm going to move to admit

7 this document, it's a business record of the school. He's

8 the superintendent and he can confirm that this appears to

9 be a communication that's a business record.

10 (At 12:03:36 p.m., Plaintiff's Exhibit 12 was

11 offered)

12 THE COURT: Mr. Mullins?

13 MR. MULLINS: I still don't think we've laid

14 a foundation. I know Mr. Pack is coming and I don't doubt

15 that he might be able to pick it up, but I'd like to leave

16 it to him.

17 THE COURT: Okay. I think the exhibit is

18 probably admissible with further foundation. It sounds like

19 Mr. Pack is going to be witness to that. Okay.

20 MS. BONANNI: That's fine.

21 MR. MULLINS: 12?

22 THE COURT: I think it was 12.

23 MS. BONANNI: Okay, yeah.

24 BY MS. BONANNI:

25 Q Okay. So I'd like you now to -- we're talking about the

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1 verbal warning that was given to Pennie Davis as a result of
2 events and circumstances surrounding this visit to Workwell.
3 A The Exhibit 14?
4 Q Yes.
5 A I got ya. I'm looking at it now.
6 Q Okay. And so Pennie Davis received an official warning from
7 the school for not submitting to this Allegiance
8 Occupational Health appointment on the 13th, correct?
9 A Ms. Davis received a verbal warning. We documented the
10 verbal warning, it is Exhibit 14. She received the verbal
11 warning for not going to occupational health on the 13th,
12 the 14th, until we went over to see her on the 15th.
13 Q Now you discover later on, a couple months later, that in
14 fact Pennie Davis had been telling you the truth that she
15 hadn't accessed any voice mails, she hadn't received the
16 emails and when you discovered that she was telling the
17 truth did you take this letter out of her permanent record?
18 A I did not.
19 Q You could have done that though, you have that authority,
20 don't you?
21 A I do.
22 Q Now you attended a meeting with Pennie Davis on the morning
23 of the 15th of October, do you remember that?
24 A I have attended several meetings, yes.
25 Q Do you remember --

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1 A You'd need to give me a specific on it.
2 Q Okay. Do you remember the meeting in the morning where
3 you're discussing her going to the clinic and appearing for
4 Workwell and Pennie explains that I didn't receive any of
5 these notices, okay I'll go, oh my gosh?
6 A I didn't attend that meeting. That would be Mr. Pack.
7 Q You don't remember that?
8 A I don't remember being in that meeting. I believe that
9 would be Mr. Pack.
10 Q Okay. So you heard about that meeting?
11 A I believe Mr. Pack would have gone over to direct her to go
12 to Workwell.
13 Q Okay. But you learned that Pennie Davis --
14 MR. MULLINS: Excuse me. Mr. Beal, if you
15 could just kind of back here, if you could just talk up a
16 little bit.
17 THE WITNESS: Yeah, I apologize.
18 BY MS. BONANNI:
19 Q But what you learned was that Pennie Davis didn't come to
20 work on the 14th because she took a sick day?
21 A I believe that's correct.
22 Q And teachers are permitted sick days?
23 A That is also correct.
24 Q And on the 15th when Pennie Davis got notice that she needed
25 to go to the employer clinic she did go to the clinic on the

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1 15th in the morning, isn't that correct?
2 A I believe a sub was provided for her to go to the clinic on
3 that date.
4 Q And you remember that as far as the sub there was delays, it
5 took a while, but as soon as a sub was arranged she went?
6 A I don't know that.
7 Q She complied with your directive, correct?
8 A I know she went to the clinic on the 15th, so I would assume
9 so, yes.
10 Q Okay. You know there were two sets of medical records that
11 addressed Pennie Davis' situation?
12 A I know Pennie Davis was seen by a clinic in Brooklyn as well
13 as our clinic, yes.
14 Q And the clinic in Brooklyn she saw them on the 12th?
15 A I believe that's the date, yes.
16 Q And she saw the employer, your clinic on the 15th?
17 A That's correct.
18 Q And both of these medical clinics treated her hand in a
19 similar fashion, correct?
20 A I would say that our clinic immobilized her hand. I would
21 say that her clinic did not immobilize her hand.
22 Q Okay. And you agree that the reason to immobilize her hand
23 was to permit it to heal?
24 A No, I don't. I agree that the reason they immobilized her
25 hand is because she refused to allow the clinic to x-ray her

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1 hand and so they could not determine the extent of the
2 injury. And so to protect themselves they immobilized her
3 hand.
4 Q They gave her a diagnosis at the time of a contusion,
5 correct?
6 A I believe that's what the record would say.
7 Q And isn't it also true that prior to even going to Workwell
8 Pennie Davis made sure that Ben Pack understood that she had
9 already had an x-ray on that hand, that she did not feel
10 comfortable having another one and that Ben Pack assured her
11 that the doctors would work it out, they would share the
12 medical information. He knew that before she even went to
13 Workwell?
14 A I can't testify to that. I don't know that.
15 Q He never shared that with you?
16 A I don't know that that conversation ever took place.
17 Q At the end of the day you are aware that both clinics gave
18 her the same diagnosis of a contusion?
19 A I am aware that both clinics gave her a diagnosis of a
20 contusion. I believe as I look at her doctor's note from
21 Monday night that they did not see evidence of swelling or
22 bruising. So --
23 Q That wasn't my question.
24 A I know, but you're asking --
25 Q My question --

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1 A -- me if both clinics gave the example. You asked me about
2 both clinics, I told you what I saw.
3 Q I'm just asking you about the ultimate diagnosis?
4 A Sure.
5 Q Which was contusion?
6 A Yes.
7 Q And that was consistent, correct?
8 A I believe so.
9 Q Yes. Now the investigation into what happened to Pennie
10 Davis on the 12th, this assault, that was completed by the
11 school on the day it happened, October 12th, 2015, correct?
12 A That's correct.
13 Q Mr. Zesson looked into it and made a conclusion and a
14 determination, correct?
15 A Mr. Zesson did with the assistance of Ms. Pauli.
16 Q And the investigation's conclusion was quote, "incidental
17 contact", correct?
18 A The investigation's conclusion was that it was incidental
19 contact and did not rise to the level of assault.
20 Q So by the time you received these medical records confirming
21 that the contact that Pennie received on her hand from M.H.
22 was of sufficient force to cause a contusion and required a
23 wrap, did you seek out Mr. Zesson or anyone from the high
24 school to ask them to reconsider this conclusion?
25 A I had no reason to.

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1 THE COURT: Mr. Beal, just for maybe
2 beneficial, what do you understand a contusion to be?
3 THE WITNESS: A contusion is a bruise.
4 THE COURT: Okay.
5 BY MS. BONANNI:
6 Q And bruises come in various scales?
7 A Sure, I would agree.
8 Q They can be very minor and they can be more severe?
9 A If you say so.
10 Q They can be painful?
11 A They can.
12 Q We're not doctors?
13 A I'm not.
14 Q So both you and I we would defer to the clinics and the
15 doctors to determine whether a person needs a wrap or
16 whether a person needs a splint or whether a person needs
17 five x-rays. That's not our province?
18 A I would guarantee I would defer to the doctor on that.
19 Q Okay. You did participate in a meeting on the 15th in the
20 afternoon?
21 A I did.
22 Q And that meeting was initiated by you?
23 A It was.
24 Q Do you recall that the meeting was initiated by you after
25 Pennie Davis provided you with the PPO?

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1 A I believe so.
2 Q She gave you the PPO, she was with her union president,
3 correct?
4 A That's correct.
5 Q She gave you the PPO, you looked at the PPO and you told the
6 two of them, get in here?
7 A I don't believe that that's the case. We would have had a
8 conversation in my office. I don't know that we would have
9 ever been get in here from anywhere else. It would have
10 always been in my office.
11 Q Okay, get into my office?
12 A I --
13 THE COURT: Mr. Beal, just so we have a jury
14 that's following along, a PPO is a Personal Protection
15 Order, right?
16 THE WITNESS: That's correct.
17 THE COURT: All right. Go ahead.
18 THE WITNESS: And I'm going to be fair with
19 you. I cannot say that I ever said a conversation of get in
20 here, because at the end of the day all conversations and
21 any meeting that I would call would take place in my office.
22 BY MS. BONANNI:
23 Q But my point is, you were angry?
24 A No.
25 Q You saw that PPO and you were angry?

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1 A No.
2 Q That PPO was given to you during a break in parent teacher
3 conferences, correct?
4 A I can't tell you when I received it.
5 Q There was a lot of activity going on in the school, do you
6 remember that?
7 A Again, I can't tell you when I received it.
8 Q But that meeting that you called into your office was called
9 immediately?
10 A At the end of the day? I believe that meeting took place at
11 the end of the day.
12 Q Don't you remember looking at the PPO, getting it from
13 Pennie and from Amy and telling them, get in my office and
14 having a meeting on the spot?
15 A I believe I've testified that I never said get in my office.
16 Q Okay.
17 A And I believe that I would testify that any meeting that I
18 called would take place in my office.
19 Q Do you remember yelling during that meeting?
20 A I do not remember yelling. I would say the voices were
21 raised, certainly.
22 Q Okay. You raised your voice, correct?
23 A I would say that that would be potentially characteristic,
24 yes. I would not deny that voices were raised and I would
25 probably have one.

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1 Q Pack raised his voice, correct?
2 A I believe so as well.
3 Q During this meeting Mr. Pack made a comment to Pennie Davis
4 that was quote, "how do we know you didn't hit your hand
5 with a hammer", end quote. Do you remember him making that
6 comment, yes or no?
7 A Sure I do, but that wasn't in statement to say that he
8 believed she hit her hand with a hammer. That was a
9 statement that says, it's been between Monday and Thursday
10 since you've seen a doctor, you know, it's not a matter of
11 if he thought she hit her hand with a hammer. It's a matter
12 of the time that had gone by between the time she was seen
13 by our doctor and the incident.
14 Q Mr. Beal, she went to the doctor the day of the incident.
15 Isn't that true, she went to the doctor that night?
16 A She didn't go to our doctor until Thursday.
17 Q Isn't it also true that she -- no one reached out to her
18 that day, no one from the administration reached out to her
19 that day?
20 A That's inaccurate.
21 Q You've --
22 A That's not true.
23 Q -- got medical records from a clinic in Brooklyn, Michigan
24 confirming that Pennie Davis sought treatment that night?
25 A I did.

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1 Q And was given an x-ray and that a doctor chose to wrap her
2 hand up as a form of treatment and they were waiting for the
3 x-ray to be developed offsite and brought back before they
4 could reach a final conclusion and diagnosis. You received
5 those records?
6 A I have received those records, but your statement is
7 inaccurate. Administration did see Pennie Davis the day of
8 the incident.
9 Q Tempers flared during this meeting?
10 A I would say that Ms. Gish raised the elevation of the
11 temperament in the room.
12 Q Pennie Davis wasn't yelling, was she?
13 A I believe Ms. Gish was raising the --
14 Q My question, Pennie Davis wasn't yelling, was she?
15 A I can't remember Ms. Davis yelling, no.
16 THE COURT: As far as you know do you even
17 remember if her voice was elevated?
18 THE WITNESS: I can't say that, no.
19 THE COURT: Okay.
20 BY MS. BONANNI:
21 Q Now during the meeting you didn't at any time tell Pennie
22 Davis that the PPO that she had just received could not be
23 honored within the school, fair to say?
24 A We have PPO's all the time. And no, I did not say that. In
25 fact, I believe we honored that PPO within the setting of

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1 the school.

2 THE COURT: Okay, Mr. Beal, just for some

3 background for the jury a little bit on PPO's. I mean there

4 could be PPO's issued between students, correct, there could

5 be PPO's that could be issued against a parent to a coach,

6 to a whole variety of relationships within the school,

7 correct?

8 THE WITNESS: Without question anyone can

9 receive, you know, if they feel that they need they can come

10 down and seek that remedy within the school system and we

11 comply with those.

12 THE COURT: Okay, very good.

13 BY MS. BONANNI:

14 Q But with this issue tempers flared because administration

15 thought that this should stay in the building and should not

16 go outside the building?

17 A No, that's not the way I recall it.

18 Q Do you remember having a conversation with Mr. Pack where he

19 alerted you that he felt this was a building issue that

20 shouldn't have gone outside the building?

21 A Again, do I recall Mr. Pack saying something along those

22 lines? Without question. But do I say that this would not

23 have been -- it's not extraordinary or out of the ordinary

24 for this to happen. We had a teacher the year prior have a

25 PPO against a student. So again, I would say that to say

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1 that we don't do that would be inaccurate.
2 Q Do you remember Mr. Pack saying this is a building issue and
3 should stay in the building?
4 A That sounds like something he would have said, but you're
5 asking me to testify for Mr. Pack. So I'll wait for that.
6 Q Exhibit 8, could you turn to it please? Can you identify
7 this for the record, Sir?
8 A Well this looks like the Personal Protection Order obtained
9 by Pennie Davis.
10 Q Okay. And this PPO if you'd turn to -- there's a stamp at
11 the back of that exhibit that indicates it was received by
12 the JPS, do you recall that being provided to the school
13 district?
14 A That's our stamp that would say it was provided, yes.
15 MS. BONANNI: I'd like to move for the entry
16 of Exhibit 8.
17 (At 12:19:49 p.m., Plaintiff's Exhibit 8 was
18 offered)
19 THE COURT: Mr. Mullins, any objection?
20 MR. MULLINS: I'm just trying to catch up.
21 THE COURT: Just for the record, this is the
22 Petition for the PPO, the verified statement concerning the
23 PPO and the actual Personal Protection Order itself,
24 correct?
25 MS. BONANNI: I'm so sorry?

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1 THE COURT: Oh, it's actually three different
2 things. It's the Petition for the PPO, then the verified
3 statement concerning the PPO and then the actual PPO itself,
4 you're referencing all of those with respect to Exhibit 8,
5 correct?
6 MS. BONANNI: Yes, I am.
7 THE COURT: Okay.
8 MR. MULLINS: Which is my confusion, your
9 Honor. So she had referenced the PPO and I'm not sure what
10 we're --
11 THE COURT: Well I think it's the whole kind
12 of PPO package.
13 MS. BONANNI: Thank you. I was going to say
14 the PPO packet.
15 MR. MULLINS: All right, fair enough.
16 MS. BONANNI: Okay. No objection to the
17 exhibit?
18 MR. MULLINS: None, your Honor.
19 THE COURT: Okay, so admitted by way of
20 stipulation of the parties.
21 (At 12:21:02 p.m., Plaintiff's Exhibit 8 was
22 admitted)
23 BY MS. BONANNI:
24 Q I'll refer to this Exhibit 8 as the PPO materials for
25 clarity, okay?

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1 A Okay.

2 Q Mr. Beal, is there anything within the PPO materials where

3 Pennie Davis is asking for this student, M.H., to be removed

4 from the high school? Take your time.

5 A On the I believe the Personal Protection Order, let me make

6 sure I've got the right page. And if I may, your Honor?

7 THE COURT: Sure.

8 MR. MULLINS: I just -- I know that Exhibit 8

9 is the materials that would be from your PPO file, but just

10 so the record is clear, when we talk about stamped, the only

11 thing that's stamped or received by the school district is

12 the last two pages --

13 THE COURT: Right, the actual PPO itself.

14 MR. MULLINS: -- which is your order itself.

15 And I know he's not a lawyer, so I think --

16 THE COURT: With respect to --

17 MR. MULLINS: -- asking about the order now?

18 THE COURT: Right. So with that you kind of

19 clarified that, so I appreciate that. That would be

20 accurate.

21 THE WITNESS: Again, looking at the page that

22 we stamped, you know, the conversation does not require him

23 to be removed from the school, no. It does require, you

24 know, not to appear at the work place or residence of the

25 petitioner, approaching or confronting the petitioner,

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1 entering onto property owned, sending e-mail communication,
2 contacting by telephone, that kind of stuff.
3 BY MS. BONANNI:
4 Q Okay. And so your understanding was that this PPO would be
5 complied with by these two individuals, Pennie Davis and
6 M.H., just not having contact?
7 A I believe the student was removed from Ms. Davis' classroom
8 the day the incident took place. I don't believe he was
9 ever in her classroom again. I believe that Ms. Pauli met
10 with Pennie Davis as a result of this and they worked out
11 with Ms. Davis and then Ms. Pauli met with the student and
12 worked out a very detailed plan for how they were going to
13 move through the building so that the student and the
14 teacher shouldn't be in contact with each other.
15 Q And that was working?
16 A To my knowledge.
17 Q You made the decision to transfer her to Parkside?
18 A I did.
19 Q And you made that decision to transfer her to Parkside when
20 the PPO was working, isn't that correct?
21 A I made the decision to transfer her to Parkside when Ms.
22 Davis brought me her intention to modify the PPO because she
23 still felt fearful in her words. So because she had
24 expressed to us that she had continued to feel fearful of
25 this student, we made the change to separate the two because

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1 there would be no way that she would run into the student
2 and there was no way that the student would run into her at
3 Parkside.
4 Q Isn't it true, Mr. Beal, that when M.H. started to -- well
5 let me rephrase. On November 4th when Pennie realized that
6 M.H. was not being accounted for and was running the halls
7 and banged her door she did two things. She made a motion
8 to come see the Court and she sent a letter to Principal
9 Pauli and asked for a meeting.
10 And that's the meeting that you just talked
11 about where they sat down and crafted this excellent
12 comprehensive plan of how to deal with it and it was
13 working, isn't that true?
14 A Okay. I believe we're talking two different meetings. I
15 believe she would have set up the how to move throughout the
16 building prior to that. Again, I'm not aware of the student
17 running the halls or not being supervised. That would be
18 something I'm not aware of.
19 I am aware that Ms. Davis brought back an
20 application to modify the PPO stating she was still fearful.
21 And that we responded to that fear by making certain that
22 she was no longer in a position to have that contact with
23 the student and that the student would have no opportunity
24 to have contact with her.
25 Q Would it help to refresh your recollection if I showed you

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1 the notes from the meeting with Principal Pauli?
2 A Was I in that meeting?
3 Q No.
4 A Then I've got to be fair with you, I couldn't tell you about
5 that meeting.
6 Q Okay. So then fair to say you're not quite sure when that
7 plan was put in place, correct?
8 A I would have assumed that the plan for the PPO was drawn up
9 after we received the initial PPO. That would be my
10 expectation.
11 Q Okay. So if the plan, if the notes, I'm just going to
12 represent to you because I've seen the notes, if the notes
13 of the meeting were actually not until November 10th that
14 would be after she alerted the Court that M.H. was not
15 complying, correct?
16 A I believe that would be after the...
17 Q Okay. So we'll let those notes speak for themselves?
18 A That would be accurate.
19 Q You weren't there?
20 A I wasn't there.
21 Q Okay.
22 MR. MULLINS: Well just, I'm getting a little
23 confused now about notes. I mean he hasn't seen them, I
24 don't even know what we're talking about and they don't
25 speak for themselves. I mean --

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1 THE COURT: Okay.
2 MR. MULLINS: I don't want to be overly
3 technical, but --
4 THE COURT: Okay, the jury will just describe
5 counsel's last statement. So the exhibits will speak for
6 themselves.
7 BY MS. BONANNI:
8 Q Do you remember --
9 THE COURT: Ms. Bonanni, this might be a good
10 area for just a little bit of a break.
11 MS. BONANNI: Sure.
12 THE COURT: We're going to have some time
13 with Mr. Beal. So I just want to make sure, a couple of my
14 jurors look kind of cold.
15 And I apologize there's not a lot I can do
16 with the blower here. But why don't we go ahead and take
17 about a -- it's after the lunch hour now, so you may have
18 brought something. We'll take about a fifteen minute recess
19 and everybody can have an opportunity to stretch.
20 And we'll pick right back up where you're at,
21 Ms. Bonanni.
22 THE CLERK: All rise for the jury.
23 (At 12:28:01 p.m., jury exited)
24 (At 12:28:05 p.m., court recessed)
25 (At 12:57:34 p.m., court reconvened)

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1 THE COURT: We're back on the record then in
2 the matter of Pennie Davis versus the Jackson Public
3 Schools. I just want to indicate I gave off an exhibit list
4 to both sides and I know we have a lot of exhibits. And I
5 think one of the things we kind of covered, we anticipate at
6 some point giving obviously the jury the whole notebook.
7 But I indicated if either side finds a
8 particular exhibit that's important and you think that it
9 needs to be circulated at that time I certainly don't have
10 any problem with that. All right.
11 MR. MILLER: And mechanically, Judge, would
12 it be okay if I take the copies up to the jury?
13 THE COURT: Sure, I don't have any problem
14 with that.
15 MR. MILLER: Okay.
16 THE COURT: And/or your associate counsel can
17 as well, okay.
18 MR. MILLER: I can't trust him with the
19 important documents though.
20 THE COURT: All right. If you need a few
21 more copies or something just let David know, my copier is
22 right there. All right.
23 MR. MULLINS: Very good.
24 THE COURT: All right. Everybody can be
25 seated. Thank you.

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1 So you actually went to Jackson Public
2 Schools too?
3 THE WITNESS: I did. I graduated in '89.
4 THE COURT: Oh, okay. I went to Grand Ledge
5 High School.
6 MR. MULLINS: I was just there last week.
7 THE COURT: We're you?
8 MR. MULLINS: Yeah.
9 MR. MILLER: Troubles everywhere.
10 THE COURT: I was talking to the other
11 counsel, Mr. Pitts (ph), you know, it's like employment law
12 is a hyper charged area.
13 MR. MULLINS: Oh yeah, oh yeah.
14 THE COURT: I've never seen it like that in
15 twenty years of practice.
16 David, you can get the jurors.
17 MR. MILLER: Is that hyper charged in a good
18 way or a bad way?
19 THE COURT: No, I think it's good.
20 MR. MILLER: Okay.
21 THE COURT: Yeah, I think there's a lot of
22 things coming forward in a way that they didn't even a few
23 years ago. You know, I mean.
24 Hey, Jay, why don't you come on in.
25 THE CLERK: All rise for the jury.

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1 (At 1:00:11 p.m., jury entered)
2 THE COURT: Okay, thank you.
3 Okay, we're ready to pick back up with direct
4 examination. Go ahead.
5 MS. BONANNI: Okay, so I'm going to ask my
6 associate, Channing Robinson-Holmes to please pull up the
7 PPO, the actual PPO signed by the Judge, which is part of
8 Exhibit number 8.
9 BY MS. BONANNI:
10 Q And, Sir, Mr. Beal, I'm going to ask you just to confirm
11 this is the PPO that was received by the school, it's
12 stamped October 15th, 2015?
13 A That's correct.
14 Q And I just want you to confirm for the jury that the order
15 is effective until October 13th, 2016?
16 A That's correct.
17 Q You indicated that in addition to that PPO you agreed that
18 the school could conform to this PPO?
19 A We agree.
20 Q Okay. And the motion that came in on November 4th was the
21 reason why you transferred Ms. Davis, correct?
22 A I transferred Ms. Davis because she continued to express
23 fear. And it was a reasonable assumption that listen, I can
24 make a change here at the trimester break and the two won't
25 be in the same place.

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1 Q Well a moment ago before the break you testified that the
2 motion was the reason that prompted you to transfer,
3 correct?
4 A She came to me and said I'm still fearful.
5 Q Let's look at that motion. Did she come to you?
6 A I believe she came to H.R., so yeah.
7 Q Didn't this PPO, this modified -- the motion, wasn't that
8 brought to school by the boy's mother?
9 A I can't say that. I can't say I've ever talked to the boy's
10 mother.
11 Q Okay. So you're not sure how it got to H.R., correct?
12 A No, I couldn't tell you, I couldn't say that.
13 Q Okay. So let's look at Exhibit 26 and I want you to confirm
14 for the jury that Exhibit 26 is in fact the motion that
15 we're talking about?
16 A Exhibit 26 is the motion to modify. That is exactly what
17 we're talking about.
18 MS. BONANNI: Okay, so I'm going to move for
19 the entry of Exhibit 26.
20 (At 1:04:16 p.m., Plaintiff's Exhibit 26 was
21 offered)
22 MR. MULLINS: No objection.
23 THE COURT: Okay. So admitted by way of
24 stipulation of the parties.
25 (At 1:04:21 p.m., Plaintiff's Exhibit 26 was

1 admitted)
2 MS. BONANNI: Channing, could you show that
3 to the jury please? Would you go to the top please?
4 Thanks.
5 BY MS. BONANNI:
6 Q Now you'll agree with me, Sir, that in order to get an
7 audience with the Court it looks like Ms. Davis had three
8 options, modify, extend or terminate the PPO?
9 A I'm not a lawyer, I couldn't tell you that.
10 Q Okay, but you see that you have to circle one apparently and
11 she circled modify?
12 A That's what it says, yes.
13 Q Now in terms of what you understood the PPO to require,
14 which was that these people stay separate, does this motion,
15 Exhibit 26, make any change to that?
16 A It is a motion to modify. I don't see that it makes any
17 change. What I do see is that it continues to express
18 concern beyond the work that we had done to satisfy the
19 original PPO or to satisfy the PPO.
20 Q Okay. So what --
21 A She says she's concerned with him being in the room next
22 door. We have orchestra, he was in orchestra --
23 Q Well I --
24 A -- which is the only one orchestra room.
25 Q Okay. I'm asking you --

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1 A It says that she feels fear and she feels unsafe. I mean
2 those are the things --
3 Q Okay.
4 A -- that I saw when I read this. You know, I don't have
5 another orchestra room for this student to go to and I don't
6 have a place where, you know, if she's expressing that she
7 feels unsafe and feels fearful, that's what I'm reading.
8 Q And this is because there was no provision made for the
9 student and he didn't know where to go. And then they met
10 with the principal and made a plan. See on that time line,
11 November 10th? I'm sorry, I can't read, November 10th, Davis
12 and principal verified a confirmed plan to conform to the
13 PPO.
14 A I see that that's what it says. I don't know what time or
15 when Ms. Pauli met with Ms. Davis. That would be a great
16 question for Ms. Pauli. My understanding is is that they
17 worked out a system so these two would not be in the same
18 area, the same space, that they would not travel in the same
19 circles. I know he was removed from her classroom the day
20 the incident took place.
21 Q Okay. And fair to say you don't know -- strike that. Go
22 down at the bottom here. The date of the motion to see the
23 Court is November 4th, 2015, correct?
24 A That's what the date is stamped, yes.
25 Q And is there anything in this PPO that is requesting that

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1 the student be removed from the high school and sent to the
2 alternative school?
3 A This isn't a PPO, this is a modification or a request to
4 modify, is that right?
5 Q I'm asking you if you see anything in this -- this is what
6 you received?
7 A Yes.
8 Q This is what prompted you to move her, correct, you
9 testified to that?
10 A Yeah, absolutely.
11 Q Okay. So I'm asking you if there's anything in here that is
12 signaling to you that Pennie Davis does not want to be in
13 the same building as this boy?
14 A Only that Ms. Davis feels unsafe and fearful. It does not
15 say anything about her wanting him transferred to the
16 alternative school or anything beyond that.
17 Q Okay. And let's read what she says about being safe.
18 Quote, "M.H. is in the room next to my room and I feel
19 unsafe with him being so close in the area", end quote. So
20 what she's asking the Court about is the fact that he's very
21 near her, correct?
22 A He was --
23 Q That's what's making her unsafe?
24 A He was assigned to orchestra. He's an orchestra student.
25 We have one orchestra room in the arts wing. So, you know,

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1 she's expressing that she feels unsafe because he's an
2 orchestra student in the same vicinity as her art room.
3 Q And what she is asking, I'm going to read from the motion
4 again is quote, "I ask he not be put in the room next to or
5 across from me. The assault is still in the court system",
6 end quote. So she's asking that he just not be next to her,
7 right?
8 MR. MULLINS: She's asking him to speculate
9 as to what is in the state of the mind of somebody else. I
10 mean the document speaks for itself.
11 THE COURT: Sustain and rephrase.
12 BY MS. BONANNI:
13 Q This document is what prompted you to act in deciding to
14 transfer her to the middle school, correct?
15 A That's correct.
16 Q But that's not what Ms. Davis was asking, correct?
17 A Ms. Davis was asking that he -- according to what this says
18 Ms. Davis is asking that he not be in the room across from
19 hers.
20 Q And isn't it true, Mr. Beal, you never asked Ms. Davis what
21 she wanted to be safe?
22 A I thought reasonably that having the two people in two
23 different buildings would make certain that the student and
24 the teacher would not cross paths. We thought we had a
25 working solution in place where when we had the PPO we

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1 thought listen, we've got this covered. For a couple weeks
2 it seemed to be going the way it was supposed to be going.
3 She claims that she wants to go modify the PPO because she
4 still doesn't feel safe.
5 So I made a decision. You know, I said look,
6 I've got an art teaching position in another building, we'll
7 make the switch and then you don't be in the same spot.
8 Q Well first of all, you didn't have an art teacher position
9 in the other school. You took the art teacher from the
10 middle school put her in the high school, took Pennie Davis
11 from the high school and put her in the middle school,
12 correct?
13 A The revised school code and our policy clearly gives the
14 school board and myself the right of assignment. So we can
15 make and we do make switches and changes all the time to
16 teaching positions. So we do have art teaching positions in
17 the middle school for which Ms. Davis is both highly
18 qualified and certified.
19 And we have an art teacher in the middle
20 school that is both highly qualified and certified to teach
21 high school art. So to make that change --
22 Q Sir, I was just asking --
23 A -- is well within the context of what we would normally do
24 within business.
25 Q Sir, you appear to be suggesting that there was an opening

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1 and I just wanted to clarify there really wasn't an opening,
2 right?
3 A I didn't say there was an opening. I said I had an art
4 position at the middle school to put Ms. Davis in.
5 Q Now I want to go back to my original question. Fair to say
6 you did not talk to Ms. Davis about what she wanted to make
7 her feel safe?
8 A We met with Ms. Davis when she said I want the -- you know,
9 she brought this PPO, said she was still fearful and so we
10 made the change. I made the decision to do that.
11 Q I'm asking you did you talk to Ms. Davis after discovering
12 this motion where she's indicating he's not adhering to the
13 PPO, did you sit down with Ms. Davis and ask her what will
14 make you feel safe in our school, how can we help you Ms.
15 Davis?
16 A I can't say that I did, no.
17 Q And she'd been with you at that point for twenty-nine years,
18 right?
19 A She's been with Jackson Public Schools for that period of
20 time.
21 Q Now once she's transferred to Parkside, the day to day at
22 Parkside is out of your ballpark, you're not really involved
23 in that, fair to say?
24 A Pretty much.
25 Q Okay.

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1 A An art teaching position in the high school is the same as
2 an art teaching position in the middle school.
3 Q I don't think I was asking you that. I was asking you
4 whether you get involved in the day to day at the schools
5 typically?
6 A Not typically.
7 Q Now in transferring her to Parkside she was no longer head
8 of the department, correct?
9 A She no longer was co-chair at the high school, no.
10 Q And transferring her to Parkside she was no longer teaching
11 students that were taking art as an elective, correct?
12 A No, the students were taking art as an elective.
13 Q At Parkside as well?
14 A That's correct, art is a rotation elective for all of our
15 students at Parkside.
16 Q Okay. Now once she moved to Parkside it was your
17 expectation that she would be given the tools to succeed, do
18 you agree?
19 A I believe she was.
20 Q I'm asking you whether it was your expectation that she
21 would be given the tools to succeed?
22 A Yes.
23 Q And the tools to succeed would include things like
24 appropriate training?
25 A Yes.

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1 Q And as you sit here today you weren't involved in providing
2 that training, correct?
3 A I don't get involved in the day to day providing for any
4 training for any teacher that attends Parkside. That would
5 be, you know, the title teacher and the building principal.
6 Q Now you did get involved though after Ms. Davis received an
7 ineffective rating at the end of the 2015-2016 school year?
8 A Ms. Davis requested an appeal of her rating so that would be
9 my time when I was involved in that, yes.
10 Q Okay. So let's look at Exhibit 39. Did you get to Exhibit
11 39?
12 A I'm looking at it, yes.
13 Q Okay, thanks. Is this the evaluation, ineffective
14 evaluation that Pennie Davis was challenging?
15 A Yes, it was.
16 MS. BONANNI: I'd like to admit this Exhibit
17 number 39 into evidence.
18 (At 1:14:19 p.m., Plaintiff's Exhibit 39 was
19 offered)
20 THE COURT: Any objection?
21 MR. MULLINS: No, your Honor.
22 THE COURT: So admitted by way of stipulation
23 of the parties.
24 (At 1:14:26 p.m., Plaintiff's Exhibit 39 was
25 admitted)

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1 BY MS. BONANNI:
2 Q So Exhibit 39 she received a final score of a one. Fair to
3 say that's the lowest score of a rating?
4 A That would be a rating of ineffective, yes.
5 Q And it is the lowest score on the scale?
6 A That would be accurate.
7 Q And in fact, she received a one for every single category?
8 A I see she received a one for the professional practices
9 portion which is seventy-five percent of her evaluation and
10 a one for student growth, which is twenty-five percent of
11 the evaluation.
12 Q Now Pennie challenged this and there was a hearing that was
13 held, you were there?
14 A After many months.
15 Q You were there?
16 A I was.
17 Q Mr. Mullins was there?
18 A He was.
19 Q It's a hearing that took two or three hours?
20 A I don't know how long it took.
21 Q Where Pennie Davis provided documentation and support for
22 everything that she had done during that school year to try
23 to boost this one ineffective rating?
24 A That's the process. So when someone appeals a rating they
25 bring evidence to suggest or to say that they deserve a

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1 higher rating, yes.
2 Q And two ineffective ratings is the district could terminate
3 the teacher, correct?
4 A Within our teacher contract -- the State requires that a
5 teacher who receives three ineffective ratings will be
6 terminated. That's State law. Our contract and our
7 association has negotiated a higher standard and so if a
8 teacher receives two ineffective ratings they could be
9 terminated, which is again why we put the IDP process in
10 place.
11 Q After this hearing a decision was made after a period of
12 time and her rating was boosted to minimally effective,
13 correct?
14 A I believe that, you know, that Ms. Davis brought the data to
15 the hearing and provided evidence that would suggest that
16 she wanted me to consider to raise her rate. I never make a
17 decision at the meeting, so when somebody comes, every
18 teacher that's done this this is how it happens. They come,
19 I take all the evidence, I take time to review the evidence
20 and then I make a decision based on that. And I did raise
21 her rating from ineffective to minimally effective based on
22 several factors.
23 Q Do you have personal knowledge as to whether Pennie Davis
24 had previously provided that data to anyone within the
25 district to support her rating initially?

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1 A My understanding is that Ms. Davis did not provide the data
2 prior to that meeting.
3 Q Isn't it true that when the ratings were being done Pennie
4 Davis was on a medical leave for a surgical issue?
5 A Ms. Davis was cleared to come back to work prior to the end
6 of June. It would have been after the school year, but
7 prior to the end of June.
8 Q Well --
9 A And certainly Ms. Davis would have had the opportunity to
10 provide that data the following fall. So the fact that I
11 got the data in March, I can't say that Ms. Davis was not
12 afforded an opportunity to meet with her principal or to
13 provide that data at a meeting that we started in August.
14 Q I'd like you to look at Exhibit 39.
15 A Yeah.
16 Q First page. Do you see where signature of staff signature
17 it says on medical leave?
18 A Yes, I do.
19 Q Thank you.
20 MS. BONANNI: I do not have anything further
21 for this witness at this time, your Honor.
22 THE COURT: Okay. Cross-examination or
23 further examination by the defense at this point in the
24 case, Mr. Mullins?
25 MR. MULLINS: Yes, your Honor, if I can ask a

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1 few questions and reserve him to call him later on in my
2 case?
3 THE COURT: Sure. You can ask him some
4 questions now and then reserve your right to recall him
5 later on in the case.
6 MR. MULLINS: Thanks very much.
7 THE COURT: And, ladies and gentlemen, at the
8 end of the thing if you have any questions that you think
9 you want to ask you write them down and I'll review those
10 with the lawyers at the end. All right.
11 So go ahead, Mr. Mullins.
12 MR. MULLINS: Thank you, your Honor.
13 CROSS-EXAMINATION
14 BY MR. MULLINS:
15 Q Mr. Beal, it's pretty bright up there right in the window.
16 I should put my sunglasses on.
17 A Good thing I'm facing this way.
18 THE COURT: Here, I can close that.
19 MR. MULLINS: Oh, I'm sorry, Judge, it's
20 quite all right.
21 THE COURT: That's okay. Sometimes they
22 bother --
23 MR. MULLINS: It's great to see the sun after
24 so much Winter.
25 BY MR. MULLINS:

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1 Q So we've identified you're the superintendent of schools, is
2 that correct?
3 A That's correct.
4 Q And that makes you in the structure a school district is
5 something of a governmental -- it is a governmental entity,
6 right?
7 A It is.
8 Q And the way that it is structured is there is the board of
9 education that's elected by the community, is that right?
10 A That's correct.
11 Q And then they are if we were to compare it to common
12 parliaments they would be like the legislature or the city
13 council, is that right?
14 A They would be the elected representatives of the community.
15 Q And then you would be the chief executive officer of the
16 governmental entity, is that right?
17 A That's correct.
18 Q And when a superintendent becomes a superintendent it's
19 because the board hires that person, is that right?
20 A That's correct.
21 Q They interview different people, search them all out and go
22 through a process and --
23 A I believe they went through an extensive search, yes.
24 Q And at the start of the day or the end of the day or all
25 during the year you answer to the board?

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1 A Everyday of the year.
2 Q And you have regular board meetings?
3 A I have regular board meetings every month.
4 Q And special board meetings if anything in particular comes
5 up?
6 A That's accurate.
7 Q And you answer to the board if there's a problem or if they
8 don't like something. Board meetings of course are public
9 and published?
10 A That's correct.
11 Q And anybody from the community can come and at some point in
12 time you have your public comment section, they can come and
13 address the board, is that right?
14 A Every meeting.
15 Q And if somebody doesn't like what's going on they can come
16 and appear and talk to the board, whether it's a citizen or
17 an employee or a business man in the community, is that
18 right?
19 A That has happened.
20 Q And it's quite typical of board meetings?
21 A Without question.
22 Q Okay. Additionally you have a collective bargaining
23 agreement with the Jackson Education Association, is that
24 right?
25 A That's correct.

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1 Q And we'll put that in evidence at some point in time, but
2 that's what we commonly call the contract, is that right?
3 A It's a contract between Jackson Public Schools and the
4 Teacher's Association to define working conditions and
5 salary and benefits, exactly.
6 Q Half a dozen different contracts with the different unions?
7 A We have five different bargaining units.
8 Q Okay. And that as you indicated defines the terms and
9 conditions of the manner in which you if you will minister
10 the school and what's expected of them and how they're
11 compensated and just virtually everything?
12 A Without question. The contact works both ways, it defines
13 our responsibilities and obligation, it also defines the
14 employees obligations and responsibilities.
15 Q Okay. And just again, big picture thing here, if the union
16 or an individual thinks you're wrong or somebody else, human
17 resources or the principal or all of you acting together are
18 being unfair or improperly treating or violating the
19 contract in any way you have what's called a grievance
20 process, is that right?
21 A It's clearly outlined within the contract.
22 Q And they have what they call step one, step two, step three,
23 step four, is that right?
24 A That's correct.
25 Q And so step three to shorten it up a bit, you're step three,

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1 is that right, it starts off with the head of the building
2 and then it eventually comes to you and then if they don't
3 like --
4 A All right, a grievance would start off that somebody has got
5 a concern or a complaint, they would go to their building
6 principal or their direct supervisor, that's step one. Step
7 two it would go to H.R., so to the assistant superintendent
8 of H.R. and they would review the concern.
9 Step three would come to me and we would hold
10 a hearing much like what I described earlier. Step four
11 would be able to go to the board. And then beyond that they
12 have the rights beyond that to take it to arbitration,
13 etcetera.
14 Q And in this instance if Ms. Davis felt that she was being
15 treated improperly or illegally this matter could have gone
16 to the board or could have gone to arbitration, is that
17 right?
18 A That would be the appropriate path or avenue, yes.
19 Q And that avenue of pursuit was not followed, is that right?
20 A No.
21 Q And I just want to clear up one of the last things we talked
22 about here. We talked about her 2016, June of 2016
23 evaluation which is marked as plaintiff's Exhibit 39. She
24 was evaluated by her building principal, Jeremy Patterson,
25 is that right?

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1 A That's correct.
2 Q Okay. And she received an ineffective rating at that time,
3 is that right?
4 A That's correct.
5 Q And I'm noting here the way the components is, it says she
6 - - as was discussed she was sick, you know, on the last day
7 of school, but was not available to provide data from the
8 assessments that she administered. And I think earlier on
9 there was some talk about data and the way teacher
10 evaluations occur, is that right?
11 A So the evaluation system, and this is kind of an ever
12 evolving thing, but the evaluation system when I got into
13 teaching used to be satisfactory and unsatisfactory. When
14 the law changed we implemented a new evaluation system in
15 the 14-15 school year, required by law now every teacher has
16 to be evaluated every year unless they receive three years
17 of highly effective ratings.
18 That wasn't the case prior to, but now
19 twenty-five percent of that evaluation has to be student
20 data, student growth specifically. And we meet with
21 teachers at the beginning of the year to define what that
22 data is going to look like so there's no surprises as to
23 what's in that evaluation or what that data should be.
24 Q And when he talks about not providing the student data,
25 that's an important part of the evaluation system, is that

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1 right?
2 A Absolutely. If you take a zero on the data portion of the
3 evaluation it would be nearly impossible to receive an
4 effective rating.
5 Q Okay. I think you basically talked about the fact, you
6 didn't receive from her the student data until this meeting
7 was held on March 17th of 2017, is that right?
8 A I don't believe anybody received the data until that
9 meeting.
10 Q Okay. And she handed it to you then?
11 A Yes.
12 Q And did you question her at that time, gee why didn't I --
13 you talked about it here a minute ago, but again I was at
14 that meeting, Ms. Bonanni attended it by phone you recall,
15 is that right?
16 A That's correct.
17 Q And she had her union representative there also, is that
18 right?
19 A She did.
20 Q And you questioned her, why am I getting this now, why
21 wasn't this given to Mr. Patterson or me before?
22 A Yes.
23 Q And I mean can you conceive of any reason why it hadn't --
24 as I understand it you've got an administrative building
25 there that's open to the public and she could have walked in

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1 and have dropped it off anytime, is that right?
2 A That's correct.
3 Q I mean obviously --
4 A She worked that year, she was in the building, she had
5 opportunity to interact with the building principal and
6 certainly, you know, having appealed her evaluation she had
7 an opportunity to drop that material off with me.
8 Q Okay. And of course Mr. Patterson, he's the principal, he's
9 right there in the building, he's somebody you're going to
10 see or is available to you all the time, is that right?
11 A That would be accurate.
12 Q And even though teachers go off at the end of the year and
13 have the Summer off, administrators like principals and
14 yourself work a longer period of time after the end of the
15 year and prior to the start of the year, is that right?
16 A Teachers work a hundred and eighty-five days, building
17 principals tend to work two hundred and twenty-five days,
18 I'm a two hundred and sixty day employee. So everybody is
19 kind of scaled to their responsibility.
20 Q Okay. And Mr. Patterson, he's got an office?
21 A He does.
22 Q He's got a mailbox?
23 A Yes.
24 Q If I'm a teacher and I'm gone for a day, a week or a month,
25 is there anything that prevents me from putting an envelope

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1 together and saying, sorry I missed the end of the year,
2 here's my student data to get in, slip it under your door,
3 put it in your mailbox or stop by when you're in the office,
4 is there any reason why that can't be done?
5 A Nope.
6 Q And then could this issue have been resolved prior to it
7 ever reaching your desk or having be appealed to you?
8 A Yes. However, she filed the appeal in July so, you know, we
9 attempted to meet in August, we adjourned that meeting, we
10 attempted several more times to meet. Again, like I said it
11 took a long time to get that.
12 Q And as I recall it, but I'm asking you, your recollection is
13 it was scheduled a number of times and the plaintiff always
14 asked to have it, meaning Ms. Davis, always asked to have it
15 put off?
16 A I believe that we requested several different dates or
17 provided several different dates, half a dozen, to try to
18 sit down and finally we ended up in March.
19 Q Okay. I seem to recall particularly one particular meeting
20 where you and I were both sitting there waiting for
21 everybody to show up and they called it off on that
22 particular day even though we were all there ready to do it
23 and that was in the fall, is that right?
24 A Yeah.
25 Q And on receiving her data you said -- well would you

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1 consider generous on your part as an administrator or how
2 would you characterize accepting something in March of '17
3 --
4 MS. BONANNI: I'm going to object to leading.
5 He's leading.
6 THE COURT: I want to hear the whole
7 question.
8 MR. MULLINS: I' sorry?
9 THE COURT: I just want to hear the rest of
10 the question.
11 BY MR. MULLINS:
12 Q I think the indication on her direct examination that these
13 evaluations are due to be completed by the end of June of
14 the school year, is that right?
15 A We are required to submit the results of these evaluations
16 by June 30th of the school year, correct.
17 Q And required by the State to do the evaluations and submit
18 it to the State?
19 A That's correct.
20 Q So we've kind of missed the final teacher marking period
21 when we get to July, August, September, October, November,
22 December, March, we're kind of past the ninth inning, we're
23 pretty late in the game, right?
24 A The contract and the law, you know, provides for teachers
25 who get an ineffective rating to have a reasonable period,

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1 thirty days, to meet with me to have that resolved, yes.
2 Q But that wasn't accomplished until March?
3 A That's correct.
4 Q Nonetheless, you considered the data and raised her
5 evaluation?
6 A Ms. Davis came, presented a wealth of information including
7 her data. She brought up once, you know, requesting us to
8 take a look at, you know, discipline referrals, you know,
9 that type of classroom management conversation.
10 In the end I asked Ms. Davis what she felt
11 her evaluation should be, at that meeting specifically I
12 asked her that, she said effective or minimally effective.
13 I made the determination based on the data to raise her
14 evaluation to minimally effective.
15 Q You used the term IDP and that's a term of art for those of
16 us who work in the educational area and I know it was
17 discussed, but could you just a little bit elaborate about
18 who gets put on an IDP and what the purpose is of an IDP?
19 A Okay an IDP again, it's an Individual Development Plan, it's
20 very specific to teachers. Every teacher who is brand new
21 to the district in years zero through five is on an IDP by
22 law. That's because we're not setting anyone up to fail.
23 So from the beginning they have to have an IDP in order for
24 us to provide that mentorhship out of the gate.
25 And then because we've got that extra

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1 stringent language in the contract with regards to
2 termination, so if a teacher is ineffective for two years in
3 a row they no longer qualify to work for JPS. And when we
4 put that language into the contract we negotiated with the
5 association that we were going to put together, sit down and
6 jointly create an IDP process.
7 So any teacher who is struggling and they
8 don't necessarily have to have a minimally effective, but
9 any teacher who is struggling, and the principal gets to
10 make that determination based on their walk throughs and
11 observations, gets to put a teacher on an IDP. It's a
12 growth plan, it's designed to help them succeed and it's
13 mutually done with the association.
14 Q And as I understand it it's something about IDP, there's
15 like a team that meets with her, is that right?
16 A That's correct.
17 Q And she gets to pick somebody to be on that team as a mentor
18 or someone that she would consider helpful to her?
19 A So again, this is not an arm wrestling thing. This was a
20 mutually designed, you know, we sat down with the
21 association and said yes, how do we build this process. So
22 we said, you know, here's what we're require. We're going
23 to require our principal to be on the team. You can have an
24 association or representative if you want on the team.
25 We're going to require a mentor of our

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1 choosing. In other words, we see a deficiency we're going
2 to provide someone, a mentor who we think can help you with
3 that deficiency. You as the association has the right to
4 provide someone to be on that team as well. If it's the
5 same person, like I said earlier, if it's the same person we
6 don't arm wrestle about that, we're fine with having one
7 mentor as long as both parties agree that this mentor can
8 help the teacher.
9 Q And the process itself, I think we've talked about it, but
10 has the IDP process do you find it to be successful?
11 A We have found it to be very successful, yes.
12 Q And in Ms. Davis' case apparently it was successful?
13 A Ms. Davis continues I believe to work within the IDP. I
14 don't know, I don't follow individual IDP's. You know,
15 we've got several of them running. I know that Ms. Davis
16 was on an IDP because of this case. That's really the
17 extent of my knowledge with it. And I didn't participate in
18 her IDP process.
19 Q Okay. In general again, you have I think you'd indicated
20 some three hundred teachers thereabouts?
21 A Yeah.
22 Q And over five thousand students?
23 A Yes.
24 Q Is it fair to say that the needs of the district change from
25 time to time based on population and the like?

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1 A I would say that the -- we say life happens, but we would
2 say that quite frankly, that the requirements or the needs
3 of the district change almost daily.
4 Q And again, going back to the collective bargaining
5 agreement, I think there was some reference made to that.
6 The assignment of a qualified teacher to a job be it sixth
7 grade, fourth grade, they have to be certified for it, but
8 where they will be assigned is a decision of the
9 administration, is that right?
10 A That's the sole -- we're the sole responsibility for that.
11 Q Okay. And that's agreed to?
12 A It's a prohibitive subject of bargaining. The association
13 can't bargain where their assignment is at.
14 Q And if you would give the ladies and gentlemen of the jury
15 some sense of, you know, is it unusual for teachers to be
16 transferred or do you have teachers coming and going or
17 what's it like administering three hundred different
18 teachers with a school district of that size?
19 A We have moved this year, so since Mr. Pack retired at the
20 end of January I've taken over the roles while we fill that
21 vacancy. But this year, year to data, you know, I don't
22 have the exact number but I would say it's in excess of
23 twenty different movements within the bounds of the school
24 year, both from elementary up to middle school and in and
25 out of any given position without question.

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1 Q I might suggest that people get sick, people retire, people
2 take jobs elsewhere, any number of different reasons?
3 A Yeah, absolutely.
4 Q And however, within the collective bargaining agreement, Ms.
5 Davis with her certification and her years of experience
6 she's -- what she'll be compensated for is set forth in the
7 contract, is that right?
8 A It is.
9 Q And she's going to be paid that as long as she works?
10 A No matter what position she's in.
11 Q And so be it teaching sixth grade art or fifth grade art or
12 tenth grade art, same pay?
13 A Compensation is the same.
14 Q Same benefits?
15 A Same benefits.
16 Q Same retirement?
17 A Yes, Sir.
18 Q And roughly same hours, some schools might be a little bit
19 different, but your schools are probably almost on a nearly
20 identical schedule?
21 A We require every teacher to work, you know, a set schedule
22 and they're all within the same time frame, yeah.
23 Q And in general it's changed a little bit over the years,
24 gone up a little bit, currently the State requires a hundred
25 and eighty-five days?

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1 A The State requires a hundred and eighty student days and
2 five professional development days for a total work day for
3 our teachers of a hundred and eighty-five.
4 Q Okay, so the plan would be they would show up a hundred and
5 eighty-five of the three hundred and sixty-five days of the
6 year?
7 A That's correct in an ideal situation.
8 Q Okay, in an ideal situation. In actuality and later on
9 we'll get more in detail on this, but most teachers and
10 we'll talk somewhat specifically about Pennie Davis, but
11 given the vacation time they might have, sick days that they
12 might have, personal business days they might have you end
13 up with ten or twenty days knocked off that?
14 A Teachers don't have vacation time.
15 Q Okay.
16 A Teachers, the contract stipulates the calendar exactly what
17 days they are to work. There are days off or breaks built
18 into the calendar but that's not quote, end quote, vacation
19 time. We anticipate that every scheduled day is a work day.
20 Q Okay. I guess I was a student too long. I'm talking about
21 they don't work Thanksgiving, they don't work Christmas,
22 they don't work Easter, they don't work --
23 A That calendar is negotiated by the association and outlined
24 within the collective bargaining agreement, that's correct.
25 Q Okay.

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1 THE COURT: And does each teacher have like a
2 certain amount of personal time that they can put in for?
3 THE WITNESS: Every teacher is allowed eleven
4 days. That's eight sick days and three personal days.
5 BY MR. MULLINS:
6 Q So that would be paid reduction in days worked, correct?
7 A They could take those days off and not lose pay.
8 Q Okay. In general, big picture here, some teachers will work
9 for twenty years and they can accumulate time and if you
10 will, have a bank if they will?
11 A Several of our teachers do.
12 Q And retire and yet still get -- or wait a year until they
13 have to retire because they're using off their bank, is that
14 right?
15 A Most don't use all their bank before they retire. That
16 would be -- I would hate to characterize teachers as doing
17 that.
18 Q Okay.
19 A Most of our teachers when they retired they've got more sick
20 days than they would ever use.
21 Q Okay. Now this incident occurs on October the 12th, 2015
22 with this M.H. or first name Marcus, is that right?
23 A The incident 2013 I believe, right, or October 13th. Am I
24 wrong on that, I believe -- I want to make sure I've got my
25 data, I believe it was -- am I wrong, Monday, October 13th?

1 Q Well the incident.
2 A Yes.
3 Q Okay. And you became aware of it and I think you said
4 you're not quite sure how you first became aware of it?
5 A It would have been the day following the incident.
6 Q Okay. And so again, you as the superintendent and Mr. Pack,
7 he's the head of human resources?
8 A Yes, he is.
9 Q The personnel manager so to speak?
10 A Assistant Superintendent for Human Resources.
11 Q Okay. And is one of his duties also and/or his department
12 managing your health insurance, managing your Worker's Comp,
13 managing your payroll, is that roughly his department?
14 A Not payroll, but the Worker's Compensation, leave of
15 absence, medical, that kind of thing. And certainly, you
16 know, yes.
17 Q Okay. And so as we've covered a bit, you went down and
18 visited her and talked with her briefly out in the hallway
19 at her building?
20 A We did.
21 Q Okay. And that's right literally --
22 A Across the parking lot.
23 Q -- a hundred feet across the parking lot from your office?
24 Okay. And so the purpose of your going there and chatting
25 with her is what?

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1 A Make sure she was okay. We have an employee who was injured
2 on the job we take a look at those.
3 Q Okay. And you as an employer, some employers have this, do
4 you have a particular arrangement with a medical health
5 facility for people who are injured at work to be seen and
6 be examined?
7 A Through well it was Allegiance Health, now Henry Ford
8 Allegiance Health right down here at the Jackson one, yes.
9 Q Okay. So an employee can go there, be checked out, whatever
10 they need to have and the bill comes to you, it doesn't go
11 to them?
12 A That's correct.
13 Q Okay. And I think you had indicated you're not a doctor and
14 you couldn't assess what the extent of her injury would be?
15 A I promise I'm not a doctor and I can't assess her injury.
16 Q Okay. And one or both of you indicated that you wanted her
17 to go to Allegiance Health?
18 A We required her to go to Allegiance Health without question.
19 We do that for any employee that's injured.
20 Q Okay. And your concerns or interests or motivation in doing
21 that is what?
22 A From a human resource standpoint we require all of our
23 employees who are hurt on the job to go and be seen by our
24 doctor to make sure that they're okay obviously. And then
25 secondarily to limit our exposure in case of liability.

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1 Q Now there was this discussion of a meeting that occurred
2 with yourself, Mr. Pack, Ms. Davis' union representative and
3 herself that I think occurred in your office, is that right?
4 A Yes.
5 Q And was there a particular concern at that time?
6 A We looked at the medical report we received from Workwell
7 from Allegiance Health. And the concern was is that Ms.
8 Davis refused to comply with the examination.
9 Q Okay. And I guess I'm going to show you plaintiff's 52,
10 which I think you might have up there in front of you.
11 Again, you not being a doctor, what's your understanding of
12 the doctor's expression of a need of evaluating her
13 condition?
14 MS. BONANNI: I'm sorry, I didn't hear that.
15 MR. MULLINS: I asked what his understanding
16 of the doctor's need of what would be necessary to evaluate
17 her --
18 MS. BONANNI: I don't know that he can
19 testify what the doctor was thinking.
20 THE COURT: Okay. Sustained and just
21 rephrase.
22 BY MR. MULLINS:
23 Q Okay. If I refer you to the report relative to the doctor
24 at Allegiance what concern if any was raised?
25 A The concern I would have is we were advised that the x-ray

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1 was necessary to check for fracture. Since we were unable
2 to obtain film or medical records, so we didn't have medical
3 records at that time, it says patient refused. And then it
4 went on and said that they placed a splint, ice, recommended
5 Motrin, return to the doctor if problems persisted. They
6 say that she will allow x-rays on Monday. So that was the
7 concern.
8 Q Okay. So you know there's been an injury -- or she's
9 advised there's an injury to the hand, you don't know how
10 good it is or how bad it is. I think you'd indicated that
11 when you came to her class she was working with her hands?
12 A She was cutting with scissors, yes.
13 Q And so you wanted to see if she's checked out and there's
14 some concern that there's no x-ray, the doctor needs an
15 x-ray to asses if there's a fracture and there's no x-ray?
16 A We sent her to our doctor and again, I'm not a doctor, so we
17 sent her to our doctor and our doctor said she refused to
18 comply with our doctor's request. So at that point that
19 raises a concern for me with regards to returning an
20 employee to work without having a clearance to work.
21 Q Okay. And so was that a subject of the discussion that you
22 had with her and her union representative about, are you
23 going to see our doctor, are you going to get the x-ray or
24 are you going to get the x-ray to us?
25 A That was the discussion on that Thursday.

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1 Q And were there any difficulties in pursuing or completing
2 that discussion?
3 A Yeah, Ms. Gish didn't want us to question her employee -- or
4 her member and ended the meeting. Which again we would
5 dispute whether that was allowed or not, but she stood up
6 and said we're done and pulled Ms. Davis from the room.
7 Q And so she's I think you'd indicated that she's been if you
8 will, off on paid leave until you get a confirmation that
9 she's capable to return to work without difficulty, is that
10 right?
11 A Okay, without question. So when Ms. Gish, when the union
12 president said I'm taking her out of here, we're not going
13 to question any further, that was the point when I said then
14 what we're going to do is move forward, you'll be on non
15 disciplinary paid leave. So you'll continue to draw your
16 salary, there's no discipline associated with this until we
17 get clearance for you to come back to work.
18 MR. MULLINS: And I'd move for admission,
19 your Honor, of plaintiff's Exhibit 52.
20 (At 1:48:21 p.m., Plaintiff's Exhibit 52 was
21 offered)
22 THE COURT: Any objection?
23 MS. BONANNI: No.
24 THE COURT: All right, plaintiff's Exhibit
25 number 52 will be admitted by way of stipulation of the

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1 parties.

2 (At 1:48:28 p.m., Plaintiff's Exhibit 52 was

3 admitted)

4 BY MR. MULLINS:

5 Q And there is a lot of back and forth that you were

6 questioned about whether she got a letter or whether she got

7 an e-mail or who checked the e-mail whatsoever. The subject

8 matter if I'm understanding the direct examination was, have

9 you, when are you, did you, where is the doctor's report,

10 the x-ray?

11 A Can I get you to -- you're going to have to help me out with

12 that question. I've got to know what you want me to answer.

13 Q I just didn't want to go through all of the, you know, Mr.

14 Pack sent her a letter saying you're directed to do this and

15 --

16 A Okay.

17 Q -- recounting the meeting that occurred.

18 A We looked at several different emails. We looked at emails

19 from December and then we looked at I believe, I don't want

20 to state it wrong, I know Mr. Pack, Jessica Carter secretary

21 in H.R. left a message directing Ms. Davis to go to

22 Workwell.

23 Q Okay. And how is it, because we're talking about something

24 that's occurring October 12th, 13th, 14th, 15th, 16th, you know,

25 go to the doctor, don't go to the doctor, how is it that

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1 you're looking at emails as far on as December?
2 A So when we placed Ms. Davis on non disciplinary paid leave
3 we were waiting for medical records. We were waiting for
4 proof that she was clear to come back to work. We called
5 her back to work, she didn't show up. She then required us
6 to give her twenty-four hours notice. She didn't show up
7 the next day. So we docked her two days pay for not showing
8 up when we called her back to work.
9 She then grieved not coming back to work or
10 grieved those two days. We met through the grievance
11 process articulated in the contract. That's the
12 investigation where we're looking at, you know, when she got
13 what in December. And then the ultimate outcome of that was
14 the association and the school agreed that one day would be
15 reasonable, so we returned one days worth of pay.
16 Q And otherwise she received her complete pay?
17 A She was docked one day for not coming back when we called
18 for her, but we agreed as an association and the district
19 that that would be reasonable.
20 MR. MULLINS: Okay. And I'd ask the Court's
21 indulgence to distribute the one page Exhibit 52 to the jury
22 so that they can make their own determination.
23 THE COURT: Go ahead.
24 MS. BONANNI: I'm sorry?
25 MR. MULLINS: I'm just going to so the jurors

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1 can throw it in their notebook.

2 MS. BONANNI: Exhibit -- the whole Exhibit

3 52? I mean --

4 MR. MULLINS: Just the one page.

5 MS. BONANNI: No --

6 MR. MULLINS: I was only aware of one page.

7 MS. BONANNI: No, there's several pages of

8 Exhibit 52. If we're going to give them the medical records

9 I suggest you put them all in.

10 MR. MULLINS: Well I don't mind what the

11 plaintiff does, but in my cross-examination I'm only looking

12 at the one page of what I questioned about.

13 MS. BONANNI: It's my exhibit so if he wants

14 to use it that's fine, but he needs to use it the way I've

15 structured it, which is all of her medical records.

16 MR. MULLINS: I'm happy to withdraw my offer

17 and offer defendant's exhibit what really is one page of the

18 -- I'm just trying to make it easy on the jury.

19 THE COURT: Okay. So we anticipate that

20 those records are going to come in at some point, correct?

21 MS. BONANNI: Yes.

22 THE COURT: Okay. I'm going to require that

23 you admit them all at the same time.

24 MR. MULLINS: Okay.

25 THE COURT: So they're apparently going to be

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1 coming in anyway, so I recognize from your standpoint you
2 think the most probative thing that they're looking at right
3 now is the top page. All right. So 52 will be admitted.
4 MR. MULLINS: Okay. And I can distribute?
5 THE COURT: You can.
6 MR. MULLINS: Thank you.
7 MS. BONANNI: He's distributing one page.
8 THE COURT: All right. Well why don't we run
9 a copy of the whole thing --
10 MS. BONANNI: Oh, I see. Yeah.
11 THE COURT: Because that's what my intent is.
12 So do we have a full copy or do you want me to pull up 52 in
13 my book and copy it for the jury? It's not very long.
14 David, just run one copy of 52 in its
15 completion there. Then Mr. Wells can -- they're looking at
16 the front page, but then that way they'd have the whole one
17 too. So I don't think we need seven copies, just one of
18 that.
19 Okay, Mr. Mullins, are you all set?
20 MR. MULLINS: I am, your Honor.
21 THE COURT: All right. So, Mr. Mullins, pick
22 back up, yes.
23 BY MR. MULLINS:
24 Q Also there was some discussion on counsel's examination of
25 this concept of a PPO?

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1 A Yes.
2 Q The Personal Protection Order. And I think you'd indicated,
3 you know, as the superintendent who runs the school you have
4 some familiarity with Personal Protection Orders, is that
5 right?
6 A It's not uncommon, we get them for a variety of reasons,
7 yes.
8 Q Okay. What might some of those reasons be?
9 A Probably the most common, you know, between spouses, you
10 know, my ex can't come, sometimes it's between, you know,
11 you have a parent blow up and so we would keep parents away.
12 We've had them with students before as well.
13 Q Okay. And some of them are dad can't pick the kid up or mom
14 can't pick the kid up or what days who gets to pick them or
15 that kind of stuff?
16 A That doesn't come in mostly in PPO's, we see those more in
17 settlement agreements, divorce decrees kind of thing. But
18 yeah, without question we deal with those as well.
19 Q Okay. So you get court orders and presumably you don't just
20 throw them in the wastebasket, you try to comply with them?
21 A Every time.
22 Q Okay. Now Exhibit 8 was plaintiff's marking of the original
23 PPO, is that right, can you familiarize yourself with that?
24 A Exhibit 8?
25 Q I believe so.

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1 A I'm just going to turn to it so I've got it.
2 Q If you don't I'll slip a copy up to you.
3 A Okay. So we're looking at the one stamped October 15th
4 received by JPS, is that correct?
5 Q That's right. Okay. And of course when the PPO if you go
6 to the bottom of it, it says it is ordered, do you see that
7 part?
8 A I do.
9 Q And the student's name has been whited out, but I'll
10 represent to the Court and to the jury that this person,
11 M.H., it is ordered and it indicates is prohibited from a
12 number of things?
13 A That's correct.
14 Q Okay. And if I were to show you box number 2, what does
15 that indicate?
16 A Appearing at the workplace or residence of the petitioner.
17 Q Okay. Now I suppose residence is pretty clear, but
18 workplace and she works in a classroom or a number of
19 different classrooms, but it's a building, right?
20 A Unless the PPO clearly articulates that we're excluding a
21 student from their educational rights we look at that as the
22 classroom.
23 Q Okay. And so if I understand what you indicated on direct
24 examination, he was immediately removed from the classroom?
25 A Without question. His schedule was changed.

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1 Q Never went in the classroom again?
2 A That's correct.
3 Q And had no reason to have contact with her?
4 A Not to my knowledge.
5 Q And we'll hear from the principal later, but she attempted
6 to make some arrangements to figure out schedules or
7 hallways or how he would enter his class so that they'd be
8 apart from each other?
9 A That's my understanding.
10 Q Okay.
11 THE COURT: Mr. Beal, while we're right there
12 on the PPO, was there another redaction on the original or
13 appearing within site of, did I cross that off the PPO?
14 THE WITNESS: I see it crossed off, yes.
15 THE COURT: Okay. So that --
16 THE WITNESS: The top box.
17 THE COURT: That would be a provision where
18 otherwise recognizing that it's a teacher and a student that
19 that's not a violation of the PPO if they're just in
20 appearance of one another, correct?
21 THE WITNESS: Yeah, absolutely.
22 THE COURT: Okay. Go ahead.
23 BY MR. MULLINS:
24 Q But then subsequently as counsel pointed out to you in
25 plaintiff's 26, do you recall that, which is the motion to

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1 modify?
2 A Yes, I see that.
3 Q Okay. And I think you had read it somewhat and I have it
4 here on the board, but you had discussed the fact that she
5 had indicated among other things, I feel unsafe, and you
6 were aware of that?
7 A I am.
8 Q And she indicated that she had fear?
9 A I am.
10 Q And did that raise any concern on her behalf?
11 A That was after our initial response to the PPO. So that was
12 -- we figured we had a plan, obviously it didn't alleviate
13 her fear. She still felt unsafe.
14 Q And I think we heard in the opening even, presumably that
15 will be in evidence later on, that there had been a knock on
16 the door, she'd seen him or for some reason or another even
17 the sight of him or knowledge of him caused fear?
18 A I can't testify to that. I don't know about a knock on the
19 door, I'm not going to say it did or didn't happen.
20 Q But you know she's got fear?
21 A That's what I understand from this intention to modify the
22 PPO.
23 Q So you as the superintendent did you try to address her
24 concerns for fear or alleviate her fears?
25 A Yes, I did.

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1 Q Okay. And again, just elaborate one more time if you would?
2 A Again, you know, we took a look at this, we thought we had a
3 solution to the PPO in place. She came back to us and said
4 I'm going to modify the PPO, it's my intention to modify the
5 PPO because I still feel unsafe, I still feel afraid. So I
6 made the decision, I moved her to a position that she's
7 highly qualified for, she's certified to teach art, art at
8 the high school and art at the middle school.
9 We did make a change as, you know, defense
10 counsel pointed out, I pulled a teacher out of the middle
11 school and placed them at the high school. So I
12 inconvenienced that teacher too. But that's what we did to
13 try to accommodate this employee who had brought to us a
14 concern.
15 Q Okay. And again, same pay, same contract, same benefits,
16 same health insurance, same pension --
17 A Same salary, all of that.
18 Q Same work schedule?
19 A Yes.
20 Q And a different building but a classroom, working in a
21 classroom teaching kids?
22 A Yes.
23 Q And the difference is this young man apparently was a
24 sophomore, now she's teaching sixth graders?
25 A That was the idea. The idea was is listen, we've tried it

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1 in the same building, it apparently isn't alleviating your
2 concerns, now if you're in the middle school he's a high
3 school student and there's no reason for him to be in the
4 middle school. If he goes to the middle school obviously
5 we've got a greater concern, but there's no way that the two
6 should ever cross paths or he won't be in the room next to
7 hers, that kind of thing.
8 Q Okay. And whether it's alleviating concerns or complying
9 with court orders it's all within the provisions of the
10 collective bargaining agreement that she works under and is
11 negotiated with the union?
12 A That assignment is the sole responsibility of
13 administration, that's correct.
14 Q You're from the Jackson area I understand?
15 A I am. I grew up here.
16 Q Born and raised?
17 A Yep, absolutely. Not born, but raised, yes.
18 Q Okay. And a graduate of Jackson Public Schools?
19 A I did, I graduated in 1989.
20 Q So as superintendent you kind of came home?
21 A Yeah, it felt good, you know, that's one of the best parts
22 about it was being able to come back home and contribute
23 back to the community.
24 Q I had discussed with you somewhat the fact that it's not
25 uncommon for teachers to move or come or go during the

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1 course of the year. And as of September 8th, 2017 some
2 rendition of how that occurs is put together in Exhibit 12.
3 Do you want to take a look at Exhibit 12?
4 A I don't have that in front of me.
5 THE COURT: We'll take a moment and bring
6 that up to you.
7 MR. MILLER: May I approach the witness,
8 Judge?
9 THE COURT: You may.
10 Do you want to take a look at it?
11 MR. MULLINS: And while she's taking a look
12 at it this is another one I'd like to distribute in its
13 entirety if that's okay.
14 THE COURT: Okay. And just for the record,
15 which one is that that we're distributing?
16 MR. MULLINS: Defendant's Exhibit 12, I'll
17 move for its admission once she's had a chance to review it
18 and identify it.
19 MS. BONANNI: I'd like to approach.
20 THE COURT: Come on up.
21 (Bench Conference Held from 2:04:42 p.m. to
22 2:05:09 p.m.)
23 THE COURT: All right. Ladies and gentlemen,
24 we have an evidentiary issue we've got to take up outside
25 your presence. We're probably close to pushing up to time

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1 for another break anyway.

2 So all rise for the jury.

3 We'll probably be back with you in about ten

4 minutes.

5 (At 2:05:17 p.m., jury exited)

6 THE COURT: Ms. Bonanni.

7 MR. MULLINS: Bonanni.

8 THE COURT: Oh, Bonanni.

9 MS. BONANNI: Bonanni.

10 THE COURT: I'm really going to work on my

11 pronunciation of that.

12 MR. MULLINS: I know, by the end you'll get

13 it and we'll --

14 MR. MULLINS: Is that your maiden name or is

15 that --

16 MS. BONANNI: That's my maiden name, Bozano

17 (ph).

18 MR. MULLINS: All right.

19 MS. BONANNI: How about you?

20 MR. MULLINS: No, I'm Irish.

21 MR. MILLER: He's Irish.

22 MS. BONANNI: Yeah, right.

23 THE COURT: Ms. Bonanni.

24 MS. BONANNI: Bonanni.

25 So here's my issue with this. I don't

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1 understand the relevance. Well first --

2 THE COURT: Why don't you tell me what the

3 exhibit is -- (multiple speakers)?

4 MS. BONANNI: It is a personnel budget

5 tracking and so it's this sheet that's tracking all of these

6 transfers. This should have been produced in discovery so

7 that I could cross-examine all the sub cases within a case,

8 within a case, within a case. I can't compare the reasons

9 why I mean Ross Smith was transferred. This is just -- and

10 it's prejudicial.

11 But mainly I mean you never produced it. I

12 asked for of course any document that supports their claim.

13 They've got the testimony already that transfers are common.

14 Anything else I missed? Okay.

15 THE COURT: Why don't you just let me take a

16 look at it real quick while I'm hearing Mr. Mullins respond.

17 MR. MILLER: May I, your Honor?

18 THE COURT: You may. Go ahead, Mr. Miller.

19 MR. MILLER: I like to give him a break every

20 now and again.

21 MR. MULLINS: At my age you just never know.

22 MR. MILLER: Yeah, exactly.

23 As you can see it's a newer document, 2017-

24 2018 personnel and budget tracking. If the Court has our

25 exhibit list that was filed before the last trial date,

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1 we're required to list exhibits and say if they're in the
2 possession of the parties, we had this listed, we said it
3 was already in the possession of plaintiff.
4 All along I've been sending enclosure letters
5 with new documents. This has been produced and at a minimum
6 it was on our October witness list. I mean which wasn't
7 that long. I mean it's two pages.
8 MS. BONANNI: But not during discovery.
9 MR. MILLER: It's a new document.
10 MS. BONANNI: Okay, but --
11 MR. MILLER: It's 2017-2018.
12 MS. BONANNI: -- whether it's in the -- then
13 if you were going to use this I'm sure there's a personnel
14 budget tracking for during the point in time when we were
15 exchanging documents, but I objected to it.
16 MR. MILLER: Just now you objected to it.
17 MS. BONANNI: So the moment I saw -- well no,
18 on our --
19 MS. ROBINSON-HOLMES: On our originally
20 objected.
21 MS. BONANNI: I originally objected on our
22 exhibit when we saw it for the first time.
23 MR. MILLER: I'm saying contemporaneous with
24 five days before trial there was an objection. In October
25 we had this on our witness list with a footnote, documents

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1 in possession of plaintiff, because it had been sent with an
2 enclosure letter.
3 THE COURT: So what is the purpose of defense
4 -- what's this going to show the jury?
5 MR. MULLINS: I'm more than happy to have an
6 instruction. It's no intention other than to show that it's
7 common in a big business with three hundred employees that
8 people come and go and get moved. They take maternity
9 leaves, they get sick, they get transferred based on lots of
10 changes happen all the time.
11 And the insinuation here seems to be there's
12 something dramatic or falling off the cliff that she got
13 moved from one building to the other and it's just this does
14 no more than to show that people are moving all the time,
15 both among buildings and in and out of careers or taking
16 other jobs and the school district does as a regular course
17 of business adapt to it.
18 And I'm happy to have a limiting instruction,
19 but it's just --
20 THE COURT: How would I --(inaudible), I
21 guess I'm not understanding this?
22 MS. BONANNI: I don't know either.
23 MR. MULLINS: Well, I don't know that it
24 requires one, other than to say it -- I mean it just shows
25 the regular course of business, which I think plaintiff has

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1 brought into question as to whether or not --
2 MS. BONANNI: So --
3 MR. MULLINS: You know, there seems to be the
4 implication if you will, your Honor, to the jury is that she
5 owns her job, that she owns her classroom and that that's
6 the way that it is. And that's just not reality.
7 MR. MILLER: It goes to the Adverse
8 Employment Action to show that there isn't actually an
9 Adverse Employment Action. This is something that dozens of
10 employees deal with every single school year.
11 MS. BONANNI: And so because one, they never
12 produced this, whatever the version would have been during
13 discovery --
14 THE COURT: Well as I'm understanding,
15 something of this -- isn't this the most updated one?
16 MS. BONANNI: Yes.
17 MR. MILLER: And as of October both were
18 produced to the plaintiff. She's had them for a
19 considerable period of time.
20 MS. BONANNI: And so --
21 MR. MILLER: And as we're getting together
22 and presenting our case and working out our trial theory --
23 MS. BONANNI: Yeah --
24 MR. MILLER: -- we come up with new
25 documents. Plaintiff has been sending me documents all

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1 week. I mean these are new exhibits, these are supplements,
2 these exhibits.
3 MS. BONANNI: No, that is really -- that is
4 not true. The only --
5 MR. MILLER: We received brand new medical
6 records a week before trial. We didn't come here and say,
7 Judge, --
8 MS. BONANNI: They're updated.
9 MR. MILLER: Exactly.
10 THE COURT: These are updated too.
11 MS. BONANNI: But I never received the
12 original and, you know, this document doesn't explain
13 whether the teacher requested the transfer, whether it is
14 because they're pregnant, whether any of these transfers
15 were not -- what am I looking for, not the request of the
16 teacher.
17 This will require me to go through each and
18 every one of these examples to try to elicit testimony from
19 Mr. Beal as to whether any of these were against the
20 teacher's will.
21 MS. ROBINSON-HOLMES: If I may, your Honor,
22 the document was actually provided a week before trial, so
23 we never had any version of this document until a week --
24 MS. BONANNI: Oh that's right.
25 MS. ROBINSON-HOLMES: -- before trial. And

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1 while it may have been on an exhibit list we had no idea
2 what to expect from the actual exhibit --
3 MS. BONANNI: That's right.
4 MS. ROBINSON-HOLMES: -- as we've never seen
5 a version of that document.
6 MS. BONANNI: Thank you.
7 MR. MILLER: I'm just going to say that that
8 is an untrue representation. The witness list that was
9 filed in October said document in possession of plaintiff
10 because for many months now I've been sending updated
11 documents.
12 MS. BONANNI: I don't have that document.
13 MR. MILLER: It was on the exhibit list even
14 saying plaintiff has the --
15 MS. BONANNI: No, because there's --
16 MR. MILLER: It would have been easy to pick
17 up the phone and say actually I don't have this even though
18 you say I have it.
19 THE COURT: I think that, you know, clearly
20 it was produced early in discovery, maybe not in its most
21 updated form. But I do think the district should have some
22 latitude. I think clearly there's an issue as whether the
23 plaintiff was somehow transferred and that was done, you
24 know, with some type of, you know, intent on their mind,
25 retaliation or whatever.

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1 And I think the district should have some
2 latitude at being allowed to explain that, you know, there's
3 different transfers that occur in the ordinary course of
4 business on a pretty regular basis.
5 So that allows you to still come back if you
6 want whether you want to question him about any one of these
7 in there I guess you can. There may be parts of, you know,
8 additional explanation. But I'm going to allow the exhibit.
9 All right.
10 (At 2:12:17 p.m., Plaintiff's Exhibit 12 was
11 admitted)
12 MR. MULLINS: Thank you, your Honor.
13 THE COURT: So, Dave, would you give that
14 back to him.
15 Okay, why doesn't everybody take a real quick
16 break and then we'll get right back on it. All right.
17 (At 2:12:29 p.m., court recessed)
18 (At 2:25:21 p.m., court reconvened)
19 MS. BONANNI: Can we address another
20 evidentiary issue?
21 THE COURT: Sure, I'd rather you address it
22 now than when the jury is here.
23 MS. BONANNI: So I just asked them to show me
24 what they've got on their blow up.
25 THE COURT: And, Mr. Mullins, I was kind of

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1 thinking through the last evidentiary issue and you're
2 offering that under a business record obviously?
3 MR. MULLINS: Correct.
4 THE COURT: Correct, okay.
5 MS. BONANNI: And so this is the green are
6 like the times that all school districts had off.
7 THE COURT: I'm just going to slide out so I
8 can see that.
9 MS. BONANNI: Yeah.
10 MR. MILLER: It's essentially her attendance
11 tracking record at the school district.
12 MS. BONANNI: But they've taken the time that
13 everybody has off for school and highlighted it in green.
14 MR. MILLER: Well no, the reason why, it's
15 hard to see but like all these days were gray, same with
16 these but the coloring you couldn't tell blown up. It was
17 shaded. And what's produced is the exhibit as shaded, you
18 can see how they're gray. They're just darkened in so you
19 can --
20 MS. BONANNI: Yeah.
21 THE COURT: Okay.
22 MS. BONANNI: So we object to this exhibit
23 for the following reasons. It's her attendance, it's not
24 relevant. She was not disciplined for attendance, this is
25 not a case about her performance and attendance being an

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1 issue. She also -- this gets very confusing, she has time
2 off for a surgery and had FMLA. This is not an FMLA case.
3 I think it would be confusing for a jury and
4 I think it's prejudicial. We've explained that she's a
5 teacher and she gets time off.
6 THE COURT: Okay.
7 MR. MILLER: And the --
8 MS. BONANNI: What's the relevance?
9 THE COURT: Okay, response?
10 MR. MILLER: Well they're saying that there's
11 an Adverse Employment Action. This is part of the terms and
12 conditions of her collective bargaining agreement and it's
13 one of the reasons to say, look ladies and gentlemen, there
14 really isn't an Adverse Employment Action. These are how
15 many days she's supposed to work, a hundred and eighty-five,
16 she only worked a hundred and fifty-two of those days and
17 she gets paid. This isn't that bad of a job.
18 THE COURT: I'm going to sustain, plaintiff,
19 on this one.
20 I think you could still elicit all that
21 information. I think, you know, your coloring it in with a
22 high lighter, whatever, calls even more attention to it than
23 the exhibit that was used. You know, you can use that to
24 further refresh your superintendent, any other witnesses
25 testimony.

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1 But I think it calls undue attention to
2 really kind of a peripheral issue that relates to
3 attendance. And, you know, I kind of leaned a little bit
4 with my last ruling in favor of allowing an exhibit, you
5 know, that they were kind of a bit surprised on and had to
6 meet as well. So I'm going to sustain their objection.
7 MR. MILLER: All right, Judge. And is it
8 just for the shading or the underlying exhibit itself?
9 THE COURT: No, well the underlying exhibit
10 may be entered, but it certainly is the exhibit as currently
11 presented.
12 MR. MILLER: All right. Thank you, Judge.
13 MS. BONANNI: So I would object to even an
14 underlying exhibit because, you know, this is not an
15 attendance case. This is not about her attendance and she
16 is permitted as you brought up --
17 THE COURT: All right. Well I'm not going to
18 per se rule it's inadmissible. They may use it as an
19 example to refresh the recollection of witnesses.
20 MS. BONANNI: That's okay. I just object to
21 its admission.
22 THE COURT: Okay. Well right now I'm totally
23 going with you on that. I sustained the objection.
24 MS. BONANNI: Thank you.
25 MR. MILLER: I'm sorry, Judge. The other

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1 reason I mean besides just showing an Adverse Employment
2 Action, this is a case without wage loss. It's purely about
3 emotional distress. It's pretty important for most people
4 to understand and this could be important for their doctor.
5 This is someone that works a hundred and fifty days a year
6 and can do all these other things. It goes to emotional
7 distress.
8 MS. BONANNI: So --
9 THE COURT: I think a lot of that has come
10 out and I'm going to give you some latitude on maybe if one
11 of your witnesses wants to, you know, review that document
12 and testify exactly to the number of days she worked or
13 whatever, but I made my ruling about at least the poster.
14 MR. MULLINS: I'd just like to say.
15 THE COURT: Sure.
16 MR. MULLINS: I haven't offered it yet.
17 THE COURT: That's true.
18 MR. MULLINS: She asked to look at the board
19 and we've got a long way to go here and --
20 THE COURT: Okay.
21 MR. MULLINS: -- what I'm --
22 THE COURT: Okay, she want's clarification
23 outside the presence of the jury. So that is --
24 MS. BONANNI: Yeah, I think --
25 THE COURT: I think that is a motion in

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1 limine. So --

2 MS. BONANNI: Thank you. Because part of

3 what we do --

4 MR. MILLER: You're so mean.

5 MS. BONANNI: Part of what we do is show each

6 other our blow ups, because it is such a -- and we talked

7 about it yesterday such an in your face. And it was

8 important to address it now. So thank you, Judge.

9 THE COURT: And I've tried to give both sides

10 wide latitude in recognizing there's going to be a ton of

11 exhibits that go back with the jury in notebooks. Whatever

12 exhibits that you want to pull out, copy and distribute to

13 the jury as we're going along. All right.

14 So, David, bring the jury back in.

15 MR. MILLER: How many civil jury trials do

16 you get a year?

17 MS. BONANNI: He loves trials.

18 THE COURT: Well I usually do -- twenty jury

19 trials last year. I think three civil.

20 MR. MILLER: Is that right.

21 THE COURT: It's a good change of pace. I

22 like to do civil. I do so much more criminal than I do

23 civil. I like to see -- (inaudible).

24 THE CLERK: All rise for the jury.

25 (At 2:31:02 p.m., jury entered)

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1 THE COURT: Thank you. Everyone may be
2 seated.
3 Ladies and gentlemen, I understand you found
4 out what the jury buzzer does. It actually goes off here in
5 my chambers and everything when you push that so we know you
6 need something or you're trapped in the room or something.
7 I usually explain it to you after the end of the case.
8 Okay. So are we ready to pick up then again
9 with --
10 MR. MULLINS: Yes, your Honor.
11 THE COURT: -- the superintendent?
12 MR. MULLINS: And if I understand it my offer
13 of Exhibit 12 is accepted?
14 THE COURT: That's my understanding.
15 MR. MULLINS: And I'd ask to distribute.
16 THE COURT: Okay, you may so publish it to
17 the jury.
18 BY MR. MULLINS:
19 Q So in short, Exhibit 12 would list the many different
20 changes, the transfers, the comings and goings of people
21 during this period of time, is that right?
22 A Yes, it does.
23 Q Okay. And is the transfers, are any of those people
24 requesting to be transferred or are they -- the school
25 addressing its administrative leaves or what does the

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1 transfers reflect?

2 A Some of these transfers are at the request of the teacher.

3 In other words, we have a vacancy posted and a teacher says

4 I would prefer to go teach in a different location or choose

5 up a different teaching assignment. Others are by design

6 from the building, that a district has an obligation to make

7 sure that we fill all the spots that we meet our

8 obligations.

9 So if I need an extra fourth grade teacher we

10 assign an extra fourth grade teacher. If I don't need a

11 Kindergarten teacher I remove a Kindergarten teacher and

12 place them someplace else. And we look at that every year,

13 we look at that after the beginning of the year quite often,

14 because I don't know how many Kindergartners are going to

15 show up, I don't know how many third graders are going to

16 come back.

17 And so we take a look at the roster of kids

18 and we, you know, I fill the classroom and then I go to the

19 next classroom and I fill that classroom. Then I go to the

20 next classroom. So that's -- there are a number of teachers

21 on here who requested to be transferred and a number of

22 teachers on here who did not request to be transferred.

23 Q Okay.

24 THE COURT: This is a record kept in the

25 ordinary course of business, correct?

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1 THE WITNESS: It is.

2 BY MR. MULLINS:

3 Q And we had also covered that fact, you addressed that you

4 eventually in March had had a meeting with Ms. Davis about

5 the prior year's evaluation and after you had the meeting

6 and she finally turned in the data you considered the

7 matter, raised her evaluation and wrote her a letter

8 reflecting that, is that right?

9 A That's correct, I raised the evaluation from ineffective as

10 it stood prior to and to minimally effective at the

11 conclusion of that meeting.

12 Q Okay. And your letter of March 17th, 2017 is marked as

13 defendant's Exhibit 10 and that as I understand it is the

14 letter that you wrote to her indicating the raising of her

15 2015-2016 evaluation review, is that right?

16 A Can I have a copy, I don't --

17 MR. MILLER: May I approach?

18 THE WITNESS: I don't have that.

19 BY MR. MULLINS:

20 Q Have you had a chance to review that?

21 A I have.

22 Q Is that the letter that you sent?

23 A It is.

24 MR. MULLINS: And I'd ask for admission of

25 defendant's 10 please.

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1 (At 2:35:41 p.m., Defendant's Exhibit 10 was
2 offered)
3 MS. BONANNI: No objection.
4 THE COURT: Okay, defendant's 10 will be so
5 admitted.
6 (At 2:35:45 p.m., Defendant's Exhibit 10 was
7 admitted)
8 MR. MULLINS: And if I could I'd ask to
9 publish.
10 THE COURT: You may publish. Go ahead.
11 (Inaudible)-- that exhibit?
12 THE WITNESS: This is my finding on the
13 evaluation review from 2015-2016.
14 THE COURT: Evaluation review.
15 All set when you are, Mr. Mullins.
16 MR. MULLINS: Thank you.
17 BY MR. MULLINS:
18 Q As I understand the regular course of business all teachers
19 are provided with a confirmation of what their salary notice
20 is every year, is that right?
21 A That's correct.
22 Q And do you have Exhibit 6 before you?
23 A Yours or hers?
24 Q Our exhibit, no. All right.
25 A All right.

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1 Q That's Exhibit 6?
2 A That's correct.
3 Q And would that be in particular among the other teachers the
4 teacher's salary notice that Pennie Davis would have
5 received for the 2015-2016 school year?
6 A This is the standard form that we issue to every teacher and
7 obviously the dollars would be different, but this is the
8 salary notice for Pennie Davis from the 2015-2016 school
9 year.
10 Q And the dollars would be different based on who you are, how
11 many years of seniority you have and what your level of
12 certification is?
13 A Yes.
14 Q All pursuant to the contract?
15 A Pursuant to the contract, without question.
16 Q Okay. And this confirms that during the 2015-2016 school
17 year she would receive a seventy-five thousand, one hundred
18 and ninety one dollars, that is level four, step twelve,
19 paid at level four, step twelve salary for the year?
20 A I believe that's the highest in our collective bargaining
21 agreement, yes. So she received seventy-five thousand, one
22 hundred and ninety-one dollars. Now that's just the salary
23 portion.
24 Q Okay. And you sign it as if you will offer as we call it a
25 contract and she's counter signed it, right?

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1 A That's correct.

2 MR. MULLINS: I'd move for admission of

3 defendant's 6, your Honor.

4 (At 2:38:07 p.m., Defendant's Exhibit 6 was

5 offered)

6 MS. BONANNI: No objection.

7 THE COURT: So admitted by way of stipulation

8 of the parties.

9 (At 2:38:10 p.m., Defendant's Exhibit 6 was

10 admitted)

11 BY MR. MULLINS:

12 Q You had talked about that this is level four, step twelve,

13 could you tell what the levels, level one, two, three, four,

14 five, what that means?

15 A In the contract we go through progression, so teachers based

16 on seniority receive a greater wage each year of the

17 contract up through twelve. The lane changes, so through

18 level one through four reflect a level of education or a

19 level of mastery that's achieved within that subject area or

20 within that teaching assignment.

21 Q Okay. And that schedule if you will is set forth at page 46

22 for your notes in the contract and level four would take you

23 over here, that's based on how high you've gone in education

24 and twelve is all the way down here, which is the very

25 highest, is that right?

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1 A Yes.

2 Q And she continues to get paid on that basis?

3 A Yes, she does.

4 MR. MULLINS: We had also talked about the

5 contract if you will, your Honor, the collective bargaining

6 agreement, which is marked as defendant's Exhibit 5. If I

7 could move for that I would.

8 (At 2:39:28 p.m., Defendant's Exhibit 5 was

9 offered)

10 THE COURT: Any objection to that?

11 MS. BONANNI: No objection.

12 THE COURT: So admitted by way of stipulation

13 of the parties.

14 (At 2:39:31 p.m., Defendant's Exhibit 5 was

15 admitted)

16 THE COURT: What are we calling that exhibit?

17 MR. MULLINS: Collective bargaining

18 agreement.

19 THE COURT: Okay.

20 MR. MULLINS: All set?

21 THE COURT: Yes.

22 BY MR. MULLINS:

23 Q And you had eluded to the fact that there are benefits in

24 addition to the salary of the seventy-five thousand some odd

25 dollars. What other benefits does she receive and what are

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1 those worth?
2 A We are required to contribute a portion of her salary
3 towards her pension, so we contribute in addition to the
4 seventy-six thousand -- or seventy-five thousand we
5 contribute more than nineteen thousand dollars towards her
6 retirement. We also purchase MESA Blue Cross Blue Shield
7 insurance for all of our professional staff. For Ms. Davis
8 that would be in excess of seven thousand dollars worth of
9 benefit.
10 Q Okay. And how would you describe or qualify the type of
11 coverage that is offered through MESA Blue Cross Blue
12 Shield?
13 A I think it's the very best. You know, it's not what it was
14 when I got into teaching. I think we've all kind of shifted
15 that, but it's excellent health insurance.
16 Q And you say you contribute to her retirement?
17 A We do.
18 Q If I understand it the State of Michigan, you can move from
19 school district to school district or stay at one school
20 district, but the school districts contribute into a type of
21 retirement plan which if you achieve a certain age and work
22 a certain number of years you can have a lifetime pension,
23 is that right?
24 A That's correct. So I've worked in four different districts,
25 I've accrued time in that pension, so towards my thirty

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1 years if you will at all of those districts so yes, and then
2 at the conclusion of my thirty years I would be able to draw
3 the pension for the remainder of my life.
4 Q Okay. And if I understand it and correct me if I'm wrong,
5 if you're over fifty-five years of age and if you've worked
6 more than thirty years in Michigan Public School Districts
7 you if you will have maximized your retirement, is that
8 right?
9 A That's correct.
10 Q And so you'd have a lifetime pension?
11 A Yes.
12 Q And if anyone who has worked thirty years and is over fifty-
13 five years of age they can take that pension anytime that
14 they want, is that right?
15 A They can.
16 Q And that also comes with medical coverage, is that right?
17 A It does.
18 Q So you have pension and medical coverage the rest of your
19 life?
20 A Yes.
21 MR. MULLINS: I'd move for Exhibit 6, your
22 Honor, if I haven't already.
23 THE COURT: Okay. I have that admitted.
24 MR. MULLINS: Thank you, your Honor. Sorry.
25 BY MR. MULLINS:

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1 Q There was some discussion when the incident occurred with
2 Marcus and this will be covered, but you understand that the
3 administrators at the building, Mr. Zesson and Ms. Baird-
4 Pauli, talked with Ms. Davis, is that right?
5 A Yes.
6 Q On the day of?
7 A Ms. Pauli talked to Ms. Davis immediately following the
8 incident.
9 Q Okay. And Mr. Zesson went to the classroom?
10 A Yes, he did.
11 Q Okay. And were students asked and Ms. Davis asked what
12 happened, students asked what happened?
13 A We interviewed I want to say there were five students
14 interviewed that were all approximate in the area. At least
15 one of those students was recommended to us by Ms. Davis,
16 this is somebody who we should talk to.
17 Q Okay. And listening to her, listening to the students
18 helped you render your decision as to how to administer the
19 school?
20 A All the statements were identical. All the statements --
21 not one statement said that the student intentionally hit
22 her. All the statements said that Ms. Davis was reaching
23 for papers to take them from Marcus, excuse me the student,
24 the student reached for the papers to keep them, their hands
25 bumped. And so it was not -- it never rose to the level of

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1 intent to do harm from a district standpoint.
2 Q And also we understand she went, a police report was filed,
3 Police Officer Goings (ph) came to the district, is that
4 right?
5 A Scott came to the district, yes.
6 Q Okay. And your understanding what Scott did when he got to
7 the district?
8 A He interviewed Ms. Davis, he interviewed Ms. Pauli, he
9 called several students down --
10 Q Ms. Pauli is the principal?
11 A He did. He called multiple students down. Again, students
12 that we had interviewed and then students that Ms. Davis had
13 recommended. And again, the statements that were collected
14 during Mr. Goings, Officer Goings report were consistent
15 with the statements that we had received.
16 Q Okay. And in any way did you try to interfere with or
17 prevent Scott Goings, Officer Goings from working with your
18 administration?
19 A We have a real good relationship with our local law
20 enforcement. They're in all of our buildings routinely, you
21 know, they come for lunch, etcetera. But no, if there's a
22 police investigation we cooperate fully.
23 Q Okay. And in the course of days, weeks, months running a
24 school district is it unusual for someone to have the police
25 called to come to the building for whatever situation there

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1 might be?
2 A No, I can think of three right off the top of my head that
3 we've had since Christmas. What a lot of people don't know
4 is we've got a system within the district that if 911 is
5 called I get made aware immediately, like within seconds
6 exactly which phone it was, which building it was, right
7 down and then my secretary, administrative assistant Ms.
8 Oxley (ph) collects that data as far as why it was done.
9 Q Okay. So not particularly unusual?
10 A No, we've got a number of 911 calls this year.
11 Q Okay. Medical emergencies, you probably have ambulances
12 there some times too?
13 A We've had a little bit of everything, you know, so yes.
14 THE COURT: Do they still have an officer
15 liaison program at the high school?
16 THE WITNESS: We don't have a liaison officer
17 program. That was discontinued prior to my arrival.
18 MR. MULLINS: Thank you, your Honor. If I
19 can reserve the right to call him in my case in chief I have
20 no further questions.
21 THE COURT: All right.
22 MS. BONANNI: I just have a brief.
23 THE COURT: Okay.
24 REDIRECT EXAMINATION
25 BY MS. BONANNI:

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1 Q As to the incident in October of 2015, isn't it true that
2 Principal Pauli reported that there was a consensus that
3 M.H. pushed Pennie Davis' hand, pushed, do you remember
4 that?
5 A I believe that he pushed her hand away was in the
6 statements, yes.
7 Q And isn't it also true you never talked to Pennie Davis?
8 A I did not talk to Pennie Davis, no.
9 Q As part of the investigation?
10 A That would not have been my role.
11 Q And because you didn't talk to Pennie Davis you weren't
12 aware that students were coming to Pennie Davis and telling
13 her that they didn't say too much and were afraid to say too
14 much because they were afraid of M.H.?
15 A I would have absolutely no knowledge of that.
16 Q The class has twenty-seven kids?
17 A Ballpark, sure.
18 Q You talked to four?
19 A I believe five were interviewed at that --
20 Q All of them confirmed that there was some kind of touching,
21 correct?
22 A All of them confirmed that there was some kind of touching.
23 Q None of them were near that table though, do you even know
24 that?
25 A I can't testify to that. What I would tell you is that

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1 included in the students that were interviewed were students
2 that Ms. Davis requested that we interview. So you say were
3 they in the area, I would assume that we would have
4 interviewed students that were approximate. And you asked
5 me a question --
6 Q That's an assumption.
7 A -- though.
8 Q That's an assumption?
9 A Fair enough.
10 Q Okay.
11 A But you also asked me a question of, did I know that Ms.
12 Davis have several students come to her and report that they
13 were threatened. Did Ms. Davis come to us and report that?
14 I can tell you at no time did Ms. Davis come to us and say,
15 gosh these students are fearful, these statements aren't
16 accurate.
17 Q And she'll tell you why if you'd asked her. But maybe
18 she'll tell the jury. Sir, you don't know one way or
19 another whether any of the kids that were interviewed were
20 even near the art table where Pennie Davis was?
21 A They were all in that classroom, that's what I can confirm.
22 Q The classroom, but you don't know whether they were at the
23 table, correct?
24 A That would be correct.
25 Q Do you remember one of the witnesses or maybe it was one or

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1 two said they heard some muttering, they heard Marcus say
2 something but they don't know what it was, correct?
3 A I believe that was accurate within the statements.
4 Q And wasn't that statement that M.H. muttered, that he wanted
5 to beat and hurt the teacher?
6 A I don't believe that that's reflected in the statements.
7 Q That's because the students couldn't hear it?
8 A Well then how would I know?
9 Q That's right. Ms. Davis reported it though. And what I
10 want you to do is turn to her official report, it's called
11 an incident report. And that incident report, that's a
12 mechanism for teachers to report violations. It is Exhibit
13 number 3 I think. No, it is Exhibit number 5. Have you
14 seen this kind of report before?
15 A I have seen this report before.
16 Q And this is an employee incident report --
17 MS. BONANNI: Channing, would you --
18 Oh, you know, I want to move to admit this,
19 number 5.
20 THE COURT: Any objection to its admission?
21 MR. MULLINS: May I, your Honor?
22 THE COURT: Just one second. We'll deal with
23 the issue.
24 MR. MULLINS: I have a concern. It's got
25 student personal information in it.

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1 THE COURT: Why don't we approach.
2 MR. MULLINS: I'm sorry.
3 (Bench Conference Held from 2:50:44 p.m. to
4 2:51:07 p.m.)
5 THE COURT: Why don't you see if that's
6 properly redacted. And we'll get Mr. Beal a copy that's
7 redacted.
8 MS. BONANNI: With the redaction of phone
9 numbers I'd like to move for the admission of this document.
10 (At 2:51:37 p.m., Plaintiff's Exhibit 5 was
11 offered)
12 MR. MULLINS: I have no objection, your
13 Honor. Okay, I have no objection.
14 THE COURT: All right. So admitted by way of
15 stipulation of the parties plaintiff's Exhibit number 5.
16 (At 2:51:44 p.m., Plaintiff's Exhibit 5 was
17 admitted)
18 BY MS. BONANNI:
19 Q This is a report that a teacher must submit within twenty-
20 four hours of an incident, correct, Sir?
21 A Yes.
22 Q And within this report Pennie Davis is indicating that
23 quote, "threatened me and said he was going to beat the
24 teacher under his breath", end quote. Did you read this
25 report --

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1 A I see that.
2 Q -- as part of your investigation?
3 A I see that. I did not read this report as part of my
4 investigation because that's not my office.
5 Q Okay. That would have been helpful though to understand the
6 scope of what really happened in that classroom, wouldn't
7 it?
8 A This is Ms. Davis' accounting. Again, our statements from
9 our students would indicate otherwise.
10 Q If you talked to her you would have learned that the student
11 threatened to hit and beat the teacher, correct?
12 A No, I can't testify to that because again, I would tell you
13 that the statements that we took from the students,
14 including the student that Ms. Davis suggested we talk to,
15 did not suggest that. And as --
16 Q The students that you talked to supported the fact that the
17 student muttered something under his breath and there's also
18 a student's statement that talks about threat. My question
19 is, if you had talked to Pennie Davis as part of your
20 investigation knowing what you know now that he threatened
21 to beat her, knowing that by talking to her as part of your
22 investigation, that would have been helpful to understand
23 what really happened in that class, don't you think?
24 A Again, I didn't do the investigation. But our
25 administrative team, Ms. Pauli, did talk to the teacher. So

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1 our administration did talk to her.
2 Q Okay. But you didn't know as part of the official
3 investigation into this incident that the student had
4 actually threatened to hit and beat the teacher, correct?
5 A That's not my role. That would be --
6 Q Okay, not your role. Sir, you have during your exam with
7 Mr. Mullins you talked a lot about the contract?
8 A Yes.
9 Q And fair to say the contract is an agreement between the
10 teachers and the school?
11 A It is a contract between the board of education and the
12 teaching association, yes.
13 Q And there's different provisions that cover a pena plea of
14 rights and responsibilities and --
15 A It covers a broad spectrum. The idea is it hopefully
16 encompasses the whole workplace.
17 Q But the pena plea of rights under the contract that can be
18 grieved or brought to the board's attention, would you agree
19 that that isn't -- there's things that are rights that
20 teachers have, that citizens have that aren't in the
21 contract?
22 A Yes, I would say that there is plenty of things that aren't
23 in the contract that citizens have.
24 Q Okay. And the only thing that you can grieve as a teacher
25 or administrator would be things that are specifically

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1 outlined in the contract and then I believe the lingo is,
2 it's a violation of the contract?
3 A That would be correct, you can only grieve contractual
4 concerns.
5 Q So you agree that the legislature gave Pennie Davis a right
6 to pursue violations of the law in court?
7 A Absolutely. We would never interfere with that.
8 Q Okay. And that there's the Whistleblower Law that we're
9 here about in this case, that's not in the contract,
10 correct?
11 A Absolutely.
12 Q Okay. That's a law in our State?
13 A Yes.
14 Q Separate and distinct from the contract?
15 A Yes.
16 Q Fair to say you don't have personal knowledge of all of the
17 things that Pennie Davis may have done in order to pursue
18 her rights within the school district and to protect
19 herself, fair to say you don't really know?
20 A You're going to have to ask that question again please.
21 Q Her union president or the union people that she works with
22 would be in a better position to understand all the steps
23 that Pennie Davis took to address things at work that she
24 felt were retaliatory?
25 A Anything that Ms. Davis felt was retaliatory within the

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1 context of the contract or work would have been brought to a
2 member of my staff, whether it's the principal, whether it's
3 the associate principal or the assistant superintendent for
4 human resources. But I don't -- the answer to your question
5 is, I don't deal on that level. There are cabinet level
6 folks who do address those concerns.
7 Q But on that level that's a level that Pennie Davis and her
8 union president would be working within, correct?
9 A They would be meeting with the building principal or the
10 assistant superintendent of human resources. We never deny
11 any of our employees, you know, the ability to have
12 representation. So anytime that Ms. Davis would come to us
13 or we would want to meet with Ms. Davis she always had the
14 right to bring representation.
15 Q Okay. Now we talked about Exhibit number 12 and this is
16 this personal budget tracking. We understand that --
17 A Hold still.
18 Q Yeah, if you want to take a look at it?
19 A Yes.
20 Q So as you sit here today you're saying that the school has a
21 right to transfer willy nilly, whatever they want to do?
22 A We have the sole right of assignment within the school
23 district, yes.
24 Q So because you have the sole right to assignment that is not
25 grievable?

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1 A It's a prohibited subject of bargaining. It's not allowed
2 in the contract, it's not a right of the employee.
3 Q Okay. So that really in terms of you don't like your
4 transfer, you can't really go through the contract to remedy
5 that?
6 A That's because it's not -- it's protected by the legislature
7 that guarantees we have the right of assignment. That was
8 articulated in law.
9 Q Pennie Davis' transfer was what we call involuntary, do you
10 agree?
11 A We have several that were involuntary, Pennie Davis' was
12 involuntary.
13 THE COURT: I just have one question. The
14 transfer though still has to be within the core area that a
15 teacher would teach, correct?
16 THE WITNESS: They still have to be highly
17 qualified and certified to teach in that position, yes.
18 THE COURT: Okay.
19 BY MS. BONANNI:
20 Q Can you tell me which of these people on this list were
21 involuntarily transferred?
22 A Going through I don't want to go through all of them. I
23 would say that Michelle Cross was involuntarily transferred,
24 Deb Zerocki (ph) was involuntarily transferred, Connie
25 Christiansen (ph) was involuntarily transferred, Melissa Jo

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1 Langenberger (ph). That's the first page, were all
2 involuntarily transferred.
3 THE COURT: So even if a teacher had a
4 maternity leave could that still trigger an involuntary
5 transfer of another teacher?
6 THE WITNESS: Typically not if a teacher goes
7 off on maternity leave or FMLA. We typically cover that
8 with a long term substitute. The only time that might be
9 the case is if someone went off on a medical leave for more
10 than a board approved leave for a year they would not have
11 necessarily rights to return to that position so to speak.
12 Do you want me to continue on to the second
13 page?
14 BY MS. BONANNI:
15 Q Sure.
16 A Melissa Pascal (ph) was involuntarily transferred, Evelyn
17 Budd was involuntarily transferred, Hillary Fairbanks was
18 involuntarily transferred, Addy Benjamin was involuntarily
19 transferred, Brent Murphy was involuntarily transferred.
20 Q Now --
21 A That's the second page.
22 Q Okay.
23 A Libby Brown was initially involuntarily transferred.
24 Q And those are typically because of performance?
25 A No, it's because of need of the district.

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1 Q Oh, okay. So there's a need. So this teacher has something
2 that the district needs and they need that skill set so they
3 need to move you. I understand.
4 A Without question.
5 Q Pennie Davis' transfer was not about need, it was about the
6 fact that she had this modified or motion that she filed
7 with the court about the PPO?
8 A Ms. Davis' transfer was about our intent, our need to
9 fulfill her requirement for feeling safe and so, yes.
10 Q But it wasn't about her need, her skill set being needed
11 somewhere else?
12 A No.
13 Q Okay. Now this issue of student data Pennie will address,
14 Amy Gish will address, but I want to address what you talked
15 about during that meeting about Pennie asking to be rated
16 minimally effective. I was at that meeting, I don't have
17 that recollection. And I've never seen that in writing. I
18 heard her requesting an effective rating. Are you sure
19 about that?
20 A I'm a hundred percent sure about that.
21 Q Because I was there too.
22 THE COURT: Counsel, you're kind of treading
23 on putting yourself in as a witness.
24 MS. BONANNI: Agree. Withdraw.
25 THE COURT: The jury will disregard that last

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1 statement by counsel.

2 BY MS. BONANNI:

3 Q Now you talked about the fact that you docked Pennie two

4 days pay because she didn't return to work after her two

5 week suspension?

6 A Again, Ms. Davis was not suspended for two weeks. She was

7 never suspended. And we did dock her two days pay because

8 on Monday we requested that she return to work. She didn't

9 return to work on Tuesday or Wednesday. Her association

10 tried to assert that we had to give her twenty-four hours

11 notice to return to work, so we docked her two days pay for

12 insubordination for not following our directive to return to

13 work.

14 Q Mr. Beal, isn't it true that Ms. Davis got a phone call from

15 the administration the night before they wanted her to

16 appear for work telling her to appear with union

17 representation and that Pennie Davis and her union rep

18 reached out to the administration in writing and through

19 telephone calls stating, we need twenty-four hours notice to

20 secure union representation.

21 And do you remember Pennie Davis calling and

22 saying --

23 THE COURT: Counsel, that's a seriously

24 compound question.

25 BY MS. BONANNI:

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1 Q I'm asking if you remember that, that part of the story?
2 THE COURT: Just rephrase it and break it
3 down a little bit more so --
4 MS. BONANNI: You know what, I'm getting
5 tired and --
6 THE COURT: That's okay. I'm just trying to
7 make it easier for the jury and everybody and just break it
8 down a little bit more so he's not answering long compound
9 questions.
10 BY MS. BONANNI:
11 Q Do you remember that?
12 A I remember that we called Pennie Davis to come back to work.
13 We do not require union representation, that is the
14 employee's right to bring representation if they want. The
15 contract does not require and we can't enforce that the
16 employee bring representation.
17 Q Did you remember during the hearing when Pennie Davis
18 challenged that she had her pay docked that she played a
19 recording of the message that was left to her from
20 administration directing her to bring union, do you remember
21 that?
22 A I do.
23 Q And that recording that Pennie had saved on her phone was
24 the basis for the decision that her pay shouldn't be docked?
25 A That was the intent of her grievance, yes.

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1 Q So the requirement that Pennie bring union representation
2 was something that came from the district, not a request
3 from Pennie?
4 A Again, the district can't require that she bring
5 representation, nor do we determine who her representation
6 is. The contract allows for her to bring representation.
7 Q I think that --
8 A I understand.
9 Q -- at that hearing that the message that Pennie played
10 directing her to bring union representation was a message
11 from someone within the district administration?
12 A I don't have that.
13 Q But you remember a recording being played?
14 A I remember a recording being played.
15 MS. BONANNI: I have nothing further. Thank
16 you.
17 THE COURT: Mr. Mullins, anything further
18 with the plaintiff with Mr. Beal?
19 MR. MULLINS: Just briefly, your Honor.
20 RECROSS-EXAMINATION
21 BY MR. MULLINS:
22 Q As to a question she asked, Pennie Davis didn't bring any of
23 this to the attention of the board?
24 A The grievance was resolved at a level three. So we agreed
25 that additional time would have been valuable and so that

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1 docking her the day for Tuesday would have been
2 unreasonable, but that docking her Wednesday because she
3 didn't return Wednesday --
4 Q My question is, as opposed to having a meeting with you or
5 with Mr. Pack, she never took any of her concerns about the
6 transfer or this M.H. fellow or how things were being
7 handled --
8 A I apologize.
9 Q -- it never went to the board?
10 A No, no, that --
11 Q In any fashion?
12 A None of that went to the board in any fashion.
13 Q And be it by way of grievance in the collective bargaining
14 agreement or in fact even though transfers are within the
15 administration's discretion, if somebody is acting
16 illegally, if I'm racially discriminating against somebody
17 or sexually discriminating against somebody or if there was
18 some suggestion that there was something illegal about the
19 manner in which you were conducting business, that certainly
20 is something that can be brought to the board's attention,
21 can it not?
22 A Without question. So I cannot exercise that right of
23 assignment in an arbitrary and capricious fashion. I can't
24 transfer someone because they're a female or because they're
25 a male or because they're black, white or old or young. In

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1 this case, you know, we don't have that ability. In this
2 case we made a transfer based on Ms. Davis' feeling of fear.
3 Q And as you look at her Exhibit 5 and her expression of fear
4 concern about this individual, does it cause you to second
5 guess or in any way think that it probably wasn't a good
6 idea to have the two of them far apart?
7 A You know, I --
8 MS. BONANNI: He's leading.
9 THE COURT: Overruled.
10 THE WITNESS: You know, at the time and I
11 won't say that I'm right or wrong today. I would tell you
12 that I did the best I have with the information I have.
13 I've got an investigation that says one thing. I've got a
14 PPO that we tried to implement. I've got an updated or an
15 intent to modify that PPO that says it's not enough.
16 So I made a decision to move her to a
17 position that she's highly qualified and certified to teach.
18 There was no malice, no ill intent to say, you know, the
19 teaching at Parkside, you know, art is any different than
20 teaching art at the high school. We kept her in her
21 preferred subject and content area.
22 BY MR. MULLINS:
23 Q And on page 2 of this incident report it makes reference to
24 it. It says, I saw Joe Zesson right after the incident.
25 Joe Zesson is your assistant principal at the building, is

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1 that right?
2 A I don't have page 2. All I've got is --
3 Q You do know who Joe Zesson is?
4 A -- page one. I do know Joe Zesson.
5 Q I understand that she wrote out and put his name down there
6 saying that's -- it would be an appropriate person to
7 respond to an incident in the building?
8 A I believe that Ms. Davis the day of the incident spoke with
9 both Ms. Pauli and Mr. Zesson, yes.
10 Q Okay. And Barbara Pauli is the principal?
11 A That's correct.
12 Q Okay. And listing a couple of names as witnesses, I won't
13 say the last name, but there's an Alexis, are you familiar
14 with Alexis?
15 A I am. That's a witness that Pennie requested we talk to.
16 Q And one of the people that the police officer, I forgot his
17 name already, spoke --
18 A Officer Goings did.
19 Q Thanks.
20 MR. MULLINS: I have nothing further, your
21 Honor.
22 THE COURT: Ms. Bonanni, anything further?
23 MS. BONANNI: No.
24 THE COURT: Ladies and gentlemen of the jury,
25 I anticipate that Mr. Beal may be back for some additional

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1 testimony. Do any of you have any questions for him at this
2 time?
3 Okay, you may step down from the witness
4 stand. Thank you very much.
5 (At 3:10:07 p.m., witness excused)
6 THE COURT: Who is our next witness?
7 MS. BONANNI: Next witness Ms. Davis.
8 THE COURT: All right.
9 UNIDENTIFIED JUROR: Can we use the bathroom
10 first?
11 THE COURT: Yes, you can.
12 Why don't we take a five minute recess.
13 We'll go ahead and do that. We'll all stand at ease for
14 five minutes.
15 THE CLERK: All rise for the jury.
16 (At 3:10:26 p.m., jury exited)
17 (At 3:10:28 p.m., court recessed)
18 (At 3:21:33 p.m., court reconvened)
19 (At 3:21:33 p.m., jury entered)
20 THE CLERK: All rise for the jury.
21 THE COURT: All right. The record should
22 reflect all the jurors, the plaintiff, the defendant and all
23 their respective counsel.
24 And I think you're ready to call your client,
25 is that correct?

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1 MS. BONANNI: Pennie Davis.
2 THE COURT: Ms. Davis, can you come on up
3 here to the witness stand and I'll get you sworn in for your
4 testimony.
5 MS. DAVIS: Yes, Sir.
6 THE COURT: Go ahead and raise your right
7 hand. Do you solemnly swear or affirm that the testimony
8 you're about to give the Court will be the truth, the whole
9 truth and nothing but the truth, so help you God?
10 MS. DAVIS: Yes.
11 PENNIE DAVIS
12 (At 3:22:18 p.m., sworn as a witness, testified as follows:)
13 THE COURT: All right. Would you have a seat
14 right there in the witness stand, Ms. Davis. When you get
15 comfortable would you state your full name and spell your
16 last name for the record?
17 THE WITNESS: My name is -- can you hear me?
18 My name is Pennie Davis, P-E-N-N-I-E, last name Davis, D-A-
19 V-I-S. Also my middle name?
20 THE COURT: Sure.
21 THE WITNESS: Middle name is Marie, M-A-R-I-
22 E.
23 THE COURT: All right. Thank you, Ms. Davis.
24 Go ahead, counsel.
25 DIRECT EXAMINATION

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1 BY MS. BONANNI:
2 Q Pennie Davis, I'd like you to introduce yourself to this
3 jury by telling them a little bit about yourself?
4 A All right. I grew up mostly in Brooklyn Irish Hills. I'm
5 more or less a country girl. I'll say it that way. I have
6 ever since I was little a very strong passion for the arts.
7 Also a very strong passion for teaching. I've always wanted
8 to teach from when I was probably second grade up.
9 Other than I wanted to be an astronaut when I
10 was younger, I mean really younger. But I've always wanted
11 to teach and share my passion of art, my passion and love of
12 nature and animals to my students and my community.
13 Q Pennie, how old are you?
14 A I'm fifty-eight right now.
15 Q Are you married?
16 A No, I'm not.
17 Q Any kids?
18 A No, I don't have kids, but my kids are my kids at school.
19 Q So --
20 A I feel so strong about that.
21 Q Okay.
22 A Sorry.
23 Q Tell the jury a little bit about your educational
24 background?
25 A I went to -- I don't know how far you want me to go back,

1 but I went to Columbia Central High School. I played sports
2 there, also got a lot of awards for art. Went to Central
3 Michigan University undergrad. I was offered art awards and
4 got some art scholarships and along with some sports
5 scholarships from other colleges in Indiana and so forth.
6 But my passion for art and education I went to Central
7 Michigan, because at that time their school was noted for
8 education also.
9 Q So what is your degree?
10 A I have two degrees. I have a degree in art education, a BA.
11 Q And that's from what university?
12 A Central Michigan University. And then I went to Michigan
13 State and I was really, really fortunate because I submitted
14 a portfolio and my portfolio was for an art person, is your
15 works, your art works and so forth. And I submitted that
16 and they gave me a fellowship. And a fellowship is like a
17 scholarship, but they call it a fellowship at that level.
18 Q So in addition to the teaching do you actually create art?
19 A Yes, I create art all the time. I have had -- I'm sorry.
20 I've shown art all over the State of Michigan. I also have
21 a couple of pieces both in Korea and Japan. Up until this
22 incident I haven't been able to pursue my arts.
23 Q Okay. Let's talk about --
24 A My own.
25 Q I'm sorry?

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1 A My own artwork.
2 Q Yeah. Let's talk about when you started at Jackson Public
3 Schools, do you remember what year that was?
4 A It was around '85, '86.
5 Q Okay. And --
6 A Somewhere around there.
7 Q -- at that time you would have been about twenty-six?
8 A Twenty-five, twenty-six, yeah.
9 Q Okay. How long have you been at the high school, so how
10 long after your hire were you brought into the high school?
11 A About I'm going to say roughly four years I started there at
12 the high school at I'm going to say '89.
13 Q Okay. And when you came to the high school in 1989 what was
14 your assignment?
15 A It was all art classes obviously. And it was tenth through
16 twelfth grade, because at that time they didn't have the
17 ninth grade up there yet.
18 Q How long did you work in the position of teaching art at the
19 high school?
20 A I believe it's about twenty-nine years.
21 Q Okay. So from 1989 until what date?
22 A Until I was moved with this incident, which would have been
23 after the first semester of 2015-2016 school year.
24 Q Okay. So about twenty-nine years?
25 A Correct.

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1 Q So I want you to try to describe for the jury what it's like
2 to teach high school art, what the curriculum is like, can
3 you describe it briefly?
4 A Yes, Ma'am. High school art for any art teacher, because I
5 know a lot of art teachers obviously because if you're in
6 the field you've got to know them, that is like the
7 pinnacle, that is like the cream of the crop because most of
8 these kids want to pursue art in some way, whether it's
9 college, whether it's going out and doing freelance art or
10 they want to learn about art to decorate their house even or
11 their offices if they're going to be a doctor.
12 There's a lot of art illustrations that they
13 can get jobs at. What else did you ask?
14 Q So you -- okay. So at a certain point in time I mean you
15 became the chair or the co-chair?
16 A Correct. No, I was always -- not always, we'd either have
17 -- because one time I asked to split the chair and I was
18 told no, either one person has to be the chair or the other
19 person.
20 Q So for the twenty-nine years that you're in the position
21 before the transfer to Parkside do you remember how long of
22 that time you worked as chair?
23 A Most of the time, but not all the time, but most of the
24 time, yes.
25 Q For the twenty-nine years that you worked there before the

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1 transfer how many art teachers were there?
2 A In the whole district?
3 Q No.
4 A No.
5 Q At your Jackson Public High School?
6 A Okay, at the very beginning there were two and like a
7 quarter of one. Like one came and worked one hour or two
8 hours and then as time went on one year there was three, but
9 our numbers were over twenty-one hundred at that time. And
10 then it dropped to two for a significant time. I mean for
11 almost ever.
12 Q Do you remember --
13 A Does that make sense?
14 Q -- how long there have been two?
15 A Pardon?
16 Q Has it been more than ten years?
17 A Correct.
18 Q Okay. More than fifteen years?
19 A I would believe so.
20 Q Okay. You said the enrollment at the time there were two
21 and a quarter or three was at twenty-one hundred?
22 A Students at the high school.
23 Q Okay. Twenty-one hundred students.
24 A Two thousand, one hundred, yeah.
25 Q Do you remember what the enrollment was like during that

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1 November 2015 time frame when you were moved?
2 A Yeah, it's about -- it's either twelve or eleven now.
3 Q When you say twelve or eleven what does that mean?
4 A One thousand two hundred or eleven hundred.
5 Q So what's the curriculum chair mean?
6 A Curriculum chair is a lot of responsibility, at least I took
7 it that way. What I was responsible for is to write
8 curriculum and submit it to the curriculum counsel. That
9 means like if we wanted -- should I explain?
10 Q Sure.
11 A Okay. Like one of the classes I created is photography not
12 real long ago. So I had to write a curriculum, what would
13 that consist of, going to research it with other schools and
14 other schools that had the art program. Had to find
15 benchmarks, that is like what you should teach at different
16 levels and different stages.
17 And then I take all that information write it
18 up and then present it to the curriculum counsel. Also at
19 the time when we didn't have a where you were -- the
20 department head was responsible to make meetings from K
21 through twelfth graders. Teachers, okay, the art teachers
22 in the district so we all can be in alignment.
23 And that means so the first grade teacher is
24 going to teach this, this and this so we can advance them
25 at, you know, the next level, advance them the next level.

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1 So, you know, when you get to high school they already know,
2 you know, what their primary colors are, they already know
3 these things because they've been taught, you know, prior
4 years certain things.
5 We would go over briefly, but they already
6 had the knowledge. And we knew it was alignment, we wanted
7 alignment. And along with aligning it just for art, but
8 cross curricular, meaning the science because there's a lot
9 of science and chemistry that go into art, the mixing of
10 paints and so forth.
11 Responsible to go to many department head
12 meetings. That means getting a group, we meet with the
13 principal, the head of the department of the science, the
14 social studies, the math, the whole can I say gambit there?
15 Q Sure.
16 A Okay. It was responsible setting up art shows. It was
17 trying to also, which I love doing, getting scholarships for
18 my students. Helping them build that portfolio because I
19 was fortunate enough to be able to go through that process
20 too, so I had experience there.
21 And I just love that, because if I can help
22 someone in my community, my kids, our kids to get funds,
23 because you know how expensive college is now. But even to
24 find a job, a freelance job I'm going to do it. That's my
25 passion.

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1 Q Ms. Davis, I'm sorry to interrupt, but --
2 A Sorry.
3 Q -- do you have any idea how many kids over the twenty-nine
4 years that you have assisted to get some kind of funding for
5 college?
6 A Quite a few, I don't have a number.
7 Q Okay. But that's something that you did as well?
8 A Correct.
9 MS. BONANNI: I'd like to show as a visual a
10 couple examples of Ms. Davis' art class work so the jury can
11 get a sense. It's not an exhibit and I did run it past
12 opposing counsel.
13 THE COURT: Okay. So there is a stipulation
14 about the admissibility of this so we'll go ahead and
15 publish it when you're ready.
16 MS. BONANNI: Can you make that bigger?
17 THE COURT: Would it be easier if we shut the
18 window?
19 MS. BONANNI: Sure.
20 THE COURT: Let me see if I can shut the
21 window over here.
22 MS. BONANNI: Thank you, Judge.
23 THE WITNESS: Those are two different
24 students and both of them got scholarships for art and I
25 helped them.

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1 BY MS. BONANNI:
2 Q So these are two of your students from the high school?
3 A Correct.
4 Q And this first one on the left, tell us where is this
5 painting?
6 A It's on the wall at our high school.
7 Q And how is it that --
8 A Jackson High, sorry.
9 Q How is it that a painting made its way to the hall?
10 A Well when I started the process of, and this was a while
11 back, trying to convince my administrators and also getting
12 the allocations for the paint I wrote a small grant to get
13 the money for the paint.
14 Q So this was part of a school project?
15 A Correct.
16 Q Whose idea was this school project?
17 A Mine.
18 Q And you applied for the funding?
19 A Correct.
20 Q And you obtained the funding?
21 A Correct.
22 Q And both of these students were able to get scholarships?
23 A Correct.
24 Q Did you assist them?
25 A Correct. One went to Ball State, the other went to Chicago

1 Institute of Arts.
2 Q Now let's talk about your reviews for the twenty-nine years
3 that you worked in the role until your demotion to the
4 middle school. Can you explain that to the jury what they
5 were like?
6 A Yeah, like again I really have a passion for teaching. I
7 have a passion for art. They were great, all of my reviews
8 as they term it now was effective and highly effective. I
9 also got noted by the school -- can I say that?
10 Q Sure.
11 A Noted by the school for excellent teacher recognition a
12 couple times and they only pick a few, they did, from each
13 building. And then they used to have dinners sometimes for
14 us and so forth. I loved working in the community too. My
15 students, we do a lot of service learning projects. And
16 what's that mean?
17 I think it's Loomis Park where there's -- I
18 don't know if you're familiar with Loomis Park, but there's
19 a big playground and it has all the wood stuff, my art
20 students helped with that. And at the Respite Center, if
21 I'm saying that right, we did a big mosaic picture on the
22 wall there.
23 We helped at the Aware Center. We helped by
24 making them mirrors and mosaics to decorate their
25 surroundings. We did, sounds strange, but sock monkeys and

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1 the kids really got into that because they gave them to the
2 Aware Shelter for the little kids that came in there.
3 Q So let me stop you. These service projects that you did?
4 A Yes.
5 Q Was this part of your curriculum?
6 A At one time we got it into the curriculum and then you'd
7 write up -- you'd have to write up what you'd like to do and
8 then a group of people, a committee would look them over and
9 they would grant you like at that time like two or three
10 hundred dollars to buy the materials to do the sock monkeys.
11 Another time I solicited Kia, is it Kia the
12 car company, I hope I can say that. Is it okay?
13 THE COURT: Sure.
14 THE WITNESS: Okay. Because in their ads if
15 you remember they had a sock monkey in their ads. And I
16 went and asked them, because they got rid of the smaller
17 grants, and I asked them and showed them what I wanted to do
18 and they were great. And they ordered the stuff for me and
19 I brought it back to the school and that's what we did. And
20 there's many more, but I won't keep going on.
21 BY MS. BONANNI:
22 Q That's okay.
23 THE COURT: So, Ms. Davis, just on the one
24 because they probably don't know, but the Aware Shelter,
25 that's a battered women's home, correct?

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THE WITNESS: Yes.

THE COURT: Would you just explain how you did your art work and how it helped those people in that program?

THE WITNESS: Yeah, I might cry a little. I'm sorry.

THE COURT: That's okay.

THE WITNESS: Yes, the Aware Shelter is a place where women go when, and if I say this wrong sorry, when they have been abused or battered or they have nowhere else to go and they have their children. It's pretty -- and they're kept safe there, it's not a lockup, how would I explain that, I shouldn't even be going through that. Sorry.

But anyway, they don't have a lot there so to help the little kids feel more comfortable there when they had to stay there, that's when the sock monkeys and when I brought those in the kids faces would light up and their parents were like -- the parents would just be overwhelmed of being thankful, okay.

Also, I thought mirrors were very important, decorative mirrors so these women could feel good about themselves again. All right, to be able to look in the mirror and say hey, you know, maybe this has happened to me, but I'm going to stand strong. I've got some support here

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1 and I've got people in the community that will help.
2 THE COURT: Thank you.
3 BY MS. BONANNI:
4 Q Thank you. So let's talk about how the district viewed your
5 performance for these twenty-nine years. I want you to take
6 a look at Exhibit number 1 if you would in the big book?
7 A Yes.
8 Q Let me know when you're there?
9 A Yes, I'm there.
10 Q Please identify this document for the record?
11 A It's document 1, it is my evaluation, it would be school
12 year 14-15. It's marked '15, but you know when the school
13 year is in the middle of the...
14 Q So would this be the school year right before your assault?
15 A Yes, Ma'am.
16 MS. BONANNI: And I'd like to admit Exhibit
17 number 1 into evidence.
18 (At 3:42:31 p.m., Plaintiff's Exhibit 1 was
19 offered)
20 THE COURT: Okay, any objection to the
21 admission of plaintiff's Exhibit number 1 into evidence?
22 MR. MULLINS: No, your Honor.
23 THE COURT: Okay, so admitted by way of
24 stipulation of the parties.
25 (At 3:42:43 p.m., Plaintiff's Exhibit 1 was

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1 admitted)

2 BY MS. BONANNI:

3 Q Can you tell the jury how you were rated this year, what was

4 your rating?

5 A It was highly effective.

6 Q Okay. Now it looks like effective was circled and then

7 scratched out?

8 A And the reason for that is through our district we're

9 supposed to have the same evaluation like for the

10 elementary, for the junior high and the high school. But

11 the principals unfortunately somehow didn't follow that. So

12 what happened was the union took that and said every school,

13 because we're on the same contract, we need to say from this

14 to this is, you know, ineffective, minimal and all those.

15 Q You mean the numbers?

16 A Yes, the percentage.

17 Q So the numbers that correlate to a particular rating needed

18 to be uniform?

19 A Correct.

20 Q Okay. And so once that was made uniform you were on the

21 highly effective scale?

22 A Correct.

23 Q Describe for the jury how the ratings have been over the

24 years if you haven't already done that?

25 A Yes, I have. But always highly or effective, the best

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1 ratings you could get as a teacher.
2 Q Sometimes you'd get effective?
3 A Correct.
4 Q Sometimes you'd get highly effective?
5 A Correct.
6 Q It would vacillate?
7 A Correct.
8 Q Ever get ineffective?
9 A No.
10 Q How about minimally effective?
11 A No.
12 Q For those twenty-nine years?
13 A None.
14 Q In those twenty-nine years were you ever disciplined?
15 A Never disciplined.
16 Q Were you ever suspended?
17 A No.
18 Q Were you ever put on a paid administrative leave?
19 A Never.
20 Q Did you ever have any issues with anyone at the school?
21 A Never.
22 Q What do you understand the value or the -- let me rephrase.
23 What do you understand to be the importance of your yearly
24 evaluation?
25 A It's utmost important because this could end your career.

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1 If you've got the two low ones you can be fired. And then
2 also as it was stated earlier this goes on a Michigan site,
3 but not just Michigan can see it, the whole United States
4 can access it.
5 Q Well let me ask you about that. What do you understand to
6 be the purpose of that registry?
7 A The purpose of it I believe is that all principals can
8 access it, all superintendents, everybody can access it, you
9 guys could access it.
10 Q So if you were applying for a job in another district is
11 that something that --
12 A Yes.
13 Q -- you understood would be accessed?
14 A Correct.
15 Q Okay.
16 A And I know a few principals and other superintendents that
17 always look at this.
18 Q Okay. Let's fast forward to the fall of 2015, that school
19 year?
20 A Yes.
21 Q And just to establish, what was your assignment that year?
22 A My assignment that year was all art and photography, which I
23 have a passion for also.
24 Q Were you still the chair?
25 A I was the only, there was two of us, I was the department

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1 chair.
2 Q Who was the other instructor in your department?
3 A Linda Jacobs at that time I believe, yes.
4 Q Pennie, you've heard testimony so far about the student that
5 we are referring to as M.H.?
6 A Yes, Ma'am.
7 Q Had M.H. ever taken any of your classes?
8 A No.
9 Q And in the fall of 2015 was he enrolled in one of your
10 classes?
11 A Yes, Ma'am.
12 Q What class was he enrolled in?
13 A It was a beginning art class, 2D.
14 Q What is it called?
15 A It's beginning 2D Art.
16 Q Does that mean two dimensional?
17 A Correct.
18 Q Describe M.H. for the jury?
19 A He's at least six foot tall, two hundred and sixty pounds,
20 fifty pounds, he was a football player.
21 Q Okay. And at the time he enrolled in your class what year
22 was he, do you know?
23 A Tenth grade.
24 Q Okay. Can you describe for the jury how, and we're going to
25 walk through this month and a half or whatever time frame

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1 from the start of school. I'm not sure when you start here
2 in Jackson, but from that point until the assault what was
3 his demeanor like when he started the year?
4 A His demeanor, he would come in and he would swear and he
5 would say, I don't want this class, I don't want to be in
6 your class and I'm going to get out of it somehow. He would
7 come in angry. I would always try to diffuse it.
8 Q How did you try to diffuse it?
9 A Well at the beginning, which he responded to a little bit, I
10 tried to make light of things to make him laugh. I'm like,
11 oh you'll get it, you'll like this and so forth. And I'm
12 like, just come in, try it. Because usually I can persuade
13 kids and they fall in love with art whether they want to do
14 art for the rest of their life or not.
15 He would come in more and more aggressive,
16 meaning more angry. His stature would be, you know, taller,
17 his voice would be and what he said, I don't want to say the
18 words, but the F word a lot and the B word. So at that
19 point a couple times I tried to look over it and I tried to
20 communicate to him, we can't do that here. But I finally
21 had to start writing up some student logs.
22 Q So why don't you describe for the jury what prompted you to
23 start writing in the log?
24 A His basically aggressive behavior and saying the F and the B
25 word and --

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1 Q Now swearing, is that a violation of the student code?
2 A Yes.
3 Q Okay.
4 A Profanity.
5 Q So I just want to make sure that I understand. Before
6 writing him up --
7 A Yes.
8 Q -- in the log, the things you tried to do to diffuse was to
9 talk to him?
10 A Yes.
11 Q And I'm just wondering if there's anything else you did or
12 if that's it?
13 A Yes, I also tried to elicit help from his grade principal,
14 from the head principal, from his counselor, from his
15 parents, from his football coach. I made several calls --
16 THE COURT: Ms. Davis, I've just got one
17 thing. His alleged aggressive behavior, do you feel like it
18 was more directed at you and/or students or both?
19 THE WITNESS: Actually it was both, Sir.
20 THE COURT: Okay. Can you just go ahead and
21 explain that?
22 THE WITNESS: When he said he'd do anything
23 to get out of my class, this is directed to me now, okay.
24 When he said he'd do anything to get out of my class, at
25 first I didn't take that as, you know, too much. But as he

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1 then started swearing and cussing and then coming in very
2 abruptly, he even bumped things around, he would throw out
3 his chest. Sorry.
4 And then with other students I could tell
5 other students were by their posture not wanting to sit by
6 him really. They were afraid of him. And it was kind of
7 known that he was, how can I say this nicely, you don't mess
8 with him.
9 THE COURT: Okay.
10 BY MS. BONANNI:
11 Q So let's look at Exhibit 7?
12 A Yes.
13 Q Can you describe what this is for the jury?
14 A This is on the back Exhibit 7 on what is called exclusion
15 out of your classroom.
16 Q No, Exhibit 7?
17 A Oh, 7, sorry. Okay, 7 is the dates and times that I tried
18 to intervene for M.H.'s behavior. And you can see I've
19 called the mom, the counselor and I've put the dates down,
20 his principals and I put the dates down and his football
21 coach.
22 Q Okay, so this is your handwriting?
23 A Correct.
24 MS. BONANNI: I would like to submit this
25 into evidence, your Honor.

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1 THE COURT: Okay, any objection?
2 MR. MULLINS: I'm not sure I got a
3 description of what it was. I couldn't hear.
4 THE COURT: Do you want to voir dire a little
5 bit on the --
6 MS. BONANNI: Oh, sorry.
7 MR. MULLINS: Maybe just repeat again what --
8 I see that it's her handwriting on the white sheet of paper,
9 but what is it again, I'm sorry?
10 THE WITNESS: Yeah, this is how many times --
11 who I called to try to intervene for M.H. I called the
12 parents and those are the dates. I've called the counselor
13 and those are the dates. I called the grade principal and
14 those are the dates. I called the football coach and those
15 are the dates.
16 MR. MULLINS: These are your personal notes?
17 THE WITNESS: These are the notes that you
18 have to -- yeah, those are my personal notes, but not just
19 my personal notes, they're the notes that I have to also
20 turn in on the, I don't know what it might have been, but --
21 BY MS. BONANNI:
22 Q It's okay, just --
23 A Expulsion when I knew was going to such a level, we have
24 this things it's called --
25 MR. MULLINS: If I can just interrupt you for

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1 a minute, I'm just trying to determine because you were
2 about to say it goes with something else. Is there another
3 part of this document?
4 THE WITNESS: Yes.
5 BY MS. BONANNI:
6 Q So I guess we can try to admit these together, they're
7 separate, but they're related so I can do that. It's the
8 student expulsion form?
9 A Right, from class, not from the school, no, no, no, just
10 from my class because I saw him elevating. And it was for
11 my students that were in there and for myself at the time
12 because he said he would do anything to get out of my class
13 and I'd never had that ever happen before that a student was
14 that adamant.
15 Q So why don't you turn to Exhibit 3. Can you identify this
16 for the record?
17 A Would you ask --
18 Q Yes. Can you identify it for me?
19 A It's pupil exclusion from class. That means there's an
20 article in our --
21 Q Well hold on before you talk about it I'm going to try to
22 get it into evidence. So this is the form that you're
23 referencing that goes with your notes?
24 A Correct.
25 Q And it's --

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1 THE COURT: Counsel, I'm just trying to
2 follow which form.
3 MS. BONANNI: Yes.
4 THE COURT: I've got 7, so --
5 MS. BONANNI: We're looking at Exhibit 3 and
6 Exhibit 7 together. Exhibit 3 is the form.
7 THE COURT: Okay, thanks.
8 MS. BONANNI: Yeah. And Exhibit 7 are her
9 notes that support the form. I'd like to move to admit both
10 of these exhibits into evidence, 3 and 7.
11 (At 3:57:223 p.m., Plaintiff's Exhibits 3 and
12 7 were offered)
13 THE COURT: Okay, any objection?
14 MR. MULLINS: I guess I'm just trying to
15 determine -- I'm sorry, your Honor. My question was whether
16 these are her personal notes or are these something that are
17 submitted somewhere?
18 THE COURT: Do you want to voir dire her a
19 little bit on the foundation?
20 MR. MULLINS: Again, I can see what you're
21 saying what these forms are. Is 7 attached to 3 or did you
22 keep 3 for yourself before you prepared 7 or I'm just trying
23 to figure out --
24 THE WITNESS: There's a typed up copy also.
25 MS. BONANNI: Let me try to clarify, Mr.

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1 Mullins and then I'll submit it or I'll present them for
2 admission.
3 BY MS. BONANNI:
4 Q Ms. Davis?
5 A Yes.
6 Q Exhibit number 3, the pupil exclusion from class form has
7 attached to it some typed notes with a signature?
8 A Correct.
9 Q Are these your notes?
10 A Correct.
11 Q Now are these notes, typed notes attached to Exhibit number
12 3, are they based on your handwritten notes that are
13 outlined in Exhibit 7?
14 A Correct.
15 Q Okay. So they are related, but you then typed up your notes
16 for the pupil exclusion form?
17 A Correct.
18 MS. BONANNI: Do you have any -- I mean I'm
19 going to submit them again.
20 THE COURT: Any further voir dire on the
21 exhibit or objection with that clarified foundation?
22 MR. MULLINS: If Exhibit 3, which I guess I
23 didn't hear it. But if I'm to understand that was submitted
24 to the administration I don't have any objection as to
25 Exhibit 4, which I don't think was, I would object because I

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1 wouldn't see what relevance it would have if it's not to our
2 --
3 MS. BONANNI: 7?
4 MR. MULLINS: 7, I'm sorry.
5 THE COURT: 3 and 7.
6 MR. MULLINS: So 3 I don't have -- you know,
7 which I've yet to hear if 3 was submitted to the
8 administration, no objection. 7, I don't see what relevance
9 it has, it's just her personal notes.
10 THE COURT: Well maybe you could clarify that
11 with one question. Ms. Davis, can you tell me as an example
12 how you used plaintiff Exhibit number 7 in conjunction with
13 plaintiff's Exhibit number 3?
14 THE WITNESS: Yes, 3 is a little packet, all
15 right. And you'll notice on the top it says September 2015
16 and then I put and October 12th, '15. I first turned it in
17 and I think, it's been a little time, that these handwritten
18 notes were on the back of one of them.
19 And then since the incident escalated further
20 this was the next that was typed up, because I was trying to
21 get in there --
22 THE COURT: I'm satisfied that she's set for
23 the requisite foundation for their admission. Both 3 and 7
24 plaintiff's will be admitted.
25 (At 4:00:54 p.m., Plaintiff's Exhibits 3 and

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1 7 were admitted)

2 BY MS. BONANNI:

3 Q Ms. Davis, you've numbered the various contacts, one, two,

4 three, four, five. Were these contacts -- looking at 7,

5 sorry.

6 A Thank you.

7 Q Were the contacts -- I guess I want you to explain what

8 order, like who did you call first?

9 A It looks like I called the parent first and talked to them

10 about his -- yeah.

11 Q So these dates that you have under each of these numbers,

12 one, two, three, four, five?

13 A They coexist also with the procedures that were given here.

14 Q Okay. Well let me ask you, in number one you talk about the

15 fact that you're addressing the behaviors with M.H. --

16 A Correct.

17 Q -- on several occasions here. Did those conversations

18 diffuse the situation at all?

19 A Momentarily, but not totally, no.

20 Q What about the parent contact, were those successful at

21 assisting you with diffusing the situation?

22 A No, it was hard to, I hate to say this, but get the mother

23 involved at this point. As you can see I met with Joe

24 Zesson and student and asked their parent to be in the

25 meeting, but no parent. She would not come.

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1 Q Oh, I see. So under number one, 9/28/15, you met with Joe
2 and the student?
3 A Correct.
4 Q Okay. And this is Joe Zesson who was the grade principal?
5 A Yes, Ma'am.
6 Q Now these meetings, you had several meetings with Joe
7 Zesson?
8 A No, on the bottom where it says four, those were all calls.
9 Q Oh, I see, you had phone calls with him?
10 A Correct.
11 Q Did --
12 A Or left messages with him.
13 Q Okay. Do you remember how many of these attempts to contact
14 Joe Zesson about M.H. were successful, meaning you were able
15 to reach him?
16 A I hate to say, but I know one for sure.
17 Q Okay.
18 A And the others I basically left messages.
19 Q When you left messages did you leave detailed messages or
20 were they just leaving your name?
21 A No, I left concern about part detailed, but not tons of
22 details. I told him I was having trouble with M.H., a
23 little bit what was happening, not everything, okay.
24 Because, you know, again a phone it's not the best
25 conversation to leave a long extensive, but I gave him the

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1 briefs like, M.H. he's doing this, I need help with him, do
2 you have any suggestions, so forth.
3 Q Did any of these efforts as described in Exhibit 7, did they
4 assist you at diffusing the situation?
5 A For a time.
6 Q Okay.
7 A Like for a day or two.
8 Q Okay.
9 THE COURT: I'd just note that you've got his
10 mother's phone number, M.H.'s mother's, but did you have to
11 go back in the record and determine if there was a father in
12 the picture?
13 THE WITNESS: Yes, I did.
14 THE COURT: Okay. And how would you go back
15 and ascertain that contact information about mom, father,
16 phone numbers?
17 THE WITNESS: It's usually in -- we can
18 access it right from our computer from Power School as Mr.
19 Beal was saying. We're on that program and most of the time
20 you can call that up. Sometimes our computers don't always
21 work that well and there also was a period of time that, I
22 shouldn't go into that, okay I'm sorry.
23 THE COURT: But going back in that
24 information you could tell if there was a father in the
25 picture, if there's a mom?

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1 THE WITNESS: Most of the time, yes.
2 THE COURT: Single parents or whatever?
3 THE WITNESS: Most of the time, yes.
4 THE COURT: Okay.
5 BY MS. BONANNI:
6 Q Why did you call his football coach?
7 A Because he was really into football, I knew that. And I
8 thought that the football coach -- usually coaches have
9 influence on the kids, all right. And actually, most of the
10 coaches love to hear from the teachers whether their players
11 or doing great or if you have a problem with them, because
12 most of the time they're going to be right there backing
13 you, helping you with these young people because they know
14 that some of these young people that come to our school that
15 is their passion, that is their outlet. So that is why.
16 MS. BONANNI: Your Honor, I think it's a good
17 time to --
18 THE COURT: Why don't you approach.
19 (Bench Conference Held from 4:07:03 p.m. to
20 4:07:20 p.m.)
21 THE COURT: All right. Well, ladies and
22 gentlemen, counsel indicated that this is probably a good
23 seg way for a break for the rest of the day. So I'm going
24 to follow their lead on the presentation. So we're going to
25 plan on starting at the same time tomorrow, 10:45. I've got

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1 a number of other things in the morning, but I can have
2 those done by about 10:30.
3 So I'll plan on having you here at 10:45.
4 Did the lunch thing work out okay? Bringing things so we
5 don't have to break. I know I kind of ate my sack lunch
6 today too on the breaks. So all right, I want to give you
7 one cautionary instruction.
8 I know you're going to go home, especially
9 today you've heard testimony, heard a good portion of the
10 case at this point. And there's that natural inclination of
11 people that you go home and hey, you know what happened down
12 at the courthouse today, what kind of case it is.
13 And I'm going to tell you that you can tell
14 them you're on a civil case and it may take another day or
15 two or a day or whatever, but don't talk with them about the
16 case because they're going to offer you all kinds of helpful
17 hints on what you should be doing with your jury duty. And
18 of course, they're not down here doing jury duty.
19 And the nice thing is you can tell them when
20 it's all over they can take you out to dinner and you can
21 give them a blow by blow discussion of the whole thing. All
22 right. But hold out for that because if you start telling
23 them, you've got to kind of heighten their suspense about it
24 by not talking about it until it's over. Okay.
25 Because that can cause among other things

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1 potential issues, you know, for the viability of the case if
2 you're somehow discussing information that's not admitted in
3 the case. All right.
4 So all rise for the jury.
5 (At 4:08:50 p.m., jury exited)
6 THE COURT: Ms. Davis, you can step off of
7 the witness stand.
8 THE WITNESS: Thank you, your Honor.
9 THE COURT: Okay. See everybody tomorrow
10 about 10:45.
11 MS. BONANNI: Thank you, Judge.
12 THE COURT: Mr. Mullins, watch out for those
13 potholes tomorrow, all right.
14 (At 4:09:36 p.m., hearing concluded)
15

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and eighty-seven (187) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Tuesday, February 27, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: August 31, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,
Plaintiff

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.
_____/

JURY TRIAL, VOLUME III OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday, February 28, 2018

APPEARANCES:

For the Plaintiff:
MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant:
TIMOTHY MULLINS (P28021)
JOHN L. MILLER (P71913)
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7020

TRANSCRIBED BY:
THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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None

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1 Jackson, Michigan
2 Wednesday, February 28, 2018 - 10:52:47 a.m.
3 THE COURT: We're back on the record of the
4 matter of Pennie Marie Davis, plaintiff, versus Jackson
5 Public Schools, defendant. File number 16-344-CZ. The
6 record should reflect the presence of all parties.
7 So go ahead, counsel.
8 MS. BONANNI: Okay, we have a few preliminary
9 issues before we bring in the jury, your Honor. First is
10 today in Ms. Davis' testimony I plan on utilizing the visual
11 aid, the time line quite extensively.
12 THE COURT: Okay.
13 MS. BONANNI: I am requesting that, your
14 Honor, ask the jury once everyone is assembled whether they
15 can actually read it. If they cannot read it, then I am
16 requesting that I be permitted to circulate the time line.
17 Since it's a visual aid I'll then ask the jury to provide it
18 back to me.
19 THE COURT: Okay. So initially you're going
20 to try to put it up on the video board over there?
21 MS. BONANNI: I'm actually going to use the
22 physical old fashion board.
23 THE COURT: All right, okay. That would be
24 fine.
25 MS. BONANNI: Okay. Second issue we have --

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1 MR. MILLER: May I briefly address the first
2 issue before we move onto the second?
3 THE COURT: Yes, absolutely, go ahead.
4 MR. MILLER: With the Court's indulgence of
5 course. I do have some concern about a time line being used
6 to improperly refresh a witness' recollection. I mean it's
7 setting out all the facts as plaintiff wants and on the
8 document right in front of her. I think that's
9 impermissible.
10 I mean to ask questions, elicit testimony
11 from her and if she doesn't remember you may be able to
12 appropriately refresh her recollection with the document,
13 but I think it's entirely inappropriate to lay out
14 plaintiff's case in front of her and say, repeat this.
15 MS. BONANNI: That's not --
16 THE COURT: Okay, can I go ahead and see one?
17 MS. BONANNI: Yeah.
18 THE COURT: Do you have a sample one there?
19 MS. BONANNI: And that's not what I intend to
20 do. It's to permit the jury to follow the story.
21 MR. MILLER: I mean just yesterday, Judge, if
22 you recall during the direct examination plaintiff was
23 turning around repeatedly and looking at the time line as
24 she was testifying. It's improperly using to essentially
25 feed her testimony.

MS. BONANNI: Well we can move the time line. Well that's maybe then a great reason to have it circulated. I don't think Pennie is trying to do anything nefarious, she's just trying to use it. But I'm happy to either move it really close to them or I didn't want to move it in a way that would block the defendants from seeing the jury.

MR. MILLER: But it's essentially a page of argument from plaintiff's counsel that she wants to give to the jury. It's no different than defendant giving up a page brief of why we think the case doesn't have merit.

THE COURT: I'm just wondering if this wouldn't be more appropriate for your closing argument after you've got all of it elicited and proper foundation laid for all of this.

MS. BONANNI: I'm not saying I won't. I'm just saying that I have been using it. I want to make sure they see it. And just --

THE COURT: Okay. But I think I agree with Mr. Miller, until we have everything established I don't think we can just, you know, you can give this to your client as kind of a road map of, you know, to set forth the whole thing.

MS. BONANNI: I don't want to give it to my client.

THE COURT: Okay.

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1 MS. BONANNI: I want the jury to the extent
2 they can't see the time line that they are permitted to then
3 have it in their hands. If, your Honor, prefers that I move
4 the time line so that she can't see it, so then it's over
5 there in that corner, that's fine too. I just want them to
6 be able to read the document.
7 MR. MILLER: But I mean, Judge, this isn't
8 evidence, this is argument with all kinds of allegations we
9 dispute. We're at the point of the case where we're
10 presenting evidence, not plaintiff's counsel's version of
11 what she thinks the facts are.
12 MS. BONANNI: I've been using the time line
13 without objection and I intend to continue to have it there
14 as a visual. It is not evidence, we've made that clear, it
15 is a time line. And it's a traditional, you know, we use
16 time lines all the time in trials.
17 THE COURT: My only problem is, I think --
18 and maybe we should revisit it after you, you know, have
19 concluded with Ms. Davis' testimony. But, you know, you're
20 essentially -- she's about halfway into her testimony and,
21 you know, it's like you just want to lay down a whole time
22 line for your case.
23 MS. BONANNI: I don't want Ms. Davis to look
24 at the time line.
25 THE COURT: But I understand, but as an

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1 example I don't think we've got in evidence yet the date Ms.
2 Davis returned to work. You know, what date has she been
3 designated as a failing teacher. I mean I think this time
4 line would be appropriate and for you to do up a thing as
5 part of your closing argument. I wouldn't have any problem
6 with that, but I think it would be premature I think to
7 distribute this --
8 MS. BONANNI: Okay.
9 THE COURT: -- to your witness at this point
10 and the jury at this point.
11 MS. BONANNI: I do not want to give it to any
12 witness.
13 THE COURT: Okay. So I guess I'm confused of
14 how I guess you were going to use it.
15 MS. BONANNI: I want to make sure that the
16 jury should they need to refresh about something that has
17 been testified to, and they have been told and they
18 understand this is not evidence, that they can see it. I'm
19 not going to give it to the witness. I'm not going to have
20 the witness testify about the time line.
21 I will move that time line so that she can't,
22 you know, even if she wants to, I think she just did it by
23 natural inclination. We'll move it away from her.
24 MR. MILLER: I mean, Judge, I still think
25 this is actually no different than me saying let me print

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1 out six copies of my trial brief and give it to the jurors
2 to follow along with my argument and what I think I'm going
3 to prove. It's not appropriate.
4 MS. BONANNI: The defendants had every right
5 to do their own time line if they thought it was necessary.
6 And there was no objection to this.
7 THE COURT: Well the problem is, and again,
8 it just comes back to where I ruled. You know, you're
9 laying all of this out, some of it may have been
10 established, it may well be a lot of this is established by
11 the conclusion of her testimony. But I think until it's
12 been all established it would be premature to be giving it
13 to the jury.
14 MS. BONANNI: Right.
15 THE COURT: Just foreshadow my ruling. I see
16 it as a great exhibit for your closing argument because you
17 then lay it all out on the board and you're putting it
18 exactly, organizing it for the jury. But I think it's
19 premature to give this to the jury in the second witness of
20 the case.
21 MS. BONANNI: Okay, fair enough. So then
22 what I will do is I will move that visual so that it is
23 outside of Pennie's eyesight so that she doesn't happen to
24 look at it.
25 MR. MULLINS: And the jury's eyesight.

1 THE COURT: But I'm making a ruling with
2 respect to how it's going to the jury.
3 MS. BONANNI: So I can't --
4 THE COURT: Not --
5 MS. BONANNI: So now --
6 THE COURT: Not at this point.
7 MS. BONANNI: Okay. So I have been using
8 this time line and now I can't?
9 THE COURT: Well I was a Prosecutor for
10 years. I couldn't take my entire criminal case and lay it
11 out on my second witness, my detective and lay out my entire
12 case and give it to the jury. I could do that in closing
13 argument if it was a fair -- but, you know, no. I just
14 think it's premature at this point.
15 MS. BONANNI: Okay.
16 THE COURT: You know, closing argument great.
17 And maybe we can revisit it again at the conclusion of Ms.
18 Davis' case, but I just at this point I think it's
19 premature.
20 MS. BONANNI: Okay. So I am going to ask and
21 I'll bring it up so we don't forget, once she's done laying
22 a foundation and testifying about all these events I have a
23 cross-examination of Mr. Pack. So I would like the Court to
24 revisit it at that point in time.
25 THE COURT: I'm more than willing to keep

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1 revisiting it --

2 MS. BONANNI: Okay.

3 THE COURT: -- to the extent that I think

4 it's an appropriate exhibit at that time in the trial you

5 can show it to the jury.

6 MS. BONANNI: Okay.

7 THE COURT: I've given great latitude to

8 allow both counsel to be able to select things out of

9 extensive trial notebooks so that they can be published to

10 the jury contemporaneously at the time that they're making

11 the point. All right.

12 MR. MILLER: And they are taking notes also

13 too.

14 THE COURT: They are.

15 MS. BONANNI: Okay. So next issue.

16 THE COURT: Okay.

17 MS. BONANNI: Yesterday at the end of the day

18 in discussion with counsel we were discussing the fact that

19 what we believe the defendant is doing at this point is

20 brining in the issue of M.H. and this investigation and

21 suggesting to this jury that Pennie conflated it, made it

22 up, attacking really her voracity.

23 I understand the motion in limine with regard

24 to the juvenile conviction. As I'm thinking about it now

25 the way the evidence is now coming in I have two thoughts.

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1 One, M.H. the way we've agreed to present this case is a
2 fictional character. We don't know his identity, we're
3 being careful to conceal that. He is a fictional character.
4 I don't think that the laws protecting juveniles from their,
5 you know, convictions being revealed makes sense in this
6 context. And in particular because they're really attacking
7 her credibility by suggesting that she made it up.
8 Now I am going to of course, and I think I'm
9 entitled to ask her about the fact that there is an ongoing
10 prosecution. I understand that according to our discussion
11 in the motion in limine --
12 THE COURT: Are we talking stemming from the
13 alleged incident where she --
14 MS. BONANNI: Yes.
15 THE COURT: She got -- okay, I'm just trying
16 to --
17 MS. BONANNI: And what I would like to do is
18 she received paperwork, and you can pull up that exhibit for
19 him, from the Prosecutor's Office indicating to her that
20 there was a plea and a conviction of assault and battery.
21 He served jail time, there's a court order.
22 THE COURT: Okay.
23 MS. BONANNI: So my first request is I would
24 like to enter that exhibit. There's probably some redacting
25 that needs to be done, maybe not we --

1 MS. ROBINSON-HOLMES: It's number 37.
2 MS. BONANNI: It's number 37. Channing is
3 saying there's no redaction needed. I think that in light
4 of the way --
5 THE COURT: 37 in your book?
6 MS. BONANNI: Yes. In light of the way this
7 case is being defended I think I have every right to make
8 that exploration.
9 THE COURT: And we're only talking the
10 specific offense that --
11 MS. BONANNI: Yes.
12 THE COURT: -- actually is inextricably
13 intertwined with the alleged assault on your client,
14 correct?
15 MS. BONANNI: Yes, thank you. Yes. And
16 that's because it is to not permit it because of the way
17 it's being defended is so prejudicial to her. Number two,
18 if the Court is unwilling to do that, then I have an
19 alternative. And the alternative is to give the jury a
20 cautionary instruction that reads something like this, under
21 the laws of this State that protect the right of juvenile
22 offenders you are not entitled to know the charge or
23 disposition of the charge with respect to any prosecution of
24 M.H.
25 So that they know that they cannot derive any

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1 kind of conclusion. That way Pennie can talk about the fact
2 that she knows there's an ongoing prosecution, that it was
3 pursued. But then they aren't left with thinking that just
4 because their school investigation found it was incidental
5 touching that maybe there was something else. They don't
6 need to know what it is.
7 That's my sort of compromise position. But
8 this is really coming from the way the evidence is coming in
9 and the defense tactic and strategy that has been chosen.
10 MR. MILLER: May I respond, Judge?
11 THE COURT: You may.
12 MR. MILLER: First, plaintiff is the one
13 opening the door and wanting to walk through it. It was her
14 opening saying assault, assault, criminal assault. It's not
15 defendant that is making that suggestion. Second, this is a
16 motion in limine that the Judge ruled upon and this is about
17 the third time we're rehashing evidentiary motions that were
18 extensively briefed and argued.
19 Plaintiff doesn't like the ruling and wants
20 to come back to it. And me and Mr. Mullins just had this
21 case that was tried in Genessee County Circuit Court, it's
22 called *Knox-Pipes v. Genessee Intermediate School District.*
23 In that case the trial court Judge allowed evidence of
24 prosecution or non prosecution, it was automatic reversible
25 error, it came back.

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1 It's an attempt to try to use an entity
2 that's not relevant as a proxy for the jury's determination.
3 This was a plea under advisement, it's not admissible under
4 statute, it's not admissible under 609(e) and plaintiff is
5 trying to make it admissible again. It's not.
6 THE COURT: What was the cite of that case
7 that you --
8 David, would you get this down and look up
9 that case and give me a copy? I would like to read it.
10 MS. BONANNI: Yeah, I'd like to read it too.
11 THE COURT: I would like to read it too. So
12 would you mind just giving David that cite so I can have him
13 get that?
14 MR. MILLER: Sure, it's *Knox-Pipes v.*
15 *Genessee* --
16 THE CLERK: (Inaudible)?
17 MR. MILLER: K-N-O-X - *Pipes v. Genessee* --
18 THE CLERK: Pipes?
19 MR. MILLER: P-I-P-E-S.
20 THE CLERK: Genessee County?
21 MR. MILLER: Genessee Intermediate School
22 District.
23 MS. BONANNI: And under Whistleblower I have
24 to allege that there was an illegal action that she is
25 reporting. So that's part of what I'm required to prove.

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1 THE COURT: Yeah, well I'd like to take a
2 look at that case --
3 MS. BONANNI: Yeah.
4 THE COURT: -- and read it. And --
5 MR. MULLINS: I'm sorry, Judge.
6 THE COURT: So I think we can delay a ruling
7 on that until our next break so I can have a chance to look
8 at that case and I'll print one for the other parties.
9 MR. MILLER: And briefly the plaintiff's
10 argument, the model jury instructions in this case, right
11 now she's saying that she has to prove an actual crime.
12 That's not true, she has to prove she reported a violation
13 or a suspected violation. She only has to say she suspected
14 it. She doesn't have to prove a violation actually
15 occurred. And it's inappropriate to try to use the
16 Prosecutor as a proxy to say, oh well the county Prosecutor
17 determined that an assault here and he pursued this charge
18 is trying to usurp the jury's role in this case.
19 MS. BONANNI: But they are saying and they
20 are suggesting to this jury that Pennie Davis made it up, so
21 there wasn't a --
22 THE COURT: No, I get that.
23 MS. BONANNI: -- reasonable suspicion of a
24 violation of the law.
25 THE COURT: Well I'm going to reserve my

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1 ruling --

2 MS. BONANNI: Thank you.

3 THE COURT: -- and specifically read that

4 case to see if it purports to what counsel is representing

5 to the Court. Then I'll further make a ruling on that

6 issue.

7 MS. BONANNI: Okay.

8 MR. MULLINS: And if I could just --

9 THE COURT: Sure, go ahead.

10 MR. MULLINS: Because I'm the one putting

11 things in context. None of the testimony from the school,

12 and it's even clear from if you will the time line, the

13 school is saying whether there's a crime or not that's not

14 our determination. I mean and this will be discussed

15 further, the police officer came, the report was made. The

16 police conducted their own investigation.

17 They can do whatever they want to do or don't

18 do. Our decision as to how to deal with an employee and the

19 student, Marcus, was independent of and was already over and

20 done with before there was any prosecution or resolution of

21 prosecution or anything. It's a separate track and is

22 prejudicial to a determination that we made without the

23 benefit of a prosecution or a jury or a trial.

24 As he made very clear from the stand, I'm

25 running a business today. I've got kids, I've got, you

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1 know, I made a decision. And he made it very clear, his
2 decision was entirely independent of any criminal
3 prosecution or anything.
4 MS. BONANNI: So that --
5 THE COURT: I'm just going to ask defense one
6 question. Mr. Miller, maybe you can, would it make any
7 difference in your analysis if it had been an adult
8 conviction?
9 MR. MILLER: No, in the *Knox-Pipes* case that
10 was actually trying to offer evidence of non prosecution
11 even.
12 THE COURT: Okay.
13 MR. MILLER: And that was reversible error.
14 The prosecution is far more prejudicial. I mean a jury
15 greatly respects I mean Judges and Prosecutors. And try to
16 say a learned Prosecutor or a learned Judge reached a
17 determination, the case is over.
18 THE COURT: Okay. Well I'm going to --
19 MS. BONANNI: Now let me add on something
20 that Mr. Mullins said.
21 THE COURT: Sure.
22 MS. BONANNI: And I'm glad he raised it,
23 because it did contribute to my thinking about approaching
24 the Court today. In preparing for Mr. Pack one of the
25 pieces of testimony at least from his deposition is that he

1 had an investigation, continued the investigation and it
2 consisted of getting the police report and reading the
3 police report.
4 And that that police report was concluded on
5 the 21st, which is really not true because then the -- I
6 don't --
7 THE COURT: So are you saying that the school
8 got a copy of the police report?
9 MS. BONANNI: That's what he's going to say.
10 THE COURT: Okay.
11 MS. BONANNI: And so then I'm thinking that
12 suggests then that -- and then I'm sure they're going to
13 want to put it into evidence. I'm not. And that is --
14 THE COURT: Police reports are almost never
15 admissible so.
16 MS. BONANNI: Well he's going to testify that
17 that was the evidence he was waiting for and that it was
18 concluded on the 21st of October. And that's just
19 misleading. And that's where my thought was, cautionary
20 instruction of whatever happened with that doesn't matter,
21 shouldn't go, you know, you don't get to know. You don't
22 get to know. So that takes care of my concern about
23 prejudice.
24 THE COURT: Okay. All right, well I want to
25 read this case. It seems to me we've got a little bit of

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1 time in the development of testimony before we get to that
2 point.
3 MS. BONANNI: And then we have one more issue
4 which is about proposed Exhibit 2, which will be used with
5 --
6 Can you get the Judge a copy?
7 MS. ROBINSON-HOLMES: Yes.
8 MS. BONANNI: We discussed yesterday the
9 excerpts from the student log that relate to things Ms.
10 Davis inputted and --
11 MS. ROBINSON-HOLMES: May I approach, your
12 Honor?
13 THE COURT: You may.
14 MS. BONANNI: And also things that Mr. Zesson
15 who will be a witness and Ms. Pauli inputted with regard to
16 this student. We have prepared this proposed exhibit,
17 defendant has objections. And I'd like to get this resolved
18 if only because this is something that's next up for Pennie
19 to discuss.
20 THE COURT: Okay, so this log this isn't a
21 school exhibit?
22 MS. BONANNI: This is a school document.
23 THE COURT: A school exhibit, okay.
24 MS. BONANNI: And what we've done is in
25 deference to the Court's ruling as to this student's

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1 disciplinary history we have redacted all, you know, five
2 pages except for the entries made by Pennie Davis and the
3 entries -- and they relate to the time frame leading up to
4 the assault. And also the entries made by witnesses that
5 will be here and I will ask them about that because it does
6 relate to the investigation of this incident according to
7 the student code that I cross-examined Mr. Beal about
8 yesterday.
9 A student's prior issues must be taken into
10 consideration by administrators when determining what kind
11 of consequence is to be given. And I think that for me to
12 perform a proper cross I get to ask these administrators,
13 since they're the ones that did the investigation, what they
14 knew about him, what they looked at, etcetera.
15 And I'm just going to --
16 THE COURT: So as an example, your very first
17 one is you think that you should be able to ask whether
18 M.H., you know, they found cellophane wrapped --
19 MS. BONANNI: No, actually that --
20 THE COURT: An amount of marijuana?
21 MS. BONANNI: That one I'll take out. I
22 didn't see that.
23 THE COURT: Yeah, well that's the first one.
24 MS. BONANNI: That's after this happened.
25 That comes out.

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1 THE COURT: That clearly wouldn't come in.
2 MS. BONANNI: Everything else Zesson I
3 believe should come in, even the entries from 9/10/2014,
4 because he's the guy in the building, he has knowledge.
5 He's the grade supervisor and he's supposed to take --
6 You know that needs to be redacted.
7 He's supposed to take that student's history
8 into consideration and he's part of that history.
9 MR. MILLER: May I respond, Judge?
10 THE COURT: You may.
11 MR. MILLER: I mean again, motion in limine
12 that's now been argued a few times, Superintendent Beal has
13 testified in his deposition he's the decision maker.
14 Plaintiff's counsel asked very matter of factly, did you
15 look at this when you made your decision? No, I had no
16 prior interaction with this student. Whether he happened to
17 hit this teacher's hand on this occasion, his past acts
18 wouldn't bare into me making that determination.
19 He didn't look at this so it can't go to his
20 state of mind. And the very two bottom entries on this
21 page, I mean the first one is relating to marijuana, it's
22 not even kind of related. The bottom two are from five, six
23 months before, I mean with skipping class and being tardy.
24 How does that have anything to do about whether a hand was
25 struck on this occasion?

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1 And even the ones before that, I mean
2 September 25th, September 23rd, September 11th. And on the
3 second page September 10th, those are a month before this
4 incident occurred. What bearing can that have on Pennie
5 Davis whether she believes she reported a violation, a crime
6 on October 12th?
7 MS. BONANNI: It's not about Pennie Davis,
8 it's going to be a cross about Zesson. Mr. Beal was very
9 clear, he doesn't get down and dirty into these
10 investigations, that's not his job. But it is the job of
11 Zesson, it is the job of Pauli. And according to Exhibit
12 number -- the student code, these administrators must look
13 at this record and determine what the consequences based on
14 their knowledge.
15 Now I think that would permit me to bring in
16 the whole thing. We've gone past that. We're not going to
17 go through the whole log. But certainly this shows their
18 contact, it shows they know, they've made their own entries,
19 whether it's skipping or not, they know the student. I'm
20 not going to spend a lot of time on it, but I do think that
21 it's permissible, especially on cross.
22 MR. MILLER: For this witness it can't be.
23 Right now she's saying, well maybe for Joe Zesson he should
24 have looked at this and should have known about it. Joe
25 Zesson is not testifying today. This has nothing to do with

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1 Pennie Davis, what he may have entered.

2 THE COURT: Mr. Zesson is going to be a

3 witness?

4 MS. BONANNI: Yes.

5 THE COURT: Okay.

6 MS. BONANNI: And also Ms. Davis will testify

7 that she looked at this log and when she saw his history,

8 and she's just going to refer to it as an extensive

9 disciplinary history, including entries from Zesson, that

10 she took certain steps. That's why she called the coach,

11 that's why she went and called the mom. You know, that's

12 why she went above and beyond.

13 MR. MILLER: And again, Judge, and I really

14 do hate to beat the dead horse, because we argued this on

15 day one, we argued it yesterday and we're arguing it again

16 because plaintiff is not happy with your prior rulings. But

17 the model jury instruction that the Court is going to

18 presumably read to the jury is, the employee's motive does

19 not matter and you should not consider in determining

20 whether the employee engaged in protected activity.

21 Her subjective fears in calling the police

22 are entirely irrelevant per the model instruction. The

23 operative fact is she filed a police report. That's her

24 protected activity. That's it. The subjective motivations

25 are, well I made the police report because of this. It's a

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1 Michigan Supreme Court case called *Shalaw* (ph). I forgot
2 who the defendant was, the plaintiff's attorney was Tom
3 Pabst, the trial court Judge was Judge Fullerton I believe.
4 The Supreme Court said subjective motivation does not matter
5 in these cases.
6 MS. BONANNI: But the motive of the employer
7 does.
8 MR. MILLER: And they --
9 MS. BONANNI: And Pennie Davis when Mr. Pack
10 said to Pennie Davis, what's your beef with this student?
11 She's saying, you know, he needs help. This needs
12 intervention. So that legitimizes her beef. And I think
13 she gets to testify about what she did, the steps she took.
14 And this is part of it, it's so critical.
15 THE COURT: All right. Well at this point I
16 think it's premature. As you get into Mr. Zesson's
17 testimony you may well lay the foundation for the
18 admissibility for some of this, especially if it's
19 appropriately redacted.
20 MS. BONANNI: Okay.
21 THE COURT: All right.
22 MS. BONANNI: So then at this point since Ms.
23 Davis is up, I am asking that I am permitted to submit this
24 exhibit with the Baird-Pauli and Zesson entries redacted.
25 THE COURT: Okay, I guess --

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1 MS. BONANNI: So that would leave Pennie.
2 THE COURT: So these would be her ones that
3 she entered?
4 MS. BONANNI: Yes.
5 MR. MILLER: And defendants would still
6 suggest that the October 12th, 2015 what she documented,
7 that's what's at issue in this lawsuit. Going beyond that,
8 I mean we're almost going a month backwards, I mean for
9 disorderly conduct for something else in class. It's just
10 another way for 404b propensity evidence to come in. And
11 the only school administrator to testify already raised his
12 right hand and said I didn't read this. There's no
13 foundation for this being relevant in any fashion at this
14 point.
15 MS. BONANNI: But there will be school
16 administrators who are going to testify about this and say
17 that nothing happened, nothing happened, nothing happened.
18 And this is all part of the appropriate background. Pennie
19 Davis should be permitted to testify about the steps she
20 took from the beginning of this school year to address the
21 defiance and behavior that she saw that caused her to be
22 concerned.
23 THE COURT: All right. I guess I'll take a
24 look at your redacted one when you get it ready for Ms.
25 Davis. You know, again it makes more sense to me to address

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1 this when you've got Mr. Zesson up on the stand who may very
2 well be the determining factor if he reviewed this or not.
3 So I guess -- I mean I'm going to allow you to get in what
4 your own client put in the log, at least at this point, I
5 think that's admissible.
6 MS. BONANNI: Okay. So then what I'll do,
7 because I would like the jury to see this is redact the
8 Zesson and then we can revisit it at Zesson.
9 THE COURT: Because again, just conversely it
10 wouldn't be fair for the district to be saying, well she
11 didn't make any of these entries, she didn't follow
12 procedures, she didn't put that information so we could look
13 at it and other staff members could evaluate it. So I'm
14 going to allow it for that limited purpose with respect so
15 far to the plaintiff. All right.
16 MS. BONANNI: Okay.
17 THE COURT: And you can readdress it again
18 with Mr. Zesson when he's up outside the presence of the
19 jury.
20 MR. MILLER: Just to hopefully make the
21 Court's job a little easier, the *Knox-Pipes* opinion, because
22 it was a twenty page opinion, the discussion is primarily on
23 page 14.
24 THE COURT: Okay.
25 MR. MILLER: Where the Court holds we find

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1 these arguments are improper. The Court has held that
2 evidence of lack of prosecution isn't even admissible there.
3 THE COURT: Okay, I'm definitely going to
4 take a look at that.
5 Okay, anything else or let's bring the jury
6 in?
7 MS. BONANNI: Well, your Honor, I am going to
8 start with the log is like my next.
9 THE COURT: Oh, okay. So you want a minute
10 to get the log?
11 MS. BONANNI: Yeah.
12 THE COURT: Sure, go ahead.
13 MR. MILLER: And compliments to the local
14 apple fritters.
15 MS. ROBINSON-HOLMES: David, do you mind
16 making a copy?
17 MR. MULLINS: Twenty-five cents each.
18 MR. MILLER: That's cheap, Wayne County is
19 two dollars a page now.
20 MS. BONANNI: That's insane.
21 MR. MILLER: Isn't it?
22 THE COURT: Mr. Miller, I'm going to give you
23 my high lighter. I'm just not seeing where that is in
24 there, you need to highlight the passage. Mr. Miller, I'm
25 going to give you a copy of it and you can highlight it

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1 there for me. I was looking for it, I didn't see it right
2 at first.
3 MR. MILLER: I'm sorry, Judge, I didn't --
4 THE COURT: I was going to let you highlight
5 that section.
6 MR. MILLER: Oh.
7 MS. ROBINSON-HOLMES: Your Honor, if I may?
8 THE COURT: Yeah, come up.
9 MR. MILLER: The page numbers on this are
10 different than the PDF original.
11 THE COURT: Just go ahead and highlight the
12 section. I'll read as much of the case as I can.
13 MR. MILLER: Yeah, absolutely.
14 THE COURT: Ms. Bonanni, am I pronouncing
15 that correctly now?
16 MS. BONANNI: Yes.
17 THE COURT: Bonanni, there were go. All
18 right, I want to make sure. Bonanni. Okay, so are we all
19 set?
20 MS. BONANNI: Si.
21 THE COURT: Very good. We'll bring the jury
22 in. We'll lasso them up. I'll get my clerk and we'll be
23 all set to go.
24 THE CLERK: The Judges meeting was canceled.
25 THE COURT: Oh, good.

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THE CLERK: (Undecipherable).

THE COURT: Well it would have been hard for me if I would've known it.

THE CLERK: It's been going on since 8:30. Families are fighting. (Inaudible).

THE COURT: Well no, I thought you were probably right around there so I held them up. So I waited until you got here. I always try to do that.

THE CLERK: Okay.

THE COURT: And David said, you know, he could -- I don't like David doing that unless you've got him doing it.

THE CLERK: All rise for the jury.

(At 11:30:21 a.m., jury entered)

THE COURT: All right, you may be seated.

The record should reflect the presence of all the jurors, parties, their respective attorneys, Ms. Davis is back up in the witness stand. We're going to continue with her direct examination.

Go ahead, Ms. Bonanni.

MS. BONANNI: Thank you, your Honor.

PENNIE DAVIS

(Previously sworn as a witness, testified as follows:)

DIRECT EXAMINATION

BY MS. BONANNI:

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1 Q Ms. Davis, good morning.
2 A Good morning.
3 Q One thing we forgot to cover yesterday, as chair of the
4 department how much extra money do you earn per year?
5 A Approximately two thousand, five hundred roughly.
6 Q Okay. So one of the things you were talking about yesterday
7 in your testimony were the pupil exclusion form that you
8 filled out with all the information?
9 A Yes, Ma'am.
10 Q And the information included contacts that you'd had with
11 various people about issues you were having with M.H.?
12 A Yes, Ma'am.
13 Q Were you seeking to have M.H. excluded or expelled from the
14 school?
15 A No, Ma'am.
16 Q Okay. Describe what you were seeking at this point?
17 A I was seeking help for troubled students. I was trying
18 everything in my power to help him. I elicited help from
19 again principals, two principals, I elicited help from his
20 football coach, from his school counselor, from --
21 Q Okay. And so the point of the exclusion form was to exclude
22 from your class?
23 A From my class only because things kept escalating with him.
24 And he wanted out and as a teacher I believe and I tell all
25 my students this, you have choices, we all have choices.

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1 The choices you make there are consequences. They can be
2 good choices, they can be bad, but there's always some kind
3 of consequence.
4 And I let them make their choices to an
5 extent. I am not going to, you know, stand in a student's
6 way at this age. You know, they have to have that right so
7 they feel empowered, because we all want to be able to make
8 our choices.
9 Q Ms. Davis, thank you. Turn to Exhibit 2, let's take a look
10 at the exhibit please?
11 A 2 did you say, sorry?
12 Q 2. Can you identify what this exhibit represents?
13 A Yes, this exhibit represents student write in logs, where
14 you write in what happened in your classroom or it could be
15 in the hallway.
16 Q Is this the log --
17 A The different offenses.
18 Q Is this the log that then becomes part of the student's
19 record?
20 A Yes, Ma'am.
21 Q Okay. And so these are -- your name is attached to some
22 entries?
23 A Yes, Ma'am.
24 MS. BONANNI: Okay, I'd like to offer Exhibit
25 number 2 into evidence.

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1 (At 11:34:00 a.m., Plaintiff's Exhibit 2 was
2 offered)
3 THE COURT: Any objection? I know we've
4 discussed this at length outside the --
5 MR. MULLINS: None other than what was
6 previously discussed.
7 THE COURT: All right. All right, well the
8 Court is going to allow the redacted portion of plaintiff's
9 Exhibit 2.
10 (At 11:34:10 a.m., Plaintiff's Exhibit 2 was
11 admitted)
12 MS. BONANNI: Okay, I'd like to publish.
13 Channing, when you have a second. Thanks.
14 THE COURT: Okay.
15 BY MS. BONANNI:
16 Q So, Ms. Davis, your first entry was 9/10 and can you
17 describe what was happening on this day?
18 A Yes. We have the option as teachers to let them have their
19 phone out or not as we're teaching. Sometimes we need them
20 to get their phone out so they can do research, because we
21 don't all have computers in our rooms. But most of the time
22 I don't let them have the phone out because it's visual art.
23 And at this time he wasn't to have his phone
24 out and I asked him several times to put it away and he
25 refused. And also the next step we ask them to give it to

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1 us, the phone, and then they get it back at the end of the
2 hour. So he would not do that either. I'm just nervous up
3 here.
4 Then very inappropriate speaking to me, rude,
5 disrespectful. I sent him to the office. And this time he
6 did go to the office. And I also called home.
7 Q Okay. The next day it appears you had another entry, tell
8 me about that day?
9 A He came in -- what they tell us to do too on these is keep
10 it to a minimal and not say at this point everything that
11 the student said and did. But saying that he was very
12 inappropriate. Again, I had to send him to the office
13 because he was constantly also saying, I'm getting out of
14 this class no matter what.
15 Q Do you have a memory of exactly what he said that day?
16 A A lot of bad words I really don't want to say.
17 Q Okay.
18 A But not exact. I mean I know some of them and you'll see it
19 later on up here, because I just put the initials.
20 THE COURT: Normally they ask the Judge, but
21 if you think the exact flavor of those words would be
22 important I'm okay with that.
23 THE WITNESS: Well I --
24 BY MS. BONANNI:
25 Q Ms. Davis, if you're not comfortable saying the word you

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1 could refer to the word as using the first letter?
2 A Okay.
3 Q And I think everyone might understand.
4 A I could use the first letter, yes.
5 Q Okay.
6 A He used the F and the B and some slang.
7 Q Was he referring -- did he use the B word to anyone?
8 A Directed towards me.
9 Q Okay. Well let's move on to 9/25?
10 A Okay.
11 Q On this day it looks like you actually refer to a violation
12 of student code, disorderly conduct number 8 and defiance?
13 A Correct.
14 Q Do you have a memory of what happened this day?
15 A Again, I just put it in with he didn't want to be the F-ing
16 in there and the F-ing this. And I just put the F because
17 that's what I was instructed to do.
18 Q You indicate in the log that he's bothering other students.
19 Do you specifically remember what he was doing?
20 A Trying to -- I feel he was trying to bully them, he was
21 trying to intimidate them.
22 Q Do you remember how?
23 A He has a big stature. In this class it was a beginning 2D
24 drawing class. I teach all ages, I mean all grades, sorry.
25 And at this point in my career they brought the ninth

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1 graders over, so there's a lot at first to keep ninth grade
2 girls in this class that were already feeling squeamish and
3 some of them did not want to sit by him.
4 Q Now at this point you indicated quote, "we need to meet
5 about this young man before he comes back to art class", end
6 quote. Who were you directing this request to meet to?
7 A Mr. Zesson and then also I was asking for a parent to show
8 up.
9 Q Now when you make your log entries, I'm assuming I'm doing
10 this motion --
11 A Right.
12 Q -- I'm assuming it's on the computer?
13 A Correct.
14 Q Do you have an understanding as to where the log entry goes,
15 does anyone get an alert?
16 A They get alerts.
17 Q Who gets an alert?
18 A The principals I believe, yes.
19 Q And when you say the principals, can you describe for the
20 jury who you're referring to?
21 A Okay. I'm referring to his principal at that time was Joe
22 Zesson and it would have been the tenth grade principal
23 because he was in tenth grade.
24 Q Does the -- who's the main principal?
25 A Yeah, she also gets it, Barb Baird-Pauli.

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1 Q Okay. And did Mr. Zesson or Ms. Pauli contact you as a
2 result of you entering this log entry?
3 A Later on that day and I also called Mr. Joe Zesson and I
4 stressed that I needed to talk to the parent and to him so
5 we could try to de escalate this.
6 Q Okay. And did anything happen to de escalate, did you
7 observe that de escalation?
8 A Well what was sad is the parent refused to come. So in the
9 meeting it was just Mr. Joe Zesson, myself and M.H. He was
10 very upset at first, M.H., and as we set there and talked he
11 did de escalate, meaning he did calm down. And it seemed at
12 that time that he was understanding what he did wrong.
13 Q Okay. And did that understanding continue or at least in
14 terms of what you observed in the classroom?
15 A For a time.
16 Q Okay. Can you describe for the jury the time frame in terms
17 of M.H.'s behavior between 9/25 and 10/12?
18 A Okay. I don't know if it's the right way to say it, but he
19 was somewhat under control. He would still come at the door
20 and, you know, I kind of hate to say it this way but muscle
21 his way in. He still made comments that he didn't want to
22 be in the class.
23 Q Okay.
24 A And I still tried to work with him to be able to stay in
25 there.

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1 Q Okay. So now let's talk about 10/12. And before we talk
2 about your actual entry into the student log let's talk
3 about that day, okay?
4 A Mm-hmm.
5 Q What period was it that the assault occurred?
6 A Third period.
7 Q Okay. So you can describe for the jury now if you would,
8 walk us through that incident?
9 A Okay. Third hour started as mostly every third hour starts.
10 I'm always ninety-nine percent of the time at my door
11 greeting students in, because at our school we feel it's
12 very important to greet them and see how they come in to our
13 classroom. So that's what I was doing.
14 So, you know, students file in, not everyone
15 is all together obviously because it's school and they've
16 got five minutes in between classes to get from one class to
17 the other. When he was coming through he was angry, he was
18 elevated again and also was mumbling stuff so I could hear.
19 There wasn't any other students around at that point.
20 Q Can you tell --
21 A Close, you know, closeness -- proximity, I'm sorry.
22 Q Can you tell the jury what -- do you remember what he said?
23 A Yes, he wanted to hurt and beat and something like kill the
24 teacher at that point. Yeah.
25 Q Okay, what happened next?

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1 A He came in the room, we set down, I'm greeting the rest of
2 the students in. And then my typical routine is I go to my
3 desk, I take roll on the computer, I like to get that done
4 first and have the students, you know, sit and relax. You
5 know, I don't want to start writing, I want to get the roll
6 and have their mental state ready to go.
7 So I took roll and then instructed the
8 students they could get up and get their assignment out and
9 then I could talk about what we're doing, the objectives of
10 the day, what I expect them to be accomplished and all the
11 how tos. So as some of the students are getting up I hear
12 M.H. muttering again that he wants to, you know, hurt and
13 threatens me.
14 And I -- do you want me to just keep going
15 on?
16 Q Yeah, I just want you to walk through the incident.
17 A I'm sorry. I went to his desk, and our desks are like in
18 the art room probably three feet by I'm going to guess about
19 four feet roughly, and quietly I put my hand, is it okay if
20 I physically show you?
21 Q Sure.
22 A I calmly put my hand and say he was setting here across the
23 table, I put my hand -- is it okay if I stand up?
24 THE COURT: Sure, absolutely.
25 THE WITNESS: I put my hand on the desk and

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1 I'm going to pretend the student was right there and, you
2 know, and the table is like this. And I tried to de
3 escalate him again and I leaned down and I said, M., you
4 can't talk that way. Please stop or I'm going to have to
5 ask you to leave. And he wouldn't stop and I said, then I'm
6 going to ask you to go to your grade principal's office,
7 because that's our first thing to ask them.
8 And he said some choice words and he says, I
9 don't have to go anywhere, something to that effect, not
10 word by word. And I said, Marcus, if I have to call for
11 security it's going to be worse. Because if you have to go
12 to the next level and call for security they come to your
13 room, then everybody knows that there's a problem.
14 And then he just said again, I'm not going
15 and he took his hand -- is that okay?
16 THE COURT: Sure.
17 THE WITNESS: So this is Marcus sitting here,
18 my hand is right here and then leaning down. And he just
19 goes like this, I'm not going and just swang a closed fist,
20 bam right into my hand here because I had it open like this,
21 sideways. He didn't go up or nothing, he went sideways
22 really for me forceful because this young man is again six
23 foot, about two hundred and sixty pounds.
24 And then I didn't yell, I let out an ahh
25 because it hurt. And I put my hand underneath my arm like

1 this. Sorry, is that okay, I don't mean to --

2 THE COURT: That's fine.

3 THE WITNESS: Put my hand underneath my arm

4 here because it hurt so much. It was throbbing, it was

5 painful. And I was literally afraid what else he may do at

6 that point not only to me but other students. So I went to

7 my phone and I called. I call security, couldn't get an

8 answer, left a message. I called Joe Zesson, didn't get a

9 message. I called Barb Baird-Pauli, didn't get a message

10 this time.

11 I also called the front desk, because usually

12 we can get through there most of the time. So I called

13 there, left a message. And then probably I'm going to say a

14 good ten minutes, probably ten minutes later, five minutes,

15 ten, he, student M, got up and ran out of my room. And then

16 about five minutes later Mr. Zesson just stepped in my room,

17 looked around and said, where is M student? And I said, he

18 ran out of the classroom about five -- between five and ten

19 minutes or seven minutes.

20 And then he turned around, Mr. Zesson, and

21 was leaving. And I said, I'm hurt. And he said, we have

22 procedures for that.

23 BY MS. BONANNI:

24 Q So, Pennie --

25 A Okay.

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1 Q -- you can sit.
2 A Sorry.
3 Q That's okay. So before you go on with the chronology of
4 what happened that day, what are the procedures and just by
5 way of identifying the documents that you have to fill out?
6 A Okay. As Jeff Beal pointed out, for every adverse or
7 negative behavior the consequences of the action that the
8 students do go up in severity. They get harder on them or
9 tougher. Actually you understand that, sorry. Do you want
10 me to say more?
11 Q Well I just want you to -- is there a way for you to -- when
12 you said there's procedures for you to report, were there
13 certain forms or certain documents that you had to fill out?
14 A Yes. Before the point of the assault I filled out a pupil
15 exclusion from my class only, because I wasn't getting
16 through to him. I guess the coach wasn't getting through to
17 him, I guess the principals weren't getting through to him.
18 Q So after the assault what forms were you required by JPS
19 policies?
20 A Oh, okay. I filled out an accident report. I filled out,
21 there's so many forms, sorry just a second. An accident
22 report, I filled out this log report because you have to
23 have that in there.
24 Q So let's take a look at the incident report, that's number
25 5. Is this the incident report that you filled out?

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1 A Yes, Ma'am.
2 Q And it indicates that you must do this within twenty-four
3 hours?
4 A Yes, Ma'am.
5 Q Did you fill this out within twenty-four hours?
6 A Yes, Ma'am.
7 Q And does the incident report indicate --
8 MS. BONANNI: Thank you, Channing.
9 BY MS. BONANNI:
10 Q That you've been injured?
11 A Yes, Ma'am.
12 Q Who does this incident report go to?
13 A It first goes to the head principal, Mrs. Baird-Pauli.
14 Q And you filled out as well on Exhibit 2, which we've looked
15 at, the log entry?
16 A Yes, Ma'am.
17 Q And tell the jury what point in time you filled in that log
18 entry?
19 A For the incident report?
20 Q Nope, on the logs.
21 A Sorry.
22 Q That's okay.
23 A For the log entry it was -- I have lunch next, so after the
24 students left, which the bell rang, then probably after Joe
25 Zesson left and so forth the bell rang in about less than

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1 five minutes. So I have lunch and my prep hour together
2 then. So I one handedly typed in the report the best I
3 could. I guess it's crucial to get that information in
4 there as soon as you can.
5 Q Okay. Now your hand, can you describe what you're feeling
6 in terms of the hand at that point?
7 A My hand was throbbing.
8 Q Did you seek medical attention right away?
9 A As soon as I could, yes.
10 Q Were you permitted to leave the class and go see a doctor?
11 A No, not at that time, no.
12 Q Can you describe what the rules are in terms of leaving the
13 class, is there a process you have to follow?
14 A Yes, you can't leave your classroom unless there's another
15 teacher in there, unless administrators come in and take
16 your classroom.
17 Q So did anybody come and take your class?
18 A No, Ma'am.
19 Q Now you described for the jury that you made some phone
20 calls?
21 A Yes, Ma'am.
22 Q While M.H. was still in your room?
23 A Correct.
24 Q And I'm wondering, was that the extent of the phone calls
25 for the day?

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1 A No, Ma'am.
2 Q Why don't you describe for the jury what other phone calls
3 you made during that school day?
4 A Okay. Also when all my students left I have that time
5 period. So I repeatedly called Mrs. Pauli, I called over to
6 the superintendent's office and also the human resource
7 office. And then what I did is I walked down to see if I
8 could find Ms. Pauli in her office. Well I figured I had at
9 least a fifty-fifty chance in finding her. So --
10 Q Let me interrupt you.
11 A Okay.
12 Q Okay, and we'll talk about any contact you had with Ms.
13 Pauli. But what I want to know is, when you left messages
14 --
15 A Yes.
16 Q -- can you tell the jury what you said in your message?
17 A I said I've been hit by a student, I'm in pain and that I
18 needed help.
19 Q Okay. Is that it, sorry?
20 A Yeah.
21 Q Yeah?
22 A For right now.
23 Q Okay. Now you're walking down the hall to see Ms. Pauli, do
24 you see her?
25 A I walked down the hall and I don't see her in the hallway,

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1 she is in her office.
2 Q Okay. Why don't you describe for the jury what happened?
3 A Okay.
4 Q You can describe --
5 A I know, I just want to visually show you.
6 Q I know.
7 A But okay. Like that's her office, okay. I'm standing
8 outside her office. She's usually on the computer or the
9 phone, so I waited for a minute or a few with my hand up
10 under here. And I said, I just was hit by a student and my
11 hand is painful. And she said --
12 MR. MULLINS: Your Honor, I'm sorry --
13 THE WITNESS: -- are you okay?
14 MR. MULLINS: I'm having a hard time hearing
15 her.
16 THE WITNESS: Oh, I'm sorry.
17 BY MS. BONANNI:
18 Q Ms. Davis, can you raise your voice?
19 A Yes. Is that better? I don't want to sound like I'm
20 yelling.
21 Q Or maybe use the microphone?
22 A Like this?
23 THE COURT: You can tilt -- the one that's
24 for recording, the other one, you know, is for
25 amplification.

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1 THE WITNESS: This one?
2 THE COURT: That's better.
3 THE WITNESS: Okay.
4 THE COURT: You could probably slide your
5 chair up just a little bit.
6 THE WITNESS: I've got long legs. Sorry.
7 BY MS. BONANNI:
8 Q Okay.
9 A Is that better?
10 Q Sure.
11 A Is that better?
12 Q Just try to keep your voice elevated for me.
13 A Sorry.
14 Q That's okay.
15 A So again, my hand was under here, so I look over there, I'm
16 just a very visual person. And I said, I was hit, my hand
17 is hurting and she asked me, was it an open fist or a closed
18 fist? Open hand, sorry, or closed hand. And I said it was
19 a closed hand. And she goes, did you put that in your
20 report? And at that time I said no, I don't believe that I
21 put it was a closed fist.
22 And she said, you should have. But I can't
23 go back in once I write a report and touch it at all. It
24 like vanishes from us as teachers, that portion of it. And
25 she asked if I was okay? And I said no. And she had a

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1 meeting or a conference and I just then turned around,
2 walked back to my classroom and I still had time during my
3 prep hour.
4 And at this point I'm trying not to show my
5 emotion, my crying to my students or the students that are
6 in the hallway. So I walked out to my car where it was
7 parked, sat in my car and I cried. And I said, okay I have
8 to pull it together. All right. I have another class,
9 because we have five hours of the day. I mean it's not five
10 hour hours, but it's -- the time period is longer than an
11 hour if that makes sense.
12 I said I have to pull it together because I
13 can't leave, no one has let me go. I've got to make it
14 through this next class and not look like I'm upset. Sorry
15 I'm going to say this and I hope this is not wrong, but I
16 prayed and I meditated and tried to pull myself together. I
17 walked back into the building and I conduct my last hour
18 class. No one called. And then it was the end of the
19 school day.
20 Q Now the school investigation into the incident was conducted
21 on that day, October 12th, were you ever contacted at --
22 A No, Ma'am.
23 Q -- any time by any school administrator and interviewed?
24 A Not on the 12th.
25 Q At any time were you interviewed by anyone from the school

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1 and walked them through what happened to you?
2 A Not on the 12th. No, not at any time.
3 Q Were you ever interviewed by Mr. Zesson?
4 A No.
5 Q Were you ever interviewed by Ms. Pauli?
6 A No.
7 Q Were you ever permitted to look at the interviews or
8 investigation materials?
9 A No.
10 Q Did you request those materials?
11 A Yes.
12 Q Did the conclusion from the school investigation on the 12th
13 that you only had incidental contact with M.H., did that
14 surprise you?
15 A It shocked me.
16 Q Let's talk about after school?
17 A Yes.
18 Q After school walk us through it, what did you do?
19 A Okay. I did make one more before I left, I think it was
20 just before fifth hour started when I got back into my
21 classroom, another phone call for help, for some assistance.
22 All right. And I received none, so my first thought, I need
23 to go to the police and make a police report because that's
24 my right as a citizen.
25 At the police office I had to wait for some

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1 time and the police officer actually suggested that I also
2 go and make a PPO order. So I went and made the PPO order,
3 because I live in Irish Hills and that's right as you know
4 here downtown Jackson. So I made the police order the PPO
5 and then I went straight to Irish Hills, Brooklyn to a walk
6 in clinic to have my hand looked at because I'm an artist,
7 my hands are my livelihood.
8 Q So you went -- where did you go?
9 A It's called Med Plus.
10 Q Okay. Were you examined by a physician at Med Plus?
11 A Yes, Ma'am.
12 Q Did they tell you what was wrong with your hand?
13 A I told them the story and they -- yes, I had a contusion and
14 they also x-rayed it, but they send out their x-ray to my
15 understanding because they couldn't see it right then. They
16 took about a two or three inch wrap, wrapped it up.
17 Q When you say two to three inch are you talking about the
18 thickness?
19 A Wide. No, wide wrap which they --
20 Q Okay.
21 A -- used.
22 Q Was that their idea or your idea?
23 A It was theirs because it was pounding and hurting so much
24 and they couldn't see the x-ray to see if there was like
25 maybe a fracture. But later on they knew there wasn't a

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1 fracture after they saw it.
2 Q So they ruled that out later?
3 A Mm-hmm. Yes, Ma'am.
4 Q But at the time when your hand was wrapped --
5 A Right, I was told not to take this wrap off.
6 Q Now the next day would have been October 13th?
7 A Yes, Ma'am.
8 Q Did you go to work?
9 A Yes, Ma'am.
10 Q Why don't you tell us -- tell the jury, did you have any
11 contact with administrators regarding the previous day's
12 assault?
13 A Yes, I had contact, it was to me kind of very strange, I'll
14 put it that way. Mr. Ben Pack --
15 Q First, what time?
16 A It was second hour.
17 Q Who was there?
18 A My students were in the room and I was instructing them.
19 And as I was instructing them Mr. Ben Pack came into the
20 room along with Mr. Beal. They walked around the room, they
21 stood by the door and they said very abruptly, get out in
22 this hallway, we need to talk to you.
23 Q Did you follow their directive?
24 A Yes, Ma'am.
25 Q Describe for the jury what happened during the conversation

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1 with them?

2 A Well as soon as I stepped out in the hallway as my class is

3 working inside my room, they started questioning me and

4 demanding that I take off my wrap. Then they asked how I

5 was and they would say, take off that wrap, we want to see

6 your hand, take off your wrap. And I'm like, I'm sorry I

7 can't do that, I was instructed by a doctor not to take the

8 wrap off at this point.

9 It's the second day that I was hurt. It was

10 throbbing and I was instructed by the doctor. And then I

11 was asked, do you shower?

12 Q Who asked you that?

13 A I believe it was Ben Pack.

14 Q It was one of the two?

15 A Yeah, one of the two.

16 Q So what did they say?

17 A Do you shower?

18 Q So what did you say back, if anything?

19 A I had to stand there for a minute and think, what do they

20 mean do I shower? And then one of them said, well how do

21 you take a shower with a wrap on? And I said, there's many

22 ways. I coached sports, not for Jackson High, but for

23 another school district so I know a little bit about

24 injuries. And also I was, not at that time but I've been a

25 licensed emergency medical technician, and I did that for a

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1 short stint.

2 So I said, you put a plastic bag around it,

3 you tape it up and you can do it that way. You can hold

4 your hand out of the shower or most women like to take a

5 bath, so it's not a shower or getting it wet, you know, you

6 can keep it from getting it wet. You don't take it off when

7 a doctor says don't take it off. I mean you know what I'm

8 saying, you don't take the wrap off if a doctor says do not

9 take this wrap off --

10 Q Okay.

11 A -- for your own health.

12 Q So you described the various things you could do to --

13 A Right.

14 Q -- take a shower?

15 A Right. And then -- sorry.

16 Q That's okay. Is there anything else that you talked about

17 with those gentlemen?

18 A Yeah. Yes, Ben Pack said we can take you out, we can send

19 you home right now. And I looked at him and Mr. Beal says,

20 oh that's not necessary. Just bring your doctor's things in

21 when you come. And I said, fine.

22 Q Let's take a look at Exhibit number 9?

23 A Yes.

24 Q Can you identify these for the jury please?

25 A Yes, these are two of the notes that I gave Mr. Pack and

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1 human resource and Jeff Beal.
2 Q Okay. So there's three -- where are these records from?
3 A These are from Med Plus in Brooklyn after hour clinic.
4 Q Now there are three pages to this document?
5 A Correct.
6 Q The first page is a series of prescription pad writings from
7 someone, presumably a doctor because it's a prescription
8 pad, regarding your injury and treatment?
9 A Yes, Ma'am.
10 Q My question is, when did you -- when was the first time you
11 provided this to your employer?
12 A I believe it was either the -- okay, I think I had -- it was
13 either the -- I don't think it was the 13th, because I
14 didn't know I had to bring them in, so it would have had to
15 been the 15th. But for some reason I think I gave them one
16 of them at the end of the day on the 13th.
17 Q Okay.
18 A Because I wanted to make a copy of it.
19 Q Okay. So of the three documents that are in this exhibit
20 which one do you think you might have given them on the
21 13th?
22 A These right here.
23 Q Page 1?
24 A Yes.
25 Q And that's the prescription notes?

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1 A Yes.
2 Q Okay.
3 A If not, for sure on the 15th.
4 Q Okay. Did you provide the second page which is the x-ray
5 results to your employer?
6 A Yes, when it came in.
7 Q Okay. Do you remember the date that you provided the x-ray
8 results to your employer?
9 A Not offhand. I know I -- they asked for it many times and I
10 kept resubmitting it to them.
11 Q Okay. And we'll go over that later with your fax
12 transmittal sheets. But let's look at the third page?
13 A Yes.
14 Q Did you give that to your employer?
15 A I believe so, yes.
16 Q Okay. Do you remember the date you gave that document to
17 your employer?
18 A It was probably the 15th.
19 Q Okay.
20 MR. MULLINS: I'm sorry, I couldn't hear
21 that.
22 THE WITNESS: Sorry.
23 MS. BONANNI: She said probably the 15th.
24 MR. MULLINS: I'm kind of back here in the
25 corner, I'm having a hard time, Judge.

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1 THE COURT: Okay. If you want to even sit
2 closer over here you can too.
3 THE WITNESS: There, is that better? Slide
4 it over?
5 THE COURT: Well, yeah.
6 THE WITNESS: Sorry.
7 THE COURT: I need to have them look at the
8 acoustics in here, but if you can just try to keep your
9 voice up as much as you can.
10 MS. BONANNI: I'd like to offer Exhibit 9
11 into evidence.
12 (At 12:14:07 p.m., Plaintiff's Exhibit 9 was
13 offered)
14 THE COURT: Exhibit number 9, that's all of
15 the ones under your tab 9, correct?
16 MS. BONANNI: Yes.
17 THE COURT: Any objection?
18 MR. MULLINS: No, your Honor.
19 THE COURT: Okay, it will be so admitted by
20 way of stipulation of the parties.
21 (At 12:14:21 p.m., Plaintiff's Exhibit 9 was
22 admitted)
23 BY MS. BONANNI:
24 Q So, Ms. Davis, you indicated that you may have given this to
25 your employer on the 13th or it might have been the 15th if I

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1 understood your testimony correctly?
2 A Yeah, I'm thinking more it was the 15th.
3 Q Okay. So the 15th would have been a Thursday?
4 A Yes.
5 Q So you were assaulted on Monday the 12th?
6 A Correct.
7 Q And we've just discussed what happened on October 13th,
8 which was Tuesday?
9 A Correct.
10 Q What was going on Wednesday the 14th, were you at school
11 that day?
12 A No, Wednesday I was both physically, mentally, my stomach
13 was upset. I was stressed by the incident that happened and
14 no one came to intervene. I was upset, because why are two
15 of my administrators, men, coming to my room ordering me out
16 while I'm teaching and asked me if I showered.
17 Q So did you take a sick day?
18 A Yes, I took a sick day.
19 Q So your next date of work would be on October 15th?
20 A Which is a Thursday.
21 Q Okay.
22 A Yes.
23 Q Yes. And do you remember where you dropped off your medical
24 records?
25 A Yes -- oh, when they came back Thursday --

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1 Q On the 15th?
2 A Yes. When Ben Pack and Jeff Beal came back to my room --
3 Q What time of day was it?
4 A It was first hour. What I did is I went to my computer and
5 turned my computer on and as I'm looking at my computer it's
6 saying that I'm going to be terminated if I didn't go to
7 Workwell, which is the school doctor when they asked me to
8 go. And I got a voice message from Jessica, which is the
9 secondary of the human resource to call her right away.
10 Q So that message was, do you remember when she sent the
11 message, did you even know?
12 A At that time I didn't know. I looked when she did and it
13 was after school after teachers leave on the 13th.
14 Q When do you leave school?
15 A At that time, our school hours have changed slightly, so I
16 want to guess about 2:20 p.m., 2:25 p.m., somewhere in that
17 vicinity because I was hurt.
18 Q Okay. So you --
19 A I'd usually stay around but I had to go.
20 Q So you received e-mails and voice-mails telling you to go to
21 the clinic?
22 A Correct, through the school e-mail.
23 Q Okay. And so did you do anything as a result of getting
24 those communications?
25 A As soon as I got them when I was back to school I called

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1 Jessica and I said, I'll go right now but I need a sub for
2 my room. That's like a taboo, you don't leave the kids
3 alone, you never do that. I said, as soon as you can get a
4 sub I'm gone, I'll go. And then after that in comes Mr.
5 Beal and Ben Pack and they're all upset at me --
6 Q Okay, hold on, before you go on.
7 A Okay.
8 Q The medical records, Exhibit 9?
9 A Yes.
10 Q Which you said you gave him on the 15th?
11 A That would be --
12 Q Can you tell me when?
13 A When they came over there, now I do remember.
14 Q Okay, so when those two gentlemen came to your room that
15 morning --
16 A Yes.
17 Q -- you gave them the medical records?
18 A These, yes.
19 Q Now at the time, now Exhibit number 9 has three pages, one
20 --
21 A Yeah, the first page.
22 Q Okay.
23 A And --
24 Q I know you know what I'm asking you, but I don't know that
25 they know, so wait until I'm done asking. Here's my

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1 question, this exhibit has three pages, one of them is an x-
2 ray, did you have that x-ray at the time?
3 A Did I have that page at the time?
4 Q Yes, did you have the x-ray at the time, the x-ray results.
5 A I believe -- yes, I did.
6 Q Are you sure?
7 A No, I'm not sure on that one. To be honest, I'm not sure on
8 that one because --
9 Q Because you just had your x-ray on the 12th?
10 A Yeah. No, I did not have that one.
11 Q Okay. So you gave them what you had?
12 A Yes.
13 Q And what you had were the two pages without the report?
14 A Correct.
15 Q Okay.
16 A Because they had to send it out.
17 Q So you gave it to them when they came to see you in the
18 morning?
19 A Correct.
20 Q And why don't you then tell us what happened during that
21 discussion with the two gentlemen?
22 A They're accusatory of me not going to the Workwell. I said
23 I'll go right now, all I need is someone to take my class.
24 And they threatened to terminate me again, put a letter in
25 my file for insubordination.

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1 Q Let me ask you a question. While this conversation is going
2 on in the morning of the 15th, had you alerted anyone within
3 the school that you were going to report to the police?
4 A Yes.
5 Q How did you alert them --
6 A When Ben Pack --
7 Q -- and who did you alert, just describe that, prior to the
8 15th?
9 A I alerted Ben Pack and Jeff Beal that basically it was my
10 right and I had to go to the police.
11 Q You left messages for Barb Pauli and Joe Zesson?
12 A Correct.
13 Q Did you inform them that you were going to the police?
14 A I know I did Barb Pauli, Joe Zesson, I don't think I did for
15 him.
16 Q Okay. So you've told us about the morning of the 15th.
17 Have you told us everything about what the three of you
18 discussed that morning?
19 A That morning, yes, I was scared of termination because they
20 said I had to go right away.
21 Q Go where right away?
22 A To Workwell.
23 Q Okay.
24 A And they weren't getting me a sub.
25 Q Okay, so you --

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1 A I called --

2 Q Why don't you explain, you have a process?

3 A Oh, yes, Ma'am.

4 Q For you to go to Workwell you've got to have a sub?

5 A Well first, yes. Right, I mean I would never leave my room

6 without a sub number one. Number two, in order to go to the

7 school's doctor you have to have a referral from human

8 resource. You have to have them make you an appointment. I

9 couldn't just walk in there an say, hey can you look at my

10 hand, because it doesn't work that way.

11 Q So on the 15th when they came in and said, you know, you're

12 supposed to go to Workwell, did you explain to them I wasn't

13 at school on the 14th and I didn't get the message, did you

14 tell them that, yes or no?

15 A Yes.

16 Q Okay. So then it's understood on the 15th during that

17 meeting that you have to go to Workwell?

18 A Yes.

19 Q So then you're waiting for a sub?

20 A Yes.

21 Q And you wait for a sub and the sub comes?

22 A Well finally, but I was scared.

23 Q But you didn't leave until the sub came?

24 A No, no, no.

25 Q Okay. When the sub came did you go to Workwell?

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1 A Right away.
2 Q Did you submit to an examination?
3 A Yes, Ma'am.
4 Q Now did you tell them that you have an x-ray, what did you
5 -- what about the x-ray, talk about the x-ray?
6 A Yes, I had an x-ray on Monday which would have been the 12th
7 and they asked me if they could do another x-ray. I said I
8 prefer to wait. I said no, I refused.
9 MR. MULLINS: We're not talking about where
10 you went to your doctor on Monday?
11 THE WITNESS: No, I'm talking about going to
12 --
13 BY MS. BONANNI:
14 Q Workwell?
15 A The school doctor.
16 MR. MULLINS: Okay. I wanted to get that. I
17 wasn't getting that.
18 THE WITNESS: Okay, I just don't want to
19 sound like I'm yelling. I'm sorry. I'll slide back, maybe
20 that will help.
21 Okay, I get my train of thought. I'm sorry.
22 So I was at the Workwell doctor.
23 BY MS. BONANNI:
24 Q Okay. So they examined your hand?
25 A Yes.

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1 Q Did they --

2 A And --

3 Q Wait. Did they x-ray?

4 A They didn't x-ray that day and it was in --

5 Q Did you finally get an x-ray from them at some point?

6 A Yes, I agreed to get an x-ray on the Monday to give it some

7 break, because everybody knows if you get too many x-rays

8 right away that you don't need it can affect you.

9 Q So you had had the x-ray on the 12th?

10 A Correct.

11 Q And did you talk about getting them that x-ray somehow?

12 A Yes, I was told though that they would work with Med Plus

13 and --

14 Q Who told you that?

15 A Actually Ben Pack at one point said the doctors will work

16 together.

17 Q Okay. So your previous conversation before going to

18 Workwell with Ben Pack was on the morning of the 15th before

19 you went to Workwell?

20 A Yes.

21 Q So was it during that conversation that Ben Pack said don't

22 worry about the x-rays, the doctors will work it out?

23 A Correct.

24 Q Okay. So you had the conversation about the x-ray. They

25 examined your hand?

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1 A Correct.
2 Q And they -- did they administer any kind of treatment?
3 A Yes, they put just like a little stiffer, like a quarter or
4 a half splint and they used the same base to wrap it all up.
5 Q Okay. And that treatment was provided just pending the
6 results of the x-ray?
7 A Correct.
8 Q Okay. And ultimately do you remember between these two
9 clinics there was a consensus of the diagnosis?
10 A Yes, Ma'am.
11 Q What was that consensus?
12 A I had a contusion.
13 MR. MULLINS: Your Honor, I'd prefer not to
14 get in the medical. The records speak for themselves.
15 She's not a doctor, none of us are doctors.
16 THE WITNESS: I was a certified --
17 MS. BONANNI: Pennie.
18 MR. MULLINS: It calls for medical testimony,
19 which I don't --
20 MS. BONANNI: I'd just respond, just her
21 understanding of what her injury was.
22 THE COURT: Okay, I'll overrule. I think she
23 can give a lay opinion of that.
24 BY MS. BONANNI:
25 Q What was your understanding of what your injury was?

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1 A A contusion.

2 MS. BONANNI: Your Honor, could I approach?

3 THE COURT: You may.

4 (Bench Conference Held from 12:27:16 p.m. to

5 12:27:33 p.m.)

6 THE COURT: Okay, we're going to go ahead and

7 take a ten minute recess at this point.

8 And all rise for the jury.

9 (At 12:27:38 p.m., jury exited)

10 THE COURT: Ms. Davis, you can step down from

11 the witness stand.

12 THE WITNESS: Thank you.

13 (At 12:28:04 p.m., court recessed)

14 (At 12:45:38 p.m., court reconvened)

15 THE COURT: Ms. Bonanni?

16 MS. BONANNI: Oh.

17 THE COURT: Bonanni.

18 MS. BONANNI: Hold on.

19 THE COURT: I was going to let you know I do

20 have a laser printer if there's anything you need.

21 MS. BONANNI: Oh, thanks.

22 THE COURT: So just let me know.

23 MS. BONANNI: Okay, cool.

24 THE COURT: Either side. If either side

25 wants to just rely on the exhibits and use the pointer, I

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1 have a laser pointer.

2 MR. MILLER: You're very kind.

3 THE COURT: Okay.

4 MR. MILLER: And we have one new proposed

5 exhibit that I guess we can talk about before --

6 THE COURT: Okay.

7 MR. MILLER: -- the jury comes in.

8 MS. BONANNI: I set that on your desk for

9 you, Judge.

10 THE COURT: Oh, is this the new exhibit?

11 MS. BONANNI: Yes.

12 THE COURT: I guess I don't see it up here.

13 MR. MILLER: I've got two here, Judge.

14 THE COURT: Okay, great. Is it the one with

15 the school map?

16 MS. BONANNI: Yes, 56.

17 THE COURT: All right, I do have it.

18 All right, go ahead.

19 MS. ROBINSON-HOLMES: So do you have

20 objections to it?

21 MR. MILLER: Yeah, I suppose. I mean

22 yesterday I mean there was a little bit of a stink made

23 saying documents weren't produced. This was literally

24 produced last night in the evening hours. And apparently

25 the purpose is to show that the high school has four floors.

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1 I mean we've wanted to use a calendar to illustrate I mean
2 these are the days people work and these are the days that
3 teachers don't work I mean to illustrate.
4 And apparently they want to do the same thing
5 with this. I have no objection to this if plaintiff will
6 allow our calendar that we tried to use yesterday. It's
7 essentially the same thing.
8 MS. ROBINSON-HOLMES: So first, this is
9 something that's been in defendant's possession. It's
10 actually Jackson Senior High School ground floor. It's not
11 something that we found and produced, this is something that
12 they've had in their possession and could have easily
13 accessed if they so chose.
14 Secondly, it goes to the issue of whether it
15 was acceptable to transfer Pennie Davis to the middle
16 school. Now she specifically requested that he be removed
17 from the area adjacent to her classroom. This will help the
18 jury see that there is plenty of space for M.H. to go and to
19 be reassigned to different classrooms, of course with
20 supporting testimony, and that he can take alternate routes
21 to those classrooms.
22 So it just is a --
23 MS. BONANNI: And one more thing. And also
24 when we get to the point in the case where we're talking
25 about the transfer back to the high school, she can explain

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1 where her new art room is situated, because that was the
2 subject of some concern as well because it's not in the art
3 area.
4 MR. MILLER: And it's, Judge, the same way we
5 want to use the calendar I mean as the time line. This is
6 when she's saying she reported something, this is when the
7 doctor occurred, she took this big block of time off, it's
8 the same thing. I mean this is no more or less probative
9 than --
10 THE COURT: And well, the Court doesn't waive
11 admissibility by comparing rulings or, you know, other
12 things. I think the calendar is a separate issue. I think
13 to the extent that the witness, probably the plaintiff if
14 she can identify this as a fair and accurate depiction of
15 the various classrooms in the Jackson High School, I think
16 it's admitted.
17 It otherwise serves to illustrate various
18 issues in the case. I think it could be used by either
19 side. So I most certainly don't see any prejudice to the
20 defense, but you're going to have to lay an appropriate
21 foundation for it. All right.
22 MS. ROBINSON-HOLMES: Thank you, your Honor.
23 MS. BONANNI: We're all set I think.
24 THE COURT: Okay, Dave bring in the jury.
25 THE CLERK: All rise for the jury.

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1 (At 12:50:20 p.m., jury entered)
2 THE COURT: All right, thank you. You may be
3 seated.
4 All right, we're going to resume direct
5 examination.
6 Go ahead.
7 MS. BONANNI: Thank you, your Honor.
8 BY MS. BONANNI:
9 Q Ms. Davis, you had a meeting with administrators on the
10 afternoon of the 15th?
11 A Yes.
12 Q Can you tell us how that meeting started?
13 A Yes, it was right after a portion of the parent teacher
14 conference.
15 Q Okay. So there was parent teacher conferences for the whole
16 afternoon?
17 A From about, I might get the time a little off, I'm going to
18 say about 12:00 to 2:30, after I came back from Workwell,
19 the other doctor they sent me to.
20 Q So tell us how the meeting started?
21 A I asked Amy Gish, my union rep, to walk over to the
22 personnel and superintendent's office building because I was
23 a little leery what might take place when I turned in the
24 official PPO and the rest of the doctor's notes. So we
25 walked --

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1 Q Now this was after Workwell, this was after your appointment
2 at Workwell?
3 A Correct.
4 Q So did you also have any documents from Workwell?
5 A Yes, I had all the documents.
6 Q So you were giving them Workwell documents and the PPO?
7 A Correct.
8 Q You went with Amy Gish?
9 A Correct.
10 Q And who did you give the documents to?
11 A We were standing at the desk of Jessica Carter, as I was
12 handing them over she was standing. Jeff Beal came around
13 the corner, saw those as also Ben Pack. And Amy and I were
14 ordered into his office right then for a meeting.
15 Q Did Mr. Pack have -- I'm sorry. Did Mr. Beal have the PPO
16 in his hand when you went into the meeting?
17 A I believe so, yes.
18 Q When you went into this meeting what was Mr. Beal's, what
19 was his demeanor like?
20 A He was obviously irritated, frustrated, hot headed angry.
21 Q Had he ever acted hot headed angry in front of you before?
22 A Never.
23 Q So who spoke first?
24 A Once we're in the meeting?
25 Q Yes.

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1 A Okay, once we're in the meeting it was Ben Pack and the
2 first thing he said to me, which I'm sorry I don't think
3 I'll ever forget, and he said it very loud, very angry, he
4 had his arms up on the table leaning over staring at me
5 trying to intimidate me I believe and said, what is your
6 beef? But he would say it loud, what is your beef with this
7 student?
8 And I said, I'm sorry I didn't know what that
9 meant, what is your beef? I said if you mean do I have --
10 don't like this student, that's on the contrary. I'm trying
11 to get him help. I've done all these things to get him
12 help.
13 Q What happened next?
14 A I'm worried about him.
15 Q Sorry. What happened next?
16 A And then Mr. Ben Pack said, how do I know you didn't hit
17 yourself? He said it loud. He said, how do we know you
18 didn't hit yourself with a hammer?
19 Q How do --
20 A How do I know, we know, referring to Jeff and him, that you
21 didn't just hit yourself with a hammer? I was in shock.
22 Q What happened next?
23 A They were very accusatory and my union said, wait a minute.
24 And I don't remember exactly what she said, you'll have to
25 ask Amy, because right then I was like -- I was so in shock

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1 that after twenty-nine years never an incident. I give my
2 heart and soul to that school, to my community because I
3 love them and I love helping people and teaching.
4 Then I believe it was Jeff Beal that said,
5 that's it, get out of my office, you are suspended. And
6 then I was really shocked because I've never been suspended
7 in my life from any job. And Amy asked what was the
8 reasoning, can we have copies of --
9 Q Well let me ask you, did they -- did anyone, Ben Pack, Jeff
10 Beal give you a reason for you being removed from school at
11 that time?
12 A Not at that time. I didn't understand.
13 Q Okay. So then Amy asked what, Amy Gish?
14 A Yes. After they made us leave out of the room as we're
15 leaving Amy asked why is this happening and I don't recall
16 which one of the gentlemen said, we're going to do
17 investigating.
18 Q Okay. So was that it?
19 A And they also told us that it would have to be in writing
20 and they weren't going to tell us or give us anything. So
21 Amy and I were out at the desk again. Jessica and Ms. Weiss
22 (ph), they both work as secretaries for human resource and
23 Amy wrote it down and I signed it and initialed it.
24 Q Now at this point in time on the 15th in the afternoon your
25 employer knew that you would be going to Workwell, so

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1 providing them with those documents was not a surprise?
2 A No.
3 Q At this point in time was this your first contact with
4 administration in terms of the PPO?
5 A Yes.
6 Q Was there any indication prior to the 15th that you had a
7 PPO or had sought a PPO?
8 A That they were aware of?
9 Q Yes.
10 A Not the PPO I don't think, but I did tell them I was going
11 to the police.
12 Q Okay. So you'd said I'm going to the police?
13 A Right.
14 Q And then once you actually got to the police it was -- this
15 is your testimony, you testified the police told you to get
16 the PPO?
17 A They suggested it.
18 Q Okay. So what you filed when you went to get the PPO, what
19 was it, like a request, a demand, a Petition, if you
20 remember?
21 A PPO's, they are my understanding, sorry, is a protection
22 order to help someone with a dispute if you are concerned
23 that they may come after you or your family, which my family
24 are my students, so I wanted to make sure that this young
25 man wasn't coming to my classroom at this point.

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1 Q Okay. So I'm just asking you about in terms of like
2 official documentation about this PPO, while there may be
3 lots of pages, what you ended up providing to your school
4 was a signed order from the Court?
5 A Correct.
6 Q And that signed order from the Court was after you applied.
7 So you applied first and then it was granted by the Judge?
8 A Yes.
9 Q And so fair to say that that order from the Judge is what
10 you gave the school?
11 A Yes.
12 Q And prior to you providing that to the school there was no
13 other indication that you were getting a PPO? I mean I
14 think I asked you that.
15 MR. MULLINS: I'd like to object to the
16 leading form of the question. If we could get the testimony
17 from the witness.
18 THE COURT: Sustained. She'll rephrase in a
19 non leading fashion.
20 MS. BONANNI: Sure, sure.
21 BY MS. BONANNI:
22 Q So you're told to leave?
23 A Yes.
24 Q And are there -- have you finished your conferences?
25 A No.

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1 Q When you were on your leave did you receive documentation
2 from the school?
3 A Through the mail.
4 Q Okay. Now you live in the country, you testified to that?
5 A Yes.
6 Q Do you have a mailbox at your home?
7 A No, I don't. Out in the country mailboxes get smashed a lot
8 around Halloween and different times. And sometimes they
9 just take them out altogether. So I ended up getting a P.O.
10 box to make sure I would get my mail.
11 Q Did you --
12 A But this was a long time ago I had a P.O. box.
13 Q So my question is, did the school know you had the P.O. box?
14 A Yes.
15 Q Okay, let's look at Exhibit 15. Can you identify this
16 document for the jury?
17 A It was a letter that was sent to me through the mail.
18 Q And who is it from?
19 A It is from Ben Pack, Assistant Superintendent, Human
20 Resource, Jackson Public School.
21 Q And this was when you were on your leave?
22 A Yes.
23 Q You received it after the 15th?
24 A Yes.
25 Q So you received this through the mail?

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1 A Yes.

2 MS. BONANNI: Okay, I'd like to enter Exhibit

3 15 into evidence.

4 (At 1:02:29 p.m., Plaintiff's Exhibit 15 was

5 offered)

6 THE COURT: Any objection?

7 MR. MULLINS: No objection.

8 THE COURT: So admitted by way of stipulation

9 of the parties.

10 (At 1:02:34 p.m., Plaintiff's Exhibit 15 was

11 admitted)

12 MS. BONANNI: Okay, I'd like to distribute

13 this to the jury if I may?

14 THE COURT: Okay, it's been admitted, go

15 ahead.

16 MS. BONANNI: Thank you.

17 BY MS. BONANNI:

18 Q Ms. Davis, you testified that during the meeting on the 15th

19 you were told to leave and that you were placed on a leave,

20 the reason that they gave you was to investigate?

21 A Correct.

22 Q Did you understand what they were investigating?

23 A No, because it was my understanding that the investigation

24 was over on the 12th.

25 MR. MULLINS: Well I'll object, your Honor.

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1 She just said I don't know what they're investigating and --
2 BY MS. BONANNI:
3 Q Did --
4 MR. MULLINS: -- now she's just speculating.
5 THE COURT: Sustained. State your next
6 question.
7 MS. BONANNI: Okay.
8 BY MS. BONANNI:
9 Q Other than telling you that they were investigating did
10 either Mr. Pack or Mr. Beal elaborate for you as to the
11 nature of the investigation during your meeting on the
12 afternoon of the 15th?
13 A No.
14 Q Okay, let's look at the letter. This letter purports to
15 outline topics of discussion during the meeting that you had
16 with Mr. Pack and Mr. Beal. So before we go through these
17 let me ask you a question, Ms. Davis, how long in terms of
18 hours or minutes did the meeting on the 15th last
19 approximately?
20 A I want to say less than probably ten minutes.
21 Q Okay. This letter from Mr. Pack indicates that there were
22 five topics of discussion, so let's go through them. Number
23 one, Mr. Pack indicates that during the meeting on the 15th
24 you discussed the Tuesday classroom visit from
25 Superintendent Beal and me. Was this topic discussed?

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1 A No.
2 Q Number two, Mr. Pack indicates that during the meeting on
3 the 15th you discussed the disciplinary letter you received
4 for not following the directive to report to Allegiance
5 Occupational Health on Tuesday, October 13th, 2015. Did you
6 discuss this?
7 A No.
8 Q Had you received a disciplinary letter?
9 A Not at that point.
10 Q So the disciplinary letter related to your visit to
11 occupational health, did you receive that through the mail?
12 A Yes.
13 Q And let's take a look at that if you can compare that, it's
14 Exhibit 14 I think, hold on. Well let me keep going and
15 I'll find that exhibit for you, okay. So didn't discuss
16 that during the meeting?
17 A No.
18 Q What about the results of your Fit to Work evaluation from
19 Allegiance Occupational Health during your visit on
20 Thursday, October 15th , 2015, was that topic discussed?
21 A No.
22 Q Number four, a copy of the Personal Protection Order you
23 secured against the student?
24 A It was never talked about, but they had it in their
25 possession.

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1 Q What do you mean -- oh, they had it in their possession?
2 A Yes.
3 Q But you didn't discuss it?
4 A No.
5 Q Okay. And number five, the discrepancies beginning to occur
6 concerning this situation. Was that topic discussed?
7 A No.
8 Q Now the next paragraph Mr. Pack indicates that it has been
9 requested by Superintendent Beal that you provide a copy of
10 the doctors report from Med Plus, including x-ray results.
11 Now here's what I want to ask you, you testified a moment
12 ago that Mr. Pack and you discussed the x-ray before you
13 even went to Workwell?
14 A Correct.
15 Q At any time after that discussion with Pack was there any
16 request made for you to produce these x-rays?
17 A No.
18 Q So was this the first you were hearing that now you instead
19 of the doctors had to go get the x-ray?
20 A Yes.
21 Q Did you comply with that request?
22 A Yes.
23 Q Did you comply timely?
24 A As timely as I could, because again they sent this to me in
25 the mail and by the time I received it it was I believe come

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1 the 19th and I was panicking, how can I get the things to
2 them. And I ended up going over to the place where I could
3 fax them.
4 Q Okay. Now let's go back to point one, this disciplinary
5 letter about not following the directive to go to Allegiance
6 Health. You indicated you received that in the mail. This
7 document has been previously admitted. I want you to look
8 at 14 and Channing is going to pull that up on the screen.
9 So we've got two letters, we've got Exhibit
10 15 and Exhibit 14, both of which are dated, October 15th.
11 Ms. Davis, do you have a recollection of, and if you don't
12 that's fine, I'm just curious, these two letters Exhibit 14
13 and 15 are both dated the 15th, do you remember receiving
14 them at the same time, on different days, do you have any
15 memory?
16 A They were different days.
17 Q Okay. Do you remember which one came first? If you don't
18 that's fine.
19 A I don't.
20 Q Okay.
21 MS. BONANNI: May we publish to the jury,
22 your Honor, Exhibit 14?
23 THE COURT: We're talking 14, 15 or both?
24 MS. ROBINSON-HOLMES: 14, your Honor.
25 MS. BONANNI: 14.

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1 THE COURT: Okay, any objection?
2 MR. MULLINS: No objection.
3 THE COURT: All right, no objection, go ahead
4 and publish.
5 BY MS. BONANNI:
6 Q So the disciplinary letter that you received, at this point
7 in time on the 15th you had seen Workwell, complied with the
8 directive?
9 A Yes.
10 Q And had you already alerted the superintendent or the
11 assistant superintendent that you hadn't received any of
12 these notifications to go to Workwell --
13 A Yes.
14 Q This letter was a verbal warning?
15 A That's what they said, but it's in my file and anything
16 written down is a written warning, it's not a verbal. You
17 don't write verbal warnings down and put in your file.
18 That's never happened before.
19 Q Okay. So you testified a moment ago to this jury that you
20 received the request to provide these x-ray results by the
21 19th at 3:00 p.m. and you testified to this jury that you
22 received the letter, Exhibit 15, pretty close in time to
23 that deadline?
24 A Yes.
25 Q So just very briefly walk us through the steps of what you

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1 did to conform to that request?
2 A I read it at the post box, I rushed home, got the documents,
3 went over and faxed them at another place because I don't
4 have Internet at my house. I don't have very good Wi-Fi
5 service at all. I don't have cable, none of that comes out
6 to where I live.
7 Q Did you communicate to anyone in the administration to
8 remind them that, you know, you don't have Internet?
9 A Yes.
10 Q Did you do that directly?
11 A I did at one point and I know Amy Gish did also. My union
12 rep.
13 Q Okay. Let's then take a look at Exhibit 22. Can you
14 identify this document for the record?
15 A Yes, this is the transmission that proved that I sent the
16 documents that they asked for in that timely fashion.
17 MS. BONANNI: Okay, I'm going to move for the
18 admission of Exhibit 22, the fax transmittal sheet.
19 (At 1:13:15 p.m., Plaintiff's Exhibit 22 was
20 offered)
21 THE COURT: Any objection?
22 MR. MULLINS: Yes, your Honor, plaintiff's
23 exhibit, the medical records have or at least partially if
24 not totally have been put into evidence. The fax
25 transmission verification report I have -- I mean I can't

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1 connect the two. I'm not aware of a foundation that
2 connects the two. If there is one I just haven't seen it
3 yet.
4 THE COURT: Is this connected to the fax she
5 said she made?
6 BY MS. BONANNI:
7 Q Yeah, this fax transmittal which is Exhibit 22, did you have
8 your x-rays or x-ray that is contained within the Exhibit 9,
9 your Med Plus records, is that what was sent?
10 A Correct.
11 Q Okay. So those two sheets go together?
12 A Correct.
13 Q And that's a fax transmittal sheet that you kept after
14 sending?
15 A Correct.
16 Q And in fact, do you know the number off the HR office within
17 JPS, can you verify that as the correct number?
18 A Correct.
19 MS. BONANNI: Okay, I hope that provides
20 appropriate --
21 THE COURT: Any further voir dire on the
22 foundation, Mr. Mullins?
23 MR. MULLINS: Yes, your Honor. I mean all
24 this shows me, this page just shows me that there was a fax
25 transmission. In fact, it says that -- how I read it five

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1 pages have been faxed.

2 THE COURT: Well I think --

3 MR. MULLINS: In and of itself it seems

4 inconsistent.

5 THE COURT: Well I think it goes to its

6 weight on its admissibility. I think there's a sufficient

7 foundation established for its admissibility. So the

8 exhibit will be admitted.

9 (At 1:15:15 p.m., Plaintiff's Exhibit 22 was

10 admitted)

11 BY MS. BONANNI:

12 Q Ms. Davis, is it possible that you sent more than just the

13 x-ray?

14 A Right here it says pages and my understanding yes, I sent

15 all the information again that I had.

16 Q Okay.

17 MR. MULLINS: If I could just interrupt. I'm

18 getting a little confused. She just said something about

19 sending an x-ray. I mean I just have a one page report of

20 notations by doctors, it's not an x-ray report. And I'm

21 just getting confused about what we're talking about here.

22 The testimony doesn't seem to match what I'm -- this is not

23 an x-ray report.

24 There is an x-ray report and it is in the

25 full Allegiance Health records --

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1 THE COURT: Well let me just indicate what
2 the Court thinks it is. I think it's that she faxed
3 apparently some of the medical documents and that's the fax
4 cover sheet from the Brooklyn area where she sent it,
5 correct?
6 MS. BONANNI: Yes.
7 THE COURT: And that's what I'm getting to
8 understand.
9 MR. MULLINS: Okay. So we're putting in the
10 fax sheet and one of the five pages?
11 THE COURT: At this point I thought you were
12 just the fax cover sheet, correct, or are you -- because
13 that's what you marked as your plaintiff's 22, just the fax
14 cover sheet?
15 MS. BONANNI: The fax cover sheet.
16 THE COURT: All right, well I have admitted
17 it. So there is a sufficient foundation.
18 BY MS. BONANNI:
19 Q Ms. Davis, let's look at Exhibit 20. Can you identify this
20 for the record?
21 A Yes, this is another bit fax that I had to go to my union
22 office because they requested it and then --
23 Q Well let me -- just identify it? It's okay.
24 A It's a fax transmission that I faxed.
25 Q Can you tell the jury the date of that transmission?

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1 A October 19th, 2015.
2 Q Okay, correct. And can you identify the time please? Can
3 you read that?
4 A It's 15:33, so it's military time, so I'd have to figure
5 that out. Sorry.
6 Q Okay.
7 A I believe it would be like 3:30.
8 Q That's right. Who is the fax to?
9 A Ben Pack.
10 Q Who is it from?
11 A Pennie Davis.
12 MS. BONANNI: Okay, I'd like to offer Exhibit
13 20 into evidence.
14 (At 1:17:57 p.m., Plaintiff's Exhibit 20 was
15 offered)
16 THE COURT: Mr. Mullins?
17 MR. MULLINS: The Exhibit 20 that I have been
18 provided is six pages of records faxed on -- yeah, the fax
19 sheet is October the 19th. It says two pages, but we've
20 been provided -- again, I'm confused as to I know we've
21 marked and provided each other with exhibits, so I'm
22 confused as to what's being offered here.
23 MS. BONANNI: So you know what, that's a good
24 point, maybe to cure this issue let's just take out the rest
25 of the pages from that. I think I need to cure this

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1 exhibit. And we'll just enter as Exhibit 20 the cover sheet
2 with the time stamp and the indication that there's two
3 pages.
4 THE COURT: So what are you asking with
5 respect to plaintiff's Exhibit 20?
6 MS. BONANNI: I'm just asking that the cover
7 sheet be entered.
8 THE COURT: Okay, just this at that time?
9 MS. BONANNI: Yes.
10 THE COURT: Okay. Well I'll admit the --
11 MR. MULLINS: Just if I could say for the
12 record, just the fact that some fax was sent to the school
13 district of unknown substance has no relevance to what we
14 have before us here today.
15 THE COURT: Well I think there's been a
16 sufficient connection, the time frame is October 19th, 2015.
17 (At 1:19:19 p.m., Plaintiff's Exhibit 20 was
18 admitted)
19 BY MS. BONANNI:
20 Q Okay, so you went to the union office. Do you remember
21 which of the medical records you'd attached to this fax?
22 A My comment on there from Workwell physical report of work
23 status.
24 Q Okay.
25 A Along with if I may say Workwell is their doctor, they

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1 automatically get all my information. Any employee if you
2 go to Workwell it is faxed automatically, sent to them
3 automatically and almost instantaneously to the human
4 resource.
5 Q Okay. So you sent a one page Workwell record?
6 A Correct.
7 Q From the union?
8 A Correct.
9 Q And from Brooklyn you sent the x-ray and something else?
10 A Well it was the paper -- it wasn't the actual x-ray, it was
11 the results.
12 Q Okay. And I think we'll have Channing find that and then
13 you can confirm that that is what you sent to the school on
14 the 19th of October?
15 A Yes.
16 Q Okay. So let's then turn to Exhibit 52. This has been --
17 THE COURT: Which number?
18 MS. BONANNI: 52.
19 BY MS. BONANNI:
20 Q This has been admitted into evidence. Now Exhibit 52
21 consists of -- it's been entered into evidence, consists of
22 several documents and it is dated, October 26th. Can you
23 read for the jury what you wrote in the comments?
24 A 52?
25 MS. BONANNI: 52, do you have it? Well I

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1 have it here.
2 BY MS. BONANNI:
3 Q Let me revise my question. You've indicated on the 19th in
4 conforming with the school's request you provided some
5 evidence, a report about the x-ray, can you just look
6 through Exhibit 52 which contains a slew of medical
7 documents and identify for the jury which document you
8 provided to the school on October 19th?
9 A Yes, the fifth page in is another fax to Ben Pack, Assistant
10 Superintendent, marked urgent. Doctor's note, plus x-ray
11 results.
12 Q So the x-ray results?
13 A Correct.
14 Q Did you fax those x-ray results on the 19th?
15 A I believe so, because on my comments here I put this is the
16 second time sent as of October 26th at this point, now at
17 12:25.
18 Q Okay. So that's the reference to now I'm sending you these
19 x-ray results again?
20 A Correct.
21 Q Okay. So the first time you sent them was on the 19th from
22 the Radio Shack in Brooklyn?
23 A As I believe, yes, correct.
24 Q Okay. Okay, let's look at Exhibit 25. Can you identify
25 this?

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1 A It's another letter that was sent to me via the mail by Ben
2 Pack, Assistant Superintendent, Jackson Public Schools.
3 MS. BONANNI: Okay, I'd like to offer this
4 letter into evidence.
5 (At 1:24:48 p.m., Plaintiff's Exhibit 25 was
6 offered)
7 THE COURT: Any objection?
8 MR. MULLINS: No, your Honor.
9 THE COURT: So admitted by way of stipulation
10 of the parties.
11 (At 1:24:56 p.m., Plaintiff's Exhibit 25 was
12 admitted)
13 BY MS. BONANNI:
14 Q Okay, now this appears to be giving you a notice of your
15 insubordination because on October 26th you were notified to
16 return to work the next day on October 27th. My question to
17 you is this, Ms. Davis, did you get notification to return
18 to work on October 26th?
19 A No, late -- yes and no.
20 Q Okay.
21 A Sorry. Late in the evening I've got I received a phone
22 message and I believe it was from Jessica Carter saying we'd
23 like you to come in for a meeting, but remember to bring --
24 we need you to have your union rep with you.
25 Q Did you try to get a union rep?

1 A Yes, I did.
2 Q Were you able to get a union rep?
3 A No, I was not.
4 Q Did you alert the school that you were unable to get a union
5 rep?
6 A Yes, I did.
7 Q Was your -- is that why you didn't show up the next day?
8 A Yes.
9 Q Now you remember you were here in the court when I was
10 examining Mr. Beal and talking about a grievance. Do you
11 remember that grievance that's associated with this
12 allegation?
13 A Yes.
14 Q And Mr. Beal and I talked about a recording, can you tell
15 the jury about the recording that relates to this situation?
16 A Yes. So the recording again states from the human resource
17 department that for the meeting I needed union
18 representation.
19 Q So during your union grievance did you play that?
20 A Yes.
21 Q Did that succeed at resolving that grievance?
22 A For that day, yes.
23 Q Okay. Now you returned to work?
24 A Yes.
25 Q And do you remember the day you returned?

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1 A The 29th.
2 Q When you returned to work on the 29th was your PPO in place?
3 A Yes.
4 Q And did you meet with anyone at the school to discuss the
5 parameters or a plan?
6 A No.
7 Q Okay. Was there any discussion with you when you returned
8 to work, did anyone tell you that the PPO could not be
9 accommodated?
10 A No.
11 Q And did M.H. adhere to the PPO?
12 A Yes.
13 Q At any time did M.H. not adhere to the PPO after returning
14 to work on the 29th?
15 A No, for a period of time.
16 Q Okay. So he was adhering for a period of time?
17 A Correct.
18 Q Describe to the jury what happened next?
19 A So he was taken out of my third hour. He was never put into
20 another class. The room across from my room is the choir
21 room and sometimes they use it also for orchestra. The
22 teacher that works in that room at that year was split up
23 from Parkside and from Jackson High, so they had to go back
24 and forth.
25 He was in that room a lot unsupervised. I

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1 would see him in the hallway, which didn't concern me a
2 whole lot. But I heard a big bang or kick on my door and
3 when I looked across the hallway you could see the door
4 slide, I mean it wasn't a big motion, and he was standing
5 there peering out the door at me.
6 Q Okay. So did you take any action with anyone at the school
7 to address that incident?
8 A Yes, I talked to Amy and I talked to Ms. Pauli after a
9 certain -- I mean when we could meet.
10 Q Okay.
11 A Because it's hard to get altogether because of all the
12 meetings and things.
13 Q So let's look at an exhibit, Exhibit 27. Can you identify
14 this exhibit for the record please?
15 A Referring to safety issues, that's what it's titled.
16 Q And who did you provide this to?
17 A To Ms. Baird-Pauli.
18 Q Okay. That's your name at the bottom?
19 A Correct.
20 Q And these are notes that you wrote?
21 A Correct.
22 MS. BONANNI: I'd like to enter this into
23 evidence.
24 (At 1:30:23 p.m., Plaintiff's Exhibit 23 was
25 offered)

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1 THE COURT: Any objection?
2 MR. MULLINS: No objection, your Honor.
3 THE COURT: So 27 is admitted into evidence.
4 (At 1:30:32 p.m., Plaintiff's Exhibit 27 was
5 admitted)
6 MS. BONANNI: I'd like to distribute to the
7 jury please?
8 THE COURT: You may go ahead and do so.
9 BY MS. BONANNI:
10 Q Okay. So it looks like in this document you're outlining
11 for Ms. Pauli the concerns that you described. The last
12 bullet point, number 7, appears to ask for a solution and
13 you state quote, "I'm asking to know the placement of blank,
14 M.H., third hour where he's not been placed in ISD classroom
15 or the library. He needs to be in a secure place and not to
16 let wander around the school for my safety and I would think
17 for the school's liability issue", end quote. Anywhere in
18 this document were you asking for the school to expel him?
19 A No.
20 Q Did you meet with Ms. Pauli to address all these issues?
21 A Eventually, yes.
22 Q Did you come up -- at the end of the meeting with Ms. Pauli
23 were you satisfied that all your concerns were addressed?
24 A Yes.
25 Q Did you come up with a plan to comply with the PPO?

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1 A Yes.
2 Q Can you describe for the jury not the specifics, but the
3 wide stroke of what general kind of plan you came up with?
4 A That if he or I saw each other we'd go the other way.
5 Q Okay. And were there specifics about his schedule or
6 classes or how he was supposed to travel?
7 A Yes.
8 Q Okay. Did you have any safety concerns once you -- let me
9 rephrase. Once you met with Pauli and came up with a plan
10 did you have any further safety concerns about M.H.?
11 A No.
12 Q And do you remember when that meeting took place?
13 A I want to guess -- I could guess maybe the 10th --
14 Q Okay.
15 A -- or sometime around there.
16 Q Was anybody else in that meeting?
17 A Amy Gish I believe.
18 Q I'm going to show you a document to help refresh your
19 recollection on the dates. This is Exhibit 29.
20 THE COURT: Ms. Davis, if you could just look
21 at the document and see if the document refreshes your
22 recollection or not as to the date.
23 BY MS. BONANNI:
24 Q Does that document help to refresh your recollection?
25 A Yes.

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1 Q Okay. It looks like in the upper right hand corner there is
2 a notation. When do you think that meeting took place?
3 A Like I said, November 10th.
4 Q Okay. So November 10th is when you met with Baird-Pauli and
5 also?
6 A Amy Gish.
7 Q Okay. Now when M.H. banged on your door, you indicated you
8 took action by going to the school and meeting with the
9 principal. Other than taking action with the school did you
10 take any other action to address the situation?
11 A Right when it happened I modified, well that's the only
12 thing you could check, for a PPO.
13 Q Okay. Describe what -- okay, we're going to pull up Exhibit
14 26 on the screen and we have it to distribute. So let's
15 turn to Exhibit 26 and talk about what you did with regard
16 -- okay, so this is Exhibit 26 that's been entered. This is
17 the motion that you filed with the Court. I'm going to read
18 what you wrote here.
19 "Blank, M.H., is in the room next to my room
20 and I feel unsafe with him being so close in the area. We
21 have four floors and for M.H. to be right next to my room I
22 have fear. I ask he not be put in a room next to or across
23 from me, the assault is still in the court system", end
24 quote. At any point in time in this motion or anywhere in
25 this motion did you ask for him to be removed from the

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1 school?
2 A No.
3 Q And in terms of satisfying your concerns that you outlined
4 in this motion were those fears allayed once you met with
5 the principal?
6 A Yes.
7 Q So the motion was supposed to be heard before the Judge?
8 A Correct.
9 Q And can you tell us when that motion was heard?
10 A I believe it looks like I dated it November 4th when I put
11 it in and modified was the only thing I could put because at
12 the first PPO I was told by the Judge at that point that if
13 I had any concerns or he needed to talk to a principal to
14 clarify that he would do so.
15 Q Okay. So what you're telling us is that when you first got
16 the PPO you had that conversation with the Judge?
17 A Yes, and the Victim's Rights.
18 Q So then when you went to file this motion did you have that
19 conversation ultimately with the Judge?
20 A Correct.
21 Q And did you share what the status was?
22 A Correct, I believe I did, yes.
23 Q Okay. Now it looks like to me, I'm looking at G on this
24 motion, you are notified that a hearing has been scheduled
25 to modify, extend or terminate the Personal Protection Order

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1 issued in this case. The date is 11/19/2015, do you see
2 that? Do you see that, Ms. Davis?
3 A I'm sorry, on the 26th -- on Exhibit 26?
4 Q Yes, on Exhibit 26 do you see letter G?
5 A Yes.
6 Q And it indicates when the hearing is to take place?
7 A Yes, I believe it -- yes.
8 Q On the 19th?
9 A Correct.
10 Q Okay. And do you remember when you were transferred to
11 Parkside?
12 A It was after that.
13 Q Well when were you given notice of the transfer to Parkside?
14 Do you want me to show you a document to help you remember?
15 Look at Exhibit 33.
16 A November 23rd -- November 13th.
17 Q Okay.
18 A It's at the top.
19 Q November 13th?
20 A That this was stated that I was told in a meeting November I
21 believe it was the 16th.
22 Q Okay. And it looks like your signature is on the bottom of
23 this notification of transfer and your signature is dated,
24 November 16th, 2015?
25 A Correct.

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1 Q Okay. So the motion on this didn't take place until after
2 you were transferred?
3 A Correct.
4 Q Now when you appeared at the motion were you asking for
5 anything new with regard to your PPO?
6 A No.
7 Q And in terms of any requests were you requesting anything at
8 this point?
9 A The only thing that I was requesting is to make sure that
10 all parties knew what they needed to do.
11 Q Okay. And from the point in time from November 10th when
12 you met with Baird-Pauli --
13 A Yes.
14 Q -- to November 19th when you came to court again, was this
15 PPO being adhered to?
16 A Yes.
17 Q Was everything working out?
18 A Yes.
19 Q Did you have any concerns or fears for your safety?
20 A No.
21 Q Okay, let's look at Exhibit 56. Oh, Ms. Davis, I think this
22 56 is in the top part of your binder.
23 A Okay, thank you.
24 Q Do you see it?
25 A Yes.

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1 Q Can you identify what this is?
2 A Yes, it is the layout and map of Jackson High School.
3 Q Is this accurate?
4 A Yes.
5 MS. BONANNI: I would like to offer this
6 exhibit into evidence.
7 (At 1:41:09 p.m., Plaintiff's Exhibit 56 was
8 offered)
9 THE COURT: Any voir dire on the foundation,
10 Mr. Mullins?
11 MR. MULLINS: On 56?
12 THE COURT: Yes.
13 MR. MULLINS: No, your Honor.
14 THE COURT: So this just purports to be a
15 diagram of Jackson High School and the various floors,
16 correct?
17 THE WITNESS: Are you asking me? I'm sorry.
18 MS. BONANNI: Yes.
19 THE COURT: And based on your many years of
20 experience this is a fair and accurate depiction, correct?
21 THE WITNESS: Yes.
22 THE COURT: Okay. 56 is admitted.
23 (At 1:41:36 p.m., Plaintiff's Exhibit 56 was
24 admitted)
25 MS. BONANNI: Okay, go ahead.

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1 We're going to distribute to the jury.
2 BY MS. BONANNI:
3 Q Okay. So how many floors are in this high school?
4 A Four.
5 Q The lowest floor is the ground floor?
6 A Correct.
7 Q Okay. And were you and Ms. Baird-Pauli able to craft a map
8 for Marcus so that the two of you did not cross paths?
9 A Yes.
10 Q Do you know how big, you may not know, but how big is this
11 school?
12 A It looks like a castle from the outside. It is quite --
13 it's the biggest school in Jackson I believe.
14 Q Okay.
15 A Because of the four floors.
16 Q Let's look at Exhibit 33. Ms. Davis, can you identify this
17 document for the record?
18 A Yes, this is --
19 MR. MULLINS: I missed the number, your
20 Honor.
21 THE COURT: 33.
22 MR. MULLINS: Thanks, I thought so. I'm
23 sorry.
24 THE WITNESS: November 13th, we met November
25 16th of my transfer from the high school to a middle school

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1 and I was told I had to sign it or I would be terminated.
2 MS. BONANNI: I'd like to offer Exhibit 33
3 into evidence.
4 (At 1:43:45 p.m., Plaintiff's Exhibit 33 was
5 offered)
6 THE COURT: Any objection?
7 MR. MULLINS: No, your Honor.
8 THE COURT: So admitted by way of stipulation
9 of the parties.
10 (At 1:43:50 p.m., Plaintiff's Exhibit 33 was
11 admitted)
12 BY MS. BONANNI:
13 Q In terms of the transfer to the Parkside Middle School did
14 you have a meeting with anyone to discuss it?
15 A Yes, I did on November 16th.
16 Q Who was in attendance at that meeting?
17 A Ben Pack, Amy Gish, myself, I think one of the human
18 resource secretaries.
19 Q Now I have a question for you, this motion that you made to
20 the Court to clarify what was going on with the PPO, did you
21 ever provide that to the school?
22 A No, I did not.
23 Q Okay. Can you tell me what was said during that meeting?
24 A Yes. Ben Pack indicated that, and this is not word by word
25 because it's been two and a half years, but indicated to me

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1 that I had to move or else I would be terminated. And that
2 we do not go to the police here.
3 Q When he made the comment we do not go to the police here,
4 can you describe what his demeanor was?
5 A He again was sitting stern, I believe his elbows were on the
6 table and he was directly staring me down in a, I hate to
7 say it this way, but a hot head, angry, accusatory almost
8 like we're getting you out of here.
9 Q What did you take that comment to mean?
10 A That I was unallowed to, or any other employee, to go to the
11 police. And that I needed to keep and every other employee
12 needed to keep all those things in house in the school
13 district.
14 THE COURT: Ms. Bonanni, this might be a good
15 juncture to take a ten minute recess. All right?
16 MS. BONANNI: Sure.
17 THE COURT: So make sure everybody has got a
18 chance to kind of stretch out and we'll pick up right there
19 when we come back.
20 All right. All rise for the jury.
21 (At 1:46:29 p.m., jury exited)
22 THE COURT: We'll see everybody in ten
23 minutes.
24 (At 1:46:31 p.m., court recessed)
25 (At 2:05:28 p.m., court reconvened)

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THE COURT: Okay, the jury.

MR. MILLER: Do you know what year this building was built, Judge?

THE COURT: Like shortly after the turn of the century. It was initially a Masonic Temple.

MR. MULLINS: Oh, it has that look, yes.

THE COURT: So there's like national treasure issues, hidden vaults, secret passageways.

MR. MULLINS: There's probably a great cornerstone somewhere.

THE COURT: There are.

THE CLERK: There's a big pool in the basement.

MR. MULLINS: Oh, is there? Still in use?

THE CLERK: No.

MR. MULLINS: No.

THE COURT: And it was actually my office was the pool area. They gave me the whole floor. It's very eclectic.

THE CLERK: All rise for the jury.

(At 2:07:00 p.m., jury entered)

THE COURT: Ladies and gentlemen, I just wanted to give you a little fortification and stretch break there. And all of the jurors are back.

Pick up where you were at.

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1 BY MS. BONANNI:
2 Q Ms. Davis, we were talking about your transfer to Parkside.
3 What were your thoughts about that transfer?
4 A It was definitely a demotion. I --
5 Q How so?
6 A At the high school again I want to reiterate that I was head
7 of the department, I've been there twenty-nine years. When
8 they remodeled the art rooms I was asked to help remodel
9 them, so I designed them. I created a lot of the
10 curriculum, the classes that were taught there. This was my
11 baby, all right. This was my pinnacle, my how do you
12 explain it, always was my dream.
13 Q What about financially?
14 A I had a decline in that also.
15 Q Okay. Because of the curriculum pay?
16 A Correct.
17 Q Okay. Now had you ever taught middle school?
18 A Never taught middle school.
19 Q And was this school the same in terms of the way it was
20 managed and run?
21 A No, not at all. There's a couple ways I'll try to explain
22 it. First off, it's considered an IB school. There's only
23 two IB schools in our whole district, one being an
24 elementary school and one being the middle school. The
25 middle school was very chaotic, it was a failing school so

1 they turned it into an IB school, which is International
2 Baccalaureate School.
3 Q So was this International IB program curriculum different?
4 A Yeah, it was night and day.
5 Q Was it different in terms of how you do your student
6 reporting?
7 A Yes.
8 Q Was it different in terms of how you do your lesson
9 planning?
10 A Yes.
11 Q Was it different in terms of how you do your day to day
12 instruction?
13 A Yes.
14 Q Was it different in terms of the terminology that you use?
15 A Yes.
16 Q When you came to Parkside did you receive any kind of
17 training before you walked in the door?
18 A No kind of training. I felt very that the principals and so
19 forth were hostile to me, no one introduced themselves to me
20 when I first got there.
21 Q Once you got there did you discover that there is a
22 particularized training for this curriculum?
23 A Yes, there are several parts of the training that all
24 teachers need to go through in order to teach the IB.
25 Q Did you receive that training when you came to the school?

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1 A No.
2 Q Okay. So when did you receive that training?
3 A Official training I received approximately, now this is
4 official training, a year after.
5 Q What do you mean by official training?
6 A Well they sent me to a conference that trains you, but it
7 was a second part of the IB. So I didn't go to the official
8 training of the first part, but they did send me to the
9 second part of the IB training.
10 Q Okay. Now that's the official training?
11 A Correct.
12 Q So am I correct in assuming that part one comes before part
13 two?
14 A Yes.
15 Q When or how did you get part one training, if at all?
16 A A little bit through other teachers, because I would ask
17 questions. And then also they have a person that during
18 your conference period occasionally you would go down and
19 talk to her with your department to learn a little bit about
20 how it's run.
21 But my partner was already trained I believe
22 and so it was almost like a foreign language to me and a lot
23 of times the person that was trying to train us or me per se
24 had a real hard time with the computer and she'd always call
25 someone in so he would try to get it to work and to figure

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1 it out.
2 Q So were you able to do your job duties, I mean did you
3 understand this curriculum enough to perform initially?
4 A I performed the best I could with the information and asking
5 as many questions as I could.
6 Q Okay. Were you provided with a handbook, an IB handbook?
7 A Not until the, shoot I want to say towards the end of the
8 first year I was there.
9 Q Okay. Now you've heard discussion about IDP, what is the
10 IDP stand for?
11 A Individual --
12 Q Development plan?
13 A Yes, sorry.
14 Q That's okay.
15 A It's --
16 Q Okay. Were you placed on an IDP at any time?
17 A I was placed on an IDP within thirty-two days of arriving --
18 roughly thirty-two days of arriving at Parkside.
19 Q How did you find out you were on an IDP?
20 A Through Mr. Jeremy Patterson.
21 Q And who is he?
22 A He's the head principal at the middle school, who also
23 informed me I was a failing teacher at that point.
24 Q So is that an official like term, quote, "failing teacher"
25 or is that just what the language he used, do you understand

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1 what I'm asking?
2 A I don't understand. I'm sorry.
3 Q Okay. Is failing teacher like a term that's used in the
4 district or is that just the language that Mr. Patterson
5 used to describe you?
6 A I'm not sure.
7 Q Okay.
8 A I just know when you hear that that means you're in trouble.
9 Q So what --
10 A I felt I was getting again retaliated against. And I
11 remember when they took -- may I mention another teacher's
12 name?
13 Q Well why don't you just use their initials I guess.
14 A Okay. When they --
15 MR. MULLINS: Teacher, sure.
16 BY MS. BONANNI:
17 Q Okay, go ahead you can say the teacher.
18 A Okay. Debbie Herr (ph) out of the junior high, or not
19 junior high, sorry, it was middle school, out of the middle
20 school she had never taught above fifth grade, they put her
21 there because they got rid of the elementary arts so she was
22 teaching the sixth grade a whole trimester. And then they
23 pulled her from there, put her to the high school and sent
24 me to the sixth grade.
25 And during our Thanksgiving break we didn't

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1 have a break, we were helping each other move things back
2 and forth. We helped each other. She wasn't trained in the
3 IB either yet. Well she got the booklet, but she wasn't to
4 my knowledge they were scheduled to go -- she was scheduled
5 to go at the beginning of that tri before they moved her.
6 Q Did you go at the beginning of that tri?
7 A Oh no, they canceled it.
8 Q Okay. So the training, ultimately did you get all the
9 training that everyone else got?
10 A I believe not.
11 Q Okay. The failing teacher designation or the words that Mr.
12 Patterson used, can you describe for the jury what was
13 discussed during that meeting with him?
14 A Amy Gish was there also. My feelings, I was petrified
15 because I was starting to see the writing on the wall
16 because if you go on an IDP usually it means they're going
17 to give you ineffective. It means they're, I hate to say it
18 this way, but starting to set you up. In the meeting Mr.
19 Patterson also made a comment, Jeremy, saying I know what
20 happened at Jackson High.
21 Q He said that to you?
22 A To myself and Amy, yes.
23 Q And when he said that to you what kind of meeting were you
24 in?
25 A The IDP.

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1 Q Was there any reason why that kind of comment would make
2 sense in your IDP meeting?
3 A No.
4 Q Describe his demeanor when he delivered that comment to you?
5 A It was sarcastic, it was feeling like I'm going to get you
6 for what you did at Jackson High. I know. You know, I went
7 to the police.
8 MR. MULLINS: Just so the record is clear,
9 your Honor, is she attributing a direct statement or is she
10 interpreting his state of mind? I would ask for some
11 clarification.
12 THE COURT: Okay. That would be helpful. If
13 you could rephrase that so that can essentially be
14 clarified.
15 BY MS. BONANNI:
16 Q So were you just reporting what Mr. Patterson said or what
17 you thought his demeanor was communicating to you?
18 A Both.
19 Q Okay. So why don't you tell us exactly what he said first?
20 A Okay. He said that I was being put on the IDP because I was
21 a failing teacher. He said I know what happened at Jackson
22 High. He said a few other things and I would have to really
23 think to remember those at this time.
24 Q I forgot to ask you about this so I'm going to go a little
25 bit out of order, but when you were transferred over to

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1 Parkside did you grieve it?
2 A You can't grieve a transfer because as Mr. Beal said that he
3 has full control of where he puts, when he puts his people.
4 Q Now the IDP, are you currently still considered on an IDP?
5 A Yes.
6 Q And is that status lifted officially or like how does it
7 work?
8 A The principal that you're under I believe can lift it. But
9 more than not you have to be effective. You can't be
10 ineffective or minimally effective. And again, this is the
11 first time in my life that I ever have received that low of
12 a score and it puts me in jeopardy.
13 Q Okay. Let's go to Exhibit 36. Can you tell us what this
14 is?
15 A Yes, it is a letter from Mr. Jeremy Patterson.
16 Q And it looks like it's a letter from Mr. Patterson to all
17 staff and then there's a response to the -- I'm sorry, e-
18 mail. An e-mail from Patterson to all staff and then your
19 response?
20 A Correct.
21 MS. BONANNI: This is dated, January 31st,
22 2016. I'd like to offer 36 into evidence.
23 (At 2:21:42 p.m., Plaintiff's Exhibit 36 was
24 offered)
25 THE COURT: Mr. Mullins?

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1 MR. MULLINS: No objection.
2 THE COURT: Okay. So admitted by way of
3 stipulation of the parties.
4 (At 2:21:52 p.m., Plaintiff's Exhibit 36 was
5 admitted)
6 BY MS. BONANNI:
7 Q Now this looks like it's an e-mail from Patterson.
8 MS. BONANNI: Oh, okay. Yeah, you can
9 distribute.
10 BY MS. BONANNI:
11 Q Looks like it's an e-mail to all teachers and staff from
12 Patterson referring to something called the ILC number 2.
13 You write to Mr. Patterson, Dear Jeremy, I do not know what
14 an ILC is. Remember I've only been at your school for a few
15 weeks and no one has informed me on this term or how or what
16 I need to do. Did you get a response from Mr. Patterson?
17 A No.
18 Q What was Mr. Patterson's demeanor once you were transferred
19 into his school, how did he treat you?
20 A He was very cold, he was very -- can I give an example?
21 Sometimes when I'd go down to these IDP meetings he would
22 come and meet me. Then I had I believe second hour prep.
23 He would come to my room, escort me down around the hallways
24 to his office. Sorry, I use the bathroom a lot when I get
25 nervous. I asked to stop at the bathroom, because it was on

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1 the way, I'd stop at the bathroom and I'd say, I will
2 continue and I'll meet you in his office.
3 And I'd go into the bathroom, obviously lock
4 the door. He would stand on the outside just waiting. I'm
5 sorry, I'm moving my foot and I could hear my foot going all
6 around. Sometimes he would just stand there. I'd come out,
7 his arms were crossed and I felt he was trying to intimidate
8 me and I would go on to his office.
9 Amy, my union member, would meet me. A few
10 times -- sometimes he did not escort me, but this was part
11 of his demeanor. When we're in the meetings he was very I
12 want to say -- I'm searching for my words, sorry. We'd
13 clash. And what I mean by that is, whatever I said he would
14 say the opposite. He would give me things to accomplish, to
15 do for the IDP, you know, because you want to, you know, do
16 whatever they ask you to do.
17 And I would accomplish them and then the next
18 IDP he would give me something else. And every time I
19 abided by the rules, I followed the contract and I was still
20 failing no matter what I did, how I did it. One other time
21 he saw me, he came to my room and saw me in the hallway and
22 said I didn't have a lesson plan. And I said I have lesson
23 plans here because at that point I had a date. I took
24 pictures of my lesson plans.
25 So they wouldn't, you know, say I didn't.

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1 That's why I made those copies of sending the faxes
2 transmissions. He screams at me and Greg Marsh is in the
3 hall.
4 Q Who is Greg Marsh?
5 A He was my mentor.
6 Q Okay. So he screamed at you and Greg Marsh observed that?
7 A Yes.
8 Q What did he say to you?
9 A Jeremy Patterson, because I said whatever format you want me
10 to put the lesson plans in, I will put them in. I will
11 however you want them.
12 Q Did you show him the picture on your phone?
13 A Yes.
14 Q Of the lesson plan?
15 A I don't remember at that time.
16 Q Okay.
17 A But I said, just tell me what lesson plan, how you want me
18 to format it and I will do it. I'm not going to be
19 insubordinate, that's fine, I'll do it. And then he screams
20 at me, yells at me, you've been teaching twenty-nine years
21 you should know how to do a lesson plan.
22 Q Now was the format of the lesson plan any different under
23 the IB curriculum than it is under the traditional
24 curriculum?
25 A I believe so.

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1 Q Did you ever try to seek transfer out of that Parkside
2 environment?
3 A Yes.
4 Q How did you do that?
5 A Through at first Amy Gish.
6 Q And she is your union president?
7 A Yes.
8 Q Any other ways you tried to seek transfer?
9 A I believe I verbally asked --
10 Q Okay.
11 A -- also.
12 Q Okay. Asked who?
13 A Pardon?
14 Q I'm sorry. You verbally asked who?
15 A I believe it was Ben Pack.
16 Q Okay. Do you remember when that was?
17 A Well I know I was begging when he was sending me off the
18 first time.
19 Q Okay.
20 A When can I come back, you know.
21 Q When you say he sent you off the first time?
22 A When he sent me to the middle school. Sorry.
23 Q Okay, so are you referring to November 16th?
24 A Yes.
25 Q And you discussed how do I get back?

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1 A Yes.
2 Q Okay. And what did he tell you?
3 A I just know it was an impossibility at that point. I don't
4 really remember his words.
5 Q Okay.
6 A And I had no choice in the matter.
7 Q Okay. Did you ever return to the high school, you're there
8 now?
9 A Yes, I'm there now.
10 Q Okay. And how is it that you were able to return to the
11 high school?
12 A Well I believe the only reason why I was able to go back up
13 to the high school is because in February I had to -- my
14 hands were forced to get an attorney because I was being
15 retaliated against. At every turn I could see the
16 metaphorically, writing on the wall. I was getting these
17 disciplines put in saying I was insubordinate when I did
18 everything, followed all the rules.
19 So when I got transferred back to the high
20 school and I think it was -- I know it was only because we
21 had a deposition.
22 Q Yeah, that's okay. So your independent efforts to get back
23 to the high school, were they successful?
24 A No.
25 Q Your first review at Parkside for that first school year

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1 would have been 2015-16?
2 A Yes.
3 Q What was your rating?
4 A One, the lowest you can get.
5 Q And had you ever received anything like that before?
6 A No, I've never received a one. One is the worst rating you
7 can get. I know on the first page of the document they give
8 you is --
9 Q Why don't you look at it, Exhibit 39, and you can -- and
10 that has been entered into evidence.
11 A Is only part of the story where, you know, it reads rating
12 one and the weights of the ratings. It doesn't look like
13 it's in here. No, it's not all in here. There's also --
14 I'm going to guess, sorry, about eight to ten divisions
15 within these divisions. Does that make sense?
16 Q And did you receive different kinds of ratings or how do you
17 characterize your rating under all these subheadings?
18 A The rating was a one, it was a blanket one, one, one, one,
19 one, one, one.
20 Q Okay. Now I'm a little confused --
21 THE COURT: I just have one question. Was
22 this after you'd taken the various steps that they'd asked
23 you to take under this ILEP?
24 THE WITNESS: IDP, yes.
25 THE COURT: IDP?

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1 THE WITNESS: Yes.
2 THE COURT: Okay. Okay, thank you.
3 Go ahead.
4 BY MS. BONANNI:
5 Q Had you received all your IDP training by the time you got
6 this rating?
7 A No, not at all because I received it the next year at the
8 beginning of the year, the section two at a conference.
9 Q Okay. So I guess I'm confused about how the IDP works with
10 the rating. You were on an IDP after thirty --
11 A Roughly thirty days.
12 Q Roughly thirty days from moving to Parkside you're on that
13 status and then you get the ineffective?
14 A Correct, at the end of the year.
15 Q Okay. Is that typically how it works, a teacher is
16 identified as failing and then put on an IDP or it is
17 typically that you get an ineffective and then you get an
18 IDP?
19 A Yes, you usually get as I understand ineffective or
20 minimally effective and then you are put on the IDP.
21 Q Did you understand why in your case you were put on an IDP
22 pretty much after you got there?
23 A No. And Amy and I both asked, because what an IDP is too if
24 I may elaborate just a little bit?
25 Q Yes.

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1 A It is very rigorous. Not that I'm not up to being rigorous.
2 It's extra hours. It's meetings with the principal at the
3 time that evaluates you to give -- it's supposed to be to
4 give you help and stuff like two or three things to work on.
5 But once I accomplished that he gave me more.
6 Q So --
7 A And then --
8 Q -- are you saying that throughout the year he was giving you
9 tasks?
10 A Correct.
11 Q And were you completing those satisfactorily?
12 A Yes.
13 Q And then he would give you more tasks and were you
14 completing those other tasks satisfactorily?
15 A Yes.
16 Q And then at the end of the year you got a failing rating?
17 A Yes.
18 Q Now did you try to challenge this rating?
19 A Yes.
20 Q And it indicates on this rating that you were on medical
21 leave --
22 A Yes.
23 Q -- when the rating came?
24 A Yes, I was.
25 Q Why were you off work?

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1 A At that time I was off work because they found two tumors
2 and I'm very blessed, they were benign tumors, but they had
3 to go in and take them out to make sure.
4 Q Okay. So you had a medical procedure and you took time off?
5 A Correct, I was on a an MFL, Medical Family Leave.
6 Q Family Medical Leave.
7 A Oh sorry.
8 Q That's okay. Family Medical Leave Act leave?
9 A Correct.
10 Q So in order to prepare and provide materials for your
11 principal to do the review my question is, was the process
12 different at the high school than it was at Parkside?
13 A No, it shouldn't have been.
14 Q Okay. Were you able to personally prepare the materials to
15 support your year?
16 A I asked Amy Gish to assist me on that, because I was in
17 recovery at this point, and she -- I don't know if she e-
18 mailed or if she verbally asked Jeremy what all he would
19 like from me because I was out at that time.
20 Q And did Gish provide Mr. Patterson with all the materials he
21 requested --
22 A Yes.
23 Q -- to your knowledge?
24 A Yes.
25 MR. MULLINS: I'll object, your Honor, that's

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1 hearsay.

2 BY MS. BONANNI:

3 Q Did Gish show you or tell you -- show you, did you see the

4 materials?

5 A Yes, she sent me a -- sent it to me.

6 Q Okay. Did you check to make sure that the materials that

7 were sent to you were the same materials that Mr. Patterson

8 was asking for?

9 A Yes.

10 MR. MULLINS: There's still no foundation for

11 any of this, your Honor. It's what did somebody else do

12 something or didn't they, which she's out, she's on leave.

13 MS. BONANNI: You know what, it's okay, Ms.

14 Gish is coming.

15 MR. MULLINS: That's who we should.

16 MS. BONANNI: He can talk to them.

17 THE COURT: Okay. I guess the hearsay

18 objection is overruled. Go ahead.

19 BY MS. BONANNI:

20 Q So did you challenge this?

21 A Yes.

22 Q And did you prepare the materials requested?

23 A Yes.

24 Q Did you have an understanding about what you were to do with

25 these materials pending the hearing about this rating?

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1 A Yes.

2 Q What was your understanding?

3 A My understanding was to keep everything together, when we

4 met I would present that to them --

5 MR. MULLINS: Again, your Honor, --

6 THE WITNESS: -- so things wouldn't get lost.

7 THE COURT: Just a second.

8 Go ahead, Mr. Mullins.

9 THE WITNESS: Oh, I'm sorry.

10 MR. MULLINS: If I may, there's a lack of

11 foundation here. I mean there has been substantial

12 testimony put into the record about when this is required by

13 law, it has to be submitted, what has to be submitted, what

14 wasn't submitted and I think that's the foundation. She has

15 some different understanding as to where it came from, what

16 we would look at, who gave her that direction. I mean we've

17 heard from the superintendent, it goes to what is required

18 by law to be submitted by the end of June.

19 THE COURT: Okay. His interpretation, her

20 interpretation. Overruled.

21 BY MS. BONANNI:

22 Q When you challenged your rating --

23 A Yes.

24 Q -- did you do that through the union?

25 A Yes.

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1 Q Did you then follow the union direction as to what you were
2 to do?
3 A Yes.
4 Q And was there a hearing scheduled?
5 A Yes.
6 Q Did you provide anyone with the materials prior to the
7 scheduled hearing?
8 A Yes.
9 Q Who did you provide those materials to?
10 A Amy Gish to turn them in and also I had a booklet that I was
11 told to hang onto.
12 Q The hearing was scheduled, was it ever changed, removed?
13 A Yes.
14 Q And can you describe for the jury the reason for the delay
15 in the hearing?
16 A Because there was a lot of people that had to be at this
17 meeting. It had to be my union, it had to be myself, it had
18 to be my understanding Mr. Ben Pack, it had to be Mr. Jeff
19 Beal, so I didn't think the lawyers were going to be
20 involved. So we came in with our booklet, my booklet,
21 everything set and their lawyer was there at this time.
22 My union said we need to call a couple people
23 because if your lawyer, outside lawyer is there, I need
24 representation from my lawyer to be there also.
25 Q Okay. And ultimately that was arranged?

1 A Correct.
2 Q You've heard the testimony from Mr. Beal about what you
3 asked for in terms of a bump up in that rating. What do you
4 recall about that discussion?
5 A He did ask me in the meeting what I thought I should get.
6 And I no way, no how said minimally. I said effective.
7 Q How long was that meeting?
8 A That meeting I want to guess was between two and three
9 hours.
10 Q 2016-17 school year still at Parkside?
11 A Correct.
12 Q Attempt to transfer?
13 A Correct.
14 Q Do you remember communicating with Ben Pack about
15 transferring?
16 A I don't recall right now.
17 Q Okay. I want you to turn to Exhibit 44?
18 A Yes.
19 Q It's been entered into evidence. Were you ever provided
20 this communication?
21 A Yes.
22 Q And what was your understanding in terms of what Mr. Pack
23 was representing in terms of the eligibility of transfer?
24 A First there would have to be a job opening, meaning someone
25 would have to leave Jackson High in order for myself to get

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1 back to Jackson High. It also states and I understand you
2 have to be highly or effective and to complete the IDP and
3 off the IDP.
4 Q And you are still on an IDP?
5 A Yes.
6 Q As far as you know?
7 A Yes.
8 Q So under that criteria were you eligible for transfer?
9 A No.
10 Q Ms. Davis, your review at the end of the 2016-2017 year was
11 what?
12 A Minimally.
13 Q Minimally?
14 A Effective.
15 Q And did you challenge this rating?
16 A Yes.
17 Q Went through the same process?
18 A Yes.
19 Q What happened?
20 A I was denied. It was another two to three hour discussion,
21 meeting where I was battered with questions. I was almost
22 abusively questioned to such an extreme.
23 Q So now that rating stood?
24 A Correct.
25 Q And that brings us then to the 2017-2018 school year?

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1 A Correct.
2 Q And so coming into Jackson High that year what is your
3 rating?
4 A Minimal.
5 Q Do you remember when you found out that you would be
6 transferred back to the high school?
7 A May 31st.
8 Q Of what year, 2017?
9 A Correct.
10 Q And what did you understand to be your assignment?
11 A I asked them what my assignment was and actually the letter
12 I think stated -- it just stated art.
13 Q Let's turn to that letter, Exhibit 46. Can you identify
14 this letter for the record please?
15 A It's a letter from Ben Pack, Assistant Superintendent of
16 Jackson Public Schools dated, May 31st, 2017, to myself. Do
17 you want me to --
18 Q And it indicates --
19 MS. BONANNI: Oh, let me offer this into
20 evidence please Exhibit 46.
21 (At 2:44:18 p.m., Plaintiff's Exhibit 46 was
22 offered)
23 THE COURT: Any objection, Mr. Mullins?
24 MR. MULLINS: No, your Honor.
25 THE COURT: All right, 46 will be so admitted

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1 by way of stipulation of the parties.
2 (At 2:44:25 p.m., Plaintiff's Exhibit 46 was
3 admitted)
4 BY MS. BONANNI:
5 Q The letter indicates quote, "you have been reassigned to
6 teach at the Jackson High School Art Department beginning
7 2017-2108 school year", end quote. Are you teaching art at
8 the Jackson High School currently?
9 A I'm teaching this trimester I have art and I also have been
10 assigned physical education.
11 Q Are you teaching only at Jackson High School?
12 A No, I'm also teaching at a program called Pathways, which is
13 virtually alternative, it's just another name for
14 alternative.
15 Q And what does that mean alternative?
16 A Alternative are students where number one, they're missing
17 credits. And the reason why most of them are missing
18 credits because of truancy, because of behavior problems,
19 they have a lot of them. Some of them have probation
20 officers.
21 Q So when do you -- at what point did you find out that you
22 would be teaching at the high school as well as at Pathways?
23 A I believe it was the first day of school when the kids
24 arrived, because it was my understanding that Mrs. Pauli the
25 head principal wasn't aware that I was coming up. Debbie

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1 Herr the other art teacher also asked her, did you know that
2 Pennie Davis was coming back to the high school and she said
3 no.
4 Q Now you found out you were going back to the high school May
5 31st, 2017. When did you get a room assigned to you?
6 A A few days roughly before we, the teachers have to be there
7 for our own like professional development, which would be a
8 few days prior to the students coming.
9 Q Okay. And what room were you assigned to?
10 A I was assigned room 122.
11 Q Okay. So let's look at Exhibit 56 while you're telling us
12 about your room. 122?
13 A Correct.
14 Q Okay. Now it looks to me like there's rooms at least on
15 this chart that are designated art rooms?
16 A Correct.
17 Q Can you tell us for the record which art room was your room
18 for the twenty-nine years before you went to Parkside?
19 A Well they did remodeling also, but it was still in the same
20 vicinity but the room numbers changed, but it was basically
21 the same room, 117.
22 Q Okay. So that had been your room for those years?
23 A Mostly. I was either in 117, which used to be called 177 or
24 I was in 116, that used to have another name. So one of
25 those two art rooms, yes.

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1 Q Okay. And what kinds of classrooms, I see 122 appears to be
2 down the hall?
3 A Yes.
4 Q The other end of the hall?
5 A It's down two halls and around.
6 Q And are these other classrooms any special particular types
7 of classrooms or are they just normal classes?
8 A They're basically normal classes. I can tell you what
9 subjects.
10 Q No, that's okay.
11 A Okay.
12 Q That's okay. So describe for the jury, when you came to see
13 this room was it appropriate for what you were going to be
14 teaching, art?
15 A Not at all. It was number one, a very disadvantage for
16 myself and my students. When I walked into the room, I
17 finally got a key for the room, there were pipes sticking
18 out of the wall high enough so a student could hit their eye
19 and poke their eye out, so I was worried about the safety.
20 The light sockets didn't have any covers on
21 them, so they were exposed. The sinks in there are very
22 small and the water wasn't appropriately working or
23 draining. There was no LED projector, meaning so you could
24 project things on the wall. And there's still not a screen.
25 Which I have a screen, but they haven't put that up yet. It

1 was very much in disarray.
2 Q Now did you -- were you able to get those issues complied
3 with or fixed just by asking or how did you -- what did you
4 do?
5 A I had to grieve it.
6 Q You had to grieve it?
7 A Yes.
8 Q And then through your grievance you got it resolved?
9 A Yes, in time.
10 Q How many art teachers are there currently?
11 A Three.
12 Q Are all of them teaching art full time?
13 A This trimester yes, but not myself because I'm teaching a
14 physical education class at Pathways.
15 Q Okay. You were at Parkside?
16 A Correct.
17 Q Deb Herr went from Parkside to the high school to fill your
18 position?
19 A Correct.
20 Q You testified to that. And now where is Deb Herr now?
21 A She's in my room. My old room, sorry.
22 Q Who is at Parkside teaching art?
23 A Right now they only have one art teacher there.
24 Q How many did they have when you were there?
25 A They've always to my knowledge had two.

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1 Q Do you understand why there's three art teachers right now
2 at the high?
3 A In my opinion I believe it's because I had to go get a
4 lawyer so they wouldn't be retaliating against me as much
5 there. To move me -- so called move me back to the system,
6 I just --
7 Q Well let me ask you this question, do you know what the
8 other art teachers, what their rating is?
9 A Effective.
10 Q So in the event there were a downsizing in the art
11 department in terms of what you understand to be the
12 criteria for downsizing who would be the one selected?
13 A I would go automatically.
14 Q Is the enrollment at the high school to your knowledge on
15 the upswing or declining?
16 A Unfortunately my knowledge it's on the decline. Jackson
17 High used to be like this pinnacle, and I'm not saying it's
18 not a great school by no means, but lots of students have
19 come there and now it is at a decline. And I believe that's
20 why too they wanted to save face and not have me go to the
21 police or even get an attorney, go outside their school
22 system.
23 Q Your PPO was in effect from 10/15 until 10/16?
24 A Correct.
25 Q What was the date of your return to Jackson?

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1 A This year --
2 Q Oh, 2017-18 school year?
3 A Correct.
4 Q That's when you returned. Okay. In terms of the
5 investigation, back to the incident of October 2015 with
6 M.H., that investigation. During your employment before
7 being transferred I believe you testified Amy Gish asked for
8 those materials?
9 A Yes.
10 Q And you also testified you never got them?
11 A Yes.
12 Q Did you ever challenge that investigation, school
13 investigation?
14 A Yes.
15 Q How so?
16 A Amy Gish challenged it. I called a school board member, I
17 left at least three messages with an explanation, not a long
18 one, but enough that they knew what was happening. They
19 knew what my situation was.
20 Q In terms of what, the transfer?
21 A That I wanted to come back to Jackson High.
22 Q Okay. That you were seeking a transfer back to the high?
23 A Yes.
24 Q So you reached out to the school board?
25 A Yes.

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1 Q I'm sorry, a member of the school board?
2 A Yes.
3 Q What about the police report that you filed, are you aware
4 whether or not that matter was pursued?
5 A I'm not understanding.
6 Q Just the police report that you filed about the incident?
7 A Correct.
8 Q Do you have an understanding whether that matter was
9 pursued?
10 A Yes, it was --
11 MR. MULLINS: Your Honor, I think we've
12 discussed --
13 BY MS. BONANNI:
14 Q But just pursued?
15 MR. MULLINS: -- this issue.
16 THE COURT: Okay. Well I've read your case
17 and this would be a time to address that outside the
18 presence of the jury.
19 All rise for the jury.
20 (At 2:55:54 p.m., jury exited)
21 THE COURT: Okay. Everyone may be seated.
22 Okay, I did have an opportunity to review the
23 *Knox-Pipes decision versus Genessee Intermediate School*
24 *District.* And there is one relevant passage on page 11 of
25 that case. It says we find that these arguments are

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1 improper. In the insurance realm this Court has held the
2 evidence of lack of prosecution is not admissible in an
3 insured suit against the insurer.
4 The reason being that evidence of acquittal
5 or lack of prosecution is highly prejudicial because it goes
6 to the principle issue before the jury. And because of the
7 different burdens of proof there is little or no probative
8 value. Likewise, under these circumstances it was improper
9 for counsel to state the Prosecutor determined that there
10 was no crime.
11 Stating that there is no crime is different
12 than stating that the prosecution decided not to prosecute,
13 particularly because of the different burdens of proof. In
14 fact, this Court has stated that a Prosecutor's decision to
15 nolle pros may take into account many factors that are
16 relevant in a civil suit.
17 First of all, I guess I want to understand,
18 this seems to apply, I mean this isn't a Whistleblower case,
19 but this part of the holding seems to reference in an
20 insured suit against the insurer. So, you know, there's
21 some level of extension there.
22 MR. MILLER: Yeah, Judge, I've obviously
23 briefed this issue extensively on that case and the context
24 that this case came up the most in was insurance to where I
25 mean as an insurance fraud case essentially and wanting to

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1 say either you weren't prosecuted or you were prosecuted to
2 essentially use that as a proxy for what the jury was
3 deciding.
4 And why I gave you that case, it's since then
5 I also I mean just on Westlaw now I mean there are multiple
6 other cases such as *Kelly Auto Parts v Boden*, 809 F2D, 1247,
7 a 6th Circuit case saying evidence of prosecution or non
8 prosecution isn't admissible. But it's -- to go back to our
9 original motion hearing, juvenile records are sealed and not
10 admissible by statute.
11 And also MRE 609(e) just I mean says,
12 juvenile adjudications, evidence of juvenile adjudications
13 is not admissible under this rule except in subsequent cases
14 against the same child in the Juvenile Division of the
15 Probate Court. I mean when, your Honor, took the bench I
16 mean with this motion I mean it was just immediate on your
17 part juvenile proceedings aren't admissible. And you're
18 absolutely right.
19 I mean this is what the court rule and the
20 statue says. But by way of another example, that *Knox-Pipes*
21 case, it's so prejudicial for a jury to try to use a
22 Prosecutor's decision as a proxy for what they need to
23 determine.
24 THE COURT: Okay.
25 MS. BONANNI: Well this is different, you

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1 know, this isn't the ultimate issue in the case at all, what
2 happened to M.H. I only raised this concern because of what
3 I was hearing and where I think this is going.
4 THE COURT: Which is where?
5 MS. BONANNI: Which is that her I think
6 there's a suggestion that she made this up. That it didn't
7 happen, that she was -- that they didn't believe her. And I
8 think that she's exaggerating. And I think that that has in
9 a way taking that strategy is in reaction to the fact that I
10 can't bring in that evidence because of the Court's ruling.
11 So I do think in light of the concerns and to
12 take a conservative approach, my concern is about prejudice
13 to Ms. Davis and how this evidence that we talked about
14 earlier and this testimony could be prejudicial to her. So
15 I think a cautionary instruction that juvenile records are
16 protected and you are not entitled to know the charge or
17 disposition of the charge with respect to anything, to any
18 prosecution of M.H.
19 THE COURT: All right.
20 MR. MILLER: And --
21 MS. BONANNI: Just so they know.
22 MR. MILLER: I mean, Judge, that seems to be
23 almost the concession that I mean the instruction should be
24 a police report was filed, the determination of that police
25 report and investigation/prosecution, whatever occurred,

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1 don't infer anything one way or the other, it was resolved.
2 I mean asking Ms. Davis questions about --
3 THE COURT: Well let me ask you, there seems
4 to be a drift in the defense case, you know, where they seem
5 to minimize first of all whether there was an injury and
6 then at some point they acknowledge there's a contusion. At
7 some point they're demanding she take the wrap off.
8 Allegedly I haven't heard the person that testified there's
9 some suggestion, you know, one administrator suggested, you
10 know, was it possible that you could have hit your hand and
11 inflicted your own injury.
12 So I'm looking at where the real prejudice is
13 to the defense at some point, you know, at some point
14 acknowledging that you know the case was submitted to the
15 Prosecutor and they filed a Petition without getting into
16 where it went.
17 MR. MILLER: Judge, I would say and again
18 going back to the day one when all these motions have been
19 argued at least once now with the Court already deciding it
20 once. But at that point we talked about --
21 THE COURT: Understand the Court's ruling was
22 as an example, you can't get -- I anticipate that M.H. has a
23 clearly significant record as a juvenile. And clearly I'm
24 not allowing the plaintiff to get into any of that.
25 MR. MILLER: Well I mean --

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1 THE COURT: Even here I'm looking at whether
2 my ruling should be with a limited purpose, not saying what
3 happened, I don't even know what happened in M.H.'s case.
4 But whether it was submitted to the Prosecutor and they made
5 a decision, you know, to issue a Petition or not.
6 MS. BONANNI: Well so the way the testimony
7 is coming in and I think it's based on this ruling is, none
8 of these students supported what happened to you and that
9 was said. Mr. Beal testified to that, there was no assault,
10 there was no assault. So for the purpose, the only purpose
11 is to suggest that she's exaggerating and it runs to
12 exaggerate.
13 And I think also Pack, who is not here, is
14 going to testify that he got the police report and that was
15 his investigation. So now it's opening a whole can of
16 worms. So I mean to the extent that we can agree that a
17 report was filed and it was accepted and pursued, but you
18 know, that's why I think the cautionary instruction is
19 probably best because I am afraid of how is the witness
20 going to characterize it that might go too far.
21 THE COURT: Okay. When you mean accepted and
22 pursued --
23 MS. BONANNI: I know I mean you are in a
24 better position than me because I don't do any criminal law
25 to give me the verbiage to at least communicate that. You

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1 know, she should be entitled, he's not here, he's not the
2 subject of this. This is not the ultimate issue in this
3 case in any way, shape or form, but the way this is coming
4 in is going to prejudice her, because the way they're
5 characterizing that nothing happened.
6 THE COURT: Mr. Miller, anything further?
7 MR. MULLINS: Would it be okay?
8 MR. MILLER: Sure.
9 MR. MULLINS: Just to address some of your
10 concerns. She reports an injury and we don't dispute that
11 something has occurred. And I've yet to have an opportunity
12 to address this, but the employer as an employer who can
13 incur a great deal of liability both under Worker's
14 Compensation and in the interest of an employee's welfare.
15 I mean there's both -- you know, if you end
16 up with carpal tunnel syndrome or a vascular necrosis of a
17 bone in the wrist or something like that, so the employer
18 quite clearly said, we want you to go to the place we rely
19 upon at our expense, here's an authorization, bang oh go and
20 in fact here's another, we would like you to get an x-ray
21 and we'd like to make sure there's not a big problem here.
22 And there's a lot of falderal here if I may
23 use the word. But the bottom line is and I touched upon it
24 yesterday if she says she doesn't want to have an x-ray,
25 okay, but then the next day that she goes back to there

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1 which we're going to have to talk about she -- they're
2 saying well we still -- you know, she hasn't given us an x-
3 ray, they haven't sent an x-ray over.
4 And quite simply once it's determined that
5 she doesn't have an injury that's threatening to herself or
6 might expose the employer to a liability in the future they
7 immediately say okay, come on back to work. During the
8 entire period of time that she's on paid leave the employer
9 is doing no more than trying to protect themselves from
10 liability either way and looking out for the welfare of the
11 employee at no expense to the employee.
12 And as soon as that document, boom, the
13 second time she goes there we don't have the x-ray from
14 Workwell, we don't, you know, we don't have it. Then
15 finally on the 19th they do get an x-ray report, send the
16 thing in --
17 THE COURT: Okay, I understand all that.
18 MR. MULLINS: So I mean it isn't that anybody
19 isn't insinuating. The second point I'd like to make is,
20 the decision that the school made doesn't have anything to
21 do with the criminal prosecution. In fact, the criminal
22 prosecution hasn't even occurred, it's completely
23 independent of that. She has expressed over and over again
24 there's fear, there's people banging on my door, I don't
25 want somebody in there.

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1 So the school says, let's alleviate her fear.
2 MS. BONANNI: Let me read a --
3 THE COURT: Well let me just ask you --
4 MR. MULLINS: So I just --
5 THE COURT: Let me ask you a question for
6 both of you to address.
7 MR. MULLINS: Yes.
8 THE COURT: I'm reading in the very case that
9 you did which is citing the whole Whistle Protection Act and
10 going through, you know, an employer shall not discharge,
11 threaten or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, condition,
13 location or other privileges of employment at all.
14 And then it goes down, page 3 by the way of
15 the case, Mr. Mullins. But it says to establish a prima
16 facie case under the WPA the plaintiff need only show that
17 he or she was engaged in a protected activity as defined by
18 the Acts. Here's my question, is reporting a crime and/or
19 getting a Personal Protection Order is that protected
20 activity that --
21 MS. BONANNI: Yes.
22 THE COURT: Part of a protected activity that
23 --
24 MS. BONANNI: Yes, that is the protected
25 activity.

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1 THE COURT: Okay. So feel free to answer
2 that as well. I'm just looking for -- (multiple speakers)
3 -- I can get.
4 MR. MILLER: And I mean even more so than
5 that. I mean under the Whistleblower Statute there's
6 essentially three types of whistleblowers, type one, type
7 two, type three as they're globally referred to. One is a
8 reporting violation, one is participating in some sort of
9 court action and the other is reporting a suspected
10 violation of law.
11 You don't even have to report an actual
12 violation of law, she just has to suspect it. That's what
13 the issue is. She doesn't have to prove that a juvenile
14 committed a juvenile offense.
15 MS. BONANNI: But she has to prove she's
16 reasonable in her belief. And, you know, that's critical.
17 And I also need to read this because this is from Ben Pack's
18 testimony. Here's the reason that Ben Pack, head of HR,
19 articulates for being the reason why they brought back the
20 plaintiff.
21 Pack met with Zesson and Baird-Pauli who gave
22 him a copy of the police report which appeared consistent
23 with what the students originally said. That's when we
24 decided to bring Davis back to work. So I'm concerned that,
25 you know, if he's going to talk about this or it comes out

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1 during this cross that I should be able to cross him by at
2 least saying, you know this was pursued by the Prosecutor?
3 And he'll say, no, I didn't know that. But, you know,
4 Pennie should be able to say, I know it was pursued by the
5 Prosecutor.
6 MR. MILLER: Judge, both yourself and both me
7 and Mr. Mullins have been Prosecutors. Just because
8 something is prosecuted that doesn't prove anything. And we
9 all know that people plead under the Youthful Trainee Act
10 all the time for all kinds of reasons because there's very
11 little consequences --
12 THE COURT: Okay, but for all of us to
13 understand, I'm not opening up with a disposition of it. So
14 let me ask you this, are you even objecting to her saying
15 that it was forwarded to the Prosecutor?
16 MR. MULLINS: Your Honor, we've never
17 objected to -- there is a police report. And she even says
18 on the bottom of it she intends to pursue a prosecution.
19 That's --
20 THE COURT: And I'm just -- both sides, I'm
21 just trying to get clarification.
22 MR. MULLINS: The fact that -- I mean she
23 hasn't spoken to it particularly, but that same day Officer
24 Goins came to the school and talked to the principal and
25 said let me talk to some kids.

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1 THE COURT: Well let me --
2 MR. MULLINS: And I'm more than happy to have
3 that be established.
4 THE COURT: Let me propose this potential
5 middle position. So maybe we can have it said that it was
6 forwarded -- that the police report was forwarded to the
7 Prosecutor.
8 And then what was your limiting instruction
9 again then?
10 MS. BONANNI: Under the laws of this State
11 that protect the right of juvenile offenders you are not
12 entitled to know the charge or disposition of the charge
13 with respect to any prosecution of M.H.
14 THE COURT: All right. So it seems to me
15 then if that's given that gives the due respect to the fact
16 that we're not supposed to get into juvenile crimes. But it
17 doesn't unduly prejudice the defense, because all we're
18 getting is that it was forwarded to the Prosecutor.
19 MS. BONANNI: And I --
20 MR. MILLER: Judge, --
21 THE COURT: Let me finish. Not that the
22 Prosecutor made a decision to either charge or not charge
23 and then we get the limiting instruction to the jury so
24 they're not wondering or I don't get a question from them
25 later on, what happened with respect to the criminal

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1 charges?

2 MS. BONANNI: Right. I think that works and

3 I could actually do that as soon as she comes in, it was

4 forwarded to the Prosecutor. I can write this out for you

5 in better --

6 THE COURT: And I take it at some point in

7 time as well did your client, you know, exercise her victim

8 rights, asked to be notified and whatnot --

9 MS. BONANNI: She did.

10 THE COURT: Okay.

11 MS. BONANNI: And she received -- and that's

12 where the letter, the exhibit that we have comes from is

13 that she was provided this order and restitution and a

14 letter saying he pled. That's how she got it.

15 THE COURT: Okay. Well I'm going to rule

16 this way.

17 MS. BONANNI: Yeah.

18 THE COURT: I'm going to allow you to bring

19 out that the police report or the investigation was

20 forwarded to the Prosecutor, okay. But then we're not going

21 to go any farther about that. Nobody gets to know whether

22 it was issued or not issued or what the ultimate disposition

23 --

24 MS. BONANNI: So then at that point in time

25 you would read the instruction?

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1 THE COURT: Then my proposal will be at that
2 time or some other time that the parties can agree and I
3 will give that instruction.
4 MR. MULLINS: And if I can ask the Court,
5 because there's been a lot of talk about what happened that
6 day and it seems somewhat confusing whether or not it was
7 investigated or looked into. And it would be my intention
8 to have the principal to confirm the fact that I got a
9 police officer in here.
10 THE COURT: Sure.
11 MR. MULLINS: In fact, I know who he is. And
12 he came in and he talked to me, what happened, what did you
13 do?
14 THE COURT: And it would be an absolute
15 normal course of action for those reports to go to the
16 Prosecutor.
17 MR. MULLINS: Yeah. And the fact that -- and
18 I'm happy to have that actual report to, you know, this
19 report went to the Prosecutor.
20 MS. BONANNI: Well I don't want -- I don't
21 know that the police report should be submitted.
22 MR. MILLER: It's your protected activity,
23 it's your prima facie case.
24 MS. BONANNI: Well she can testify that she
25 did it.

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1 THE COURT: Normally police reports aren't
2 admissible. We don't normally admit those.
3 MS. BONANNI: Yeah, I'm satisfied she's got
4 the PPO.
5 MR. MULLINS: And --
6 MS. BONANNI: I'm satisfied she says I went
7 to the police. I don't think I need the report.
8 THE COURT: All right. Well at least that
9 gets us up to there. We can talk about the police report
10 later on, but can we -- you've got your limiting instruction
11 so I --
12 MS. BONANNI: I'm writing it so you can --
13 THE COURT: I guess we've got right about to
14 the point where, you know, you were going to talk about the
15 Prosecutor.
16 MR. MULLINS: Because it has been said there
17 was no investigation of the matter and it was brought out --
18 THE COURT: Well I'm fully anticipating
19 you're going to bring out that the police came, the police
20 did an investigation, then talked to her.
21 MR. MULLINS: The police said, you know, let
22 me talk to some kids. And in fact, even wanted the kids
23 that Ms. Davis put down, he's bring this kid in.
24 THE COURT: And let me explain --
25 MR. MULLINS: I just want --

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1 THE COURT: -- my rationale for ruling in the
2 manner that I did, because I'm kind of leaving it in a
3 position where neither side gets the benefit of knowing,
4 well the Prosecutor dismissed it so therefore they must have
5 thought there was nothing there and/or the other side, the
6 Prosecutor issued it and that happened.
7 So I'm just, you know, showing the natural
8 sequence of where the police report -- where it went, it
9 went to the Prosecutor and then we give the limiting
10 instruction that essentially tells the jury that they're not
11 allowed, you know, essentially to find out what the
12 disposition of juvenile cases are. Okay?
13 MR. MULLINS: Right. I just wanted to fill
14 in --
15 THE COURT: Sure.
16 MR. MULLINS: -- all of everybody. Because
17 there's some suggestion that, you know, we lock our doors
18 and keep the police out or something like that.
19 THE COURT: No, no.
20 MR. MILLER: Sneaky, sneaky, I know what
21 you're doing. You've got to watch her.
22 MS. BONANNI: 3:00 o'clock is like my
23 witching hour.
24 MR. MILLER: Oh let me see, Mullins is going
25 over.

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1 THE COURT: Why don't you take a minute and
2 if you want to use the -- anything or is everybody ready to
3 --
4 MS. BONANNI: I think if Mr. Mullins gives us
5 the okay we're okay.
6 MR. BEAL: Your Honor, may I have two minutes
7 to run to the restroom?
8 THE COURT: Absolutely.
9 Everybody else, we'll kind of reconvene in
10 five minutes.
11 And are you two working on the limiting
12 instruction then?
13 MR. MILLER: Yeah.
14 MS. BONANNI: Yeah.
15 MR. MILLER: And, Judge, I'm just real quick,
16 I'm not sure where that left off. Sorry, I was correcting
17 that, but with the police report itself to the extent the
18 school administrators testified that they received it and
19 incorporated it into their investigation. Is the Court
20 saying that that wouldn't be admissible if the school is
21 adopting it as part of their investigation?
22 MS. BONANNI: I don't know what that means of
23 adopting. I mean they actually --
24 MR. MULLINS: I don't know if anybody is
25 saying they adopted it.

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1 MS. BONANNI: Yeah.
2 MR. MULLINS: It's just a matter of actually
3 --
4 THE COURT: Incorporating it by adopting it?
5 MR. MILLER: Yeah, exactly.
6 MS. BONANNI: I don't think that needed to be
7 admitted into evidence. They can talk about the fact that
8 they were sitting there and they could say, well it's
9 consistent with our own. But I don't think it should be --
10 MR. MILLER: Judge, --
11 MS. BONANNI: How can we do that? I mean --
12 MR. MILLER: Our concern is, Judge, plaintiff
13 has gone to great lengths to say, no one even bothered to
14 speak to this person, it was a kangaroo court sort of
15 investigation. And the school district did do their
16 investigation and got the police report with the interview
17 statements and it went into their --
18 THE COURT: I certainly have no problem with
19 getting -- you can call the police officer as far as I'm
20 concerned. And he can say, yeah, I talked to X amount of
21 people, I did this and I got done and I forwarded it to the
22 Prosecutor's Office. But I think the actual report itself,
23 you know, normally police reports aren't admissible.
24 So I guess we either redact it from being
25 part of your -- otherwise I don't care that they reference

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1 it, but I'm just saying the absolute substantive body of the
2 actual report itself I don't think is properly admissible
3 into evidence.
4 MS. BONANNI: Okay.
5 THE COURT: But I'm more than willing to have
6 you all look at that further and we'll further address that
7 as we get closer to that, once it's time to take a look at
8 that I understand. All right. But at least I think we're
9 of the mind, and I'm not saying agreement, but the decision
10 reached by the Court and the limiting instruction. And all
11 of you are going to try your very best not to get in further
12 about what happened with M.H.'s juvenile proceedings.
13 MS. BONANNI: Yeah, I --
14 MR. MULLINS: We have nothing to do with it.
15 MS. BONANNI: My plan is to just ask her the
16 question about that her knowledge that it was forwarded to
17 the Prosecutor and then you would read this.
18 MR. MILLER: So you aren't going to try to
19 bring the victim rights letters --
20 MS. BONANNI: No.
21 MR. MILLER: Okay.
22 MS. BONANNI: Well that's -- I just, you
23 know, no police report, no victim's rights letters. I guess
24 I'll renew that if we start bickering about the police
25 report.

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1 THE COURT: Okay, I think this is very fair
2 under the circumstances. It's very narrow and I think it
3 appropriately instructs the jury on the limitations of their
4 access or the parties' access to what took place.
5 MR. MILLER: I suppose. And I hate to just
6 keep bringing up I mean new issues. But I suppose I would
7 have some question as to foundation as to Ms. Davis's
8 ability to even say this police report was forwarded to the
9 Prosecutor. At a minimum that's one level of hearsay, a
10 police officer saying I'm forwarding this to the Prosecutor.
11 I think you have to call -- if she wants to
12 establish that point she's got to call the police officer.
13 Otherwise it's hearsay. That's the only way Ms. Davis could
14 know whether someone --
15 MS. BONANNI: I mean she only knew because
16 she was in that victim's -- she had an advocate.
17 THE COURT: A victim advocate. She activated
18 her rights and they gave her some information.
19 MS. BONANNI: Yes. And that's how she got
20 the letter with the order and the explanation of what
21 happened in terms of the disposition.
22 MR. MILLER: I think we might be better
23 suited if the Court just read the instruction without any
24 further testimony.
25 MS. BONANNI: That's fine. That's fine.

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1 MR. MULLINS: It goes back to my thought
2 about the police report is that it again reminds everybody
3 what occurred that day and it shows the interaction of Ms.
4 Davis, of the principal, of the assistant principal, of
5 students that the school -- because again, there has been an
6 implication as to our side that, you know, we don't allow
7 this stuff to get outside or something like that when that
8 very day here the person, you know, it memorializes quite
9 simply the fact that somebody did come in, questions were
10 asked.
11 She certainly gives her side of the story
12 that I got hurt, I got hit, you know, and a couple kids are
13 talked to and the principal said, well we talked to some
14 people. Who do you want to talk to? And it just, you know,
15 it just establishes that as being one of the facts that
16 actually --
17 THE COURT: Okay. I'm not limiting any of
18 that.
19 MR. MULLINS: In fact, it would seem to kind
20 of suggest that because it makes it very clear at the bottom
21 of the police report, I want to prosecute. So you know that
22 there's a prosecution coming.
23 MS. BONANNI: Well they don't know, because I
24 don't want --
25 MR. MULLINS: And then we just don't know the

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1 end of it.

2 MS. BONANNI: -- that in. Yeah.

3 THE COURT: At this point I'm going to rule

4 obviously they can talk about what happened. I mean either

5 side can feel free to call the police officer that took the

6 report. And clearly the police officer, what happened when

7 you were done with your investigation? We forwarded, you

8 know, the reports to the Prosecutor's Office.

9 But at this point if you want to show me some

10 further research about what you think that it should be

11 admissible with respect to the police report, I'll tell you

12 I've been doing this for years and I've never seen --

13 MR. MULLINS: Sure, I understand.

14 THE COURT: -- police reports admitted into

15 evidence.

16 MS. BONANNI: So her personal knowledge --

17 THE COURT: Even with the officer testifying

18 here.

19 MS. BONANNI: Okay. So I want to get some

20 clarity since she's coming back. Am I permitted to just ask

21 her the question, do you have personal knowledge whether the

22 matter was forwarded to the Prosecutor?

23 MR. MILLER: She would only know that from a

24 hearsay statement --

25 MS. BONANNI: No, because she asked --

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1 MR. MILLER: -- or someone telling her.
2 MS. BONANNI: Well she asked for it.
3 MR. MILLER: Well someone told her, that's
4 the definition of hearsay. It's a statement made by a
5 declarant out of this --
6 MS. BONANNI: It's to prove the truth of the
7 matter.
8 MR. MILLER: It's not.
9 THE COURT: Well I think it could be offered
10 for a limited hearsay purpose to show its impact upon the
11 listener. Specifically she's talking with the Victim Rights
12 Advocate. So the Court would allow it for that limited
13 amount of hearsay purpose.
14 MS. BONANNI: Okay.
15 THE COURT: But that's it.
16 MS. BONANNI: That's it.
17 THE COURT: That's where it stops.
18 MS. BONANNI: Then it stops.
19 THE COURT: All right. Okay, I'll be right
20 back.
21 Do you need five minutes or are you all set?
22 THE CLERK: Yes, please.
23 THE COURT: All right, five minutes and we'll
24 see everybody back.
25 (At 3:21:21 p.m., court recessed)

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1 (At 3:30:16 p.m., court reconvened)
2 THE COURT: All right. David, would you
3 bring the jury back in?
4 MR. MILLER: May we approach real quick?
5 THE COURT: Sure, come on up.
6 (Bench Conference Held from 3:30:51 p.m. to
7 3:32:22 p.m.)
8 MR. MILLER: Thank you, Judge.
9 THE CLERK: All rise for the jury.
10 (At 3:32:26 p.m., jury entered)
11 THE COURT: All right, thank you. Everyone
12 may be seated. The record should reflect the presence of
13 the jury, all the parties, their respective attorneys.
14 And, Ms. Bonanni, go ahead.
15 MS. BONANNI: Okay.
16 BY MS. BONANNI:
17 Q When we broke we were talking about the incident on -- the
18 assault of October 12th, 2015. Do you have personal
19 knowledge as to whether this matter was forwarded to the
20 Prosecutor?
21 A Yes.
22 THE COURT: Okay, ladies and gentlemen, I'm
23 going to give you what's called a limiting instruction.
24 Under the laws of the State of Michigan that protect the
25 right there are -- under the laws of Michigan there's laws

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1 that protect the right of a juvenile. You are not entitled
2 to know the charge and/or disposition of the charge with
3 respect to any prosecution.
4 BY MS. BONANNI:
5 Q Okay, Ms. Davis, as a result of the experiences that you had
6 at the JPS as you've testified before this jury for several
7 hours now, I'm wondering if you could share with them what's
8 happened to you in terms of your damages?
9 A Okay. Like I said, I was highly effective. This was my
10 baby.
11 THE COURT: Ms. Davis, could you just keep
12 your voice up?
13 THE WITNESS: Louder? Sure.
14 THE COURT: Just start right over there again
15 and keep that voice right up.
16 THE WITNESS: Okay, this was my baby at
17 Jackson High. Basically this is the pinnacle for any art
18 teacher to be the head of the department, to be helping
19 students at the high school level get scholarships, interact
20 with this level. I even designed the art rooms that are at
21 Jackson High.
22 The art rooms at Jackson High that I'm not in
23 right now, I don't claim those rooms, they're not personally
24 mine just because I designed them. But the advantage of
25 them are number one, they have a computer lab in each one

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now. They have a kiln room. They have --

MR. MULLINS: I'm sorry?

MS. BONANNI: A kiln.

THE WITNESS: A kiln room. They have slab rollers, they have storage areas, they have proper shelving for paintings. They have -- I mean they're state of the art rooms. As you can see on the map they're twice the size at least of the room they put me in. And the art room is approximately as big as this.

THE COURT: When you say kiln, is that like to fire the pottery and all that kind of thing?

THE WITNESS: Yes, it has its own room set aside and it has two big kilns in it.

THE COURT: Okay.

THE WITNESS: With a door and lock, so no students can get in there, but we put the clay in there in a storage room --

THE COURT: Okay.

THE WITNESS: -- and so forth. It has a dark room for photography in that area. It's got two different, each room has air vents for them for the airbrushing, so we can teach them that. So we can really prepare these kids. I was pulled out of there just out of spite because of going to the police, retaliation.

BY MS. BONANNI:

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1 Q Pennie, let me ask you, did you seek professional help?
2 A Yes.
3 Q Tell me when you sought professional help first and for
4 what?
5 A Right at the day the incident happened I called a couple
6 different, what are they called, counselors, psychologists,
7 what have you and I was trying to get into someone as soon
8 as possible.
9 Q Okay. I'm going to ask you to look at Exhibit 53?
10 A Yes.
11 Q Can you identify these please, these records?
12 MR. MULLINS: You can identify them.
13 BY MS. BONANNI:
14 Q They're your records from your therapist, Laura Gallagher,
15 M.A., L.L.P., do you see that?
16 A What number again, I'm probably on the wrong page?
17 Q 53.
18 A No, this is it.
19 Q Look at page 3?
20 MR. MULLINS: I'll stipulate to that.
21 MS. BONANNI: That's okay. Yeah.
22 THE COURT: Which exhibit are we on?
23 MS. BONANNI: Exhibit 53. And the defendant
24 has stipulated to the entry of these records from therapist
25 Laura Gallagher.

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1 (At 3:38:39 p.m., Plaintiff's Exhibit 53 was
2 offered)
3 THE COURT: All right, it will be so admitted
4 by way of stipulation.
5 (At 3:38:41 p.m., Plaintiff's Exhibit 53 was
6 admitted)
7 BY MS. BONANNI:
8 Q So, Ms. Davis, this is the person that you initially treated
9 with? You don't need to look through the records, we're not
10 going to use them anymore.
11 A Yes.
12 Q I want you to share with the jury if you can what was it --
13 was there anything happening that prompted you to seek
14 professional help?
15 A Because I was assaulted by a student, I was never helped by
16 my district, anyone in my district and I want to say if they
17 wanted me to go to Workwell right away why didn't you send
18 me on the 13th when you came to my room?
19 Q Ms. Davis --
20 A I followed all the rules.
21 Q Okay. So had you seen a therapist or were you seeing a
22 therapist at the time of the assault?
23 A No.
24 Q Were you experiencing physical symptoms?
25 A Yes, my stomach, I couldn't sleep, I had a hard time eating.

1 I was very anxious, I was scared because of how they were
2 treating me and denying basically that this ever happened,
3 that it wasn't any type of assault.
4 Q Did you have, and not just initially but over time, have you
5 continued to treat with the therapist?
6 A With a therapist, yes.
7 Q And you treated with Ms. Gallagher for a couple months?
8 A Yes.
9 Q And then you transitioned to another therapist?
10 A Yes.
11 Q And how long have you been with that therapist?
12 A Ever since.
13 Q And what is his name?
14 A Weisbrod.
15 Q Doctor Weisbrod?
16 A Correct.
17 Q In terms of what's happened to you emotionally what I want
18 you to identify for the jury is any physical, meaning
19 medical, physical things that you attribute to what has
20 happened at school?
21 A Okay.
22 Q The case, everything in this case?
23 A Right. Obviously high anxiety. And once they transferred
24 me in I think it was December I had to go off. I've had
25 hear monitors because my heart --

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1 Q When did you have a heart monitor?
2 A I had a heart monitor twice.
3 Q Okay. Do you remember the first time, it was you said at
4 Parkside?
5 A Yes, in December.
6 Q In December.
7 A Around December.
8 Q Anything else physically that's happened?
9 A Yes and this is embarrassing, but I had bleeding from my
10 rectum.
11 Q Okay. When was the second time?
12 A That I had the heart monitor?
13 Q Yeah.
14 A It was the following year.
15 Q Okay. Now what about --
16 A When I got -- sorry.
17 Q Go ahead.
18 A I think it was after I'm getting ineffective because that
19 means they didn't rate me, I'm being basically one step
20 closer to termination and I'm also getting these referrals
21 of insubordination. And I did everything they wanted me to
22 do. I answered every question. I sent you everything.
23 Q So what I want you to try to explain is do you understand
24 whether you've ever had a diagnosis from your doctor?
25 MR. MULLINS: Well, your Honor, I think

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1 that's got to come from the doctor.

2 MS. BONANNI: That's okay, he's coming. So I

3 can wait. I mean your understanding of her diagnosis, is

4 that admissible, your Honor?

5 THE COURT: You objected to her

6 understanding?

7 MR. MULLINS: I do. I mean we're talking

8 about a lot of different medical things here.

9 THE COURT: All right. Well apparently then

10 this is going to be produced. They can give us that

11 firsthand.

12 MS. BONANNI: That's fine.

13 THE COURT: So go ahead. Sustained.

14 BY MS. BONANNI:

15 Q Ms. Davis, what about medication, have you been assigned

16 medication that you take from your doctor?

17 A Yes.

18 Q And has that been consistent since you started treatment or

19 has that changed?

20 A It's been pretty consistent, but they added -- do I say what

21 I'm on?

22 Q Huh?

23 A Do I say what I'm on?

24 Q Well I think you can share what medication that you're

25 taking.

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1 A Okay. An anti-anxiety, if I can remember, sorry. I've had
2 a sleeping pill so I can sleep.
3 Q Have you ever been given any medication for depression?
4 A Yes.
5 Q Now in terms of anxiety, sleep, depression, were you on
6 medication at the time you sought treatment?
7 A No.
8 Q What about -- I know we've talked about the physical things
9 you've experienced, the heart monitor?
10 A Yes.
11 Q Can you describe any symptoms that you felt as a result of
12 what's happened?
13 MR. MULLINS: Well, your Honor, I think --
14 THE WITNESS: I felt belittled, I felt --
15 MR. MULLINS: Sorry to interrupt.
16 BY MS. BONANNI:
17 Q Wait.
18 A Sorry.
19 THE COURT: Just one second, there's an
20 objection on the floor.
21 Go ahead.
22 MR. MULLINS: I think people can describe
23 symptoms or feelings, but the compound of as a result I
24 think if something is related to or not I think that has to
25 come from a medical expert.

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1 THE COURT: Okay. Sustained and rephrase.
2 MS. BONANNI: I guess I'm -- she can --
3 BY MS. BONANNI:
4 Q Can you describe the feelings that you've had since October
5 2015?
6 A Yes. I've felt discriminated against, I've felt belittled.
7 Q Any symptoms that you felt?
8 A Physical?
9 Q Or emotional.
10 A Yes, frustration, very upset, I have heart palpitations, I
11 --
12 Q Do you -- okay, go ahead.
13 A I cry sometimes. And I try to not cry because --
14 Q Prior to October 2015 were you creating your own art?
15 A Oh, yes.
16 Q Do you create art now?
17 A I can't create art now, I'm so exhausted, I'm fatigued. I
18 go to work and I've been on pins and needles wondering what
19 the next thing they're going to try to do to me. What's the
20 next hoop I need to jump through to be able to maintain my
21 job.
22 Q Is there any kind of strategies that you use at school to
23 try to help yourself to maintain and do your work?
24 A Yes, I try to meditate and pray a lot. My friends try to
25 help me, but I get tired of telling them my problems. So

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1 I've isolated myself. And because I'm afraid to talk to
2 them because I don't want to snap at them.
3 Q Now that you're back at the high school have you had any
4 complaints?
5 A No.
6 Q Any complaints from administration about you?
7 A Not at all.
8 Q Any complaints from parents or students?
9 A Not at all to my knowledge, no.
10 Q Have you received your rating for this year?
11 A No, you don't receive that until the very end of the school
12 year.
13 Q Okay. How important is teaching to you?
14 A It's my life, it's my passion. I come from a family of
15 teachers. My step-father taught and was highly recognized
16 for over fifty-six years. He was a teacher for a year, he
17 was a principal and he was a superintendent. He taught me
18 my values. He would give his shirt off his back to any of
19 the students that needed him or the parents.
20 I'm the same way. I want to be just like
21 him. And I strive to do that. My brother is a teacher in
22 Indiana. And he is a very good teacher and we're proud of
23 that. He cares for the students unbelievably. My sister is
24 a teacher. She helps with -- first she was a teacher in
25 Canada, she was also a missionary. And she helps the school

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1 system where she is at, she helps with the special needs.
2 She has in her -- I give her so much credit,
3 her older age now she teaches Braille, she teaches sign
4 language, she's taught autistic students. And I always ask
5 for help if I get any of these types of students and I help.
6 Q Okay, Pennie, I don't have anything further.
7 THE COURT: All right. Ladies and gentlemen,
8 I think I've talked with the attorneys on scheduling. We're
9 pretty close, but a little bit more time on the plaintiff's
10 case. We're going to have some cross-examination of this
11 witness and I think it would be fair to all the witnesses
12 for him to allow to do that in a block of time tomorrow.
13 So we're going to adjourn for the day today,
14 reconvene at 11:30. Again, if you can plan on either
15 bringing something or already have lunch so I don't have to
16 get into that afternoon recess situation. Is that still
17 okay for everybody to do it that way? Okay.
18 And again, I'd just ask you to be mindful of
19 my former instruction not to discuss the case with anyone,
20 you know, that you interact with at home just because you'll
21 have plenty of opportunity to do that after the case is
22 done.
23 So all rise for the jury.
24 David, would you go ahead and dismiss the
25 jury for the evening?

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1 (At 3:50:24 p.m., jury exited)

2 THE COURT: Thank you, Ms. Davis, you may

3 step down from the witness stand.

4 THE WITNESS: Thank you.

5 THE COURT: Anything further we need to

6 address before tomorrow?

7 MS. BONANNI: No.

8 THE COURT: Okay. See everybody then

9 tomorrow afternoon. All right, 11:30.

10 MS. BONANNI: Thank you, Judge.

11 MR. MULLINS: Thanks, Judge.

12 (At 3:50:53 p.m., hearing concluded)

13

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and seventy (170) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Wednesday, February 28, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 14, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

JURY TRIAL, VOLUME IV OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Thursday, March 1, 2018

APPEARANCES:

For the Plaintiff:
MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 West 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant:
JOHN L. MILLER (P71913)
TIMOTHY J. MULLINS (P28021)
101 West Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7188

TRANSCRIBED BY:
THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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1 Jackson, Michigan
2 Thursday, March 1, 2018 - 12:09:36 p.m.
3 UNIDENTIFIED SPEAKER: -- Judge John G.
4 McBain presiding.
5 (Transcriber Note: Judge's Microphone is Off)
6 THE COURT: All right, thank you, you may be
7 seated. Well, did you find your exhibits, Mr. Miller? Did
8 you find --
9 MR. MILLER: No, it's -- the defense exhibits
10 were up there.
11 THE COURT: I was just checking. Let me just
12 see if -- I'll --(inaudible).
13 (Multiple conversations - inaudible - not
14 transcribed)
15 THE COURT: Well, I'm not seeing them up here
16 either, so.
17 MR. MILLER: All right, I can produce some
18 copies, we've only admitted a few exhibits, so it's --
19 THE COURT: Okay, all right --
20 MR. MILLER: -- that's not a --
21 THE COURT: If you want to just re-mark them
22 and we'll --(inaudible). All right, from this point on it's
23 probably helpful for both of you to collect your exhibits
24 when we're done then we won't have to get together during --
25 (inaudible). Okay, so is there anything preliminary before

1 we get back? We've got a cross-examination scheduled for
2 Ms. Davis?
3 MS. BONANNI: Yes, Sir.
4 THE COURT: Okay so, Ms. Davis, why don't we
5 have you come back up to the witness stand. Mr. Mullins,
6 are you all set to do your cross-examination?
7 MR. MULLINS: Indeed, your Honor.
8 THE COURT: All right, David, why don't you
9 bring the jury in?
10 THE CLERK: All rise for the jury.
11 (At 12:12:12 p.m., jury entered)
12 THE COURT: Thank you ladies and gentlemen of
13 the jury, you may be seated. Ladies and gentlemen, I wish
14 one of you could put a little note under there "Can we have
15 a jury snow day?" All right, it's coming down and we're
16 gonna watch, all right?
17 All right, so you recall, ladies and
18 gentlemen, that we finished the direct exam -- or the direct
19 examination of the plaintiff, we get another cross-
20 examination by Mr. Mullins and so we get that at that time.
21 Go ahead, Mr. Mullins, when you're ready.
22 The nice thing about school, I always
23 remember is, there's lots of snow days, but you know, when
24 you're out in the real world life it just doesn't seem like
25 you get many snow days.

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1 All right, Mr. Mullins, go ahead.
2 MR. MULLINS: Snow days. He hates them,
3 everybody else loves them.
4 THE COURT: The students like them.
5 MR. MULLINS: He's gotta get up at 4:00 in
6 the morning to decide.
7 MR. BEAL: I have a lot of kids who would
8 love me today.
9 PENNIE DAVIS
10 (Recalled as a witness, previously sworn, further testified as
11 follows):
12 CROSS-EXAMINATION
13 BY MR. MULLINS:
14 Q Morning, good morning, Ms. Davis.
15 A Good morning.
16 Q Let me ask you a few general questions first. A school, in
17 general, or yourself as a teacher at a school, the state
18 sets a certain number, if you will, of instructional days,
19 is that right?
20 A I'm sorry, could you speak a little bit louder?
21 Q I was saying that all the time yesterday. A school district
22 is obligated, if you will, or the state indicates to a
23 school district that you'll have a certain number of
24 instructional days every year, is that right?
25 A I believe so.

1 Q Okay, and --

2 A The superintendent would know that.

3 Q The superintendent --

4 A Would know that.

5 Q Okay --

6 A Sorry.

7 Q -- but, the point being, it's regulated?

8 A I'm not understanding what you're asking.

9 Q Well, I'll move on. So, if I were to tell you that the

10 dates set for teachers to be, if you will, at work in the

11 2015-2016 school year was 183, would that comport with your

12 memory?

13 A I don't recall at this time --

14 Q Okay --

15 A -- the numbers.

16 Q -- do you have even an estimation?

17 A No, not at this time.

18 Q Okay, in -- let's go real general then. School starts just

19 after Labor Day, right?

20 A Roughly.

21 Q Roughly, and ends early in June?

22 A It all depends on the year and the set up and so forth.

23 Q Okay --

24 A But, I'd like to say as I told you before, I was out on

25 medical -- family medical leave at one point which is

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1 regulated, I know from the state that gives me the right if
2 I have a medical leave that that should never be used
3 against me.
4 Q Sure, and I understand, but I was talking all, Lake
5 Michigan, Lake Huron, the whole state. Public education,
6 generally teachers start on Labor Day, work to early June.
7 That would be your standard school year, is that right?
8 A I wouldn't know that from other schools, sorry.
9 Q Okay, all right then, we'll take it on down to Jackson. In
10 the years that you worked in Jackson, in general, you'd
11 start school around Labor Day and you'd end around the first
12 week in June, is that right?
13 A It was all the time -- I'm sorry, I can't answer that
14 question.
15 Q Okay, so there would be years when you would work all June,
16 July and August at the school district teaching school? I'm
17 -- I guess I'm not trying to confuse you, but I think just
18 about everybody in this room would have gone to school and
19 started about Labor Day and ended around June and that's --
20 A Yes, Sir, I said approximately that, I wasn't --
21 Q Okay, very good, that's all I was trying to establish. And
22 as far as your employment with Jackson Schools when the last
23 day of school would occur on whatever day in June, you then
24 would not work from that time until they brought you back,
25 approximately around Labor Day?

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1 A No, Sir, I'm a excellent teacher and teachers work through
2 the Summer, also we -- in those years that I was moved, I
3 was moved in a year and 2/3 they moved my classroom three
4 times. And for a art teacher to move all their stuff -- and
5 then I also had to work out of boxes, because they told me
6 they were gonna move me at one point and they didn't move me
7 for about two months later.
8 Q I'm -- you've thoroughly confused me, I'm actually talking
9 about you being in the classroom teaching class and you're
10 telling me that you did teach in the summers?
11 A No, I was telling you that teachers prepare. It's not just
12 a, I don't know, eight, nine months job roughly. We're
13 preparing, because there's so much -- the changes are so
14 much and then you want to prepare for your classes, what
15 you're teaching.
16 Q I understand what -- but what I'm trying to get at is for
17 those of us who had jobs, if you will, like punch a clock or
18 you know, you've gotta be there at 8:00 o'clock and you're
19 there until the bell rings in the morning and the bell rings
20 at the end of the day. I understand that -- like I, as a
21 lawyer, I'm always reading, I'm always studying, but I'm
22 just talking about as far as being required to be at and on
23 the job, at Jackson Schools, that's generally from Labor Day
24 to some date early in June?
25 A I would imagine, if I understand what you're saying, right

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1 --

2 Q Okay.

3 A -- but, I'm not sure I understand.

4 Q And in the course of a typical school year the students

5 would be off, class would not be taught during the holidays,

6 if you will, there's a Thanksgiving break of a couple days,

7 is that correct?

8 A I -- usually -- I think it's a day or day and a half, not

9 positive, because that fluctuates too --

10 Q Okay.

11 A -- I believe. I don't have the school calendar, I --

12 Q Okay.

13 A -- don't have it memorized.

14 Q Am I at least safe in saying you've never taught school on

15 Thanksgiving day?

16 A Not on Thanksgiving day --(undecipherable)--

17 Q Okay, and I know that the dates will vary but, when you get

18 towards the middle of the year, a few days before Christmas,

19 December the 25th, I understand it will vary as to what day

20 it falls, but from there through a few days or after New

21 Years day class is off, there's no classes, is that right?

22 A If I'm understanding you right, yes --

23 Q Okay --

24 A -- again --

25 Q -- and then there's -- putting aside snow days --

1 A -- no, people -- we have to make up snow days.
2 Q That is correct. Putting aside snow days then there's
3 various other, you know, what people might call bank
4 holidays, President's day, Martin Luther King day, days like
5 that, some various other holidays during the course of the
6 year where school is not held, is that right?
7 A I believe so, the best person to ask would probably be the
8 superintendent.
9 Q You -- Mr. Beals (sic) has already testified to this
10 somewhat, but you belong to a union?
11 A Yes.
12 Q You are paid in accordance with a schedule that the school
13 negotiates with the union, is that right?
14 A For the most part.
15 Q Okay, and other -- I understand that there are different
16 steps, but a basic salary is set forth, if you work the
17 scheduled days you get a certain salary, is that right?
18 A Correct.
19 Q Okay, and that base salary 2015 to 2016, then 2016 to 2017
20 and now 2017 to 2018, that's gone up every year, has it not?
21 A To be honest, I couldn't tell you that.
22 Q Okay, you, in addition to whatever your base salary might
23 be, you are allowed some sick days, is that right?
24 A Correct.
25 Q And you're allowed some personal business or leave days, is

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1 that right?
2 A Correct.
3 Q And so, those are days where even though school might be
4 scheduled you can use within that allotment that number of
5 days not to come into school, have a substitute come in or
6 call in sick or take a personal day to go see the dentist or
7 whatever and you're paid for that within those number of
8 days, is that right?
9 A I believe what you're saying is correct.
10 Q Okay, I -- I'll just -- do you know how many sick days you
11 have a year?
12 A Um --
13 Q Paid sick days.
14 A Not offhand. I know that the union or the district has
15 changed it several times and that you used to be able to
16 take a few days, but now you can't, bank -- meaning save
17 them at all.
18 Q Okay, and --
19 A So, if you get a bad sickness then it's just -- unless we do
20 a MFLA, if I'm saying those initials right, sorry, family
21 medical leave.
22 Q There's a limited amount of time that you can take off in
23 any given year and still get paid?
24 A I'm sorry, would you --
25 Q There is a limited number of days that you can take off and

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1 still receive your full pay?
2 A Correct.
3 Q And I'm gonna refer you to Defendant's Exhibit 5.
4 A Yes?
5 Q And just in general if you'd take a look at page 46.
6 MS. BONANNI: I'm sorry, what exhibit, Mr.
7 Mullins?
8 MR. MULLINS: The contract 5 -- and on page
9 46 it sets forth, if you will, the schedule on which --
10 based on seniority and education, how all teachers' salaries
11 are determined, is that right?
12 THE WITNESS: I need to get there first, so.
13 BY MR. MULLINS:
14 Q Okay, page 46 is -- and if you don't know that's fine, I
15 just...
16 A Okay, I'm there, what was your question?
17 Q There is -- that on page 46 is the salary scale index is
18 that right?
19 A That's what it says, yes.
20 Q Okay, and you may or may not be familiar, you're at level
21 IV-12 is that right?
22 A I believe so.
23 Q Okay, and if understanding the steps go from one through
24 twelve your -- for a person who's at the I, II, III, IV, V,
25 is in relationship to educational attainment, is that

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1 correct?
2 A Again there were some times where throughout the years the
3 union and me was bargaining to so someone couldn't get a
4 whole step and the steps are I, II, III, IV, V and so forth,
5 so they've kind of -- at one point that I believe, but the
6 union changed it.
7 Q If I can just --
8 A Oh, sorry.
9 Q -- so we can get here before too much snow gets out there.
10 I'm referring specifically to the contract that was in
11 effect in 2016 to 2019.
12 A I'm sorry, what exactly are you asking?
13 Q Okay so, we're on the current scale.
14 A Okay, this is the current -- okay, I will trust you for
15 that.
16 Q And I was asking well, first we look at the steps, this is
17 level I, level II, level III, level IV, and level V, is that
18 right?
19 A Correct.
20 Q And for instance, level I, that's a non-degree job, number
21 II is a bachelor's degree job, see what I'm saying?
22 A Okay, I see what you're --
23 Q Okay, so you have gotten to level IV and the scale goes
24 higher as you move across, so you think that you're at IV,
25 is that right? If you don't know that's okay.

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1 A I'm either III or IV, yes.
2 Q Okay, fair enough and then XII is again increasing and
3 that's based on years of seniority, is that right?
4 A Mostly, like I said again that at some point that they broke
5 them down, I'm probably not saying that right, like not
6 necessarily if you are on step 3, this is a true step 3,
7 that person might have worked five years or six years or so
8 forth.
9 Q You --
10 A And that's a true --
11 Q You being at step 12 are at the highest a person can be
12 paid, who has obtained a level IV, is that right?
13 A Yes, without -- yes, I believe so.
14 Q And be it with you or any other teachers, this is how
15 someone's salary is determined, is that right? With
16 reference to the levels and the steps?
17 A I believe so.
18 Q Okay, and on a -- I'm just trying to make a simple point, I
19 can't say I like Joe better than Mary, so two fourth grade
20 teachers at the same level and the same step are gonna get
21 paid the same base salary, is that right?
22 A I believe so -- well, there was a incident that -- well, I
23 won't go into that. I --
24 Q That's -- when we talk about a collective bargaining
25 agreement it's everybody, for all the teachers --

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1 A Most of the time.
2 Q -- this is how it's --
3 A Most of the time.
4 Q Okay, and just very briefly without getting into too much
5 detail I would refer you to Defendant's Exhibit 12 which --
6 A Like this 12?
7 Q Correct.
8 A Okay.
9 Q And you may or may not be familiar with it, but in general
10 this is -- on top it says 2017-2018 personnel and budget
11 tracking, is that right?
12 A Yes.
13 Q Okay, are you familiar with the documents or not?
14 A This is the first time that I've seen this, I believe.
15 Q Okay, in referencing it though, looking at the top left
16 corner -- so, this is a planning or recording of, if you
17 will, who's going where and I imagine you recognize or know
18 of many of the different names on Exhibit 12?
19 A A few of them, yes.
20 Q Okay, so if you look at the top left corner it says, see
21 where it says pending layoff?
22 A Yes.
23 Q It says "none"?
24 A Yes.
25 Q Okay, if I'm wrong, just let me know. Then it, again

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1 without going into excessive detail, it lists a whole number
2 of people who have left the school district and gone
3 someplace else in the right column, is that right? Taken
4 another job or...
5 A I believe so, it doesn't indicate it --
6 Q Okay, I guess --
7 A -- here what it is.
8 Q -- I guess I should be more correct, on the top it says, LOA
9 there's two people listed under LOA, that would be leave of
10 absence, is that right? If you know.
11 A I don't know --
12 Q Okay --
13 A -- LOA, what that represents, so.
14 Q -- and then there's a long list of people who resigned,
15 taken another job, gone for some reason.
16 A I'll take your word for it, yes.
17 Q Okay, anybody on there that you know to have resigned, of
18 all those people?
19 A Know of? You mean -- how do you mean, know?
20 Q Well, okay then among other things then, if you will, in the
21 body of the sheet page by page it lists a lot of different
22 employees and indicates various different changes in
23 position, just transfers, resigned, promoted, lists a number
24 of new hires, indicates people moving, transferred from say
25 for instance, Hunt; transferred from McCulloch; transferred

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1 from Parkside Social Studies, these are people being moved
2 from one spot within the school district to the other and/or
3 new people coming into the school district, is that right?
4 A I know that we had to close a school, so I know they had to
5 move those people out of that school, because they're
6 closing elementary schools. And I'm sorry for my -- the
7 length of your question, I don't know what you're asking.
8 Q Well, for instance, a number of people are indicated, it
9 says, plan or thoughts and for a number of different people
10 it says, new hire. I don't know if you know any of the new
11 hires and some of those are highlighted in yellow and as you
12 flip through the pages you see some new hires, is that
13 right?
14 A I don't have highlighted, but I will see -- I see two new
15 hires.
16 Q On the first page?
17 A Right, you want me to try to count them or what are you
18 asking me --
19 Q No, that's all right, I just -- the simple point is with the
20 school district with this -- with 300 teachers you've got a
21 lot of coming and going and a lot of hiring and a lot of
22 resigning, is that right?
23 A It appears that way.
24 Q Okay, and --
25 A I would say more going than coming, I thought.

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1 Q And sometimes as the years go by, I think you had talked
2 about that, like for instance, closing an elementary
3 building. Sometimes certain years or groups or grades might
4 have more kids, move along a couple years and that same
5 grade might have less kids, so you might need one more 4th
6 grade teacher or one less 7th grade teacher. Things like
7 that occur over the years within the school district, is
8 that correct? It isn't always the same number of teachers
9 or grades or classes?
10 A Pretty close in the high school I would say, I would
11 disagree with you on that.
12 Q Okay, and I agree, pretty close I think you had testified
13 yesterday at one point in time, there was three hour
14 teachers --
15 A Only at one time --
16 Q -- and then there's two hour teachers and now there's three
17 hour teachers again. Is that -- and I'd agree that's pretty
18 close, but that's true, right?
19 A Place at -- what am I saying, Sir?
20 Q In the past -- at one time in the past I think you had said
21 when there was more students there was three hour teachers
22 and then there was two hour teachers and now there's three
23 hour teachers again?
24 A Well, it's a misconception that there are three hour
25 teachers right now there, because they also -- I'm teaching

1 under two different hats. One is the regular high school
2 and the other is Pathways/Alternative.
3 Q Let's talk briefly about Pathway. Pathway is not an
4 alternative education high school is it?
5 A Yes.
6 Q You have a separate building for alternative education
7 students?
8 A They are kept in our basement, isolated from basically all
9 the other students most of the time.
10 Q What's the Taylor Alternative Education building for?
11 A The what?
12 Q There --
13 A I've never heard of that.
14 Q -- you're not aware of the school having a separate building
15 for alternative education high school?
16 A There's a night school, but not -- I don't know what you're
17 talking about.
18 Q Okay, fair enough. Pathways is a new program, is it not?
19 A It's a new title.
20 Q Well, it's a new title and it helps students advance, get
21 their degree and move on into a vocation, does it not?
22 A I would hope so, just like the alternative did.
23 Q Okay --
24 A Because, they took Wilson -- what is it -- Wilson Academy I
25 think they called it, Alternative and moved them to the

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1 basement of Jackson High and titled it Pathways.
2 Q Okay, you're saying Wilson Alternative Ed doesn't exist
3 anymore?
4 A Not to my knowledge, not during the day.
5 Q It might still be there, that might be the alternative
6 education building?
7 A I don't know what you're talking about, Sir.
8 Q Okay, fair enough. Pathways is a support system, not an
9 alternative education program, isn't that right?
10 A I would disagree.
11 Q All right, and you had talked about Pathways having
12 disciplinary problem students in it, but in fact, they go --
13 you're right, I said Taylor, it's Wilson. I get my
14 presidents mixed up -- the Wilson Building, Pathways is only
15 an academic program, is it not?
16 A I believe not. I don't think --(inaudible)--
17 Q Your -- you've never been laid off in all the years you've
18 worked at the school district?
19 A No, not yet, but --
20 Q Just --
21 A -- I'm afraid --
22 Q -- just --
23 A -- that I will be because of the situation that has come up
24 already --
25 Q Ma'am --

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1 A -- and that's why I had to get my lawyer.
2 Q -- I'm just --
3 A And that's how I got moved back to Jackson High is because I
4 had my lawyer --
5 THE COURT: Okay, Ms. Davis --
6 THE WITNESS: I'm sorry, am I talking too
7 much?
8 THE COURT: -- it's gonna be helpful -- your
9 attorney can do some redirect later on --
10 THE WITNESS: I'm sorry.
11 THE COURT: -- but if you'll try your best
12 just to answer Mr. Mullins' questions --
13 THE WITNESS: Yes, Sir, sorry.
14 THE COURT: -- all right? And then your
15 attorney will have a right to what's called redirect to
16 clarify any matters that you want, okay?
17 THE WITNESS: Sorry.
18 THE COURT: Thank you, go ahead. So, Mr.
19 Mullins, why don't you restate your question about whether
20 she was laid off?
21 BY MR. MULLINS:
22 Q I will and I understand what you were saying and I was here
23 yesterday as was the jury and we just -- if we keep doing
24 the same thing over and over again we'll be here a long
25 time, so it's a simple question: In the years, up until

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1 today, you know there's, you know, going backwards, you've
2 never been laid off?
3 A I don't believe so.
4 Q Okay, and your base salary today is higher than it has ever
5 been in your career at Jackson Schools?
6 A Are you saying that's the most I've ever made? I mean, I
7 don't understand what you're saying.
8 Q I was say -- I guess that would be another way of putting
9 it, the base salary --
10 A Correct, then correct.
11 Q It has --
12 A Sorry.
13 Q -- it has gone up?
14 A Correct.
15 Q And went up last year?
16 A I'm not sure on that.
17 Q Okay, you have to go look and check?
18 A Yes.
19 Q Now, we had -- we talked quite a bit yesterday about the
20 incident in October of 2015 with M. H. or we can say Marcus,
21 is that correct?
22 A I believe so --
23 Q Okay --
24 A -- yes.
25 Q And let me refer you to Defendant's Exhibit 20.

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1 A I don't have that.

2 MR. MULLINS: If I may hand this to the

3 witness, your Honor?

4 THE COURT: You may.

5 THE WITNESS: Thank you, Sir.

6 BY MR. MULLINS:

7 Q And are you familiar with the document?

8 A Yes, I read -- I refamiliarized myself, sorry.

9 Q Okay, and this is the document that you authored yourself

10 and signed, is that right?

11 A I am real sorry, I --

12 Q Did --

13 A -- couldn't hear you all the way.

14 Q -- you wrote this document and that's your signature on the

15 bottom of it?

16 A Correct.

17 Q And you wanted Marcus out of the building, is that right?

18 A No, only out of my classroom, because I was protecting the

19 other students that were afraid of him.

20 Q Okay, let me direct you to the bottom of the document and

21 the last two sentences, "I request he is removed

22 immediately, I do not feel safe with him being at our

23 school."

24 MS. BONANNI: I'm gonna place an objection to

25 the extent that if he's gonna read the paragraph. He should

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1 read the whole thing.

2 THE COURT: Okay, overruled I think he can

3 submit it in context, you can follow up further on, redirect

4 if you'd like.

5 MS. BONANNI: Okay.

6 THE WITNESS: I'm sorry, what were you

7 asking?

8 BY MR. MULLINS:

9 Q I'm asking if what I just read is what the last two

10 sentences immediately above your signature say?

11 A I think you're taking that out of context.

12 Q I may well be, I'm not here to argue with you.

13 A Well, that's nice, I'm --

14 Q I'm just here to --

15 A (Multiple speakers)--

16 Q -- confirm there's a document, did you write it?

17 A Yes, I wrote it.

18 Q Let it --

19 A But, you're taking it out of context.

20 Q -- let the jury hear what it says and context can be added

21 in opening or closing argument, but indeed that's what it

22 says, is that right?

23 A Out of context, yes.

24 Q And above that you had indicated that you might have

25 sustained a fracture to your hand that it would take five or

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1 seven days to know for sure, is that right?
2 A That's what I was told by one of the doctors.
3 Q Okay, and my simple point is whatever a doctor told you
4 that's what you put down on the piece of paper?
5 A I believe so, and then again out of context, you only read
6 part of it.
7 MR. MULLINS: I move for admission of
8 Defendant's 20, your Honor.
9 (At 12:46:39 p.m., Defendant's Exhibit 20 was
10 offered)
11 THE COURT: Any objection?
12 MS. BONANNI: No objection.
13 THE COURT: So admitted by way of stipulation
14 of the parties.
15 (At 12:46:45 p.m., Defendant's Exhibit 20 was
16 admitted)
17 BY MR. MULLINS:
18 Q You talked about -- I don't know how much you knew about it,
19 Marcus was a second stringer JV football player, is that
20 right?
21 A I knew he was a football player and this was our first
22 winning season in over about 20 years.
23 Q For the JV team or the varsity?
24 A I believe for both and I know Ben Pack used to and coach.
25 Q Used to, long time ago?

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1 A And -- no, not a long time ago, he was always part and still
2 is part of that.
3 Q But, whether or not he played on the varsity or the JV, you
4 don't know?
5 A I know that Bob Dillon (ph) was the one -- one of the
6 coaches I went to to ask for help with Marcus, because I
7 wanted to help this young man.
8 Q So, that sounds like you don't know whether he played on the
9 JV or the varsity?
10 A Well, because I coached sports in the past I know when you
11 get to a certain level that even if they're on the JV, which
12 I wasn't sure, I know they always suited them up when they
13 go to the big games, you know, the end games, so they have
14 enough players. Does that make sense? Is that what you're
15 asking?
16 Q I'll move on.
17 A I'm sorry.
18 Q Relative to the incident with Marcus you -- and I'm
19 referring to your exhibit number 5, you filled out an
20 incident report?
21 A Correct.
22 Q And asked to -- some people to confirm what did or didn't
23 happen, you listed in particular, Alexis and Lauren, is that
24 right, and put their phone numbers down?
25 A Correct, and afterwards a couple of the students, the girls

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1 came up to me crying --
2 Q I'm just --
3 A -- and said --
4 Q -- again --
5 A -- that they --
6 Q -- Ms. Davis --
7 A -- were scared of him --
8 Q -- Ms. Davis --
9 A -- and they could not say everything to the principal and
10 they --
11 MR. MULLINS: Your Honor, if I could just get
12 her to ask (sic) the question, I mean, again.
13 THE COURT: Okay, Ms. Davis, you just listen
14 carefully to the question and answer it.
15 THE WITNESS: (Undecipherable)--
16 THE COURT: Go ahead, restate your question.
17 BY MR. MULLINS:
18 Q You listed -- I'll just say the first names -- Alexis and
19 Lauren and put their phone numbers down, is that right?
20 A Correct.
21 Q And you'd agree over the 20 years of -- or over 30 years of
22 being a teacher, you do encounter difficult students, is
23 that right?
24 A Yes, and I always do well with them.
25 Q And the last thing you want to do is expel or kick a student

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1 out of school, because that tends to foretell their life
2 heading in a negative direction, is that right?
3 A Can you break that down, I'm sorry, it's too long.
4 Q You really don't want to have -- in general -- I understand
5 you're not a school administrator, but as the philosophy of
6 a teacher you want to keep kids in school, going to school,
7 learning and advancing both socially and educationally, is
8 that right?
9 A And that's what I tried to do with M.H.
10 Q Now, you described the incident occurring and Mr. Zessin
11 came to your room and spoke with you briefly, is that right?
12 Your assistant principal?
13 A Correct.
14 Q And you also were interviewed by Barb Pauli, the principal
15 of the school, is that right?
16 A Not actually, no.
17 Q Did you talk to her?
18 A I walked out -- do I elaborate, I'm sorry, I don't want to
19 talk too much.
20 THE COURT: Well, you should just answer the
21 question as best you can.
22 THE WITNESS: Okay.
23 BY MR. MULLINS:
24 Q You met with Principal Barbara Pauli --
25 A (Multiple speakers)--

1 Q -- specifically to discuss what had occurred with Marcus?
2 A I walked down to her office briefly.
3 Q Okay, and discussed the matter with her?
4 A Briefly.
5 Q And told her what happened?
6 A Briefly.
7 Q Did she ask you how you were?
8 A Yes.
9 Q Did she look at or examine your hand at all?
10 A No.
11 Q Okay, and did she ask you -- ask about students who might
12 have been present or witnessed the matter?
13 A No.
14 Q Did she, to your knowledge, talk with any of the students?
15 A Not to my knowledge.
16 Q Did Ms. -- or Mr. Zessin talk with any of the students?
17 A At that time not to my knowledge.
18 Q Did Scott Goins, Police Officer Scott Goins come to the
19 school?
20 A Not to my knowledge.
21 Q Okay, did he talk to any of the students?
22 A At that time not to my knowledge.
23 Q Okay, are you aware that Barb Pauli, Mr. Zessin, or Officer
24 Goins talked with the students at any time that day, the
25 next day, the day after?

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1 A They said they did on October 15th I think it was --
2 (inaudible)-- when they had -- when Amy and I were called
3 into that meeting, but they wouldn't share any of the
4 information with us.
5 Q Let me refer you to Defendant's Exhibit 17.
6 A I don't have that.
7 Q (Inaudible)--
8 A Thank you.
9 Q On the second page top, let me give you a chance to review
10 the matter.
11 THE COURT: What exhibit are we on again, Mr.
12 Mullins?
13 MR. MULLINS: Defendant's 17.
14 THE COURT: Okay.
15 MR. MULLINS: It's entitled, blank incident
16 in art class.
17 THE WITNESS: I was not -- woops, what's your
18 question, sorry?
19 BY MR. MULLINS:
20 Q Well, first are you familiar with Mr. Zessin's report?
21 A Only right now --
22 Q Okay --
23 A -- well, not right now, when you showed me.
24 MS. BONANNI: Your Honor, let me just place
25 an objection to the extent that these are materials she

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1 wasn't provided. They're written by someone else and they
2 contain hearsay.
3 MR. MULLINS: Okay, they've been provided
4 long, long ago and the point is is that we have had
5 testimony again and again that the school did not
6 investigate this incident and so, for purposes of showing
7 that indeed people, including herself and other people were
8 talked to and that reports were prepared as opposed to her
9 simply being ignored, that's the purpose for which it's
10 being offered.
11 THE COURT: Okay, I'll -- objection's
12 overruled. Overruled, Ms. Boninni (sic) go ahead, next --
13 MS. BONANNI: And the hearsay, your Honor?
14 THE COURT: I don't think that they're
15 necessarily anymore hearsay than any of the documents that
16 the plaintiffs used at the time, so go ahead.
17 BY MR. MULLINS:
18 Q So, if I have you turn to page 2 there's a signature on
19 there, Joe Zessin. Are you familiar with his signature?
20 A I don't know his signature, no.
21 Q Okay, but you do know Joe Zessin?
22 A Yes, and this statement --
23 Q Well, we're --
24 A -- (multiple speakers)--
25 Q -- gonna get to that, it's real simple, you do know who Joe

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1 Zessin is?
2 A Yes.
3 Q He's the -- one of the assistant principals at the high
4 school, is that right?
5 A Yes, was.
6 Q At this time?
7 A He's not there right now.
8 Q At the time that the incident with Marcus occurred?
9 A Yes, he was his grade principal.
10 Q And you can -- the document starts off indicating that he
11 was called by you to -- about Marcus?
12 A Yes, as I referred to you before yesterday I called many
13 principals.
14 Q And it then goes on to indicate that he went down to the
15 classroom and Marcus wasn't there?
16 A Correct, but the next part is not true.
17 Q The part where it says that immediately several students
18 blurted out to me that Marcus did not hit Ms. Davis?
19 A Yes, I've never seen that before and the students were as
20 quiet as a mouse, you could hear a pin drop --(inaudible)--
21 Q The next paragraph says that he came back to his office and
22 Marcus was waiting for him in his office, is that right?
23 A I have no knowledge of that.
24 Q We're talking about this document and you know, whether
25 that's what the document says.

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1 A Yes, that's what this document says.
2 Q And I believe, and correct me if I'm wrong, you had
3 instructed Marcus to leave the room and go to the office?
4 A Yes, but he didn't leave for a while, I had to call
5 security.
6 Q Okay, you see what he told Mr. Zessin that he was -- and I'm
7 doing freestyle rapping at his seat.
8 MS. BONANNI: Your Honor, at this point the
9 document speaks for itself, Mr. Zessin hasn't provided any
10 foundation for this document, it was Mr. Zessin who talked
11 to this student, Ms. Davis wasn't there, how can she
12 comment? It's hearsay. He can ask Mr. Zessin.
13 MR. MULLINS: And I can, but I you know, I'm
14 going in the order of the witnesses and she said --
15 THE COURT: Okay, go ahead and restate the
16 question --
17 MR. MULLINS: -- there was no investigation.
18 THE COURT: -- so I can understand its
19 connection with the objection, go ahead.
20 BY MR. MULLINS:
21 Q Go ahead.
22 THE COURT: I want to hear you restate the
23 question.
24 BY MR. MULLINS:
25 Q Oh, I'm sorry. That Marcus told -- when Mr. Zessin finds

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1 him in his office and asks him what's happening he said that
2 he was freestyle rapping, whatever that is.
3 A If you say so.
4 Q No, I'm just asking if that's what Mr. Zessin has written in
5 his investigation report?
6 MS. BONANNI: Your Honor, I can't --
7 THE COURT: Okay, well I'm gonna sustain the
8 objection, because I'm not sure how she would know what's
9 written in that report.
10 BY MR. MULLINS:
11 Q Marcus never returned to your class, is that right? In
12 other words he was out of your class as a student?
13 A Correct.
14 Q Now, the incident that you had with Marcus he was seated at
15 his desk?
16 A Correct.
17 Q And you approached him and he had some artwork that he was
18 working on in front of him, is that right?
19 A I don't recall at this time, sorry.
20 Q Okay --
21 A Because, it was the beginning of the hour.
22 Q Did you not reach to take that away from him?
23 A No --
24 Q -- as you're ordering him to leave the room?
25 A -- no.

1 Q You --
2 A Not to my recollection, no.
3 Q You describe somewhat the incident yesterday and you were,
4 as I recall, indicating that you had your hand on the table
5 and wasn't the reason you had your hand on the table to take
6 hold of what he was working on?
7 A No, it was because I was leaning down to keep it a private
8 conversation. So, when other students were up getting their
9 work they wouldn't hear me asking very nicely please, do not
10 threaten, please do not keep saying what you're saying.
11 Q And in your demonstration whether or not you were grabbing
12 at the paper or he was grabbing back at the paper I
13 understand you don't recall that you --
14 A No, I didn't --
15 Q -- demonstrated to us yesterday that with a closed fist he
16 hit your hand just as I'm showing here now --
17 A No --
18 Q -- right?
19 A -- it slid sideways like this. It didn't come up over, like
20 I said before, he just was here and he just went whew.
21 Q Slid it across the table?
22 A Well, he forcefully whew, yes.
23 Q It's been indicated that he pushed your hand away from his
24 artwork.
25 A Not to my knowledge.

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1 Q As to your demonstration, so I'm clear, you demonstrated him
2 going into the side of your hand --
3 A Right here, onto this part of my hand like that and I --
4 Q To my recollection and I'll leave it to the jury, you
5 demonstrated him striking your left hand?
6 A No, it was the right hand.
7 Q It's your right hand, the medical records would indicate
8 you're complaining about --(inaudible).
9 A What?
10 Q You're saying it is the right hand?
11 A I've always said it was the right hand.
12 Q Okay, again I was recollecting from what I observed from
13 your demonstration yesterday, but I leave that to the jury.
14 Let me refer you to Plaintiff's Exhibit 2.
15 A I don't have that, your 2?
16 Q It should be in your book under number 2.
17 A Oh, sorry. (Inaudible)--
18 Q That's all right, take your time.
19 A Is it okay if I set these on the floor?
20 THE COURT: What's that?
21 THE WITNESS: Can I set these on the floor?
22 THE COURT: Yes, you may.
23 THE WITNESS: Yes.
24 BY MR. MULLINS:
25 Q Now, and take a minute to familiarize yourself with the

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1 document and let me know if you are familiar with it or not.
2 A I'm sorry, what number?
3 Q Two.
4 A Yes.
5 Q Okay, and this -- do you know Officer Scott Goins?
6 A No --
7 Q It's not a trick question, I mean, you may or may not.
8 A I don't recall his name.
9 Q Okay, but you do recall a police officer speaking with you?
10 A When I went to the -- only when I went to the police
11 station.
12 Q And thereafter do you understand that he interviewed
13 Principal Pauli?
14 A Who was he, sorry?
15 Q I'm sorry?
16 A Who was he?
17 Q The officer. On the top it says S. Goins, I understand his
18 first name is Scott, but the question is whether you know
19 that he went to the school and interviewed the principal
20 Barb Pauli?
21 MS. BONANNI: I'm placing an objection,
22 Exhibit 2 are the excerpts of the log -- of the student log
23 that Pennie Davis submitted.
24 THE COURT: Okay, just hold on just a second.
25 So, which document are you -- have you got there, is it --

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1 are you looking at the Jackson Police Department police
2 report?
3 MR. MULLINS: Yeah, I have it marked as
4 Exhibit 2, but maybe --
5 THE COURT: Is it Defendant's Exhibit 2?
6 MR. MULLINS: No --
7 THE COURT: Maybe you're looking at Plaintiff
8 2, I don't -- that's
9 MS. BONANNI: It's not.
10 THE COURT: Would you mind showing counsel
11 which exhibit you're referencing?
12 MR. MULLINS: Yeah, I'm --
13 MS. BONANNI: (Multiple speakers)--
14 MR. MULLINS: -- questioning as to her
15 knowledge --
16 MS. BONANNI: (Multiple speakers)--
17 MR. MULLINS: -- of that which had been
18 marked --
19 MS. BONANNI: -- okay, so --
20 MR. MULLINS: -- as Exhibit 2.
21 MS. BONANNI: -- no, Exhibit 2 is the student
22 log.
23 MR. MILLER: (Inaudible)--
24 MR. MULLINS: Okay, I'm -- I apologize.
25 THE COURT: Just maybe this will help

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1 clarify, so when you -- after the alleged assault that
2 occurred, did you go to the Jackson Police Department right
3 down around the corner here?
4 THE WITNESS: Yes, Sir.
5 THE COURT: And you went up to the desk and
6 you made contact with a Jackson police officer, is that
7 correct?
8 THE WITNESS: Yes, Sir.
9 THE COURT: Okay, go ahead, Mr. --
10 MR. MULLINS: And I apologize, it's properly
11 Plaintiff's 11.
12 THE COURT: Plaintiff's 11, okay, very good.
13 THE WITNESS: (Inaudible)-- okay.
14 BY MR. MULLINS:
15 Q And I'm specifically looking at page 2 there where the
16 typing is.
17 A (Inaudible)--
18 Q Sure.
19 MS. BONANNI: Your Honor, may we approach?
20 THE COURT: You may, come on up.
21 (Bench conference from 1:08:41 p.m., to
22 1:10:42 p.m.)
23 BY MR. MULLINS:
24 Q And so, again going back look at the top left corner, this
25 is -- it would indicate October the 12th, 2015 at 14:59

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1 hours military time, I guess they'd call it, that would be
2 consistent with when you recall going over to the police
3 station?
4 A I'm sorry, I don't see that.
5 Q Way on the very top left corner of page 2.
6 A Okay, I see the date, sorry.
7 Q Okay, and so you -- although you don't recall his name, I
8 understand that, you did talk with some police officer?
9 A Correct.
10 Q Okay, and that you do or you don't know that that police
11 officer then did go and interview Principal Barb Pauli?
12 A I have no knowledge of that.
13 Q Okay, and you do or don't know that she related what you had
14 told her prior to that and what Mr. Zessin had told her?
15 A I don't have any knowledge of that.
16 Q Okay, and you do or don't know that he asked to speak to
17 some students?
18 A Who is he?
19 Q The police officer, I'm sorry, you're correct.
20 A No, I don't have that knowledge.
21 Q Okay.
22 A Didn't have that knowledge until now, or a while ago.
23 Q Do you know who Hanna is?
24 A She was one of my students --
25 Q Would have been present at the time this incident occurred?

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1 A I believe so.
2 Q Okay, and you do or don't know that the officer had her, the
3 principal bring her to him and ask what happened?
4 A I was aware of it by her coming to me later in tears.
5 Q Okay, and you -- Alexis Adkins -- or Alexis, we talked about
6 that's one of the names that you had given on the incident
7 report as a witness, you're familiar with Alexis?
8 A I have 400, 600 students a year when I'm at Parkside, so now
9 that I'm back at the Jackson High and this is two and a half
10 years ago. I believe I'm familiar with the name.
11 Q Okay, I might refer you back to your incident report number
12 5.
13 A (Inaudible)-- yes, I believe I put her down, because I
14 remember seeing that -- him saying, yes I see her name on
15 there.
16 Q Okay, you do or don't know that she was interviewed by the
17 police officer?
18 A I knew she was interviewed by somebody, I don't know who it
19 was or when it was, because she --(inaudible)--
20 Q Now, you had indicated that you did talk with principal Barb
21 Pauli?
22 A Briefly.
23 Q And let me show you, if I may, Defendant's--
24 THE COURT: Mr. Mullins, if you need to
25 approach the witness, you don't have to ask each time, just

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1 to speed things up so, because I know you've got a lot of
2 exhibits either side, so just approach when you need.
3 BY MR. MULLINS:
4 Q Let me show you Defendant's proposed Exhibit 25.
5 MS. BONANNI: I'm sorry, 25?
6 MR. MULLINS: Yeah.
7 MS. BONANNI: Okay.
8 BY MR. MULLINS:
9 Q Okay, do you see that?
10 A I've never seen this before until now.
11 Q Okay, then why don't you take some time and familiarize
12 yourself, read it and let me know when you've had the
13 opportunity to do so.
14 A Yes, I skimmed through it.
15 Q And this is her memorializing that on October the 12th she
16 had received a phone call from you and had a conversation
17 with you?
18 A But, it's incorrect and she --
19 Q We'll get --
20 A -- wrote it up --
21 Q -- to that --
22 A -- on October 16th many days after that.
23 Q We're gonna get to that. She's typed out what she says is
24 her recollection of the conversation that she had with you
25 on October 12th, is that right?

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1 A Four days later, yes.
2 Q October the 16th? That's the date to the document. I'm
3 trying to agree with you here.
4 A Yes.
5 Q Okay, and she indicated that an incident involving Marcus
6 and yourself had occurred and she indicated that she would
7 like to see you. Did that occur?
8 A I called her and I walked down to her office.
9 Q All right, and she lays out back and forth the conversation
10 between you and her and you said you did have a, as you
11 indicated, brief conversation?
12 A I had a brief conversation and some things she didn't put in
13 there and other things she added to that I've never seen
14 before.
15 Q Okay, but I'll accept the fact that you may never have seen
16 it, but you did have a --
17 A I never said -- this is inaccurate.
18 Q Okay, she recounts at that time asking if you were okay, did
19 she?
20 A Yes, and I told her no.
21 Q Okay, she indicates here saying I'm fine, really I'm fine.
22 You can say if you don't believe -- if you disagree.
23 A No, because I've --(undecipherable)-- like I testified
24 yesterday.
25 THE WITNESS: Am I talking too much?

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1 THE COURT: No.

2 THE WITNESS: I had my hand underneath my

3 arm, I am outside the door, in there is her desk and she's

4 --

5 BY MR. MULLINS:

6 Q Okay, and she indicates -- indicated that she had touched

7 your hand --

8 A No, she couldn't, because the distance there's no possible

9 way.

10 Q Never got that close to you?

11 A No.

12 Q Okay, she indicated that you indicated to her that you

13 bruise easily and you wouldn't be surprised if your hand was

14 bruised.

15 A No.

16 Q Didn't say that?

17 A No.

18 Q Okay.

19 A Matter of fact, she asked me was it open fist or closed and

20 I said closed.

21 Q Okay --

22 A And she said put that in -- am I talking too much? Put that

23 into the referral and as I stated before, I can't go back,

24 so I just left it.

25 Q I'm sorry, you stated what?

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1 A I stated before that I can't go back into the -- once you
2 send it's sent -- she told me to put in there closed fist
3 and I already sent it.
4 Q And she indicates that -- you said you had to go to drop a
5 grant request off, did you?
6 A I believe not, she was -- had a meeting or had something
7 going on, so she didn't have time to spend --
8 Q Okay, so it's your recollection that she ended the
9 conversation, you didn't say, I have to go and left?
10 A Correct.
11 Q Okay, now if -- from that point on Marcus, if you will, was
12 out of your class and was never a student in your class
13 again?
14 A Correct.
15 Q Okay, and you testified yesterday that you had also
16 petitioned for and obtained a personal protection order, is
17 that right?
18 A Correct.
19 Q And I'll refer you -- it's been referred to before, but to
20 Defendant's Exhibit 14.
21 MR. MILLER: That's part of plaintiff's 8.
22 MR. MULLINS: Or for your ease of reference,
23 plaintiff's 8.
24 MS. BONANNI: What are we looking at?
25 MR. MULLINS: Your 8.

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1 THE WITNESS: Yes, I'm there.
2 BY MR. MULLINS:
3 Q And let me refer you to the bottom third, if you will, of
4 the page where it says, "It is ordered." Let me know when
5 you're with me.
6 A I'm sorry, I don't know what you mean.
7 Q Right down here you can see it says, "It is ordered" and
8 then there's a number of boxes?
9 A Okay.
10 Q All right, and among other things number 7 it is ordered and
11 M.H., the name is blacked out and what is ordered is checked
12 in the boxes, "M.H. is prohibited from appearing at the
13 workplace or the residence of the petitioner", is that
14 right?
15 A I'm sorry, I'm not seeing exactly where you mean. I had a
16 victim's rights advocate help me fill that out.
17 Q That's okay --
18 MS. HOLMES: Counsel, I'm sorry, there are a
19 number of pages in that packet, so she --(inaudible)--
20 MS. BONANNI: It's the third page.
21 BY MR. MULLINS:
22 Q (Inaudible)-- page 2, this is what we call Judge's order.
23 A Okay, this then -- that says 14, this says 8 and this is --
24 (inaudible)--
25 Q Are we on the same page now?

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1 A Yes --(undecipherable)-- to answer your question.
2 Q Very good, and I'm asking you where it says, that's what's
3 called the order and it says, "It is ordered" under number 7
4 and there's M that's blacked out; H, blacked out, "...is
5 prohibited from" and there's a number of boxes that have
6 been checked, is that right?
7 A Correct.
8 Q Okay, and among others, the second one says that M.H. is
9 prohibited from appearing at the workplace or the residence
10 of the petitioner.
11 A Correct, as the Judge at the time --
12 Q I just want to ask you about the piece of paper with -- we
13 talked about it yesterday, I'm sure your counsel's gonna
14 talk with you more about it, but --
15 A Sorry.
16 Q -- is that what the piece of paper says, we had a hard time
17 finding the page, just trying to move along.
18 A Yes, this is the page --
19 Q Okay --
20 A -- that you found for me.
21 Q Okay, now your workplace primarily is teaching in the
22 classroom or might be the building, it might be the campus,
23 I guess that term is kind of vague maybe. But, he was no
24 longer in your class?
25 A Yes.

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1 Q Okay, however, you testified yesterday that he was still in
2 the building, you saw him -- I think you indicated you
3 thought that he might have banged on your door?
4 A Can you break those questions down? Sorry.
5 Q You, subsequent to the entry of the personal protection
6 order that says that he shouldn't appear at your workplace.
7 He was -- we agreed, he's no longer in your classroom?
8 A Correct.
9 Q Okay, never was a student of yours again?
10 A Correct.
11 Q You -- and -- but, he was still a student at the school?
12 A Correct.
13 Q He's, as I understand it, in orchestra or band. You may or
14 may not know, but.
15 A I don't know.
16 Q Okay, the orchestra/auditorium/band room is just down the
17 hall from the room that you were teaching?
18 A There is several rooms, there's right across my hall at the
19 time was the choir room, a few doors down, if I recall
20 right, is the band room, maybe it would help with a map on
21 the first floor there further down is the auditorium.
22 Q So, the -- you're not certain whether he was part of the
23 musical instruction, but the music facilities or center, if
24 you will, are in close proximity to your classroom?
25 A Yes.

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1 Q Okay, and going back again I thought I understood you to say
2 yesterday that you had seen him a time or two after the PPO
3 was entered, is that right?
4 A Yes.
5 Q Okay, and you aren't sure, but suspected that he may have
6 banged on your door at one point in time?
7 A Yes.
8 Q Okay, and you were fearful of his presence anywhere near
9 you?
10 A No, it was a liability for the school to have a student
11 unsuper -- sorry, I'm a little nervous, unsupervised because
12 it was during like the third hour and he was not placed in a
13 class or supervision 3rd hour and I'm not sure about 4th
14 hour, because -- am I talking too much again, I'm sorry --
15 because of the orchestra teacher/band teacher, whoever he'd
16 like this lady, worked partly at Parkside and then partly at
17 Jackson High, so she told me herself that she wasn't in
18 there, that the transfer back and forth, but he would just
19 come for a room and no one else in there.
20 Q Some teachers move back and forth between buildings even in
21 the same day?
22 A Oh yes, every day.
23 Q Okay, people are always moving around?
24 A No, not always --
25 Q Not always.

1 A -- your assignment can be split in half or in quarters or
2 you might have one hour at Parkside and then four more hours
3 or three or what have you depending what year at Jackson
4 High, so you have to drive back and forth usually only one
5 time. And there's very few, very limited, maybe I want to
6 guess one or two teachers have had to do that.
7 Q Okay, and on November the 4th you filed a document with the
8 court seeking to modify the personal protection order, I
9 think you testified to that yesterday, is that correct?
10 A What you're saying is correct.
11 Q All right, and if I can refer you to Defendant's 16.
12 (Inaudible)-- try that.
13 A What is the same?
14 Q -- what pages we're on.
15 A Oh, that's not 16.
16 Q This is Defendant's 16.
17 A I don't have it.
18 Q I'm handing it to you right now.
19 A Okay.
20 Q Take a moment and look at it, are you familiar with that
21 document?
22 A Yes.
23 Q Okay, and under you can see D-2 is that your handwriting?
24 A Correct.
25 Q And among other things it indicates "M is in the room next

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1 to my room and I feel unsafe with him being so close in the
2 area." Is that right?
3 A That is what it says, because he was right out my door when
4 I heard the big bang and he was -- I won't go into it, sorry
5 I'm talking too much.
6 Q So, his presence -- any presence, I mean he --
7 A That's only --
8 Q -- he never came by your residence, that's --
9 A No.
10 Q -- I'd never heard that, okay. And but, he's still in the
11 building and the sight of him being near you gives you fear,
12 is that right?
13 A No, the unsupervision is a liability for our school.
14 Q Okay.
15 A And I was trying to also look out for our school.
16 Q And you -- putting aside looking out for the school you
17 indicated that, again further on in the 3rd line, "I have
18 fear" is that right?
19 A Yeah, because I want our school to be the best, I don't want
20 them to, you know, be affected by what's happened. I have
21 to report to them if I didn't tell them what happened or
22 what's happening.
23 MR. MULLINS: I'd move for admission of
24 Defendant's 14 and 16, your Honor,
25 (At 1:32:58 p.m., Defendant's Exhibits 14 and

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1 16 were offered)

2 THE COURT: Any objections to the admission

3 of Defendant's 14 or 16?

4 MS. BONANNI: Well, only to the extent that

5 they've already been admitted and -- under a different

6 number, but I guess that's fine.

7 THE COURT: All right, they'll be so

8 admitted.

9 (At 1:33:16 p.m., Defendant's Exhibits 14 and

10 16 are admitted)

11 BY MR. MULLINS:

12 Q And so, you've reported this incident with Marcus both to

13 the school and to the local police department?

14 A Yes.

15 Q And various people have been talked to about the incident?

16 A I assume so --(inaudible)--

17 Q Okay and you, as I recollect, the very next day -- and I

18 think you'd indicated also that you went to -- your own or a

19 clinic that evening and had your hand wrapped, is that

20 right?

21 A I went to a clinic the same day on the 12th when I was

22 injured and went to the police department, they suggested a

23 PPO, and then I went to the clinic --

24 Q Okay --

25 A -- but that was on the 12th.

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1 Q -- and so, and you've indicated you had an injury to your
2 right hand, or a contusion I think you indicated?
3 A Correct.
4 Q Okay,
5 A --(inaudible)--
6 Q -- and the -- if I recall your testimony the very next day
7 you went back to school -- let me back up, on the 12th you'd
8 finished your classes on the 12th, is that right?
9 A Correct.
10 Q Okay, and on the 13th you returned to work and were teaching
11 again?
12 A Correct.
13 Q And at some point in time in the day, Mr. Beals, who is the
14 superintendent and a gentleman you referred to as Ben Pack
15 came down to see you, is that right?
16 A Second hour, yes.
17 Q Okay, and they inquired about your injury?
18 A I wouldn't call it an inquiry, I would call it --
19 Q Well, they wanted to --
20 A -- angry, I would call it.
21 Q They wanted to see if you were hurt, did they not?
22 A They were upset --
23 MS. BONANNI: I'm gonna object to the extent
24 she's asking what was in their head, their motive, she can't
25 testify to that.

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1 THE COURT: Sustain and rephrase.
2 BY MR. MULLINS:
3 Q Okay, did they ask you what injury, if any, you had?
4 A The first thing was take off the wrap.
5 Q Okay, and you indicated that, we'd covered it before, I hope
6 you can recall it, that you yourself that day suspected that
7 there might be a fracture in your hand, but it would take
8 five to seven days to find out, is that right?
9 A I said the swelling needed to go down, I was told by the --
10 sorry, by the Med Plus doctor.
11 Q And again, I'm not, none of us are doctors and I'm leaving
12 it for the doctors to say what they said, but when you -- in
13 your Exhibit 5 if you want to refer back to that.
14 A Okay.
15 Q And you had indicated that you might have a fracture on your
16 right hand?
17 A Correct.
18 Q And if I --
19 A It was after seeing me.
20 Q -- that's okay, just trying to determine what you -- that's
21 the actual incident report filed with the school, is that
22 right? Your incident report.
23 A Correct.
24 Q Okay, and on -- again referring to your -- to Exhibit 20
25 where I asked about --

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1 A Sorry, my 20 or your 20?
2 Q My 20.
3 A Okay, I'll see if I have it.
4 Q I'm referring to mine, because they're just one page and --
5 A Okay, --(inaudible)--
6 Q Okay, and you indicate there under the date 10/12/15 that
7 you had a bruise and possibly a fracture, it says the
8 teachers hand, I assume you're talking about your hand --
9 A I don't see that, sorry.
10 Q -- and then in parens it says we'll need to wait five to
11 seven days for the swelling to go down to know for sure.
12 That's what you had indicated. In other words, I'm just
13 simply trying to establish that you yourself suspected that
14 there might be a fracture in your hand at that time. Or you
15 didn't know, but...
16 A The only thing I find strange is these are two different
17 documents put together and I'm not sure where that date came
18 from.
19 Q I'm not putting them together, I'm just trying to establish
20 the fact that at that time you weren't sure whether you had
21 a fractured bone in your right hand or wrist.
22 A After I saw the doctor.
23 Q Correct, and so, as Mr. Beals, the superintendent and Mr.
24 Pack the -- who handles workers comp or human resources,
25 they came down to see you at -- when they were standing

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1 there you didn't know whether you had a fractured bone in
2 your hand, is that right?
3 A I didn't know, but I doubted it.
4 Q You doubted it?
5 A Yeah, a little bit --
6 Q It didn't seem that bad?
7 A -- but I wished -- oh, it hurt, it pounded and it was
8 swollen --
9 Q Okay.
10 A -- but I wished if they cared about me they would have --
11 one of them would have stayed in my room and said let's get
12 you to the Work Well right then. I would have gone like
13 that.
14 Q Okay, and let me show you part of --
15 MR. MILLER: --(inaudible)--
16 MR. MULLINS: Could we take a brief -- we
17 might have to remark an exhibit, that's a good time --
18 (undecipherable)--
19 THE COURT: Sure, a good segue for a -- all
20 right, ladies and gentlemen, why don't we rise, have a 10
21 minute break, David would you take the jury to the jury
22 room? Everyone can be at ease for the next 10 minutes.
23 (At 1:41:30 p.m., hearing recessed)
24 (At 3:46:11 p.m., hearing resumed)
25 THE COURT: Well, I thought most of the time

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1 those summary disposition motions were gonna be I thought a
2 lot quicker than they were, I mean they extensively briefed
3 on, but they argued a little farther -- longer than I
4 thought, so.
5 MS. BONANNI: Your Honor, you just gotta deny
6 them all.
7 THE COURT: Well, you --
8 MR. MILLER: I'm crossing my fingers she
9 files a plaintiff's --(multiple speakers)--
10 THE COURT: You know sometimes though I can
11 see the defense attorneys sometimes when I deny that motion
12 for summary disposition there's not necessarily a
13 disappointed look in their face.
14 MS. BONANNI: Oh, I know.
15 THE COURT: I'm just gonna leave it at that.
16 MR. MULLINS: That meter just doesn't grind
17 to a halt.
18 THE COURT: Sometimes you just aren't all
19 that worked up about it. The case will go on.
20 MS. BONANNI: Yeah, true. There is --
21 THE COURT: All right, so, let's bring the
22 jury in, I'll take responsibility for the delay, so I'll let
23 them know.
24 MS. BONANNI: Yes, please don't let them
25 blame us.

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1 THE COURT: I'm not. I'm gonna shoulder that
2 100 percent.
3 MR. MILLER: You're not supposed to say
4 things like that in front of our client. Gives bad
5 impressions.
6 MS. BONANNI: Yeah. Yeah, that didn't happen
7 here, --(inaudible)--
8 MR. MILLER: Deny the motion, Judge, please.
9 THE CLERK: All rise for the jury.
10 (At 3:48:10 p.m., jury entered)
11 THE COURT: Well, thank you ladies and
12 gentlemen, you may be seated. Ladies and gentlemen, I do
13 want to apologize for the delay, that wasn't anything that
14 any of the parties did, I had a motion for summary
15 disposition in a construction litigation case with a couple
16 lawyers from Detroit, one from Jackson and they had
17 extensively briefed the issue and had been in court a number
18 of different times where I thought their arguments would not
19 go on as long as they did, but sometimes it's difficult for
20 a Judge to anticipate how long a lawyer's gonna take in
21 presenting their things.
22 So, I just don't want you to think that
23 there's any delay attributed to either of the parties, they
24 patiently waited while I was able to finish this up. The
25 good news is is that we can pick the case back up right now,

1 so let's go. Go ahead --

2 MR. MULLINS: Thank you, Judge.

3 THE COURT: -- Mr. Mullins.

4 BY MR. MULLINS:

5 Q Ms. Davis, could I ask you to turn to your Exhibit 52?

6 A Yes, Sir.

7 Q And --

8 A Okay, I've got it.

9 Q -- and page 2, I believe. Is that a letterhead, does it say

10 on top of it Jackson Public Schools?

11 A Yes.

12 Q Okay, and just to avoid some of the confusion we've had.

13 So, you see -- it's a form, your name is there Pennie Davis?

14 A Yes, I've never seen this form before.

15 Q That's okay, and the date right across from that is

16 10/13/15?

17 A Yes.

18 Q Okay, and underneath Jackson Public Schools what's the

19 heading or the title there? Initial authorization to treat

20 form?

21 A All additional treatment and service beyond first visit --

22 Q I'm sorry, let me try to redirect you. Big letters on top,

23 Jackson Public Schools, we can see that?

24 A Correct.

25 Q And then right underneath that it says initial authorization

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1 to treat form, is that right?
2 A Correct.
3 Q And that's October 13, 2015?
4 A That's what this is dated, yes.
5 Q And the bottom left hand corner says Allegiance Occupational
6 Health Clinic, is that right?
7 A Correct.
8 Q And this -- and you've been there before, have you not? To
9 Allegiance Occupational Health Clinic?
10 A That's a possibility.
11 Q You don't recall going there before? I don't mean in
12 relationship to this incident, I mean falling in the parking
13 lot and hurting your shoulder at school or you've been hurt
14 at school in the past and gone to Henry Ford Allegiance,
15 haven't you?
16 A I believe so.
17 Q Okay, and so they authorized you on October the 13th to go
18 there and to treat and in fact, as to relative to your
19 possible having a fracture in your hand asked you to go and
20 get checked out there, right?
21 A After I left school I was unaware of this until the 15th
22 when I returned back to school.
23 Q This is -- you were, I think you testified yesterday that
24 Mr. Beals and Mr. Pack came and chatted with you in the hall
25 outside of your office on the 13th?

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1 A Outside of my classroom --
2 Q Right.
3 A -- and I wished, like I said again, that they would have
4 told me or just came and took my class that hour and sent me
5 right then. But, there was no conversation of this at all.
6 Q They indicated that they wanted you to be treated.
7 A On the 13th?
8 Q Yes.
9 A My knowledge when I got it was on the 15th.
10 Q So, you're saying that despite what this form says you
11 weren't authorized to be treated just like any -- they're
12 concerned, they want to know if you're hurt and they're --
13 and we get into this whole back and forth about whether or
14 not you're gonna go to Allegiance when you've been
15 indicated, told and authorized to go there on October the
16 13th and there it is right in writing.
17 A You also have to take in consideration that at the time they
18 told me, the time Jessica alerted me to this I had no idea
19 until I came back to school on the 15th.
20 Q And you went finally to Allegiance on the 15th
21 A I was --
22 Q -- despite being told to go beforehand?
23 A I went as soon as I found out, as soon as they got a sub, as
24 I said before, to take over my classes. I turned on my
25 computer again -- or am I talking too much?

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1 THE COURT: No, just go ahead and answer his
2 questions.
3 THE WITNESS: Okay.
4 BY MR. MULLINS:
5 Q You went there, that's all I'm trying to --
6 A Oh --
7 Q You --
8 A -- yes.
9 Q -- finally went there on the 15th?
10 A I went there as soon as I could.
11 Q Okay.
12 A Not final.
13 Q And turn the page to the entry from Allegiance on the 15th.
14 A (Inaudible)-- okay.
15 Q And Allegiance, like most facilities, you could go there
16 before school, during school, after school, they just wanted
17 you to go there, they didn't --
18 A Again, are you asking me a question? Okay.
19 Q I mean, I know you've gone about well, I couldn't go right
20 here --
21 A You cannot go unless you have a referral, they call --
22 Q Well, we've already got past the referral.
23 A -- well, that's what you're --
24 Q -- the referral's been done --
25 A -- that's what I'm understanding.

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1 Q -- you're authorized.
2 A -- so, I'm sorry, I don't understand what you're asking.
3 Q And I think you had testified yesterday that even though the
4 school, even if you forgot about the referral that you had
5 indicated that the school and the clinic they call back and
6 forth and fax stuff back and forth just like that, so you
7 know where it is, they want you to go there and even if you
8 wait until the last bell rings at 4:00 o'clock or 5:00
9 o'clock, I mean, it's just a matter of -- there's this
10 possibility you might have a fracture, they don't have any
11 medical record from you or anybody else and they want to
12 make sure you're all right and get you checked out.
13 A They never asked me to go. The first I found out was on the
14 15th.
15 Q And you don't understand that authorization to be --
16 A I --
17 Q -- why would they authorize you to go if they weren't asking
18 you to go?
19 A I didn't know of the authorization until the 15th.
20 Q Okay, so we had -- not to unduly take the jury's time, you
21 had indicated even prior to that that there was this
22 suspicion that you might have a fracture in your hand or
23 your wrist, right?
24 A I am no doctor, so --
25 Q Let me back up and -- everybody wants to get this done.

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1 A (Inaudible)--
2 Q You had indicated in some papers which you had submitted in
3 response to the incident that there was this suspicion and
4 it might take five to seven days to determine whether you
5 had a fracture in your hand or your wrist. And that's --
6 you had advised the school of?
7 A That's --
8 Q I don't want to have to go back and get those papers out
9 again.
10 A -- what I was told by a doctor that my hand --
11 Q That's fine and my whole thing is and you let the school
12 know that, so the school is like, hey get over to
13 Allegiance, let's -- we don't, you know, a fracture that
14 isn't treated or you know, that -- you have indicated quite
15 a bit yesterday that your hands are very important. So, if
16 the fracture isn't treated and you know, maybe there is a
17 fracture or you end up with carpal tunnel syndrome or a
18 vascular necrosis and the bone in your wrist dies or you
19 know, something where there has to be surgery, that could be
20 -- that would be bad for you, real bad for you and it
21 wouldn't be good for the school. So, the best thing is is
22 to get to a professional place and get it examined and
23 that's what they wanted you to do. And that's what they're
24 -- and it's in everybody's best interest, right?
25 A I went to the walk-in clinic the day of the accident myself

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1 at Med Plus which is 52 I don't know if they put it into
2 court yet or not, so hopefully you'll see and it's says on
3 there right hand swollen, so I addressed it, because I
4 wasn't given any direction at my workplace to go to Work
5 Well and again, you cannot go to Work Well unless they
6 direct you. So, I took it upon myself as a good employee to
7 get it checked out as soon as possible. I did not make any
8 claims of workman's compensation --
9 Q I didn't say you make a claim, this is just all about
10 information and you've reported that you might have a
11 fracture, but you haven't provided anything from a doctor,
12 because none of us know --
13 A They've never asked me --
14 Q Okay, so you went, you have that page right there in front
15 of you and you did then finally go on the 15th, is that
16 right?
17 A This page I went on the 12th. Monday, 10/12 that you're
18 referring to --
19 Q I'm talking about Allegiance.
20 A -- in front of --(undecipherable)-- well, then I need to
21 know what page, so I can -- because there's a whole stack of
22 them in this 52.
23 Q For ease of reference this is the page 52 that I -- let's
24 stay with that page. And --
25 A Yes, I went there.

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1 Q -- okay, there's October the 15th, 2015, date, hour at
2 office, you can see that. We'll let the document speak for
3 itself.
4 A Okay.
5 Q You do recall going there on the 15th at Allegiance?
6 A Yes.
7 Q Okay, and if we look on that there's some discussion, you
8 indicate your right hand and then there's a one, two, three
9 down at the bottom and the doctor is noting and I'll read it
10 and follow along. You see where the one is circled?
11 A Yes.
12 Q Okay, "Advised patient that x-ray was necessary to check for
13 fracture since we are unable to obtain films/records.
14 Patient refused." Is that what it says?
15 A Not exactly, but --
16 Q Now, hang on --
17 A -- the reason why --
18 Q I didn't ask you about a reason --
19 A Okay.
20 Q I didn't ask you about who, I'm asking you if this document
21 says what I just read on number one?
22 A Oh, not exactly, but yes.
23 Q Then let me try -- not exactly, but yes?
24 A Well, not exactly. You didn't read it word for word, sorry.
25 Q P-circle number one --

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1 A Yes.
2 Q "Advised pt that x-ray was necessary to check for fracture.
3 Since we are unable to obtain film/records. Patient
4 refused."
5 A Okay.
6 Q Could I be any more exact?
7 A That was more, yes.
8 Q Okay, now let me show you Defendant Exhibit 23. So, here is
9 a physicians report of work status and on the right hand
10 side where it says limitations, there's a box checked that
11 says, "Ltd use of right hand due to splint."
12 A Light work --
13 Q Light work, right so, they don't have the x-ray and on top
14 they've written -- no, will see sooner or if the patient
15 will provide an x-ray. But, anyhow your employer has
16 advised you're limited in your work.
17 A I believe the doctor that I went to first did not limit me.
18 I also know that they agreed with me --
19 Q Well --
20 A -- that they would wait --
21 Q -- well --
22 A -- until Monday --
23 Q -- excuse me --
24 A -- to do the x-ray, because --
25 MR. MULLINS: Your Honor, if I could --

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1 THE WITNESS: -- x-rays are not good for you.
2 THE COURT: Okay, just go ahead and restate
3 the question, Mr. Mullins.
4 BY MR. MULLINS:
5 Q I'm just going with the medical records and what they say
6 and as she pointed out light work, limited. Now, let me
7 show you the -- you return on the 19th to Allegiance, is
8 that right?
9 A Correct, and they --
10 Q And --
11 A -- took an x-ray --
12 Q -- and during this period of time, there's a lot of talk
13 yesterday about a meeting that occurred on the 15th and the
14 employer talked with you about not having the examination
15 and they were saying that you have to be on light work, so
16 they're like -- so, you had a discussion about Allegiance
17 Health and you were put on paid leave until they -- a
18 determination as to your medical status could be obtained,
19 is that right?
20 A No.
21 Q Okay, that wasn't talked about at all?
22 A No.
23 Q Okay, now on October 19th, 2015 I'm gonna look -- direct you
24 to the top of that page and you see on the second line, "She
25 has been wearing the splint ace wrap..." you see that

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1 portion?
2 A On Exhibit 26 or 52?
3 Q The third line down on that today's date, October 19, 2015.
4 Third line down, starts off --
5 A Which -- sorry, Sir, which exhibit --
6 Q The one I just handed you.
7 A -- is it 26 or 52?
8 Q Twenty-six.
9 A Okay.
10 Q Part of 52, but I just try to get it simple.
11 A Okay, I'm sorry --
12 Q See the third line, ace wrap?
13 A Yes.
14 Q Ace wrap -- I'm reading this, that third line. Ace rap and
15 it says, "Records from Med Express/x-ray report was not
16 received. Patient states hand still tender at times, but
17 overall improved."
18 A Yes, and I could have came back sooner than the 29th, two
19 weeks later.
20 MR. MULLINS: But -- and your Honor, I'd move
21 to admit Defendant's 23 and Defendant's 26 and Plaintiff's
22 52.
23 (At 4:07:31 Defendant's Exhibit 23, 26 and
24 Plaintiff's 52 were offered)
25 THE COURT: Any objection?

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1 MS. BONANNI: I --(undecipherable)-- 23.

2 MR. MULLINS: All of which are from the

3 Allegiance health records packet.

4 THE COURT: Medical records.

5 MS. BONANNI: The excerpt from the records?

6 MR. MULLINS: It -- I did the excerpt to make

7 this -- these, the 23 -- the 15th, the 19th and your 52.

8 MS. BONANNI: Twenty-three is fine, 15

9 Defendant?

10 MS. HOLMES: Twenty-six, I think.

11 MR. MULLINS: Twenty-six.

12 MS. BONANNI: Twenty-six.

13 MR. MILLER: Here you go Megan, if it helps.

14 MS. BONANNI: Oh, 26, Excerpts of the medical

15 record is fine.

16 MS. HOLMES: Fifty-two has been admitted.

17 MS. BONANNI: And our 52 has been admitted.

18 MR. MULLINS: I'm sorry?

19 MS. BONANNI: Plaintiff's 52, is that what

20 you're looking for --(undecipherable)--

21 MR. MULLINS: Asking to have that admitted --

22 MS. HOLMES: Yeah, that has been admitted.

23 MR. MULLINS: -- the authorization to treat

24 form.

25 MS. BONANNI: Yeah, that has been admitted.

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1 THE COURT: Yeah, 52 has been admitted, but
2 the other two are admitted by way of stipulation of the
3 parties.
4 (At 4:08:38 p.m., Defendant's Exhibits 23 and
5 26 were admitted)
6 MR. MULLINS: Very good, and might I publish
7 the authorization to treat to the jury?
8 THE COURT: Any objection?
9 MS. BONANNI: No.
10 THE COURT: All right, you can be published
11 at this time, go ahead.
12 BY MR. MULLINS:
13 Q Then again for ease of reference for yourself, I'm showing
14 you the note from Allegiance of November the 2nd, 2015. And
15 if we look at the -- again at the bottom right hand corner
16 it's the same form as we'd looked at before. There they
17 indicate discharge from care 11/2/15, regular work, 11/2 and
18 there's no boxes checked as to limitations or light work, is
19 that right?
20 A Correct.
21 Q And I think you had indicated that --
22 A That was when I was back at work already for a few days.
23 Q You'd gone a few days earlier?
24 A Mm-hmm.
25 Q Because, on the -- the second time you went to Allegiance

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1 you did have them take an x-ray, is that right?
2 A On the 19th.
3 Q On the 19th and then that got reviewed and as you indicated
4 they call up and let the school know you can come back and I
5 think you returned to work on the 29th --
6 A The 29th.
7 Q -- I'm sorry?
8 A The 29th, two weeks later almost.
9 Q And any charges that would have resulted from Allegiance are
10 paid for by the school district?
11 A Not my own co-pays. When -- I have co-pays when I get my
12 own medicine for --.
13 Q I'm trying to be specific here, trying to be specific as to
14 these visits to Allegiance that are encompassed in 52.
15 Allegiance didn't charge you for any visit or anything. It
16 was paid for by the school district. That's all I'm talking
17 about.
18 A Yes, as I said, I went on Monday and I paid it myself. Med
19 Plus as a good employee would go in right away.
20 Q I just want to get the record straight, it's kind of a
21 technical business. You went someplace else and you might
22 have had a co-pay there, but at Allegiance which the school
23 doesn't have, they wanted you to be examined, you got an x-
24 ray, you didn't pay anything and weren't charged anything by
25 Allegiance?

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1 A I would say no, but the Med Plus is part of Allegiance, now
2 Henry Ford.
3 Q You went two different places --
4 A Correct.
5 Q -- you didn't go to Allegiance on Monday?
6 A They're a part of Henry Ford system, I'm sorry. They're not
7 probably part of the Work Well, I'm not sure, I don't think
8 so.
9 Q Now, you said there was no discussion, you've talked about
10 this meeting on the 15th, because as indicated you didn't
11 have the x-ray from Allegiance until the 19th, so they
12 brought you in and said, you know, we really want you to be
13 seen by Allegiance. And by then, as that record had
14 indicated you hadn't had an x-ray at Allegiance and on
15 number three he says the results of your fit to work
16 evaluation from Allegiance Occupational Health during your
17 visit on Thursday, October the 15th. That was a subject of
18 discussion when they met with you on October the 15th, is
19 that right?
20 A I don't believe so.
21 Q Okay, and they didn't reinforce with you at that meeting we
22 really want you to go to Allegiance and that's why you went
23 there on the 19th?
24 A No, I went on the 15th. That's the first time I went there
25 --

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1 Q And --

2 A -- sorry.

3 Q -- again, you went on the 15th, doctor says you need an x-

4 ray, you said no x-ray. They met with you and they put you

5 off work, you can't do full duty, they don't want you to

6 hurt your hand, so then they have a meeting with you, you

7 know, it -- need to know whether you've got a fracture or

8 not. Your own doctor -- you -- as you even said and it's in

9 the record says, can't determine if there's a fracture

10 without an x-ray.

11 A And I was --

12 Q So, you got an x-ray on the 19th.

13 A I had one on Monday the 12th and then I submitted to another

14 x-ray on the 19th, because when they were at my door they

15 said the doctors --(inaudible)-- please state that question

16 again.

17 Q When they're at -- when they're at the door they don't have

18 anything from any doctor.

19 A I was told that the doctors -- you have to resay it, because

20 I don't want to say something that's not right.

21 Q Okay, I agree. They came, you had -- we -- you submitted

22 some reports -- you had this report of this incident and you

23 submitted to the principal as part of the investigation they

24 were conducting, I've been told I might have a fracture and

25 it's gonna take five to seven days to find out whether I do

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1 or not. So, they show up literally the next day and say we
2 want you to go and see whether you've got a fracture or not
3 and --
4 A That's --(multiple speakers)--
5 Q -- they don't have any medical records at that time.
6 A That's --(multiple speakers)--
7 Q Mr. -- the guys in charge don't have anything, right?
8 A That's not all correct, no.
9 Q It's not? They do have records when they come to your door?
10 A How you're stating it and put it in -- you're mixing a few
11 things up, sorry.
12 Q Well, I haven't seen and I haven't heard any indication that
13 when they came to see how you were with your wrist and
14 they're responding to you're indicating that you might have
15 a fracture, they're saying, and they have you authorized to
16 go to Allegiance. They don't have -- and the simple
17 question is -- the jurors heard all of that. They don't
18 have any x-ray report or doctor report from anybody when
19 they're talking with you out in the hall, do they?
20 A I don't know what date you're talking about --(multiple
21 speakers).
22 Q The day they came and saw you in the hall.
23 A Which day? They saw me twice
24 Q The incident occurred on the 12th you testified, with Mr. --
25 with Marcus. Is that Monday --

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1 A Correct.
2 Q -- October the 12th. The very next day, the 13th you came
3 back to work, correct?
4 A Correct.
5 Q And they came and wanted to know about your wrist?
6 A No, they were accusatory, they wanted to look at it, they
7 didn't believe me and Mr. Pack, I don't want to restate all
8 this, but he was sending me home. I said I went to the Med
9 Plus, Mr. Beal said, it's okay, just bring in your records
10 and -- or something then when you come.
11 Q And you --
12 A And I did.
13 Q -- hadn't brought -- you hadn't, at that time, hadn't
14 brought in any records. They're letting you be on leave
15 with pay and we want to see a medical record. We want to
16 see an x-ray and make sure that your wrist is okay for you
17 and for them, correct?
18 A What are you asking?
19 Q They wanted you -- Allegiance wanted to take an x-ray of
20 your wrist and they wanted you to have an x-ray of your
21 wrist.
22 A As I already stated I had an x-ray, Allegiance agreed with
23 me that we could take another one on Monday, because we all
24 know x-ray after x-ray after x-ray is not healthy for a
25 person.

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1 Q Now, subsequent to -- we had the testimony yesterday, this
2 discussion of fear and this gentleman, Marcus, still being
3 at the school, you indicated that you were transferred to
4 Parkside, is that right?
5 A Okay, sorry, restate that?
6 Q The school district transferred you to Parkside Elementary
7 and had you, as an art teacher, went to Parkside, the art
8 teacher at Parkside went to the high school?
9 A Not exactly, Parkside is a middle school, not a elementary.
10 Q I'm sorry, and you are correct, I did say elementary school,
11 middle school. To teach 6th grade art at Parkside?
12 A Correct.
13 Q And I won't go over the whole paired thing and the
14 modification of the request to modify the order, but you
15 went to Parkside and the principal there is Jeremy
16 Patterson?
17 A Yes, it is.
18 Q Okay, and you had previously worked with him at the
19 highschool, had you not?
20 A I would like to state he was very cold when I got there --
21 Q Well, I just --
22 A -- he put me on an IDP and 32 days. He said we were far
23 apart --
24 MR. MULLINS: Your Honor, I'm trying to move
25 along.

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1 THE COURT: I appreciate it. Just restate
2 the question and if the witness can do her best to answer
3 just the question.
4 THE WITNESS: Sorry.
5 BY MR. MULLINS:
6 Q Prior to going to Parkside you had worked at the high school
7 with Jeremy Patterson previously, had you not?
8 A He was one of the five principals.
9 Q Okay.
10 A And you don't see all the principals all the time.
11 Q Okay, and he'd even previously evaluated you?
12 A Ms. Pauli does that.
13 Q Okay --
14 A The head principal.
15 Q Let me just show you for reference's sake a document in your
16 evaluation memorandum June 11th, 2012, is that right?
17 MS. BONANNI: Your Honor, if I may, I don't
18 have a copy of that.
19 THE COURT: Okay, which exhibit? This
20 exhibit?
21 MS. BONANNI: It's not --
22 MR. MULLINS: I'm just using it to question
23 her, your Honor, she doesn't appear to recall an evaluation
24 that occurred back in 2012.
25 MS. BONANNI: Well, I don't believe this was

1 ever produced to us, but --
2 MR. MULLINS: It's part of the personnel file
3 --
4 MS. BONANNI: No, it's not actually. It's --
5 and it's not date stamped as part of the production, I have
6 not seen this -- I've never seen this.
7 THE COURT: All right, counsel approach the
8 bench.
9 (Bench Conference held from 4:24:25 p.m. to
10 4:25:45 p.m.)
11 THE COURT: Does she have a copy of that?
12 Would that be helpful too for her to have a copy of it when
13 he's questioning her?
14 MR. MULLINS: She does.
15 MS. BONANNI: She does have one.
16 THE COURT: He has a copy? Very good. Go
17 ahead, Mr. Mullins.
18 BY MR. MULLINS:
19 Q So, does that refresh your recollection that Jeremy
20 Patterson was the administrator doing the -- your teacher
21 evaluation in 2011-2012?
22 A As I teach my kids to always tell the truth, I did not --
23 and to apologize, I did not remember this six years ago, but
24 I also know when they do evaluations usually both of them --
25 at least two principals usually, at least at the high

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1 school, believe, that will come in and evaluate you
2 periodically through the year and to my recollection it was
3 Barb Pauli, she usually signs them and goes over it with you
4 and I apologize, because I did not remember this.
5 Q Okay, and that --
6 A Six years, eight years ago.
7 Q -- so this is the Jeremy Patterson who's now the principal
8 at Parkside?
9 A Yeah, which his brother was, but the --(inaudible)--
10 Q Well, I'm not talking about his brother now --
11 A Right.
12 Q -- Jeremy is Jeremy and his brother is somebody else, but
13 so, he had rated you effective, he's the administrator doing
14 the evaluation, he rated you effective in June of 2012, is
15 that right?
16 A Correct, that's what it says right here.
17 Q Okay, now you discussed at length yesterday, and was he fair
18 to you in that evaluation?
19 A No, as you can see I put I disagree on it.
20 Q Okay, but at least you recall it now?
21 A I read it right here --
22 Q Yeah.
23 A -- and now that I see it and I see the date I'm not gonna
24 deny it, I said I was sorry.
25 Q Okay -- you know, don't --

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1 A I didn't remember from whatever, eight years ago with
2 everything I've been through right now.
3 Q So, in short, you've testified at length that Mr. Patterson
4 didn't have a justification to rate you as being ineffective
5 at the end of the 2016 school year, is that right? Is that
6 a fair summarization of what you were telling us yesterday?
7 A Correct, because I was at 32 days told to be a --
8 Q It's -- just --
9 A -- failing teacher --
10 Q -- just --
11 A -- and he would --
12 Q -- you thought he was unfair?
13 A I know he was.
14 Q Okay, so let me have you look at Defendant's Exhibit 11.
15 A Is that the one from --(inaudible)-- I'm sorry.
16 Q That would be in the Defendant's book which.
17 A So, that's yours?
18 Q Yes.
19 A I don't have that then.
20 MR. MULLINS: (Inaudible)--
21 THE COURT: Okay, very good.
22 BY MR. MULLINS:
23 Q So, Mr. Patterson wrote you a letter on February the 2nd,
24 2016 which is Defendant's Exhibit 11 and I ask you to take a
25 minute to take a look at that with the attachments and let

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1 me know when you've refreshed your recollection.

2 MR. MULLINS: While she's reviewing, your

3 Honor, and we have an agreement about the prior evaluation,

4 I'd offer Defendant's Exhibit 53, the June 11th, 2012 annual

5 evaluation.

6 (At 4:31:10 p.m., Defendant's Exhibit 53 was

7 offered)

8 THE COURT: And your -- you now agree with

9 the -- its admission is that correct, Ms. Boninni?

10 MR. MULLINS: I'm sorry, your Honor, I said

11 50 --

12 MS. BONANNI: Sorry, I'm not --

13 MR. MULLINS: I'm sorry, your Honor, 23,

14 Defendant's. The document that was just produced -- was

15 produced previously, but just identified.

16 (At 4:31:10 p.m., Defendant's Exhibit 23 was

17 offered)

18 MS. BONANNI: Just give me one second.

19 THE COURT: Sure.

20 MS. BONANNI: No objection.

21 THE COURT: All right, so admitted by way of

22 stipulation of the parties.

23 (At 4:31:51 p.m., Defendant's Exhibit 23 was

24 admitted)

25 BY MR. MULLINS:

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1 Q Okay, so do you recollect that letter?
2 A Yes, and I wrote a rebuttal --
3 Q All right, just --
4 A I wrote a rebuttal --
5 Q -- we'll get to it --
6 A -- and I don't know where it is.
7 Q -- we're -- we'll get to it, your attorney can provide it,
8 I'm just trying to get through the day. So, Mr. Davis wrote
9 that letter to you dated February 2nd, 2016, yes?
10 A No, my name is Davis, his name is Mr. --
11 Q You are correct, you are correct, I guess --
12 A Jeremy Patterson.
13 Q -- the snow must be getting in my head. Mr. Jeremy
14 Patterson wrote this letter to you on February the 2nd,
15 2016, is that correct?
16 A That's what is stated, yes.
17 Q Okay, and you recall getting it?
18 A We had a meeting and I wrote a rebuttal which is missing.
19 Q But, you did get this letter?
20 A It appears that I should have.
21 Q Okay, and it indicates cc: Amy Gish --
22 A Yes, I said that.
23 Q -- that's your JEA, Jackson Educational Association, your
24 union president, is that right?
25 A Correct, Sir.

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1 Q And to Mr. Pack, human resources, is that right?
2 A Correct, Sir.
3 Q And Mr. Cullen, the building union rep, is that right?
4 A Yes.
5 Q And Ms. Jarvey, the assistant principal?
6 A Yes.
7 Q And Mr. Weatherwax, the assistant principal?
8 A Yes.
9 Q Also indicates that went into your personnel file?
10 A Yes.
11 Q And indeed, you on the second page dated February 22nd,
12 2016, you write, "I disagree with this" and it says, P.
13 Davis, so I presume that's your handwriting and signature?
14 A Right, that's why I wrote a rebuttal and --
15 Q Just -- just --
16 A -- we didn't have it --
17 Q -- let's get through this --
18 A -- in the file at all.
19 Q -- and then we can get to the rebuttal. Okay, now let's
20 read the letter. So, he indicates to you, "This letter
21 serves as a formal written reprimand for your inappropriate
22 classroom behavior on Friday, January the 29th, is that
23 correct?
24 A That's what the first line says, yes.
25 Q It goes on to say, "On January 29th I received a complaint

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1 from a student in your 5th hour class stating you were upset
2 with the students because they were talking and disruptive.
3 The student stated you picked up a book, threw it, hitting
4 her on the left arm leaving a red mark on her arm.
5 A This never happened and --
6 Q I just -- just --
7 A -- I would like the --
8 Q -- just --
9 A -- rebuttal.
10 Q -- just want to read the letter to the jury and then we can
11 talk about it.
12 MS. BONANNI: Let me place an objection to
13 the extent that Mr. Mullins intends to read this entire
14 letter into the -- into evidence without admitting it. I
15 think he needs to move to admit this.
16 THE COURT: Mr. Mullins, are we gonna admit
17 the letter into evidence?
18 MR. MULLINS: I'm more than happy to move for
19 its admission, I think we've established the foundation, but
20 --
21 THE COURT: Okay.
22 MS. BONANNI: I have an objection to the
23 packet, not the letter, but the packet.
24 THE COURT: All right, we'll reach an
25 agreement on the letter then, that's so admitted under what

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1 exhibit number?

2 MS. BONANNI: Well, 11 is a packet, it's not

3 just the letter and --

4 THE COURT: Okay.

5 MS. BONANNI: -- there's a collection of

6 things including hearsay.

7 THE COURT: Okay, well right now we're just

8 dealing with the letter. What exhibit number is just the

9 letter, Mr. Mullins?

10 MS. BONANNI: No, 11 is a packet of the

11 letter and other materials.

12 THE COURT: Okay.

13 MR. MULLINS: And I -- the purpose for not

14 having moved yet is I'm continuing to establish my

15 foundation --

16 THE COURT: Okay.

17 MR. MULLINS: -- but at this juncture I'm

18 just having the letter read into the record and more than

19 happy to publish it to the jury if that would save time.

20 But, again I understand a foundation needs to be laid and I

21 think that's what I'm doing.

22 THE COURT: All right, okay go ahead.

23 BY MR. MULLINS:

24 Q So, we left off with the complaint of the book -- you having

25 thrown the book and a red mark on the student's arm, is that

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1 right?

2 A There was teachers that --

3 Q I'm just trying to --

4 A -- came in and --

5 Q -- I'm just trying to read the letter.

6 A -- I never threw a book at a student --

7 MR. MULLINS: Your Honor --

8 THE COURT: Okay --

9 MR. MULLINS: -- I don't know how we're gonna

10 move along --

11 THE COURT: -- Ms. Davis, he's gonna --

12 THE WITNESS: Sorry.

13 THE COURT: -- go ahead and read the letter

14 and then maybe after that he can give you your response to

15 what occurred after that, all right? So as -- I think it

16 will save a little time, so why don't we go ahead and read

17 the relevant portions of the letter? So, just go ahead and

18 read it and then give her a chance to respond.

19 BY MR. MULLINS:

20 Q "During 7th hour on Friday, Mr. Patterson, Ms. Jarvey, Mr.

21 Cullen, Ms. Davis met regarding this complaint. I advised

22 you that you would not be returning to your classroom 7th

23 hour, a substitute teacher would finish the day and that I

24 would complete my investigation of the complaint after

25 receiving written statements from other students present

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1 during the incident. I have reason to believe that you did,
2 indeed throw a book that hit the student in the arm."
3 Paragraph. "Again, I brought this complaint
4 to your attention during our meeting on Friday, January the
5 29th. During this meeting you indicated that you did not
6 throw a book at anyone and that the student filing the
7 complaint said, 'I'm going to get you fired.' You stated
8 you chose to ignore that statement, however, your actions of
9 throwing a book hitting the girl in the arm were confirmed
10 by multiple students present in the classroom."
11 Paragraph. "Previous conversations have been
12 held between you and Mr. Weatherwax regarding your actions
13 of inappropriate classroom behavior. And an e-mail sent to
14 you by Mr. Weatherwax on Friday, January the 8th, he shared
15 concerns from a student stating that quote, "'You' quote,
16 'got in her face'" end quote. He encouraged you to respect
17 student's personal space, build relationships, and cease
18 inappropriate classroom behavior or disciplinary actions
19 could follow.
20 Jackson Public Schools recognizes that all
21 students are children under our supervision. Our job as
22 educators is to respond to student misbehavior by following
23 classroom routines and help students manage their behavior
24 appropriately. You are being informed that this type of
25 behavior you displayed is unprofessional and will not be

1 tolerated in Jackson Public Schools."

2 Paragraph. "You are expected to maintain a

3 professional work environment at all times which is

4 conducive to Jackson Public Schools expectations. Please be

5 advised that further incidents of this nature are subject to

6 further disciplinary action up to and including termination

7 of employment." And then it says, I acknowledge my

8 signature below that I have afforded the opportunity to

9 review and sign this correspondence prior to it being placed

10 in my personnel file and you put down see below and said

11 that you disagreed with it. Did I read the letter

12 correctly?

13 A You read their letter correctly, but I put in several

14 disputes and --

15 Q Well, whatever you might have put in I guess I --

16 A -- and why don't I have that? And why when I went to get my

17 personnel file --

18 Q Excuse me --

19 A -- and went through it, I didn't get it? It wasn't there.

20 Q Ms. Bonanni can put in whatever she has, I -- I'm just

21 trying to get through one simple exhibit.

22 THE COURT: All right, you've read the whole

23 letter, she's responded that it's accurate, so let's follow

24 up with the next question.

25 BY MR. MULLINS:

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1 Q Now, other than a letter, I mean you got a letter of
2 reprimand, but I mean, there was no time off, no loss of
3 pay, no suspension, nothing, you got a letter in your file?
4 A In retaliation, yes.
5 Q And all of these individuals did meet on February the 22nd,
6 2016 and that's confirmed and signed by Amy Gish on the 2nd
7 page, is that right?
8 A A cc you mean?
9 Q Just underneath the cc there's handwriting there by Amy Gish
10 confirming a meeting on February the 22nd, 2016, is that
11 right?
12 A Correct, yes.
13 Q And then underneath that you wrote I disagree with this
14 letter, P. Davis.
15 A Correct, yes.
16 Q Now, in advance of you receiving the letter of written
17 reprimand, Mr. Patterson, who had received this complaint
18 from the student had sent you an e-mail on January the 29th
19 saying as a follow up -- and I'm turning now to the 3rd page
20 of the document.
21 A Okay, I see this now.
22 Q Okay, and I'm reading his e-mail to you at 3:47 p.m.
23 A So, I wouldn't have got it until the next day.
24 Q I can't quite hear --
25 A I wouldn't have received this until the following day then.

1 Q Okay but, and he said, "Ms. Davis..." Subject: Written
2 statement, "Ms. Davis, as a follow up to the meeting that
3 was held in my office during 7th period I'm issuing a
4 directive to you to provide a written statement from your
5 5th period class that you shared verbally today. The
6 details should include, but not limited to one, your
7 interactions with..." The name of the child is blacked out,
8 "...and relative to whether or not you threw a book that hit
9 her in the arm. During our meeting you said that you did
10 not throw a book and you did not hit her in the arm with a
11 book. My directive is to complete your statement and turn
12 it into Ms. Jarvey on Monday, February the 1st by 9:15. I
13 will be out of the office Monday to attend a funeral,
14 however, you will be informed of the findings from the
15 investigation via myself upon my return to Parkside on
16 Tuesday. You are expected to return to your classroom
17 assignment Monday, February the 1st as usual, thank you for
18 your cooperation, Jeremy Patterson, Principal for
19 Instruction Middle School at Parkside." Is that correct?
20 A You've read the letter, that is correct. Again, I wrote a
21 rebuttal, but it's not in there.
22 Q And the rebuttal that you wrote -- if, well, I -- you said
23 you wouldn't have got it until the next day, but it looks
24 like, as best I can read, just above the e-mail that he sent
25 you at 7:50 p.m., on January the 29th, 2016, 7:50 in the

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1 evening, To Jeremy Patterson, cc Michael Cullen, Christy
2 Jarvey, Benjamin Pack, Amy Gish, you wrote, "Mr. Patterson,
3 I did not throw a book at any student and no student was hit
4 by a book including..." The name was deleted. "...when she
5 was in 5th hour. Blank, she would say quote, 'I'm getting
6 you fired.' end quote, you have parens, "(a few times),"
7 end quote. "I just ignore her comments and help student --
8 student single, with their artwork. The class and I had a
9 good talk at the end of the hour about the loudness in the
10 room and how they will work harder to control the noise as
11 they may win a pizza party. And my option anytime a student
12 is hit by any option -- object in my classroom, it should be
13 reported to me. I take the situation very seriously and any
14 making up of false situation should be handled through
15 discipline, action of the student or students involved.
16 Penny."
17 A Yes, and there was also a rebuttal.
18 Q So, you have a rebuttal in addition to this one?
19 A Yes.
20 Q And a number of students wrote out their versions of what
21 they witnessed and provided those to you, to your
22 representatives and that is what is referred to by Mr.
23 Patterson in reprimanding you on February the 2nd, is that
24 correct?
25 MS. BONANNI: I'm going to object to the

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1 extent you're asking her to testify about Mr. Patterson's
2 mind.
3 THE COURT: Okay, sustain and rephrase.
4 MR. MULLINS: I've done nothing no more than
5 ask her did he provided her with an opportunity to rebut and
6 provided her and all her representatives of the statements
7 provided by the students.
8 THE COURT: Okay, I think you've stated that
9 to her and you're not nine then - 4:47:18, correct?
10 THE WITNESS: I'm sorry, I'm not
11 understanding at all.
12 THE COURT: All right --
13 THE WITNESS: If he could break it down?
14 THE COURT: -- sure, maybe if you could break
15 it down, repose the question to her, Mr. Mullins.
16 BY MR. MULLINS:
17 Q Okay, when you had this meeting Mr. Patterson and your union
18 representatives had and reviewed the written statements
19 supplied by the various students on January the 29th, 2016?
20 A I actually don't recall physically seeing them or having
21 them at that meeting. I do recall that I wrote rebuttals
22 for all these.
23 Q Well, we can get to any rebuttal you're written, but first
24 I'm trying to get to what happened and you had all your
25 representatives there and he indicates that he's obtained

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1 statements from these students and you and your
2 representatives in the meeting that you had prior to him
3 issuing the letter of reprimand reviewed the statements from
4 the students.
5 MS. BONANNI: I'm gonna object, that's not
6 what she just said.
7 THE COURT: Okay, and what's your objection?
8 MS. BONANNI: I guess again objecting to him
9 asking questions about hearsay statements that she just
10 testified to she's never seen.
11 THE COURT: Okay, my understanding is she saw
12 the document, correct? She's got a copy of it right there.
13 MS. BONANNI: No, she -- your Honor, this is
14 -- he was asking her about the 1st page --
15 THE COURT: Okay.
16 MS. BONANNI: -- and there are other pages
17 with hearsay statements that she just testified she never
18 saw. So, to the extent he's gonna ask her about the
19 statements, it's hearsay.
20 THE COURT: All right, Mr. Mullins, what --
21 MR. MULLINS: And the purpose for the offer
22 -- I'm sorry, I don't mean to --(inaudible)--
23 THE COURT: That's okay, I just wanted to
24 know how you responded to the objection.
25 MR. MULLINS: Thank you. I'm again

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1 responding to the long presentation yesterday that Mr.
2 Patterson is unfair and had no basis for coming to the
3 conclusion that he came to and I'm rather methodically just
4 setting forth what it was that, amongst other things that he
5 had and that he relied upon that he'll subsequently indicate
6 formed when taken together in culmination the evaluation --
7 THE COURT: All right --
8 MR. MULLINS: -- that he came to. So --
9 THE COURT: So, why don't you come back again
10 with a question and see -- let me see where it goes each --
11 the next few questions.
12 BY MR. MULLINS:
13 Q So, you can see the first statement that Mr. Patterson
14 refers to with the name blanked out, dated January the 29th,
15 2016?
16 THE COURT: Okay, just by way of -- did you
17 review these student interviews as part of this response or
18 not?
19 THE WITNESS: Of my rebuttal?
20 THE COURT: Well yes, I mean, were they
21 provided to you so you had an opportunity to review them?
22 THE WITNESS: I believe not.
23 MS. BONANNI: So, I mean, Mr. Patterson will
24 be here, he can testify to whatever he did, who he talked
25 to, but it's hearsay to have her --

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1 THE COURT: Okay, all right, well then I'm
2 gonna ask that we move on if we're gonna have Mr. Patterson
3 here later on.
4 MR. MULLINS: Okay.
5 THE COURT: Let's hear it from him.
6 MR. MULLINS: And I would move for admission
7 of Defendant's 11, your Honor.
8 (At 4:51:19 p.m., Defendant's Exhibit 11 was
9 offered)
10 THE COURT: Okay, any objection?
11 MS. BONANNI: Yes, it's -- I do not object if
12 they want to alter this exhibit to include only the first
13 three pages which would be the things that Ms. Davis
14 actually had in her possession and reviewed. If they want
15 to redact the hearsay students statement -- not redact,
16 remove them then I'm fine with it.
17 THE COURT: Okay.
18 MR. MULLINS: And again I'm trying to move
19 things along, I'll make a conditional offer, Mr. Patterson's
20 gonna be here, he can finish the foundation, but so that we
21 don't have too many exhibits and take up too much of the
22 jury's time I'm more than happy to have it be conditional.
23 MS. BONANNI: That's fine.
24 THE COURT: All right, we'll accept the
25 conditional foundation then, go ahead.

(At 4:52:00 p.m., Defendant's Exhibit 11 was admitted)

BY MR. MULLINS:

Q Did you recall at that time having students in your class by the name of Maya and Alejandro?

A Again, I saw that year over 400 students and they're 6th graders, so they have a little bit also at that school a gang mentality and do I recall their names exactly right now, it's two and a half years later and I've been through so many students, I'm sorry, I don't recall the names right now.

Q Okay, sorry about the awkwardness of the documents, but the binder, you know, as you know somehow --

THE COURT: I understand.

MR. MILLER: My fine motor skills aren't the best.

UNIDENTIFIED JUROR: Your Honor?

THE COURT: Yes?

UNIDENTIFIED JUROR: What did she -- I didn't hear the word before mentality. What was the word?

THE WITNESS: Gang. Kind of, they're 6th graders, they --

MR. MULLINS: I just missed it the -- what word?

THE COURT: I think the juror was trying to

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1 get her to clarify part of her answer, so.
2 UNIDENTIFIED JUROR: I just wondered what the
3 word was.
4 THE COURT: Sure, why don't we just -- do you
5 recall what the juror's trying to get back, which part of
6 your answer was that?
7 THE WITNESS: The mentality, the --
8 THE COURT: Okay --
9 THE WITNESS: --(undecipherable)--
10 THE COURT: Why don't you look towards the
11 juror.
12 THE WITNESS: Sorry, the adolescent stage of
13 and the immaturity of 6th graders, but at this school it's
14 like a gang type, you know, they have little clique gangs
15 and so forth.
16 BY MR. MULLINS:
17 Q So, you believe that these 6th graders subjected -- unfairly
18 subjected you to some type of gang conduct?
19 A Not subjected, they are 6th graders and they will get
20 together with their friends, their clique, their group so
21 forth and they'll do stuff and not only with myself, but
22 with other teachers.
23 Q So, if I understand what you're trying to say, these
24 different students who wrote out these statements got
25 together as some kind of a gang, presented a red mark on

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1 somebody's arm to Mr. Patterson and wrote up these
2 statements as some kind of a plot against you?
3 A A lot of the students that I get complaints from -- and no,
4 there wasn't that many, I had more compliments from parents
5 and so forth. Again remember I had, at that year, been
6 there 2/3 of the year and I've seen probably 400 students.
7 So, in my 29 years of teaching I've never been written up.
8 Q And what, you know, in asking you about this gang, when --
9 in the -- in your rebuttal you claimed that this one
10 particular student was trying to get you fired and you only
11 made reference to one person, now you're claiming that the
12 various witnesses constitute a gang --
13 A No, no.
14 Q -- when you only rebutted as to one person.
15 A I'm saying the community there. The --
16 Q It's a gang community?
17 A -- I'm just using that as a terminology how chaotic it is
18 there. How there are cliques, I'm not saying they all, but
19 a few friends, I'm just using that as a terminology.
20 THE COURT: Ms. Davis, I guess I've got one
21 question, maybe you can clarify for me. Are you using the
22 word gangs to mean something of a criminal element or are
23 you talking just groups of peoples?
24 THE WITNESS: Sorry, groups.
25 THE COURT: Okay, so you're not suggesting

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1 gangs in the criminal context, correct?

2 THE WITNESS: Correct.

3 THE COURT: Okay.

4 BY MR. MULLINS:

5 Q Okay so, in his letter to you Mr. Patterson offered -- also

6 referenced a communication he had received from Mr.

7 Weatherwax which I'll show you dated January the 8th, 2016

8 marked Defendant's Exhibit 18.

9 MS. BONANNI: The exhibit 18 that I have is

10 one page and I see that she's looking at multiple pages.

11 THE WITNESS: Oh, no that's --

12 MS. BONANNI: So, before we move on -- just

13 one page?

14 MR. MULLINS: Sorry.

15 MS. BONANNI: Sorry. Sure, I've got it.

16 MR. MULLINS: Okay.

17 THE WITNESS: Okay.

18 BY MR. MULLINS:

19 Q So this, if you recollect, is the subject raised by Mr.

20 Weatherwax that Mr. Patterson also referenced in his letter

21 to you that we just discussed? If you recall.

22 A Yes, I recall and --

23 Q And this --

24 A -- I can explain this --

25 Q -- you'll --

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1 A -- and I had a rebuttal --
2 Q -- you'll get a chance --
3 A -- for this and --
4 Q -- first we have to let everybody know what we're talking
5 about --
6 A Mm-hmm.
7 Q -- see, that's how it works. So, now we know it's
8 Defendant's 18 -- Defendant's Exhibit 18, it's dated January
9 the 8th, 2016 and it is sent to Pennie Davis with the
10 heading, "Follow up to our meeting today from Eric
11 Weatherwax." Is that right?
12 A Correct.
13 Q Okay, and he -- you know him to be the assistant principal
14 at Parkside, is that right?
15 A At this time he was.
16 Q Yeah, at this time. At that time, not this time.
17 A That time, sorry.
18 Q Okay, and I'll read it. "Pennie, let me first say it's good
19 to have you back in the classroom, the students benefit so
20 much more when they have someone who is knowledgeable and
21 experienced in their subject matter."
22 Paragraph. "I wanted to recap our discussion
23 today. When I arrived to your class there were a couple of
24 students in the hallway, you and I went out to speak with
25 one of the students who was removed from the class. She was

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1 removed for being loud and out of her seat. The student
2 said you, quote, 'Got in her face', end quote and that she
3 didn't like that. I explained that the best way to get
4 cooperation from students is through relationships and
5 students don't respond well when confronted in that manner.
6 An alternative would be to stand by the student and speak to
7 her."
8 Paragraph. "I want to say that just as we
9 expect students to respect your personal boundaries and
10 proximity, we also expect that of our staff towards our
11 students. This type of behavior," parens "(getting in the
12 face of a student)" parens, "must cease immediately or it
13 could lead to disciplinary action."
14 Paragraph. "As always, if there's anything
15 we can do to help, please don't hesitate to ask. Have a
16 restful weekend, Eric Weatherwax." Is that right?
17 A What you read you read mostly correct. I did not get into
18 anybody's face, that is not my --
19 Q Let me stop you for just a minute for a little housekeeping
20 --
21 A -- the way I do it --
22 Q -- could I move --
23 A -- and also I wrote up a rebuttal.
24 THE COURT: Okay, just -- okay, go ahead, Mr.
25 -- she wanted to clarify something.

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1 MR. MULLINS: Could I move for admission of
2 Defendant's 18?
3 (At 5:01:40 p.m., Defendant's Exhibit 18 was
4 offered)
5 MS. BONANNI: No objection.
6 THE COURT: So admitted by way of stipulation
7 of the parties.
8 (At 5:01:42 p.m., Defendant's Exhibit 18 was
9 admitted)
10 BY MR. MULLINS:
11 Q Now, I didn't mean to cut you off, but it's homework. So,
12 you wanted to address this, it sounded like?
13 A I wrote a rebuttal --
14 Q Okay.
15 A -- I don't understand your comment, though.
16 Q All right, and presumably you don't have it handy.
17 A I asked for it, I asked for my personnel file, when I was
18 looking through it I did not see any of the rebuttals in
19 there and then I was denied copying things from my own
20 personnel file.
21 Q You've -- just so the record's clear, as a formality of this
22 court your attorney's been provided your entire personnel
23 file.
24 A Two years ago.
25 Q Okay.

1 A Roughly.

2 Q And as recently as today?

3 A No, no, Sir.

4 MR. MULLINS: Well, your Honor, I'll take

5 that up later. All right, I think counsel will agree to

6 that.

7 MS. BONANNI: Actually, I don't.

8 THE COURT: All right, I don't know that this

9 --

10 MS. BONANNI: But, it doesn't matter --

11 THE COURT: -- is the time or place to do

12 that, we can further address that perhaps outside the

13 presence of the jury. Let's move along with our cross-

14 examination.

15 BY MR. MULLINS:

16 Q So, we could agree, I know you don't agree with the facts,

17 but throwing a book at a student that would -- that would be

18 a serious matter?

19 A Well yes, it would be a very serious matter.

20 Q Okay --

21 A Anyone.

22 Q -- and Mr. Patterson, with all that we've talked about,

23 wrote you a letter and it ended there, is that right? There

24 was no docking of pay or suspension or anything, you just

25 got the letter of written reprimand, is that correct?

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1 A That would be that I could be terminated. Because, if you
2 have those in your personnel file they can terminate you.
3 So, that's why I also wrote up a rebuttal.
4 Q Okay, but all you got was -- we're talking today, from today
5 back you're still working there, I hate to keep going over
6 things. He gave you a letter of reprimand and you're still
7 employed full time, full pay, Jackson Public Schools, right?
8 A Thanks to my lawyers, yes.
9 Q So, let me show you what has been marked as Defendant's
10 Exhibit 19. And let us know when you've had a chance to
11 review or refresh your recollection as to that document.
12 A Sorry, I have never seen this, I'm trying to skim through it
13 fast. Okay --
14 Q Okay --
15 A -- I'll try to answer anything.
16 Q -- do you recall Amy Aldoro LBSW, (ph) who wrote this
17 letter?
18 A Not at this present time, but it's been two and a half --
19 Q Okay --
20 A -- or more years.
21 Q -- she references her daughter, Makiyah (ph), you recall
22 having her in your class in 2015/16?
23 A I'm sorry?
24 Q Do you recall having her daughter in your class in 2015-2016
25 school year?

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1 A Like I stated before, I don't recall her name right now,
2 because it's been two and a half years --(inaudible)-- close
3 to 1600 students --(inaudible)-- at this point.
4 Q This is a letter written to Ms. Jarvey, Mr. Patterson and To
5 Whom It May Concern, is that correct?
6 A I have no -- oh, there it is it's on the top. Yes, I see
7 that now.
8 Q Okay, and it -- Defendant's Exhibit 19 indicates, "This e-
9 mail is regarding my daughter, blank, who is a 6th grade
10 student at Parkside. On January 29th, 2015 I received a
11 call from a Parkside number at approximately 12:00 p.m. It
12 was ..." blank, crossed out, "... her voice was shaky and
13 she sounded very upset. She told me, quote, 'I was late to
14 class... I have been late to class every day this week' end
15 quote. I asked if she was okay and she said yes. I then
16 heard an adult voice in the background prompting her to tell
17 me that she had left class without permission..." blank,
18 child's name, "...repeated that the adult told her to say.
19 I asked to speak to the adult that she was with. An adult
20 got on the phone and proceeded to say that..." child, "...
21 had been late to class everyday that week. I stopped her
22 and introduced myself and asked her her name. She
23 identified herself as Ms. Davis."
24 Paragraph. "Ms. Davis began again to tell me
25 that..." blank "... had been late to class every day that

week and had left class on that day without permission. Her manner of speaking was accusatory and she was clearly very angry. I interrupted her and asked her why..." blank "...had left class. She became very frustrated at this question and said it was not the point that she had tried to call me repeatedly to talk to me about..." blank "...being late and was unable to reach me. I asked when she called and if she had left a message. She again behaved as if I was inconveniencing her by asking any questions at all. I stated that this has never been a problem for..." blank "...before and I was trying to understand what was happening.

MS. BONANNI: Your Honor, let me place an objection. The document speaks for itself and this letter is a page and a half. Is there a question for this witness?

THE COURT: Okay, Mr. Mullins?

MR. MULLINS: Well, there will be and --

THE COURT: Okay, well --

THE WITNESS: Why does he --

THE COURT: -- it -- this -- let me just indicate that --

MR. MULLINS: And I'm happy to publish it --

THE COURT: -- at this juncture of the trial is getting tedious. We can start taking document after document and reading it and then asking questions about it.

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1 But, I think the better procedure is admit the exhibits and
2 then, you know, ask questions that follow up on it. So --
3 MR. MULLINS: I'll move for --
4 THE COURT: -- I'm gonna sustain the
5 objection, so if you got the exhibit admitted then ask
6 questions about it.
7 MR. MULLINS: Okay, I --
8 MS. BONANNI: And I'm gonna object to the
9 exhibit simply because it is hearsay. She's never seen it
10 and someone else can admit it -- get it admitted, with the
11 proper foundation --
12 THE COURT: Okay, who --
13 MS. BONANNI: -- she's just seeing it for the
14 first time.
15 THE COURT: -- she has indicated that she's
16 seeing it for the first time, so.
17 MR. MULLINS: And again for, you know, the
18 reason I'm going into this is because --
19 THE COURT: I understand, I don't want your
20 rationale for doing it, I want your response to the
21 objection.
22 MR. MULLINS: That this provides -- and while
23 I have the witness here on the stand, it is evidence of the
24 basis that Mr. Patterson had in culmination with --
25 THE COURT: Okay, you're laying out your

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1 whole rationale for the case. The objection, legal
2 response. She's arguing it's hearsay, what's your response?
3 MR. MULLINS: It's part of her personnel
4 file, it was produced, it's in her personnel file --
5 THE COURT: Okay, now ladies and gentlemen,
6 we're gonna dismiss for the balance of the evening, it's ten
7 after five, you've had a long day. So, all rise for the
8 jury.
9 (At 5:13:01 p.m., jury excused)
10 THE COURT: 10:30, so we'll plan on seeing
11 everybody at 10:30 tomorrow, okay? Ms. Davis, you can have
12 a seat back at the counsel table or step down if you'd like.
13 Let me just offer an observation. I understand what you're
14 doing, Mr. Mullins and, you know, when I -- when there's an
15 objection on the floor, you know, I want it responded to and
16 not in the manner that explains your theory for, you know,
17 proving your case. You know, if it's a hearsay objection
18 you've got a legal response. I learned a long time ago with
19 a number of different trial Judges, don't try speaking
20 objections more than a couple of times, because the Judge is
21 gonna start, you know, hitting you down for that. So,
22 tomorrow I really want to focus on some things; first of all
23 we thought we were gonna have this cross done in two hours.
24 We're a lot more into two hours today than that, so I think
25 both counsel need to go back and start, you know, screening,

1 because I -- this is drag for the jury, okay? And I don't
2 know it necessarily helps either side, it's just dragging
3 out, you know, I mean, the cross isn't crisp and punctual.
4 A lot of the direct examination hasn't been either, so
5 especially the practice of just reading in letters and then
6 asking questions, you know, we're gonna be here for a long,
7 long time doing it that way, all right? So, we'll see
8 everybody at 10:30 tomorrow. I'm not picking on anybody,
9 I'm just making a few observations. Meanwhile until
10 tomorrow at 10:30, it would be helpful if the two of you get
11 together at some point, you know, and see who can reach some
12 agreement on jury instructions. That's always something th
13 two parties can work on before we get back at 10:30, all
14 right? So --
15 MS. BONANNI: Thank you, Judge.
16 MR. MILLER: Will do, Judge.
17 THE COURT: All right, so I know the hour's
18 long and everybody's had, you know, a long day, all right?
19 MR. MILLER: Thanks, Judge.
20 MS. BONANNI: Thanks, Judge.
21 THE COURT: All right, thank you.
22 (At 5:15:04 p.m., hearing concluded)
23
24

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred eleven (111) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Thursday, March 1, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 13, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

JURY TRIAL, VOLUME V OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Friday, March 2, 2018

APPEARANCES:

For the Plaintiff: MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 West 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant: JOHN L. MILLER (P71913)
TIMOTHY J. MULLINS (P28021)
101 West Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7188

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT

None

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1 Jackson, Michigan
2 Friday, March 2, 2018 - 11:01:11 a.m.
3 MR. MILLER: Good news though, Judge, we did
4 meet on jury instructions and have everything figured out
5 that will go into the final form with the exception of one
6 instruction, that would be very quick for the court to
7 resolve by itself.
8 (Transcriber Note: Judge's Microphone Is Off)
9 THE COURT: All right, good. Yeah, you can
10 have a seat up here, Ms. Davis.
11 MR. MULLINS: Morning, your Honor.
12 THE COURT: Morning, so I just heard the news
13 on the jury instructions, that was good, so --(inaudible)--
14 that, and anything else preliminarily that we need to
15 address with the jury before we bring them back in?
16 MS. BONANNI: No, your Honor --
17 MR. MULLINS: Your Honor --
18 MS. BONANNI: -- for once.
19 THE COURT: All right, great, David go -- is
20 he already headed over there? All right. Yep, here they
21 come.
22 THE CLERK: All rise for the jury.
23 (At 11:03:35 a.m., jury enters)
24 THE COURT: All right, thank you, you may be
25 seated. The record should reflect the presence of all the

1 jurors, the parties, their respective counsel and Mr.
2 Mullins resume the cross-examination, go ahead.
3 MR. MULLINS: Thank you, your Honor. Good
4 morning.
5 CROSS-EXAMINATION
6 BY MR. MULLINS:
7 Q Morning, Ms. Davis. You are a -- you have tenure as a
8 teacher, do you not?
9 A Yes.
10 Q And tenure at Jackson Schools, is that right?
11 A Yes, but that's not all accurate.
12 Q Well, you don't have tenure?
13 A They've changed on here what tenure means.
14 Q That's fine, but there is a concept, you have to work for
15 three years as a teacher successfully, that's called the
16 probationary period. Then you have tenure and that -- you
17 understand that means certain things?
18 A Not anymore, no Sir.
19 Q So, tenure is meaningless?
20 A Close --
21 Q Okay.
22 A -- to that, yes.
23 Q You referred in this case to Parkside Middle School as a
24 grossly inferior workplace, is that right?
25 A That's not accurate.

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1 Q It's not accurate? You haven't made that reference?
2 A That's not totally accurate.
3 Q Well, you might recall I took your deposition back in
4 February of 2017, do you recall that?
5 A Yes, Sir --
6 Q It was --
7 A -- a year ago roughly.
8 Q -- a day kind of like yesterday, cold, and we met and there
9 was a court reporter there and they typed down everything
10 that everybody said, right?
11 A Correct.
12 Q Okay, and of course, you were sworn to tell the truth then
13 just like now?
14 A Correct, and could you talk just a little louder --
15 Q Certainly.
16 A -- because I still couldn't hear you, sorry.
17 Q Certainly. And I pointed out to you and referred to you
18 that you had referred to Parkside as a grossly inferior work
19 location and in fact, confirmed that by showing you your
20 complaint?
21 A I'm not sure if that was the exact words, but if you say
22 it's so, that it was in there, then maybe those were my
23 exact words.
24 Q Okay, if I read to you from paragraph 52 in part, that you
25 were involuntarily transferred to a grossly inferior work

1 location.

2 MS. BONANNI: I'm sorry, could Mr. Mullins

3 please identify what he's reading from? I didn't hear.

4 MR. MULLINS: I'm reading from paragraph 52

5 of plaintiff's complaint. Does that refresh your

6 recollection?

7 THE WITNESS: I've listened to what you read,

8 if that's what I said, then that's what I said at that time.

9 BY MR. MULLINS:

10 Q Now, in September of 2012 you bid on a vacancy to teach at

11 Parkside, did you not?

12 A Not that I recall.

13 Q Not that you recall? Let me show you an e-mail from Pennie

14 Davis to Jessica Carter regarding vacancy posting 2012-2013

15 Parkside overloads and asked if that refreshes your

16 recollection.

17 MS. BONANNI: Tim, could I please see what

18 you're looking at?

19 THE WITNESS: Yes, I see, do you want me to

20 answer anything?

21 BY MR. MULLINS:

22 Q Well, my question was whether reading that document, that e-

23 mail from you to the human resources office reflects --

24 refreshes your recollection if you indeed did apply to fill

25 a vacancy that was posting -- posted to teach some art at

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1 Parkside Middle School?
2 A I think at that time that I remember, it was a junior high,
3 not a middle school, but I can't be a hundred percent sure
4 and if this is a overload, then when we get overloads --
5 shall I explain or shall I be quiet? I'm sorry, I don't
6 want to overtalk.
7 THE COURT: Just try to answer the questions
8 as completely as you can.
9 BY MR. MULLINS:
10 Q Yes, as best I can, fairly simple. You've had a chance to
11 look at it, there was a vacancy to do some teaching of art
12 at Parkside school, call it a middle school or call it a
13 junior high, same building, same name. Did you apply --
14 did you respond to that --(undecipherable)-- does that
15 refresh your recollection that you applied to teach art and
16 fill that vacancy?
17 A They want a -- yes, a one hour vacancy with different age
18 groups of students.
19 Q And what, you say different age, what grade are you talking
20 about?
21 A I'm not sure at the time. This is -- I -- I mean, I don't
22 know at this time, sorry.
23 Q Again, if you'd look at the document and your response,
24 "Hello Jennifer, I would like to bid on the 6th grade art
25 position. Thank you, Pennie Davis."

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1 MS. BONANNI: I'm just --
2 BY MR. MULLINS:
3 Q Does that refresh your recollection?
4 MS. BONANNI: -- I'm gonna ask if he's gonna
5 read stuff, he needs to read the whole sentence.
6 MR. MULLINS: I'm happy to put it in
7 evidence, I'm just trying to refresh her recollection. It's
8 her e-mail. I'm happy to do it any way anybody wants.
9 THE COURT: Okay, what would you like him to
10 do, read --(multiple speakers)--
11 MS. BONANNI: I just want him to read the
12 whole sentence since he's purporting to read the entire
13 sentence and he's skipping something and it's important,
14 because I think he should read the whole sentence.
15 THE COURT: All right, I'll have you read the
16 whole sentence, Mr. Mullins.
17 BY MR. MULLINS:
18 Q "Hello," this is from Pennie Davis, sent Monday, September
19 24th, 2012, 2:26 p.m. To: Jessica Carter; Subject: Re
20 Vacancy Posting 8-2012-2013 Parkside overloads; Hello
21 Jennifer; I would like to bid on the 6th grade art position:
22 (Overload). Thank you, Pennie Davis." Does that refresh
23 your recollection that you did on that 6th grade Park --
24 teaching position at Parkside?
25 A On the overload, yes, one hour.

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1 Q And if I understand what you're telling us is that you would
2 teach some at the high school and then some, the overload,
3 at Parkside?
4 A I would teach all at the high school and then it was a
5 overload at -- after work at the -- at that time, Parkside.
6 Q Because they had an overload of students and needed one more
7 art teacher to teach one more class at Parkside?
8 A Yes.
9 Q If you -- yes? Now, after M.H. was no longer in the high
10 school, you asked to be transferred back to the high school,
11 is that right?
12 A Before that, yes, --(inaudible)--
13 Q And let me refer you to Exhibit 10.
14 A In which packet, please?
15 Q Defendant's Exhibit 10 and take a moment to look at it and
16 ask if you recall receiving that letter addressed to you,
17 dated March 17th, 2017 from Jeff Beal, the superintendent.
18 A Yes, I do and it was after I got my lawyer in February.
19 Q Yes, you do?
20 A I do remember this after I contacted my lawyer previous to
21 this in February.
22 Q So, Ms. -- Mr. Beal indicates in there -- also you've had a
23 review hearing in March of 2017, is that right?
24 A I believe so.
25 Q And at the time of the review hearing you provided

1 Superintendent Beal with your student data, is that right?
2 A Yes, Sir.
3 Q Okay, and every teacher is required -- you did talk about
4 some things that have changed and there are -- is a new
5 system the last couple years as to how teachers will be
6 evaluated and what different things will be given how much
7 weight, is that correct? If you know.
8 A Could you restate that question a little bit simpler?
9 Q The model or sometimes they say, the tool or the rubric, the
10 form that the state requires the schools to use to evaluate
11 teachers has been modified in the last -- over the last
12 three years, is that right?
13 A I'm not sure if it's over the last three years.
14 Q Okay, recently? And more importantly, at this time? At the
15 time of your 2015-2016 evaluation?
16 A I'm not positive.
17 Q Okay, and the -- I think you had indicated yesterday that
18 evaluations occur at the end of the year?
19 A The main percent that you get or the -- what they go through
20 the whole year they'll come in different -- or at the high
21 school -- woops, am I talking too much?
22 Q Okay --
23 A At the high school they do it a little different than at the
24 junior high --
25 Q Okay --

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1 A -- middle school.
2 Q -- so, one of the things that is required is for the
3 evaluating administrator to receive from the teacher, the
4 student data. The -- their performance, is that right?
5 A Yes, and they can always access it from their own computer
6 --
7 Q And --
8 A -- at any time.
9 Q -- and Mr. Patterson didn't have your student data from you
10 at the end of the 2016 school year, did he?
11 A That's not accurate, because he could always access any
12 teacher's quote, "data", how the kids perform on his own
13 computer through PowerSchool.
14 Q He could look up their grades --
15 A Mm-hmm.
16 Q -- but as to the goals for -- the students set at the start
17 of the year, the accomplishments and the teacher presenting
18 here's what I've done, here's what I've accomplished, that's
19 what is to be submitted to the administrator at the end of
20 the year, is it not?
21 A You'll have to break that down for me, I'm sorry.
22 Q Another question: You -- whatever he might have been able to
23 look up on his computer, you didn't submit your student data
24 in June or July or August to Jeremy Patterson?
25 A That's not totally correct -- or accurate, sorry.

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1 Q Okay, what did you submit to him in June or July or August
2 of 2016?
3 A It was, I believe, June and you can talk to Amy Gish,
4 because she also helped me and asked Jeremy Patterson what
5 all he would want, because at that point --
6 Q Oh --
7 A -- I was recovering --
8 Q -- oh, mind you I don't want to hear anything hearsay and
9 you and Amy Gish --
10 A We sent him a letter.
11 Q -- grapevine, or your aunt or your uncle or whatever. I'm
12 just -- did you go to Mr. Patterson and say here's something
13 or did you put something in Mr. Patterson's office?
14 A I was out on medical leave.
15 Q Okay, and the first time you actually handed your student
16 data to anybody in the administration was when you gave it
17 to Jeff Beal, the superintendent at the review hearing which
18 finally occurred in March of 2017, is that correct?
19 A Yes, I was told to hold on to everything until then.
20 Q And that's a large percentage and with that not being in an
21 evaluator's possession as the school year ended, a very big
22 percentage on which the evaluation is based is a zero, is
23 that right?
24 A No, I think it's only like 25 percent of it all.
25 Q Okay, but --

1 A So, it's not a big percent.
2 Q -- my question being, if an evaluator doesn't have the data
3 instead of starting at 100 percent and going downwards,
4 you're already 25 percent down, because there's nothing
5 there, it's a zero?
6 A I'm sorry, I don't understand what -- exactly what you're
7 asking. Please restate it.
8 Q I'll ask another question. In addition to the student data,
9 discipline is taken into -- whether there's been any
10 discipline or any problems over the course of the year,
11 that's part of the evaluation process is it not?
12 A Could you kindly explain just when are you talking about,
13 students? Are you talking about teachers, I'm not clear on
14 what you're asking.
15 THE COURT: Ms. Davis, can you keep your
16 voice up?
17 THE WITNESS: Yes, Sir.
18 THE COURT: All right.
19 BY MR. MULLINS:
20 Q Both, whether there have been discipline problems in the
21 room; whether the room has been, you know, unusually chaotic
22 or there have been bad interactions between the teacher and
23 the student; whether there have been complaints about the
24 teacher or if there's been complaints from the students or
25 whether or not there's been any actual discipline of the

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1 teacher herself; that's a component, but the quality of the
2 interactions between the student and their families and the
3 school district as to each individual teacher, who's -- each
4 of whom are evaluated is part of the evaluation process, is
5 it not?
6 A It's one of twenty-four, so it's one of the things out of
7 the twenty-four, roughly.
8 Q So, there are a number of different things, basically it's
9 an assessment of the significant things that have happened
10 in the -- particularly in the teacher's interaction with the
11 students and the extent to which the teacher has performed
12 as an employee for that school year, is that correct?
13 A If I understand right, like I said, it's only one section
14 out of at least twenty-four.
15 Q Now, going back to Exhibit 10, Mr. Beals (sic) indicated to
16 you that based on the fact that he had received your data he
17 was raising your prior rating of ineffective to minimally
18 effective for the 2015-2016 school year, is that correct?
19 A Yes.
20 Q And he then goes on at some length to indicate how
21 significant data is as being part of a teacher's evaluation,
22 is that right?
23 A Correct.
24 Q Okay, he told you, did he not, that you as a teacher were
25 responsible for providing the students' specific data to

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1 your building principal, is that right?
2 A Who is "he", sorry?
3 Q Mr. Beal, we're referring to the -- you had a review, there
4 was a long discussion and then he sent you a letter?
5 A Correct.
6 Q And he points out that failing to provide specific student
7 data automatically reduces your score by as much as 25
8 percent making it very difficult to earn an effective
9 rating?
10 A We send it electronically now.
11 Q He's --
12 A So, you know that it's --(inaudible)--
13 Q -- you're talking about the letter that he sent you?
14 A Pardon?
15 Q You had had a review meeting, you requested a review of the
16 evaluation that Jeremy Patterson gave you at the end of the
17 2015-2016 school year, is that right?
18 A Yes, I don't deny that.
19 Q A number of different meetings were set and adjourned and
20 eventually they occurred in March, is that right?
21 A I never denied that.
22 Q Okay, and today after that was completed and those
23 discussions occurred, the decision that Mr. Beal made was
24 communicated to you by this letter?
25 A Correct.

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1 Q So, all the questions that I'm asking you are not what about
2 what we do today electronically or what happened here. Just
3 so that we can try to get this done. So, he indicated it
4 would be very difficult to get an effective rating if
5 someone doesn't turn their data in in a timely fashion?
6 A Okay.
7 Q So everybody can hear?
8 A Yes.
9 Q He also pointed out some other observations, did he not,
10 that he indicated it's glaringly obvious that the number of
11 discipline referrals you wrote during the 2015-2016 school
12 year were excessive with regards to the similar time period
13 when comparing teachers that had the same students.
14 A It states that there, but it's not accurate.
15 Q Okay, he pointed out that comparing one group of teachers
16 with you you were referring two to three times, double or
17 even triple the number of referrals for the same time
18 period. Meaning sending people out of the room, is that
19 right?
20 A I do not believe that is not accurate, but yes, he states
21 that there.
22 Q He did tell you that, you dispute it, okay.
23 A No, I'm saying he said that there, but it's not accurate,
24 it's not the whole picture.
25 Q And he concluded by indicating Mr. Patterson has some

1 significant concerns on -- you talked that there are a lot
2 of things to look at in an evaluation and Mr. Patterson,
3 your evaluator, he pointed out he had concerns about
4 structure, lesson planning, work place collaboration, and
5 professional communication. And those are all elements
6 based upon which you score an evaluation, is that right?
7 A They are in sections, well yes.
8 Q And he concluded saying, it's my expectation that these
9 concerns be resolved through the IDP process and that you
10 will continue to find success within your practice and our
11 students will continue to grow.
12 A Correct.
13 MR. MULLINS: I would move for admission of
14 Defendant's Exhibit 10, your Honor.
15 (At 11:28:54 a.m., Defendant's Exhibit 10 was
16 offered)
17 THE COURT: Any objection to the admission of
18 that exhibit?
19 MS. BONANNI: No objection, it has been
20 admitted.
21 THE COURT: All right, it will be so
22 admitted.
23 (At 11:29:03 a.m., Defendant's Exhibit 10 was
24 admitted)
25 BY MR. MULLINS:

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1 Q Now, on May 31st of 2017 you were advised that -- that
2 being, if we orientate ourselves -- at the end of the 2017
3 school year you were advised that you, based on your
4 request, would be transferred back to the high school, is
5 that right?
6 A Yes, thanks to my attorney.
7 Q So, that's a yes?
8 A Yes, thanks to my attorney.
9 Q And I'll show you what's been marked as Defendant's Exhibit
10 9. And you received that letter which indicated that you
11 would be reassigned to teach in the Jackson High School art
12 department beginning the 2017-2018 school year, is that
13 right?
14 A That's what this says, yes.
15 Q Okay, and it says following teacher's protocol, all teachers
16 who are transferring buildings during the Summer months will
17 have their materials moved prior to August 21st, is that
18 right?
19 A Yes.
20 Q So, in short, you put the material that you want to have
21 transferred in boxes however you want and then they have
22 other personnel from building and grounds physically move
23 your stuff to the high school, is that correct?
24 A Not totally accurate.
25 Q Okay, partially accurate?

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1 A Correct, partially.

2 Q And it indicates here boxing labels put it together and the

3 materials put together what you want to be moved and it will

4 be moved and it gets it over there, lets you know when it

5 will be there in advance of when school starts up again. It

6 will be there by August 21st so that you then can get ready

7 for the start of the school year, is that right?

8 A Again it's partially accurate.

9 MR. MULLINS: Okay, I move for the admission

10 of Defendant's number 9, your Honor.

11 (At 11:31:47 a.m., Defendant's Exhibit 9

12 offered)

13 THE COURT: Any objection?

14 MS. BONANNI: No objection.

15 THE COURT: So admitted by way of stipulation

16 of the parties.

17 (At 11:31:51 a.m. Defendant's Exhibit 9 was

18 admitted)

19 BY MR. MULLINS:

20 Q Let me show you Defendant's Exhibit 8 and that is your

21 request asking to be transferred which the prior document

22 grants, is that right?

23 A Yes, this is one of the times I asked.

24 Q Okay, then that's very shortly -- the date on that to your

25 recollection is?

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1 A This time that I asked was March 16th, but I had asked prior
2 to this date.
3 Q Okay, and that was right after -- or very shortly after you
4 had had this review hearing, is that right? Where your
5 evaluation was changed.
6 A Oh, sorry, just a second. No, my evaluation was changed the
7 first year that I was there --
8 Q My --
9 A -- and this was --
10 Q -- let me ask --
11 A -- the second --
12 Q -- let me ask my question.
13 A -- year that I was there.
14 Q Let me ask my question. My question was you received that
15 in relationship the on March 7th, 2017 is when you presented
16 your student data to Superintendent Beal and your review
17 process occurred, leading to his raising your 2015-2016
18 evaluation from ineffective to minimally effective, isn't
19 that correct? March 7th, 2017 is the review date, the
20 meeting.
21 A I'm sorry, I'm confused, if you could shorten the question a
22 little?
23 Q The district granted your request to be transferred from
24 Parkside to the high school. You have the document there.
25 A Yes --

1 Q And the date --

2 A -- after I got the lawyer.

3 Q -- and the date that they granted your request and you

4 received that letter was --

5 A Which letter, sorry I --(inaudible)--

6 Q The letter where they're advising you you're being

7 transferred if you have your things boxed up we'll have

8 somebody move them over to the high school. Number 8.

9 A I don't mean to be difficult, I -- could you just restate it

10 simply? You're asking me what exactly?

11 Q You asked for a transfer on March 16th?

12 A That was one of the dates, yes.

13 Q And your review hearing on March the 7th?

14 A I'm not positive of my review hearing, the date.

15 Q And it was subsequent to the hearing that they granted your

16 request and you were transferred to the high school?

17 A Yes, but that was confusing, because in order to be

18 transferred you would have to be effective or highly

19 effective. I'm still now, minimally effective. I'd have to

20 finish and be off of IDP, I am still on the IDP.

21 Q You --

22 A I was told there had to be a position there and there was no

23 openings there.

24 Q Somehow or another you were transferred?

25 A Correct.

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1 Q And you do teach art at the high school --
2 A Not totally. Woops, sorry.
3 Q -- at this time.
4 A Not totally, yes.
5 Q One unit of girls physical education, is that right?
6 A I teach at Jackson High and I also teach at -- in the
7 Pathways program.
8 Q Okay, then was I correct then, you teach art and one unit of
9 girl's PE? Physical Education?
10 A Between the programs, is that what you're asking?
11 Q I'm sorry?
12 A Between the programs, is that what you're asking?
13 Q In -- when you put your whole day together.
14 A This trimester I have three Jackson High classes, and then
15 one Pathways physical education class.
16 Q Okay, and you're a long time athlete, I think you'd talked
17 about before and are a certified PE teacher?
18 A That was a minor.
19 Q A minor in -- but you're certified to teach PE among other
20 things, right?
21 A I don't know what you mean among other things. I can't
22 teach like the health. They've changed the degrees over
23 time and they've relabeled them too with different headings,
24 so you only teach certain parts.
25 Q You're certified to teach physical education, are you not?

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1 A Part of it, yes.
2 Q You've talked about being athletic and you've even gone so
3 far as to be a black belt in Tae Kwon Do, is that right?
4 Martial arts?
5 A Yes, I was fortunate to go to Korea and represent the United
6 States.
7 Q And you have a black belt in Taw Kwon Do?
8 A Correct.
9 Q Which is -- actually that -- it's some form of martial arts,
10 is that right?
11 A Correct.
12 Q Now, you talked to someone about art in the high school
13 building, you talked about a dark room, the photo dark room
14 is a separate room accessible to everyone from the hallway,
15 is it not?
16 A It's right between, if you would like to get the map, right
17 between the two real art rooms.
18 Q Okay, my point is there's an art room, there's art room,
19 there's lots of classrooms and another room is --
20 A That's right -- I'm sorry.
21 Q -- the dark -- the photo room or the darkroom which is it's
22 own room and can be entered from the hallway through its own
23 doorway?
24 A Correct.
25 Q The art room that you are teaching in also has, internally,

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1 a doorway to its own storage room, does it not?
2 A It's the Ford Language area where they keep all their books
3 and so forth.
4 Q And you don't store any material in there?
5 A Occasionally now I asked them if I could and they were kind
6 enough to now let me.
7 Q Okay, and that's like right in your room, you open up the
8 door and there's the storage room?
9 A It's very small.
10 Q The term IDP has been thrown about a bit, but the -- an IDP
11 is where a teacher will work with mentors or an
12 administrator, a couple of different people to get training,
13 is that right?
14 A Partly accurate, yes.
15 Q Okay, it's a individual development plan with -- a plan is
16 created as to what we might be able or what we need to
17 improve and development is the goal, is that right?
18 A Correct.
19 Q In addition to being a teacher with Jackson schools, during
20 the Summers you've worked at Michigan International
21 Speedway, is that correct?
22 A Correct.
23 Q And the school has no objection to you doing that when
24 you're free in the Summers?
25 A Not to my knowledge, a lot of teachers have to work in the

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1 Summer.
2 Q You, I just noted from some of your records or some of your
3 reference you enjoy working with animals, you show dogs, is
4 that right?
5 A I have before, yes.
6 Q Okay, you own dogs at this time?
7 A Yes.
8 Q Okay, and you also live on a property where you keep horses?
9 A They're not my personal horses, I help out the elder
10 gentleman with his horses.
11 Q Okay, and you enjoy riding horses and working with horses?
12 A No, I don't ride horses, I basically just help him water
13 them, feed them, lead them out to the pasture.
14 Q Okay, and do -- the property where the horse is kept, is
15 your home, that's where you live?
16 A Most of the time -- I mean, it's not my property, no, where
17 the horses are, no.
18 Q Okay, so sometimes you live there, sometimes you live
19 elsewhere?
20 A No, I don't live on the property where the horses are.
21 Q I didn't -- and I wouldn't suggest that --
22 A Well, I mean it's not my property.
23 Q Okay, you live in close proximity to the -- where the horses
24 are?
25 A You could say that, yeah.

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1 Q The -- I was asking about athletics and --
2 A Could you talk up just a little bit, I will too.
3 Q -- I was asking you about athletics relative to your
4 teaching PE and you've previously coached high school
5 basketball, is that right?
6 A No, I played basketball, I've coached cross country and
7 track and that was many, many, many years ago when I first
8 started teaching in the early days.
9 MR. MULLINS: Thank you, your Honor, I have
10 nothing further.
11 THE COURT: Any further redirect?
12 MS. BONANNI: Very brief.
13 REDIRECT EXAMINATION
14 BY MS. BONANNI:
15 Q Ms. Davis.
16 A Yes.
17 Q You remember you attended the deposition of Jeff Beal?
18 A Yes.
19 Q And do you recall that the deposition was in February of
20 2017, I can show you the transcript --
21 A Correct.
22 Q -- do you remember that?
23 A Yes.
24 Q Do you remember whether there was any discussion during that
25 deposition about transferring you back to the high school

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1 and asking whether -- why that wasn't happening, remember
2 that?
3 A Yes.
4 Q Turn to page -- sorry, turn to Exhibit 43 in the plaintiff's
5 book.
6 A Yes, I have it.
7 Q Okay, can you identify this for the record, please?
8 A It is a, I believe, a e-mail. Do you want me to read the
9 header or identify it, sorry?
10 Q No, my question is do you remember receiving this -- having
11 this forwarded to you at the time it was written, February
12 22nd -- I'm sorry, February is it 28th? Twenty-second?
13 A Twenty-second.
14 Q February 22nd, 2017?
15 A Yes.
16 Q Okay, and you received this communication from whom?
17 A Amy Gish.
18 Q And this is a communication between Ben Pack and Amy Gish --
19 A Correct.
20 Q -- and Marcy Hartung, correct?
21 A Correct.
22 MS. BONANNI: I'd like to offer this into
23 evidence.
24 THE COURT: Which exhibit? Number --
25 MS. BONANNI: Number 43.

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1 (At 11:48:45 a.m., Plaintiff's Exhibit 43 was
2 offered)
3 MR. MULLINS: No objection, your Honor.
4 THE COURT: So admitted by way of stipulation
5 of the parties.
6 (At 11:48:56 a.m., Plaintiff's Exhibit 43 was
7 admitted)
8 BY MS. BONANNI:
9 Q This communication between Mr. Pack and Ms. Gish is dated
10 February 22nd, so approximately 12 days after the deposition
11 of Mr. Beal. Can you describe for the jury what is being
12 discussed and what the purpose is of this communication?
13 A (Undecipherable)--
14 Q Sure.
15 A It is to return me back to teaching art at Jackson High
16 School.
17 Q And this communication with the administration at this
18 particular time requesting a transfer, was this before your
19 hearing regarding your ineffective rating or after? If you
20 remember.
21 A I had ineffective at this time.
22 Q Okay, let's look at Exhibit 44, this Exhibit 44 is another
23 communication between Ben Pack, Amy Gish, dated February 28,
24 2017. My question to you, Ms. Davis is do you recall having
25 this communication forwarded to you?

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1 A Yes.
2 Q And this is a communication from Ms. Gish to Mr. Pack -- or
3 I'm sorry, excuse me. This communication, Exhibit 44 is
4 from Mr. Pack to Ms. Gish, is that correct?
5 A Yes.
6 Q Also cc'd on this communication from Mr. Pack is Mr. Beal,
7 you see his name?
8 A Yes.
9 MS. BONANNI: I'd like to offer this into
10 evidence.
11 (At 11:51:00 a.m., Plaintiff's Exhibit 44 was
12 offered)
13 MR. MULLINS: I believe it's already in, but
14 it's fine.
15 THE COURT: All right, so admitted.
16 (At 11:51:03 a.m., Plaintiff's Exhibit 44 was
17 admitted)
18 BY MS. BONANNI:
19 Q Thank you. Now, this communication from Mr. Pack indicates
20 that when a position is open the job is posted for all
21 internal positions -- I'm sorry, all internal candidates,
22 those interested in transferring need to apply for the
23 position. At the time, February of 2017 did you understand
24 whether there was an open position at the high school?
25 A There was not.

1 Q Mr. Pack also indicates that in order to be even considered
2 for a transfer a teacher must have a quote, "Effective
3 rating on their evaluation or successfully completed their
4 IDP." end quote. My question is at this point in time had
5 you completed your IDP and did you have an effective rating?
6 A No.
7 Q During your cross-examination Mr. Mullins was asking you
8 about Allegiance/Work Well, the employer's clinic and during
9 that -- those questions you mentioned something about co-
10 pays. My question to you is do you have co-pays that relate
11 to any of the treatment that you've testified to receiving
12 or any of the medications that you've testified to taking?
13 A Yes, I've had to pay over a thousands of dollars for
14 medications that I've been --
15 MR. MULLINS: Your Honor, I object --
16 THE WITNESS: -- subsequently put on and --
17 MR. MULLINS: -- to that, there's --
18 THE WITNESS: -- also --
19 MR. MULLINS: -- no --
20 THE WITNESS: -- therapy -- oh, I'm sorry.
21 THE COURT: That's okay, go ahead Mr.
22 Mullins.
23 MR. MULLINS: There's no foundation, it's --
24 she might have spent anything on any number of medical
25 billings, but if we're limiting this to those days that she

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1 went to Allegiance then we don't --

2 THE COURT: Okay --

3 MR. MULLINS: -- have those billings, there

4 haven't been any billings presented, those are questions

5 that were asked in interrogatories and the answer --

6 THE COURT: Ms. Boninni (sic), what is your

7 response to the objection?

8 MS. BONANNI: Well, she did testify to co-

9 pays during his cross, number one. Number two, no one asked

10 for her billings in -- she doesn't have billings, she has a

11 co-pay. No one asked for her checks, she can testify to

12 what she pays per visit for a co-pay and per medication, per

13 co-pay per month. It think that's absolutely relevant, it's

14 out of pocket loss.

15 THE COURT: All right, overruled.

16 BY MS. BONANNI:

17 Q So, just make it simple, each time you go to therapy what's

18 your co-pay?

19 A After I pay a deductible of -- and I don't recall if it's

20 500 or 1000, do you mean like per visit?

21 Q Yes, per visit.

22 A It's at least 20 dollars.

23 Q Okay, now what do you pay for your medications per month?

24 Out of pocket.

25 A Approximately 100 dollars.

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1 Q Okay, and have you been paying co-pays for the psychological
2 treatment that you've received?
3 A Correct.
4 Q Have you been paying the co-pays that you testified to for
5 the medications that you've been receiving?
6 A Correct.
7 Q And you have been in therapy since October of 2015 until the
8 present?
9 A Correct.
10 Q During your cross-examination you talked about the kids that
11 had come forward to you to let you know that they had been
12 interviewed as part of the inquiry into the incident
13 regarding M.H.
14 A Yes, a couple of them, girls, came up in tears and said they
15 felt like they failed me, because they were afraid to come
16 totally --
17 MR. MULLINS: Well, your Honor, I --
18 THE WITNESS: -- forward out --
19 MR. MULLINS: -- if I may?
20 THE WITNESS: -- with the information --
21 THE COURT: Sure.
22 THE WITNESS: -- oh I'm sorry.
23 THE COURT: Ms. Davis, go ahead.
24 MR. MULLINS: To the extent my objection is
25 hearsay. What these girls have said has been limited. If

1 we're gonna put their statements in the records as to what
2 they've said as it's been recorded by the police officer and
3 by various people, I have no version -- I have no problem
4 with her relating her version of it, but in turn hearsay is
5 hearsay, records are records, so it's a hearsay objection --
6 THE COURT: Okay --
7 MR. MULLINS: -- unless we can agree on --
8 THE COURT: -- your response to the hearsay?
9 MS. BONANNI: My response, your Honor, is
10 that it is not hearsay, it's not being offered for the truth
11 it's being offered for the effect on the listener.
12 THE COURT: All right, overruled. I'll allow
13 it for that limited non-hearsay purpose.
14 BY MS. BONANNI:
15 Q So, go ahead and describe what the two students told you.
16 A They said they had not come totally --
17 THE COURT: You need to speak up, Ms. Davis.
18 THE WITNESS: I'm sorry --
19 THE COURT: That's okay.
20 THE WITNESS: -- I'm just a little -- because
21 it bothers me.
22 THE COURT: I understand, that's okay, go
23 ahead, just trying to keep -- I also have to --
24 THE WITNESS: Yes.
25 THE COURT: -- give a recording --

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1 (inaudible)--

2 THE WITNESS: Yes, Sir.

3 THE COURT: Thank you, go ahead.

4 THE WITNESS: The two students came up to me,

5 they were both females and they said that we're sorry we

6 failed you -- we feel like we failed you, because we

7 couldn't be totally open and reveal everything, because they

8 were afraid of the student bullying them. And then also

9 before I got moved the students wrote up a petition to keep

10 me at Jackson High and they came to me -- and I'm sorry --

11 they came to me and they were crying and they kept saying,

12 I'm sorry, Ms. Davis, we failed you, I'm sorry we failed you

13 and they're crying. I said, no you did not fail me, you did

14 not fail me.

15 It's very important that these students know

16 it's not their fault, they did everything they could without

17 feeling threatened and they had all these petitions and I

18 don't know what principal said it wasn't enough or how that

19 came out, but they were right down in my room just at the

20 end of the school day, I don't remember the date, just

21 before I was moving.

22 Q Okay, now --

23 A Sorry.

24 Q -- we talked -- it's okay, it's okay. Ms. Davis, we talked

25 about -- Mr. Mullins asked you about this request in 2012 to

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1 do an overload and I just want to understand does an
2 overload mean one more class on top of everything that you
3 were doing at the high school?
4 A Correct, it's like if you worked at a factory, it's like
5 overtime.
6 Q Okay, Mr. Patterson, he rated you effective in 2012, fair to
7 say that was consistent with your 29 years of getting either
8 highly effective or effective?
9 A Correct.
10 Q And once you got to Parkside, was his demeanor any
11 different?
12 A Correct, it was totally different.
13 Q And in terms of the treatment did you talk, did he talk to
14 you at all about your performance in the first, say two
15 weeks of being there?
16 A I believe it was about three weeks --
17 Q Okay --
18 A -- roughly, sorry.
19 Q -- so after three weeks of being there I just want to
20 understand, had you been trained?
21 A No, I have had no training.
22 Q Tell us about this conversation you had with Mr. Patterson
23 after three weeks of being there.
24 A He stated my performance wasn't up to his expectation and
25 kind of in quotes, "This will not end well."

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1 Q Is that -- are those his exact words, "This will not end
2 well?"
3 A Correct.
4 Q Did that impact how you managed or anything like your
5 actions afterwards?
6 A I tried to make sure I did extra over and above, so he knew
7 that everything was there, I -- he stopped me once out in
8 the hall and Greg Marsh (ph), my mentor was there, and
9 yelled at me and said, something that -- this is not word
10 for word, okay? Said, something about the lesson plans, I
11 said I have pictures of lesson plans, the lesson plans are
12 right here, tell me what format you want, if you want a
13 different format just tell me what you want and I'll put it
14 in anyway you want.
15 Because, I would -- and I was jumping through
16 any hoops and I don't mean that in a bad way, but I was
17 doing anything to succeed, to do well and he said, you've
18 been teaching 29 years and you should know how to do lesson
19 plans. And all my lesson plans have always been fine and
20 okay, I've never had anyone ever question them. And again,
21 I've had no training in the IB schools and I was going to be
22 compliant, I'll do whatever, just give me the layout how you
23 would like it and I'll do it.
24 Q Okay, lets turn to Exhibit 38, plaintiff's book. Have you
25 seen this document before?

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1 A Yes.
2 Q Identify it for the record.
3 A Employee Harassment Complaint Form.
4 Q And this is several teachers from Parkside, Pennie Davis,
5 Sherry Reed and Maureen Haswell (ph)?
6 A Correct.
7 Q And I just want you to look at page -- excuse me, 4 of this
8 complaint and indicate under proposed resolution for your
9 concerns that you're raising, quote, "Pennie is requesting
10 she be moved back up to the high school for next year." End
11 quote -- oh, I'm gonna add to this. "She is also requesting
12 she receive an effective rating on her evaluation." End
13 quote. Now, the date of this is April 11, 2016, who does --
14 did this complaint go to, in other words were any of the
15 administrators, Mr. Pack or Mr. Beal in the loop in terms of
16 receiving this complaint form at that time?
17 A Correct.
18 Q Who -- which one?
19 A Both of them.
20 Q Thank you, and was your request granted?
21 A No.
22 Q Was there any response?
23 A No.
24 MS. BONANNI: I'd like to offer this into
25 evidence.

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1 (At 12:03:02 p.m., Plaintiff's Exhibit 38 was
2 offered)
3 THE COURT: Any objections, Mr. Mullins?
4 MR. MULLINS: Yes, it contains multiple
5 hearsays.
6 THE COURT: Okay, what's your response to the
7 hearsay objection component?
8 MS. BONANNI: I guess I'm not -- again, it's
9 just for this -- it's really not the hearsay for the truth
10 of what these statements are, but really just the effect on
11 Ms. Davis.
12 THE COURT: Why don't you bring the exhibit
13 --
14 MS. BONANNI: Sure.
15 THE COURT: -- up to the bench?
16 MS. BONANNI: And I'm happy to redact any
17 kind of quoted statement.
18 (Bench Conference held from 12:03:35 p.m. to
19 12:05:54 p.m.)
20 BY MS. BONANNI:
21 Q Is it fair to say that the nature of this harassment
22 complaint was about the disrespect within the administration
23 at Parkside?
24 A Correct.
25 Q Okay, I want you to turn to page -- Exhibit 41. Can you

1 identify this for the record, please?
2 A It's a grievance report form.
3 Q It's dated 9/27/2016 and this was filed on your behalf?
4 A Correct.
5 Q You've seen this before?
6 A Correct.
7 MS. BONANNI: I'd like to offer this into
8 evidence.
9 (At 12:06:57 p.m., Plaintiff's Exhibit 41 was
10 offered)
11 THE COURT: Any objection, Mr. Mullins?
12 MR. MULLINS: No, your Honor.
13 THE COURT: So admitted by way of stipulation
14 of the parties.
15 (At 12:07:05 p.m., Plaintiff's Exhibit 41 was
16 admitted)
17 BY MS. BONANNI:
18 Q Now, this grievance relates to a student who on 9/27/16
19 verbally threatened to kill you and several students in the
20 class. My question is this: Why did this incident get to
21 the level of a grievance?
22 A Because, they weren't following the code of conduct from our
23 school, so in order to file the code with conduct, it's
24 certain steps and that's why it went to a grievance. I
25 wasn't scared of this young man.

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1 Q So, you weren't scared of the young man?
2 A No, no.
3 Q But, it is a violation technically to use that kind of
4 language and threats in school?
5 A Correct.
6 Q And you're -- what you're saying is that the school was not
7 following protocol?
8 A Exactly.
9 Q Okay, let's look at Exhibit -- oh, I've -- okay -- need to
10 do that. Exhibit 51. Ms. Davis, these are your -- all of
11 the Allegiance Occupational record/Work Well that deal with
12 your hand. Have you seen these before?
13 A Yes.
14 MS. BONANNI: I'd like to offer Exhibit 51
15 into evidence.
16 THE COURT: Okay, any objection, Mr. Mullins?
17 MR. MULLINS: I would object, your Honor,
18 because it's not a -- as represented a complete set of the
19 records, in fact, we -- the authorization to treat form
20 which isn't here and which has been placed in evidence and
21 is a communication back and forth --
22 THE COURT: Okay, Ms. Bonanni?
23 MS. BONANNI: Okay, I thought it was a
24 complete set. If it is a partial set they have admitted
25 excerpts, so I suppose we'll call this more excerpts.

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1 THE COURT: Okay, so we have a complete set?
2 MS. BONANNI: I thought this was a complete
3 set and they obviously put in the authorization. I don't
4 know that the authorization was in the subpoena documents
5 that we received. The authorization has already been
6 admitted into evidence, so if that's the only thing missing
7 then I still think --
8 THE COURT: All right, I tell you what.
9 We're kind of close to the end of the examination of this
10 witness, so we'll deal with that admissibility of this
11 exhibit and the other one we talked about --(inaudible)--
12 MR. MULLINS: And I might be able to simplify
13 it, your Honor. To --
14 THE COURT: Sure.
15 MR. MULLINS: -- I don't have any objection
16 to these records being placed in evidence, just they're not
17 a complete set, that's all.
18 THE COURT: Okay, so --
19 MS. BONANNI: Okay, so why don't I -- so I'll
20 offer it again into evidence, Ms. Davis, this is a set of
21 your records from Work Well minus the authorization to treat
22 --
23 THE WITNESS: Correct.
24 BY MS. BONANNI:
25 Q -- you've seen these before?

1 A Yes.

2 MS. BONANNI: Move to admit.

3 (At 12:10:22 p.m., Plaintiff's Exhibit 51 was

4 offered)

5 THE COURT: So admitted.

6 (At 12:10:25 p.m., Plaintiff's Exhibit 51 was

7 admitted)

8 MR. MULLINS: I hate to be overly technical,

9 but she's saying minus the authorization to treat. There's

10 a lot of things that go back and forth --

11 THE COURT: Okay, all right --

12 MR. MULLINS: -- and --

13 THE COURT: -- we'll hold on the

14 admissibility, perhaps we'll find a complete set on the

15 break and deal with the issue of admissibility after that,

16 all right?

17 MS. BONANNI: Okay.

18 BY MS. BONANNI:

19 Q Ms. Davis, my question with regard to these Work Well

20 records, is it your understanding that your employer

21 receives a copy of a medical record every time you appear?

22 A Correct.

23 Q And in terms of x-rays, I see that there was an x-ray that

24 appeared to have been conducted at Work Well on October

25 19th?

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1 A Correct.
2 Q Do you remember that?
3 A Yes.
4 Q Did you provide a copy of that x-ray to your employer?
5 A Correct.
6 Q Did you provide your employer with a copy of your Med Plus
7 x-ray?
8 A Correct, several times.
9 Q Do you remember the dates that you provided your employer
10 with your Med Plus x-ray?
11 A The 19th I believe, yep, and the 23rd and there was one more
12 time, I don't remember the third date.
13 Q Okay, during the cross-examination Mr. Mullins suggested
14 that the administrative leave on October 15th that you were
15 sent out on was because of safety issues related to your
16 hand?
17 A I have no knowledge of that.
18 Q My question is during that meeting on the 15th in the
19 afternoon did anyone share that they were upset for your
20 safety and worried about your hand and that's why you were
21 being sent out of school?
22 A No.
23 Q I want you to look at Exhibit number 15 -- and Channing, if
24 you can pull that up. Exhibit 15 is the letter that you
25 have testified to receiving at some point in the mail after

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1 the 15th -- I believe the 19th of October you received this.
2 Is there anything in this letter that suggests that there's
3 concerns about the safe -- your hand and whether it's safe
4 to work?
5 A No.
6 Q And you see that last sentence in Exhibit 15? It states,
7 quote, "As stated, during the meeting you are to remain off
8 campus, remain (sic) from any correspondence with students
9 and staff and refrain from attending any school activity
10 while the investigation is taking place." End quote.
11 A I don't understand it, I felt like that was a discipline.
12 Q Had you ever been told you couldn't communicate with your
13 colleagues?
14 A No.
15 Q And did you even understand what the nature of this
16 investigation was?
17 A No.
18 Q Let's look at Exhibit 59. Can you identify this exhibit,
19 please?
20 A Sorry, just a minute.
21 Q Oh, sorry.
22 A Okay, this is a message to human resource Jessica Carter and
23 Ben Pack.
24 Q Who is it from?
25 A Myself.

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1 Q What is the date?
2 A October 26th, 2015.
3 Q There's a page 1 in the upper right hand corner of this
4 document --
5 A Correct.
6 Q -- can you explain that?
7 A That is a transmittal from a fax machine.
8 Q Did you fax this document?
9 A Correct.
10 Q Who did you fax it to?
11 A Jessica Carter and Ben Pack.
12 Q When did you fax it?
13 A On October 26th.
14 MS. BONANNI: I'd like to enter this into
15 evidence, Exhibit 59.
16 (At 12:15:21 p.m., Plaintiff's Exhibit 59 was
17 offered)
18 MR. MULLINS: I would object, your Honor, I
19 -- there's no indication that it's a fax or any foundation
20 that this has been received by the school district.
21 MS. BONANNI: Exhibit 59 has a transmittal on
22 the upper right hand corner.
23 THE COURT: Mine stops at 54, so I'm gonna
24 need --(inaudible)--
25 MS. BONANNI: It is -- she just testified she

1 faxed it and that's what that number represents.
2 THE COURT: And she can identify this as
3 something she created, okay? It's got her initial.
4 Objection overruled --
5 MS. BONANNI: Thank you.
6 THE COURT: -- so we can talk to the other
7 list of people and see if they received it.
8 BY MS. BONANNI:
9 Q Ms. Davis, this relates to the request that you return to
10 work with your union rep?
11 A Correct.
12 Q And you're indicating to Jessica Carter and Ben Pack that
13 you received the message at 6:08 and you can't find a union
14 rep. It is now 8:30, I've called three people, etcetera.
15 Do you know whether or not Pack and Carter received this?
16 A Yes, they did and -- sorry, the phone message that I
17 received said -- from Jessica Carter said that we wanted --
18 she want -- want the meeting -- sorry, I need to get a
19 drink.
20 Q It's okay.
21 A Wanted a meeting, but I need to bring a union rep.
22 Q And is this the incident that led to you being docked a
23 couple days pay?
24 A Correct.
25 MS. BONANNI: Okay, I have nothing further,

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1 your Honor.

2 THE COURT: Okay, any further follow up?

3 MR. MULLINS: Thank you, your Honor.

4 THE COURT: Recrossing that, Mr. Mullins?

5 RECROSS-EXAMINATION

6 BY MR. MULLINS:

7 Q This typed up document, Exhibit 59, there's no fax

8 indication on the top --

9 A Very up -- well, maybe it got cut off of yours, it's up at

10 the top here. It says p 1 --

11 Q Can I see it?

12 A I --

13 Q Oh, it says -- I see that it says page 1 --

14 A Right.

15 Q -- but I'm just asking you this question to the extent that

16 people, particularly the jury might be familiar with faxes

17 that they show on the top just like an e-mail shows the time

18 that it's sent and where it comes from and where it's

19 received and people are -- just kind of a squiggly on the

20 top of it. I don't see anything like that, there isn't

21 anything like that is there? I do see that it says page 1,

22 I do see that.

23 A I think it depends on -- this is a personal friend of mine

24 that had a very old fax, so I'm not sure what you're saying

25 should else be on here. I'm not a technical person, or a IT

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1 person.
2 Q It says "Then touched upon." And I don't want to overly
3 belabor the point, but when -- on -- again your medical
4 records that you were just -- your counsel just had you
5 looking at, when you were at Allegiance on October the 19th
6 they indicate records from Med Express x-ray report not
7 received.
8 A Could you --
9 Q That's on October the 19th, that's what the doctor wrote.
10 A Tell me what page you're on, what exhibit it is?
11 Q I think again we've been over it before and I don't want to
12 overly belabor it, but they put you on light work --
13 A So, what are you asking, Sir?
14 Q -- what you could do and they had not received an x-ray from
15 anybody else --(inaudible)--
16 A I did not know that at that time that the doctors did not
17 communicate back and forth. I was told by --
18 Q That's all -- it's just --
19 A -- Ben Pack that they would --
20 Q -- I'm asking you about it --
21 A -- communicate that back and forth.
22 Q -- about what the doctors had written in the records and
23 then again on your -- you had been put -- and we talked
24 about it before, in the bottom corner, they had you on light
25 work, restricted work. No use of the hand over 10 pounds.

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1 That's what it says, right? Bottom right hand corner, the
2 box that was checked. I don't want to take too much time.
3 A Yes, and that's easily done at my work.
4 Q And the first thing that indicates that that's been lifted
5 and you're ready to go back for regular work is November the
6 2nd, is that right?
7 A But, I was already back at work and working.
8 Q That just -- that's just what your counsel put in front of
9 you, that's your medical record, it indicates, "Work status,
10 discharged from care, regular work 11/2/2015." Is that
11 correct?
12 A Yes, I was discharged from care.
13 Q And returned to regular work?
14 A Correct.
15 Q And relative -- you've -- again your counsel asked about
16 this letter of October the 15th from Mr. Pack and the
17 discussion, number 3 was a concern about the results of your
18 fit to work evaluation from Allegiance Occupational Health
19 during your visit on Thursday, October the 15th, 2015 that
20 was one of the elements of discussion just as the records I
21 just showed you indicated that they have not received an x-
22 ray from anyone, you didn't have them have an x-ray and this
23 was a subject of discussion?
24 A May I see the document and can you clarify your question?
25 Q It's the one your counsel just showed you, number 3.

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1 A Oh, this one? Eight? There's so many documents, so I...
2 Q Just looking at number 3.
3 A We never discussed this, I got this --
4 Q I'm just asking you what number 3 says.
5 A The results of your fit to work evaluation -- I'm not sure
6 what fit to work is -- okay, of your evaluation from
7 Occupational Health during your visit on Thursday, October
8 15th. That doesn't really make sense to me.
9 Q That's fine. And then the lawyer/counsel questioned you
10 about indicates that you're requested to either provide the
11 district with a copy of the doctor's report from your visit
12 to Med Plus including the x-rays and to turn it in.
13 A Which I did, three times on the 19th and the 23rd and one
14 more date that I can't recall at this moment, sorry.
15 Q After they asked you to do that?
16 A Well, how would I know to do it if they didn't ask me?
17 Q That's the simple point, this was the subject of the -- of
18 the significant subject of discussion when you met on the
19 15th?
20 A No, it wasn't at that time.
21 Q It wasn't on that time, but it is in the letter at that
22 time?
23 A They said we had that discussion, but we didn't. That is un
24 -- that's not accurate, so.
25 Q Okay, and your doctor record says that you refused an x-ray

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1 and that you should be kept off or were limited in your use
2 of the hand as of the 15th?
3 A They said limited and I was already working.
4 Q You commented on this about you showed a lesson plan to
5 Principal Patterson on your phone. A lesson plan is --
6 teachers, for those of us in the area, but the ladies and
7 gentlemen might not know it; a teacher is supposed to have
8 or create a lesson plan which is kind of a plan day by day
9 by day as to how I intend to -- or show how the teacher is
10 moving through the curriculum that's been designed by the
11 school or the curriculum director and that way an
12 administrator and evaluator can see if what is planned is
13 matching up with the curriculum or the educational plan of
14 the school district, is that a fair description of a lesson
15 plan?
16 A I had no training in the IB and no one showed me --
17 Q But --
18 A -- that format --
19 Q -- I'm asking you --
20 A -- so I wasn't giving them the lesson plans.
21 Q -- I'm just trying to generally ask you, so that the jury
22 can understand what a lesson plan is.
23 A A lesson plan is a unit. There's three different ways that
24 you can do it. Number one is you write -- there's two
25 different ways. So, you write what you're teaching, what

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1 benchmarks it reaches, goals for the students and how you're
2 going to get them, hopefully there, which we do. You also
3 want to put down the different ways, like sometimes you want
4 to include a lot of different ways -- writing in ways, so
5 they write it; research, you show them, you can show them
6 movies, video things, you give demonstrations, there's tons
7 of things you put on one. And then there's a day to day one
8 where you're more brief and that constantly changes
9 slightly, because you have to move along on how your class
10 goes. So, say you're saying these kids are -- the other
11 students are understanding -- are understanding it, so one
12 2-D art might be moving a little faster than the maybe third
13 hour, another hour. Because, you might have to remediate a
14 little bit. Is that kind of clear enough or I could go on.
15 Q Okay, and it's administrators throughout your career as a
16 teacher administrators, particularly a principal, or
17 particularly the principal, the person who's the
18 administrator of the school will do -- they'll examine
19 lesson plans, that's not uncommon, is that right?
20 A They will look at them, but he was stating when I --
21 Q I'm just -- I'm just --
22 A -- had them laying out on my desk --
23 Q Excuse me --
24 A -- that they weren't there, so that's why I started taking
25 pictures of them so I can prove that they were there.

1 Q Okay, and you, boom, here look on my camera, there's my
2 lesson plan, it exists. That's what he wanted to see your
3 lesson plan and you showed it to him on your phone?
4 A Not then, I just kept them. He was just in the hall and he
5 said that as kind of a --
6 Q So, you kept them on your phone --
7 A -- strange, no.
8 Q -- you kept them on your phone so that you'd always have
9 proof that if someone were to say that you didn't have the
10 written lesson plans in your classroom or they disappeared
11 or something you could show that they existed?
12 A Most of the time, yes. Not all the time on my phone.
13 Q In addition to teachers having lessons plans and administers
14 -- administrators reviewing lesson plans, administrators do
15 in-class observations, do they not? In fact, they're
16 required to, are the not?
17 A Correct.
18 Q And so, and simply put at any given time you're there
19 teaching whatever class and all teachers, the principal
20 will, at different times go into a classroom, just walk in,
21 sit down quietly at the back of the room and watch and
22 observe as to how the class is going on and how the lesson
23 plan or the teaching is being effectuated, is that right?
24 A Correct, and I always -- I never had any complaints.
25 Q Okay, and the review of the lesson plans and the

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1 observations are then at the end of the year along with the
2 student data, all part of these many different things that
3 comprise the evaluation?
4 A That's incorrect.
5 Q It's incorrect the observations have nothing to do with --
6 A Obser -- sorry.
7 Q -- the evaluation?
8 A Observations do, yes.
9 Q Okay, and administrators are required to make so many
10 observations -- in-class observations of every teacher, are
11 they not?
12 A Observations, yes.
13 Q Okay, and reviewing lesson plans and reviewing student data
14 is also part of the evaluation, is it not?
15 A The lesson plans, no. I've never had mine evaluated at the
16 end of the year, lesson plans.
17 Q But, the student data is?
18 A Correct, which every principal can also access the computer
19 through our PowerSchool.
20 Q You had indicated that you always do the over and above, but
21 you didn't hand in your student data to the administration
22 for 2015 and 2016 until March of 2017.
23 A I was out on medical leave.
24 Q Well, you're out on medical leave in May, but you weren't
25 out on medical leave on July or August or September or

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1 October or November or December or January or February.
2 A I was told to hang on to everything until all parties
3 involved could meet. So, that's what I did, I know they
4 don't have to report the data to the state.
5 Q You indicated that Mr. Patterson said, I can't remember
6 exactly the wording I used, but something about there's no
7 ending or no good ending to this or something like that.
8 But, indeed there is no ending. You have, for 30 years and
9 continue to be a full time teacher at Jackson Public Schools
10 and that has not ended, is that correct?
11 A I've had a target on my back, it was about to end --
12 Q Well, let me --
13 A -- if I --
14 Q -- let me --
15 A -- didn't get --
16 Q -- let me --
17 A -- my attorney and --
18 Q Please just try to answer my questions.
19 A I am trying.
20 Q Your attorney can get up and go over whatever she wants.
21 THE COURT: Okay, restate your question
22 again.
23 BY MS. BONANNI:
24 Q You have -- you have not ended your teaching career at
25 Jackson Public Schools?

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1 A No, thanks to my attorneys.
2 Q You continue and have always continued to be employed at
3 least for over 30 -- 32 years, I think it is, closely or
4 been continuously employed on a full time basis at Jackson
5 Public Schools.
6 A Thanks to my attorney.
7 Q All 32 years, okay and have never been laid off?
8 A Not to my knowledge.
9 Q And I know we had talked about tenure, but no one has any --
10 ever proffered or instituted the gun any tenure proceedings
11 against you, have they?
12 A There is no tenure anymore.
13 Q There's no such thing as a tenure proceeding?
14 A I don't know, I don't think so.
15 Q Okay.
16 A I don't know anymore, because the education -- there I'm
17 talking too much -- changes back and forth, because -- in
18 the terminology, because we used to have No Child Left
19 Behind Act and then that's changed a lot, it's strange, back
20 and forth.
21 Q Okay, but throughout your career, whatever exists today or
22 not, you've never had tenure proceedings brought against
23 you?
24 A Not that I know of, no.
25 Q And the -- it's the school board that revokes tenure if

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1 tenure is to be revoked, is that right?
2 A There is no tenure now.
3 Q There is no tenure now? How about --
4 A That I know of. It doesn't exist.
5 Q Okay, the Teacher Tenure Act does not exist anymore?
6 A I don't believe so.
7 Q Okay, just to the extent maybe that it does, let's refer
8 back to the old days, to revoke a teacher's tenure charges
9 have to be brought and there is a hearing and you go in
10 front of the school board?
11 A Could you tell me what tenure is?
12 Q You don't -- if you don't know what tenure is, that's fine.
13 Just -- you don't know what tenure was --
14 A I don't what tenure is.
15 Q -- 10 years ago or 15 years ago, you never heard of the
16 Michigan Tenure Commission or the Teacher Tenure Act, or I
17 know you told me you were a tenured teacher, but if you
18 don't know what tenure is, that's fine I'll accept that and
19 I'm done with that question.
20 A I know of it, but I don't know what it is.
21 Q Okay, and you don't know how tenure charges are brought?
22 A I don't think it exists anymore.
23 Q But, it used to exist?
24 A I believe so, yes.
25 Q Okay, and do you believe that when it existed that was

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1 something that had to be brought to the school board?
2 A I don't know.
3 Q Okay, you had talked about, if I understand what you're
4 saying is the students in both schools who had offered
5 complaints about you had been intimidated into saying what
6 they said?
7 A I don't understand in both schools what you're saying.
8 Q You -- well, let's talk about when you were at the high
9 school. You said that we know that Officer Goins talked to
10 the students and we know that Mr. Zessin talked to students
11 and we know that Barbara Pauli talked to students and we've
12 got written statements that say certain things, but you said
13 those statements aren't true and somebody otherwise has come
14 to you and said, well we were afraid and that's why we said
15 what we said.
16 A That's what the two young girls had told me, no one informed
17 me at the school that they -- those guys were --
18 Q And here's my question --
19 A Okay.
20 Q -- did you have a writing or a report or an e-mail or a fax
21 or a scribbled note that you handed into Officer Goins or to
22 Barb Pauli or to Mr. Zessin saying, I know that you got
23 these statements from these kids, but I want you to know and
24 yet you'd better go back and check with them that, you know,
25 I think that they really didn't mean what they said that

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1 they're so afraid of their classmate that they said things
2 that weren't true. Is there any contemporaneous fax, e-
3 mail, photo saved on your phone, or writing that you have
4 that would verify or let us look at that some of these
5 students who were in your class told you that?
6 A At Jackson High, no I don't have a fax or so forth from the
7 students.
8 Q Or you, yourself, there's no I'm not gonna find any kind of
9 a note that you, you know, Ms. Pauli, I gotta talk to you, I
10 -- you know, or Officer Goins, I've gotta talk to you on the
11 16th or the 17th or the 14th or the 19th of October after this
12 -- I know you talked to these people and I know that they
13 said things, but you shouldn't rely upon those, because a
14 couple of these people have come to me and have said that
15 they're afraid of this person or this person might have
16 threatened them. I -- there's even -- I know you're --
17 saying you don't have a fax machine, but even, you know,
18 Officer Goins, Scott Goins, you know, here's a note from me
19 or drop something off or ask him to supplement his police
20 report or go to Mr. Zessin or Ms. Pauli and say, please add
21 this when we've -- we do have typed things from you that you
22 said and you've submitted and -- but I don't see anything
23 that says that. I want to make sure that there's not
24 something that we're missing in writing, something we can
25 look at that goes back to that time.

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1 A It happened at the end of the day, I did not know that, only
2 through the students that they were interviewed, I was
3 waiting for someone administrative to tell me and things
4 moved so quickly --
5 Q It's -- if --
6 A I didn't think it was I was protecting the students privacy.
7 Q The answer would be that you don't have anything like that,
8 is that right?
9 A I don't have a fax from anyone, no.
10 Q You don't have anything -- I'm sorry?
11 A I do not have a fax from any students.
12 Q You don't have any kind of a written document either created
13 by yourself or from anybody else that would indicate
14 anything like that? That's all I'm asking.
15 A I'd have to look back in my e-mails to see if I scribbled it
16 up. I've got about eight three inch binders filled with all
17 this information.
18 Q Well, you've been asked to produce those things. Are there
19 binders that you're holding back?
20 A No, no, no, I just -- I'll say no, no.
21 MR. MULLINS: Thanks, I have nothing further,
22 your Honor.
23 THE COURT: All right.
24 THE WITNESS: I can't remember.
25 THE COURT: Okay, any further -- ladies and

gentlemen of the jury, any questions for Ms. Davis? Okay, I don't see any, so Ms. Davis, you may step down from the witness stand. Ladies and gentlemen this appears to be a good time to maybe take our lunch break and did everybody bring something or not, I'm just trying to decide the length of the break? So, we do have, if you want to go over to the YMCA which is right across the street, they do have a little soup and sandwich bar there. So, we're gonna take maybe a half an hour.

UNIDENTIFIED JUROR: I do have a question.

THE COURT: Okay, well I need you to write it down.

UNIDENTIFIED JUROR: I did --(inaudible)--

THE COURT: You did? Okay, bring it -- I'll see the counsel at the -- you can bring it up here. Ms. Davis, you can have a seat there for just a second, looks like we've got a question. Mr. Mullins, if I could see you and Ms. Boninni at the counsel table?

(Bench Conference held from 12:41:35 p.m. to 12:41:54 p.m.)

THE COURT: Okay, ladies and gentlemen, the two attorney's inform me that a picture that they do not recall, but there's one that was taken, all right?

(Bench Conference held from 12:42:01 p.m. to 12:44:04 p.m.)

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(Transcriber Note: Judge's Microphone Is Off)

THE COURT: All right, ladies and gentlemen, we have some scheduling issues and so, we're gonna take an hour for lunch, all right? And we're gonna be back at 2:00 o'clock, all right? It should give us a good handle on where we're gonna be, so all rise for the jury. David, would you take the jury to the jury room and release them for lunch anytime they're ready. Okay, do we need to adjust a couple things? Ms. Davis, you can have a seat back at counsel table, we've got a couple of admissibility issues I just want to see if we can further address, all right?

(At 12:44:16 p.m., jury excused)

THE WITNESS: May I use the bathroom, Sir?

THE COURT: You sure can, you can -- yeah, you can use the one in there.

THE WITNESS: Okay, thank you, excuse me.

MR. MULLINS: I have a real simple thing that --

THE COURT: Sure, no problem.

MR. MULLINS: -- before I forget, which I am capable of.

THE COURT: Go ahead.

MR. MULLINS: I would ask -- it's not necessarily relevant now, but it will come into play that the court take judicial notice of the Teacher Tenure Act

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1 under Michigan Rule of Evidence 2001 as being a current
2 existent statute and we may need to have to craft an
3 instruction to explain to the jury what it is, because she's
4 just --
5 THE COURT: Okay, but I was almost gonna ask
6 a question about that, but I didn't, because I didn't know
7 if -- has that essentially been modified --
8 MS. BONANNI: Yes.
9 THE COURT: -- by the fact that you get this
10 -- if you get two ineffective ratings they can release you,
11 as an example, even if you've got 20 or 30 years in school
12 --
13 MS. BONANNI: Yes, and so --
14 THE COURT: -- correct?
15 MS. BONANNI: -- that's why -- what my
16 concern is for you taking judicial notice, it's confusing,
17 because, it's not relevant here. The Teacher Tenure Act has
18 absolutely nothing to do with anything that happened in this
19 case.
20 THE COURT: Okay, well I -- so, I'm not gonna
21 take judicial notice of it now, but that may be a great
22 question. You may even want to call, you know, one of the
23 superintendents or further administrators, because it just
24 sounds to me to be premature at this point for me to grant
25 judicial notice about that, all right?

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1 MR. MILLER: May I answer the court's
2 question, Judge?
3 THE COURT: Sure.
4 MR. MILLER: Just to give my explanation?
5 There were amendments to the Teacher Tenure Act, I think,
6 2011. And there's a lot of things it covers; evaluations,
7 but there's still a Teacher Tenure commission, you still
8 have to bring charges against the teacher to terminate them
9 and there's still a standard for discharge. It's not willy
10 vanilly or at will, I mean, there is still a standard that a
11 school board needs to prove. And that is important, just
12 because, I mean the plaintiff has suggested I can be let go
13 for any reason.
14 THE COURT: But, does it still have to
15 incorporate this new ineffective finding at least two years
16 in a row or --(multiple speakers)--
17 MR. MILLER: No, no, the evaluations are
18 separate. We've set forth, I mean, a very specific way,
19 it's a few page, I mean, for the evaluations for how
20 evaluations occur. It has to happen every year unless
21 you're highly effective so many years, but there's a
22 separate section for the discharge of a tenured teacher and
23 that's essentially -- it can't be for any reason that's
24 arbitrary or capricious which by law means it can't be
25 retaliatory for engaging in some sort of protected action.

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1 THE COURT: Well, I'm not prepared to take
2 judicial notice of that yet and it may be that one or many
3 some of the additional witnesses it may be that you want to
4 call Mr. Beal back up and ask him some questions about the
5 tenure system and how it currently applies. So, I just
6 think that's a little premature at this point, okay? So --
7 MS. BONANNI: So, I just was -- I know it's
8 rude to text when the Judge is talking, but it was Doctor
9 Weisbrod.
10 THE COURT: That's okay.
11 MS. BONANNI: Okay, so he's -- he didn't hear
12 from me, so he panicked, so he says his wife and daughter,
13 they're on lockdown, he's gonna come and testify now. So,
14 that's great --
15 THE COURT: Okay.
16 MS. BONANNI: -- but, I still, if we have
17 time, I'm trying to move this along. I do not expect to
18 take a lot of time with him. I don't know about Mr.
19 Mullins, but I would like my next witness to be Mr. Pack.
20 That is something that I indicated to them, they know that's
21 my order and so, I'd like the call to be made. I don't
22 expect to take more than 40 minutes with Doctor Weisbrod,
23 because I'm putting in his records --
24 THE COURT: All right, since we're taking a
25 break, so what do you think, Mr. Mullins in terms of getting

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1 Mr. Pack here?

2 MR. MULLINS: Well, I'm -- and I'm -- I'm

3 making this representation to the court: We had a long

4 discussion, she even talked about taking witnesses out of

5 order, not Mr. Pack, and that there's gonna be Mr. Gish, and

6 there's gonna be Mr. -- and Mr. Pack was not requested

7 today. Now, I will, as an officer of the court, make an

8 attempt to contact him, but he's retired. I -- and -- I

9 have indicated to her that, you know, on a day's notice I'll

10 have him here. I mean, he was -- he would have been here

11 Monday if -- and --

12 MS. BONANNI: Okay, I was --

13 THE COURT: Well, listen, let's use good

14 faith efforts to --(undecipherable)--

15 MR. MULLINS: Yes.

16 THE COURT: -- contact him --

17 MR. MULLINS: Yes.

18 THE COURT: -- see --(undecipherable)-- give

19 the court a further report then, all right?

20 MR. MULLINS: Certainly.

21 THE COURT: And counsel, obviously --

22 (multiple speakers)--

23 MS. BONANNI: And it's -- and it's important

24 and I don't mean to be -- I'm pretty laid back as you can

25 see. But I think if this --

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1 THE COURT: Sometimes. Sometimes not --
2 (inaudible)--
3 MS. BONANNI: I won't forget you said that.
4 No, I want to keep this moving and I was told that Pack
5 needed an hour, he's under subpoena, I know he's retired,
6 but he's been subpoenaed.
7 THE COURT: And I'm gonna --
8 MS. BONANNI: Yeah.
9 THE COURT: -- take Mr. Mullins' word that
10 he's gonna do his very best over the break here to see if he
11 can get Mr. Pack, so. But, alternatively we might want to
12 make plans so we can make the most efficient use of the time
13 of the jury that we can today. That's --
14 MS. BONANNI: Yeah.
15 THE COURT: -- really what the court wants to
16 do, all right?
17 MS. BONANNI: Okay.
18 THE COURT: And I'm sure the parties want to
19 too, all right?
20 MR. MULLINS: Thank you, your Honor.
21 THE COURT: So, either one of you want to
22 leave for the lunch hour, that's fine. Feel free to go to
23 the Y too as long as you're just --(undecipherable)-- you
24 know the jurors and who they are, so. Okay, we'll see
25 everybody, I'll be around having lunch and --

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MR. MULLINS: We'll avoid the Y.

THE COURT: What's that?

MR. MULLINS: We'll avoid the Y.

THE COURT: All right, well there's other places pretty close too. That's just the closest I send the jurors.

MR. MULLINS: Yes, I -- it's -- yeah.

MR. MILLER: And Judge, could you ask Ms. Boninni to stop making fun of my vest? She's made fun of my vest over --

MS. BONANNI: I like it.

MR. MILLER: -- and over today.

MS. BONANNI: I feel like it needs a little --

THE COURT: --(inaudible)--

MS. BONANNI: -- teeny --(inaudible)-- he needs a pipe, I'm telling you he needs like --(inaudible)--

THE COURT: So, we did have the question of the full exhibit?

MS. BONANNI: Oh, yeah.

THE COURT: I don't want you to -- (inaudible)-- but maybe you all can talk about that.

MS. BONANNI: Yeah, I think we have an idea.

THE COURT: All right,

MR. MULLINS: And it -- and again, my -- I

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1 don't have any problem with that exhibit, it's just that it,
2 obviously is not the full and complete and it keeps being
3 offered as that --
4 THE COURT: That's all I'm asking is we can
5 maybe find one --
6 MR. MULLINS: Yeah.
7 THE COURT: -- mark it and get it ready for
8 admission all right?
9 (At 12:50:04 p.m., hearing recessed)
10 (At 2:11:12 p.m, hearing resumed)
11 UNIDENTIFIED SPEAKER: All rise for the jury.
12 THE COURT: All right, thank you, you may be
13 seated. The record should reflect the presence of all the
14 jurors, parties and respective attorneys. And I understand
15 our next witness is here, is that correct?
16 MS. BONANNI: Yes, your Honor, yes.
17 THE COURT: And which witness would that be?
18 MS. BONANNI: Doctor Mitchell Weisbrod.
19 THE COURT: Okay. Please raise your right
20 hand to be sworn. Do you solemnly swear or affirm that the
21 testimony you are about to give this court will be the
22 truth, the whole truth and nothing but the truth, so help
23 you God?
24 THE WITNESS: I do.
25 MITCHELL WEISBROD

1 (At 2:12:09 p.m., witness sworn, testified as follows:)
2 THE COURT: Have a seat right there in the
3 witness stand and when you get comfortable would you state
4 your full name and spell your last name for the record?
5 THE WITNESS: Mitchell S. Weisbrod.
6 THE COURT: Okay.
7 THE WITNESS: Last name, W-E-I-S, as in Sam,
8 B-R-O-D, as in David.
9 THE COURT: All right, thank you.
10 DIRECT EXAMINATION
11 BY MS. BONANNI:
12 Q Good afternoon, Doctor Weisbrod. Could you please introduce
13 yourself to the jury, tell them a little bit about yourself.
14 A I'm a clinical psychologist, been practicing in the field
15 since 1991. I am Pennie's therapist, a clinical kind of
16 behavioral therapist.
17 Q Can you tell me what -- tell me about your educational
18 background.
19 A I have a doctorate in clinical psychology, a masters in
20 clinical psychology, a masters in social psychology and a
21 bachelors in physiology.
22 Q Okay, tell me what it cognitive behave -- you said you were
23 a cognitive behavioralist?
24 A Cognitive behavioral psychology is a theoretical orientation
25 that believes that thinking or cognition, feelings and

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1 behavior are related. How you think will affect how you
2 feel, how you behave, how you behave will affect how you
3 think and feel, vice versa. By helping a person adjust
4 their thought process, we can help change behavior, helping
5 them change their behavior, we can change their thoughts and
6 feelings, so.
7 Q And has this been the school of thought in terms of therapy
8 that you have been using with regard to Pennie Davis?
9 A Yes, it is.
10 Q And how long have you been treating Pennie Davis?
11 A For almost two years.
12 Q I'm gonna show you a document that's been marked as Exhibit
13 66 and if you could please identify what this is?
14 A It's my CV, curriculum vitae.
15 Q Okay, and this sets out your education, your work
16 experience, post doc experience, teaching, research
17 etcetera, is this up to date and accurate?
18 A Yes, it is up to date and it's accurate.
19 MS. BONANNI: I'd like to move to enter
20 Exhibit 66 into the record.
21 (At 2:15:04 p.m., Plaintiff's Exhibit 66 was
22 offered)
23 THE COURT: Any objection? Admission of the
24 CV?
25 MR. MULLINS: No, that's fine, your Honor.

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1 THE COURT: All right, so admitted by way of
2 stipulation of the parties.
3 (At 2:15:10 p.m., Plaintiff's Exhibit 66 was
4 admitted)
5 BY MS. BONANNI:
6 Q Okay, now I'm gonna also show you what has been marked in
7 the white book, the big book as Exhibit 55 in the back.
8 A All right.
9 Q Can you identify what this document is?
10 A A summary of my progress notes.
11 Q Okay, and then --
12 THE COURT: And I see Mr. Mullins looking for
13 it, what number?
14 MS. BONANNI: Oh, 55.
15 THE COURT: Fifty-five --(inaudible)--
16 MR. MULLINS: Is it different than 54 which
17 would be in this?
18 THE COURT: Okay, go ahead, Ms. Bonanni.
19 MS. BONANNI: Oh, I'm sorry, is he -- he's
20 still looking.
21 BY MS. BONANNI:
22 Q I'm gonna ask you questions about Exhibit 55. Have you
23 verified to see whether this summary is accurate?
24 A Yes, it is.
25 Q And it's based on your treatment notes?

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1 A Correct.

2 MS. BONANNI: I'd like to move for the entry

3 of Exhibit 55 into the record.

4 (At 2:17:06 p.m., Plaintiff's Exhibit 55 was

5 offered)

6 THE COURT: Any objections, Mr. Mullins?

7 MR. MULLINS: Mind if I voir dire, your

8 Honor?

9 THE COURT: You may.

10 MR. MULLINS: So, this is something you

11 prepared in order to come down here today, is that right?

12 THE WITNESS: Which?

13 MR. MULLINS: The summary?

14 THE WITNESS: I prepared it along with the

15 attorney.

16 MR. MULLINS: Okay, with -- Ms. Bonanni?

17 THE WITNESS: Yes.

18 MR. MULLINS: And you have a more complete --

19 THE WITNESS: Yes.

20 MR. MULLINS: -- file that you brought with

21 you with all of your --

22 THE WITNESS: I didn't bring my caseworker I

23 had submitted it to you and to the --

24 MS. BONANNI: And I have that as well.

25 MR. MULLINS: Okay, and is that just --

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1 THE WITNESS: It looks like it's right here,
2 it's Exhibit 54.
3 MR. MULLINS: Okay, and that's my question,
4 if I were to look at your file in your office, what you see
5 there in 54 would be the beginning and the end, that's the
6 complete file?
7 THE WITNESS: Right. It's complete except
8 for billing records, things like that.
9 MR. MULLINS: I'm sorry?
10 THE WITNESS: Except for billing record, yes,
11 this is the complete clinical notes.
12 MR. MULLINS: Okay, thank you.
13 MS. BONANNI: I'd like to move for the
14 admission of Exhibit 55.
15 (At 2:18:15 p.m., Plaintiff's Exhibit 55 was
16 offered)
17 MR. MULLINS: That's fine.
18 THE COURT: All right, so admitted by way of
19 stipulation of the parties.
20 (At 2:18:18 p.m., Plaintiff's Exhibit 55 was
21 admitted)
22 MS. BONANNI: Thank you, your Honor.
23 BY MS. BONANNI:
24 Q Okay, Mr. Weisbrod, let's look at one more document and
25 that's exhibit 54 and I just need you to identify what these

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1 -- this collection of documents is.
2 A It looks like the reverse order of my clinical notes.
3 Q Okay.
4 A Starting from the most recent to the original.
5 Q Okay, thank you, Doctor. How -- now you indicated -- do you
6 remember when Pennie Davis came to see you first?
7 A Yes.
8 Q Tell me the date.
9 A February 5th, 2016.
10 Q And --
11 MR. MULLINS: Your Honor, if I may?
12 THE COURT: Sure.
13 MR. MULLINS: And excuse -- I have no
14 objection to the admission of the summary with the
15 understanding that we will be admitting his complete notes.
16 MS. BONANNI: Oh, I'm sorry, did I --
17 MR. MULLINS: That's fair enough.
18 MS. BONANNI: -- I forgot to move to admit
19 Exhibit 54.
20 (At 2:19:13 p.m., Plaintiff's Exhibit 54 was
21 offered)
22 THE COURT: All right, it will be so admitted
23 by stipulation of the parties.
24 (At 2:19:17 p.m., Plaintiff's Exhibit 55 was
25 admitted)

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1 BY MS. BONANNI:

2 Q At any time during your testimony Doctor, you may feel free

3 to consult either Exhibit 55 or 54 to help you answer my

4 questions, okay?

5 A Yep.

6 Q So, tell me when Pennie Davis came to see you first.

7 A February 5th, 2016.

8 Q And at the time she came --

9 MR. MULLINS: I'm sorry, it's either the

10 acoustics or my ears from too many years.

11 THE WITNESS: February 5th, 2016.

12 MR. MULLINS: Thank you.

13 BY MS. BONANNI:

14 Q And when she came to see you the first time on February 5th,

15 2016, had she been in treatment?

16 A Yes, she had.

17 Q And do you remember who she was treating with?

18 A She was treating with a psychologist, Gallagher.

19 Q And do you remember how long that treatment was?

20 A I think it was about, I recall it was probably about 10, 11

21 sessions.

22 Q Now, those notes have been submitted as evidence in this

23 case. Have you also had a chance to review those notes?

24 A Yes, I have.

25 Q And can you tell me whether those notes in terms of the

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1 diagnosis etcetera, observations are consistent with what
2 you have found at least on February when you met with
3 Pennie?
4 A Yes, they described Pennie as having an adjustment reaction,
5 adjustment disorder with anxiety and depression. That was
6 my initial diagnosis I believe as well. And --
7 Q Did that -- let me ask you, did that -- describe for the
8 jury what is that diagnosis, what does it mean?
9 A A adjustment disorder is a reaction to an extreme stressor
10 and it's a reaction that is outside the typical normal
11 experience due to the stressor. And it usually lasts about
12 six months or less.
13 Q So, did your diagnosis of Ms. Davis change at any time
14 throughout the course of your treatment?
15 A Yes, you know, after a while and as the symptoms persisted
16 we changed the diagnosis to depression and anxiety.
17 Q And has the diagnosis of depression and anxiety, has that
18 remained consistent?
19 A Yes, it has.
20 Q What's the treatment goal in terms of your work with Pennie?
21 A To relieve the symptoms of depression and anxiety.
22 Q Now, is she, to your knowledge, is she utilizing medications
23 to assist with that?
24 A Yes, she is.
25 Q Okay, let's talk about the initial evaluation of Ms. Davis

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1 on February 5th, what was the presenting problem?
2 A She was presenting with feelings of anxiety, just feeling on
3 edge, not being able to stop or control her worrying.
4 Worrying about different things, trouble relaxing, trouble
5 sleeping, and she had been having anxiety attacks over the
6 last four weeks.
7 Q Now, at this point in time do you remember where she was,
8 was she at the high school, had she transferred to Parkside
9 when she came to see you?
10 A I'll have to look here. February -- I'm not sure.
11 Q Let's look at your treatment note from February 11th, 2016.
12 And you can look at the summary if you want as well.
13 A February 11th?
14 Q Yes.
15 A Yes.
16 Q Again the presenting problem appears to be chronic stress,
17 anxiety, depression, but what was going on on this day?
18 A Okay, on this day she was -- she felt she was being punished
19 for reporting an assault to the police. She was transferred
20 to Parkside, she stated that she was asked by the
21 administration that she hurt herself instead of the student
22 assaulting her and that was particularly upsetting her.
23 Q Okay, and now did that change, that sort of presenting
24 issue? Has that changed over time or can you ---
25 A No --

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1 Q -- characterize for the jury what's -- how things in terms
2 of her feelings have changed?
3 A No, I think persistently she's felt that she's been treated
4 poorly, she's been treated differently than other teachers
5 in similar situations. Her anxiety has at times gotten
6 better, but because of continued stressors or new things
7 have gotten progressively worse.
8 Q What do you mean by new things?
9 A It -- she has described it and the way she describes it says
10 that she is given criteria for success and the bar continues
11 to move and she feels she's been set up to fail. And
12 therefore, you know, it's two steps forward three steps back
13 and she -- then we've been working hard just for her to
14 maintain her composure, maintain her ability to function and
15 keep going to and keep working, so.
16 Q So, you said that as things keep changing --
17 A Mm-hmm.
18 Q -- what do you mean by that?
19 A Well, she recently this year was transferred back into the
20 highschool where she had hoped to be and but was
21 discouraged, because they didn't put her in the art room
22 that she had been in prior to the transfer and into a room
23 which she described as kind of a converted utility closet
24 without sufficient supplies.
25 Q So, this is the room with the wires and the exposed pipes?

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1 A Pipe, yeah.
2 Q Okay, so when things like that would happen can you describe
3 for the jury how that impacts someone who's got the anxiety
4 and depression that --
5 A Well, you know, it's her hope was built up and then dashed
6 like the rug was pulled out from under her.
7 Q So, then clinically how does the patient or at least how --
8 A It's like it's retraumatized.
9 Q Okay.
10 A You know, so.
11 Q So, does it present a challenge then for the clinician to --
12 A Yeah, you have to bring her back to at least where we left
13 off and --
14 Q And I think the way you're describing it you said three
15 steps forward, two steps back?
16 A Yeah, or I think I said it the other way around.
17 Q Okay, so is that the best visual for us to understand the
18 challenges that she has?
19 A Right.
20 Q Now, the depression, I understand generally these things,
21 you know, but I'm not a doctor like you, so can you, at
22 least for Pennie, can you describe how the depression
23 manifested itself with Pennie throughout the course of your
24 treatment?
25 A Course of treatment, there's lack of hope and when she gets

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1 hope -- hopeful it's pulled away and it's manifested both
2 emotionally and physically. We've seen her diabetes get
3 worse, she's been on a heart monitor at least once that I
4 can remember since that. And you know, she's cheerful often
5 in the office which is not uncommon for depressed patients,
6 but we could make several steps where she's motivated and
7 hopeful and then something happens whether it's a reprimand
8 or something and it's, you know, she's -- hits bottom.
9 Q Now, describe for the jury how the anxiety manifests itself
10 in terms of symptoms for Pennie over the course of your
11 treatment.
12 A Inability to sleep, falls, you know, she's got -- she came
13 with some problems sleeping and it's -- it goes back and
14 forth. She needs some medication to help her fall asleep,
15 she gets disoriented a bit, confused, you know, some somatic
16 symptoms.
17 Q Okay, so -- and you attribute these symptoms to her anxiety?
18 A Correct.
19 Q And what are you noticing things -- the things that she's
20 reporting to you that are causing her to feel depressed or
21 to feel anxious? What are the -- I think the terminology is
22 stressors --
23 A Mm-hmm.
24 Q -- what are the stressors that Pennie has reported to you
25 throughout the course of her treatment?

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1 A Stressors are -- there are two types of stressors basically,
2 we categorize major life events, these are deaths, divorces,
3 job loss, job promotion, births, the body doesn't care which
4 if it's a good thing or a bad thing it just reacts and those
5 things -- the impact are -- is strong and the effects last a
6 relatively long period of time.
7 A major stressor can affect an individual six
8 months, year, two years even though, you know, they might
9 not think about what's causing the immediate one. The minor
10 stressors are everyday things, forgetting your car keys,
11 running late, getting behind in traffic. Now, major
12 stressors, obviously that, you know, since I've known her or
13 just before the assault, being transferred, having her
14 credibility challenged, having her teaching cred -- not her
15 credentials, but her teaching expertise challenged.
16 According to her reports being scolded publicly by, you
17 know, the principal and just changes, where she feels less
18 than, that she's not being treated as an equal to other
19 teachers, so.
20 Q And has she reported to you the reason why she's being
21 treated this way?
22 A Yes, I -- as I said, she feels that she's being punished for
23 going outside the chain of command and reporting the
24 incident to the police.
25 Q Okay, now let's look at -- moving ahead to one of your

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1 entries, she -- I'm looking at July 8th, 2016 and this is in
2 the Summer before school at Parkside begins --
3 A Mm-hmm.
4 Q Can you tell the jury what was going on with the this
5 situation was for Pennie?
6 A Pennie --
7 MR. MULLINS: July 18th?
8 MS. BONANNI: July 8th, 2016.
9 THE WITNESS: July 8th. I believe this was
10 getting ready to return to school. She had already got an
11 ineffective report on her teacher evaluations. My
12 understanding of the education is if you have a ineffective
13 report it's hard to transfer, it's hard to go anywhere if
14 you get two --
15 MR. MULLINS: Excuse me, your Honor, I don't
16 think there's a foundation for this. If he has any
17 expertise or understanding of --(undecipherable). I mean I
18 know we've had this whole talk about teacher tenure and I --
19 if we're gonna go into it, we're gonna go into it.
20 THE COURT: (Multiple speakers)-- foundation
21 --(inaudible)-- tenure system?
22 MS. BONANNI: I'll -- and I don't know what
23 the answer is, so I'll see what he knows.
24 BY MS. BONANNI:
25 Q Sir, do you have an independent understanding of the school

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1 system and how their ratings work?
2 A I've been told by several teachers I've had -- I have other
3 clients who are teachers that an ineffective rating makes it
4 difficult --
5 MR. MULLINS: But, seriously, your Honor, and
6 I wouldn't be objecting but for the fact, I mean, we --
7 we're gonna do all of that stuff, we're gonna do all of that
8 stuff.
9 THE COURT: Okay, well I think it's based on
10 hearsay --
11 MS. BONANNI: Okay.
12 THE COURT: -- so I'm gonna sustain the
13 objection.
14 BY MS. BONANNI:
15 Q So, at least in terms of Pennie, what was she reporting to
16 you on this date on 7/8/2016?
17 A That if -- she was reporting to me that if she got -- she
18 felt as if she got another ineffective she could be fired.
19 Q Okay, and then can you -- this fall of 2016 we've got
20 treatment, she -- she's -- it looks like she's treating
21 weekly?
22 A Under -- when she was under a lot of stress and feeling a
23 lot of anxiety we would schedule weekly.
24 Q Okay, and how have the treat -- how has the appointments
25 been if, like what's typical? Is it typical that they're

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1 weekly or bi-weekly?
2 A My normal course is to start weekly for a few sessions and
3 as people progress we fade them out to twice a week and
4 often then do monthly follow ups. Pennie hasn't made
5 significant enough progress to do -- follow my normal
6 procedures.
7 Q Okay, now in the same fall of 2016 I'm looking at September
8 19, 2016, she talked about the IDP with you?
9 A Mm-hmm.
10 Q Do you -- and what did she share with you about what the
11 IDP, her concerns?
12 A The IDP stands, I believe the Individual Development Plan
13 and it's something that the schools do to help teachers
14 improve where especially if they've labeled somebody a
15 failing teacher, they'll -- it helps them improve. In her
16 -- in Pennie's case she felt that she was doing what they
17 were telling her to do and when she submitted her materials
18 the principal or whatever, changed the criteria and then she
19 had to redo them and then submitted them and had to change
20 something else, so she felt that she had to keep doing
21 different things and there were more requirements of other
22 trainings and --
23 Q Now, I see here at certain points in time in your therapy
24 you're giving her suggestions about how to cope and I'm
25 looking at 10/3/2016 you -- your note says quote, "Focus on

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1 the kids."
2 A Mm-hmm.
3 Q Was that your idea or was that something she was telling
4 you?
5 A It was both, I mean, she was utilizing her strength. We
6 talked a lot about doing the things that you can control.
7 We can't control what the school does or anybody else does,
8 we can only control how we think or how we feel and you
9 know, how we behave. So, her strength has -- according to
10 what she's told me and the -- is that she's good teacher and
11 the teacher of the kids respond to that. So, by focusing on
12 the kids and doing her art or whatever she's --
13 (undecipherable)-- that's what she can control.
14 Q Let me ask you a question about her art. Not the class, but
15 the art. Has she shared with you that she makes her own
16 art?
17 A Yes, she shared both -- some of her history, Pennie's a
18 pretty private person, so she doesn't share a lot. But,
19 she's a very accomplished artist, she's won numerous awards,
20 she went to college on an art scholarship.
21 Q And so, has she, to your knowledge, has she reported to you
22 that she is making her own art?
23 A That's one of the things she has a hard time doing her own
24 art.
25 Q Has she reported to you why she struggles to do her own art

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1 now?
2 A Well, she says she's exhausted, you know, when she goes home
3 she takes care of the dogs, she helps her neighbor with his
4 horses and tries to go to sleep.
5 Q Is exhaustion, is that symptomatic of one of the diagnoses
6 --
7 A Oh, both.
8 Q Okay.
9 A Both the depression and anxiety.
10 Q Okay.
11 A And lack of sleep.
12 Q Yes. On -- in October of 2016 she's reporting to you that
13 she feels that whatever she does is not enough. It says
14 quote, "She has done everything they ask, but it is never
15 enough." end quote. Is that a consistent theme throughout
16 your treatment?
17 A Yeah, more or less, that's some of the periodic, like I
18 said, the two steps -- two or three steps back she feels.
19 Q Okay, as you're talking -- as you're testifying, it reminds
20 me that, you know, therapy is about sharing.
21 A Mm-hmm.
22 Q In terms of your impressions about Pennie, do you think that
23 she's being forthcoming with you when she shares what's
24 happening in her life?
25 A Yes, especially, you know, current things, some past things.

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1 It took a while for her to tell me about her scholarships
2 and you know, her own successes. Mostly she focuses on her
3 professional duties and her love of teaching. But --
4 Q Well, in terms of in general, is it possible for you as a
5 therapist to get a sense of someone as being honest or
6 candid with you?
7 A Yes.
8 Q Tell me how it is that you make that kind of determination.
9 A It a lot of -- mostly it's consistency and over the two
10 years she's been very consistent in her reporting. She --
11 different moods, that seems very genuine. It's consistent
12 to what she was telling Ms. Gallagher and it overall, it's a
13 woman who, you know, who is very polite, very pleasant,
14 early on, you know, would even apologize if she said heck in
15 my room.
16 Q And I noticed that there is a notation you make in your
17 notes that at one point in time she uses swear words and
18 that's remarkable to you, you make a note of that.
19 A Right. You know, that's more recently, probably in the last
20 three or four months that her use of swear words in session
21 has come out. More frequent -- not often, not like some of
22 my clients, but often, so.
23 Q So, she still -- do you know if she's still on the IDP, has
24 she shared that?
25 A No, I don't -- I don't believe she -- I don't remember if

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1 she is or not.
2 Q Okay, and has she shared any concerns or anxiousness she has
3 about her current rating?
4 A Yeah, I think she's always worried about how she's gonna be
5 evaluated.
6 Q Now, did she share with you -- I'm looking at when she does
7 go back to the high school --
8 A Uh-huh.
9 Q -- in the school year of 2017 to 2018?
10 A Mm-hmm.
11 Q Do you remember leading up to the high school and returning
12 to the high school, what was going on with her emotionally?
13 A She -- you know, she was happy to be returning to the high
14 school, but was somewhat taken aback that the principal who
15 she thought was a friend was treating her differently. It's
16 on my notes of August 21st.
17 Q So, this is the -- on this date you write "Client was
18 cheerful, the principal for whom she worked for many years
19 and who had given her very high evaluations was now being
20 cold to her. Additionally, the client reports she's not in
21 the art room she helped design, but rather a closet with no
22 supplies or art equipment. She fears it is starting
23 already." So, describe sort of how that works with someone
24 who has this kind of depression and this kind of anxiety.
25 MR. MULLINS: I'm sorry, your Honor, just --

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1 I guess I don't mind her reading portions of the record, but
2 what entry were we on --
3 MS. BONANNI: Oh, I'm sorry --
4 MR. MULLINS: -- were you reading from?
5 MS. BONANNI: -- August 21st, 2017.
6 THE WITNESS: And can I?
7 BY MS. BONANNI:
8 Q Yes.
9 A Okay, at this point you know, obviously she's paranoid,
10 she's afraid that no matter what she does it's gonna be held
11 against her or something's gonna happen. And when she saw
12 the art room again without -- at that point without
13 supplies, without anything she was very upset and again
14 depressed again.
15 Q And that is what that two steps back --
16 A Yes.
17 Q -- concept?
18 A Yeah, I mean, she was hopeful that she was going back and
19 things were gonna be okay. She was worried that they might
20 not be, that things -- knowing that things weren't over and
21 that when she saw the room it was disheartening.
22 Q Now, you mentioned supplies and lack of supplies, since
23 going back to the high school has she shared with you any of
24 those challenges she's had?
25 A Yes, she says she still doesn't have a lot of supplies,

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1 she's had other teachers, you know, sharing their supplies
2 and I believe she's gotten some supplies, but not all of
3 things that were requested.
4 Q Do you -- did she share with you that she had to file
5 grievances to get paper?
6 A Yes.
7 Q Do you know anything more about that other than what I've
8 said?
9 A Well, she said she just -- she's made requisitions and when
10 they don't -- didn't happen she had to file a grievance.
11 And she has to go through her lead teacher.
12 Q Okay, now do you have a sense of her capability of moving
13 forward not needing treatment? Her strengths, do you have
14 any kind of impression and/or opinion on that?
15 A I think this has affected her that -- and the effect, like I
16 said will last a while, but I have every confidence that
17 when she feels a sense of resolution she will be able to
18 move on.
19 Q So, if there were a stretch of time in her career where
20 there wasn't something happening like not getting supplies
21 or being put in a decent room, is that the kind of situation
22 that needs to happen so that she doesn't keep taking the two
23 steps back?
24 A Yes.
25 Q Okay, you believe her?

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1 A Yes.
2 Q What about her resilience?
3 A I think she's been very resilient, not without bumps and
4 bruises. I think she's very determined, I think she's
5 competitor, her history as a athlete, a college athlete, you
6 know, has hardened her to a discipline. And she want -- you
7 know, she's committed to finishing this process and getting
8 back to teaching.
9 Q There was a note, and I can find it, but I'm not quite sure
10 which date it is, but you write something about how Pennie
11 reports that she feels like they want her to quit and she's
12 not gonna quit.
13 A Right.
14 Q Has she --
15 MR. MULLINS: Your Honor, I'm gonna object to
16 the form of the question. If he's got something in his file
17 or just -- it's a leading --
18 MS. BONANNI: Okay, I'll find it.
19 MR. MULLINS: -- form of questioning.
20 MS. BONANNI: I can rephrase and find it for
21 him.
22 BY MS. BONANNI:
23 Q Okay, what's -- I'm sure we'll come across that note as I'm
24 moving along here, let's look at -- this is before the move
25 to the high school, May 16th, 2017. "Client heard a rumor

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1 she's being placed back at the high school even though she
2 did not get a good evaluation. She claims the evaluation
3 was onerous -- erroneous." End quote.
4 A You said May --
5 Q May 16, 2017.
6 A Okay. So, what is the question?
7 Q Oh, I just wondered what was it that bothered her about
8 being transferred when her evaluation was low?
9 A Well, I think she was more upset that she felt that the
10 information in the evaluation was inaccurate. That she
11 claimed that some of the things that were on there were
12 misreports, were -- I can't remember the exact things
13 whether it was observation or whether it was a note that was
14 wrong.
15 Q June 27, 2017 before going back to the high school, she's
16 sharing with you that "Other art teachers will not -- they
17 have not told her any of the other art teachers at the high
18 school will be moved, nor what classroom she will be in or
19 what classes she will teach. She was also told to have her
20 things packed up, but does not have full access to her
21 things." End quote.
22 A Okay, two parts, the first one was about the other art
23 teachers. In her evaluation there were two art teachers
24 that were already at the school and historically, from my
25 understanding of what her perception was is that there was

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1 only room for two art teachers and that she hadn't heard
2 that either of those -- them were being moved, so she was
3 wondering how she was gonna fit in there. And the second
4 one was she was told to pack up her things from the middle
5 school and -- but, she didn't have a key and she had a hard
6 time getting in there and getting assistance and packing up
7 and moving her stuff.
8 Q When she got to the high school do you recall her sharing
9 with you the -- any interaction with the principal, Ms.
10 Pauli?
11 A Well, that was where -- you said before that she felt, you
12 know, Pennie felt that Ms. Pauli was more cold to her than
13 in the past.
14 Q Okay, so I'm looking at 10/10/16 and I believe this is one
15 example where she's sharing with you that she thinks they
16 want her out. 10/10//16 she reports she feels tired and
17 stressed, things are heating up at work, she knows they are
18 trying to get her out. She stated she had done everything
19 they asked, but it's never enough. At this point in time, I
20 mean, is this sort of thematic -- a theme for her?
21 A Yes, I mean, you know, she gets, you know, she does get
22 emotional and over this time period, you know, her emotions
23 are raw, so it's easy to set her off emotionally, so.
24 Q So, now I think and maybe I'm wrong, but there are people
25 who use therapy to help them with symptoms and move on and

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1 then there are people who always want to maybe stay in
2 therapy forever. Is Pennie -- what is Pennie like?
3 A Well, Pennie -- she wants to get better, the issue here is
4 that the perceived injustices keep happening which keeps re-
5 traumatizing. We try -- and that's why I moved to that
6 strategy or the techniques of the acceptance -- accepting
7 that there are certain things you can't control and just
8 focusing on what you can and working trying to -- worked on
9 trying to develop outside relationships outside, things to
10 do to help relieve the stress.
11 MS. BONANNI: I don't have anything further,
12 thank you.
13 THE COURT: Cross-examination, Mr. Mullins?
14 MR. MULLINS: Your Honor, if I could beg your
15 indulgence --
16 THE COURT: Yep --(multiple speakers) --
17 MR. MULLINS: -- maybe for five minutes,
18 there's a lot of paper. Could we maybe take five minutes
19 and -- I know I would move through a lot faster if I wasn't
20 fumbling around with the paper.
21 THE COURT: All right, let's -- we'll take a
22 five minute recess --(inaudible)-- all right?
23 (At 2:52:14 p.m., hearing recessed)
24 (At 3:08:05 p.m., hearing resumed)
25 UNIDENTIFIED SPEAKER: All rise for the jury.

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1 THE COURT: All right, thank you, everyone
2 may be seated. The record should reflect the presence of
3 the jury, all the parties and their respective counsel. Mr.
4 Mullins, cross-examination.
5 MR. MULLINS: Thank you.
6 CROSS-EXAMINATION
7 BY MR. MULLINS:
8 Q Could you outline for the jury a little bit pre-college, I
9 know you have a CV here that says you went to Central, but
10 how about your grade school, high school experience, where
11 might that have been?
12 A That was in New Jersey.
13 Q Okay.
14 A High school in Bergenfield, New Jersey.
15 Q Okay.
16 A And then Michigan State University. Michigan State
17 University.
18 Q Okay. I'm part hard of hearing and you're a little soft
19 spoken, so we'll work on it. So, you are -- you have, if
20 I'm to understand it, a -- you're a psychologist?
21 A Correct.
22 Q So, you -- your degree is in psychology?
23 A Correct.
24 Q And you're a doctor of psychology?
25 A Yes.

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1 Q And just by way of orientation, I'm a doctor of law.
2 A Okay.
3 Q But, you're not a medical doctor?
4 A That is correct.
5 Q You cannot admit people in hospital?
6 A That is not correct.
7 Q And which hospital are you -- have a --
8 A I'm -- I don't have privileges, but I can provide a 1st
9 certification or 2nd certification for commitment hearings.
10 Q Okay, so you -- I understand a certification for commitment
11 --
12 A Right.
13 Q -- but you don't have admitting privileges --
14 A No, not at the hospital, that's correct.
15 Q -- a medical doctor has to do that?
16 A Yes.
17 Q Okay, and you cannot prescribe medication?
18 A That is correct.
19 Q And you can't treat medical conditions?
20 A I can treat psychiatric conditions and psychological --
21 Q Well, I guess that was -- you -- you're limited to treatment
22 of the mind, but you can't --
23 A Psychiatric and psychological conditions and some of which
24 do affect medical conditions, so.
25 Q And that's a good point. You're a psychologist, but then

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1 there's another term called a psychiatrist?
2 A Correct.
3 Q And a psychiatrist is a medical doctor who is also board
4 certified or specialized in psychology in addition to
5 medicine, is that right?
6 A Psychiatry, not certified in psychology, but psychiatry.
7 They typically don't treat psychological disorders which are
8 you know, personality disorders, but they can.
9 Q Okay, a psychiatrist is a medical doctor?
10 A Yes, they go to med school, we go to graduate school.
11 Q And you --
12 THE COURT: Is it fair to say that
13 psychologists do a lot of the recommendations, you know, for
14 the medications where the psychiatrist will ultimately
15 prescribe --(inaudible)?
16 THE WITNESS: Yes, a lot of consultations.
17 BY MR. MULLINS:
18 Q Now, you've indicated you provide therapy and if I
19 understand in essence what you do, you have on any given
20 day, or these different days that you've had appointments
21 with Ms. Davis, she'll come into your office, she'll sit
22 down, she'll tell you what she's got to tell you, you've got
23 to -- you ask her a few questions and then as I see it here,
24 pretty much you'll have this basic form that you work with
25 --

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1 A Right.
2 Q -- and you'll have this one page form with boxes checked off
3 and one or two sentences typed in that would summarize --
4 A Mm-hmm.
5 Q -- what you have heard or what you have said to her?
6 A Right. The -- a lot of the checked boxes are part of a
7 mental status exam.
8 Q Okay, and it's fair to say as to -- well, you didn't go to
9 Jackson Public Schools, have you been to Parkside
10 Elementary?
11 A Have I been there, yes.
12 Q Okay, and is it something of a standard modern middle
13 school?
14 A Yes.
15 Q Okay, anything atypical about it?
16 A Not that I know of.
17 Q Okay, and have you been to the high school?
18 A Yes.
19 Q And it's kind of a classic --
20 A Yeah, classic --
21 Q -- gothic structure?
22 A Similar to the one I went to.
23 Q Okay, well maintained?
24 A Yes.
25 Q Is that a --

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1 A Yeah. It's older, but yes.
2 Q Lots of classrooms and --
3 A Mm-hmm.
4 Q -- in both buildings the classrooms are pretty much like all
5 the classrooms that you've seen from New Jersey to Michigan
6 and beyond?
7 A Yeah.
8 Q It seems to be?
9 A Seems to be, yeah consistent with other schools in other
10 places of the same age.
11 Q Okay, now as I understand it you, if you will, inherited or
12 whatever the word would be initially she treated, from the
13 records that I see with a Ms. Gallagher?
14 A Mm-hmm, Jennifer Gallagher.
15 Q Okay, Gallagher?
16 A Gallagher, yes.
17 Q Okay, and then came over and transferred to --
18 A Right.
19 Q -- see you from that point on. You, I think, have there and
20 indicated to me that you have Jennifer Gallagher's records
21 and that's kind of the start of you'd reviewed those and
22 then picked it up from there --
23 A Mm-hmm. Yes. It -- often her husband, Leonard, or -- who's
24 a clinical psychologist as well, or Jennifer will --
25 Q Jennifer Gallagher's husband is a psychologist?

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1 A Yes. They often refer to me for certain cases.
2 Q Okay, so let me ask you a few questions about Jennifer
3 Gallagher's records. She -- I'm looking at what I would
4 call the initial intake form or different offices use a
5 different word, but --
6 A Yes.
7 Q -- it takes biographical information and asks a few
8 questions and --
9 A Right.
10 Q -- you see what I'm talking about there?
11 A Yep. I'll get to it, which --
12 Q It looks like it's in the upper right corner, it's October
13 20, 2015.
14 A Yeah.
15 Q Are we there?
16 A P 1, right here.
17 Q There you go, P 1. So, it's got name, got her cell phone
18 there.
19 A Mm-hmm.
20 Q 128 High View Court, Brooklyn, Michigan. It indicates,
21 please list children and their ages and what does that say?
22 A Poppy, Kiddo, Eagle, Charlie and Lucky.
23 Q Do you have any insight on that?
24 A I believe they're her animals, her dogs.
25 Q Okay, and she's asked about having allergies and it says,

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1 yes, too many to list. Is that right?
2 A Yes.
3 Q Under the medical health information?
4 A I see that, yes.
5 Q And it says, please list history of major surgeries or
6 serious injuries and it --
7 A Mm-hmm.
8 Q -- left and right knee, kidney stones, heart and then dot
9 dot dot --
10 A Yep.
11 Q -- other things. As to any of those physical conditions,
12 those aren't things that you treat or could treat, right?
13 A I cannot treat those, but there are psychological conditions
14 can exacerbate those.
15 Q Okay.
16 A Asthma can trigger an anxiety attack.
17 Q Okay, so if a person who is in for help, has had knee
18 replacement surgery or has got arthritis, or he's got back
19 pain or has kidney stones, or --
20 A Mm-hmm.
21 Q -- is allergic to too many things to mention or has asthma
22 --
23 A Mm-hmm.
24 Q -- and difficulty --(undecipherable)-- those things can make
25 somebody unhappy?

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1 A Yes, they're stressors, yes.
2 Q Okay, those are major life stressors?
3 A Yeah, they can be, yes.
4 Q Okay, now the extent to which she has an extensive medical
5 history, you're -- as best I can tell, unaware?
6 A Can you repeat that, I didn't --
7 Q The extent to which she has a significant medical history of
8 illnesses or what those are, you are largely unaware other
9 than a few references like this.
10 A Here or in my intake, yes.
11 Q Yeah, I mean, you don't have the hospital records from --
12 A Right.
13 Q -- knee replacement surgery --
14 A I could have --
15 Q -- or broken shoulder or anything like that?
16 A -- I could have requested it, but I didn't see the
17 relevance.
18 Q Yeah, and I'm not criticizing you for it, I'm just -- that
19 to the fact that there's more of that or less of that, you
20 really don't know?
21 A Correct.
22 Q Okay, but to the extent that their -- those exist, those can
23 be major life stressors and they can make somebody
24 depressed?
25 A Yes.

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1 Q Okay, now what are its -- you're familiar with the term a
2 character trait?
3 A Mm-hmm.
4 Q Okay, and that's a yes, because --
5 A Yes.
6 Q -- they record these things and you've gotta make a word and
7 uh-huh can be an uh-huh and that can be a problem later on.
8 A Mm-hmm.
9 Q A character trait, in simple terms, that's like the makeup
10 of a person, someone's personality, is that right?
11 A A character trait tends to be something that's consistent
12 over time and situation.
13 Q Okay, so I mean, in --
14 A First as a state, which is --
15 Q Let's start with the trait first.
16 A Okay.
17 Q So, in simple terms for someone like me a character trait
18 could be someone who their, if you will, their nature or
19 their personality is happy or angry or --
20 A Mm-hmm.
21 Q -- excitable or --
22 A Mm-hmm.
23 Q -- very kind of withdrawn, I mean, those are all character
24 traits, right?
25 A I would say yes.

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1 Q And that's kind of something that either that someone's born
2 with or kind of they develop as they're growing up, is that
3 right?
4 A They develop it based on their temperaments that they're --
5 that are hardwired genetic traits, yes.
6 Q Okay, temperament, that's right people have different
7 genetic traits that leave them to have different
8 temperaments?
9 A Mm-hmm. Yes.
10 Q Okay, and these microphones take everything down and the
11 potentiality of it all being typed up at some later date is
12 always there so, okay, thank you. So, some people are, by
13 their nature or by their trait or as a result of their
14 genetics just anxious by nature, some people are jumpy and
15 anxious?
16 A Yes.
17 Q Some people are, by their nature genetics or character trait
18 depressed by nature?
19 A They can be, yes.
20 Q I've noted in various records the term, dysthymia is used,
21 is that right?
22 A Yes.
23 Q Dysthymia is the lowest form, if you will, of depression, is
24 that right?
25 A Yes, it's more blue days than not in a month, basically.

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1 Q Did you say --
2 A More blue, like blue days, yeah.
3 Q Kind of a person sees the dirt on the ground rather than sun
4 in the sky?
5 A Yeah, or just an overall sad mood mostly --
6 Q Blah, kind of a blah kind of a person?
7 A Yes.
8 Q Okay, and you can have a dysthymic personality, right?
9 A It's -- you can have a dysthymic disorder, you can perhaps
10 have a blue, you know, a dysthymic personality, but I don't
11 see that all that often though.
12 Q Okay, but I do note it being noted here.
13 A Mm-hmm.
14 Q Yes?
15 A It's a mood state, yes.
16 Q In the general information, again on October 20th of 2016
17 from Jennifer Gallagher's records -- looks like we're on
18 page 2 now. Hobbies and interests are working out, art,
19 reading, learning everything new -- or anything new, dog
20 showing, and then again dot dot dot, is that right?
21 A Yes.
22 Q There's insurance information that indicates MESSA that's
23 MESSA, are you familiar with MESSA insurance?
24 A Yes.
25 Q That's the Blue Cross-Blue Shield teacher's insurance?

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1 A Yes.
2 Q Okay, and the fact that it says BC/BS policy number's there
3 and there's an assignment, if you will, or an authorization
4 for the insurance company to make payments for treatment, is
5 that right? You're familiar with that?
6 A Yep. Yes.
7 Q And you operate the same way?
8 A Correct.
9 Q She indicates that she finds enjoyment or comfort, if you
10 will, with her horses and her dogs, is that right?
11 A Yes.
12 Q Now, again in general what has or is happening to her on a
13 day to day basis, and we'll talk about this as you have on
14 the different visits, but what has or hasn't happened or
15 what's being said, your source of information is her coming
16 into her office and talking to you, is that right?
17 A That is correct.
18 Q Okay, and just as if you don't have any of her medical
19 records other than the few from the preceding Jennifer
20 Gallagher, you don't have any other source of information?
21 A Correct.
22 Q Now, you --(inaudible)-- records, it looks like you, as best
23 I can tell, first saw her and your intake form is on
24 February the 5th of 2016, is that right?
25 A Yes.

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1 Q She indicates that she's -- you've got a thing there,
2 student, check yes or no, it says yes and she says she's a
3 student of life. You let me know when you've caught up with
4 --
5 A The most recent for --
6 Q That order, I don't know. You know what I'm referring to, I
7 imagine you just haven't found it yet.
8 A Yeah, I just haven't found it yet, I'm trying to find where
9 --
10 Q (Inaudible)--
11 A Yeah, it's -- so what date are we looking at?
12 Q Well, I have your letter head, February 5th, 2016 and like I
13 said, looks like what I would call an intake form, but you -
14 - whatever you call it.
15 A That's the demographic form.
16 Q Demographic.
17 A I'm trying to find it should be right around here.
18 Q Got it?
19 A Yep.
20 Q And whatever you call it, that's the first thing you go
21 through with somebody who's new to you -- to your office, is
22 that right?
23 A Yeah, they fill the demographic form out in the lobby.
24 Q Okay, all right. So, going back there, you know, we've got
25 the date, I just want to confirm now that you're with me on

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1 the page February 5th, 2016 which indicates that she's a
2 student, yes, of life, correct?
3 A Correct.
4 Q Ask her all about that, she's open to anything or everything
5 or likes to learn new things or --
6 A No, you're on my record, right?
7 Q Sorry?
8 A You're on my record, right?
9 Q Yeah, oh yeah, the one -- my copy just -- I know I'm --
10 A Okay, no --
11 Q -- I thought we had gotten there.
12 A That's --
13 Q Yeah, I'm solely on your records now.
14 A Yeah, okay. Yeah.
15 Q That one.
16 A Okay.
17 Q Yep?
18 A Yep.
19 Q So, did I -- are you with me the things I just asked you
20 about?
21 A Well, I got the right page, now could you repeat the
22 question?
23 Q Okay, well I've just -- you asked the basic demographic,
24 demographics mean who you are, where you are, where you're
25 from, you now, that kind of stuff, right? Biographical

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1 information, I guess, you might otherwise call it --
2 A Well, no that one's --
3 Q -- and you ask a bunch of questions, right?
4 A -- this one's just like for billing information, the
5 biographical and the next page, the intake, the one that
6 says initial evaluation is --
7 Q Okay, we'll work through that.
8 A -- okay.
9 Q So, and just question yes saying student and then of life, I
10 don't know, as a psychologist does that mean anything to you
11 or do you -- maybe you never even noticed it. Or does it
12 suggest open to anything or --
13 A It's always trying to learn new things.
14 Q I suppose you ask the question whether the patient's under
15 18 and that's probably for legal purposes for you, but her
16 answer to that is thank God I'm not. I guess, you know, any
17 observation there, or just humorous?
18 A I think it's just her sense of humor, yeah.
19 Q So, sense of humor was intact?
20 A Yes.
21 Q And then, as you indicated there's, once again, the
22 insurance information and the authorizing you to bill the
23 insurance company, is that right?
24 A Yes.
25 Q And then you -- the next thing I think you had made

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1 reference to is your patient health questionnaire, is that
2 right?
3 A Yeah, patient health questionnaire.
4 Q And one of the questions that you ask is right at the very
5 bottom of that page on number 7, it says, feeling afraid as
6 if something awful might happen. And it's indicated yes,
7 she has a positive response for that, is that right?
8 A Yes.
9 Q And then it indicates, "Are not most women?" Kind of a
10 generalization which again, I'm not a psychologist, but it
11 seems to be more of a -- as opposed to a particularized
12 concern that --
13 A Yeah, the --
14 Q -- everybody is --
15 A Yeah, this is a general questionnaire screening for anxiety.
16 Q But, there's some -- I think that there's some projection
17 there, isn't there?
18 A Some what?
19 Q Projection, isn't that a term you guys use?
20 A Yeah, but that's not what it means, but --
21 Q Oh, okay, generalization?
22 A This is a generalization, yeah again might be some humor.
23 Q Some humor?
24 A Yes.
25 Q Okay, humor is good. Then -- okay, then I think the initial

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1 evaluation that's your next form?
2 A Yep.
3 Q And the current living situation, she's on her own with four
4 dogs and horses, is that right?
5 A Yep.
6 Q She had indicated that she'd previously been in counseling
7 in years previous. As far back as 1996, is that right? And
8 I apologize, I'm not sure if that's in your records, but it
9 is in --
10 A Yes.
11 Q -- Ms. Gallaghers and --
12 A Yes.
13 Q Okay, and you don't have or haven't reviewed those records
14 from treatment as far back as 1996 for counseling?
15 A That's correct.
16 Q You've got -- you, in your initial evaluation you write out
17 some notes, you ask questions about family and --
18 A Mm-hmm.
19 Q -- where she works, and friends, she indicated has some
20 friends, but has a hard time bonding. It psychologically, I
21 mean --
22 A She's a very private person, so there's some --
23 Q Kind of keeps to herself?
24 A -- yes.
25 Q You go into the medical history, you -- it says allergies

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1 and then print the form, it says adverse reactions to
2 medication, food, etcetera and I've got to confess, I can
3 kind of read your writing, but why don't you tell me, I see
4 she's allergic to dust and what are some of the other things
5 that you've got some initials there?
6 A Penicillin, morphine, I can't read my writing.
7 Q It's a big word there, but I can't read it.
8 A Erythromycin, grasses, straw and dogs.
9 Q Okay, is that Erythromycin, Erythromycin is a --
10 A Yeah, it's an antibiotic.
11 Q -- antibiotic, that's it. And do you also I asked about
12 hospitalizations --
13 A Mm-hmm.
14 Q -- surgeries and -- are you with me? It looks like it
15 starts out with kidney stones --
16 A Yep.
17 Q -- collar bone --
18 A Right.
19 Q -- I mean, you tell me, because it's your writing and your
20 writing is almost as bad as mine. Is it left knee
21 replacement?
22 A Kidney stones; collar bone; left knee replacement, two
23 surgeries; left -- another knee surgery; tonsils and
24 adenoids; and I can't read --
25 Q I'm sorry, tonsils and --

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1 A Tonsils and adenoids.
2 Q Okay, what are adenoids, is that like glands or something,
3 or --
4 A Yes, it --
5 Q Oh, it's with the tonsils?
6 A Yes.
7 Q Okay.
8 A Copy is not very good, tonsils at 26 years old, I don't --
9 and then blood clot in the leg.
10 Q Okay.
11 A That's what it says.
12 Q And then relevant medical conditions I see asthma circled,
13 is that right?
14 A Asthma is circled, borderline diabetes and a questionable
15 head injury or head trauma.
16 Q Now, at the -- as of the time that you first seen her she's
17 working at Parkside Elementary -- I keep saying elementary,
18 Parkside -- there's another school that has a Parkside
19 Elementary -- Parkside Middle School, is that right?
20 A Yes.
21 Q And you had talked that your note -- I'm looking at your
22 note from 2/26/16 that she feels that she's in a no-win
23 situation, correct? Among other things --
24 A Yeah, I got it, yeah.
25 Q -- I mean, I know you have been counsel --(undecipherable)--

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1 some of this --
2 A Mm-hmm.
3 Q -- but, and I'm -- but the -- factually she's -- again going
4 back to basics --
5 A Mm-hmm.
6 Q -- you understand that she's employed as a teacher?
7 A Yes.
8 Q And you may or may not know I think you mentioned that you
9 may have worked with schools, are you some familiarity with
10 schools?
11 A Some familiarity with schools.
12 Q Okay, but in generally, going through your notes, it looks
13 like you understand that she's employed, she is employed
14 pursuant to a union contract and --
15 A Right.
16 Q -- is paid in accordance therewith?
17 A Mm-hmm, yes.
18 Q Okay, didn't otherwise though, go into the details with it?
19 A No.
20 Q Okay, but I guess I'm asking you psychologically being fully
21 employed, fully paid, having over 30 years in on the job,
22 no-win situation seems a bit extreme, doesn't it?
23 A Well, it says that she feels like she's being punished, she
24 was a high school teacher and feels like she was demoted to
25 Parkside.

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1 Q Okay, and I'm -- and of course, I get the history and I
2 understand the story that she's given to you, and I do
3 understand that you -- I'm trying to remember the word that
4 you used, but -- that your counseling which is what you do,
5 was one of something of acceptance or reality or
6 understanding reality --
7 A Right.
8 Q -- as I -- am I close?
9 A Control, you can control, focus on what you control.
10 Q Okay, and lots of people don't like their jobs that much or
11 might not like where they get assigned, but if you do have a
12 full time job and you've got full time pay and you got good
13 medical insurance and benefits, is -- on a psychiatric --
14 psychological perspective, is that a no-win situation?
15 A I'm a little confused by that, but if you -- there are some
16 people who would say that that having a job and even though
17 they don't like it it's stressful, so.
18 Q Okay, and I agree with you.
19 A Okay, yeah.
20 Q I'm looking at your March 24th, 2016 and your notation, you
21 indicate keep working, is that right?
22 A Yes.
23 Q And from the start of your having seen her up until the last
24 most recent notation, which wasn't that long ago.
25 A Right.

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1 Q You've always recommended that she work and keep working?
2 A Yes, she likes the -- that's where she feels she has shined
3 is working with the kids, yeah.
4 Q Okay, now on -- I think counsel had shared it with you on --
5 well, let me ask you, I can't remember -- on May 9th, 2016,
6 entry, are you with me?
7 A Get there, I mean, okay.
8 Q And you have recorded their patient, pt looking forward to
9 the end of the year, is that right?
10 A Correct.
11 Q And you understand from her as with teachers, school year
12 ends in June and --
13 A Mm-hmm.
14 Q -- they're off until Labor Day or so, is that right?
15 A Yes.
16 Q You didn't understand anything different from that?
17 A Just that there is they start before students and prepare
18 their classrooms and get their teaching assignments and all
19 that --
20 Q Come in a few days beforehand, but basically off in the
21 Summer, is that right?
22 A Well, I think -- my understanding is they typically know
23 where they're going to be the following year and --
24 Q Okay.
25 A -- so.

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1 Q And then you didn't see her again then from May 9th until
2 July 8th, is that right?
3 A I think so. I know I had a vacation in there somewhere, I
4 know.
5 Q I've got a page 15 on here, I don't know how yours are
6 numbered, but I'm looking at July 8th, 2016.
7 A Okay.
8 Q And you've got recorded, patient returned to therapy, had a
9 short break after school ended, is that right?
10 A Yes.
11 Q And then you next saw her on September the 6th, is that
12 right? Or, in fact, you know, I think I'm wrong about that,
13 but you'd --
14 A She --
15 Q -- on the 18th you had an appointment, but you've got checked
16 no-show, is that right? July 18th?
17 A Right and then I've got 8/19 she cancelled, because she hurt
18 her foot.
19 Q Okay.
20 A And so 9/6.
21 Q And you encourage her to do things on her own time to reduce
22 stress at work --
23 A Yeah.
24 Q -- walk with the dogs and tend to the horses and have lunch
25 and dinner with friends, is that right?

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1 A Correct.
2 Q Now, again as to her interactions at work, what her
3 evaluations are, who's evaluated her, how they've evaluated
4 her, whether they've evaluated her fairly or unfairly or
5 what procedures have gone into it, your only source of
6 information is what she tells you?
7 A Yes, but I have another client that also employed there, so.
8 Q Okay, so but your not there or you'd know.
9 A No.
10 Q I mean, I wouldn't expect it, but I mean, you're not, I
11 should probably talk to this person's boss or their
12 evaluator or maybe, you know, go with them in any kind of a
13 meeting or anything like that, you haven't done that?
14 A No, I have not done that.
15 Q Okay, you have a notation of December the 28th, 2016, if you
16 can catch up with me there.
17 A Okay.
18 Q And your notation is she's on break, presumably December 28th
19 she's on the Christmas/New Years break?
20 A Yes.
21 Q But, you note on January the 4th that she finds the break to
22 have been minimally enjoyable?
23 A Right.
24 Q On January 17th to January 23rd, January 30th you and your
25 session notes, you indicate the client continues to feel

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1 that she is always walking on egg shells, still focus on
2 maintaining positive outlook. Walking on egg shells, she's
3 unusually sensitive or what is that -- is that your term or?
4 A What --
5 Q I started -- it's the copying company is page 29, it says
6 1/17/17 is the date that I'm looking at.
7 A Okay.
8 Q And there's this term, you know, your therapeutic focus on
9 your form it says, client continues to feel that she is
10 always walking on egg shells.
11 A That means uneasy, maybe a bit paranoid about what might
12 happen. She feels like -- she felt she was under a
13 microscope all the time and again, maintaining positive
14 outlook, focusing on what she can, we practiced stress
15 reduction techniques, relaxation, mindfulness imagery, and
16 then you also see a notation for cognitive restructuring,
17 changing some of the negative thought --
18 Q Okay.
19 A -- automatic negative thoughts.
20 Q And I was curious, that exact same notation or phrases, you
21 know, I probably did a little quickly, January 17th and then
22 again on January 23rd and --
23 A Mm-hmm.
24 Q -- on January 30th this walking on egg shells, you indicate
25 you think that might be some sense of paranoia?

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1 A She feels that she's under a microscope, yeah.
2 Q Okay, now I again, this isn't my area, to my limited
3 understanding, when you talk about somebody being paranoid
4 that is a --
5 A There's a --
6 Q -- let me just ask my question first.
7 A Mm-hmm.
8 Q Now we could be talking about a psychosis or schizophrenia,
9 isn't that --
10 A There's a clinical level and then there's just an average
11 personality, you know --
12 Q Okay.
13 A -- a personal level that's caused by common things.
14 Q Okay, so this is a paranoid -- just a common paranoia?
15 A Yeah, worried about what's gonna happen --
16 Q Okay.
17 A -- things are up in the air, yeah.
18 Q So, you very clearly don't think that she, in any way, is --
19 has any kind of psychosis or psychotic --
20 A Absolutely not.
21 Q -- just a common kind of a -- again dysthymia?
22 A I didn't say dysthymia, she's not feeling -- she's under a
23 lot of stress, has symptoms of anxiety and depression.
24 Constant worry, that's all part of the symptoms.
25 Q Okay, the --

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1 A And not being able to sleep well --
2 Q -- the only reason I keep saying dysthymic is because I'm
3 looking at your form and you keep checking that box.
4 A Dysthymia, there's moods and affect, the general mood she is
5 more blah most of the days, but her affect, her emotional
6 range is appropriate. It -- she's got full range of
7 emotions, but --
8 Q Yeah, that's what I was just gonna ask you, you've got
9 orientation, time, place and person, you've got those
10 checked meaning she's well oriented?
11 A Correct..
12 Q As we all are or presumably, I guess, maybe not me. Affect,
13 you've got appropriate?
14 A Yes.
15 Q And mode, you've got dysthymic --
16 A Yes, and anxious.
17 Q -- and thought contact -- thought content is appropriate?
18 A Correct, and that's where you would think of psychosis or
19 something. With no hallucinations, no delusions, no
20 grandiose ideas, no illusions.
21 Q On 4/11/17 your -- and it's -- tell me if it's fair to say
22 that those boxes, again you have this form and those boxes
23 are basically consistently checked through -- the way I just
24 went through one of them, through the period of time --
25 A Right.

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1 Q -- that you've seen her, is that right?
2 A Yes.
3 Q I certainly don't want to go through all of them.
4 A Right.
5 Q On April the 11th, 2017 you've got your session notes and
6 reported that the break was good.
7 A No it's Spring Break.
8 Q I'm presuming we're talking about Spring Break or Easter
9 Break or -- if you know.
10 A Mm-hmm.
11 Q And I -- when we -- she's had this break on April the 11th,
12 2017 and indicates to you that she feels that she's being
13 dealt with in an abusive manner and that's what --
14 A Which date?
15 Q -- I'm back on 4/11 where she said she just got done with a
16 break.
17 A Mm-hmm. Yep, okay.
18 Q And I'm -- but, just a couple weeks prior to that I think
19 you had indicated on direct testimony that she was unhappy
20 about her rating or felt that she'd been treated
21 inappropriately with her rating or ineffective rating, is
22 that right?
23 A That there were some -- her claim was that there was
24 uneffectual, not effectual information on that.
25 Q Okay, and the reason I go to that is I don't see anywhere

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1 that she mentions to you at all that in March, which would
2 just be a week or two prior to the Spring Break that she's
3 had a review with the superintendent and they've raised her
4 rating to minimally effective and there's no -- that reality
5 seems to be in contrast with what she's telling you or that
6 something that's what you call significant life event --
7 A Mm-hmm.
8 Q -- isn't being reported to you.
9 A My understanding is that minimally effective is still not a
10 good rating.
11 Q Okay, it's not the best rating, but the point is it's higher
12 than it had been before.
13 A Yes.
14 Q Okay, did -- and again, not to belabor the point, but
15 exactly how she got whatever rating she got or what she had
16 handed in or hadn't handed in, you don't know?
17 A Only what she's told me.
18 Q Okay, and if someone were to tell you that the law requires
19 a principal or shall we say, her boss to rate her --
20 A Mm-hmm.
21 Q -- in June and that the person's rating, one of the things
22 that composes at least 25 percent of the rating is them
23 turning in certain data about their students, if you will.
24 A Mm-hmm. Yes.
25 Q And those of us who's gotten, you know, a term paper or

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1 sales report or something like that, but the boss is, you
2 know, is required to have this material to be turned in by
3 the teacher --
4 A Yes, yes.
5 Q -- if the administrators were to indicate that she had not
6 turned that in, that's not something she advised you of?
7 A No, she had said she had turned things in.
8 Q Okay, and again if people such as the superintendent were to
9 testify that she requested a review that was put off a
10 number of times, but finally in early March did have a
11 meeting and it wasn't until that time that she actually
12 turned the material in and the -- her rating was improved
13 even though that, if you will, test or term paper was handed
14 in that much later, again these are facts that are entirely
15 unknown to you?
16 MS. BONANNI: I just gonna object to the
17 extent that he would like Doctor Weisbrod to testify about
18 what the superintendent knew or didn't know.
19 MR. MULLINS: I only want --
20 MS. BONANNI: That's --
21 MR. MULLINS: -- him to testify as to --
22 MS. BONANNI: -- that --
23 MR. MULLINS: -- what he does or doesn't
24 know.
25 THE COURT: Okay, I think with proper

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1 foundation the question may be appropriate.
2 THE WITNESS: I know what she had told me is
3 that she turned in paperwork and it wasn't, according to Ms.
4 Davis, wasn't -- the principal didn't like it in the format
5 and that she resubmitted it. That's what I am -- that's
6 what my understanding is.
7 BY MR. MULLINS:
8 Q Okay, and just -- I wouldn't be able to find anything in
9 here about when, if you will, the resubmission or any of
10 that discussion or when -- or the fact that that improvement
11 occurred or when it occurred --
12 A Mm-hmm..
13 Q -- that's not related anywhere in here?
14 A Right, I mean, again from her perspective of anything less
15 than an effective or a highly effective which she had been
16 used to, is -- is not good enough, so.
17 Q People who have a, if you will, a perfectionist personality
18 trait can render themselves anxious just in dealing with the
19 everyday world if that -- if you have that trait?
20 A Perfectionistic, sure you can -- it can be the basis of some
21 anxiety, impossible to achieve.
22 Q And you might be placing unrealistic expectations upon
23 yourself or being unhappy with reality?
24 A Maybe unrealistic expectations of yourself or others.
25 Q On May 9th, 2017 you have again, you filled out the form,

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1 homework assigned: continue to practice cognitive
2 restructuring plan for the Summer break, is that right? May
3 9th, 2 -- May 9th, '17?
4 A Yes.
5 Q On May 16th, 2017 your -- and this is your form, you put down
6 homework assigned, I mean, that's your form, right?
7 A Yes.
8 Q I guess when you say homework it's your --
9 A Practice what we --
10 Q -- advice of --
11 A Yeah, practice what we've talked about, what we've been
12 training to do, yes.
13 Q Okay, and homework you've assigned on May 16th, continue to
14 practice cognitive restructuring and plan for the Summer
15 break?
16 A Yep.
17 Q Now, and I think counsel asked you about this, but I will,
18 as of that time she has been advised that she will be
19 transferring to the high school at the start of the new year
20 in the Fall, is that right? On the bottom of 5 -- May 16th.
21 A Mm-hmm, yes.
22 Q Where your session note is.
23 A Yes.
24 Q And on May 23rd your homework assigned again, continue to
25 practice cognitive restructuring, plan for the Summer break?

1 A Yes.
2 Q On June the 6th you had a session scheduled, but you've got a
3 consumer no-show, DNKA, what's DNKA for?
4 A Where -- what --
5 Q I'm looking at June the 6th, 2017.
6 A Sir, it's an acronym, did not keep appointment.
7 Q Okay, and on June 27th, on your session notes again it's
8 indicated, she is indeed going to be teaching at the high
9 school, is that right?
10 A Yes.
11 Q Okay, and your homework assigned, continue to practice
12 cognitive restructuring, plan for the Summer break, is that
13 right?
14 A Yes.
15 Q And your understanding is that she wanted to go back to the
16 high school, is that right?
17 A Yes.
18 Q And on July the 6th, 2017 your homework assigned, it says
19 continue to practice cognitive restructuring, plan for the
20 Summer break and what I have, I assume on your where it says
21 plan for the Summer break, that's crossed out?
22 A Right.
23 Q Am I to presume that there's no reason to plan anymore,
24 because she's on Summer break?
25 A Yes.

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1 Q On July 13th, 2017 again homework assigned: continue to
2 practice cognitive restructuring plan for the Summer break
3 and then you crossed out the plan for the Summer break
4 because she's on the Summer break already. I guess I'm
5 asking you why you crossed that out.
6 A Well, because she was on the Summer break and I was cutting
7 -- left that on there, the form.
8 Q Do you do these forms -- I'm gonna kind of guess today being
9 what it is, is this on a computer and you kind of chat with
10 the person and check the boxes and things like that --
11 A Yep.
12 Q -- with a and kind of run the form from session to session?
13 A Yes.
14 Q And July 20th again the same thing.
15 A Mm-hmm. It stops on August 29th.
16 Q What did you say?
17 A It stops on August 29.
18 Q Each of the --
19 A Yep.
20 Q -- plan for the Summer break is crossed out until August 29th
21 when the Summer break indeed is over?
22 A Mm-hmm.
23 Q Okay, thanks for helping me out there. However, on July 27th
24 while she's still on the Summer break it says, client was
25 given a date to have things packed up and ready to move to

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1 the high school although she doesn't know what classroom yet
2 maintenance told her they would take care of moving her
3 things appropriately, is that right?
4 A That's what she told me.
5 Q And I can't remember the question to answer entirely, but
6 there was some suggestion that she had a concern that she
7 couldn't get into the building to have her stuff boxed up
8 and moved, do you recall that portion of your testimony?
9 A Yeah, she had said she didn't, at one point didn't have a
10 key or didn't -- there was some of her stuff was in somebody
11 else's classroom and she didn't have a key to that
12 classroom.
13 Q Have you been around schools or particularly Parkside in the
14 Summertime?
15 A I think for an event or two, yes.
16 Q Okay, my school in the Summer, the maintenance people are
17 waxing the floors and cleaning the rooms and --
18 A Mm-hmm.
19 Q -- with not much going on, it isn't like it's all locked up
20 and jailed up and is there to your knowledge any reason why
21 someone couldn't have a maintenance person let her in a room
22 or she wouldn't be able to call and arrange anytime during
23 that Summer break to --
24 A My understanding is --
25 Q -- just -- just, because we have to make a record, let me

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1 just finish. Just make an arrangement to have her things
2 put in boxes, so that the maintenance people could move them
3 for her?
4 A I think she had made -- she's told me she had made several
5 attempts to do that and things didn't work out the way she
6 expected.
7 Q Okay, but she did tell you she'd been advised the
8 maintenance people would take care of it for her?
9 A Yes.
10 Q If she described to you in your therapeutic notes and co-
11 counsel confirmed to you that she'd described the room that
12 she would be working in as a closet and you indeed record
13 that --
14 A Yes.
15 Q -- description on August 21st, is that right?
16 A Yes, that's her interpretation of the room.
17 Q Okay, and so, presumably she's been able to get there and
18 begin getting her stuff in and see and view the room before
19 school starts in September, is that right?
20 A Can you say that again, I was reading my note.
21 Q Okay, August 21st, 2017 --
22 A Okay.
23 Q -- okay, you've crossed out plan for the Summer break,
24 because she's still on the Summer break --
25 A Mm-hmm. Yes.

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1 Q And she's apparently been to the high school and is getting
2 the room set up, but it's a closet.
3 A Okay, yeah, it had a closet with no supplies or art
4 equipment.
5 Q Okay, now how big, how small, whether this is a closet or
6 just a normal classroom, you have no clue whatsoever?
7 A No.
8 Q Okay, you only know what she told you?
9 A And it wasn't the art room that she left.
10 Q I get that. Then the -- as you had pointed out by August
11 29th, she's back to school at the high school is that right?
12 And describes to you the classes she has, is that right?
13 8/29/17?
14 A Yes.
15 Q She was a DNK, no show on October the 3rd of 2017, is that
16 right?
17 A On October 3rd she called and cancelled.
18 Q Okay, October 10th, you know that the client reported that
19 the kids are doing well and has gotten positive feedback
20 from her peers, is that right?
21 A Yes.
22 Q Same thing again on October the 26th, kids are doing well,
23 has gotten positive feedback from her peers? Session notes.
24 A Session notes, October 26th you said?
25 Q Yeah, and I'm reading part of, you know, I'm not going

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1 through the whole thing. "Kids are doing well and has
2 gotten positive feedback from her peers." That's recorded
3 in your session notes.
4 A Yes.
5 Q Now, you saw her on November the 2nd, 2017, do you see that?
6 A Yes.
7 Q And she indicates that -- and I think this is chatted about
8 -- of the courses that she's teaching, she's teaching PE --
9 A Mm-hmm..
10 Q -- which I understand to be physical education?
11 A Yes.
12 Q For the alternative high school girls. She was originally
13 very upset until reminded that in high school she was a
14 multi-sport varsity athlete, a college scholarship athlete,
15 a black belt in Tae Kwon Do, and coached high school
16 basketball and track at Columbia High School. It is that
17 you talking back and forth with her --
18 A Yes.
19 Q -- that to you do this and have done this and you are an
20 athlete and --
21 A Again, changing those -- some of the negative thinking into
22 a positive and reframing the situation and --
23 Q Okay.
24 A -- building confidence that she can -- she could rise to
25 that.

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1 Q And on November the 21st, 2017 we're getting close to
2 current, that your therapeutic notes look -- are you with
3 me? November 21st?
4 A Yes.
5 Q "Looking forward to the Thanksgiving and Christmas break,
6 talked about how to disengage from work stress, and to more
7 fully engage the break." Is that right?
8 A Yes.
9 Q On November the 28th, back to work, I guess that'd be right
10 after the Thanksgiving break -- have you caught up with me?
11 A Yes.
12 Q "Patient reported that kids in PE and art are doing well for
13 the most part, feels that peers have been more supportive
14 and helpful, sharing supplies and equipment." is that right?
15 A That is correct.
16 Q It indicated that on December the 7th she began using swear
17 words and that -- this wasn't typical for her. Any insight
18 on that? It -- there doesn't seem to be anything related to
19 it, or I don't see any notation. Just -- it --
20 A The notations up -- was up --
21 Q -- might not have any connection, but --
22 A -- at the time she was criticized at work for sending a
23 couple of students out of class for not following the rules
24 and...
25 Q Okay, so that's what she was unhappy about?

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1 A I think that was that day, yes.
2 Q Okay, 12/13 was a cancellation?
3 A Yes, called to cancel, yes.
4 Q 12/20 this last December 20th, of 2017, "Looking forward to
5 break." That's what you have?
6 A Yeah.
7 Q Okay, and you saw her on January the 10th?
8 A Yes.
9 Q And on January the 24th, then on February the 1st? February
10 the 1st, for example, client feedback, "Feels anxious, but
11 more settled."
12 A Yes.
13 Q Same thing on February the 6th?
14 A Yes. Well, on February 6th there was, "Feels anxious and is
15 feeling some self doubt."
16 Q Okay, and your homework is to review her portfolio of
17 artwork, is that right?
18 A Yes, and awards accomplishments again to kind of remember --
19 remind herself of who she is and what she's capable of
20 and...
21 Q Okay, and then you saw her on February the 13th and on
22 February the 21st. Each time -- well, I guess the first time
23 it indicates that she forgot to bring her portfolio, but is
24 working on it. And on February the 21st she -- it's unclear
25 to me, did she bring the portfolio --

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1 A Yes, she did --
2 Q -- for you to review or did you -- you were just telling her
3 to review it?
4 A Well, I wanted her to review it, but she did bring it in to
5 show me some of her stuff.
6 Q Okay, and with the records that I have, that's the last time
7 you saw her?
8 A Yes.
9 Q And you, in general, encourage, if you will, keep on doing
10 what she's doing with the job that she has and -
11 A Right.
12 Q -- pursue it as long as she feels like it?
13 A Focus on what she can control, try to get rid of any
14 negative thoughts, self doubts, engage in positive
15 pleasurable activities, engage in master activities which
16 are activities where she feels confident and competent and
17 completing tasks. In addition to relaxation exercises to
18 control anxiety, pretty standard stuff for anxiety and
19 depression.
20 Q Thanks, I've nothing further.
21 THE COURT: Any redirect?
22 MS. BONANNI: Very brief.
23 THE COURT: Okay.
24 REDIRECT EXAMINATION
25 BY MS. BONANNI:

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1 Q Did Ms. Davis accept your suggestions to turn negative
2 things like, having her art assignment changed to gym, into
3 positive, you know --
4 A Yes.
5 Q Okay, so would you describe her as receptive to your
6 suggestions?
7 A Eventually, yes.
8 Q Is she hard working in terms of the homework -- hard
9 working?
10 A Yes.
11 Q Mr. Mullins asked you about unrealistic, whether she's
12 unrealistic. Have you observed Pennie Davis to be
13 unrealistic?
14 A No, I view her as pretty down to earth individual.
15 Q Is it unrealistic for Ms. Davis to expect a rating
16 consistent with what she'd received for 29 years as a
17 teacher?
18 A Yes.
19 Q Now, Mr. Mullins showed you an entry of May of 2016, you
20 don't have to look it up, I just want to know your
21 independent memory. Do you have a memory that in June of
22 2016 whether Pennie was -- had a surgery for these benign
23 tumors?
24 A I believe so, yes.
25 Q And do you know if that impacted, at least at that time,

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1 when she was coming to see you, in terms of recovery?
2 A Like I said, stress works on your weakest link, so it --
3 Q What's that?
4 A Stress works on your weakest link, if you have an injury, if
5 you have a genetic predisposition towards heart or diabetes
6 is will exacerbate symptoms.
7 Q Well, my question was did that surgery result in her maybe
8 not coming to a few sessions?
9 A Yeah, possibly, I don't --
10 Q You don't know.
11 A -- sometimes if it's a phone call I don't write down the
12 reason why.
13 Q I know I'm gonna butcher this word, but dysthymic?
14 A Dysthymic?
15 Q Dysthymic, that was not any kind of diagnosis that I saw in
16 any of the medical records?
17 A No, that's not a diagnosis, it's a statement of your --
18 person's mood state.
19 Q And mood means blue?
20 A Blue, a pervasive blue mood.
21 Q Okay, I also want to clarify something. Ms. Davis' last
22 therapy contact with a therapist prior to you and Ms.
23 Gallagher was 20 years ago?
24 A I believe so.
25 Q So, for 20 years she's been functioning successfully?

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1 A That's my understanding.
2 Q Egg shells, walking on egg shells. Feeling under a
3 microscope. If you are a person who, in the -- in their
4 professional setting has had a level of success and rating
5 of you know, effective, highly effective, and then that
6 changes, does that contribute to the feeling of egg shells?
7 A Yes.
8 Q Does that make sense?
9 A To me it does.
10 Q Is Pennie depressed by nature?
11 A Not from -- I didn't know her prior to seeing her for the
12 first time, but that's not how other people have described
13 her.
14 Q Okay, now Mr. Mullins was asking you about these character
15 traits. One of them was depressed by nature, the other was
16 anxious by nature. Is she anxious by nature?
17 A I don't believe so.
18 Q Any reason to think she's exaggerating?
19 A No.
20 Q Last question, Mr. Mullins was talking to you about the fact
21 that Pennie Davis has been fully employed, hasn't lost her
22 job. And my question to you as a clinician, if someone is
23 fully employed, does that mean you can't have feelings of
24 depression or be diagnosed with depression?
25 A No, I would have no clients otherwise, but --

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1 Q Are most of your clients employed?
2 A Most of them are, yes.
3 Q So, things can happen at work or in life which contribute to
4 that psychological condition?
5 A Yes
6 Q And cause that psychological condition?
7 A Yes.
8 Q No further questions.
9 THE COURT: Mr. Mullins?
10 RECROSS-EXAMINATION
11 BY MR. MULLINS:
12 Q The -- I know that you kind of prepared a -- I can't
13 remember the name -- summary or condensation of your records
14 --
15 A Mm-hmm.
16 Q -- and you did that in consultation with her attorney, is
17 that right?
18 A That is correct.
19 Q And you're being compensated for being here today?
20 A It has not been arranged, no.
21 Q Okay, thank you.
22 THE COURT: Ladies and gentlemen of the jury,
23 any questions for Doctor before I release him from his
24 subpoena?
25 UNIDENTIFIED JUROR: I have one, your Honor.

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1 THE COURT: All right, if you'd write that
2 down I'll take a look and I'll see counsel at the bench, so
3 I can also discuss with you some scheduling issues.
4 (Bench Conference held from 4:24:12 p.m. to
5 4:24:25 p.m.)
6 THE COURT: --(undecipherable)-- brought up
7 just one question from the jurors and if you could just
8 address them I'll read so you can address them since it's
9 their question. "Have you ever observed Pennie Davis with
10 any aggressive -- aggression or anger?"
11 THE WITNESS: No.
12 THE COURT: Okay, any follow up on the jury's
13 question? All right, all right, thank you, Doctor Weisbrod,
14 you're hereby released from further appearance on your
15 subpoena and appreciate you making some time for us this
16 afternoon. So, why doesn't counsel approach the bench, so I
17 can get an idea on our scheduling here?
18 (At 4:24:54 p.m., witness excused)
19 (Bench Conference held from 4:25:07 p.m. to
20 4:25:52 p.m.)
21 THE COURT: All right, ladies and gentlemen,
22 we'll go ahead and give you a 10 minute recess, we may very
23 well be done for the day, but we've gotta check on one
24 witness and his status and so, I'll be with you in just a
25 minute over in the jury room, all right? All rise for the

1 jury.

2 (At 4:26:05 p.m., jury excused)

3 THE COURT: All right, feel free, Mr.

4 Mullins, if you want to go out and --(inaudible)--

5 MR. MILLER: Well, I presume I'll find --

6 (inaudible)-- at this point --(inaudible)-- sibling that

7 lives a mile down the road from him is diagnosed with cancer

8 and he's processing it.

9 THE COURT: Did you get a sense that he could

10 break away for a little bit on Monday if we gave him a time

11 certain?

12 MR. MILLER: Monday was very much -- he was

13 visibly concerned about the possibility of having to be here

14 on Monday. As he -- I hate to disparage anyone, but he said

15 this -- he described it, his sister's husband is a super

16 hard worker, but not the brightest guy and he needs to be

17 the person that's actually talking factors in. Hearing what

18 needs to be done, because I guess, she's on medication.

19 THE COURT: Okay, all right well how do we --

20 (inaudible)-- what do we want to do then Tuesday or Monday?

21 MS. BONANNI: I think that we give Mr. Pack

22 options and let him tell us which one works. I don't know

23 how the jury feels about staying, I'm sure they don't want

24 to stay.

25 THE COURT: Well, is he here now? He's not

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here now, right?

MR. MILLER: No.

MS. BONANNI: Oh, I thought he was here, okay. So, I think that we leave it to Mr. Pack to come Monday, because the Judge said we could start at 9:30 or to come out of order on Tuesday.

THE COURT: Mr. Mullins?

MR. MULLINS: We have Amy Gish?

MS. BONANNI: Yes.

MR. MULLINS: We're gonna have a couple principals and understanding that that's -- you were gonna have a start time, if you know --

THE COURT: We can start as early as 9:30 on Monday, I don't have any further trials, so.

MR. MULLINS: Okay, so understanding he's gotta deal with what we did and the fact there's gonna be three people present him with such options or you know, we have -- we can slide him -- slot him in someplace. Whether you know, whether it's 9:30 --

THE COURT: So, how about this, even if we started Monday and did your other two, but we indicate to the jury that there's gonna be one more witness that's gonna testify for the Plaintiff at some point during the case?

MS. BONANNI: Yes, that sounds fine. The only issue is that I only have one. So, he's one of the two

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1 remaining, so okay.

2 THE COURT: --(inaudible)-- okay.

3 MS. BONANNI: Okay, yeah.

4 MR. MULLINS: And I just meant that I had two

5 of them too --

6 MS. BONANNI: Yeah, he's got two.

7 MR. MULLINS: So, we you know, a good chunk

8 of Monday is gonna get -- I mean --

9 MS. BONANNI: Okay.

10 MR. MULLINS: They're not gonna be long, but

11 some amount of time and then we'll do what we can with him.

12 MR. MILLER: I mean, --(undecipherable)--

13 we've been here a while, I mean, just under 403. I mean, a

14 lot of this is cumulative. He has been deposed and authored

15 pages of his deposition, testimony into evidence. All of

16 his letters are in evidence and plaintiff has testified

17 about the interactions with him. I'm concerned about his

18 state of mind, frankly, if he's -- I think it's a little bit

19 unfair to subject Mr. --(inaudible)--

20 THE COURT: Well, I can't tell the plaintiff

21 --(undecipherable)-- expressed a desire to have his witness

22 here and he's on the witness list, so all right, well, why

23 don't we plan that and put at 9:30 and then we'll have one

24 other witness out, I guess I'll have you contact Mr. Pack

25 and see what -- it sounds like Tuesday we can accommodate

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him. Sounds like Monday's gonna be a very difficult thing to do.

MR. MULLINS: And if we can. I mean, I don't really know.

THE COURT: Yeah, I mean, if he can I guess we can try to get him on Monday if he's available or present Tuesday --

MS. BONANNI: I -- that's what I think we gave him scenarios and see what works best for him, he may want to come in at 9:30 and get it done.

MR. MILLER: It won't be til late Tuesday -- (multiple speakers)--

THE COURT: Yeah, Tuesday I've got pretrials and stuff, so --

MR. MILLER: (Inaudible)--

THE COURT: What time for a start on Tuesday?

MR. MILLER: (Inaudible)--

THE COURT: I guess on Tuesday it's 11:00 and then probably Wednesday I can probably get done on the sentences by what, 10:30.

MS. BONANNI: --(inaudible)--

THE COURT: No, that's probably gonna get moved, so. Okay? All right, so I think we've got down what we're gonna do and Dave, why don't you let the jury know we'll still plan on having them here at 9:30, all right?

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1 MS. BONANNI: Sounds good, thank you, your
2 Honor.
3 THE COURT: Okay, all right, see everybody --
4 I appreciate the progress that you made on the jury
5 instructions this morning, so. All right, thank you. See
6 everybody at 9:30 a.m. on Monday.
7 MS. BONANNI: Have a good weekend, Judge.
8 THE COURT: You too.
9 (At 4:49:43 p.m., hearing concluded)
10

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred forty-seven (147) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Friday, March 2, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 13, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No.: 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

JURY TRIAL, VOLUME VI OF VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Monday, March 5, 2018

APPEARANCES:

For the Plaintiff:
MEGAN BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 West 4th Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800

For the Defendant:
JOHN L. MILLER (P71913)
TIMOTHY J. MULLINS (P28021)
101 West Big Beaver Road, Suite 1000
Troy, MI 48084
(248) 457-7188

TRANSCRIBED BY:
THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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1 Jackson, Michigan
2 Monday, March 5, 2018 - 9:36:58 a.m.
3 THE COURT: All right, in the matter of
4 Pennie Marie Davis versus Jackson Public Schools. File
5 number 16-344-CZ. Ms. Boninni (sic), I understand that
6 you're ready to call your next witness, is that correct?
7 MS. BONANNI: Yes.
8 THE COURT: Okay, that would be Mr. Pack?
9 MS. BONANNI: Yes, Mr. Pack.
10 THE COURT: Okay, David, let's bring the jury
11 in.
12 MR. MILLER: With the court's permission,
13 Judge, I'll be questioning this witness.
14 THE COURT: Sure, that's fine.
15 MS. BONANNI: Your Honor, do you have a list
16 of the admitted exhibits by chance? Or if I can check with
17 your --
18 THE COURT: Yeah, she's -- Becky's got them
19 all right there.
20 UNIDENTIFIED SPEAKER: We're missing one
21 juror.
22 THE COURT: All right, everybody have a seat,
23 we'll wait until we get the other juror.
24 UNIDENTIFIED SPEAKER: All rise for the jury.
25

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1 (At 9:41:32 a.m., jury entered)
2 THE COURT: All right, thank you. Everyone
3 may be seated and the record should reflect the presence of
4 all the jurors, both counsel of record and the Plaintiff and
5 Ms. Boninni, you ready to call your next witness?
6 MS. BONANNI: I am, your Honor, I'd like to
7 call Mr. Ben Pack.
8 THE COURT: Good afternoon, Mr. Pack, can I
9 have you raise your right hand? Do you solemnly swear or
10 affirm that the testimony you're about to give the court
11 will be the truth, the whole truth and nothing but the
12 truth, so help you God?
13 THE WITNESS: I do.
14 BENJAMIN DOUGLAS PACK
15 (At 9:42:20 a.m., witness sworn, testified as follows:)
16 THE COURT: Okay, would you have a seat right
17 there, Mr. Pack on the witness stand and when you get
18 comfortable would you state your full name and spell your
19 last name for the record?
20 THE WITNESS: Benjamin Douglas Pack, P-A-C-K.
21 THE COURT: All right, go ahead, Ms. Boninni.
22 DIRECT EXAMINATION
23 BY MS. BONANNI:
24 Q Good morning, Mr. Pack.
25 A Good morning.

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1 Q Now, Mr. Pack, you have a long history with the district,
2 since 1987?
3 A Yes.
4 Q You've served in many capacities including teacher, coach,
5 athletic director and assistant superintendent of human
6 resources among other roles?
7 A Yes.
8 Q Last 10 years assistant superintendent, fair to say?
9 A Yes.
10 Q Okay, so assistant superintendent of human resources, that
11 would be to take care of any issues that come up with
12 teachers and staff?
13 A Yes.
14 Q Among other duties?
15 A Yes.
16 Q You are also a member of Mr. Beal's -- or were, because I
17 know you've retired. You were a member of Mr. Beal's
18 cabinet?
19 A Yes.
20 Q And that would mean that you were one of his closest
21 advisors?
22 A Yes.
23 Q You were involved in a decision whether to transfer Pennie
24 Davis or not?
25 A I was in the discussions, yes.

1 Q And you worked with Mr. Beal on that issue?
2 A Yes.
3 Q Okay, now prior to October of 2015, you agree with me would
4 you not that Pennie Davis was a long term teacher who had
5 never been suspended or disciplined?
6 A She was a long term teacher and to my knowledge she was
7 never suspended as well.
8 Q Fair to say she'd never shown any aggressive tendencies or
9 violent tendencies during her 29 years?
10 A That's a fair statement.
11 Q Okay, as part of your duties with human resources you are
12 responsible, along with Mr. Beal, at answering employee
13 grievance?
14 A Yes.
15 Q That's part of the human resources bundle of duties?
16 A Yes.
17 Q Now, you found out about the assault on the 12th of October,
18 fair to say?
19 A The 12th of October, I believe, in the afternoon.
20 Q You saw Pennie Davis walking over to Mr. Beal's office and
21 you spoke with the secretary who confirmed that she had been
22 hit, correct?
23 A That was after school, yes.
24 Q And then the next day you had a conversation with Principal
25 Pauli about the fact that Pennie Davis was alleging that she

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1 had been assaulted?
2 A Yes.
3 Q You were aware that the police had come to the high school
4 on the 12th as well?
5 A I was not aware of that.
6 Q So, the police came to the high school on the 12th,
7 Principal Pauli was there and she did not share that with
8 you when you had a conversation with her on the 13th?
9 A I don't recall that she shared that the date with me that
10 the police had already been there. It was my understanding
11 they came a little later.
12 Q As assistant superintendent, wouldn't it be your expectation
13 that Principal Pauli would share something as important as
14 the fact that the police had come to the high school to deal
15 with this assault?
16 A You'd have to ask her that question.
17 Q Well, you did find out that the police had been to the high
18 school, correct?
19 A Later in the week, yes.
20 Q You first spoke with Pennie Davis about the assault the day
21 after on October 13th, correct?
22 A That is correct.
23 Q Okay, and you knew at that point in time that she had been
24 injured, but you didn't know the extent of it, fair to say?
25 A I knew that she claimed that she was injured, yes.

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1 Q So, it could have been a break, it could have been a sprain,
2 could have been a bruise, fair to say at that point in time,
3 the morning of October 13th you did not know one way or
4 another, correct?
5 A I did not know if she had been injured, that's correct.
6 Q Okay, and in fact, isn't it true that when you walked into
7 Ms. Davis' classroom on the morning of the 13th with Mr.
8 Beal, it was Ms. Davis who actually told you, I don't think
9 my hand is broken, remember that?
10 A She did say that, yes.
11 Q Okay, so she said, I don't think my hand is broken, but it's
12 been wrapped by the doctor and I've had an x-ray, she shared
13 that with you, correct?
14 A She did.
15 Q Now, Mr. Beal does not recall asking Ms. Davis whether or
16 not she took the wrap off to shower. He denies that, but
17 you remember him talking about that don't you?
18 A I do not remember that statement.
19 Q Let's turn to Exhibit 14 in your big book, Sir.
20 A Would it be in Tab 14?
21 Q Yes, thank you.
22 A There isn't an Exhibit 14, it's empty. There's a 13 and a
23 15.
24 Q I'll have you look at mine. I want to show you mine. I
25 want you to look at the third paragraph, Sir, and we've got

1 it up here for the jury, so I'm gonna -- so I can read it.
2 I'm sorry, second paragraph. In your letter, this is a
3 letter from you to Pennie Davis and you say to Pennie Davis,
4 Mr. Beal inquired about taking it off to shower and you
5 stated you keep it on when showering. Does that help
6 refresh your recollection that you actually did talk about
7 the showering and whether or not she took off the wrap to do
8 that function?
9 A That, obviously refreshed my memory, it must have been said,
10 I put it in writing.
11 Q Mr. Beal did talk about whether or not she took the wrap off
12 to shower, do you remember why you would ask her that?
13 A We had directed her that on that day that she would have to
14 go to see our doctor for an examination and she firmly was
15 against going to see our doctor for an examination, said she
16 couldn't take the wrap off.
17 Q Okay, Sir, you asked her to take the wrap off and it
18 bothered you that she wouldn't do it, isn't that true?
19 A That's not true at all.
20 Q You told her during that meeting with Pennie Davis on the
21 13th you said -- when she said, I cannot take this wrap off,
22 you said, I can send you out Davis. And Mr. Beal said, no,
23 no, no, let her give us the medical records.
24 A I don't remember making that statement, but it is true that
25 we can send her to Work Well.

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1 Q And Mr. Davis did appear to Work Well on the 15th, correct?
2 A On October 15th, yes, two day later, a few days later.
3 Q And she also gave you her own medical records from Med Plus
4 where she had gone on the first day, the day of the assault,
5 correct?
6 A Much longer after that date, it was later in October.
7 Q Okay, do you remember when, Sir? They're marked with this
8 little stamp.
9 A That would be towards the end of October.
10 Q Okay, you know they were faxed over to you on the 19th? And
11 Amy Gish faxed them over to you as well, remember that?
12 A You'd have to show them to me, I don't recall that.
13 Q Do you remember -- and I'll pull up Exhibit 9 if you would,
14 Channing. You were given confirmation that Pennie Davis, in
15 fact, had had her hand wrapped by a doctor and that the
16 doctor had told her to keep the wrap on day and night for
17 the first few days and not to remove it. You remember
18 learning that, correct?
19 A In this case right here the work -- the alleged injury
20 happened during the work day and so, as procedure for
21 worker's compensation it's a requirement that the employee
22 go to see our doctor to determine the extent of the injury.
23 Q And she did do that.
24 A On the 15th.
25 Q And you -- weren't you happy though -- and you told me this

1 in your deposition, I can help refresh your recollection,
2 you were happy that Pennie Davis went to her doctor on the
3 12th, on the day of the incident. You were happy about that
4 weren't you?
5 A I don't know if I was happy about it, but I mean, if she was
6 injured obviously she should go to the doctor.
7 Q Okay, so there was no lag in time -- very little lag in time
8 from the time of the injury until her first contact with a
9 medical professional, correct?
10 A That's not the issue. The issue is she was supposed to see
11 our doctor.
12 Q Okay, and she did see your doctor, Sir, correct?
13 A Three days later.
14 Q Now, Sir, you know that on the 15th Pennie Davis took a sick
15 day on the 14th and on the 15th, on her first day back she
16 opened up her computer, she saw the e-mails from your
17 assistant, Jessica, and she got the voice mail from your
18 assistant, Jessica and when you came down to her room on the
19 morning of the 15th, Pennie shared that with you. She said,
20 oh, I just got these notices from Work Well, from you guys,
21 I'm happy to go. And it took several hours for someone
22 within the administration to locate a sub, isn't that true?
23 A Not true at all.
24 Q Okay, do you remember Pennie Davis telling you, I never got
25 the voice mail from Jessica?

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1 A At some point in that week she did -- she said that, yes.
2 Q Okay, and it's true that your assistant, Jessica did not
3 contact Pennie until the end of the school day on the 13th?
4 A I gave Pennie a verbal directive to attend Work Well on
5 Tuesday morning the 13th.
6 Q Okay, that's your memory today?
7 A That's the truth.
8 Q Okay, well then let's take a look at a letter that you wrote
9 about this. Let's take a look again at Exhibit 14.
10 A I think you've got it in your hand.
11 Q Yes, I do, I'm gonna give it to you, Sir. For some reason I
12 miraculously have two of them, so you can have this. Sir,
13 you wrote Pennie Davis a letter verbally warning her,
14 because of this whole Work Well situation and you describe
15 sort of all the events. I want you to look at your letter,
16 3rd paragraph, it reads quote, "Later in the day on October
17 13th you were directed to go to Allegiance Occupational
18 Health formerly Work Well, for an evaluation on your hand.
19 You just see that, Sir?
20 A Absolutely.
21 Q Is there anywhere in your letter where you state you were
22 verbally instructed to go to Work Well in the morning on the
23 13th?
24 A She was verbally instructed to go to Work Well on the
25 morning of the 13th.

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1 Q My question, Sir --
2 A Mm-hmm.
3 Q -- is there anything in your letter, your official letter
4 from this time several years ago, that indicates at all that
5 Pennie Davis was given any kind of directive in the morning
6 on the 13th? Do you see that?
7 A There's nothing in the letter.
8 Q Thank you. What you do see in your letter is that the
9 directive was given in the afternoon, correct?
10 A By -- the written directive was given in the afternoon by my
11 assistant.
12 Q And the directive was given by your assistant and you do
13 agree that Pennie, once that phone call came in Pennie had
14 gone for the day?
15 A She was given a verbal directive in the morning to attend
16 Work Well.
17 Q The phone call from your office that you referenced in your
18 letter, Exhibit 14 --
19 A Yes.
20 Q -- that directive was given by your assistant, Jessica --
21 A Yes, that one was.
22 Q -- let me finish, thanks. In the afternoon on the 13th
23 after Pennie had gone for the day, correct?
24 A That's correct.
25 Q In fact, you had the IT department with Mr. Beal, you and

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1 Mr. Beal had the IT department check to see if Pennie Davis
2 accessed that voice mail prior to October 15th, do you
3 remember that?
4 A I remember the IT was involved in some way, but I'm not sure
5 what the results of that was.
6 Q And you found out that Pennie was being truthful and you
7 found out that Pennie was being truthful about when she
8 actually accessed that voice mail, isn't that true, Sir?
9 A I don't remember that.
10 Q At any time, when you found out that Pennie had not accessed
11 the voice mail until the 15th when she told you she had, did
12 you ever remove this verbal directive, this verbal warning
13 from her file?
14 A I'm not understanding your question.
15 Q You found out that she didn't -- wasn't even aware of the
16 request to go to Work Well until the 15th when she came back
17 to work, because --
18 A She was given a verbal warn -- she was given a verbal
19 directive on Tuesday the 13th --
20 Q Okay, that's when --
21 A -- which should suffice. That should suffice and that's why
22 the verbal warning was not removed.
23 Q -- okay, well your letter says the directive came in the
24 afternoon, so let's just focus on what was done in the
25 afternoon by your administration, okay? And there was a

1 phone call from your assistant, Jessica, correct?
2 A That's true.
3 Q And then there was an e-mail from your assistant, Jessica,
4 correct?
5 A True.
6 Q And those -- the e-mail and the voice mail were delivered
7 after Pennie Davis had gone for the day, isn't that true?
8 A I believe it was after the school day was over, whether she
9 had left or not I don't know.
10 Q Okay, and when you had the IT department look at the e-mail
11 and look at the voice mail you were never able to debunk Ms.
12 Davis' statement to you that she had not accessed or
13 obtained this information until the 15th, fair to say?
14 A This information -- that is true.
15 Q Okay, thank you. Okay, let's look at Exhibit 12 if you
16 would, Sir.
17 A Excuse me?
18 Q Number 12, thanks. This is a voice mail from Jessica
19 Carter, Jessica is your assistant?
20 A Yes.
21 Q And this is her telephone number and e-mail that you see?
22 A Yes.
23 Q This is the voice mail that Jessica left for Pennie Davis at
24 2:59 p.m. on October 13th, 2015?
25 A Yes.

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1 MS. BONANNI: I'd like to move for the
2 admission of this into the record.
3 (At 9:57:32 a.m., Plaintiff's Exhibit 12 was
4 offered)
5 THE COURT: Any objections?
6 MR. MILLER: No objections.
7 THE COURT: All right, so admitted by way of
8 stipulation of the parties.
9 (At 9:57:34 a.m., Plaintiff's Exhibit 12 was
10 admitted)
11 BY MS. BONANNI:
12 Q Okay, on October 15th that morning conversation that you had
13 with Pennie, Pennie indicated she would go to Work Well,
14 absolutely --
15 A Yes.
16 Q -- but she indicated to you that she had concerns about the
17 x-ray and she said, I do not feel comfortable having my hand
18 -- I just had an x-ray and don't you remember telling her,
19 don't worry, the doctors will confer with one another and
20 they'll know what to do?
21 A That's true.
22 Q Okay, so when Pennie Davis left to go to Work Well later in
23 the -- actually, a couple hours later once the sub was sent
24 down to her room, she attended -- that's what she
25 communicated to Work Well. Look, I've already had an x-ray,

1 work with the doctors and you knew that, correct?
2 A Well, I didn't know that specifically, I didn't have
3 documentation of it.
4 Q Okay, but you knew, because you and Pennie had talked about
5 it --
6 A Well, she had said it, but --
7 Q Okay --
8 A -- maybe she didn't say it.
9 Q -- and you said to her, they'll confer with your doctors,
10 they'll know what to do and how to do it.
11 A I said that.
12 Q Now, Work Well is the district's clinic that they use when
13 employees are injured or suspect an injury, correct?
14 A Correct.
15 Q And as part of your relationship with Work Well, when an
16 employee is seen the district -- in particular, you, are
17 gonna get copies of those records?
18 A We usually receive a phone call first and then a fax, the
19 records are faxed later on.
20 Q Okay, and so I want you to look at, if you would, Exhibit
21 number 51. Have you found it, Sir?
22 A I could have.
23 Q Okay, so the top of this exhibit indicates that it's
24 Allegiance Occupational Health Center otherwise we've been
25 referring to it as Work Well, these are a selection of

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1 records from Work Well regarding Pennie Davis?
2 A The copy that you provided me on Exhibit 51 says the legal
3 copy services, Michigan Circuit Court.
4 Q Okay, and you see as you're looking and as you scroll
5 through past the subpoena there's some Work Well documents,
6 is this the clinic that we've been referring to?
7 A Yes.
8 Q Okay, and that's the clinic that the district has a
9 relationship with in terms of who sees employees --
10 A Correct.
11 Q -- that are injured? Okay.
12 A Correct.
13 MS. BONANNI: Okay, I'd like to move to admit
14 Exhibit 51.
15 (At 10:01:00 a.m., Plaintiff's Exhibit 51
16 offered)
17 MR. MILLER: I would object, Judge, just
18 under the rule of completeness. This isn't the complete
19 set, the page numbers go from Bates page number 1 to Bates
20 page number 3, the 222, the page 5, page 4, page 2, and then
21 a page that's not numbered, so they aren't all -- it's not a
22 complete set, I'd ask that complete records be put into
23 evidence under the rule of completeness.
24 MS. BONANNI: Okay, so we've had excerpts of
25 the Work Well documents that they've marked, not including

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1 all of them. This is just what we had in our possession
2 from Work Well, so this is all that we have on -- I mean, if
3 they want me to mark each page separately like they did, I
4 just want to put them all in one exhibit to question this
5 witness.
6 THE COURT: Mr. Miller?
7 MR. MILLER: Well, I would like the complete
8 record from this medical provider to be in evidence, not a
9 selective copy. If she wants to mark these as a separate
10 exhibit -- that's not the complete records, then we'll add
11 them later, that's fine, but the complete records need to be
12 admitted.
13 THE COURT: Any objection to the complete set
14 being admitted?
15 MS. BONANNI: No, I just don't know what else
16 is missing.
17 THE COURT: You guys have a complete set?
18 MR. MILLER: Well, I mean, some of these
19 aren't -- I mean, again -- I mean, one of the numbers is
20 page 222 which are Bates stamp numbers that defendants had
21 produced that aren't even a record from this provider, so
22 it's -- I just don't want there to be any confusion that
23 this isn't what was produced by Allegiance. It's not what
24 it's purported to represent.
25 MS. BONANNI: We have a time constraint with

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1 the witness, so for purposes of just moving it along I am
2 happy to put in any documents that Mr. Miller believes are
3 missing. And --
4 THE COURT: Okay, you want to conditionally
5 admit those?
6 MS. BONANNI: I want to conditionally admit
7 this pending Mr. Miller's review of what's missing and I'm
8 happy to put anything in, absolutely.
9 THE COURT: All right --
10 MR. MILLER: Then no objection, Judge.
11 THE COURT: -- all right, then we'll follow
12 that procedure, go ahead.
13 BY MS. BONANNI:
14 Q Okay, so thank you. I'd like you to look at page 8, if you
15 could just count in eight pages from that exhibit, Sir.
16 A Can you show me what you want me to look at?
17 Q Sure.
18 A We'll get the right page.
19 Q Right -- 51 --
20 A Two, three, four, five, six, seven, eight, okay.
21 Q Yes, thank you. Okay, we're on the same page --
22 A Page 5.
23 Q Okay, so these are the documents that you would have
24 received from your clinic Work Well, correct?
25 A Yes.

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1 Q And this is based on the examination that Pennie Davis had
2 on mid-morning of the 15th, correct?
3 A Correct.
4 Q And isn't it true that these records show that upon
5 examination Pennie's hand showed swelling and a small
6 hematoma, do you see that reference, swelling and a small
7 hematoma?
8 A Small hematoma, yes.
9 Q Do you see --
10 A Swelling and small hematoma.
11 Q -- swelling and small hematoma. So, it was exactly what
12 Pennie had told you. Isn't it true that she didn't think
13 the hand was broken, but there was something going on,
14 correct?
15 A That's true.
16 Q Okay, so by the 15th and certainly by the time you got the
17 x-ray from Work Well on the 19th there was evidence
18 connecting Pennie Davis' injury to the October 12th incident
19 with M.H.
20 A There could have been, yes.
21 Q And you didn't have any evidence to debunk what Pennie Davis
22 was telling you. That the contusion was related to the
23 October 12th incident, fair to say?
24 A That's fair.
25 Q She was telling you the truth?

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1 A Yes.
2 Q Now, afternoon of the 15th there's another letter, another
3 meeting; you, Beal, president of the union, Amy Gish, and
4 Pennie Davis, correct?
5 A That's true.
6 Q Do you have memory of that meeting?
7 A Yes.
8 Q Pennie Davis and Amy Gish brought the PPO documentation to
9 Mr. Beal's office, put it on the counter. Mr. Beal saw it,
10 you already knew about the PPO, and there was a meeting
11 immediately, correct?
12 A We had -- we were familiar with the PPO and we called the
13 meeting, yes.
14 Q And Mr. Beal took the PPO and the meeting immediately took
15 place, correct?
16 A Yes, it did.
17 Q Okay, and you asked Pennie Davis, what's your beef with this
18 student, remember saying that?
19 A That's a statement that I made.
20 Q I'm sorry?
21 A That's a statement.
22 Q Okay, and you made that statement?
23 A Because it wasn't in line with the witnesses' testimony of
24 what happened in class that day.
25 Q Well, and you also said, how do we know you didn't hit your

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1 hand with a hammer, you said that, didn't you, Sir?
2 A Well, I didn't accuse her of hitting her hand with a hammer,
3 my -- that statement was in direct correlation to the time
4 when the incident happened and the time she actually went
5 back to Work Well to be examined. Our worker's comp
6 insurance laws wants to have our employees to immediately go
7 down to be examined, so they can know that nothing can
8 happen in the time when they are examined.
9 Q You were yelling during this meeting, weren't you, Sir?
10 A I was not yelling.
11 Q Mr. Beal was yelling during this meeting wasn't he?
12 A He was not yelling.
13 Q So, you accuse Pennie Davis of hitting her hand with a
14 hammer?
15 A I did not accuse Pennie Davis of hitting her hand with a
16 hammer. That's actually --
17 Q Okay, but --
18 A -- absurd that you would say that.
19 Q So, you're saying you made that statement somehow in the
20 meeting?
21 A As an example of the time correlation between the incident
22 and the time when she finally went to be evaluated.
23 Q Well, let's talk about the time correlation.
24 A Yes.
25 Q Ms. Davis was assaulted and immediately went to a clinic

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1 where she was seen by a doctor and her hand was wrapped.
2 A I did not have evidence of her going to a doctor.
3 Q She told you she'd gone. She told you she went to the
4 doctor and that's why she had the wrap and in fact, you
5 referenced it in your Exhibit 14. The letter that you
6 wrote, you knew she went to her own doctor.
7 A She said she went to her doctor, yes.
8 Q Yes, you knew that. Because, you knew that she had been x-
9 rayed, because she even talked about that she'd been x-
10 rayed. You knew she had immediately --
11 A We'd --
12 Q -- sought medical attention.
13 A -- she did say she was x-rayed, she did say she went to her
14 doctor and we -- but we did not have any receipt from the
15 doctor.
16 Q You asked Pennie Davis, what's your beef with this student
17 and you didn't wait for an answer. I mean, did you know
18 that at this point in time she had made 21 contacts with
19 administrators, parents, the football coach, his counselor
20 and did you ever consider that Pennie Davis beef with this
21 student was the fact that he was exhibiting aggressive
22 behaviors, the fact that he was exhibiting behaviors that
23 made her concerned, you ever think about that?
24 A Again, there was a question.
25 Q Sir, isn't it something that you wanted teachers to do if

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1 they saw a student that was exhibiting behaviors that were
2 contrary to the student code, that it would be your
3 expectation that they would reach out to various
4 administrator, staff, counselors, etcetera to try to get
5 assistance?
6 A Absolutely, and she could have simply said that had went to
7 the building administrator, she didn't tell me that.
8 Q You knew that M.H., the student that we are referring to as
9 M.H. had threatened Pennie Davis, you knew he threatened
10 her?
11 A I did not know that.
12 Q You knew that the basis of her PPO -- you saw the PPO --
13 (inaudible)-- you saw the PPO?
14 A Yes, I've seen the PPO.
15 Q And you've seen the incident report that Pennie filled out
16 for the school, a school form?
17 A The PowerSchool, yes.
18 Q You saw the student log that she filled out?
19 A I believe so, yes.
20 Q And that student log, the incident report indicate that he
21 threatened to beat the teacher?
22 A That's what she put in it.
23 Q And isn't it also true that those interviews with students
24 corroborated that there was something said about a threat?
25 A I don't believe that's true at all.

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1 Q You don't remember that?
2 A I don't believe that's true at all, that would be a question
3 for the building principal.
4 Q Okay, so that's a question for the building principal that
5 you knew from that incident report that there was a threat,
6 a threat to beat the teacher, correct?
7 A That's what she put in the report, yes.
8 Q And that's against the student code, that's a violation --
9 A Yes, it -- absolutely.
10 Q You knew also that Pennie Davis had reported that there was
11 a threat of violence because of e-mails you exchanged with
12 the principal -- the building principal, remember that?
13 A I'm not familiar with that.
14 Q Let's look at Exhibit 65 and actually, that's in the back,
15 so there aren't tabs, so go to the last pages. This is a e-
16 mail from Joe Zessin to Patterson, Beal, Pauli and Pack, do
17 you see that?
18 A Yes.
19 Q Dated October 13th, 2015 at 7:27 in the morning.
20 A It's cc'd to me, yes.
21 MS. BONANNI: Okay, I'd like to move to admit
22 this into evidence.
23 (At 10:12:00 a.m., Plaintiff's Exhibit 65 was
24 offered)
25 THE COURT: Mr. Miller, any objection?

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1 MR. MILLER: I'm just looking at it real
2 quick, this was a later marked exhibit, so.
3 MS. BONANNI: It's part of the --
4 MR. MILLER: No objection.
5 MS. BONANNI: Okay, thanks.
6 THE COURT: So admitted by way of stipulation
7 of the parties.
8 (At 10:12:16 Plaintiff's Exhibit 65 was
9 admitted)
10 BY MS. BONANNI:
11 Q Second paragraph, Sir, the letter indicates quote, "As I
12 believe you are aware, Ms. Davis is alleging that she was
13 threatened by the student yesterday and was then assaulted."
14 end quote.
15 A That she's alleging -- yes.
16 Q Okay, so before you talked to her on that day, you'd had
17 that e-mail indicating that she had been threatened?
18 A Which day was that?
19 Q The 13th.
20 A It could have been in my e-mail, I don't know if I read it
21 before then -- before going to see her, because that -- we
22 went to her classroom at end of 2nd period.
23 Q Okay --
24 A It was right before 10:00 o'clock.
25 Q -- and 7:27 in the morning is before 2nd period, fair to

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1 say?
2 A That is true.
3 Q Okay, now you never interviewed Pennie Davis about the
4 incident on October 12th, 2015, fair to say?
5 A We had conversations with -- on the 15th.
6 Q Okay, you didn't talk to her about her version of what
7 happened, right?
8 A No, that would have been building administration's --
9 Q Okay, are you aware, Sir, that no one from the building
10 administration ever interviewed Pennie Davis?
11 A I'm -- I don't know if that's true, I think Mr. Zessin --
12 here in his letter refers to having some type of
13 conversation with Mr. -- Ms. Davis.
14 Q Okay, but in terms of the extent, you don't know one way or
15 another?
16 A That would be a question for the building administration.
17 Q Now, you did find out that Pennie Davis reported to the
18 police and you found out that on October 15th Pennie Davis
19 had applied for and was granted by a Judge the PPO?
20 A That's true.
21 Q You were angry on the 15th that Pennie Davis had gone
22 outside of the building?
23 A That's not true at all. I was not angry.
24 Q You told me that Pennie Davis should have kept this inside
25 the building.

1 A After reading the testimony of the witnesses to the
2 incident, it seemed to me, in my opinion, it was a situation
3 that could have been handled inside the building by the
4 building administration.
5 Q It made you angry, Sir.
6 A It did not make me angry.
7 Q This meeting that you had on the 15th?
8 A Yes.
9 Q Was elevated. You testified to that, I can refresh you.
10 A It was elevated, the conversations were elevated between Mr.
11 Beal, myself and Ms. Gish. The spokes --
12 Q Ms. Gish wasn't yelling.
13 A -- she didn't say much of anything that day. Pennie -- her
14 -- Amy Gish the union president was her spokesperson.
15 Q There was yelling, correct?
16 A I wouldn't say yelling, but there was --
17 Q Raised voices?
18 A Raised voices.
19 Q And this existence, this very existence of the PPO was the
20 real source of elevated feelings about this situation, isn't
21 that fair?
22 A That's not fair.
23 Q Let's look at your testimony, I deposed you in February of
24 2017.
25 A Correct.

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1 Q And I've got your deposition there. You were sworn to tell
2 the truth on that day and you're sworn to tell the truth
3 today.
4 A I am.
5 Q Take a look at your deposition testimony at page 34. I'm
6 gonna read to you what I asked you and what you responded.
7 THE COURT: Page 34, lines what?
8 MS. BONANNI: Lines 18 through 23. You can
9 actually look at it right here, Sir, can you see it? I
10 asked you, "Okay, so this existence of this PPO was the real
11 source of the elevated feelings about this situation. Isn't
12 that fair to say?" and your answer was, "That's part of it."
13 And I asked you, "It's a big part of it isn't it?" And you
14 answered, "It's part of it, yes."
15 THE WITNESS: It says, elevated feelings, it
16 does not say angry.
17 BY MS. BONANNI:
18 Q Okay, now let's go to Exhibit 15, Sir. Exhibit 15 --
19 A There is no 15.
20 Q Okay, I'm gonna tell you and then I'll give it to you.
21 Exhibit 15 is a letter that you wrote, why don't you pull it
22 up. Exhibit 15 is the letter that you wrote after the
23 conversation that you had with Pennie Davis, but you mailed
24 it to her house, do you remember you mailed her a letter
25 chronicling why she was being placed on administrative

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1 leave?
2 A Okay, let me see it.
3 Q Okay, sorry, I don't know how it escaped the binder.
4 A Can I put it in here?
5 Q Absolutely, thanks. Okay, so this is the letter that you
6 wrote to Pennie Davis after the meeting in the afternoon of
7 the 15th when she was placed on administrative leave?
8 A Correct.
9 Q And in this letter -- was this punitive?
10 A No.
11 Q So, if it wasn't punitive, you -- it's not punitive, but yet
12 you won't let her come to campus, talk to anybody or attend
13 any school activities?
14 A Normal things that are added in any type of letter like
15 this.
16 Q And after October 15th when she was placed on administrative
17 leave Pennie Davis wasn't interviewed by anybody --
18 A That --
19 Q -- isn't that true?
20 A -- but it wasn't -- she wasn't interviewed by me, no.
21 Q And there were no additional witnesses interviewed, fair to
22 say?
23 A That would be a question for the building principal.
24 Q While Pennie Davis was off on administrative leave, her
25 union president contacted you and indicated that Pennie

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1 Davis does not have internet at home, so to please mail
2 letters and to please mail them to a PO box, remember that?
3 A I don't remember that, but --
4 Q You don't remember that she doesn't have internet?
5 A I don't know that for a fact.
6 Q And remember Pennie Davis' union representative, on October
7 19th told you that when Pennie comes back to work she's
8 gonna need time to get a union rep if the school requires
9 it?
10 A We don't require a person having a union rep, they're
11 allowed to have a union rep. Ms. Davis always had a union
12 rep during our meetings.
13 Q Now, you've docked her pay after -- on October 28th, you
14 docked her pay two days, because she was ordered to come
15 back to work and bring a union rep and she wrote you a
16 letter immediately that night and said, I don't have time
17 and I can't find anyone, I need 24 hours to find a union
18 rep. Do you remember getting that letter from her?
19 A She said she needed 24 hour notice to return to work.
20 Q Okay, and do you remember Pennie grieving you docking her
21 pay?
22 A Yes.
23 Q And I want you to look at Exhibit 25, this is the letter
24 where you docked her pay.
25 THE COURT: What exhibit?

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1 MS. BONANNI: Exhibit 25 and that's been
2 entered already into evidence. You knew that she needed 24
3 hours notice, you still docked her pay and wasn't Pennie
4 able to get some of her pay back, because she saved the
5 message from Jessica from your office telling her you must
6 have a union rep and she played that during the grievance,
7 do you remember that?
8 THE WITNESS: She did file a grievance and
9 that dispute was resolved through the grieving process.
10 BY MS. BONANNI:
11 Q And the way she was able to win that grievance was because
12 she had that message saved from Jessica.
13 A Yes, there was no win in that grievance, there was a mutual
14 agreement that we would split the cost of the two days, she
15 was paid for one day and she was unpaid for the 2nd day.
16 Q The union -- you moved Pennie from her job in high school, a
17 job she'd been in for 29 years?
18 A She was moved.
19 Q Okay, and you moved her, because you said you wanted her to
20 be safe, isn't that -- you moved her for safety?
21 A Well, the movement -- the official movement of Ms. Davis to
22 the middle school at Parkside was requested through the
23 superintendent and it was because of her safety, yes.
24 Q Okay --
25 A She kept -- she had had an amendment on the PPO and she put

1 in writing that she was afraid of the student.
2 Q But, the PPO and what the PPO required in terms of keeping
3 these individuals away from one another, that never changed,
4 do you agree with that?
5 A Correct.
6 Q So, that never changed and in fact, Pennie Davis, on the
7 10th of November met with Barb Pauli from the high school,
8 who's the principal and her union rep and they came up with
9 a comprehensive plan -- travel plan of about how M.H. would
10 travel to the school and how Pennie would travel to the
11 school. Do you remember hearing about that plan?
12 A I know that there was a plan that the student was removed
13 immediately from her classroom, his schedule was adjusted,
14 but to the extent that his schedule was adjusted, I don't
15 know that.
16 Q But, you do know that after it became clear that you were
17 gonna move Pennie Davis, that her union representative, the
18 union president let him know that they already had a plan in
19 place, Pennie felt safe and that she had already met with
20 Barb and they'd come with a plan, you knew that.
21 A Again --
22 MR. MILLER: Judge, I'm just gonna object as
23 to the form of the very compound questions. Again --
24 THE COURT: Overruled. Go ahead.
25 BY MS. BONANNI:

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1 Q You can go ahead and answer, Sir.
2 A Again, Ms. Davis placed in writing that she was fearful of
3 the student, it was prudent on our part to make sure that
4 the two were separated. Obviously, the plan that originally
5 developed with removing the student from class was not being
6 adhered to, was not working, she still felt threatened and
7 it was just prudent on our part to make sure that the two
8 people were separated.
9 Q When her union representative was telling you that, there
10 had not been plan in place and now there was and it was
11 working?
12 A Again, I'm not for -- I'm not familiar with the dates that
13 you're talking about or when that meeting took place and
14 when -- I'm familiar with the time the PPO was amended.
15 Q Okay, was the PPO amended, Sir?
16 A It was modified in some way.
17 Q No, there was a request for Pennie to meet with the Judge to
18 deal with the issues, so that the student knew what he had
19 to do. But, that meeting with the Judge took place after
20 you moved Pennie, isn't that true?
21 A I'm not familiar with those dates.
22 Q Well, let's look at the dates, let's look at Exhibit 26.
23 Okay, are you at 26, Sir?
24 A Yes.
25 Q Okay, so you see here in 26 Pennie's indicating that he's in

1 the room next to her, she doesn't feel safe, she asks that
2 he not be put in a room next to her or across from me. The
3 assault is still in the court system. That's what she's
4 asking, that he not be in a room across from her.
5 A And again, the rooms that are across from Ms. Davis'
6 classroom were specifically designed for music students,
7 band, chorale music, orchestra, those type of things, it's
8 not the type of a classroom we can pick up and move to any
9 other classroom in the building. So, if his schedule
10 dictated that he had to have a class over in that area,
11 that's where those classes are taught.
12 Q Mr. Haskey (ph) wasn't in class, there wasn't an orchestra
13 class going on when he was sitting in the room outside of
14 Pennie's. You know, that?
15 A I'm not familiar with that.
16 Q Okay, he was just sitting there, because he had nowhere to
17 go.
18 A Again, that would be a question for his counselor and the
19 building principal.
20 Q So, that was an assumption on your part?
21 A Assumption?
22 Q You didn't know, M.H. did not have a class going on at the
23 same time as Pennie Davis. He was hanging out in an empty
24 classroom, you didn't know that?
25 A I did not know that.

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1 Q Okay, well, now you do. But, what I really want you to look
2 at is the fact that the date here of when Pennie's gonna go
3 to the court, talk to the court about her concerns, that's
4 on the 19th of November. Do you see the date of the
5 hearing?
6 A Yes, I do, 19th.
7 Q And do you remember when you made the official decision to
8 move Pennie Davis?
9 A It had been prior to that, yes.
10 Q So, there was no modification of any PPO.
11 A No, that -- when we received the PPO that the student and
12 this teacher could not be near each other and the plans to
13 separate the student obviously were not going as planned.
14 The decision to transfer a teacher to the other building
15 involved another teacher that we had to move to the high
16 school. We normally don't move teachers during the school
17 year, we try to -- but if we do move teachers during the
18 school year -- and which we have, we try to do what we call
19 a natural break, meaning at the end of a trimester and this
20 is right up -- if we're gonna move a teacher, any teacher,
21 it would have to be right around the trimester, so they can
22 finish up what they're grading and with the current students
23 are teaching.
24 Q Well, before you made this decision to move Pennie Davis you
25 didn't talk to her, did you?

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1 A Well, there was meetings with -- there was meetings.
2 Q You didn't say to her, do you feel safe? Is it working for
3 you?
4 A She put in writing that she wasn't safe, she filed a PPO.
5 Q She didn't even give you this -- the court hearing document.
6 She did not give it to you. That did not come from Pennie
7 Davis, isn't that true?
8 A We met on the 15th, we knew there was a PPO.
9 Q You knew there was a PPO, you did not know that there was
10 this issue about the student not adhering to the PPO. On
11 the 15th all you --
12 A Correct.
13 Q -- had was the PPO?
14 A This would have been afterwards.
15 Q Because look, this wasn't filed until November 4th. You see
16 that date there?
17 A Yes.
18 Q So, what you knew was that you had a PPO --
19 A Yes.
20 Q -- they were supposed to stay away from each other --
21 A Yes.
22 Q -- okay? And Pennie Davis, when the student wasn't adhering
23 to work with the building administration to get it all
24 worked out and it was working satisfactorily --
25 A Well, I can't testify to that --

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1 Q but, before --
2 A -- I don't know, obviously there could have been a
3 conversation with Mr. Beal and Ms. Pauli.
4 Q But, before even moving this teacher who'd been in that
5 class, who built and designed the classroom, who was
6 extremely successful in this classroom, before moving her
7 and uprooting her in the middle of the year, you didn't even
8 talk to her, did you?
9 A I did not personally.
10 Q And when they found out and got wind that you were gonna
11 move her, the union said this is not right, she feels safe,
12 everything is fine, this is not necessary?
13 A That was their opinion.
14 Q When Pennie Davis moved over to Parkside -- you know that
15 Parkside is an IB school --
16 A Yes.
17 Q -- and different kind of curriculum completely, correct?
18 A Not correct. We have a -- it's the same Michigan
19 curriculum. We have to meet those standards, IB is
20 generally it's different how it's taught, okay?
21 Q Yes.
22 A And --
23 Q And how is it supported?
24 A -- and that's how it's supported. We do employ IB coaches,
25 teachers, okay? There's coaches to work with all new

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1 employees. We've placed many new teachers that are not IB
2 certified yet and three teachers have transferred into that
3 building that aren't IB certified yet and they still
4 certified in the State of Michigan to go teach in those
5 classes.
6 Q My question, Sir, was simply that the IB curriculum, the IB
7 way of schooling and doing and learning is different than
8 what you teach in the other schools that are in this
9 district, is that correct?
10 A I'm not sure that there's a whole lot of difference in art
11 --
12 Q Well, are you an expert?
13 A I'm not an expert.
14 Q Okay, there's a handbook, a special IB handbook, correct?
15 A There's a -- there's special ways of teaching core
16 curriculum classes, yes.
17 Q And teachers actually are sent off site -- teachers from
18 this district have been sent to other cities to go through
19 training --
20 A Yes, we do.
21 Q -- is that true?
22 A That's true.
23 Q Now, Pennie Davis was labeled a failing teacher within 32
24 days of moving to Parkside and I believe during your
25 deposition you told me that a failing teacher means the

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1 teacher is ineffective, correct?
2 A Well, ineffective is the terminology that we use, yes.
3 Q And at that point in time, 32 days in do you have any
4 personal knowledge as to what kind of training Pennie Davis
5 actually received?
6 A I don't.
7 Q Do you remember how many times Pennie Davis asked to be
8 reinstated into her job at the high school?
9 A I don't.
10 Q Do you remember receiving grievances from Pennie Davis'
11 union president asking you to reinstate her to the high
12 school?
13 A An actual grievance?
14 Q Yes.
15 A I don't.
16 Q Do you remember a grievance regarding some administrators at
17 Parkside, Mr. Weatherwax, that was filed by three teachers
18 including Pennie Davis and --
19 A Yes, I do.
20 Q -- Pennie Davis was asking in satisfaction of this
21 grievance, please bring me back to the high school?
22 A That was on a whole different issue.
23 Q But, she asked you to go back to the high school?
24 A At that time, yes.
25 Q And, in fact, do you remember exchanging some communications

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1 with her union president saying that, yes, transfers do
2 happen, but there has to be a job opening and there has to
3 -- the teacher has to have an effective rating and that all
4 the candidates would be considered. Do you remember telling
5 Amy Gish that?
6 A I do.
7 Q Okay, and at that point in time Pennie Davis didn't have an
8 effective rating, so she wasn't eligible to transfer
9 according to what you said in your communications to Gish?
10 A At that particular point in the school year the
11 determination whether Ms. Davis was highly effective,
12 effective, or minimally effective or ineffective had not
13 been determined yet.
14 Q Ms. Davis is still on her IDP, correct? At least --
15 A Today?
16 Q -- from the time you retired, we'll say.
17 A I believe she was still on IDP.
18 Q Okay, and when did you retire, Sir?
19 A January 31st, 2018.
20 Q Okay, so as of January 31st, 2018 Pennie Davis was still on
21 her IDP, correct?
22 A She could have been.
23 Q And an IDP is for ineffective teachers, correct?
24 A That's not true at all.
25 Q Teachers who have been rated ineffective are placed on IDPs

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1 as a mechanism for improving their rating, correct?
2 A An IDP is a mechanism for any teacher effect -- that is
3 highly effective, effective, minimally effective or
4 ineffective to improve an area deemed by the principal that
5 they need to have work on.
6 Q Do you have any understanding why Pennie Davis remained on
7 an IDP as of January of 2018?
8 A Again, that would be a question for the building principal.
9 Q Now, Pennie Davis moved back to the high school as a result
10 of inquiries made as part of this law suit as to why she
11 wasn't being reinstated, isn't that true?
12 A Pennie Davis requested to return to the high school in the
13 Spring of 2017.
14 Q Sir, do you remember when I deposed you in February of 2017?
15 A Yes.
16 Q It was the same day that I deposed Mr. Beal.
17 A Correct.
18 Q And do you remember having a conversation with Mr. Beal
19 after those depositions, Mr. Beal sharing with you that I
20 had demanded why Pennie Davis was not being reinstated into
21 her job? Do you remember discussing that with Mr. Beal?
22 A Not right off the top of my head.
23 Q Did Mr. Beal share that with you that that was part of his
24 deposition?
25 A Again, I --

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1 Q Let me see if I can refresh your recollection, I'm looking
2 at Mr. Beal's testimony, page 94-95. Just take a look at
3 that and see if it refreshes your recollection as to whether
4 or not you and Mr. Beal discussed the fact that there was a
5 request being made as to why Pennie was not being
6 reinstated.
7 A Which pages specifically?
8 Q Ninety-four, ninety-five.
9 A Okay, I'll look at it.
10 MR. MILLER: Judge, I just object to that,
11 it's improper to refresh a witness' recollection with the
12 deposition transcript of another declarant, not himself.
13 MS. BONANNI: The question is just about the
14 conversations that they had subsequent to that day and how
15 it relates temporally to Pennie Davis' request to be
16 reinstated again.
17 MR. MILLER: Something that occurred after
18 the date of those depositions surely not in that deposition
19 transcript and can't be used to refresh his recollection.
20 THE COURT: All right, sustained.
21 BY MS. BONANNI:
22 Q Do you remember close in time to your deposition Pennie
23 Davis making a request to be reinstated in her position at
24 the high school?
25 A It could have been, I mean, she'd requested to go back to

1 the high school, you know, throughout that period, yes.
2 Q I'm sorry, I didn't --
3 A Yes.
4 Q -- that, yes.
5 A I'm sure she did.
6 Q Okay, so would it surprise you to learn that it was within
7 30 days that she made an official request?
8 A Again --
9 Q I'm gonna ask you --
10 A -- she could have requested it, yes.
11 Q -- okay, and I'm gonna ask you to look at Exhibit 44 which
12 is a text message from Ms. Gish, the union representative to
13 Pennie Davis asking for Pennie to be reinstated and she's
14 asking on Pennie's behalf.
15 A There is no --
16 Q Forty-three, sorry.
17 A Yes, it was Amy Gish, it was --
18 Q And that request was made February 28th?
19 A Pennie Davis didn't make it.
20 Q What I'm asking, Sir, is that on February -- oh, 22nd, I'm
21 sorry. February 22nd Amy's contacting you saying it was
22 brought to my attention that Jeff would entertain a change
23 of assignment for Pennie Davis that would return her back to
24 teaching art at the high school. At this time we, Pennie
25 included, are making a formal request to return Pennie to

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1 her previous teaching assignment at the high school. She
2 did communicate that to you?
3 A Yes.
4 Q And you, in turn, told her she has to do it herself.
5 A Yes.
6 Q And then Pennie ended up doing it, correct?
7 A Did she? I don't think she did.
8 Q Let's look at Exhibit 45.
9 A She did.
10 Q She did. Pennie did?
11 A She signed it.
12 MS. BONANNI: Okay, I'm gonna move to admit
13 Exhibit 45.
14 (At 10:38:06 a.m., Plaintiff's Exhibit 45
15 offered)
16 MR. MILLER: No objection.
17 THE COURT: So admitted by way of stipulation
18 of the parties.
19 (At 10:38:12 a.m., Plaintiff's Exhibit 45
20 admitted)
21 BY MS. BONANNI:
22 Q When Pennie Davis was moved back to the high school you
23 remember she was placed in a room that was not her own, she
24 was placed in a foreign language room, do you remember that?
25 A She was placed in a classroom that was a multi-use classroom

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1 with water and used for science, it could be used for art,
2 could be used for a lecture hall.
3 Q She was given access to that room one week before school
4 started and do you recall that she alerted the
5 administration that there were serious issues including
6 exposed pipes, exposed electrical sockets and wires?
7 A She did.
8 Q And in fact, in order to get that corrected, Pennie had to
9 grieve that, didn't she?
10 A I can't remember if she actually filed a formal grievance,
11 but I know that she had requested that be fixed.
12 Q Okay, now Mr. Pack, the student log that we have, the
13 student log -- a student's log remains part of their
14 permanent record, correct?
15 A Yes, it does.
16 Q And a building administrator such as a principal has an
17 obligation to amend that log in the event there's something
18 in the log that is not accurate, correct?
19 A They have the ability to go in and amend it, yes.
20 Q And that log, the log that Pennie Davis submitted indicating
21 that she'd been hit by a student, to your knowledge has that
22 log ever been changed or altered?
23 A Not to my knowledge.
24 Q So, it remains part of the student permanent record,
25 correct?

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1 A It would, yes.
2 Q Unaltered. Sir, ineffective ratings are used as a basis for
3 layoff, correct?
4 A They can be, yes.
5 Q They're not -- in the old days seniority would be part of
6 that consideration, correct?
7 A That's true.
8 Q But, these days by state law layoffs must be done based on
9 effectiveness, not seniority, correct?
10 A That's true.
11 MS. BONANNI: I don't have anything further,
12 your Honor.
13 THE COURT: Cross-examination, Mr. Miller?
14 MR. MILLER: Thank you, Judge.
15 CROSS-EXAMINATION
16 BY MR. MILLER:
17 Q Good morning, Mr. Pack.
18 A Good morning.
19 Q I'm going to hand you what's marked as Defendant's proposed
20 Exhibit number 1. Do you recognize that document?
21 A Yes, I do.
22 Q What is it?
23 A This is the attendance tracking record for Pennie Davis for
24 the 2015-2016 school year.
25 Q Okay, is that a record that's kept in the ordinary course of

1 the human resource depart's --
2 A Yes.
3 Q -- business?
4 A Yes.
5 Q Okay, do you maintain one of these for every employee in the
6 school district?
7 A Yes.
8 Q Okay, about how many employees does the school district
9 have?
10 A Full and part-time between 500 and 600 employees.
11 MR. MILLER: All right, I'd move to admit
12 Defendant's Exhibit number 1.
13 (At 10:41:52 a.m., Defendant's Exhibit 1 was
14 offered)
15 MS. BONANNI: I object to the relevance. Her
16 attendance is not part of this lawsuit nor has she ever been
17 disciplined for attendance. I think it's misleading and
18 confusing. It's not relevant.
19 THE COURT: Okay, what's the relevancy of the
20 attendance record?
21 MR. MILLER: The relevancy, Judge, is
22 Plaintiff is saying she was evaluated unfairly under the
23 revised school codes, specifically Sections 380, 1248 and
24 1249. Attendance is a mandatory consideration as part of an
25 evaluation, so her attendance record as a matter of law is

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1 relevant here.

2 MS. BONANNI: I'm going to firmly object to

3 this, here's why: She was on family medical leave for much

4 of this because of injuries that, you know, the benign

5 tumors that are not part of this lawsuit, but certainly

6 cannot be used by law against her. This is confusing, this

7 -- these absences have not been explained, it's not part of

8 our case in chief, it's just not relevant. And by law --

9 the law -- I mean, Mr. -- I was gonna call you Holmes -- Mr.

10 Miller would agree that the law would never permit FMLA

11 absences to be used against -- it's a per se violation.

12 MR. MILLER: There's a whole lot of dates

13 here besides FMLA leave that's in debate and it's only one

14 year that she had --

15 THE COURT: Mr. Mullins too, why don't I see

16 counsel at the side bar.

17 (Bench Conference held from 10:43:14 a.m. to

18 10:47:09 a.m.)

19 THE COURT: All right, ladies and gentlemen,

20 they're gonna go through some attendance issues with respect

21 to Ms. Davis. Some of these dates that she missed are

22 apparently for what's called a Family Medical Leave Act.

23 Those are protected days, so her utilizing those days are

24 not something that the district could use against her. So,

25 at some point in time I just wanted you to be aware of that

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1 distinction.

2 All right, Ms. Bonanni, go ahead.

3 MR. MILLER: All right, thank you, Judge.

4 THE COURT: Mr. Miller -- Mr. Miller, go

5 ahead.

6 BY MR. MILLER:

7 Q You still have a copy of --

8 A Yes, Exhibit 1?

9 Q -- Exhibit 1, Mr. Pack? All right, the gray shaded days on

10 the calendar, what do those represent?

11 A Those are non-work days.

12 Q Like Summer break, Christmas --

13 A Summer break, Christmas break.

14 Q All right, and in 2015-2016 how many district work days were

15 there?

16 A One hundred and eighty-three work days.

17 Q All right, and how many days did Ms. Davis work that year?

18 A One hundred and twenty-four work days, point one.

19 Q I'm gonna hand you -- you can leave this up here -- hand you

20 what's marked as Defendant's Exhibit number 2. Can you tell

21 us what that document is?

22 A It's the attendance tracking record for Pennie Davis for

23 2016-2017 school year.

24 Q Okay, and just like 2015-2016, Defendant's Exhibit number 1,

25 is this kept in the ordinary course of your office's

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1 business?
2 A Yes.
3 MR. MILLER: All right, I'd move to admit
4 Defendant's Exhibit number 2.
5 (At 10:48:43 a.m., Defendant's Exhibit 2 was
6 offered)
7 MS. BONANNI: With the objection that I've
8 provided.
9 THE COURT: Subject to the Plaintiff's
10 objection and the court's ruling, it's so admitted.
11 (At 10:48:53 a.m., Defendant's Exhibit 2 was
12 admitted)
13 MR. MILLER: All right, thank you, Judge.
14 BY MR. MILLER:
15 Q How many district work days were there in 2016-2017?
16 A There was 185 work days that year.
17 Q Okay, and how many days did Ms. Davis come to work?
18 A One hundred and fifty-two point eight.
19 Q All right, it's come to understand that you're recently
20 retired, congratulations.
21 A Yes.
22 Q Do you have any responsibilities at Jackson Public Schools
23 at this time?
24 A None.
25 Q Okay, so if you wanted to take some sort of adverse action

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1 towards Ms. Davis right now you couldn't, correct?
2 A Correct, I'm not an employee.
3 Q Last week we heard a little bit of testimony about teacher
4 tenure, what it is, does it exist. Does teacher tenure
5 exist in Michigan?
6 A Yes.
7 Q Okay, if a school district wanted to terminate a teacher for
8 cause what's required?
9 A Well, there would have to be a valid reason and they would
10 -- administration would have to take that reason to the
11 board of education and the board of education would have to
12 agree to send it on to take the teacher up for tenure
13 charges. It would then be heard by an administrative law
14 Judge who would hear both sides of the case and determine if
15 the teacher should be terminated.
16 Q All right, and how many members are on a school board?
17 A Seven.
18 Q Okay, so majority is four?
19 A Correct.
20 Q Okay, so for a teacher to be brought up on tenure charges
21 you'd have to convince four school board members that
22 discharge was appropriate, right?
23 A Correct.
24 Q All right --
25 THE COURT: So, I guess, Mr. Pack, so what's

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1 the difference if a teacher, let's say with 20 plus years of
2 tenure gets two highly ineffective ratings? What happens to
3 the teacher then?
4 THE WITNESS: Based on our negotiated
5 agreement, two ineffective ratings would equal termination.
6 THE COURT: Has that got to be taken to the
7 school board?
8 THE WITNESS: Yes, we still have that and
9 have approval from the school board.
10 THE COURT: So, how does the school board act
11 as a check then?
12 THE WITNESS: Well, the two ineffective
13 evaluations is in the contract. It would be to keep a
14 teacher on that already received two ineffective evaluations
15 would have to be the approval of the board, they would still
16 want that person working.
17 THE COURT: Okay.
18 BY MR. MILLER:
19 Q All right, and that is a good point. Under the contract and
20 under state law a teacher can potentially lose their job if
21 they have too many ineffective evaluations in a row,
22 correct?
23 A The state law is three.
24 Q Okay --
25 A And the teachers negotiated that down to two ineffective

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1 evaluations.
2 Q All right, and during your very long employment at Jackson
3 Public Schools has that ever occurred?
4 A Never.
5 Q Okay, what about bringing a teacher up on tenure charges
6 saying this person should be terminated for cause, has that
7 happened during your tenure as the head to the HR
8 department?
9 A Never.
10 Q Okay, and what's your understanding -- how much does it cost
11 for a school district to go through that process?
12 A Two hundred -- two hundred fifty thousand dollars.
13 Q All right, so pretty rare event to occur in Michigan,
14 correct?
15 A It's very rare.
16 Q All right, you were asked some questions a little bit ago
17 about PPOs and motions to modify and Ms. Davis being
18 transferred. I'd like you to take a look in Plaintiff's
19 binder there, of all their exhibits, Exhibit number 33.
20 A Yes.
21 Q What is that document?
22 A Exhibit -- Plaintiff's --
23 Q Plaintiff's Exhibit 33?
24 A November 13th, 2015.
25 Q Now, is that Ms. Davis' transfer letter?

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1 A Yes.
2 Q Okay, and what's the date on that letter when she was
3 reassigned?
4 A She was -- this letter was dated November 13th, 2015.
5 Q Okay, and if you could turn to Plaintiff's Exhibit 26.
6 A Yes.
7 Q Okay, and is that the motion to modify the PPO that we were
8 just talking about?
9 A Yes.
10 Q Okay, and what date did Pennie Davis sign that document?
11 A November 4th.
12 Q Okay, and that's where she says she still has a fear --
13 A A fear.
14 Q -- she's still afraid?
15 A Yes.
16 Q Okay, and that was nine days before her transfer, correct?
17 A "I have a fear", yes.
18 Q All right, you testified a little bit ago that the first day
19 you spoke to Ms. Davis and told her to go to Henry Ford
20 Allegiance was October 13, correct?
21 A That's true.
22 Q Okay, and when is the first time you heard back from Henry
23 Ford as to Ms. Davis' ability to work?
24 A Thursday, October 15th.
25 Q All right, I'm gonna hand you, just for your convenience,

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1 what's part of Plaintiff's Exhibit 52. What is that
2 document?
3 A This is the initial authorization to treat form. It's
4 filled out by my office.
5 Q And when was that dated?
6 A October 13th, 2015.
7 Q The same day you spoke with Ms. Davis in the morning about
8 going to Henry Ford?
9 A Yes, yes.
10 Q Okay, and she did go on October 15th, correct?
11 A She did go on October 15th.
12 Q All right, let me hand you another page of Plaintiff's
13 Exhibit 52, we feel like it's a little bit easier as opposed
14 to flipping through it all.
15 A Yep.
16 Q Is this the doctor's note and the report of work status that
17 you received at that time?
18 A Yes.
19 Q Okay, and you were advised that an x-ray was necessary to
20 check for a fracture?
21 A Yes.
22 Q And that Ms. Davis refused?
23 A Yes.
24 Q And then the physician put her on restricted work duty,
25 correct?

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1 A That is correct.
2 Q Okay, and at that time you made the decision to place Ms.
3 Davis on leave?
4 A There was a conversation between Mr. Beal and I, yes.
5 Q Okay, and was this disciplinary?
6 A No.
7 Q Was this to punish her?
8 A No.
9 Q Were you retaliating against her for filing a police report?
10 A No.
11 Q Well, why did you put her on paid, non-disciplinary leave?
12 A She was on a limited restriction to come back, she's a art
13 teacher, when she walked in with Ms. Gish on that date on
14 the 15th her hand was immobilized with a splint and was
15 obviously, you know, she, you know, was truly limited as an
16 art teacher to teach art. And obviously, for her safety we
17 placed her on paid administrative leave.
18 Q All right, as a former football coach and athletic director
19 is this somewhat similar to concussion protocol with a
20 student athlete?
21 A It'd be very similar.
22 Q All right, that you're concerned about their safety and
23 whether they can participate and not hurt themselves --
24 A Don't return until you can -- you're fully recovered.
25 Q All right, and I understand that you testified that it was

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1 the superintendent's decision to ultimately transfer Ms.
2 Davis?
3 A That's true.
4 Q But, you were part of that conversation it sounds like?
5 A That's true.
6 Q Okay, and what was the reason why? Why did you decide to,
7 with the superintendent, to transfer Ms. Davis?
8 A Ms. Davis put it in writing that she was fearful of the
9 student. Again, it was prudent on our part to keep her
10 safe, keep her away from the student and so, that's the
11 decision that was made to place her at the middle school at
12 Parkside.
13 Q All right, were you doing this to punish Ms. Davis?
14 A No.
15 Q Were you doing it to retaliate against her for filing a
16 police report?
17 A No.
18 Q Okay, it had nothing to do with it?
19 A It had nothing to do with it.
20 Q Okay, and is it your understanding that after student, M.H.
21 was no longer in the high school was she transferred back?
22 A She was transferred back this year, yes.
23 MR. MILLER: All right, I have no more
24 questions, Judge.
25 THE COURT: Any further redirect?

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1 MS. BONANNI: Yes.

2 REDIRECT EXAMINATION

3 BY MS. BONANNI:

4 Q During the transfer meeting with Pennie Davis on the 15th,

5 you told her by way of explanation why she was being

6 transferred and you said to her, we don't go to the police

7 here. Remember that?

8 A Yes, I do. But, we do go to the police, I mean, let me

9 clarify that --

10 Q Well, that's what you said --

11 A -- we go to the -- we --

12 Q -- during the meeting you didn't clarify anything, you just

13 said, we don't go to the police here.

14 A Based on the --

15 Q Correct?

16 A -- based on the witness' testimony of what happened in the

17 classroom, this would have been an issue that could have

18 been addressed at the building administration level.

19 Q Sir, Mr. Miller showed you Exhibits 1 and 2 with the sick

20 leave --

21 A Yes, yes --

22 Q -- remember that?

23 A -- yes.

24 Q And just to make clear for this jury, it is against -- I

25 mean, you're HR, so you know a little bit about what the

1 school can and cannot do, correct?
2 A Yes.
3 Q It's against the law for Ms. Davis' medical leaves that are
4 FMLA qualifying to be used against her for any decision made
5 by the school?
6 A That would be true.
7 Q And isn't it true that Ms. Davis took two FMLA leaves. One,
8 because of work place stress and the other because of benign
9 tumors. Were you even aware of that?
10 A I was aware of that.
11 Q So, to the extent those leaves are used against her in terms
12 of looking at her attendance, that would be impermissible.
13 A The evaluation is done by the building principal and that
14 would be a question for Mr. Patterson.
15 Q But, you are in charge of the teachers and the
16 administrators so, it would be your expectation that they
17 would abide by the law?
18 A Absolutely.
19 Q So, to the extent her leaves which were sizable for the
20 tumor or for stress, you would not expect the building
21 administrators to use that against her when evaluating, is
22 that a fair statement?
23 A That's a fair statement.
24 Q Do you even know when her FMLA leaves were, do you remember?
25 A I think one was right before Christmas and one was right at

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1 the end of the school year.
2 Q The one was in June of 2016?
3 A May.
4 Q May/June and that was lengthy wasn't it?
5 A I think it went all the way up to the end of the school
6 year.
7 Q That was because of the benign tumors, isn't that true?
8 A I'm not familiar with what that was.
9 Q Okay, and the one in December was because of stress and she
10 was on a heart monitor, do you remember that?
11 A Not that detailed that she was on a heart monitor.
12 Q But, you knew it was stress?
13 A I knew she was off work.
14 Q You knew as of October 19th that Pennie Davis hand wasn't
15 fractured, it's in your own Work Well records.
16 A Yes.
17 Q So, you knew that as of the 19th that she didn't come back
18 to work until the 29th, correct?
19 A I believe she was called back to work on Monday the 26th.
20 Q Okay, now Exhibit 15 in the book, that's your letter where
21 you put her on this administrative leave. During your exam
22 with Mr. Miller you told this jury that you were concerned
23 about her ability to work?
24 A Yes.
25 Q Is there anything in your letter where you put her on leave

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1 -- administrative leave? Is there anything in this letter
2 that in any way suggests that Pennie Davis wasn't physically
3 capable of instructing her art and that's why she was being
4 placed off work?
5 A I don't believe that's in there.
6 Q Thank you, nothing further.
7 THE COURT: Anything further, Mr. Miller?
8 MR. MILLER: Very brief, Judge.
9 THE COURT: Okay.
10 MR. MILLER: Just a couple questions.
11 RECROSS-EXAMINATION
12 BY MR. MILLER:
13 Q Again, during this non-disciplinary leave she was paid this
14 entire time, correct?
15 A One hundred percent of her pay.
16 Q Okay, and as your understanding, that's part of the Worker's
17 Compensation Disabilities Act?
18 A Again?
19 Q Is that part of the Worker's Compensation laws, to pay an
20 employee while they're off and --
21 A That's part of our -- it's -- well, it's part of our teacher
22 contract.
23 Q Okay, are you generally familiar with the board of education
24 policies?
25 A Yes.

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1 Q Okay, are you aware that there's a Whistle Blower Protection
2 Act policy from the board of education?
3 A Yes.
4 Q Okay, and isn't it a true statement that if an employee
5 believes that they're being retaliated against they can
6 report that to the board of education?
7 A Yes.
8 Q Okay, do you know, did Ms. Davis ever make that complaint to
9 the board of education saying --
10 A Not to my knowledge.
11 Q Okay, no other questions.
12 REDIRECT EXAMINATION
13 BY MS. BONANNI:
14 Q Sir, you are aware that Ms. Davis contacted Ms. Fitzgerald
15 who is a board member on the board of education about what
16 was happening to her at school?
17 A I'm not aware of that.
18 Q Thank you.
19 THE COURT: Okay, ladies and gentlemen of the
20 jury, any questions for Mr. Pack? Okay, looks like I've got
21 one question from the juror. If I can have...
22 All right, Mr. Pack, I've got a question from
23 one of the jurors --
24 THE WITNESS: Okay.
25 THE COURT: -- so if you could just listen to

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1 me, but look at them, because it's their question, okay?
2 THE WITNESS: Okay, yep.
3 THE COURT: Does paid administrative leave
4 count against the attendance or is it protected like FMIA,
5 I'm gonna let you look at the question too.
6 THE WITNESS: Okay, it does not count against
7 the person. That's like if we were to assign any employee
8 to go to this building, that's our assignment. We want them
9 to go there, okay, so there's no repercussions, there's no
10 way it's counted against them, that was our decision to do
11 that for that employee based on that situation. So, in no
12 way does it count against them.
13 THE COURT: All right, counsel, either one
14 want to follow up on the juror's question? Nobody? Okay,
15 Mr. Pack, thank you very much.
16 THE WITNESS: All right.
17 THE COURT: Glad we could squeeze in your --
18 THE WITNESS: --(inaudible)--
19 THE COURT: -- okay, thank you, Mr. Pack.
20 Okay, why don't we take a 10 minute recess and I think one
21 more witness from the Plaintiff then?
22 (At 11:04:34 a.m., witness excused)
23 MS. BONANNI: Yes.
24 THE COURT: Okay, all rise for the jury.
25 (At 11:04:50 a.m., jury excused)

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1 (At 11:04:50 a.m., hearing recessed)
2 (At 11:30:13 a.m., hearing resumed)
3 THE CLERK: All rise for the jury.
4 (At 11:30:13 a.m., jury entered)
5 THE COURT: All right, thank you ladies and
6 gentlemen, everyone may be seated. Ms. Boninni, what's the
7 pleasure of the Plaintiff?
8 MS. BONANNI: I would like to call to the
9 stand, Amy Gish, your Honor.
10 THE COURT: All right, very good. Good
11 afternoon, Ms. Gish, can I have you raise your right hand?
12 Do you solemnly swear or affirm that the testimony you are
13 about to give the court will be the truth, the whole truth
14 and nothing but the truth, so help you God?
15 THE WITNESS: I do.
16 AMY GISH
17 (At 11:31:05 a.m., witness sworn, testified as follows):
18 THE COURT: Okay, would you have a seat right
19 there and when you get comfortable would you state your full
20 name and spell your last name for the record?
21 THE WITNESS: My name is Amy Gish, G-I-S-H.
22 THE COURT: Okay, go ahead, Ms. Boninni.
23 DIRECT EXAMINATION
24 BY MS. BONANNI:
25 Q Ms. Gish, can you describe for the jury your history just,

1 you know, with the district, when you started, what you do?
2 A Yes, I've been with the district twice now, when I first
3 worked with the district I was a paraprofessional, I worked
4 part time, I got a full time job the following years as a
5 teacher assistant. The following year I worked as a
6 assistant custodian and then I started subbing out at the
7 Department of Corrections as an adult basic ed teacher, so
8 that was my first stint with Jackson Public Schools.
9 I returned as an elementary teacher working
10 in alternative ed. I stayed working in elementary ed for
11 about seven or eight years and then I took a job as an
12 instructional specialist working with teachers and coaching
13 them. I then went to Parkside, our middle school and I
14 worked there for four years in various capacities. I went
15 to our high school for two years after that, went back to
16 elementary for a year and now I teach middle school
17 alternative ed.
18 Q Ms. Gish, are you active in the union?
19 A I am. I am in my second term as the president of Jackson
20 Education Association. It's a two year term, so this is my
21 first of my second term.
22 Q And prior to becoming president did you have any other roles
23 like as a steward or --
24 A I didn't, I shadowed two of our building reps when I was at
25 Parkside and I also shadowed our former union president

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1 before I became president.
2 Q In your capacity as union president do you have the
3 opportunity to meet with administrators?
4 A Yes, many times.
5 Q And in terms of administrators Mr. Beal, over here and Mr.
6 Pack, who testified a moment ago, did you meet with those
7 gentlemen?
8 A Yes, many times.
9 Q Did you meet with them on a regular basis?
10 A Yes.
11 Q How frequently would you meet with those individuals?
12 A Too many to count, I mean, there was several times a month
13 for various reasons. Times that we've e-mailed, talked on
14 the phone, in between times that we've seen each other, you
15 know, outside of school maybe a school board meetings where
16 we have contact, so --
17 Q Contract negotiation?
18 A -- contract negotiations as well, yep, we've been through
19 one of those, so there's many opportunities.
20 Q Have there been meetings where the topics are contentious?
21 A Yes. An example would be if there's discipline --
22 disciplinary issues or if there are -- well, negotiations is
23 in there too. If there's disagreements about anything.
24 Q Okay --
25 A Yeah.

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1 Q -- so, Pennie Davis --
2 A Yes.
3 Q -- prior to October of 2015 were you aware of any
4 disciplinary issues, suspensions, showings of aggressive
5 behavior, any concerns about her teaching, any negative
6 concerns about Pennie Davis?
7 A No, I was not.
8 Q We're talking about an incident that took place in Ms.
9 Davis' classroom on October 12th, 2015 and there's been
10 testimony that you attended a meeting on the 15th with
11 Pennie Davis and the administrators, it was in the
12 afternoon.
13 A Yes, I do remember that.
14 Q Okay, can you walk us through first of all, how that meeting
15 was initiated?
16 A That day we had parent teacher conferences and before our
17 first set of conferences started Pennie had asked if I
18 would, during our break, walk over to Reynolds Hall, which
19 is right next door to the high school, so that she could
20 turn in some paperwork. I know it was paperwork related to
21 an injury that she sustained. So, at break we walked over,
22 she -- we went to human resources which is just inside the
23 doorway there across from the superintendent's office and
24 she submitted her paperwork.
25 Q Let me ask you a question. In addition to the medical did

1 she have the PPO or did you see the PPO?
2 A Yes.
3 Q Okay, so you went to the superintendent's office?
4 A No, we went to the window at human resources, so that we
5 could turn it in and --
6 Q And that would be Mr. Pack's office?
7 A Yes.
8 Q Okay.
9 A Yes, it's -- his office actually is behind where the two
10 administrative assistants sit.
11 Q Okay.
12 A So, we turned in the paperwork and then the superintendent
13 came out and he told us we needed to get in his office.
14 Q What was his tone?
15 A Stern.
16 Q Okay --
17 A Not happy.
18 Q -- what happened next?
19 A We went in and sat down and Mr. Pack started questioning us
20 about the incident, was asking Pennie what was her beef with
21 this student and she didn't understand what he meant and he
22 asked again, what's your beef and when she understood that
23 he was asking, you know, what's your problem with this kid,
24 she said, I don't have a problem with him, I've been trying
25 to get him help. And then there were questions that went on

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1 from there about her being treated for an injury and they
2 were asking her why she was refusing to have an x-ray taken
3 at Work Well. Well, she stated that she already had one x-
4 ray taken at Med Plus, she didn't want to be exposed to x-
5 rays unnecessarily and she was due to go back to have a
6 follow up x-ray and so, she wasn't refusing to have an x-
7 ray, she just wanted them to know that Med Plus had started
8 the treatment and she was going back there for the follow up
9 treatment.
10 Q What -- keep going.
11 A Okay, they had asked about Pennie being in the classroom
12 with this student and wanted to know why she was able to
13 still teach, still work even though she had this injury --
14 Q So they, what was the tone, what was the demeanor that you
15 were getting from these administrators?
16 A The -- they didn't believe her, it was almost -- they were
17 rude, they were unsympathetic, they were accusatory, they --
18 I know that Pennie had said, you know, she felt
19 uncomfortable at one point when they were asking her about,
20 you know, this -- oh, this injury's so bad, but you were
21 teaching, we saw you teaching. She felt uncomfortable,
22 because at one point they had asked her about how she
23 showered, because she had this wrap on her hand. And she
24 thought that that was inappropriate and made her feel
25 uncomfortable --

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1 Q Now, was that discussed during the meeting of the 15th or is
2 that something that was shared with you?
3 A She had shared that with me, but she also said that she
4 didn't -- she felt uncomfortable about it, because at one
5 point the superintendent had asked her to take off the wrap
6 so he could see her injury and that came up. He said an
7 injury that bad, you would have a lot of bruising, he wanted
8 her to take off her wrap, so he could see just how bruised
9 and how injured she was.
10 Q So, how elevated did this meeting get?
11 A It got heated throughout the time, because they were -- some
12 things weren't making sense to me like they -- Pack had said
13 you know, that this was an incident of what was
14 characterized as a soft touch. That Ms. Davis had sustained
15 and then he used an example of how do we know that you
16 didn't go home and hit your hand with a hammer? And to me
17 that was such a juxtaposed -- you know that didn't even fit,
18 hitting your hand with a hammer would cause blunt force
19 trauma as opposed to a soft touch. So, it -- their
20 conversation was confusing.
21 Q Did you have an understanding as to what was causing the
22 elevated tone here?
23 A They were not happy that she went to the police which she
24 has a right to do after being assaulted and they were not
25 happy that she got a PPO on a student.

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1 Q Were you aware at this time that Pennie had already told the
2 administration that she didn't even think her hand was
3 broken, but she had sustained something, because it was
4 swelling and painful?
5 A Yes, and I know just from having a contusion twice myself is
6 that the reason why you go back for the follow up is after
7 the swelling goes down they can take another x-ray and see
8 if there's something there like a --
9 MR. MULLINS: I understand it's vague,
10 limited, but medical testimony, she's not qualified for
11 medical testimony.
12 THE COURT: Overruled, I think she's just
13 testifying her own comparative contusion, experience with
14 that, so it's very limited lay person's opinion. Overruled.
15 THE WITNESS: So, I know going back for a
16 follow up they're just looking for something that they
17 probably, if there was anything there that they couldn't
18 pick up in the first one when the swelling was so great.
19 BY MS. BONANNI:
20 Q Now, at the end of this meeting my understanding is they
21 informed Pennie that she was on a leave.
22 A Yes.
23 Q And did this make sense to you?
24 A No.
25 Q Did they articulate the reason for the leave?

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1 A No.
2 Q Was this typical?
3 A No.
4 Q At the time was it typical?
5 A If you're placing somebody on -- it's a paid administrative
6 leave, that's during an investigation. The investigation
7 was over with and I had asked for documentation of the
8 investigation and they refused to give it to me. The
9 superintendent did state that if I wanted copies of
10 everything that I needed to put it in writing which I did.
11 Which I never received even to this day I haven't received
12 anything --
13 Q So, then --
14 A -- that I requested.
15 Q -- let me back up. Does the end of this meeting is not
16 connecting to you why she's on a leave, so you ask them
17 point blank, verbally what's the basis and do they respond?
18 A Nothing, there was nothing.
19 Q And then you follow up with a writing asking for the basis
20 of this?
21 A We asked for the paperwork from the investigation about the
22 student assault. We were not provided for a reason why she
23 was being put on leave.
24 Q Okay, so you never got that explanation?
25 A Never got the explanation.

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1 Q You did put something in writing on the spot on the 15th, do
2 you remember that?
3 A I do.
4 Q I was gonna ask you to take a look at it, just trying to
5 locate it. Exhibit 18, it stated 10/15/15 at 2:52 p.m.
6 Exhibit 18 in the big book. Can you -- are you there -- can
7 you identify this for the jury, please?
8 A Yes, this is a letter that I wrote and it's to Ben and Jeff
9 and it's requesting documentation from the investigation
10 about the incident with the student.
11 Q And it's received on October 15th, 2015 by human resources?
12 A Yes, yes, let me read this.
13 Q Yes, I just want to make sure you --(inaudible)-- the stamp,
14 this is what I'm referring to as the stamp.
15 A October 15th, yep, 2015, yep.
16 THE COURT: Which exhibit are we looking at?
17 MS. BONANNI: We're looking at Exhibit 18,
18 I'd like to move to admit.
19 (At 11:45:07 a.m., Plaintiff's Exhibit 18 was
20 offered)
21 THE COURT: Mr. Miller? Mr. Mullins?
22 MR. MULLINS: No objection, your Honor.
23 THE COURT: So admitted by way of stipulation
24 of the parties.
25 (At 11:45:14 a.m., Plaintiff's Exhibit 18 was

1 admitted)
2 BY MS. BONANNI:
3 Q So, you're asking for a few things?
4 A Yes.
5 Q You're asking for evidence of the investigation into the
6 assault?
7 A Correct.
8 Q You're asking for e-mails between individuals in human
9 resources and superintendent and you're asking for any
10 evidence or documentation related to the non-disciplinary
11 paid leave?
12 A Yep, I do have that on there.
13 Q Do you get any response from the administration?
14 A No.
15 Q Now, let's look at Exhibit number 19. Now, Exhibit number
16 19 is a e-mail from Ben -- I'm sorry, from you to Ben. Do
17 you see that?
18 A I do.
19 Q It's dated October 19th at 12:37?
20 A Yes.
21 Q Now, do you remember what prompted you to write this e-mail
22 to Ben Pack?
23 A Let me just read it real quickly. Yes, Pennie Davis told me
24 that she --
25 Q Wait, before you go on --

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1 A Yes.

2 MS. BONANNI: I want to move to admit Exhibit

3 19.

4 (At 11:46:50 a.m., Plaintiff's Exhibit 19 was

5 offered)

6 THE COURT: Mr. Mullins, any objection?

7 MR. MULLINS: No objection, your Honor.

8 THE COURT: So admitted by way of stipulation

9 of the parties.

10 (At 11:46:56 a.m., Plaintiff's Exhibit 19 was

11 admitted)

12 BY MS. BONANNI:

13 Q So, what I want you to explain, if you can, Ms. Gish, is why

14 were you telling Mr. Pack, Pennie doesn't have internet and

15 what was going on that prompted you to write this?

16 A There was a need to communicate from administration to Ms.

17 Davis and I wanted to make sure that they understood that

18 she does not have internet access at home. So, I mean, she

19 doesn't have a land line, so her, you know, so communicating

20 with her would be best through mail -- snail mail through

21 the U.S. Post Office. So, I wanted to make sure that they

22 understood that that was the case.

23 Q And she was getting letters with deadlines really late

24 wasn't she?

25 A Yes.

1 Q So, did you do anything to try to help out with that for
2 her?
3 A I did, I tried to communicate, do any, you know, types of
4 communication that she needed. I was kind of like the go
5 between, so just trying to help her keep in touch.
6 Q And --
7 A She and I used cell phones to communicate and sometimes her
8 cell phone wouldn't even work well at her house and so,
9 she'd tell me she'd have to drive, she knew where the good
10 spots were, so she'd have to drive, you know, to call me so
11 that we could hear each other.
12 Q Now, that day on the 19th --
13 A Yes.
14 Q -- Pennie was -- she received a letter from Ben Pack
15 instructing her to provide the x-rays that she assumed the
16 doctors were sharing and to your knowledge -- personal
17 knowledge did she comply with that?
18 A She did, she -- I know that she had requested the x-rays
19 from Med Plus, so that she could give it to Work Well to
20 satisfy their need to have x-rays.
21 Q And were you aware that in addition to the Med Plus x-ray
22 she also had an x-ray from the employer's clinic, Work Well
23 that was given to the employer on the 19th?
24 A Yes.
25 Q But, she didn't get back to work ultimately until the 29th?

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1 A Correct.
2 Q Did you have any idea what kind of investigation was going
3 on or what was taking so long?
4 A No.
5 Q You did another follow up letter to your investigation notes
6 letter, so I want you to turn to Exhibit 21, it's dated that
7 same day, October 19th. Can you identify this for the jury,
8 please?
9 A Yes, this is a letter to Jeff and Ben and it is signed by
10 me.
11 MS. BONANNI: Move to admit Exhibit 21.
12 (At 11:49:47 a.m., Plaintiff's Exhibit 21 was
13 offered)
14 THE COURT: Mr. Mullins, any objection?
15 MR. MULLINS: No, your Honor.
16 THE COURT: So admitted by way of stipulation
17 of the parties.
18 (At 11:49:55 a.m., Plaintiff's Exhibit 21 was
19 admitted)
20 BY MS. BONANNI:
21 Q So, you sent a second letter, because there was no response
22 to the first?
23 A Correct.
24 Q Did you get a response to your 2nd letter?
25 A Not that I recall.

1 Q Now, it looks like -- you outlined for them that quote, "We
2 have received the letter placing Pennie on non-disciplinary
3 leave. We have not received any documentation, so we're
4 additionally asking clarification and documentation of the
5 following:" And I want to go through each of these bullets
6 with you if I may, Amy.
7 A Sure.
8 Q The first is about the Allegiance Occupational Health
9 disciplinary letter she received. What was your concern
10 here?
11 A Let me read the entire bullet.
12 Q It reads -- I'll read it to you --
13 A Okay.
14 Q -- you can think about this. You tell Mr. Pack and Mr. Beal
15 that you would like them to provide you with documentation
16 and clarification regarding quote, "The reasoning for
17 sending a disciplinary to Pennie regarding a directive to
18 report to Allegiance Occupational Health on 10/13 and 10/14.
19 When the notification was sent via e-mail and after Pennie
20 had left school for the day and therefore she did not
21 receive that notification until she returned to work on
22 10/15/2015."
23 A Okay, I do remember that.
24 Q So, did you get any kind of feedback from the administration
25 about this?

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1 A No.
2 Q The next bullet point where you're asking for clarification
3 and documentation relates to quote, "The reasoning for
4 placing Pennie on a non-disciplinary leave." end quote. Did
5 you ever get any feedback from the administration about
6 that?
7 A No.
8 Q And this non-disciplinary administrative leave, at this time
9 how common was it?
10 A That's common when they're investigating something, there
11 wasn't anything that was being investigated, because they
12 had already completed their investigation. That was already
13 stated when we were meeting on the 15th --
14 Q And they had all the medical records?
15 A Yes.
16 Q Now, there has been testimony that there was a concern that
17 Pennie was not safely able to resume her teaching
18 responsibilities or duties. My question to you is did you
19 ever hear anything like that?
20 A No.
21 Q Okay, the next topic that you want clarification and
22 documentation relates to, quote, "The topic subjects of the
23 investigation referenced in your letter to Pennie dated
24 10/15/2015. What/whom is being investigated?" end quote.
25 Did you get any feedback or clarification?

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1 A No.
2 Q And this next bullet point, you're asking them to explain
3 why Pennie was forbidden to come on campus or attend any
4 school functions in your letter dated 10/15/2015 when it was
5 established in your meeting with Pennie and I on that date
6 that, in fact, she was permitted?" end quote.
7 A I do remember them stating that -- because, she asked the
8 question, they said that she was allowed to and then they
9 apparently changed their mind.
10 Q So, by the time the letter came to Pennie -- the letter
11 dated October 15, they had changed their mind?
12 A Mm-hmm.
13 Q Do you understand why?
14 A No.
15 Q Did you ever get clarification?
16 A No, but I assumed it was --
17 MR. MULLINS: Your Honor, we're here for
18 factual testimony.
19 THE COURT: Sustained as to speculation.
20 BY MS. BONANNI:
21 Q And then the next bullet point is the credit given to the
22 statement of apology from the student's mother regarding the
23 incident along with other evidence referencing the student's
24 prior behavior issues." end quote. Did you ever hear from
25 the administration about that?

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1 A No.
2 Q And you understand that the student log that contains the
3 history of a student's behavior or misbehavior is something
4 that administrators -- school building administrators and
5 the top administrators are supposed to take into
6 consideration?
7 A Yes, they all have access to that information.
8 Q And that's part of the code?
9 A Yes.
10 Q And on the 19th you're telling the administration that
11 Pennie wants to come to work and you really want to work on
12 this and you're asking for 24 hours notice. Why did you
13 need 24 hours notice?
14 A Because, it was often difficult to get in touch with her, so
15 I just wanted time to be able to communicate.
16 Q And do you remember the fact that the school required her to
17 have union representation on her return to work meeting?
18 A Yes.
19 Q You remember that issue that she didn't have enough time to
20 find someone, were you part of that?
21 A Yes, she called me and I wasn't available. I didn't know
22 that she had called until later that evening. I do know
23 that she had attempted to contact other people in the
24 organization to see if they could attend with her and she
25 was having a difficult time getting ahold of somebody who

1 could come.

2 Q To your knowledge, did she alert administration that she

3 couldn't find a union --

4 A She did, yes.

5 Q And you remember she had her pay docked?

6 A Two days.

7 Q And you helped her with a grievance, you took that grievance

8 through the process?

9 A We did and we got one day of pay restored.

10 Q And that was because Pennie had saved the message from the

11 administration?

12 A Yes, we had a recorded message -- voice mail message from

13 one of the administrative assistants in HR that told her

14 that she needed to attend the meeting and bring union

15 representation with her.

16 Q So, it was a directive coming from administration?

17 A Yes, they made it clear that administrative assistants have

18 administrative rights.

19 Q Now, when Pennie Davis returned to work on October 29th you

20 were in attendance at the meeting when she returned?

21 A Yes.

22 Q Was there any discussion from the principal or anybody

23 suggesting that the PPO could not be adhered to?

24 A The return to work meeting, I recall that being a matter of

25 formality.

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1 Q Okay, what do you mean by that?
2 A Whenever someone's put on paid, non-disciplinary leave, in
3 order to bring them back to work that we have to formally do
4 that, so there's a meeting held to formally bring them back
5 to work.
6 Q Okay, now on November 4th time frame do you remember Pennie
7 talking to you about the fact that M.H. had banged on her
8 door?
9 A Yeah, she was concerned that he was not being supervised.
10 Q And to your knowledge, was there like a formal plan in place
11 in terms of sitting down and determining how this PPO would
12 be complied with?
13 A Initially, there wasn't, but then we had a plan in place.
14 Q And once it was clear that M.H. that there was no plan in
15 place were you aware that Pennie, in addition to alerting
16 you and alerting the school, alerted the court?
17 A Yes.
18 Q So, let's talk about the steps that were taken with the
19 building to comply with the PPO, do you remember meetings
20 with the principal?
21 A I do, she and I met --
22 Q How many were there?
23 A Well, I had e-mailed her and I went in on an afternoon and
24 met with her and we got through the meeting pretty quickly,
25 she had a good plan in place and it was, you know, okay with

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1 Pennie.
2 Q Okay, let's look at the notes --
3 THE COURT: Who is the principal?
4 THE WITNESS: Ms. Pauli.
5 THE COURT: Okay, go ahead.
6 MS. BONANNI: That's -- thank you, Judge.
7 Look at Exhibit 29. Can you identify this for the record,
8 please?
9 THE WITNESS: Yes, this is a e-mail to Ms.
10 Pauli from me and it's a copy with my handwritten notes that
11 I took during the meeting on November 10th, the e-mail was
12 dated November 6, of 2015.
13 BY MS. BONANNI:
14 Q Okay, so the e-mail is dated November 6th, the handwritten
15 notes, those were your notes?
16 A Yes.
17 Q And those are -- appear to be related to a meeting of
18 November 10th, Tuesday?
19 A Yes.
20 MS. BONANNI: Move to admit Exhibit 29.
21 (At 11:59:26 a.m., Plaintiff's Exhibit 29 was
22 offered)
23 THE COURT: Any objection, Mr. Mullins?
24 MR. MULLINS: I guess I'm just a little bit
25 confused about references in the attachment, but if I could

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1 voir dire it real quickly?
2 THE COURT: Sure, go ahead.
3 MR. MULLINS: So, there's a typed e-mail and
4 then there's handwriting. Is the handwriting your
5 handwriting?
6 THE WITNESS: Yes, it is.
7 MR. MULLINS: Okay, and did -- it says
8 something about attachments, do you recall there being
9 attachments or what the attachments were?
10 THE WITNESS: Um.
11 MR. MULLINS: Was it the PPO or the motion to
12 modify the PPO?
13 THE WITNESS: Let me see. Well, I'm just
14 looking down where it says, from Pennie Davis to Barb Pauli
15 and it copied to me and to -- or one of our union reps.
16 Pennie says, see attachment, thank you.
17 BY MS. BONANNI:
18 Q Why don't you look at Exhibit 27 with 29, I believe this is
19 the attachment. See if that refreshes your recollection.
20 A It does.
21 Q So, attached to the e-mail -- the original e-mail from
22 Pennie to Barb was Pennie's outline of issues regarding M.H.
23 and where he was and what was happening, correct?
24 A Yes.
25 Q Okay, and that was the basis for your private meeting with

1 Barb Pauli?
2 A Yes.
3 MS. BONANNI: So, Pennie -- I guess I'll move
4 to admit Exhibit 29 with that clarification.
5 (At 12:01:39 p.m., Plaintiff's Exhibit 29 was
6 offered)
7 MR. MULLINS: Are we admitting 27 and 29,
8 because that's the attachment?
9 MS. BONANNI: Twenty-seven has been admitted.
10 THE COURT: And 29 is the one she's moving in
11 now which I think addresses the issue of the attachments,
12 correct?
13 MS. BONANNI: Yep.
14 MR. MULLINS: I'm good.
15 THE COURT: All right, it's so admitted by
16 way of stipulation of the parties.
17 (At 12:01:56 p.m., Plaintiff's Exhibit 29 was
18 admitted)
19 BY MS. BONANNI:
20 Q So, the meeting that you had with Ms. Pauli about the safety
21 concerns was a private one between the two of you?
22 A Yes.
23 Q And it looks like you've used your e-mail to Ms. Pauli as a
24 basis for your notes?
25 A Yes.

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1 Q Okay, so it looks like the motion to modify was discussed
2 with the building administrator?
3 A Yes, I noted that mom came in and brought a copy of another
4 PPO Pennie has filed.
5 Q And did you address the concerns that Pennie had raised to
6 the court in this modification about her safety?
7 A Her only concern was that she wanted to have the student
8 supervised, so she wasn't sure on the document what to
9 indicate was the reason for going back in, so she put modify
10 on there.
11 Q Right, so in terms of what the issue really was, the heart
12 of the issue was that no plan had been put in place to deal
13 with this PPO and that's why you met with Pauli on the 10th?
14 A Yes, he was -- M.H. was in her 3rd hour class and when they
15 removed him from class he -- my understanding is he had no
16 class assigned to him. So, he was again unsupervised, we
17 didn't know really where he was during 3rd hour.
18 Q And so, it looks like you discussed the fact that he had
19 been going to the empty orchestra class --
20 A Yes.
21 Q -- for that period?
22 A Yes.
23 Q And that he had been directed not to go into that hallway
24 and also to leave out that way?
25 A Yes.

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1 Q And you also appeared to have discussed science -- goes to
2 lower level to go to science, what did that refer to?
3 A The art room is right around the corner from where the
4 science classes are on that level, but there is a science
5 area on the lower level and so, Ms. Pauli wanted M.H. to go
6 down to the lower level when he had to pass through that
7 area of the building to get to his science classes. So,
8 there's stairways, you know, placed in different parts of
9 that area, so he could essentially just go down one floor,
10 go to where he needed to go, go up the stairs and go to
11 class.
12 Q So, in terms of at the end of the day on the 10th was there
13 any lingering safety concerns about how this PPO would be
14 complied with?
15 A After the 10th?
16 Q Yes.
17 A No, everything was set and in order.
18 Q And did Pennie express to you that she had any lingering
19 safety concerns after the 10th?
20 A No.
21 Q Did Ms. Pauli appear to be satisfied that the plan was
22 workable?
23 A Yes.
24 Q Transfer meeting with Pennie.
25 A Okay.

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1 Q The transfer documentation was signed on November 16th, it
2 was prepared on the 13th, do you remember that meeting on
3 the 16th?
4 A Yes.
5 Q Do you remember there's been some testimony and Mr. Pack
6 talked about it as well, that during that meeting where
7 Pennie is being told that she's going to Parkside. Mr. Pack
8 explains, quote, "We don't go to the police here." end
9 quote.
10 A Yes.
11 Q Do you remember that statement?
12 A Yes.
13 Q Did that statement make sense to you?
14 A Yes --
15 Q What did --
16 A -- in that --
17 Q -- go ahead.
18 A -- they're punishing her for going to the police and for
19 filing a PPO.
20 Q Had you made it clear to Mr. Pack and Mr. Beal that moving
21 Pennie was not necessary?
22 A Yes, I did.
23 Q How did you communicate that to Mr. Pack and Mr. Beal?
24 A By e-mail.
25 Q That e-mail has been admitted into evidence as Exhibit

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1 number 32, I just want you to verify that is, in fact, a
2 communication you're referring to?
3 A Yes.
4 Q I guess, according to Ms. Holmes, who knows more than me, it
5 has not been admitted, so I'm going to ask that you identify
6 it for the record.
7 A This is an e-mail from myself to Ben Pack dated November
8 12th, 2015 and a response from him dated November 12th, 2015.
9 Q Okay, and --
10 A And I did copy -- no he did copy the superintendent and he
11 also copied Jessica Carter, who's one of the administrative
12 assistants in HR.
13 MS. BONANNI: I'd like to move to admit
14 Exhibit 32.
15 (At 12:07:37 p.m., Plaintiff's Exhibit 32 was
16 offered)
17 THE COURT: Any objections, Mr. Mullins?
18 MR. MULLINS: No, your Honor.
19 THE COURT: So admitted by way of stipulation
20 of the parties.
21 (At 12:07:45 p.m., Plaintiff's Exhibit 32 was
22 admitted)
23 BY MS. BONANNI:
24 Q It appears on the 12th at 6:58 a.m., you're communicating
25 with Mr. Pack and you're telling him Barb and I already met

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1 about that. You also indicate Barb has addressed the issue
2 with M.H. in terms of avoiding the hallway where Pennie's
3 room is. There are ways for him to access all of his
4 classes and avoid that area. Barb and I already met about
5 that.
6 A Yes.
7 Q Did you have any further follow up questions, follow up
8 conversations with Pack or Beal or anybody about the fact
9 that this issue had been addressed?
10 A They never acknowledged that we had a plan in place.
11 Q Now, you also indicate that there's a teacher at Parkside in
12 the classroom where Pennie would go that had been assaulted?
13 A Yes.
14 Q And it looks like you're attempting to find arguments to
15 make this transfer stop?
16 A Yes, they stated that they wanted to transfer her to
17 Parkside for her safety and my argument was that she
18 wouldn't feel safe in a classroom knowing that the teacher
19 in there was assaulted by a student and she was -- she's
20 friends with that teacher, so she knows what took place.
21 When I refer to the assault she knows what took place and
22 that moving her into that position wouldn't make her feel
23 any safe, you're moving her from a school where she's taught
24 for 20 some years and to an unknown environment. All of her
25 resources -- known resources that she has are primarily at

1 the high school where she doesn't have her resources at the
2 middle school. So, in terms of feeling safe, feeling safe
3 was at Jackson High, not at Parkside.
4 Q Did you come away with an understanding as to why the
5 administration was still pushing this transfer?
6 A They were still upset about the PPO and going to the police.
7 MR. MULLINS: Well, your Honor, I'm gonna
8 object to lack of foundation here as to the motivations of
9 someone else unless there's -- it's a specific statement or
10 a specific document, otherwise it's speculation.
11 THE COURT: Ms. Bonanni?
12 BY MS. BONANNI:
13 Q You understood --
14 THE COURT: Sustained.
15 BY MS. BONANNI:
16 Q Yes, you understood that Mr. Beal's -- sorry, you understood
17 that Mr. Pack's comment during the transfer meeting, quote,
18 "We don't go to the police here." End quote, was his
19 explanation as to why he was moving her, that he was
20 punishing her?
21 A Yes.
22 Q Because, in fact, there was a plan in place and it was
23 working?
24 A It was.
25 Q Now, let's talk about when she's transferred. The -- as I

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1 understand it -- have you taught IB?
2 A I was at Parkside when IB came in as part of our
3 transformational plan, we were a priority school, so I was
4 there, but I wasn't trained in IB, because I was doing
5 training for another piece of -- one other strategy that our
6 teachers were taught and that's reading apprenticeship, so I
7 was the trainer for that.
8 Q Okay, but in terms of sort of transitioning into the school
9 is it a type of curriculum and method of teaching that other
10 teachers receive training before they actually start?
11 A Some of them have -- had received training and some of them
12 -- we do training in cohorts and so --
13 MR. MULLINS: I'm sorry, what was the word?
14 THE WITNESS: Cohorts, C-O-H-O-R--
15 MR. MULLINS: Oh, cohorts.
16 THE WITNESS: --T-S, yep, cohorts. So, we
17 actually -- it's less expensive if we train a smaller group
18 of like five or six, because the trainings take place all
19 over the country, so Florida, Colorado, Arizona, and it's
20 usually four days of training initially and then there's
21 follow up.
22 BY MS. BONANNI:
23 Q When Pennie came into Parkside did she receive any of that
24 training?
25 A No.

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1 Q When Pennie came to Parkside within 32 days were you at that
2 meeting when Patterson tells her she's failing?
3 A Yes.
4 Q Do you remember anything else that Mr. Patterson said during
5 that meeting?
6 A Yes, he brought up that -- the incident up at the high
7 school.
8 Q What exactly did he say?
9 A He said, I know what happened up at the high school.
10 Q Describe his demeanor when he said it.
11 A Sarcastic.
12 Q Was it relevant to what you were talking about?
13 A No.
14 Q You were talking about the fact that Pennie was failing?
15 A Yes, this is part of the evaluation process for Pennie that
16 year and the following year what's referred to as an IDP, so
17 it's like a plan of assistance.
18 Q So, he said that during the plan of assistance meeting?
19 A (Inaudible).
20 Q Did he ever say anything to you about his prediction about
21 what would happen to Pennie?
22 A Several times, he said it once in the fall during one of the
23 meetings after she was transferred and said, you know,
24 Pennie, you and I here and here, I can tell this is not
25 going to end well. There are two incidences during a

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1 meeting in February and he made the same statement, I can
2 see this is not going to end well.
3 Q So, when he's making this statement, I see this is not going
4 to end well, at what point in time -- the first time you
5 hear it, had she had any training?
6 A No. There is a -- there's an IB coordinator at Parkside,
7 there's two now, but at the time I think there was just one
8 -- no there's two and these are retired administrators who
9 come in and work with the teachers writing their lesson
10 plans or unit plans and helping them with their assessments,
11 so they're there for support and I do know that one of them
12 stated that she would help Pennie.
13 Q And do you know if Pennie tried to engage in other self-help
14 measures to try to figure out how to teach in this IB
15 system?
16 A She talked with other teachers and they also gave her an IB
17 book, she read through that and I do know that at one point
18 they were asking her why she was doing certain things and
19 she --
20 Q Who's they?
21 A The -- when we were in meetings with Patterson --
22 Q Okay, so during meetings --
23 A -- and if any other administrators sometimes Pack was in
24 there.
25 Q Okay, so meetings with Patterson or possibly Patterson and

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1 Pack where -- go ahead, what's discussed?
2 A Yeah, she'd say well I'm just doing what I read in the book
3 and Mr. Patterson made a comment, well, we don't do it that
4 way, we do it the Parkside way.
5 Q So, Ms. Davis is looking for ways to try to understand how
6 to teach within this system of IB, she finds a handbook,
7 she's reading it and then she's told that's not the way they
8 do it at Parkside?
9 A Correct, very confusing.
10 Q And was she being not disciplined, but was that part of an
11 IDP meeting where they were telling her she wasn't doing
12 things right?
13 A Yes.
14 Q Now, at the end of the year she got the ineffective rating
15 --
16 A Yes.
17 Q -- and it was one?
18 A One, that's the lowest you can get, I've never seen anybody
19 get a one.
20 Q When you say you've never seen anyone get a one, are you
21 referring to just the one or are you referring to all the
22 numbers that are factored into the overall score?
23 A Both.
24 Q So, the one -- she got ones for every single sub-heading of
25 --

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1 A Yes, so if I --
2 Q -- you explain.
3 A -- yeah, if I remember correctly there were three rubrics
4 that year that we followed out of six, so it's a tool that's
5 called 5E Plus and the three rubrics that we use were --
6 (undecipherable)-- Professional Collaboration, classroom
7 environment and student engagement. And within each of
8 those there's about seven or eight what we call indicators
9 and the indicators have different ratings on them, so if
10 you've fallen in unsatisfactory area it gives you a
11 narrative of what that would look like. Then when it goes
12 up to the next there's four different levels, each one has a
13 narrative of what it would look like. So, if it's
14 unsatisfactory you would get a one, if it's between
15 unsatisfactory and the next one up you would get between a
16 one and a two. Next one up is a two, between that is a two
17 and a three and so forth. She received a one in all
18 indicators of all rubrics, so the overall score was a one.
19 Q Okay, I'm gonna try to take a look at that rating, okay
20 we're gonna try to locate that, but fair to say you've never
21 seen anything like that?
22 A Correct and I have opportunity to meet with other leaders
23 and from local districts and around the state and this is a
24 common tool that's used, the 5E Plus and so, when I've had
25 conversations with other leaders I have yet to find anybody

1 who has had a member receive a one.
2 Q Okay, so I want you to turn to Exhibit 39. Is that the
3 review that you're referring to?
4 A Yes, I see the rubrics with the indicators marked for
5 student engagement and professional collaboration and
6 communication.
7 Q Now, Exhibit 39 indicates that Pennie Davis was on medical
8 leave at the time, do you remember that?
9 A Which exhibit, this one?
10 Q Thirty-nine, it's -- instead of her signature it says, on
11 medical leave.
12 A Oh, I see, yes.
13 Q And do you remember whether you had a role or responsibility
14 in providing Mr. Patterson with the documentation or data
15 that he needed?
16 A Yes, towards the end of the year I was in a meeting with Mr.
17 Patterson relating to another issue and I knew that the
18 final evaluations were coming and I knew that Pennie was on
19 medical leave and I asked is there anything that you need
20 from Pennie in order to complete her evaluation. And he
21 said, I just need to know what she's done for professional
22 collaboration. If you can get a list -- and he said, some
23 things I do know just from being in meetings and talking
24 about them, but he said, if you can ask her for a complete
25 list for those items then he would include that in his

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1 scoring when he goes through and marks the professional
2 collaboration ratings.
3 Q Now, I'm gonna show you a document that is your e-mails and
4 see if that refreshes your recollection as to exactly what
5 Mr. Patterson asked for and what I'd like you to do is
6 describe for the jury what's -- what he specifically asked
7 for and what you've provided.
8 MR. MULLINS: Your Honor, could they identify
9 what documents she's being shown? I don't know what it is.
10 THE COURT: Which exhibit number is that?
11 MS. BONANNI: Yes, this is not an exhibit is
12 her e-mails that she brought this morning that she herself
13 looked up. I can share it.
14 THE COURT: And does Mr. Mullins have a copy
15 of those?
16 MS. BONANNI: No, I don't even have a copy,
17 do you --
18 THE COURT: We'll, have David run a couple
19 copies, so.
20 MR. MULLINS: I'd like a copy of this, your
21 Honor, I think we need a --
22 THE COURT: David, why don't you run a copy
23 for both parties? This should take just a minute. And just
24 for the record a copy of the exhibit has been provided to
25 either side, correct?

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1 MS. BONANNI: Yes.
2 THE COURT: Okay.
3 BY MS. BONANNI:
4 Q So, tell me, does this refresh your memory --
5 MR. MULLINS: And I'm sorry, your Honor, but
6 it's a couple pages long and if I could -- I can't read and
7 listen --(inaudible)--
8 THE COURT: Sure, go ahead.
9 MR. MULLINS: -- it just --
10 THE COURT: Just give me a hands up when
11 you're ready.
12 THE COURT: Ms. Bonanni, are you gonna be
13 marking this as an exhibit?
14 MS. BONANNI: No.
15 THE COURT: Okay.
16 MR. MULLINS: Okay, your Honor, and --
17 THE COURT: Okay.
18 MR. MULLINS: -- I'm not sure what the
19 question is or if there is one.
20 THE COURT: Well, it's not being marked as an
21 exhibit, so go ahead.
22 BY MS. BONANNI:
23 Q Okay, does this refresh your recollection as to what,
24 specifically Mr. Patterson asked you to provide to support
25 Pennie Davis' review for the year?

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1 A Yes, he specifically requested information about
2 professional collaboration.
3 Q Is that PCC that I see?
4 A Yeah, it's professional collaboration and communication,
5 PCC.
6 Q Okay, so your e-mail is that -- you had -- it appears that
7 you had a conversation with him and he told you to provide
8 the PCC?
9 A Yes.
10 Q Did you provide the PCC?
11 A Yes, it's on here on this -- about a page worth of
12 information once you put it all together.
13 Q Oh I see, so you provided that to him?
14 A Yes, I contacted Pennie and she gave me the information that
15 she wanted included on there.
16 Q Excuse me.
17 MR. MULLINS: If we could -- it hasn't been
18 explained the date of when this is occurring. If we could -
19 -
20 THE COURT: Okay.
21 MR. MULLINS: -- just to connect up here.
22 THE COURT: Can we clarify that date?
23 MS. BONANNI: Sure. Now, this is in August
24 of 2016?
25 THE WITNESS: Correct.

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1 BY MS. BONANNI:
2 Q So, this is after she received the ineffective rating?
3 A Yes, this is before -- this is the day before we were going
4 into meet with Pennie.
5 Q Okay, now prior to the ineffective rating Pennie's on
6 medical leave. Did you provide documentation or ask Mr.
7 Patterson if he needed documentation?
8 A Yes, I asked him and then I sent an e-mail at the end of the
9 year with this information and then I followed up again
10 before we met the following day in August just to make sure
11 that he had included that. In fact, I indicated on the
12 bottom, you know, was this information taken into
13 consideration when her evaluation was finalized.
14 Q Okay --
15 A I just was checking to make sure that he had received it and
16 used it.
17 Q Okay, so then there are -- it's fair to say that there are
18 several communications that you have with Patterson related
19 to the kind of data he wants. One, close in time or prior
20 to the actual review being given to Pennie and then one
21 during the Summer?
22 A Yes.
23 Q Any more than two contacts that you had with him?
24 A Well, there was, like I said the one face to face and then
25 the two e-mails.

1 Q Now, during Pennie's time at the school, were you aware of
2 any incidents where she was unable to get supplies that she
3 needed?
4 A Yes.
5 Q Can you just briefly describe for the jury what was
6 happening with her?
7 A It was difficult for her to get art supplies, she kept
8 asking for certain things that were art related; paint,
9 clay, things like that. She also asked for copy paper if
10 you use Reading Apprenticeship as a strategy with your
11 students you're providing them with reading materials so
12 that they can interact with it. So, they're gonna be
13 writing on it, they all need their own document in order to
14 do that, so she did need copy paper for that and she also
15 used rubrics for her art pieces that the students did, so
16 that there's communication and reflection on the piece both
17 between the student and the teacher.
18 Q Did you have any involvement in this allegation that Pennie
19 threw a book?
20 A Yes.
21 Q Tell me what you know about that investigation.
22 A I do know that a teacher consultant at the school
23 interviewed several of the students who were in the
24 classroom. Pennie talked to her mentor teacher and another
25 teacher and they asked her to go down to the -- her

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1 classroom with them and to explain what happened. And she
2 did, they then heard how the student was explaining that the
3 incident took place and one of the teachers said in order
4 for it to happen the way that the student described --
5 MR. MULLINS: Your Honor, we're getting into
6 hearsay here. I mean, it's hearsay I don't even know who
7 the teacher is, but it's --
8 THE COURT: Okay.
9 MS. BONANNI: It's offered to prove not
10 hearsay, but the effect on listener.
11 THE COURT: Okay, so it's to her mentor who
12 is who?
13 MS. BONANNI: Fred Marsh.
14 THE COURT: Okay this is the -- what's the
15 mentor doing with Ms. Davis at this point?
16 THE WITNESS: In her classroom talking with
17 her about how the incident occurred.
18 THE COURT: Okay, I'll allow it for the non-
19 hearsay purposes offered and it's effect upon the listener.
20 THE WITNESS: Mr. Marsh indicated that in
21 order for it to have happened the way that the student
22 described it there would have been acrobatics involved.
23 Q So, not believable according to --
24 A Correct.
25 MR. MULLINS: I'll object to the

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1 characterization leading --(inaudible)--
2 THE COURT: Sustained as to the
3 characterization.
4 BY MS. BONANNI:
5 Q Here's my question, I think the jury needs to understand
6 what Parkside is like in terms of frequency of complaints.
7 I'm assuming you, as union president you're hearing about
8 that?
9 A Yes.
10 Q Are you hearing that lots of teachers at Parkside are
11 getting lots of complaints?
12 A Yes.
13 MR. MULLINS: Your Honor, that's hearsay too.
14 I mean --
15 THE COURT: Sustained. The jury will
16 disregard.
17 BY MS. BONANNI:
18 Q Are you involved in those complaints?
19 A Yes, when there is a complaint it'll come to usually me or
20 through somebody to me and I'll talk with the teacher or
21 teachers involved regarding whatever the issue is.
22 Q Was Pennie Davis the only teacher to receive complaints?
23 A No.
24 Q Parent complaints, did you see teachers other than Pennie
25 Davis receive complaints from parents?

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1 A Yes.

2 MR. MULLINS: We're getting pretty far afield

3 here, I mean if we're gonna bring in every teacher and

4 review every complaint, I mean, we're talking about what

5 happened --

6 THE COURT: We are getting a little far

7 afield, so are we wrapping this up?

8 MS. BONANNI: Sure.

9 THE COURT: All right.

10 BY MS. BONANNI:

11 Q What about the -- you did have a group grievance by teachers

12 related to the environment at Parkside, do you recall that?

13 A Yes.

14 Q Now, how many requests for transfer back to the high school

15 did you assist Pennie Davis with?

16 A Several -- I can't think --

17 Q Were your independent attempts to get Pennie transferred

18 back to the were you successful?

19 A No, I know one was through the grievance and then one was

20 through e-mail and one was through e-mail via letter, I

21 remember that. If there were more I can't recall right now.

22 Q I forgot to ask you one thing, that investigation into M.H.

23 that you were asking for, the incident with M.H., let me ask

24 you about your experience as union rep, have you seen school

25 investigations?

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1 A Yes.
2 Q Have you seen school investigations into incidents involving
3 high school age kids?
4 A Yes.
5 Q In terms of obtaining statements, what's the typical
6 protocol that you have seen in your years as union president
7 related to a student's statement?
8 A The students are asked to provide a written statement signed
9 and dated.
10 Q Of their own?
11 A Yes.
12 Q In their own handwriting?
13 A Yes.
14 Q With their signature?
15 A Yes.
16 Q Independently obtained?
17 A Correct.
18 Q In other words they don't collaborate with one another?
19 A No, they don't want that.
20 Q In your experience in the union with investigations is it
21 common to see multiple, multiple statements from students
22 about one incident?
23 A Yes.
24 Q What about the persons involved in an incident, is it
25 typical to see a statement or interview of that person?

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1 A Yes, if there's an adult involved then we get a statement
2 signed and dated from them as well.
3 Q School has ability to transfer teachers?
4 A Right of assignment, correct.
5 Q And right of assignment is not something you can grieve?
6 A Correct.
7 Q Lots of transfers, I mean, 2017-18 transfers, were there any
8 buildings closed?
9 A McCulloch Academy closed, so --
10 Q And that would have resulted in a number of teachers seeking
11 -- not seeking, but being transferred?
12 A Correct, they had to be placed and so I believe it was
13 approximately four people that needed to be placed --
14 Q Okay.
15 A -- three or four.
16 THE COURT: Closed McCulloch, was that a
17 kindergarten or what grade level was McCulloch?
18 THE WITNESS: Yeah, K-2.
19 BY MS. BONANNI:
20 Q And Mr. Beal testified that school transfers, district
21 transfers people based on the district needing their skills
22 somewhere else, do you understand that to be true?
23 A Yes, an example would be when McCulloch closed we ended up
24 having too many elementary teachers and not enough secondary
25 teachers, so if you're an elementary teacher who's secondary

1 certified as well, if you move up to the secondary level
2 then that alleviates some of the problems that are caused
3 with too many teachers at the elementary level.
4 Q Did you understand Pennie Davis' transfer to have any
5 relationship to her skill set?
6 A No.
7 Q That her skills were needed elsewhere?
8 A They had two art teachers at middle school at Parkside
9 already.
10 Q Do you understand why there are now three teachers -- art
11 teachers at the high school when there's always been for the
12 past 15 years two?
13 A No.
14 MS. BONANNI: No further questions, your
15 Honor.
16 THE COURT: All right, ladies and gentlemen,
17 does anybody need a break? I was gonna let Mr. Mullins do
18 the cross-examination, I think this is the plaintiff's last
19 witness, correct?
20 MS. BONANNI: Yes.
21 THE COURT: And so, does anybody need a break
22 before we have Mr. Mullins do the cross-examination of Ms.
23 Gish, okay?
24 MS. BONANNI: Okay.
25 THE COURT: All right, okay. Mr. Mullins.

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1 MR. MULLINS: If I could just run down the
2 hall real quick?
3 THE COURT: All right, looks like we'll take
4 a 10 minute recess then, all right, so we'll see everybody
5 in 10 minutes.
6 THE WITNESS: Shall I just leave all this?
7 THE COURT: Yeah, you can and you're free to
8 step down and stretch out or whatever you'd like to do.
9 (At 12:38:03 p.m., hearing recessed)
10 (AT 1:00:52 p.m., hearing resumed)
11 THE COURT: All right, David, let's bring
12 them in.
13 MR. MULLINS: I'm at that magic age.
14 THE COURT: What's that?
15 MR. MULLINS: I'm at that magic age.
16 THE COURT: You are. Bring the jury in. I'm
17 there myself, so.
18 MR. MULLINS: What did you say?
19 THE COURT: I said I'm there myself, so.
20 (At 1:01:46 p.m., jury entered)
21 UNIDENTIFIED SPEAKER: All rise for the jury.
22 THE COURT: All right, thank you, everyone
23 may be seated. The record should reflect the presence of
24 all the jurors, plaintiff's counsel, defendants and their
25 counsel. Mr. Mullins, will have Ms. Gish, Ms. Gish, let's

1 have you come up to the witness stand and remind you that
2 you're still under oath, so I don't have to swear you in
3 again. And Mr. Mullins is going to begin his cross-
4 examination. Mr. Mullins, go ahead.
5 CROSS-EXAMINATION
6 BY MR. MULLINS:
7 Q Thank you, your Honor. Relative to your history have been
8 -- having been an employee at Jackson Public Schools, if I
9 understand from your testimony you transferred among quite a
10 few different school buildings, is that right?
11 A Yes.
12 Q You've been to the high school, you've been at Parkside,
13 been to an elementary school, been to the alternative middle
14 school. I'm missing one or -- you've been to virtually all
15 the buildings almost?
16 A Well, not every elementary building, but I've been to all
17 the levels.
18 Q Okay. So, not unusual to move about for you?
19 A When that opportunity to gain new experience I took it.
20 Q Okay, you had talked about contract negotiations, you did
21 indicate that sometimes those could be contentious and I
22 guess any of us who had ever been to the union or understand
23 that, but the fact of the matter is eventually you've
24 arrived at and contract has already been put in evidence and
25 the contract sets forth what the teachers will be paid,

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1 right?
2 A The contract contains a salary schedule, yes.
3 Q Yes, that's what I mean and depending upon where you fit, if
4 I understand, there's two variables, you have your years of
5 seniority and then your level of educational attainment and
6 those will determine your salary, is that right?
7 A Correct.
8 Q And so, every single teacher's base salary would be based on
9 that schedule, is that right?
10 A Correct.
11 Q In other words everybody gets paid the same as long as
12 they're at the same level?
13 A Yes, if it -- if the lanes and --
14 Q Right.
15 A -- the columns and rows fit, that's where you are.
16 Q And presumably, you know that Ms. Davis has been there over
17 30 years, so she's at the very top of the pay for her level,
18 is that right? You might not know, you might know, but --
19 A Yeah, I don't know what her salary is.
20 Q Okay, you know that she's at the top of the scale for -- she
21 would at least, whatever her educational level would be with
22 that many years she would be at the top?
23 A Yeah, years wise it stops at 12.
24 Q Yeah, so once you get past 12 and then it just depends on
25 whether you've got a bachelor's degree or a masters or --

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1 A Correct, yes.
2 Q -- a doctorate would take you up higher?
3 A Yes.
4 Q Okay, now on the subsequent to this October the 12, 2015
5 event at the high school involving Ms. Davis, there was a
6 meeting at the administration building --
7 A Yes.
8 Q -- involving that incident, is that right?
9 A Yes.
10 Q And there was substantial discussion about medical, whether
11 somebody's seen the doctor, whether they've gotten an x-ray.
12 That was a big part of the discussion, is that right?
13 A Yes.
14 Q And that's kind of where the meeting kind of came to an end,
15 you were unhappy with the extent to which questions were
16 being asked about her medical and the meeting came to a
17 close.
18 A I was unhappy with the way that they were treating her and
19 accusing her.
20 Q But, let's talk about the medical and that's trying to
21 resolve, you know, is there a medical record, is there an x-
22 ray, what does the doctor say, that was the concern, right?
23 A I wish the questions would have been put that way, but --
24 Q But, that was the subject --
25 A -- that was the subject --\

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1 Q -- subject --
2 A -- of the conversation, yes.
3 Q And for somebody -- you're an employer you would agree with
4 me in general that an employer is somewhat responsible for
5 the health of their employees particularly in the work
6 place?
7 A Yes.
8 Q Okay, it's somebody's -- if somebody's -- you would
9 certainly understand as union president if somebody's hurt
10 it wouldn't be good, in fact, it would be entirely improper
11 for an employer to order somebody to go back to work and to
12 do physical work while they were hurt, is that right?
13 A Well, you could be returned to work and there could be, you
14 know, you could be returned to work with light duty or
15 returned to work with restrictions, it depends.
16 Q That's the magic word, isn't it? It depends.
17 A Mm-hmm.
18 Q That -- you've got to say yes or no for the record.
19 A Yes, it depends on the situation.
20 Q Okay, and that's what we have doctors for, because no one
21 who was in that October 15th meeting would qualify as a
22 doctor, right?
23 A No doctors were in the 15th meeting.
24 Q Okay, so -- and I'll try to move through this rather
25 quickly, but you had indicated -- or it's come up that she

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1 was authorized to go to the clinic on the 13th when Mr. Pack
2 and Mr. Beal spoke with her in the hall outside of her
3 classroom, is that right? And you may not know that,
4 because I understand you weren't there.
5 A When you say the clinic, you're talking about Work Well?
6 What we call Work Well --
7 Q Yes --
8 A -- you're talking about the employers --
9 Q -- I know it's Allegiance now, but --
10 A -- yes.
11 Q -- over here -- over there at the commerce center there is
12 that where the clinic is and you might --
13 A We call it Work Well.
14 Q -- yes.
15 A I don't know that Work Well came up --
16 Q Okay --
17 A -- during that conversation. I know that they had asked her
18 about how she was able to work.
19 Q Okay, and of course, again not being doctors they don't know
20 and they authorized her to go to their clinic to be
21 evaluated and one of the subjects was that on the 15th that
22 she had gone, but had not either provided the doctor with
23 information or didn't have an x-ray, which the doctor felt
24 was necessary, if you -- I don't know if you've reviewed the
25 medical records or not.

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1 A She -- when she received communication from HR that she had
2 an appointment set up to go see Work Well it was around 3:00
3 o'clock, I believe on Tuesday --
4 Q Okay, Ma'am, I don't want to cut you off --
5 A -- okay.
6 Q -- I know, I know everybody wants to get to lunch or move
7 the day along, but my simple point is whatever whether she
8 went a day later or two days later or whatever, okay, but
9 when she went to the clinic the doctor said -- advised the
10 patient that an x-ray was necessary to check for a fracture
11 and since we're unable to obtain films or records they
12 wanted to take an x-ray and Ms. Davis refused. So, they
13 weren't able to do the evaluation to see if she's all right,
14 whether she's okay to go to work or whether she's restricted
15 or whether working might make her whatever injury she might
16 have worse, that was the problem, if you will or the subject
17 of the discussion on the 15th was it not?
18 A One of the things that we discussed was the x-ray and Ms.
19 Davis stated that she would get a copy of the x-rays from
20 Med Plus to supply to them.
21 Q Right, but the records and the jury's all got this all,
22 they've received it, they didn't have them then, she
23 couldn't do an x-ray then, as you indicated, she went back
24 on the 19th which is after the meeting on the 15th and there
25 the doctors say records from the Med Express (sic) x-ray

1 report was not received. So, they still can't evaluate her
2 hand, because -- until -- and then, of course, she does by
3 the 19th which is four days after the meeting that you
4 indicated wasn't happy on the 15th. She then has an x-ray
5 done on the 19th.
6 A I don't know all of what happened at the clinic --
7 MS. BONANNI: Let me just object to the
8 extent that --
9 THE COURT: Just a second, just one second
10 while I rule on the objection, that's okay.
11 MS. BONANNI: I'm just gonna object, I don't
12 quite know what the question is, but to the extent he's
13 asking her to guess what the doctors were doing and the x-
14 rays, I don't know that she can answer that question.
15 THE COURT: Well, that would be speculative,
16 but that's what he's asking.
17 MS. BONANNI: Speculative, thank you.
18 MR. MULLINS: And that's just fine. It's
19 more a -- I'm trying to respond to her understanding of A,
20 the subject of the meeting on the 15th and what there was
21 concern about. And there've been --
22 THE COURT: Okay, why don't --
23 MR. MULLINS: -- Ms. Davis didn't think that
24 medical was discussed at all --
25 THE COURT: Okay --

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1 MR. MULLINS: -- at the meeting and --
2 THE COURT: Let's hear your next question, go
3 ahead.
4 BY MR. MULLINS:
5 Q So, you may or may not know that the doctors indeed said
6 restricted work, no use of the hand beyond 10 pounds, was
7 that discussed, is that confirmed?
8 A That part was discussed, yes.
9 Q Okay, so -- and you understand that the actually in writing
10 they didn't release her to return to work on an unrestricted
11 basis until November the 2nd?
12 A That I wouldn't know.
13 Q That's fine --
14 MS. BONANNI: I'm gonna object, she returned
15 to work on the 29th.
16 MR. MULLINS: I understand that she returned
17 though, I'm just trying to, you know, cover what the doctors
18 have said. There might have been a phone call made, you
19 know, a day or two earlier, but again, moving on.
20 THE COURT: Overruled, go ahead.
21 BY MR. MULLINS:
22 Q It is in the individual's interest not to go back to work.
23 If they reported to the employer I might have a fracture,
24 but -- and the employer is advised of that it certainly
25 would be reasonable for the employer to say, well we want to

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1 make sure you don't have a fracture or whatever the medical
2 problem might be, before they put you back to work, right?
3 That's common, right?
4 A That's not common.
5 Q It's not common, just you might have a fracture, but I'm
6 gonna -- so a person comes out of a football game, he's just
7 kind of dizzy and you know, says, well I really got my bell
8 rung there and coach I want to play, I want to play put me
9 back -- put me in. It's not reasonable for the coach to
10 say, no, no, no, better take a seat --
11 THE COURT: Mr. Mullins, I don't know that
12 it's appropriate to ask her what the coach is gonna do about
13 concussion protocols.
14 BY MR. MULLINS:
15 Q The person in charge to look after the physical interest of
16 the person that they're in charge of, should they not?
17 A Yeah, they're -- they should look after them, I can tell you
18 that when I got my contusion at work I was sent right back
19 to work, I -- there was no -- same day I returned to work.
20 Q Okay --
21 A But, I had a restriction as well in terms of weight, how
22 much I could --
23 Q It depends on what the demands are of your job and if the
24 employer says, we want to make sure that you're -- they're
25 not obligated to provide light work as long as they're

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1 paying you to be off and they want to make sure that you're
2 better before you come back to work, that's in everybody's
3 best interest isn't it?
4 A I've never heard it put that way. If you're returned to
5 work you return to work.
6 Q Right, and eventually once they got a clearance, the x-rays
7 done, they get the report, they actually now it's like okay,
8 come on back to work and --
9 A I'd have to look at the documentation to see when it was
10 signed return to work --
11 Q Okay --
12 A -- but I think it was --
13 Q Well, the jury has that, so that's --
14 A Okay.
15 Q -- okay, so --
16 A Yeah, so.
17 Q -- so they returned her to work, she's fine and there's no
18 ongoing physical problem with the wrist.
19 A With the wrist?
20 Q Yeah, well you might not know --
21 MS. BONANNI: I'm gonna object, it's --
22 MR. MULLINS: Well, we'll let it go. Okay.
23 MS. BONANNI: -- yeah, there's no issue that
24 her wrist was injured.
25 BY MR. MULLINS:

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1 Q And the -- again, there's been some question about this --
2 you know, Ben Pack saying, I don't know how you're, you
3 know, A, I -- you know, neither of them are doctors, they
4 haven't looked at her wrist to see if it's all black and
5 blue or swollen or anything like that, because it's all
6 wrapped up and again he wants a doctor -- he wants to know
7 how the person gets hurt and again that something
8 intervening doesn't happen. This whole thing about -- we
9 don't know if you're hurt or if something else has occurred,
10 a car accident, get hit by a hammer, got hurt at work,
11 whatever, that again was the subject of the conversation on
12 the 15th, was it not? Trying to determine the nature and
13 extent of the injury?
14 A No, it was already determined by the doctor.
15 Q Well, I understand Ms. Davis is saying that she saw a
16 doctor, but the employer at that time had no record,
17 couldn't see her wrist and had no idea how badly she was
18 injured and the doctor that she -- they sent her to said, we
19 can't evaluate you until we get an x-ray and we don't have
20 an x-ray.
21 A No, there's --
22 Q Isn't that what the conversation was on the 15th?
23 A -- I think the documentation that she was turning in was
24 copy of the PPO and medical record -- or not the record, but
25 medical documentation.

1 Q Okay, and the PPO in general, among other things, talks
2 about student and teacher stay away from each other, right?
3 Isn't that your understanding of the plan, you know, that
4 even with or without the PPO the -- it's agreed this student
5 is out of your class, you're never gonna have to teach this
6 student, you're not gonna have to discipline them and indeed
7 they're ordered to be apart, is that right? If you know,
8 you might not.
9 A I do know the PPO was approved, I do know that of all the
10 things that Ms. Davis had requested for the terms of the
11 PPO, if my recollection is clear I think the only one that
12 was not approved was being within sight of one another and
13 that was basically due to both of them being in the same
14 building. But, they had -- the plan was to have him out of
15 her room as a student, to assign him a different class and
16 to have him travel in the building in an area where he
17 wouldn't be near her classroom.
18 Q Okay, and you may or may not recall that one of the boxes
19 that was checked, what this M.H. was told not to do was to
20 be at her work place. And unfortunately, that was thought
21 to be interpreted to be her room or hallway, but --
22 A Yes --
23 Q -- okay.
24 A -- classroom.
25 Q So, and you know what, while we're at it, let me show you

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1 what's marked as Exhibit 31 which represents the school
2 board policy 1411 and ask if you are familiar with that
3 school board ruling?
4 A Yes.
5 Q Policies, if you will -- a school board policy, one of which
6 I'm showing you there is kind of the book of rules that the
7 school board is the ultimate boss of the school district, is
8 that right, they --
9 A Correct.
10 Q -- hire and fire the superintendent and either hire or
11 approve every hiring from there on down, is that right?
12 A Yes.
13 Q If the school board's mad at you that's bad, right?
14 A Well, you wouldn't --
15 Q If four members of the school board are mad at you it's bad.
16 A Right, the majority.
17 Q It's like they're the representatives of the community,
18 they're elected and they make the final call on everything.
19 And this policy indeed says that if anybody's aware of
20 anything illegal that they should report it and then if it
21 involves somebody of the administration they should bring it
22 to the board's attention, is that right?
23 A Yes.
24 Q And it says that nobody should be retaliated against or can
25 be retaliated against for whistle blowing activity. That's

1 the official policy of the Jackson Public Schools, is that
2 right?
3 A Correct.
4 Q Okay, and if you will, it's -- just in common parlance a
5 school board policy at a school would be like a law that the
6 legislature or Congress passed, is that right? It's a rule
7 that applies to --
8 A It's a policy, I mean it, yeah.
9 Q -- the employees --
10 A -- yeah, it's what governs --
11 Q It's what governs?
12 A Yes.
13 Q Okay --
14 A Policy -- governance policy.
15 MR. MULLINS: Move for admission of 31, your
16 Honor.
17 (At 1:19:39 p.m., Defendant's Exhibit 31 was
18 offered)
19 THE COURT: Any objection?
20 MS. BONANNI: No objection.
21 THE COURT: So admitted by way of stipulation
22 of the parties.
23 (At 1:19:48 p.m., Defendant's Exhibit 31 was
24 admitted)
25 THE COURT: Ms. Gish, was that number 29

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1 right there?

2 THE WITNESS: Thirty-one.

3 THE COURT: Thirty-one.

4 BY MR. MULLINS:

5 Q And at a certain point in time when the school for -- on

6 whatever basis or medical report or record, they're

7 satisfied that she can come back to work, they contact her

8 and say, come on back to work, I think you'd indicated it

9 was the 29th.

10 A If they place you on a administrative leave, yes, it's a --

11 Q This particular case.

12 A Yes, when they placed her on administrative leave we did

13 have a meeting to officially bring her back.

14 Q Okay, and you had indicated that, you know, if you will, put

15 forth a directive on your part that she gets 24 hours notice

16 before she's called back to work, but that's not provided in

17 the collective bargaining agreement or isn't a rule or

18 anything.

19 A It was a request, because of the communication difficulties

20 and I just wanted to make sure that we were compliant --

21 Q But --

22 A -- with what we were able to do.

23 Q -- just so that we're entirely clear, there's nothing that

24 says that a person who's out on injury leave, worker's

25 compensation leave, that they have a 24 hour notice right or

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1 delay in returning to work?
2 A No, it's a reasonable request.
3 Q Okay, well I guess that was kind of the dispute over the two
4 days whether it was reasonable or not, so you filed a
5 grievance about a two day docking of pay, because she didn't
6 come back and you and management, the union management came
7 to a resolution of the dispute and agreement that well,
8 we'll take it down to one day. And that was an agreement
9 that was settled, right?
10 A Well, the directive that was given to her was to have union
11 representation when she came into the meeting and she was
12 attempting to get union representation. So, that was the
13 cause for the grievance --
14 Q So, the dispute --
15 A -- when she was docked pay.
16 Q -- well, I don't want to belabor the point, but the dispute
17 as to docking her at all was resolved by way of agreement,
18 the resolution agreement between the union and the school
19 district to reduce it to one day.
20 A The grievance ended with her gaining one day of pay back.
21 Q Yeah, my point being a court didn't rule it or an arbitrator
22 didn't rule it. The union and the school --
23 A There's a process --
24 Q -- here's the deal, we cut a deal --
25 A -- yeah, there's a process and --

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1 Q -- so it's resolved.
2 A -- it was denied by the -- by Pack and then we appealed it
3 and then it went to the next level which is the
4 superintendent and then that's when we had the one day
5 reinstated.
6 Q And in -- you know, because -- you know, on the one hand it
7 says, you know, she really wants to get back to work and the
8 school is saying, well we want a doctor's say that it's okay
9 to get back to work and then when the school says, you know,
10 well, come on back to work it's like, well it's gonna take
11 me a couple of days. I mean, couldn't somebody just have
12 called her on the cell phone and said come on back to work
13 tomorrow?
14 A The doctor had returned her to work.
15 Q My question is this whole thing about once it's been
16 determined that she can come back to work?
17 A She was at work.
18 Q Okay --
19 A Sorry, I --
20 Q There -- we just got done talking about there was dispute
21 about the 24 hour notice and then she didn't come back
22 within 24 hours; either she didn't get the message or
23 whatever --
24 A The 24 hours was a request --
25 Q All right --

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1 A -- so that I could make sure that I had enough time to get
2 in touch with Ms. Davis.
3 Q Okay, and couldn't just that been arranged real easily by
4 cell phone or by text?
5 A If I can get in touch with her.
6 Q Okay, and -- but, I mean, like the kids do, they text and
7 cell phone back and forth --
8 A Right, but she's in an area where there's not good
9 reception, so I think I mentioned before that there were
10 times when she had to drive to a spot where she could get
11 reception, so that we could hear one another, so if there
12 were text messages being sent and she's not in a good area,
13 it's going to, you know, stay out there until she gets in a
14 spot where it's gonna go through to her cell phone and
15 she'll receive it. So, it wasn't always --
16 Q And again --
17 A -- quick.
18 Q -- there was something counsel brought up in their Exhibit
19 19, you sent this e-mail to Ben Pack saying on Friday, this
20 is on October the 19th, you said on Friday you requested a
21 copy of her first set of x-rays of her right hand and again,
22 that was a subject raised -- that request was raised on the
23 15th and they're still trying to get them on the 19th, right?
24 A Yes, when she had requested -- well, I don't know without
25 looking at the document when dates are for when she's

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1 getting her copies of x-rays, but I know that when she made
2 the request she told me that the doctor said that it was
3 going to take a little time for them to process everything
4 and get it over there, so the delay wasn't due to Ms. Davis,
5 it was because of the doctor getting everything to her.
6 Q So, -- and then again you wrote a letter on October 9th --
7 19th requesting these various bullet points and at that time
8 --
9 A Can I look at which exhibit you're --
10 Q Yeah, Exhibit 17, that's the letter that you wrote. I'm
11 sorry, 17, 17.
12 A Seventeen? The exhibit I have --
13 Q Your October 19th, 2015, the numbers have been moved around
14 here a bit.
15 A The Exhibit 17 that I have is the Allegiance Occupational
16 Health e-mail.
17 Q Here's the --(multiple speakers).
18 A Oh --
19 MS. BONANNI: Twenty-one.
20 BY MR. MULLINS:
21 Q I think it might be wrong. Why don't you take a look at 21?
22 A Okay, yes.
23 Q Okay.
24 A Okay.
25 Q So, at that point in time and even as we sit here today,

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1 exactly what the doctor notes were or them putting her on
2 limitations or restrictions or you know, taken her off work,
3 you don't know about that?
4 A I only know what was communicated with me.
5 Q Yeah, but A, you're not a doctor; B, you don't have any
6 records and that was one of their concerns was getting the
7 records.
8 A I think it was that the -- that Work Well get the x-rays.
9 Q Correct, correct and you now understand the reason for her
10 being paid on -- put on paid, non-disciplinary leave,
11 meaning no harm, no foul, like a vacation is to get that
12 medical documentation?
13 A That was never stated.
14 Q Okay --
15 A I never had that understanding.
16 Q But, without any doubt whatsoever, her medical situation and
17 getting medical examinations was, A, not the subject of that
18 meeting?
19 A On the 15th?
20 Q Yeah.
21 A It came up, but the -- it was not the overall, it came up.
22 Q You had also asked about -- you talked about statements
23 being taken and people being interviewed, you're aware on
24 the 12th that Barb Pauli, the principal had interviewed
25 students, were you aware of that?

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1 A Okay, so the 12th would have been Monday --
2 Q The day of the event.
3 A -- yeah, the day of the event, I've never seen any
4 statements that Barb Pauli took.
5 Q Okay, my question being here, two and a half years later do
6 you understand or don't you understand that the principal,
7 you know her very well, right?
8 A Yes.
9 Q For decades, right? Maybe I'm --
10 A Not decades --
11 Q Okay --
12 A -- but, maybe a decade.
13 Q -- okay, fair -- that's good, I understand you worked for --
14 so, you do or you don't understand that on that day she
15 talked to students?
16 A My understanding is that Mr. Zessin, who was the grade
17 principal is the person who talked with students.
18 Q Okay, so he went down to the class, talked to students,
19 wrote out a whole --
20 A I don't know how --
21 Q -- notes and statements --
22 A -- he conducted the interview --
23 Q But you know he did it?
24 A -- I just know that he interviewed -- yes, students and he
25 has notes that he provided.

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1 Q And the principal may or may not have, you don't know?
2 A No, we had -- there was a meeting with Ms. Pauli and Mr.
3 Zessin, so that he could over his notes and let us know that
4 -- what the findings were and he --
5 Q Okay, and you've seen those?
6 A -- put them in electronic format.
7 Q Get them all written out --
8 A Yes, I've seen --
9 Q -- and then he typed them up and you guys reviewed them?
10 A -- I've seen them recently, but I didn't see them at the
11 time. He wouldn't -- again, when we asked for information
12 we never got any of that documentation, so.
13 Q Right, well you said you were at a meeting with him where
14 you knew that he had notes and you went over the notes and
15 --
16 A Sure, sure, so I knew --
17 Q Okay --
18 A -- yes, I knew he had them, but we never received a copy of
19 them.
20 Q Yeah, but let me show you what's been marked as Defendant's
21 Exhibit 17 and ask you are those Mr. Zessin's notes that he
22 wrote out and then subsequently typed up and that he
23 reviewed with you in this meeting, is that right?
24 A Yes, these are his notes from the interviews.
25 Q Okay --

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1 A And his e-mails.
2 Q Okay, and on the very last -- I'd move for admission of
3 Defendant's Exhibit 17, your Honor.
4 THE COURT: Any objection?
5 MS. BONANNI: I'm confused. The witness
6 talked about recently seeing typed notes, this Exhibit 17
7 includes some scratchy handwritten notes, so I don't know
8 that she's ever seen that and I don't know -- and it's also
9 recent, so I'm not sure what the relevance is and I don't
10 think it's proper to include these handwritten notes with
11 just multiple layers of hearsay.
12 THE COURT: Okay.
13 MR. MULLINS: Well, again the -- it's
14 appropriate as to protocol has been testified to, it
15 establishes what, you know, for impeachment purposes whether
16 or not protocol has been followed and also --
17 THE COURT: Ms. Gish, can I take a look at
18 the exhibit?
19 MR. MULLINS: And just real quickly before I
20 forget that she just testified that they had a meeting where
21 they reviewed these notes. She said she might not have
22 gotten a copy of them, but she reviewed them at a meeting
23 with him knowing that he'd written them out and then typed
24 them up afterwards.
25 THE WITNESS: I didn't see them, I didn't

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1 review them, he went over his notes and his findings.
2 MR. MULLINS: Okay.
3 MS. BONANNI: Okay, so I didn't catch that,
4 so I guess I would add to my objection that she's never
5 reviewed these, she's never seen these.
6 THE WITNESS: Again, that's why we made the
7 request to have them.
8 THE COURT: Okay, well there's multiple
9 different things in here. Here's a transcript, there's an
10 e-mail, there's some handwritten notes. So, at this point
11 I'm gonna sustain the objection.
12 MR. MULLINS: Okay.
13 THE COURT: You might be able to do it with
14 further foundation, but it's like three different exhibits.
15 BY MR. MULLINS:
16 Q And Ms. Davis attended that meeting that you had. This
17 meeting that you had where you're meeting with the building
18 administration and she's there with you and your --
19 A And Mr. Zessin, I don't think --
20 Q -- and Barb Pauli also.
21 A -- I believe she was there.
22 Q Okay, and in that finding --
23 A I don't recall, but I do remember Mr. Zessin, I do remember
24 being at a meeting and Mr. Zessin going over his findings.
25 Q Okay, so they had conducted an investigation?

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1 A Yes, protocol would be that you get written statements that
2 are signed and dated from all individuals involved. What he
3 was apparently going from is you have provided written notes
4 that he took from, I guess, an interview that he did with
5 these students.
6 Q Yeah, that's certainly what I understand --
7 A Okay.
8 Q -- as I think you do. You said you'd gone over them
9 recently with plaintiff's attorney -- did you, or how is it
10 you came to go over them recently?
11 MS. BONANNI: I'm gonna object, she did not
12 testify that she went over them with me.
13 MR. MULLINS: That's what I asked her, who
14 did she review them with recently. She said she reviewed
15 them.
16 THE COURT: Okay, well let's state that
17 question and see what her answer is before it's imputed to
18 plaintiff's counsel.
19 BY MR. MULLINS:
20 Q That's my question, with whom did you review them recently?
21 A On my own.
22 Q Okay, and so how did you come into possession of them?
23 A From the information that I was given about Mr. Zessin's
24 investigation.
25 Q Okay, by the school district?

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1 A No.
2 Q Well, did it fall from the sky? I'm just, you know, how did
3 you get it?
4 A I was asked if I have seen this, no I haven't seen this, but
5 I didn't review it I just was asked did I see this, no.
6 Q We'll move on, I'll just leave this for the jury. A minute
7 ago you -- they either did or didn't hear you like I think I
8 did that you had reviewed this recently and my question is --
9 -
10 A I said not until I got here. This is part of the
11 information that we had requested, okay? This information
12 is in this book --
13 Q Yeah.
14 A -- this information I have read through --
15 Q Okay.
16 A -- today.
17 Q Okay.
18 A I was asked did I see this, no I did not see this, because
19 Mr. Zessin never gave it to us. It -- this was information
20 -- we have a right to request information following an
21 investigation, we have a right to do our own investigation,
22 okay? I was requesting information from the investigation
23 so that I could see what was written down, what was used to
24 make his determination as to what had took place. So, Mr.
25 Zessin -- I should have had this years ago.

1 Q Okay, when did you review it today?
2 A It's in this -- it's in the book.
3 Q Well, I appreciate that, but you didn't go through Mr.
4 Zessin's notes on direct examination, so you must have
5 reviewed it previously unless you're pretty good at
6 reviewing that whole book in the short time --
7 A No, I was asked have I seen this, no I have not see this, I
8 did not get this. This was not part -- from what we
9 requested this is part of what we requested. Did I get a
10 copy of this? No, I did not get a copy of this.
11 Q Now, I think you had indicated -- so, and you also
12 understand that the principal, Ms. Barbara Pauli --
13 A Mm-hmm.
14 Q -- interviewed Ms. Davis on the day of the incident, is that
15 right?
16 A I don't have any knowledge of her interviewing Ms. Davis.
17 Q Okay, and you understand that the police came to the school?
18 A I know the police were called.
19 Q Okay, and do you know whether or not they came to the
20 school, interviewed, talked with Barb Pauli --
21 A I don't -- I know that --
22 Q -- let me finish my question, just let me finish. But,
23 whether they talked with Barbara Pauli and whether they
24 said, well let me talk to some of the kids, Scott Goysen
25 (sic), the police officer from the city, do you know him?

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1 You may not --
2 A I have no idea.
3 Q Okay --
4 A I know that the police had obviously interviewed Pennie, but
5 I don't what else they all did, I don't know what they did.
6 Q They interviewed who?
7 A I know that they made contact with Pennie, the person who
8 called the police, but I don't know anybody else that they
9 had talked to. I don't know who showed up or --
10 Q So, whether or not the police also interviewed students,
11 you're unaware of?
12 A I don't know what they did that day --
13 Q Okay.
14 A -- other than like I said, I know that they were called.
15 Q But, of course, that report's a public document and you
16 could get it if you were concerned about whether or not
17 anybody had looked into this matter, that's something that
18 easily can be obtained, is that right?
19 MS. BONANNI: I'm gonna place --
20 BY MR. MULLINS:
21 Q You may or may or may not know.
22 MS. BONANNI: -- an objection to the extent
23 that the police record of a juvenile or police report
24 involving a juvenile may not be discoverable under FOIA.
25 THE COURT: Sustained.

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1 MR. MULLINS: And just for the record I think
2 the police report is obtainable, it's just proceedings
3 aren't, but that's -- but I understand.
4 So, on -- Ms. Davis went to court after
5 having obtained the PPO and the school is trying to keep the
6 student --
7 THE COURT: Mr. Mullins, reflecting further
8 on your answer, I think you're correct on that, so I think
9 that the police report is discoverable, but obviously what
10 happens for the juvenile is not, so I'll correct that.
11 MR. MULLINS: Thank you, your Honor.
12 And just to go back, so you didn't, as the
13 course of wanting to gather more information about this,
14 didn't obtain a copy of the police report to see what
15 students had been talked to or what they said or anything
16 like that?
17 THE WITNESS: Did I obtain a copy?
18 BY MR. MULLINS:
19 Q You or the union in your capacity or anybody --
20 A No.
21 Q -- to your knowledge? Okay --
22 A I'm sure Ms. Davis has it, but I never --
23 Q So --
24 A -- I never got a copy.
25 Q -- we know that after obtaining the PPO this Ms. Davis was

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1 concerned, because she heard somebody bang on her door and
2 she went and she looked out and she saw this student across
3 the hall or somewhere within her sight. You're aware of
4 that?
5 A I know that there was banging on her door. I do know that
6 the student was in a classroom in which the teacher, during
7 the time that he was in the classroom the teacher was
8 actually at Parkside teaching. So, she teaches part time at
9 Parkside and then she comes over to Jackson High. So, I do
10 know that he was in that classroom too, unsupervised.
11 Q And so, she filed some documents with the court, I think you
12 had indicated some knowledge of it, seeking to modify or
13 adjust the PPO indicating basically she's afraid of this
14 kid, is that right?
15 A I don't know that she was looking to modify or adjust, I
16 know that when she said that she was going back because at
17 that time the plan was not in place. There were three
18 choices on --
19 Q My question is real simple. She -- and that motion to
20 modify --
21 A I'm trying to answer it.
22 Q -- well, let me -- I'm trying to narrow it down and maybe
23 it's inartfully worded, but she expressed in writing, in her
24 own handwriting in this motion that she was fear -- had fear
25 and she was fearful of this student and that his presence or

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1 sight made him -- her fearful?
2 A It was making her -- she was scared that this student was
3 unsupervised, okay? This student was unsupervised at a time
4 when he should have been supervised and it was also trying
5 to make administration aware that this student is
6 unsupervised.
7 Q Okay.
8 THE COURT: I just have a question. Was it
9 ultimately determined that this juvenile actually was not
10 given another class, if he was actually out and about during
11 this specific period of time?
12 THE WITNESS: He was, if he was given another
13 class I don't know at what point, but he was supposed to be
14 in like with one of our teachers who ended up going on
15 medical leave, he had surgery. And then there was a plan to
16 have him be in another area. It would just -- there was
17 nothing concrete in terms of what the plan was. So, our
18 request was can we sit down and get something concrete, so
19 that there's accountability for where this kid is.
20 THE COURT: Well, to your knowledge, if you
21 know, was he assigned another class?
22 THE WITNESS: Not during that --
23 THE COURT: Period.
24 THE WITNESS: -- point, not during that point
25 --

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1 THE COURT: Okay, all right.
2 THE WITNESS: -- he -- and that was part of
3 Ms. Davis' request, you know, where is he supposed to be?
4 Because, yes he's in my 3rd hour art class, yes you took him
5 out, he must not have another class if he's being able --
6 because a teacher would know that a student is missing, they
7 take attendance every hour, every day. So, it would come up
8 that this student is not in class.
9 BY MR. MULLINS:
10 Q It would be fair to say that like some students this student
11 might be someone who might be suspected of -- or actually
12 being someone non-compliant in other words. If you say,
13 don't go down that hall he might yet go down that hall? Is
14 that -- and you may not know, I'm -- but, that's my
15 question.
16 A I don't know what he would do in that case. All I know, Mr.
17 Mullins, is we've been trying to get help for this kid for
18 many, many years.
19 Q No, we're not here about him though. So, on November the
20 5th, I think counsel had showed you Exhibit 27, and --
21 A What's that?
22 Q Counsel had showed you -- counsel, Ms. Davis' attorney, had
23 showed you Exhibit number 27.
24 A Is this 27, yes, so this is by Pennie Davis and this is
25 regarding safety issues.

1 Q And that's my point, even as late as November the 5th she's
2 saying during the last six days I'm concerned about my
3 safety. And then talked to Jeff --(undecipherable)-- and
4 Amy Gish about my safety issues with this student. And I'm
5 jumping around in the letter, but that he was in the choir
6 room without permission and I'm concerned for my safety.
7 That and she thinks that presents a liability issue. That's
8 you know, in the heading on the November the 5th that you --
9 Plaintiff's Exhibit 27 which the jury can look at, it says,
10 concerning and it says safety issues, is that right?
11 A Yes, it does say safety issues.
12 Q And then on November the 6th then, and I'm assuming that's
13 in response to her raising these safety issues with you you
14 send a letter to Barbara Baird Pauli, who's the -- that's
15 Exhibit 29, again, with the big heading and big letters,
16 safety issues, is that right?
17 A Yes, again we wanted to make sure that there was a plan in
18 place so that this student was where he should be.
19 Q Okay, and again, talking about safety concerns raised by
20 Pennie, is that right?
21 A Correct.
22 Q So, with this much discussion and this much concern, if the
23 student were not to follow a plan or to be non-compliant or
24 just do what he's gonna do and cause injury to, you know,
25 Ms. Davis, the administrators responsible would be in some

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1 hot water, would they not?
2 A Correct, and it was taken care of at the building level,
3 it's a building issue.
4 Q Well, you said a plan was put in place, I guess we're never
5 gonna know how successful that plan might have been, but he
6 seems to be kind of difficult to corral and to prevent from
7 banging on doors and going to where he's not supposed to go
8 as late as November the 6th.
9 A As soon as the plan was in place I don't recall there ever
10 being any issues after that.
11 Q So, the next week on the 12th, the administration decides to
12 resolve any concerns of safety with this student by
13 transferring her to Parkside?
14 A They stated that they were transferring her to Parkside for
15 her safety.
16 Q And I think you'd made reference to Exhibit 32 and Mr. Pack
17 indicates, "It's our responsibility to do our best following
18 her PPO, keeping all involved safe and keeping her working."
19 That's one of the statements in that exhibit, right?
20 A Can you repeat that? What was the statement?
21 Q I'm just reading --
22 A Yeah, I'm with you on 32.
23 Q -- the one sentence, his ending statement on the 2nd
24 paragraph, "It's our responsibility to do our best following
25 her PPO, kind of keeping all involved safe, and keeping her

1 working." That's what he indicates, is that right?
2 A Forgive me, "It is our responsibility..." I'm looking for a
3 sentence that -- oh, okay I was looking for a sentence that
4 started with, it is our responsibility. Okay, "Until then
5 it is our responsibility to do our best following her PPO,
6 keeping all involved safe and keeping her working." That is
7 the last sentence of the 2nd paragraph.
8 Q And if you know, if she's so satisfied with the plan, why
9 then would she have gone to court on November the 19th to --
10 on the motion to modify the PPO? Which you might not know,
11 but, if you know.
12 A Well, the plan was in place before the transfer, there were
13 no problems after that. The reason why she went back is she
14 was making sure that the information on the PPO was being
15 followed. And again she didn't know which of the reasons
16 for appearing again to mark, so she marked modify.
17 Q One thing for sure, if her work place is at Parkside and
18 he's a student at the high school, he's -- it certainly
19 makes it more difficult, I mean, he's not at her -- if you
20 -- I guess, it depends on what the definition of work place
21 is, but physically they're different buildings some distance
22 apart --
23 A They are different buildings.
24 Q -- so it makes it there will be no wandering down the halls
25 or, there's no reason why he should be --

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1 A There's no reason why he should be there.
2 Q -- showing up and he wouldn't be at her work place.
3 A He shouldn't be. But he was also not in her classroom
4 anymore after the plan was in place, so that was resolved.
5 Q You worked at Parkside for a while?
6 A Four years.
7 Q Okay, did you find that a good place to work?
8 A At first.
9 Q Okay, and what course did you speak there -- teach there?
10 A I taught Alpha Reading which is a supplemental reading
11 program; I taught 7th grade English; I taught 8th grade
12 English; I was a literacy coach; I taught -- actually I
13 taught Alpha Reading three different times.
14 Q Now, you had some talk -- there's been some talk about her
15 2015-2016 evaluation and you talked about your role that you
16 had played subsequent to that. First of all, the evaluation
17 occurs one time at the end of the year, is that right?
18 A The evaluation is bits and pieces are taken -- we call them
19 snapshots, throughout the year so that you can put the
20 snapshots together and then at the end of the year you can
21 get the full picture.
22 Q But, the -- but, the document itself, the actual review, if
23 you will, you know, the -- your grade in the class, your
24 grade as a teacher for the year comes as of the end of the
25 school year, is that right?

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1 A You should know where you're at at mid-year, not in terms --
2 Q Let me try it again --
3 A -- of a number, but if you --
4 Q -- let me try it again. We've talked about ineffective or
5 minimally effective --
6 A Right.
7 Q -- or -- and that actual review -- you talked about tool,
8 there's a document, if you will, the teacher -- the
9 principal gives a grade in those terms and it's based on
10 those many things, but it occurs at the end of the school
11 year after the school year's over, is that right?
12 A The final evaluation does, but you need to know where your
13 teachers are at least by mid-year, because if there's any
14 problems you need to make sure that you give that teacher
15 time to correct those problems.
16 Q And you -- let's go back to that and I'll just try one last
17 time. I understand how you -- that arriving at the
18 evaluation considers many, many, many things that occurred
19 throughout the year, good and bad. But, the grade, if you
20 will, is given at the end of the school year?
21 A The final, yeah, the final evaluation is given at the end of
22 the school year --
23 Q It's written up in a document?
24 A Correct.
25 Q Okay, and --

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1 A It's -- I'm lying, it's in --
2 Q -- okay.
3 A -- yeah, it's not written.
4 Q Okay, and in -- and it's required by law, this isn't
5 something somebody dreamt up, every teacher has to be
6 evaluated every year, is that right?
7 A Unless you have three highly effectives in a row and you can
8 request not to be evaluated that 4th year, otherwise yes.
9 Q And --
10 THE COURT: What's the peril to a teacher as
11 you understand it, if they've had those three ineffective
12 ratings?
13 THE WITNESS: The three ineffectives?
14 THE COURT: Yes.
15 THE WITNESS: It's termination.
16 THE COURT: Okay, and that would be by going
17 to the school board or how would that work?
18 THE WITNESS: Yes, all firings and
19 terminations and retirements, everything goes to the school
20 board for a final --
21 THE COURT: Okay.
22 THE WITNESS: -- yea or nay.
23 THE COURT: And would another consideration
24 also be that if there was a layoff that they would have
25 certain less protection than most other teachers as well,

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1 correct?

2 THE WITNESS: Correct, if they're ineffective

3 or minimally effective, yes that's part of their layoff

4 procedure.

5 THE COURT: That obviously, that doesn't have

6 to go to the school board, that's an administrative

7 decision?

8 THE WITNESS: The layoffs --

9 THE COURT: If you know.

10 THE WITNESS: -- yeah, we haven't done

11 layoffs, you know, since I've been president, so I'm not

12 sure -- that's a good question.

13 THE COURT: Okay. All right, thank you.

14 THE WITNESS: Mm-hmm. Unless, if we've done

15 a layoff I don't recall a layoff, but it's been a long time.

16 THE COURT: And if you know, there's been

17 some limited testimony, has the population of Jackson Public

18 Schools, Jackson High School, has it been declining or has

19 it been increasing?

20 THE WITNESS: It depends on the year, but

21 normally we gain students at the high school.

22 THE COURT: Okay.

23 THE WITNESS: Because, Paragon for example,

24 they only go through 8th grade, so we do get a lot of

25 Paragon students --

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1 THE COURT: From the charter, okay.
2 THE WITNESS: -- that come to Jackson High
3 School --
4 THE COURT: All right --
5 THE WITNESS: -- so, yes.
6 THE COURT: -- thank you.
7 THE WITNESS: Mm-hmm.
8 BY MR. MULLINS:
9 Q And a new program was started there recently, Pathways, is
10 that right?
11 A I'm sorry?
12 Q A new program was started at the high school, Pathways, you
13 may or may not be aware of that?
14 A Pathways is located at the high school.
15 Q And it's a new program, is that right? A new program?
16 A New program, yes.
17 Q And you had made reference to the fact that something about
18 a statement that Mr. Patterson had made that this wasn't
19 gonna end well, but the fact of the matter is Ms. Davis has
20 continued to be fully employed and paid in accordance with
21 the collective bargaining agreement right up to the present
22 time, is that right?
23 A Okay, so if --
24 Q She still works at the school district?
25 A She still works at the school district, yes.

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1 Q And as we stand here again today, she does not have and
2 never has had an ineffective rating.
3 A Ineffective?
4 Q Yeah.
5 A She never has had a --
6 Q And Mr. --
7 A -- right, your question is she has never had ineffective --
8 Q Yes --
9 A -- she has.
10 Q -- I understand at the end of the 15-16 school year that
11 Mr. Patterson said that she was ineffective, an appeal was
12 filed from that. It a long time occurred as can be, Mr.
13 Beals (sic) -- we're gonna talk about this in a minute, Mr.
14 Beals then changed her rating to minimally effective, so as
15 we stand here today she doesn't have an ineffective rating?
16 A No, it was changed.
17 Q Okay, so -- and also you talked about there's things that --
18 and in addition her salary she's always had health
19 insurance, is that right?
20 A Yes.
21 Q And has a contribution made on her behalf every year to the
22 Michigan Public Schools Retirement System, is that right?
23 A Yes.
24 Q And having over 30 years experience -- and I'll be somewhat
25 indelicate in saying being over 55 years of age she can

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1 retire having a full pension and lifetime medical anytime
2 she should so choose, is that right?
3 A I don't -- that I don't know.
4 Q Okay, you're not a pension expert? And you might not know
5 this either and you can take your pension from the school
6 district and then go out and get a job someplace else just
7 as long as it's not in the Michigan Public School district.
8 You could go to Illinois, Ohio, Indiana or get into some
9 other field of endeavor and make another salary and still
10 collect your pension and have all those benefits?
11 A And still have all of what benefits?
12 Q The pension, the pension you know --
13 A Oh, the pension benefits?
14 Q There's no reduction for getting another job or working
15 someplace else?
16 A You -- it has to be you're getting your full, so whatever
17 the requirements are you can start pulling that, whatever
18 the requirements are, so yeah, if you wanted to work
19 elsewhere.
20 Q Okay, and it had been discussed that she had requested a
21 transfer and was advised, as is indicated in Defense Exhibit
22 9 on May 31st at the end of -- in anticipation at the end of
23 2017 school year that her request for transfer would be
24 granted and she would be going back to teach at Jackson High
25 School, is that right?

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1 A You said 9?
2 Q Yeah, and the document's not that important if you just
3 recall that she was advised at the end of the school year in
4 2017 starting this year in the fall she'd be teaching at the
5 high school.
6 A I just want to look at the document so I --
7 Q Yeah, I'm sorry --(inaudible)--
8 A -- that's okay, I'm looking where you told me to look, but I
9 --
10 Q -- and you might recall this, it was talked a little bit
11 during your direct examination.
12 A Okay, yes I do remember that.
13 Q Okay, and indeed she did go to the high school this fall and
14 continues as the teacher there now?
15 A After this she was transferred.
16 Q Well, she was transferred. The PPO has expired you may or
17 may not know, M.H. isn't there anymore, you may or may not
18 know --
19 A I don't know.
20 Q -- but comes this fall she receives this letter and said if
21 you have -- your material will be moved by August -- prior
22 to August 21st and you'll teach at the high school and she's
23 been doing that.
24 A We had made several requests that I'd know after the
25 depositions, Pennie and I sat down and wrote a letter with

1 the request once again to be transferred back up to the high
2 school and then finally she was given the green light to go
3 back up.
4 Q Okay, and you may or may not know this, if someone is being
5 illegally discriminated against as a teacher says, you know,
6 I think I'm getting a bad evaluation because of my race or
7 because of my gender or because of -- in violation of the
8 school zone whistle blower protection policy, that's
9 something that can be taken to the board and the board could
10 adjust change overrule that, is that right?
11 MS. BONANNI: I'm gonna object, speculation.
12 She's not a lawyer.
13 MR. MULLINS: As I prepped, she may not know
14 it, but she's the president of the union --
15 THE COURT: If she knows.
16 THE WITNESS: Could you restate your -- the
17 question?
18 BY MR. MULLINS:
19 Q If a person was -- if there was an illegal motive that
20 underlied a decision to lay somebody off, fire them, give
21 them that evaluation, for instance, you know I don't like
22 black people or I don't like women or whatever. But, it
23 would be a protected classification that that could be taken
24 to the board and/or you were aware of the whistle blower
25 protection policy the board has, is that right?

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1 MS. BONANNI: I want to object to this
2 compound question with Title VII implications, Elliott
3 Larson implication and whistle blower, I'm not quite sure.
4 It's compound, it's speculative --
5 THE COURT: It is compound, it does involve
6 different legal theories as well as, I guess, administrative
7 theories within the school districts, also sustain the
8 objection.
9 BY MR. MULLINS:
10 Q Okay, I'll reword it. If somebody believed that the policy
11 that you're aware of, the whistle blower protection policy
12 was being violated, that could be brought to the school
13 board's attention and whatever violation or the result of
14 whatever such violation was the school board could rectify,
15 change, is that right?
16 A Pennie attempted to contact the school board member twice --
17 Q Well, I appreciate --
18 A -- about this.
19 Q -- that and I know your school board president, there's an
20 old saying that a school board speaks as a unit, in other
21 words whatever that ultimate decision is it's got to be
22 brought to the board as a whole, they've got to act
23 officially and a majority vote on anything whether it's
24 approving your collective bargaining agreement or anything
25 else has to be brought to the board officially, a school

1 board meeting. The board can only act as a public body at
2 its meeting and a majority decision has to be reached --
3 A If Pennie were to bring this into the school board at a
4 public meeting then this information about M.H. would be out
5 there. This -- she attempted to contact this person and
6 talk to them twice, because she was not wanting this
7 juvenile's information to be part of conversation at a
8 public meeting.
9 Q And actions relative to discipline can be done in closed
10 school board meetings, you're aware of closed sessions such
11 as well --
12 A I'm aware that there are closed sessions.
13 Q -- your collective bargaining sessions are closed, are they
14 not?
15 A I'm aware of closed sessions.
16 Q Okay, and just like we're doing here today the identity of
17 the individual can be redacted and what the underlying
18 problem is can be discussed at the school board, without
19 just like in discipline hearings. You're aware, as the
20 president of the union if somebody has a disciplinary
21 hearing before the board they can request a closed meeting,
22 is that right?
23 A Sure, but you have to be able to talk to the person in order
24 to be able to do that.
25 Q Okay, this was never put on a board agenda?

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1 A No, but like I said we're talking about a kid. You know, we
2 don't want to bring his information --
3 Q Mind --
4 A --out to the public.
5 Q -- mind you so it's clear, you as the president of the
6 union, and to your knowledge nobody else ever went and
7 requested at a board meeting, we want to put this issue on
8 the agenda for consideration by the board?
9 A Nobody went to a meeting to ask that to be put on the
10 agenda.
11 Q And it's not on an agenda or not brought before the board,
12 they can't deal with it?
13 A That's not true.
14 Q They can --
15 A We've contacted board members before and they've dealt with
16 things.
17 Q Okay, you can, so to overrule an administrative action that
18 can be done without an official act of the school board?
19 A That's not overruling an administrative action.
20 Q Okay.
21 THE COURT: So, school board action would
22 normally require a quorum, right? At least a certain amount
23 to act and then a majority of those present, correct?
24 THE WITNESS: Mm-hmm, correct.
25 THE COURT: So, I think you were suggesting

1 is somebody could take a concern to one board member?
2 THE WITNESS: Correct.
3 THE COURT: Okay.
4 THE WITNESS: Correct, and that's what she
5 attempted to do twice.
6 BY MR. MULLINS:
7 Q And did -- again you may or may not know this, it's improper
8 for a quorum of the board to meet, make any -- take any
9 action on anything other than at a public meeting unless
10 it's a properly noticed and posted closed session, is that
11 right?
12 A I don't know what the policy is for that. I would be
13 speculating at that point.
14 Q The teacher evaluations are incorporated in the Teacher
15 Tenure Act, is that right?
16 A It's my understanding that teacher evaluations is mentioned.
17 Q Okay, and the legislature just, in recent years changed the
18 requirements of evaluations, in other words, the manner in
19 which they've done and set forth all these -- you used the
20 word rubric, but it's like, you know, you've said you've got
21 to objectively show different things and it's weighted on,
22 you know, you have to -- so much of it has to be based on
23 this, on that and there's many different considerations.
24 But, it's a formal, if you will, like school. So, much is
25 in your project, so much is in your term paper, so much is

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1 your final exam grade. That -- the legislature has just
2 done that in recent years, is that right?
3 A Yes, it lays out protocol for teacher evaluation.
4 Q Okay, and let me show you what we've marked as Exhibit 39, I
5 believe. So, I'm gonna refer to this as Defendant's 40.
6 You were shown an e-mail and asked about it questions
7 talking about collaboration and that Mr. Patterson indicated
8 that he needed information regarding collaboration, is that
9 right? The collaborative process?
10 A He needed information so that he could use it to complete
11 the rubric for her PCC, professional collaboration and
12 communication.
13 Q Okay, and that's a fancy word for the different teachers, if
14 you will, in the same school particularly the same grade,
15 particularly the same subject, how they work together and
16 exchange information and how you work with other
17 professionals to function well as a school district, is that
18 a layman's -- good layman's summarization?
19 A It includes more than that, but that's part of it.
20 Q Okay, and when you were talking about this and communicated
21 and -- on August the 4th, 2016 you had indicated --
22 (undecipherable)-- when we met for another issue on Tuesday,
23 you asked me and you talked about the upcoming meeting
24 relative to the review we're gonna change evaluation and
25 that he needed additional information, is that right?

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1 A That's -- that's the August e-mail was me making sure that
2 he had received and used information from the e-mail sent at
3 the end of the year for the final evaluation, so what I did
4 was I copied the wording from the e-mail that I sent at the
5 end of the school year and pasted it in my August e-mail and
6 then just was following up basically to make sure that that
7 information was received and was used.
8 Q And --
9 A That's what that is.
10 Q -- and there's been discussion that this review meeting was
11 scheduled and put off a number of different times and
12 finally occurred on March the 7th, of 2017 or thereabouts,
13 you might not recall the specific date.
14 A Yeah, I don't recall.
15 Q But, March, the Spring of 2017 is when it occurred?
16 A For the -- for which meeting?
17 Q For the review contesting her ineffective evaluation?
18 A The meeting took place, I don't know the date.
19 Q Okay, and if I were to tell you -- you were there present?
20 A I was.
21 Q Lots if material was submitted to Mr. Beal by your client
22 and yourself?
23 A Yes.
24 Q Okay, and he indicated, well thanks for giving me this data,
25 I've, you know, we've been looking for it and I'm not gonna

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1 make my decision right now, but this certainly gives me
2 something to work with. And on March 17th, Exhibit 10, he
3 changed her evaluation to minimally effective, is that
4 right? In other words, about a week after that meeting
5 whenever it occurred --(inaudible)--
6 A Well, it wasn't that she was supplying new information, it
7 was that she had that information that she had used all
8 along. That's what I was saying was, throughout the year
9 you kind of build your case, so to speak, in terms of this
10 is what I'm doing to meet the criteria of these rubrics.
11 So, it doesn't come down to that final evaluation, you
12 should be building all along. So, what she brought in is
13 documentation that she had all along.
14 Q And documentation that she had all along, first, calendar
15 wise, how am I doing, March 17th is when the letter came out
16 --
17 A Oh, sorry.
18 Q -- the meeting that you had was about a week or so earlier
19 and then you got his response --(undecipherable)-- in
20 writing, and he upped her evaluation, right? I'm just
21 trying to put that chronology to date when this stuff
22 happened in line for the jury.
23 A Yes.
24 Q Okay --
25 A Oh, he refers to --

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1 Q I'm just trying to deal with the date now.
2 A Oh, okay.
3 Q We can move along --
4 A Oh, okay.
5 Q -- everybody wants to go home. So, but on March the 4th,
6 which would be you indicated having talked with Mr.
7 Patterson and he had responded, still no word about --
8 (undecipherable)-- see where I've circled that there?
9 A Yes, I -- there was -- that's me.
10 Q That's you letting Pennie's representatives know that Jeremy
11 Patterson is still concerned that he doesn't have data?
12 A No, that's not what this is. When I sent this -- at the end
13 of the year, as I stated, I asked Mr. Patterson what he
14 needed from Ms. Davis and I would get that. The only thing
15 he requested was information about the PCC rubric. He never
16 mentioned anything about needing data, so what I'm stating
17 here is that he never made the request for data at the end
18 of the school year nor did he, in August before we went in
19 for her final evaluation meeting. So, the request for her
20 student data was not requested and there's information --
21 every school handles it differently, so you may go into a
22 final evaluation and they may say, we already have your
23 data, you don't need to bring any additional data with you.
24 Q And that's a good, I mean, trying to move it along.
25 A Okay.

1 Q When you look at -- of course the evaluation that you're
2 appealing, my recollections is, is on June 27th which has
3 MR. MULLINS: to be at the end of the school year, he's
4 gotta turn it in in a timely fashion, on that document,
5 that's where he gives the grade of ineffective, right?
6 That's what you were appealing was what he had put on that
7 document on the evaluation?
8 A We were appealing the document, he can leave it blank. When
9 you enter the rating into SEPI which is the state management
10 system for the evaluation ratings. You can leave it blank
11 if you don't have the score yet.
12 Q So, if he doesn't evaluate a teacher and then you go a whole
13 another year, that's -- he's not gonna have any problem with
14 his administration or his boss or with the state board of
15 education?
16 A Oh, I'm not stating that, but the process wasn't completed
17 yet, so --
18 Q You're required by law to evaluate every teacher every year,
19 the school year ended in June of 2017 and the process per
20 your indication wasn't completed even in March of 2018.
21 That's kind of handing the term paper in late isn't it?
22 A I have contacted SEPI for a previous incident and they have
23 told me that you can leave it blank if the process is not
24 completed. I know that --
25 Q Let's get to the point. If you look at the evaluation --

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1 MS. BONANNI: I'm gonna object and just ask
2 that she be permitted to finish her response.
3 MR. MULLINS: I'd just like her to answer my
4 question.
5 THE COURT: All right, well I'll allow you
6 any redirect you want to do on that.
7 BY MR. MULLINS:
8 Q When you look at the evaluation document it indicates on
9 there -- let me back up -- the teacher -- when you say, so
10 the ladies and gentlemen of the jury can understand here,
11 when we're talking about student data we're talking about
12 your report as the teacher about how your students did,
13 what, you know, whether they meet their goals, what their
14 accomplishments were, again like you said it's kind of a
15 year long process, kind of where they started out, you know,
16 basically what their grade was, how well they progressed.
17 Your class as a whole if I look at it you've got 35 kids in
18 your class, how did the group of kids that you taught
19 progress? What's the data as to how they progressed, is
20 that right? That's the student data.
21 A The student data has multiple points.
22 Q Okay, and that's a heavily weighted portion of the
23 evaluation process by law? If you know.
24 A Well, I'm just looking here and it says that 25 percent is
25 student growth, so that would be the data. And 75 is the

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1 professional practice --
2 Q Okay --
3 A -- which would be the rubrics.
4 Q -- there you go. And, in fact, the legislature is
5 indicating we're taking that more and more seriously, now
6 it's 50 percent, right? If you know.
7 A Oh, I don't think we're at 50 yet. I think we're at --
8 Q Okay, we're headed towards 50 for next year?
9 A Yeah, well --
10 Q Okay, well it's important --
11 A -- it's going up.
12 Q Okay, so if, if you will, the score on the test for 25
13 percent of the test is zero, you're already down to 75
14 percent.
15 A If it's -- if you don't have the 25 percent, you're at 75
16 percent.
17 Q Okay, so it's almost impossible to be -- get an effective
18 rating if you're already down at the start of the process,
19 at 75 percent?
20 A Well, there's a -- it's -- there's a calculation table if I
21 can call it that, that we used to have a teacher evaluation
22 committee that would meet, we put this together so that
23 there was like local data and then teacher data, so if you
24 were taking data from like the NWEA MAP Test which is an on
25 line test. That was weighted a certain percentage and then

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1 if you gave a pre-test, post-test that was weighted a
2 different percentage. So, like the data for NWEA, Mr.
3 Patterson had access to that, he has access to every teacher
4 in his building, so he could have pulled that data for sure.
5 Q It's the teacher's responsibility to teach, grade and
6 produce for the evaluation so that it can be discussed
7 within the context of the rubric with their administrator as
8 to what -- how they've done on these different things
9 including the student data?
10 A Some administrators pull that up on their own, they have the
11 information in front of them. I mean, they --
12 Q Okay, so when we look at the evaluation that he rendered on
13 -- at the end of June of 2017, he indicates there, I don't
14 have the student data. It's written right on there, isn't
15 it?
16 A On which one?
17 Q On her evaluation.
18 A On 40?
19 Q On the evaluation, I just --
20 A Oh, you're asking if it's written on there, I'm gonna look
21 to see if it's written --
22 Q If you don't know -- you do understand there's a -- and
23 we'll get it before -- he's gonna come in and talk about it
24 all, but if it indicates on there, right there, I don't have
25 Pennie Davis' student data. That's indicating --

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1 A I can't confirm nor deny that, because I don't have what
2 you're looking at in terms of it being written somewhere.
3 Q But, for anything you're principal doesn't have and doesn't
4 get the student data that's a problem?
5 A If they don't have the data they request the data.
6 Q Okay, and what I just showed you that as late as March 4th,
7 2018, just a couple of days before when finally this review
8 is happening in front of Mr. Beals, he's --
9 A Oh, when you say March I -- do you mean August? I'm sorry
10 to interrupt. You said March 4th, do you mean August 4th?
11 Oh, no you're talking about the appeal --
12 Q Yes.
13 A -- I'm sorry
14 Q Yes, yes the appeal.
15 A -- okay, sorry.
16 Q That --
17 A We've had a lot of meetings.
18 Q -- that he's still indicating, I don't have the student
19 data, which is what I just showed you.
20 A This right here?
21 Q Yeah.
22 A No, that's -- this is what I typed. He didn't --
23 Q Yeah, here you're indicating that --
24 A He didn't state that.
25 Q -- in response to the --

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1 A What I'm indicating here --
2 Q -- memo attached to it --
3 A -- is that he still has not -- this is what I wrote stating
4 that he did not -- even the day before, looking back, he did
5 not request the data.
6 Q I --
7 A The only thing he requested from me was the information
8 about PCC and that was at the end of the school year.
9 Q I understand that --
10 A He still hadn't requested data --
11 Q
12 A -- so, I didn't know what he needed. That's why I was
13 asking him what do you need? I'll get it for you. If he
14 had said data I would have gotten the data.
15 Q In short, what you're trying to tell us is that if he
16 doesn't have the necessary 25 percent weight of the
17 evaluation that late in the game, it's his fault, not Ms.
18 Davis' obligation to present that data?
19 A What I'm saying is he never requested it from me to get, so
20 I assumed he had it.
21 Q It's not a matter of request, the law requires the teacher
22 to compile the data and to produce it to the evaluator as of
23 the time or for the evaluation. It's not --
24 A She was on medical leave.
25 Q -- it's not -- that's fine, it's not the teacher's job to

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1 teach the class, give the test, grade the test and compile
2 the -- I'm sorry, scratch that question. It's not the
3 principal's job to teach, the class, grade the class, give
4 the tests, put the student data together. That's what the
5 teacher does for the class. It's the principal's job to
6 take that along with the other things and evaluate them.
7 It's for the teacher to compile the data and to give it to
8 the administrator for the evaluation.
9 A If the administrator doesn't have access to it they request
10 it from the teacher. This teacher could not go to school
11 being on medical leave --
12 Q Okay --
13 A -- so she could not go to the school to get the data --
14 Q And her medical leave --
15 A -- and if I had known that they needed something I would
16 have gone to the school to get whatever they needed.
17 Q And her medical leave ended in June?
18 A I don't know when it -- I don't know.
19 Q Okay, whenever it ended, if you assume that she wasn't on
20 medical leave and might have even been working someplace
21 else, July, August, September and she's got the document
22 that says, teacher has not presented student data.
23 November, December, January, Summer break, Thanksgiving,
24 Christmas break, the teacher could pull that stuff together
25 and give it to the principal, right?

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1 A First trimester she wasn't even at this school, okay? So,
2 you're talking about a third of the school year that's not
3 even represented here.
4 Q I'm not trying to do the evaluation, I'm just talking about
5 who's got an obligation to present the data at the end of
6 the year.
7 A If the principal doesn't have it they request it from the
8 teacher.
9 Q Okay, and at -- when finally on March the 7th the review
10 occurs in front of Mr. Beals, Ms. Davis gives him the
11 student data and says, thanks Dolly, I wish we had a -- Mr.
12 Patterson's there and they're like we didn't have this
13 before, thanks, this is something to work with. And he
14 questioned why didn't we get this before, we might have
15 saved ourselves all a lot of trouble, but it wasn't he
16 indicated I didn't get this until we sat down there on March
17 7th, 2018, right?
18 A Whatever she provided on that day I know that he kept the
19 notebooks and he stated he went through the notebooks and he
20 had changed her rating from ineffective to minimally
21 effective.
22 Q Okay --
23 A But, I don't know really what --
24 Q You don't know what was --
25 A -- he was taking into account. I --

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1 Q Okay --
2 A -- he didn't go over, you know, specifics, it was just a
3 general after looking at the information.
4 Q You had talked about in addition -- we'll move past the data
5 now. Another concern that the principal had had is this
6 complaint by students that Ms. Davis had thrown a book at a
7 student and caused a red mark on her arm.
8 A What --
9 Q Do you recall that?
10 A I recall.
11 Q Okay, and an incident such as that -- let's take Ms. Davis
12 out of it that would generally have a negative affect on a
13 person's evaluation, would it not? Corporal punishment is
14 illegal in Michigan, is it not?
15 A Corporal punishment is illegal in Michigan.
16 Q Yes, okay and if you were employing corporal punishment or
17 some mode thereof, that would negatively affect your
18 evaluation?
19 A If you're applying corporal punishment, yes.
20 Q You could even be criminally prosecuted, could you not?
21 A It is against the law.
22 Q And I think you were aware of the fact that a student had
23 gone and complained and an investigation was conducted, a
24 lot of the students were asked to write out statements and
25 indicate what they saw and had occurred and a discussion was

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1 had with Ms. Davis and that body of evidence led to his
2 conclusion and the letter of reprimand that he wrote, is
3 that right?
4 A I stated before the teacher consults -- I am aware that the
5 teacher consultant interviewed some students. Ms. Davis
6 wasn't interviewed.
7 Q If I were to show you what's been marked at Defendant's
8 Exhibit number 11, does that not indicate that he brought
9 this complaint to her attention during a meeting that he had
10 with her? Fourth paragraph, 3rd full paragraph, 1st
11 sentence.
12 A Oh, starting with "again"?
13 Q Yes.
14 A Okay, I did read the -- what is the question?
15 Q I'm sorry?
16 A I did read the paragraph, what's the question?
17 Q This would indicate that he did bring it to her attention,
18 he did talk with her as to her version of the story, she
19 denied it, indicates --
20 A He never got a statement.
21 Q -- I'm sorry?
22 A He never got a statement.
23 Q So, that letter doesn't tell you that he talked to her about
24 this complaint?
25 MS. BONANNI: I'm just gonna object to the

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1 extent that she's not on this communication, she doesn't
2 have personal knowledge, it speaks for itself, Mr. Patterson
3 can testify to what he did or didn't do.
4 THE COURT: Okay.
5 MR. MULLINS: If I could briefly respond, if
6 we turn to the 2nd page of the document, it's carbon copied
7 to Amy Gish. Mr. Pack, Mr. Colin, Ms. Jarvey, Mr.
8 Weatherwax and who actually have signed the document
9 indicating that there was a meeting on 2/2/16 between
10 listing the people and you signed it Amy Gish, 2/22/16, so
11 certainly not only are you aware of it, but you --
12 THE COURT: Overruled.
13 BY MR. MULLINS:
14 Q -- had a meeting on it and signed it, did you not?
15 A My signature --
16 Q I'm sorry, wait, wait, hang on --
17 THE COURT: I overruled the objection.
18 BY MR. MULLINS:
19 Q Go ahead.
20 A Sorry, the signature on here states there was a meeting on
21 2/2/16 between Jeremy Patterson, Christa Jarvey, Pennie
22 Davis and Amy Gish at MSP. And then it's my signature and
23 the date.
24 Q Okay, right on the 2nd page to the left.
25 A That's where it's located.

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1 Q So, you have seen it before, you reviewed it, you talked Mr.
2 Patterson and you probably recollect it now?
3 A We stated on here that there was a meeting, Pennie stated
4 she disagreed with that they were not -- when he says that
5 he completed his investigation, the investigation did not
6 include a written statement from Pennie Davis.
7 MR. MULLINS: Okay, I move for admission of
8 Defendant's 11 your Honor.
9 (At 2:35:50 p.m. Defendant's Exhibit 11
10 offered)
11 MS. BONANNI: No objection.
12 THE COURT: So admitted by way of stipulation
13 of the parties.
14 (At 2:35:53 p.m. Defendant's Exhibit 11
15 admitted)
16 BY MR. MULLINS:
17 Q You've previously received a minimally effective evaluation,
18 have you not?
19 A Yes.
20 Q That was given was given by Dan Evans, a former
21 administrator at the school district in 20014?
22 A No.
23 Q Okay, go ahead.
24 A Dan Evans was a superintendent.
25 Q Okay, and he left, but at that time you had received a

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1 minimally effective evaluation?
2 A The --
3 Q Just prior to that.
4 A -- I think it was a transition when Dan was retiring and
5 then Mr. Beal was coming on.
6 Q Exactly, that's what I'm talking about.
7 A Yeah.
8 Q And so, he came, if he indicated that's when he came that
9 would be about right?
10 A Yes.
11 Q Okay, and you -- so, Mr. Evans, who was the superintendent
12 at that time, has left and you went to Mr. Beals and asked
13 him to change your evaluation upward, didn't you?
14 A I asked for an appeal, because the original was ineffective
15 and there were no observations, nothing was done that year
16 and there was not evidence to give me any rating of any
17 kind. They gave me ineffective and I do have that with me
18 and after we had a meeting it was changed to minimally
19 effective, but they did not rate me on the literacy coach
20 position which we agreed that they would rate me on.
21 Q And if he indicates that that's not the event that you were
22 talking about, but that he couldn't change your minimally
23 effective -- that the minimally effective that that could
24 not be raised, because it would be unethical for him to do
25 it, because he wasn't there when Mr. Evans was there, so

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1 that was between you and Mr. Evans, isn't that true?
2 A It would be unethical for him to raise it, because he was
3 not there? It was raised from ineffective to minimally
4 effective.
5 MR. MULLINS: Thank you, your Honor, I have
6 nothing further.
7 THE COURT: Just a few points of redirect?
8 REDIRECT EXAMINATION
9 BY MS. BONANNI:
10 Q Yes. Throughout your career with the district that
11 minimally effective -- never had that again, you?
12 A Correct, I've never had it since then --
13 Q Always --
14 A -- or before then.
15 Q -- or before then. There was an issue with that particular
16 administrator?
17 A There certainly was. I raised a red flag and --
18 Q You made some reports about some financial irregularities?
19 A Um.
20 Q Briefly describe that.
21 A We had a principal who was new to the district, new to the
22 community, so we didn't really know much about her and my
23 office when I was a literacy coach was located not too far
24 from her office, so we had opportunity to work together and
25 talk to one another quite a bit and I, just in conversation

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1 I had asked her about a life skills class that she ended up
2 cutting and I said, that was our most popular class, why did
3 we end up cutting that? And she said the groceries were
4 fifty thousand dollars a year and I'm not going to spend
5 fifty thousand dollars a year on groceries. And I said,
6 well we -- we've been spending money on groceries for that
7 class for decades, what's the difference now? And ever
8 since that conversation life was not easy.
9 Q Now, did you report your concerns about the financial
10 irregularities to someone?
11 A I reported my concern about that conversation, yes, to one
12 of our district administrators and some other red flags that
13 I had seen --
14 Q Okay.
15 A -- and I was encouraged to be friends with her.
16 Q Now, this book throwing situation, Pennie was not found
17 guilty of corporal punishment, was she?
18 A She was not.
19 Q She was not criminally prosecuted?
20 A She was not.
21 Q And, in fact, it's just a reprimand, but it remained in her
22 file?
23 A Correct.
24 Q And what you objected to was the fact that no one bothered
25 to take her version of events, fair to say?

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1 A Correct.
2 Q And --
3 A We had even asked them to go down to the classroom so that
4 we could show them where she was standing, where the student
5 was sitting and how things happened, but they wouldn't --
6 Q The administration was not receptive to that?
7 A Correct.
8 Q And then what about the trainer? The trainer had gone to
9 look at this -- look at the allegations and had some
10 reaction and response that was provided to the
11 administration about whether the book could have actually
12 been thrown in the manner in which it was alleged? Greg
13 Moore?
14 A Oh, the mentor?
15 Q The mentor, yes.
16 A He did, he did go down, yes.
17 Q Again, administration not receptive to that?
18 A Correct.
19 Q Now, there was a -- administration at Parkside, would you
20 describe them as responsive to Pennie's requests?
21 A Just in general response?
22 Q Yes.
23 A No.
24 Q Now, there was one incident where a child -- where one of
25 the kids broke student code by threatening to kill Pennie.

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1 Pennie has testified that she didn't take it seriously, but
2 administration didn't follow through with any kind of
3 violation. Were you involved in a grievance on that?
4 A Yes.
5 Q Because, it's important to document violations of student
6 code, correct?
7 A Absolutely.
8 Q And as a teacher, if Pennie observes students doing things
9 that were violations it was her obligation to write up her
10 concerns in a log, correct?
11 A Correct.
12 Q And if she didn't write up concerns in a log, that could
13 actually come back to haunt the teacher in your review?
14 A Correct, I mean, you don't want to watch a student struggle
15 for years, you know, the red flags and never document that
16 there were all these red flags that were missed.
17 Q Now, Mr. -- we gave you -- you sent us an e-mail with some -
18 - the old e-mails between you and Mr. Patterson and we
19 shared that with opposing counsel and we've got it here in
20 front of you. I just to make very clear your comment to my
21 associate, Channing Robinson-Holmes was there was never a
22 request for data. So, that communication is to Ms. Holmes,
23 correct?
24 A Correct.
25 Q Not to Mr. Patterson?

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1 A Correct.
2 Q So, at any time -- the critical time when Pennie Davis is
3 off after having had surgery, she's on a medical leave, end
4 of the year's coming, your role was to give Patterson
5 whatever he wanted?
6 A Correct.
7 Q Did he tell you what he wanted?
8 A He wanted, yes, he wanted the PCC.
9 Q Did you give him what he wanted?
10 A Yes.
11 Q Did you then give him again the same information in the
12 Summer?
13 A Yes.
14 Q Leading up to this appeal meeting?
15 A Correct.
16 Q But, that appeal meeting was cancelled and then rescheduled,
17 then ultimately did not take place until March of the
18 following year, correct?
19 A Correct.
20 Q Data is handled in different ways at different schools, I
21 think you've made that clear?
22 A Yes, some administrators will put out a memo or an e-mail
23 what to expect when we meet for our evaluations whether it's
24 mid-year or final. I'm not aware of anything that was sent
25 out at Parkside, but just having been at the high school I

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1 know that the principal up there sends it out, so it's
2 pretty clear what to bring.
3 Q Okay.
4 A And what not to bring.
5 Q Now, the rubric for the evaluations, that has been in any
6 factor, that same rubric that same expectations for over 10
7 years, is that about right?
8 A For the evaluations?
9 Q Yes.
10 A No, the evaluations, they've been -- they changed several
11 years ago, but they amend and update like we talked about
12 the data being raised, so --
13 Q Okay, so considerations or little pieces might be changed
14 and updated, but in general the process has been the same?
15 A The -- I don't know that it's been for 10 years, but it's
16 been for a while, yes.
17 Q Okay, Mr. Mullins asked you about this Jackson Public School
18 bylaw for whistle blowers?
19 A Yes.
20 Q And you know, there's school board policy and there's then
21 the law?
22 A Correct.
23 Q Do you understand that teachers are protected by the law?
24 A Yes.
25 Q And you understand that teachers might also have rights

1 under the contract?
2 A Yes.
3 Q And then there might be a school board policy that might
4 come into play?
5 A Yes.
6 Q Now, Pennie Davis, the protected activity that we're talking
7 about here is the police and the PPO, do you understand
8 that?
9 A I do.
10 Q And when Pennie was assaulted does it make sense to you that
11 she would naturally go to the police?
12 A She gave administration every opportunity to do so, it
13 actually states in our contract that the police would be
14 called and that the board would advise her on what her legal
15 rights are, but that wasn't taking place. So, she has a
16 right to go to the police.
17 Q And get a PPO?
18 A Yes, and to get a PPO.
19 Q And is there anything in the school board policy that
20 addresses the rights of going to the police or PPOs or
21 anything. I mean, I guess, can the school board issue a PPO
22 to your knowledge?
23 A No.
24 Q Can the school board investigate something and then, you
25 know, refer it to prosecutor for further action?

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1 A No.
2 Q There are laws in the State of Michigan that protect
3 teachers just like every other citizen, do you understand
4 that?
5 A Yes.
6 Q Mr. Mullins talked about the PPO expiring and did you
7 understand that the PPO was in effect for a year?
8 A I didn't understand that, no.
9 Q I'm gonna represent to you that it was in effect for a year,
10 so it would have expired in October of 2016. When did that
11 transfer take effect, September of what year? That transfer
12 to the high school?
13 A So, let's see --
14 Q Was it this school year?
15 A No, it was, this school year, wait a minute, so this school
16 year, high school, last school year Parkside, school year,
17 Parkside, so -- 15-16 school year, that would be three years
18 ago. What was the question?
19 Q What's that? Oh, yes, so the assaults in October of 2015
20 and she moves -- it's okay.
21 A Well, I understand what you're saying, but she started out
22 at the high school that year and then yeah, she was moved to
23 -- it was that school year.
24 Q To Parkside.
25 A Yeah, that was that year.

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1 Q When did she move back to the high school.
2 A Was it this year? Yes.
3 Q Okay, and the PPO, if it expired in October of 2016 had been
4 long gone?
5 A Yes.
6 Q And the student had been long gone, if you know.
7 A I would assume, I don't know.
8 Q Now --
9 THE COURT: Ms. Bonanni, there was one area
10 that I told you on redirect that you could ask her to
11 complete her question. I don't know if you recall what that
12 was, you may have already covered it, but I just --
13 MS. BONANNI: I -- do you know what? Do you
14 remember?
15 MS. HOLMES: --(inaudible)--
16 MS. BONANNI: No. I don't remember.
17 THE COURT: You probably already covered it,
18 so.
19 BY MS. BONANNI:
20 Q Okay, let's pull up Exhibit 27, Channing, can you fire up
21 the -- and I just -- Mr. Mullins asked you about this
22 document, it is Pennie's letter to Barb Pauli, it's been
23 entered into evidence and he -- Mr. Mullins asked you about
24 safety concerns, but I'd like you to -- I'd like to ask you
25 on Ms. Davis was concerned about the school's liability and

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1 the school's safety, do you see that at the bottom?
2 A Yes.
3 Q And what she's asking the school is quote, "He needs to be
4 in a secure place and not to let wander around the school
5 for my safety and I would think for the school's liability
6 issue." End quote.
7 A Yes.
8 Q And it also appears in exhibit -- I'm sorry, bullet number
9 two that she's concerned about the safety of other students.
10 A Correct.
11 Q But, fair to say the issue was quickly resolved to
12 everyone's satisfaction?
13 A Yes.
14 Q Look at Exhibit 33's, Mr. Mullins asked you about the
15 meeting on the afternoon of the 15th and can you identify
16 Exhibit 30?
17 A It is a letter dated November 6th, 2015 and it's written by
18 me. The subject is meeting attended by Pennie Davis, Amy
19 Gish, Ben Pack and Jeff Beal.
20 Q So, these are your notes of November 6th, 2015 chronicling
21 what took place during the October 15 meeting?
22 A Yes.
23 MS. BONANNI: I'd like to move to admit
24 Exhibit 30 into evidence.
25 THE COURT: Any objection?

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1 MR. MULLINS: Yes, your Honor, hearsay.
2 THE COURT: Okay, what's hearsay about the
3 exhibit?
4 MR. MULLINS: I'm sorry?
5 THE COURT: Why don't you approach the bench?
6 MR. MULLINS: It attributes --
7 (Bench Conference held from 2:52:17 p.m. to
8 2:52:46 p.m.)
9 THE COURT: Overruled. Just if you can lay a
10 little bit of foundation for that with the witness?
11 BY MS. BONANNI:
12 Q Sure. Ms. Gish, these are your notes of the meeting that
13 took place between Mr. Pack, Mr. Beal, Ms. Davis and
14 yourself?
15 A Yes.
16 Q Are these complete and accurate?
17 A Yes.
18 THE COURT: Yeah.
19 MS. BONANNI: I'm gonna offer this again into
20 evidence, Exhibit 30.
21 (At 2:53:17 p.m., Plaintiff's Exhibit 30
22 offered)
23 THE COURT: With that further foundation, the
24 exhibit's now admitted subject to the exception by the
25 defense.

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1 (At 2:53:23 p.m., Plaintiff's Exhibit 30
2 admitted)
3 BY MS. BONANNI:
4 Q Ms. Gish, is your -- Mr. Mullins was asking you about this
5 concern about restrictions and light duty and is there
6 anything in this chronicle of what happened during that
7 meeting where you identify that any of these gentlemen are
8 expressing a concern about whether Pennie can perform her
9 duties in a light duty fashion or not?
10 A No.
11 Q What I see here is Mr. Pack is asking what's your beef with
12 this student twice, Mr. Pack is saying how do we know you
13 didn't go home and hit your hand with a hammer. Jeff Beal
14 states quote, "When I asked you to remove your wrap and see
15 your hand you refused." And Jeff Beal also says, "When you
16 went to work while you refused to have your hand x-rayed..."
17 Now, my question is were you aware that Pennie, before going
18 to even Work Well had talked to Mr. Pack and had told him
19 I'm not gonna get my hand x-rayed and he seemed to think
20 that was perfectly fine?
21 MR. MULLINS: Object to the form of the
22 question, your Honor, leading.
23 BY MS. BONANNI:
24 Q Did you know?
25 THE COURT: Sustained, just rephrase in a

1 non-leading manner.
2 BY MS. BONANNI:
3 Q Did you have an understanding that Pennie was cooperating
4 with providing x-rays or not?
5 A Yes, she had made the request from the doctor who took the
6 initial x-ray to have a copy of that, so she could provide
7 it.
8 Q So, at this point in time they've got the PPO and it's amped
9 up meeting, did you understand why they were obsessing so
10 much about these x-rays?
11 A No.
12 Q And Mr. Beal, I want you to explain this to the jury,
13 because I think I had forgotten about this comment. During
14 the meeting Mr. Beal says quote, "How do you know x-rays are
15 bad for you?" End quote. What was the tone of that
16 comment?
17 A Sarcastic.
18 Q You indicate quote, "The conversation was one that was full
19 of accusations of Pennie causing her injury and the incident
20 to happen as opposed to showing concern for her injury,
21 safety and well being." End quote. Is that how you felt at
22 the time?
23 A Correct.
24 Q Is that how you feel now?
25 A Yes.

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1 Q And was there a connection in your mind between what was
2 happening in this meeting and the PPO?
3 A Yes.
4 Q Was there a connection in your mind when Mr. Pack said we
5 don't go to the police here, was there a connection in your
6 mind to that comment and the PPO?
7 A Yes.
8 MR. MULLINS: Your Honor, it seems that we're
9 both leading and getting beyond the scope of cross-
10 examination, but I'll leave it to you.
11 THE COURT: Okay, overruled. She's answered
12 the question.
13 MS. BONANNI: I'm almost done. Mr. Mullins
14 talked to you about the fact that Pennie has remained
15 employed, she has remained -- she get's, you know, a pension
16 she's worked for, she's got health insurance and I want to
17 know from you, just because Pennie has remained employed,
18 have you, as her union president, observed her to have any
19 injuries? Any emotional things you've observed, your
20 observations of how Pennie before the incident and Pennie
21 after?
22 THE WITNESS: Absolutely.
23 MR. MULLINS: It goes beyond the scope of her
24 qualifications, your Honor.
25 THE COURT: Overruled, just based on

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1 observations.
2 BY MS. BONANNI:
3 Q And that's what I want you to do is share what you have
4 observed.
5 A When I worked with Pennie at the high school she was
6 somebody who's bubbly -- excuse me -- and happy -- excuse me
7 -- happy and joking, now it's like she's died inside. I
8 applaud her for being able to go through all this and just
9 continue teaching. Sorry.
10 Q That's okay --
11 THE COURT: It's okay, take a moment.
12 MS. BONANNI: I don't have anything further.
13 THE COURT: Anything further, Mr. Mullins?
14 MR. MULLINS: No, your Honor.
15 THE COURT: Ladies and gentlemen of the jury,
16 any questions for Ms. Gish? Okay, if you can -- Fan Fan can
17 bring it up to the bench. Ms. Gish, just got one easy
18 question for you. What does IST mean? When they were
19 taking a look at Plaintiff's Exhibit 29?
20 THE WITNESS: The IST room is our detention
21 room.
22 THE COURT: Okay, I'm gonna --(inaudible)--
23 THE WITNESS: Oh, yeah -- I did --
24 (inaudible)-- okay, can I read what I wrote?
25 THE COURT: Yeah, and you can tell them what

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1 it means if you can read what --
2 THE WITNESS: Okay.
3 THE COURT: -- you wrote and then what you
4 think what that means.
5 THE WITNESS: Okay, so this reflects back to
6 when he was gonna be with that teacher and the teacher went
7 off on surgery, so then they ended up putting him in the
8 detention room which, I mean, that's not really what the
9 detention room is, you know, should be used for. But, IST
10 is our -- it's like a student tutorial room.
11 THE COURT: Okay, follow up on the juror's
12 question?
13 MS. BONANNI: No, your Honor.
14 THE COURT: Mr. Mullins?
15 MR. MULLINS: No, your Honor.
16 THE COURT: All right, Ms. Gish, thank you,
17 very much for your testimony.
18 THE WITNESS: Thank you.
19 (At 3:00:24 p.m., witness excused)
20 THE COURT: All right, ladies and gentlemen,
21 we're gonna go ahead and take, what do you think, a 45
22 minute break? Got motions for -- I'm sure they're gonna
23 take it --(undecipherable)-- Plaintiff's. I guess before --
24 does the Plaintiffs rest your case?
25 MS. BONANNI: Yes, may it rest.

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1 THE COURT: All right, plaintiff rests. All
2 right, ladies and gentlemen I'm gonna have you -- plan on
3 taking your lunch about 3:45 and both the attorneys and I
4 will still be working on some other matters as you're out to
5 lunch. All right, so all rise for the jury.
6 Take 10 before we get back for arguing these
7 motions?
8 (At 3:00:50 p.m., jury excused)
9 MR. MULLINS: Yeah, and I should get people
10 over here --(inaudible)--
11 THE COURT: Yeah, I would say we're --
12 MR. MULLINS: -- I'm trying to get your
13 schedule. We're probably gonna get to 4:00, I mean, it's up
14 to you, I'm just trying to --
15 THE COURT: Sure, and I'd like to use that
16 time, that 4:00 to 5:00 time -- 4:00 to 5:00.
17 MR. MULLINS: Yeah, that's fine.
18 THE COURT: Okay, I want to take 10 and see
19 everybody back.
20 (At 3:01:47 p.m., hearing recessed)
21 (At 3:49:01 p.m., hearing resumed)
22 THE COURT: Okay, all right, we're back on
23 the record, we're -- so plaintiff has rested their case, so
24 the defense is indicating you have some motions you'd like
25 to argue?

1 MR. MILLER: Yes, Judge, being the internal
2 optimist I'll start with the motion for a directed verdict,
3 just on the off chance that --
4 THE COURT: Okay.
5 MR. MILLER: -- other motions, so.
6 THE COURT: All right, why don't you --
7 (undecipherable)-- briefly detail that if you'd like.
8 MR. MILLER: Sure. For the 1st reason is
9 plaintiff hasn't demonstrated an adverse employment action.
10 From the pretrial motions anything before November 12th
11 cannot be considered an adverse employment action, so that
12 takes out all the medical leaves, the suspension, the being
13 docked pay and we're essentially left with the reassignment.
14 Under the collective bargaining agreement as all witnesses
15 have agreed, management has exclusive right to reassign and
16 our courts have held, I mean, kind of over and over most
17 recently in *Toward v City of Warren*, 2015 case with leave to
18 appeal denied at 499 Mich 881. The court held that
19 plaintiff failed to demonstrate a genuine issue of material
20 effect concerning whether he suffered an adverse employment
21 action, because plaintiff's reassignment to the front desk
22 into the jail were not adverse employment actions, a mere
23 inconvenience or alteration of job responsibilities does not
24 compromise an adverse employment action.
25 Same with minimally effective evaluations

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1 unless it actually results in a loss in pay our courts have
2 held that that's not an adverse employment action. An
3 example would be *Cole versus Department of Corrections*, a
4 2006 case. Besides that anything else really talked about
5 is --(undecipherable)-- defendant would suggest that
6 plaintiff hasn't demonstrated an adverse employment action.
7 Second argument is defendant would suggest
8 that plaintiff has really sued the wrong parties here.
9 We've all heard that the school board is the ultimate boss,
10 they're the final decision maker for employment decisions.
11 There's procedures where the school board is supposed to
12 hear cases like this and that wasn't followed. Under
13 Michigan --
14 THE COURT: Isn't the school board part and
15 parcel of the Jackson Public Schools?
16 MR. MILLER: That's what I'm saying, the
17 school district I don't believe is really the appropriate
18 party here. Our whistle blower statute in this state is
19 unique and that any individual supervisor can be sued if
20 they've done something wrong. If plaintiff really thinks
21 that Assistant Superintendent Ben Pack retaliated against
22 her or Superintendent Jeff Beal retaliated against her they
23 were the appropriate defendants. The school district at the
24 board level hasn't done anything to plaintiff and we'd
25 suggest that the appropriate party really hasn't been sued

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1 here and that's a basis for dismissal.

2 The third basis at this point is plaintiff

3 has failed to demonstrate a causal connection. A

4 coincidence in time isn't enough to establish a retaliation

5 claim. If the school district, Jeff Beal or Assistant

6 Superintendent Ben Pack really wanted to transfer her

7 because she filed a police report that would have happened

8 immediately after they filed the police report. All kinds

9 of interventions took place, then there was an attempt to

10 modify the PPO saying I'm still afraid and she was

11 transferred. That's -- it's not enough for someone to

12 disagree with an employer's business judgment to show

13 causation. So, then the defendants would suggest that there

14 hasn't been a requisite showing for causation and would ask

15 for a verdict to be directed on defendant's behalf.

16 THE COURT: Okay, Ms. Bonanni, what's your

17 response?

18 MS. HOLMES: Actually, your Honor, I'll be

19 responding.

20 THE COURT: All right, full name for the

21 record?

22 MS. HOLMES: Channing Robinson-Holmes, so.

23 THE COURT: All right --

24 MS. HOLMES: So --

25 THE COURT: -- Channing?

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1 MS. HOLMES: Yes.
2 THE COURT: P number?
3 MS. HOLMES: It's 81698.
4 THE COURT: 698 all right. My clerk will
5 appreciate that when --(inaudible)--
6 MS. HOLMES: So, first as to the argument
7 that there's no adverse employment action has been
8 demonstrated, transfer and location is actually within the
9 language of the statute which says that we shall not
10 threaten or discriminate against an employee regarding
11 amongst other things, the location or privilege of
12 employment, because of --(undecipherable)-- activity. And I
13 think it's uncontested that plaintiff was moved from the
14 high school to Parkside and I understand that that can be
15 within the right of the contract, however, it cannot be
16 against -- it cannot be arbitrary or capricious and
17 certainly not against -- in retaliation in violation of the
18 Whistle Blower Protection Act to transfer her.
19 Secondly, there was a negative rating of
20 ineffective and then minimally ineffective following the
21 transfer and she was placed on IDP which speaks to ongoing
22 retaliation that she's suffered at Parkside and then
23 continued at the high school she's still on the IDP.
24 Further, actually the transfer in location she lost her
25 curriculum chair position which would certainly qualify as

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1 term and condition and privilege of employment within the
2 statute and she lost the stipend that was associated with
3 that. So, she's also suffered economic loss.
4 Now, secondly as to this being the improper
5 defendant, this is the first time this has been raised and
6 we filed this lawsuit how many years ago now?
7 MS. BONANNI: February of 2016.
8 MS. HOLMES: February of 2016, so I'm
9 surprised defendant found that that was an actual reason to
10 dismiss this case that they would have done that at that
11 time. Secondly, Beal and Pack were agents of JPS when they
12 made these decisions to retaliate against plaintiff and as
13 they've testified to they had the authority and control to
14 do so. So, they controlled her employment situation,
15 retaliated against her based on her protected activity.
16 And third, that there's no causal connection.
17 There's actually a one month temporal proximity between the
18 protected activity and the first adverse employment action
19 of the transfer. And under numerous cases that's considered
20 sufficient temporal proximity to make it past a motion for
21 summary disposition. So, it's certainly still sufficient
22 now. Further, intervening events between the protected
23 activity and the transfer indicate that the motive of the
24 defendant was to retaliate against the plaintiff as we've
25 demonstrated the context being statements such as what's

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1 your beef with this student, and we don't go to the police
2 here. Statements of that nature indicating that they were,
3 in fact, angry about the police report and PPO.
4 THE COURT: Okay, court's had --
5 (undecipherable)-- mindful of its responsibilities in
6 reviewing the motion for directed verdict, the court must
7 view the evidence in the light most favorable to the non-
8 moving party. And first of all, the court is satisfied that
9 there is sufficient evidence before the court that there
10 was, in fact, adverse employment action. Specifically, Ms.
11 Davis was moved from her position as department head and/or
12 curriculum chair from the high school where that had a
13 stipend associated with it. That stipend was clearly gone,
14 she was no longer the department head, moreover, seemingly
15 right on the heels of this there was also a negative rating
16 of ineffective when apparently for 28 other years she'd
17 never had that kind of rating.
18 There was even further issues raised about
19 the sufficiency of her ultimate transfer back and resources
20 and whether it was equipped -- sufficiently equipped for an
21 art room. I don't -- it wasn't raised by either side, but
22 that was some of the notes that the court also had. The
23 court is certainly satisfied that there's a causal
24 connection alleged between the adverse employment action and
25 the subsequent events that the court's outlined. Moreover,

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1 there's some testimony too that clearly, if you are rated
2 ineffective at least two years in a row that certainly that
3 could be then the causal basis to be terminated from the --
4 by way of the school board and/or also put the employee in a
5 position where they would clearly be more prominently on the
6 layoff list should that occur.
7 Moreover, the court's satisfied that the plaintiffs have
8 not, in fact, sued the improper party. I don't think they
9 would have had to file it against the school board, maybe
10 ideally they should have listed the school board. I don't
11 think they were -- they have to individually name the
12 employees involved. They clearly named the school district
13 and obviously the agents of the school district are acting
14 in the ordinary course of their employment. So, the motion
15 for directed verdict is denied. Okay, anything further?
16 MR. MILLER: There -- yeah, I guess there
17 are, there's two other motions that defendant had filed and
18 there's also a question on an appropriate jury instruction.
19 I don't know when the --
20 THE COURT: Okay, I don't know that we'll get
21 to the -- we need to get to the jury instruction yet, so I
22 do appreciate -- looks like we're very close on the jury
23 instructions. Which is the next motion you wanted to bring
24 to the court?
25 MR. MILLER: There was a -- we filed a motion

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1 asking the court to take judicial notice of the Teacher
2 Tenure Act. We've had lay witnesses testifying what they
3 believe the Teacher Tenure Act requires. We think it would
4 be appropriate for the court to instruct or even provide a
5 copy of what the Teacher Tenure Act actually says to the
6 jury as opposed to lay people testifying as to what they
7 think the law requires and it's in the province of the court
8 to instruct on the law.
9 THE COURT: Okay.
10 MR. MILLER: And we cited cases to that
11 effect.
12 MS. HOLMES: Your Honor, just because
13 plaintiff has no familiarity with the Tenure Act there's no
14 reason to place it into judicial notice. In fact, it has to
15 be relevant to the case at hand and defendant has offered
16 nothing into his motion or oral argument that indicates that
17 it is relevant just because plaintiff indicates that she
18 didn't know about it doesn't mean that it's relevant to this
19 litigation. Further, the section cited by defendant in it's
20 motion speak to demotion and termination and plaintiff has
21 alleged neither of these, so it again speaks to the
22 irrelevance of the act which would only then, if directed to
23 the jury, would confuse them. Because, they're not going to
24 understand where this comes in and why it's being presented
25 to them.

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1 And further, this court has already
2 instructed that no future speculative damages should be
3 presented to the jury and we maintained that throughout the
4 course of presenting evidence, so there's just no purpose to
5 talk about demotion or termination with regard to the act,
6 it's irrelevant.
7 MR. MILLER: May I briefly respond, Judge?
8 THE COURT: Mr. Miller, go ahead.
9 MR. MILLER: Throughout plaintiff's testimony
10 she did make all kinds of statements such as I have a target
11 on my back, they're out to get me, I live in constant fear
12 of being terminated. I mean, she's very much presenting a
13 perspective claim still, because she still does have a job,
14 she's being paid and it's at least out there the suggestion
15 that she could be gone at any time when this lawsuit's over.
16 They don't like me and I'm out of here and it's just not
17 true. It is a hard process to terminate a teacher and it's
18 relevant to this matter.
19 THE COURT: Okay, well the court's gonna go -
20 - I think taking judicial notice of the Teacher Tenure Act
21 would be appropriate, the court is also of the mind that
22 there's been testimony presented that if a teacher, in fact,
23 is given that ineffective rating at least two years in a row
24 that they can then take action to terminate the teacher
25 irrespective of the amount of her tenure. And then we even

1 had some testimony what happens, you know, if a third
2 ineffective was there, so it's certainly part of the law
3 that applies. So, I'm gonna go ahead and allow the Teacher
4 Tenure Act to be there, but the court recognizes that that's
5 only part of the governing law in this matter, all right?
6 So, anything further?
7 MR. MILLER: The last motion, Judge, was the
8 defendant's motion to strike claims for physical injuries to
9 her body. First as to the hand injury, there's been a whole
10 lot of talk about the hand injury and the throbbing and the
11 pain and I think there's some potential for confusion there,
12 whether that's a compensable injury. That's a worker's
13 compensation claim, has nothing to do with the retaliation
14 claim, but more importantly, plaintiff has offered testimony
15 that she somehow attributed symptoms of, I mean benign
16 tumors being surgically removed, rectal bleeding, and a
17 heart monitor being prescribed has somehow caused by Jackson
18 Public Schools. There's been no medical testimony to
19 support that, but more to the point it's -- in April,2016
20 defendant served interrogatories in number 15 we asked, have
21 you ever --
22 THE COURT: Let me just -- your client's not
23 trying to make some kind of connection between her -- the
24 injuries just described by counsel and what's happened to
25 her to date, correct?

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1 MS. BONANNI: No. I mean, the only -- the
2 benign tumor issue is only relevant to show that she wasn't
3 there to do the data, she couldn't even go to school, she's
4 not allowed to be in school when she's on medical leave and
5 also a benign tumor -- oh, the sick leave, like to the
6 extent they're gonna try to argue that she's got some
7 attendance issue, that's where that comes in. We're not
8 asking the jury to compensate her for the benign tumors.
9 But, they're the ones that have put this, well, you've only
10 worked so many days a year and that's why we elicited that
11 testimony. So, we're not gonna stand in front of the jury
12 at close and say compensate her for this, however, I will
13 say, the -- they've had her records for a long time. Her
14 records from the psych -- from the therapist do reference
15 that she's stressed and she's been put on a heart monitor.
16 I think that with -- she is allowed to talk about that; she
17 is allowed to say, I've had heart palpitations. I don't
18 necessarily need a doctor to connect that, because it's --
19 one, it's never gonna happen, I mean, stress is stress. She
20 feels that stress and she's been placed on a monitor and
21 they've known about it, it's in her medical reference to it
22 is in her therapeutic records.
23 MR. MILLER: Well --
24 MS. BONANNI: What about and -- go ahead.
25 MR. MILLER: Well, may I finish my argument,

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1 if I may?

2 THE COURT: Yeah, I didn't -- I didn't mean

3 to cut you off then, I just thought that we could probably

4 reach an agreement on the more serious stuff that you were

5 alleging, but go ahead.

6 MR. MILLER: I mean, I think for no other

7 reason then under, I mean, MCR 2.313, I mean, for discovery

8 reasons this all needs to be stricken. Defendant is part of

9 their discovery, I mean, I asked pretty succinct questions,

10 have you ever received medical treatment or therapy of any

11 kind or nature as a result of the injury or damage

12 complained of in your complaint, if so, when and who did it?

13 In response, four very specific doctors were listed with

14 specific dates, nothing about heart problems or heart

15 monitors, nothing about benign tumors or the non-medical

16 psychologist said the body -- stress can attack the weakest

17 point. I mean, offering testimony like that --

18 THE COURT: Yeah, well I certainly would

19 agree that there hasn't been a causal connection with those

20 things, but in terms of depression, insomnia, you know,

21 other injuries -- Ms. Boninni (sic) -- do you have -- or I

22 have to get that right.

23 MS. BONANNI: That's okay, it's Bonanni.

24 THE COURT: So, do you want to further

25 respond to that, maybe we --

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1 MS. BONANNI: Yeah --can
2 THE COURT: -- find a limiting instruction,
3 so.
4 MS. BONANNI: -- can --
5 MS. HOLMES: I would like to point out that
6 in the instructions regarding damages that the parties have
7 now stipulated to, there's nothing referencing compensating
8 her for medical ailments such as these physical ailments
9 that the defendant is now bringing up. So, I don't think
10 the jury is even going to consider it, because it's not
11 instructed in the damages, nor is it on plaintiff's verdict
12 form which, you know, lists compensation for certain harms.
13 So, it's not going to cross their mind to offer that into
14 damages.
15 MR. MILLER: I would say it's part of the
16 emotional distress damages which are in the jury
17 instructions and will likely be on the verdict form. If
18 plaintiffs are saying they're willing to waive a claim for
19 non-economic damages that's fine, but otherwise I think it's
20 appropriate to instruct the jury that the claim for tumors
21 and rectal bleeding and heart conditions are not
22 recoverable, same with, I mean, the hand injury.
23 MS. HOLMES: So, that's a whole separate --
24 that's separate from emotional damages, so you're saying
25 that she cannot recover for her rectal bleeding, that's not

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1 anywhere in the damages, they're not going to come across
2 physical ailments and so, it's a non-issue.
3 MR. MILLER: It's emotional distress for lay
4 jurors sitting there wondering what they should award for
5 damages, there's been testimony that Jackson Public Schools
6 caused benign tumors and that she has rectal bleeding,
7 because of Jackson Public Schools. Those are pretty
8 shocking allegations.
9 THE COURT: Okay, well I took that testimony
10 that that was happening and she was explaining that as the
11 context with some of this other time off. I don't -- I
12 didn't understand the testimony as offering some kind of
13 causal connection to the benign tumors and the rectal
14 bleeding. Okay, so why don't -- whether we're ruling on
15 that right now, I mean, I'm certainly prepared to do that,
16 but I think that there's other areas that are within the
17 emotional distress, the sleeplessness, the depression, other
18 normal components of emotional distress that would be
19 properly admitted. All right, so if we can reach an
20 agreement on the, you know, that a motion in limine or a
21 limiting instruction on the benign tumors and rectal
22 bleeding, I'm certainly willing to grant that. Or if you
23 want to admit there's been no causal connection to establish
24 that on behalf of the defendant's action.
25 MS. BONANNI: Yeah, I don't -- I -- and we're

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1 not offering it for that, so I don't want to give an
2 instruction that's going to make it appear that we've been
3 asking for that and now we're not permitted, because we
4 haven't offered evidence. I mean, it's just not something
5 we're gonna argue in close that I'm seeking.
6 THE COURT: Well, it did come up and --
7 MR. MILLER: And Judge, it's not our fault, I
8 mean, at the end of plaintiff's examination and now tell
9 everyone, I mean, the symptoms that you've suffered as a
10 result of this and very tearfully, rectal bleeding and heart
11 monitors --
12 MS. BONANNI: Well --
13 MR. MILLER: -- I mean, it's -- we didn't
14 suggest it and put it into evidence, plaintiff did.
15 MS. BONANNI: And the heart monitor is
16 something that if you complain and you say, I'm feeling of
17 --(undecipherable)-- you know, that you'll --
18 THE COURT: Okay, well the heart monitor and
19 heart palpitations are something I think that could be
20 embraced during emotional distress, but I'll specifically
21 let the defense instruct a limiting instruction I'll review
22 later on about specifically there's no causal connection
23 between, you know, benign tumors and rectal bleeding with
24 respect to the district's actions for the plaintiff, so.
25 MS. BONANNI: Yeah, but would it be

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1 permissible to say something along the lines of the
2 plaintiff is not seeking compensation for the rectal
3 bleeding and I mean, that's really the truth.
4 MR. MILLER: And Judge, just so my objection
5 is clear, we did ask for anything attributed to the school
6 district to list the doctors. Whoever prescribed a heart
7 monitor for this heart condition, that doctor has never been
8 disclosed and we do not have one page of medical records.
9 If we got those medical records who know what they would
10 say? People have heart monitors for all kinds of reasons,
11 it's inappropriate for plaintiff to be allowed to sand bag
12 us here and not identify doctors and produce medical
13 records.
14 THE COURT: If you want to further get some
15 clarification on the heart monitor issue you can recall the
16 plaintiff certainly in your case. But, I will grant your
17 instruction unless we agree to something further and I want
18 to move on about the benign tumors and the rectal bleeding
19 as previously outlined.
20 MS. BONANNI: Yeah, and I'm not sure, I think
21 Doctor Kilhorn that we did identify as her primary care?
22 THE COURT: Ms. Davis, you can feel free to
23 come back up here, I don't know if there's anything that you
24 might be able to point out to them, but you're the
25 plaintiff, you can stay up here.

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1 (Attorney/client conference from 4:09:38 p.m.
2 to 4:10:12 p.m.)
3 THE COURT: Ms. Holmes, anything further on
4 that?
5 MS. HOLMES: No, thank you, your Honor.
6 THE COURT: All right, well maybe between now
7 and as we get closer to the --(undecipherable)-- we can
8 reach some agreement on the more significant medical issues
9 that I've outlined that I'm not satisfied that there's a
10 causal connection. All right?
11 MR. MULLINS: The only plan is trying to make
12 this in the medical records of the doctor's that was
13 disclosed. The word heart monitor -- nobody's done a heart
14 monitor and if we'd got those records and said, oh, it was
15 stress or whatever that we might well have had a medical
16 exam or something like that, but this just --
17 (undecipherable)-- that's why we asked the question who are
18 your doctors, who have you treated with, what are the
19 issues.
20 THE COURT: Okay, so you're maintaining that
21 the heart issues then should be --
22 MR. MULLINS: Yes, and it's not --
23 THE COURT: -- okay.
24 MR. MULLINS: -- you know, you know, we only
25 got just the psychological records and then one small clinic

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1 records --

2 THE COURT: All right --

3 MR. MULLINS: -- and there's nothing in there

4 about it --

5 THE COURT: -- well the court will expand it

6 then to heart issues, benign tumors and rectal bleeding, all

7 right?

8 MR. MILLER: Thank you, Judge.

9 THE COURT: And those -- I don't really think

10 it had been the plaintiff --

11 MS. BONANNI: Oh, it was part of her FMLA

12 leave in December of 2015. That's -- she went on a stress

13 leave and part of it was that she was on a heart monitor,

14 so.

15 THE COURT: Okay, well and again if you

16 really want to fully develop that --

17 MS. BONANNI: Yeah, I really don't.

18 THE COURT: -- it was an opportunity to put

19 it in discovery --

20 MS. BONANNI: Yeah.

21 THE COURT: -- and I mean, I think there was

22 other ways that you can discuss her stress --

23 MS. BONANNI: I agree.

24 THE COURT: -- and depression and anxiety and

25 all those other things without getting into really matters

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1 that haven't been fully developed in terms of, you know, a
2 causal connection --
3 MS. BONANNI: I agree, your Honor.
4 THE COURT: -- okay?
5 MS. BONANNI: Yep.
6 THE COURT: I'm not suggesting for a moment
7 that the plaintiff didn't have some --
8 MS. BONANNI: No.
9 THE COURT: -- very real things going on
10 medically, but I'm looking at the causal connection between
11 the evidence presented and this trial. So, okay so, I'm
12 gonna let the two lawyers kind of work on that, if we can
13 reach an agreement on a limiting instruction or simply how
14 they're gonna argue it. If you can't then I'll make a final
15 ruling on that, all right?
16 MR. MILLER: All right, thank you, Judge.
17 THE COURT: All right, anything further? All
18 right, so we've got one more witness ready to start today?
19 MR. MILLER: Yeah, I have Mr. Patterson here
20 --
21 THE COURT: Okay.
22 MR. MULLINS: -- and I'm not exactly sure how
23 far you're gonna go, but I'm presuming he's gonna take us to
24 5:00, but --
25 THE COURT: All right.

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1 MR. MULLINS: -- other -- if we were gonna go
2 real late I'd have the other --
3 THE COURT: Okay.
4 MR. MULLINS: -- principal.
5 THE COURT: Well --
6 MR. MULLINS: Presumably, that'll be --
7 (undecipherable)--
8 THE COURT: Okay, so let's at least get Mr.
9 Patterson's testimony started. And do you have kind of an
10 order now, the witnesses, Mr. Mullins, that you think you're
11 gonna go with?
12 MR. MULLINS: As in here right now, there'll
13 be Mr. Patterson --
14 THE COURT: Okay, and tomorrow?
15 MR. MULLINS: -- and then there'll be Barb
16 Pauli -- Baird Pauli, the principal of the high school and
17 I'm expecting that we're done.
18 THE COURT: Okay, so probably two witnesses,
19 three witnesses?
20 MR. MULLINS: And there's a possibility that
21 very brief when I go through my checklist --
22 THE COURT: So, it looks like two or three
23 witnesses then, just so I can tell the jury, so I can give
24 them something. So --
25 MR. MULLINS: Yeah, and it will be quick, I -

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1 -

2 THE COURT: Probably two or three at this

3 point. Three?

4 MR. MULLINS: Say three and we'll do two --

5 THE COURT: Probably two, no more than three?

6 MR. MULLINS: -- yeah.

7 THE COURT: All right.

8 MR. MULLINS: Two, three at the most, yeah.

9 MS. BONANNI: That's a good trick. Say four.

10 MR. MULLINS: I'd rather not --

11 THE COURT: Because, I wonder the jury's back

12 there going, wow, one half of the case is finally done, so I

13 just gonna --

14 THE COURT: You know it's -- we're gonna --

15 we're gonna get it done.

16 MR. MILLER: (Multiple speakers).

17 THE CLERK: All rise for the jury.

18 (At 4:13:46 p.m., jury entered)

19 THE COURT: All right, thank you ladies and

20 gentlemen you may be seated. Ladies and gentlemen we're now

21 gonna begin the defense case, I do want to indicate to you

22 that they've indicated that their case is only gonna be two,

23 no more than three witnesses and they anticipate we're

24 probably gonna finish up by tomorrow, correct?

25 MR. MULLINS: That's -- I more than

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1 anticipate that, yes.
2 THE COURT: All right, so with that we're now
3 gonna begin the testimony of Mr. Patterson.
4 THE COURT: Raise your right hand. Do you
5 solemnly swear or affirm that the testimony you are about to
6 give the court will be the truth, the whole truth and
7 nothing but the truth, so help you God?
8 THE WITNESS: I do.
9 JEREMY PATTERSON
10 (At 4:14:50 p.m., witness sworn, testified as follows:)
11 THE COURT: All right, will you have a seat
12 right there and when you get comfortable would you state
13 your full name and spell your last name for the record?
14 THE WITNESS: My name is Jeremy Michael
15 Patterson, last name spelled P-A-T-T-E-R-S-O-N.
16 THE COURT: Okay, thank you, Mr. Patterson.
17 THE WITNESS: You're welcome.
18 THE COURT: Go ahead.
19 MR. MULLINS: Thank you, your Honor.
20 DIRECT EXAMINATION
21 BY MR. MULLINS:
22 Q As I understand it, Mr. Patterson, you're employed with the
23 Jackson Public Schools, is that right?
24 A That's correct.
25 Q And in what capacity are you employed?

1 A I'm the principal for instruction at Middle School at
2 Parkside.
3 Q Okay, that's Parkside -- you did say that, Parkside Middle
4 School?
5 A Mm-hmm.
6 Q Tell me a little bit about your educational background,
7 please. Outline your -- where you're from and your --
8 A I'm a Jackson Highschool graduate, class of 1993. I left
9 Jackson Highschool and went to Spring Arbor University and
10 graduated from Spring Arbor University and then I pursued a
11 masters degree and completed that degree at Michigan State
12 University.
13 Q And give me a description somewhat of Parkside Middle School
14 what are some of the highlights of the programs you have
15 there and what you do there.
16 A Absolutely, so we service grades six, seven and eight at
17 Middle School at Parkside. We have nearly a thousand
18 students and there's also a alternative program called
19 Fourth Street Learning Center on a campus that has less than
20 a hundred students. We have a lot of outstanding programs,
21 so I'd say one highlight about Jackson Public Schools is
22 being a large school system we have an opportunity to offer
23 a variety of programs during the day, we offer seven
24 periods, so all students have seven classes that they
25 attend. And we have a plethora of after school activities

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1 such as athletics, band and clubs that are kind of at the
2 will of student interest. So, there's a lot to do, a lot to
3 keep a thousand students busy with. And we have an
4 outstanding staff, we have nearly a hundred staff that
5 service the students, about 60 teachers and three
6 administrators, we try to work within a grade system, so
7 this year I'm the 6th grade principal although I'm the
8 building principal I try to really get to know the 6th grade
9 students and the assistant principal is kind of in charge of
10 the 7th grade and then there's also an associate principal
11 in charge of the 8th grade and that's kind of how, we're not
12 in teams of teachers, but 6th grade teachers, 7th grade
13 teachers, 8th grade teachers, some teach in multiple grade
14 levels, but some just specifically to that grade level.
15 Q And I understand you previously worked with and know Pennie
16 Davis?
17 A Yes. I've been with Jackson Public Schools since, I think,
18 2000 and my -- at one point in time I was a teacher at
19 Jackson High School for five years and I was a principal --
20 assistant principal at Jackson High School for five years as
21 well. And during that time I did observe Pennie's classroom
22 multiple times.
23 Q Okay, and it's been put in the record you've evaluated her
24 before when she was at the high school?
25 A Correct.

1 Q In her lawsuit against the school district she's described
2 Parkside Middle School in comparison to the high school
3 where she worked as a grossly inferior work place. Would
4 you agree with that characterization?
5 A I would strongly disagree. The majority of students that
6 Jackson High receives are from Middle School at Parkside.
7 Again I think we have fantastic teachers, I think we have an
8 outstanding curriculum, I think there's a plethora of
9 activities for kids to do during the day to help them feel
10 connected to our building. We have a strong parent program
11 called PAVE, which is -- stands for Parents and Adult
12 Volunteers for Education that everyone's welcome to be a
13 part of the system to help our kids to achieve success and
14 prepared towards graduating from Jackson High School. I
15 love it there.
16 Q I want to show you a document that's previously been marked
17 as Defendant's Exhibit 11 which is a memorandum to Ms. Davis
18 from yourself dated February the 2nd, 2016 and ask if you're
19 familiar with that?
20 A Yes, I am.
21 Q Okay, and it indicates that she's being reprimanded for
22 inappropriate classroom behavior, is that right?
23 A That is correct.
24 Q And could you tell me what that, in essence, summarize what
25 the situation is and how you came to issue that letter of

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1 reprimand to Ms. Davis?
2 A Yes, so to summarize, a student complained that she was
3 struck by a book thrown by Ms. Davis and so, we -- we
4 meaning the other adults listed here interviewed several
5 students that were at the classroom, because I not present
6 at the classroom. We did also interview Ms. Davis and
7 received a statement from her. We met with the folks
8 identified here, myself, the assistant principal; building
9 representation and Ms. Davis before the day was out and
10 there was a preponderance of evidence that she did strike a
11 student with a book after being upset. Sounds like the
12 classroom students were not listening, she had tried
13 multiple times, got upset and I don't think, well you know,
14 based on the evidence that was shared there were multiple
15 people who observed the student being hit by a book thrown
16 by Ms. Davis.
17 Q Okay, and did you observe any indication of the student
18 being hit by a book?
19 A I wasn't physically there, but the student did have a mark
20 when she came down to my office to make the complaint.
21 There is a written statement in her from that student
22 stating that as well.
23 Q Okay, and the statements here that -- had obtained from the
24 students, were they consistent?
25 A Yeah, they were consistent, I mean, it depends, I guess,

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1 where you were in the classroom or I didn't have all the
2 students together, so because it was the end of the day and
3 I thought it was important enough to have that. You had
4 multiple people doing multiple investigations, so I was
5 assisted on this investigation. So, the kids weren't all
6 testifying or writing things down simultaneously, but it was
7 pretty consistent that the teacher was upset, because the
8 kids weren't doing as they were asked to do and the end
9 result was that a student got hit with a book.
10 Q Okay, and on the 2nd page there it indicates all the
11 different people that you -- it says cc, so I assume that
12 means the letter was copied to all those people, among them
13 being Amy Gish, who's the Jackson Educational Association
14 president, is that right?
15 A That's correct.
16 Q And apparently, she -- underneath there in her hand writing,
17 apparently you had a meeting on February 22nd of 2016
18 amongst a number of the people listed there including Ms.
19 Davis and Ms. Gish, is that right?
20 A That's correct.
21 Q Okay, and why is the subject matter dynamic a matter of
22 concern to you?
23 A Oh, you know, it's all about having a good experience in the
24 classroom with kids and when kids aren't having a good
25 experience in the classroom, they look -- our parents and

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1 our students look at our teachers as professionals and that
2 they'll behave in a professional manner. Obviously, it's
3 supposed to be an art class, so I'm sure there was a lesson
4 that was planned and prepared for the day and it's the
5 teacher's responsibility to execute that plan. You know,
6 sometimes students are talking or students are moving around
7 in the art classroom that can present some challenges, but
8 we always talk about multiple intervention strategies to
9 help students find success, because again it's an art
10 classroom and that's our expectation is that students are
11 learning art and safety is a top priority and again, the
12 teachers are responsible providing that safe and orderly
13 environment in the classroom and there are moments that are
14 difficult in the classroom, but as professionals we expect
15 our staff to be able to handle them and certainly not lash
16 out in anger against students.
17 Q In that letter you also go on to indicate that you've had
18 previous conversations or there have been previous
19 conversations between Ms. Davis and Mr. Weatherwax regarding
20 actions of inappropriate classroom behavior on her part.
21 What -- who's Mr. Weatherwax?
22 A Mr. Weatherwax was the associate principal at Middle School
23 at Parkside at the time of the incident and you know, based
24 on what students, again, having the grade offices they may
25 report to Mr. Weatherwax's office if it was one of his

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1 students and a complaint was sent to Mr. Weatherwax's office
2 that Ms. Davis was yelling at students and getting in their
3 face. And so, what we do as administrators is coach our
4 staff on how could we handle this situation better. We
5 talked to the teacher to make sure they're aware of the
6 complaint and that's exactly what happened here, there was
7 communication sent back to Ms. Davis about building
8 relationships, about remaining calm with the students and
9 there was no discipline at the time, so I just took it as a
10 coaching opportunity as an administrator to a teacher, this
11 is how we can provide a better experience and you know,
12 building relationships with students is priority number one,
13 to be able to get our students to do the things that we want
14 them to do they need to know that they can trust us and --
15 (undecipherable)-- us and understand our expectations in the
16 classroom.
17 Q Okay, let me show you Defendant's Exhibit 18, it's a
18 memorandum from Mr. Weatherwax of January 8, 2016 and ask if
19 you recognize that?
20 A I do, I was copied on this and you know, sometimes we like
21 to put things in writing, so there's -- things aren't
22 misconstrued or taken some other way. So, again this is
23 just a follow up, looks like Mr. Weatherwax first said, you
24 know, welcome back to the building and how valuable it is to
25 have the teacher instead of, you know, substitute teachers,

1 so kind of starting with the positive. Recapping the
2 discussion, so there was a private conversation, but just
3 following up about what the student said. The student said
4 you got in her face and then the administrator goes on to
5 identify alternatives. We talk about proximity in the
6 classroom, sometimes teachers use proximity to get things to
7 happen; students to sit down in their seats, students to
8 stay on task whatever that may be, but understanding those
9 personal boundaries as well. And to be certain of
10 expectations, there was just a follow up communication and
11 it's not atypical that multiple administrators have that
12 communication so we're all on the same page.
13 Q Now, she received this letter of reprimand of February 2nd,
14 2016, Exhibit 11. Other than receiving a letter of
15 reprimand was there any punishment, docking of pay,
16 suspension, any sanction whatsoever other than the fact that
17 she received the letter?
18 A No, she didn't return to the classroom at that time, so a
19 substitute teacher finished the day, but that didn't impact
20 her pay or ability to teach the next class period at any
21 time.
22 MR. MULLINS: Okay, your Honor, the
23 Defendant's Exhibit 11 has already been admitted, I'd move
24 for Defendant's Exhibit 18 for admission.
25 (At 4:27:46 p.m., Defendant's Exhibit 18 was

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1 offered)
2 THE COURT: Any objection to the admission of
3 18?
4 MS. BONANNI: No, no objection.
5 THE COURT: So admitted by way of stipulation
6 of the parties.
7 (At 4:28:00 p.m., Defendant's Exhibit 18 was
8 admitted)
9 MR. MULLINS: Okay, and I ask to publish
10 Defendant's Exhibit 11 to the jury.
11 THE COURT: You may.
12 BY MR. MULLINS:
13 Q I would like to then move on and show you a document marked
14 as Defendant's Exhibit 19. And this is a letter directed to
15 both you and Ms. Jarvey.
16 MS. BONANNI: Your Honor, I object to the
17 extent the document contains hearsay.
18 THE COURT: Okay, why doesn't counsel
19 approach the bench?
20 (Bench Conference held from 4:29:01 p.m. to
21 4:30:03 p.m.)
22 THE COURT: Court's had an opportunity, the
23 court's gonna find that it was an exhibit, so it's
24 admissible for the non-hearsay purpose of its affect upon
25 the listener or the reviewer. Go ahead.

1 MR. MULLINS: Okay, and I -- technically I
2 don't think I moved for it, so I guess you're granting my --
3 THE COURT: I am. I am granting
4 admissibility.
5 MR. MULLINS: Okay, and I'd ask to publish
6 that to the jury also.
7 THE COURT: You may.
8 BY MR. MULLINS:
9 Q Now, this is a letter from a parent as I understand it?
10 A That's correct.
11 Q And again, could you, as best you can why is this of
12 significance to you? The event, why don't you describe what
13 occurred and let's go from there.
14 A So, again I'm not in the classroom every day, but our
15 students are and so, the expectation is that we're having
16 art class and there's gonna be a learning objective and if
17 there's complaints sometimes the students will complain to
18 the administrators, sometimes they'll complain to their
19 parents and so, it's important that -- it's important here,
20 because the student is saying we're on the phone and we
21 utilize our parents daily on helping to set the expectations
22 that there's consistency between home, what you expect out
23 of your child at home and what you expect out of your child
24 here at school. And this communication here says, parent is
25 trying to call, figure out what's going on, daughter's

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1 upset. Shaking, sounds real upset, mom knows her daughter
2 pretty well and it looks like Ms. Davis was on the telephone
3 and sounds like it wasn't going well. And so, the whole
4 goal would be to set the expectation, this is what I need
5 your child to do in the classroom, but it doesn't sound like
6 that happened and it became very short and brief and
7 basically hung up on the parent. The parent was upset about
8 that and then complained to the administration.
9 Q And the -- I don't think I asked you, who is Ms. Jarvey, it
10 was directed to both you and Ms. Jarvey?
11 A Yes, Ms. Jarvey is one of the assistant principals and so,
12 again when we're sticking with the grade principals here
13 this was a 6th grade student complaint. I believe I either
14 had 7th or 8th grade students at that time, so that's why --
15 has a good relationship with Ms. Jarvey. A parent called
16 the office after not having a good experience, this was just
17 something that happened in Ms. Davis' classroom through the
18 parent's perspective and the student's perspective on that
19 day.
20 Q A complaint of this nature would it be typical of the kind
21 of communication you would get or have with a parent?
22 A I'd say it would be a significant complaint. Sometimes
23 we're able to have conversations and that's where it starts
24 and ends. You call me, I explain to you what happened in
25 the class today, okay, I'll tell my child to be on time next

1 time, easy to resolve, you know, most of the time. So, I
2 would say to have this letter of concern with this extent,
3 it's certainly not the expectation of that, although the
4 teachers have to teach the classroom something to the effect
5 of when is the best time to have the conversation. I think
6 the parent was really upset from what they're sharing here,
7 because she was on board with solving the problem, but
8 didn't feel like that was shared back with her. And so,
9 obviously, the parent brings up other conversations like
10 what's going on in this classroom, my daughter is coming
11 home saying this and saying this and so, I guess she made a
12 connection to this isn't the level of expectation that I
13 have of teachers here at Middle School at Parkside or any
14 professional for that matter of fact. So, she kind of went
15 into describe what she does for a career pathway, and
16 believes that that was unacceptable and that's why she was
17 making the complaint in writing.
18 Q And we've talked about teacher evaluations and that's
19 something is -- as a principal that you do?
20 A Oh, absolutely.
21 Q Okay, could you briefly, for the jury that doesn't
22 necessarily understand the process, tell how -- number one,
23 are all teachers evaluated?
24 A All teachers are evaluated unless they were exempt. Some
25 teachers could be exempt from three years of highly

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1 effective evaluation consecutively, they could be exempt for
2 one year.
3 Q Okay, and the evaluation is done at the end of the year?
4 A The evaluation is done all year, so there's an agreed upon
5 system where we begin the school year with a preconference,
6 so that lists out all the expectations up front, so there's
7 no surprises at the end of the year. So, you'd begin with a
8 preconference, we'd talk about what data we'll be
9 collecting, we talk about areas of focus. So, I always have
10 a teacher choose an area of focus, what do you want to get
11 better on this year. As an administrator I choose an area
12 and say, hey, this is a building goal of ours or this is a
13 area I think I want to help you improve upon. There's a
14 mid-year inquiry, so half-way through the year we'll meet
15 and we'll talk about how are things are going. There are
16 multiple classroom observations throughout the year using a
17 tool called Pivot and so we'll provide feedback and we do
18 kind of scripting, so we just write out the things that we
19 see and the things that we hear. And we do coding which
20 says, okay well, this falls under student achievement, this
21 falls under classroom environment in different areas. So,
22 the evaluation process is continuous, it's pretty elaborate
23 that it's over the course of the year, so it's not just we
24 meet once at the end of the year and talk about how things
25 were going. But, we're always collecting evidence

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1 throughout the school year.
2 Q Okay, and is it then finalized at the end of the year in a
3 meeting that the evaluating administrator will have with the
4 teacher?
5 A Yes, we schedule a post conference or a post inquiry and so,
6 that's when you, you know, pretty much sum up your year.
7 I've given feedback throughout the school year, the teachers
8 are bringing their data and sharing how things are going.
9 And then ultimately, I have to submit this evidence human
10 resources.
11 Q Okay, you -- we talked about this Exhibit 11 and 18,
12 difficulties in a relationship, does that factor into or
13 weigh into your evaluation?
14 A It does.
15 Q Okay, and you had used the term data. Is -- what do you
16 mean by data?
17 A So, there's two different forms of data that we collect,
18 there are local assessments, so those would be your art
19 assessments. Art projects, anything that the teacher is
20 grading in the classroom is deemed as important. Could be
21 grades entered into PowerSchool, so that nuts and bolts of
22 what the teacher is teaching and how are the students doing.
23 So, our benchmark is here better, we don't want the kids to
24 earn Ds, we don't want the kids to earn Es -- not just on
25 one particular assignment, but over the course of the

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1 trimester. So, in art class there are no year-long art
2 classes, there's only a 12 week trimester then they get a
3 report card, then they'll move on to another area within the
4 school. So, Ms. Davis would only have the students for 12
5 weeks, they would collect that data, how did we do and then
6 we present that as evidence at the end of the year.
7 Another data piece that we collect is an
8 assessment called NWEA and we assess students in reading and
9 math and science throughout all of Parkside, all teachers
10 are required for local assessments and the NWA data. We had
11 a preconference to talk about it, because it's difficult
12 when you don't see those students all year long, so we came
13 up with an agreement that since it's the collective
14 responsibility of all teachers at Parkside to help improve
15 reading scores, it's one of our school wide initiatives that
16 Ms. Davis would be evaluating her students on the reading
17 scores. And not just the students on her case load, but we
18 picked a particular grade level that she had input on in
19 coming to that decision with myself.
20 Q And the data, is that a significant portion or a
21 significantly weighted portion of the evaluation?
22 A It's 25 percent and so, the local assessment data is 10
23 percent and the NWA data is 15 percent.
24 Q And was there any difficulty in getting the data from Ms.
25 Davis in June of 2016 at the end of the 15-16 school year?

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1 A Yes, she was not available to have a post conference, we
2 sent numerous communications to our staff and she was out
3 ill at that point in time and my responsibility was to
4 collect certain things and I did and then there's certain
5 things that I did not have from Ms. Davis.
6 Q Okay, and could she have subsequently, if we know that her
7 leave had ended in June and July, August, September could
8 she have gotten that data to you at a later date?
9 A Absolutely.
10 Q Okay.
11 A So, it would be no different with a student if the student
12 was ill at the end of the year they could come back and take
13 the assessment when they're better. We can put in a grade
14 change and the same thing is true for Ms. Davis.
15 Q Okay, and the rating that she received from you was that of
16 an ineffective rating, is that right?
17 A That's correct.
18 Q Okay, and was that, among other things, based upon the
19 inter-student/parent difficulties and the lack of data?
20 A I'd say there was a preponderance of evidence that suggest
21 it was an unsatisfactory school year including the absence
22 of a meeting.
23 Q Okay, with the -- and the actually getting together and
24 meeting with the teacher, in addition to collecting the data
25 --

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1 A Mm-hmm.
2 Q -- and reviewing how the, you know, what's the significance
3 of actually having a meeting with the evaluating
4 administrator?
5 A I feel like the evaluation as a collaborative process. I
6 don't claim to know everything that happens every day, so I
7 ask the teachers to share with me. I came into your
8 classroom three to six times, but what did I miss outside of
9 that? So, there's a lot of different systems that we have
10 in place with unit assessment, lesson plans, parent
11 communication. The teachers are required to collect that
12 evidence and submit that evidence at the end of the year.
13 So, that didn't happen on Ms. Davis' part. I came into the
14 classroom, did some observations, did some coding and so, I
15 was able to look at some of those things. Again, we'd have
16 several meetings throughout the school year, so I felt like
17 I was in pretty good tune to what's going on in a classroom
18 and just wasn't the ending anybody was probably looking for,
19 because obviously, if that was the case then there's a lot
20 of people that probably weren't having a great experience,
21 so.
22 Q If a teacher does not submit the data to the evaluator as in
23 this case to you and doesn't have a meeting with you is it
24 difficult to obtain any kind of a positive or an effective
25 rating?

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1 A Extremely difficult and again, I don't think anybody knows
2 the data like Ms. Davis does, so if I go searching for
3 things -- I don't know everything that goes into her part
4 and I wouldn't have time to collect all the data from all
5 the teachers at Middle School at Parkside, so there's things
6 that we talk about all year. Teachers need to collect this
7 information, administrators need to do these parts and when
8 we come together at the end of the year the expectations are
9 very clear on what's expected. And no communication at all
10 is just not okay.
11 Q Now, there's been -- well, between she appealed the
12 evaluation, is that right, or the results of the evaluation?
13 A That's correct. She did not appeal that directly to myself,
14 she appealed that to central office.
15 Q Okay, could she have appealed it to you and scheduled these
16 things --
17 A Absolutely --
18 Q -- ahead and been completed?
19 A -- absolutely and I, you know, think that that should have
20 happened, we could have probably handled this right at
21 Middle School at Parkside without having to involve central
22 office, but that didn't happen.
23 Q Okay, and the going to central office, that ones' reviewed
24 by the superintendent himself, is that right?
25 A That's correct.

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1 Q And I understand it was scheduled and adjourned a number of
2 different times at the request of the plaintiff?
3 A That's correct.
4 Q And there's been some testimony that it occurred finally on
5 March the 7th of 2018, do you recall that?
6 A I do.
7 Q Okay, and prior to that you were present there when the
8 review occurred with the superintendent?
9 A I was.
10 Q Okay, and prior to that date where the review itself
11 occurred, had she either met with you on her review process
12 or submitted the data to you for reevaluation?
13 A No.
14 Q Okay, and did she then -- what do you recall happening at
15 the review?
16 A The data was presented and was taken into consideration and
17 the overall evaluation was subsequently improved.
18 Q When Ms. Davis transferred to Parkside Middle School did
19 anybody indicate to you in any way that you should treat her
20 differently or unfairly or be mean to her or any kind of
21 indication like that from -- particularly anybody in
22 administration?
23 A Not at all. My first communication -- I think she reached
24 out to me first and said, hey, Mr. Patterson, I'm coming
25 over to Parkside and have questions. And so, I sent a

1 welcoming e-mail explaining, you know, all the things that
2 she had asked, how to gain access to the building, the
3 classroom, she was looking for her handbook and different
4 things, so I was leading her in these areas, I was
5 explaining a little bit about Parkside and the support staff
6 that we have in place and I had an experience with her that
7 was a pleasant experience from the high school. So, I
8 didn't expect anything less than a good experience.
9 Q Okay, and in any way did you discriminate against her or
10 retaliate against her or in your evaluation of her treat her
11 unfairly or differently than any other teacher as a result
12 of any of her activities?
13 A No, and I would say, you know, a lot of efforts were made, a
14 lot of coaching efforts, a lot of supports were put in place
15 to help her to be successful.
16 Q And are you aware of the school board -- the school board is
17 the ultimate boss of the school district if you will, or --
18 A Yes.
19 Q And they pass rules or policies, is that right?
20 A That's correct.
21 Q Does the school board have a whistle blower protection
22 policy?
23 A Yes.
24 Q Then that would prohibit anyone, particularly an
25 administrator from retaliating against her in any way,

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1 discriminating against someone who'd filed a -- any type of
2 whistle blower complaint?
3 A Correct.
4 Q And if somebody thought that they had been discriminated
5 against is that something that can be brought to the school
6 board at a school board meeting?
7 A Absolutely --
8 Q Okay.
9 A -- people do it all the time.
10 Q Okay, things could be put on the agenda?
11 A And community members can just show up and speak with a
12 piece of paper submitted requesting to speak.
13 Q There's a public comment section where anybody can show up
14 on I don't like the way the football coach is coaching right
15 on down to I don't like the way I'm being treated as an
16 employee, is that right?
17 A We don't like playing time, but yes.
18 Q Playing time. It does happen though doesn't it?
19 A It does happen. Sorry, I'm a former coach.
20 Q You know any of the coaches at Parkside?
21 A I know all the coaches at Parkside.
22 Q Is it --
23 THE COURT: What did you coach?
24 THE WITNESS: I coached girl's basketball,
25 boy's basketball, and boy's baseball.

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1 THE COURT: Okay, thanks.
2 THE WITNESS: You're welcome.
3 BY MR. MULLINS:
4 Q How's the school's relationship with the police department?
5 A The school's relationship is great --
6 Q To the extent you have one, assuming that you know who they
7 are.
8 A -- with the Jackson Police Department, you know, providing a
9 safe and secure environment isn't just a reactive thing, but
10 a proactive thing, so Jackson Police Department has been
11 highly visible in our schools whether it's a drive by at
12 dismissal time, popping in during lunch time, visiting
13 classrooms, doing presentations, connecting with
14 administrators, sharing contact information. There's e-
15 mails that are sent out in the beginning of the school year;
16 here's the people to contact, so we have a great
17 relationship with the Jackson Police Department.
18 Q Okay, and is there any reason that as administrator you or
19 anyone you're aware of as an administrator would be upset
20 that somebody contacted the Jackson Police Department
21 relative to any suspected inappropriate or improper or
22 illegal or -- activity?
23 A Absolutely not, I think that's what they're there for is to
24 investigate criminal activity.
25 Q At the end, as I understand it, of the 2017 school year, Ms.

1 Davis was transferred back to the high school from whence
2 she had come, is that right?
3 A Yes.
4 Q And is there any reason why she would have any difficulty
5 and -- well, let me back up. Is it unusual for teachers to
6 transfer or move about from building to building within the
7 district?
8 A It's no uncommon.
9 Q And is there any reason subsequent to the end of, you know,
10 June of 2017 when the -- June of 2017 when the school year
11 ended, any reason why she would have difficulty accessing
12 the building, in particular her classroom to box up
13 materials and put them together so the maintenance staff
14 could move her materials for her over to the high school?
15 A That's our practice, so I think by getting boxes, helping to
16 move heavy items so you're not doing that by yourself. I
17 have a key to the building, typically there throughout the
18 Summertime, so it wouldn't be atypical for me to be at
19 Parkside during the Summer months, also Enviro-Clean as they
20 are working year around. And so, easy to access and
21 expected especially if you're moving from building to
22 building.
23 Q Okay, Enviro-Clean, is that like the maintenance staff?
24 A The maintenance staff.
25 Q So, they're there and can provide access to a teacher?

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1 A A hundred percent.
2 Q And somebody could call you and arrange for access if for
3 some reason they weren't there?
4 A Call, e-mail, anything. The secretaries are there, we run
5 Summer school during the Summer months, not all the
6 classrooms, but some, but somebody's always in the building.
7 Q Thanks. I have nothing further, your Honor.
8 A You're welcome.
9 THE COURT: Cross-examination?
10 CROSS-EXAMINATION
11 BY MS. BONANNI:
12 Q Thank you, your Honor. Mr. Patterson, you understand there
13 are school board policies, there are school policies,
14 correct?
15 A Yes.
16 Q And you're not telling us today that school board policy
17 supercedes Michigan law are you?
18 A I would assume they'd be aligned.
19 Q Okay, so one could assert their rights under Michigan law
20 and one could assert their rights under school -- a school
21 policy?
22 A I would assume they would be aligned.
23 Q Okay, do you know that for a fact?
24 A That's the assumption.
25 Q Okay, do you know what the Whistle Blower Protection Act is?

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1 A I think I have the gist of it.
2 Q Okay, what is it?
3 A If you feel like you've done something to someone and you've
4 notified someone, you told on someone for doing something in
5 particular, here in this case, Ms. Davis had a complaint
6 against a student at the high school --
7 Q I'm just asking you if your understanding of the law, not
8 Ms. Davis.
9 A Okay, and I'm just explaining my context in which I
10 understand it, so I don't know how it's explained.
11 Q Okay, so you don't understand the Whistle Blower Protection
12 Act outside the context of what you understand from this
13 case?
14 A It's my only experience dealing with the Whistle Blower Act.
15 Q Okay, so you understand that a teacher has an absolute right
16 under the law to go to the police and report a --
17 A Absolutely, I do, yes.
18 Q -- a teacher -- you understand, Sir, that a teacher has an
19 absolute right to go to the police and report a violation of
20 the law or a suspected violation of the law, correct?
21 A A teacher can go to the authorities and -- yes.
22 Q And you understand that a teacher can take the appropriate
23 steps to apply for a PPO and then seek approval from a court
24 of law to obtain a PPO, you understand that?
25 A Yes.

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1 Q And you understand that it is a violation of the Michigan
2 Whistle Blower Protection Act if the teacher is retaliated
3 against for doing those things?
4 A What retaliation are you referring to?
5 Q Going to the police.
6 A Can you ask your question again, I just want to make sure --
7 Q Yes.
8 A -- I get it straight.
9 Q You understand it's a violation of the Whistle Blower
10 Protection Act for a teacher to be retaliated against for
11 going to the police or for getting a PPO?
12 THE COURT: And by PPO we mean Personal
13 Protection Order.
14 THE WITNESS: Yes.
15 THE COURT: Okay.
16 THE WITNESS: You're not saying that there
17 was retaliation, because I think that's what you're saying,
18 so that's the part I don't agree with, but yes, you can
19 obtain a PPO and you shouldn't be retaliated against, I
20 agree with that.
21 BY MS. BONANNI:
22 Q Okay, so you can't get a PPO from the school board, is that
23 fair to say?
24 A Yes.
25 Q And a PPO, you understand provides protection for a teacher?

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1 A Absolutely.
2 Q And you can't make a police report to the school board,
3 correct?
4 A Correct.
5 Q You've gotta go to the police.
6 A Correct.
7 Q Now, Mr. Mullins asked you about police coming to the school
8 and I understand that they're there, but is it typical for
9 police to come to Parkside and interview students about an
10 incident?
11 A It happens, yes.
12 Q Okay.
13 A Is it every day? Absolutely not, but it happens.
14 Q So, when it's happened, you would, of course, alert someone
15 within the administration that there's an incident that has
16 required police intervention?
17 A Can you say that one more time, please?
18 Q You are the principal at Parkside?
19 A Yes.
20 Q To the extent -- now, how many times do the police come to
21 Parkside to interview students in a year would you say?
22 A I don't know, it varies from year to year, it just --
23 Q More than 10?
24 A Yes.
25 Q More than 20?

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1 A Potentially, somewhere in that.
2 Q So, this school, this middle school has 20 or more incidents
3 which require police intervention?
4 A Or interviewing students.
5 Q Interviewing students?
6 A Mm-hmm.
7 Q Because, they're investigating an allegation?
8 A Mm-hmm.
9 Q Yes?
10 A Yes.
11 Q So, in those instances when the police have been called to
12 your school, fair to say you're gonna alert someone within
13 the administration that the police have been called and
14 they're here again?
15 A Fair.
16 Q That's your job?
17 A That's the police's responsibility, they can't just walk
18 into classrooms and interview, it's their responsibility to
19 seek us out to gain permission, because these kids are
20 supposed to be in class.
21 Q Okay.
22 A And their --
23 THE COURT: Mr. Patterson, is it also fair to
24 say that some of those, in fact, even many of those
25 investigations may involve situations where they merely want

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1 to interview a student at school?
2 THE WITNESS: Yes, and they still have to
3 have permission and so, they would never just go interview
4 students because they're the police department, they have to
5 work through the administration and the parents.
6 BY MS. BONANNI:
7 Q Of course.
8 A Yes.
9 Q And so, of course, you as well as head of the school are
10 going to let the administration know that there's a
11 situation that has required the police to come in and
12 interview, that's your job?
13 A Am I supposed to let everybody else know?
14 Q No, someone within the administration know that the police
15 have been to Parkside.
16 A From central office?
17 Q Sure.
18 A Notifying central office?
19 Q Yes.
20 A I might.
21 Q Yes. Now, when you evaluated Pennie Davis' ineffective, did
22 you downgrade her performance because she had taken time off
23 work?
24 A No.
25 Q Why?

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1 A Why?
2 Q Yes.
3 A I evaluated her based on the body of evidence that I
4 observed and that she provided for me.
5 Q Okay, so if on that year, that school year Ms. Davis worked
6 124 days, you would not have held that fact against her?
7 A No, I mean, other than maybe sub plans, because the teacher
8 has a responsibility to provide work for the kids to do and
9 I had some concerns with those plans.
10 Q So, to the extent the sub plans were somehow deficient, fair
11 to say that would be outlined in your evaluation of Ms.
12 Davis?
13 A That would be taken into consideration of my overall
14 evaluation.
15 Q And that would be highlighted?
16 A That was communicated multiple times throughout the school
17 year, yes.
18 Q Now, when Ms. Davis -- when you were gearing up to give her
19 this rating, she was on an FMLA leave, correct?
20 A Yes.
21 Q She had had surgery, correct?
22 A I have -- that's what I understand, yes.
23 Q And you remember she was off for five weeks -- actually,
24 five weeks up until the time school let out, you remember
25 that?

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1 A Mm-hmm.
2 Q Yes?
3 A Yes.
4 Q And that five weeks, you don't even know, because you're not
5 gonna take attendance for the Summer, you don't know how
6 long she was actually getting better from that surgery?
7 A I didn't have any communication, no.
8 Q Now, you do know that the union president was working with
9 Ms. Davis to provide you with the information that you
10 needed in order to accurately assess Ms. Davis' performance,
11 correct?
12 A She had made communication, yes.
13 Q She reached out to you and she asked you what you needed in
14 order to evaluate Pennie?
15 A Yes.
16 Q And isn't it fair to say she provided you with the
17 information that you needed in order to evaluate Pennie?
18 A I don't feel like anybody can provide me the information
19 that happens in the classroom on an ongoing basis other than
20 Pennie.
21 Q To the --
22 A That's how I personally feel, because again, there are
23 things that I know I don't see that happen in the classroom
24 and it really needs to be a post conference inquiry where we
25 have that dialog back and forth. And I don't feel

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1 comfortable giving someone a final evaluation based on
2 information that someone else is presenting.
3 Q So, you have the option as the principal of the school to
4 hold off on finalizing Pennie Davis' evaluation until such
5 time as she was medically permitted to interface with you in
6 the manner in which you wanted?
7 A No, Ma'am, I did not have that option.
8 Q Well, Ms. Gish did give you data that you asked for,
9 correct?
10 A No, I think she sent me professional communication and
11 collaboration.
12 Q In June Ms. Gish provided you with the data that you
13 requested of her at that time, do you remember that?
14 A No.
15 Q Okay, in the Summertime Ms. Gish reached out again and
16 provided you the data that you were requesting, do you
17 remember that?
18 A Provided me the data?
19 Q Yes.
20 A I don't. I don't recall that she provided me local
21 achievement data. I submitted the NWEA data, because of the
22 nature that Ms. Davis would not have access to that
23 information, we had talked about that. That that's
24 something that I would bring and that I did bring. But,
25 that's the only data that I submitted in that final

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1 evaluation.
2 Q Now, the appeal of that rating was delayed and fair to say,
3 Sir, you do not know the reason for the dates being moved,
4 isn't that true?
5 A Moved from when?
6 Q From Summer, Fall of 2016 into March?
7 A I was present at one meeting where everyone showed up and
8 then we didn't have a review.
9 Q And the reason for that is because there was an attorney
10 present, correct?
11 A I don't know if that's -- there was an attorney present.
12 Q Right. Now, as to this data that you provided, you provided
13 the NWE data that is stated that Ms. Davis could never
14 access, correct?
15 A She can't access the whole 6th grade, because she doesn't
16 have those -- she only has the students on her caseload at
17 that time.
18 Q So, in a best case scenario you're only missing 10 percent
19 of the data, correct?
20 A If NWEA is 15 percent, yes.
21 Q So, that's correct, what I've said?
22 A That, I did not have, I did not have the local assessment
23 data and I did not have a post-inquiry with Ms. Davis.
24 Q So, in a best case scenario you were only deficient 10
25 percent of the data, correct?

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1 A No, because again I need to have a post-inquiry with Ms.
2 Davis, so --
3 Q And that post-inquiry was impossible, because she was on a
4 medical leave?
5 A It was not impossible, it was just delayed.
6 Q There's a lot of parent complaints at Parkside, isn't that
7 true?
8 A Just random complaint? I mean --
9 Q Yes, from parents. Parents complain at Parkside, true?
10 A Yes, parents do complain at Parkside, yes.
11 Q Lots of complaints from parents?
12 A Parents complain.
13 Q And in fact, at a time, and I'm not sure what the status is
14 now, but for a time the school was considered failing,
15 correct?
16 A They were on the priority school list and --
17 Q That's --
18 A -- have made progress and off that list now.
19 Q That's the lingo, and that's good.
20 A It's great.
21 Q In priority school list, so you also get complaints from
22 students, right? At Parkside?
23 A Students complain, yes.
24 Q Okay, and sometimes students complain verbally and sometimes
25 it's in writing, correct?

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1 A That's correct.
2 Q You also get compliments, don't you?
3 A We do.
4 Q From students and parents?
5 A We do.
6 Q And Ms. Davis, that time she was with you she got
7 compliments, didn't she?
8 A She did.
9 Q Some of those were in writing and some of those were verbal,
10 yes?
11 A Yes.
12 Q Did you provide those as part of her personnel file?
13 A That's not my responsibility --
14 Q Oh --
15 A -- to provide those.
16 Q Do you know how many compliments she got during those years
17 she was at your school?
18 A I don't.
19 Q It was a lot.
20 A How many?
21 Q Did you keep them for your files?
22 A Yeah, I know of one parent meeting that went well, I mean, I
23 was at parent meetings a lot of times and when I was there
24 at the department meetings and the parent meetings things
25 tended to get better and improve.

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1 Q Now, this Exhibit 19 that Mr. Mullins showed you, this
2 letter from a parent, this was never provided to Ms. Davis.
3 This is just something that you kept, correct?
4 A No, this is something that Ms. Jarvey provided to Ms. Davis.
5 Q Do you know that for a fact that she was actually -- Ms.
6 Davis was provided this?
7 A Well, that's what she told me.
8 Q That's what Ms. Jarvey told you?
9 A Mm-hmm.
10 Q Okay, now I'm gonna tell you Ms. Davis has never seen this.
11 Is it typical to hold back on some complaints from parents?
12 A No, it's not typical at all, but it sounds like she had a
13 conversation with her on the phone, so I think she knew the
14 gist of the complaint.
15 Q It is the policy at Parkside to have a student engage in
16 self-help when they're tardy repeatedly, repeatedly by
17 having that student in the presence of the teacher call home
18 to admit what was happening to the parent directly?
19 A That's a strategy.
20 Q Yes --
21 A It's not --
22 Q -- and that's a strategy that was being employed in this
23 instance, albeit the parent wasn't too happy about it?
24 A I don't know that the parent was not happy about the kid
25 being late to class more than when you're trying to work

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1 with the teacher for a resolution it sounds like that was
2 what the parent wasn't happy with.
3 Q There've been employee harassment complaints that have been
4 filed against a school administrators at Parkside?
5 A I think one.
6 Q Okay, that one complaint, it's Exhibit 38, if you would turn
7 to the exhibit in the big book.
8 A Oh, this one?
9 Q Yes.
10 A The employee harassment complaint form?
11 Q Yes, you remember this complaint?
12 MR. MULLINS: Your Honor, we -- that's the
13 one we discussed before that's got a lot of hearsay in it,
14 hearsay from other people.
15 THE COURT: Okay, let's take a look at it
16 too.
17 MS. BONANNI: This is the one, your Honor,
18 that we've conditionally entered pending our redaction of
19 hearsay.
20 THE COURT: Okay, go ahead.
21 MS. BONANNI: And I'm just going to respond
22 by saying that now that Mr. Patterson is here that it's not
23 offered to prove the truth, but again just the affect on
24 this listener who is the person that would have received
25 this complaint.

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1 THE COURT: Okay, well with that
2 documentation now having Mr. Patterson's here, I'm gonna
3 allow it to be admitted.
4 (At 5:09:18 p.m., Plaintiff's Exhibit 38 was
5 admitted)
6 MS. BONANNI: Thank you.
7 THE COURT: Again for it's non-hearsay
8 purposes, it's affect upon the listener why the
9 administrator may have acted in the way he did. It also
10 appears to be a business record.
11 BY MS. BONANNI:
12 Q Mr. Patterson, I'm just gonna ask you a brief question.
13 These -- on page 4 of this harassment complaint it looks
14 like the teachers were requesting assistance with harassment
15 from a particular assistant principal, Mr. Weatherwax?
16 A I'm sorry, did you ask me a question?
17 Q Yes.
18 A I was just reading the document on page 4.
19 Q Did -- the teachers, these three teachers from Parkside were
20 asking for assistance with a administrator, Mr. Weatherwax
21 that they felt was being a bully and harassing.
22 A You're saying that they asked for help via this complaint
23 form?
24 Q Yes.
25 A Yes.

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1 Q Now, you also had -- you remember there was a student that
2 threatened to hurt Ms. Davis, Sir? You remember a student
3 who threatened to kill Ms. Davis and then he admitted it and
4 several students in the class, remember that? And then he
5 admitted it?
6 A I do, yes.
7 Q Okay, look at Exhibit 41, Sir. This has been admitted into
8 evidence and my question is really why did Ms. Davis have to
9 go to the formalized extent of filing a grievance in order
10 to get the Parkside school to follow the code of conduct?
11 A I did follow the code of conduct, the student had multiple
12 interventions that are in place. And now one thing that the
13 law asks us to do which wasn't a part of the law at the time
14 is to consider the seven factors and so, there is
15 administrative discretion when issuing discipline and it was
16 perceived that the student acted out of -- should say, use a
17 very poor choice of words it was consequenced appropriately
18 and in my opinion, but apparently not in the opinion of Ms.
19 Davis and so, that's why she took it to the next step.
20 Q Or the union, correct?
21 A Correct.
22 Q Mr. Patterson, your brother is on the cabinet of the
23 superintendent, Mr. Beal, correct?
24 A Yes, he's the assistant superintendent.
25 Q Okay, and when Ms. Davis came to your school she

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1 transitioned after the school year had begun, correct?
2 A As did I, yes.
3 Q She transitioned to the school without having training in
4 IB, correct?
5 A As did I, yes.
6 Q And in 32 days you had a meeting with her and you told her
7 that she was a failing teacher and would be on an IDP,
8 correct?
9 A Absolutely not.
10 Q She was on a IDP and she remains on a IDP.
11 A And IDP is for support, so when there are concerns and one
12 of Ms. Davis' concerns was I've never taught at the middle
13 school before. So, I've never taught in a National
14 Baccalaureate curriculum before, so proactively before we
15 get to the end of the year evaluation we need to put all the
16 supports in place.
17 Q She did not receive IB training, correct?
18 A That is not correct.
19 Q In the beginning of her tenure at the school, she came to
20 the school and started instructing and teaching, but had not
21 received the training, correct?
22 A And that's okay.
23 Q And she was given a book, or she actually found an IB manual
24 and she utilized that, correct?
25 A Yes, we have IB coaches and that was in the first e-mail

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1 communication that I sent to her that Ms. Sayer (ph) would
2 be assisting with any support she needed relative to IB.
3 Q Other teachers at Parkside actually attend trainings. They
4 have gone out of state at times to attend trainings in this
5 International Baccalaureate Program, correct?
6 A We have to utilize the resources that are available to us,
7 though not all teachers go out of state, some do it in-
8 house, because we have two IB coordinators who do ongoing
9 coaching with our staff and we have teachers in the same
10 situation right now where they're new to us in the middle of
11 the school year and how do I get up to snuff and just the
12 support is there.
13 Q Ms. Davis was required to meet with you weekly, because she
14 was on a IDP throughout the school year, isn't that true?
15 A I think we met monthly.
16 Q Sorry.
17 A But, she had other meetings in addition to the IDP meetings,
18 because again you want to know the expectations of the
19 person who's gonna be evaluating you, so I think it was just
20 getting the communication up front from myself and then she
21 had a mentor teacher, Mr. Marsh; she had a impact coach, Mr.
22 Mason; and IB coordinators or coaches that met with them
23 regularly as well.
24 Q So, she was on an IDP?
25 A She was on an IDP.

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1 Q Okay, and in fact, you remember that she ultimately got some
2 training at the end of the school year before she went off
3 on medical leave?
4 A When she went out -- I don't remember exact location, but
5 she went out for more training.
6 Q She went out for a formalized training?
7 A Yes. It was a formalized training at Middle School at
8 Parkside as well and there's a document that I have in my
9 bag, I don't know if you received that, that showed the
10 level of training that she did receive.
11 Q I don't have that document.
12 A She does.
13 Q Sir, though in that first 32 days you had meetings with Ms.
14 Davis and her union was present, do you remember that?
15 A I'm not sure.
16 Q Do you remember having meetings where you're talking about
17 Pennie Davis' performance within that first 32 days of her
18 transition to Parkside and you let her know that you knew
19 what happened at the high school?
20 A Absolutely not, I don't --
21 Q Do you remember telling Ms. Davis on multiple occasions that
22 this is not going to end well, in terms of her performance?
23 A No, what I shared with her at one particular meeting and
24 this is the best way I could explain it. Ms. Davis felt
25 like everything was going well and I was communicating that

1 everything wasn't going well and we needed to move closer
2 together is my exact explanation of how things were before
3 we got to the end of the year.
4 Q Sir, do you remember telling her I can tell this isn't going
5 to end well?
6 A Is there more to that statement I would ask? Because, I
7 don't remember, I'm not a predictor of the future, I might
8 add, if we don't come closer together to with the
9 expectations are and agree that things need to get better.
10 Those are my Parkside norms for everyone that we all improve
11 professionally, I include myself in that as well. That we
12 all work collaboratively, that we all keep the needs of
13 students in mind and my final norm is that we seek
14 solutions.
15 Q So, if I understand you correctly is it possible that you
16 said, I can tell this won't end well and you just don't
17 remember saying it?
18 A No, that again I was asked can you give a grade now, can you
19 tell her how she's doing right now, and I said, no. When
20 you put a grade to something people stop, okay I got a B,
21 all right I got a B keep moving and that's not the intent
22 with this evaluation process. It's continuous improvement,
23 so there was never a grade and I do not recall ever telling
24 anyone, I mean, she would ask like how am I doing? And I'm
25 like we outline these things in the plan like these are the

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1 areas where we have to improve professionally --
2 THE COURT: Mr. Patterson, I'd just think
3 maybe this will help --
4 THE WITNESS: Okay.
5 THE COURT: -- how do you think her and the
6 district needed to get closer to that middle that you
7 described?
8 THE WITNESS: I think -- ah, I don't remember
9 all the details exactly about the IDP, but they were listed
10 in the IDP. These are the particular areas that I need you
11 to improve upon. And so, whatever was written into that
12 document as well as the evaluation tool -- all the
13 evaluation tools would say, how is our parent communication
14 going? How are students performing academically? How are
15 we collaborating with others? So, that was a lot of the
16 feedback that I provided or that we had dialog about
17 throughout the year when we met.
18 BY MS. BONANNI:
19 Q In that IDP don't you remember you giving her criteria to
20 meet, Pennie meeting that criteria and then adding more
21 criteria? That's what was happening throughout the year --
22 this first year at Parkside on the IDP, do you remember
23 that?
24 A I don't -- I don't. Because, typically I would have a copy
25 of the tool, she would have a copy of the tool and there

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1 would probably be multiple copies if that were the case.
2 Q Look at Exhibit 36 please. This is an e-mail from you to
3 all your staff dated January 31st, 2016, do you see that?
4 A I do.
5 Q And then Pennie Davis sent you an e-mail back, do you see
6 that?
7 A I do.
8 MS. BONANNI: I'd like to offer Exhibit 36
9 into -- oh, it's been admitted? Thank you. This -- in this
10 e-mail you're referring to something called the ILC and
11 please share your results of ILC process etcetera. Pennie
12 writes to you and says, "Dear Jeremy, I do not know what an
13 ILC is, remember I have only been at your school for a few
14 weeks and no one has informed me on this term or how or what
15 I need to do." Do you see that?
16 A I do.
17 Q Now, I haven't been able to find your response to that e-
18 mail.
19 A Oh, I think it was in our meetings, because we met
20 regularly, I think you'll also find that in her
21 mentor/teacher and I think you'll also see that she
22 submitted multiple ILCs although we did excuse her from more
23 than what everyone else was required to do, because of the
24 time that she came in. And so, again the mentor/teacher was
25 there to help her with that process. I personally met with

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1 her on that process. She was excused from having to -- I
2 think we were required to do six in a school year and so,
3 hers was probably more like three maybe two. And there were
4 accommodations that were made to help get her to where she
5 needed to be. There's also a document that explains the
6 process, it's just a series of questions about what do we
7 want students to know? How will we measure what they know?
8 We work in a collaborative process, so there was another art
9 teacher that you work on this with, so she would kind of
10 show how her students are doing, the other teacher would
11 show her students' work and they would reflect upon that
12 experience to say, well how did it go? What worked well,
13 what did work well, what would we do differently next time?
14 So, that's pretty much the gist of the ILC process.
15 Q My question was, Sir, you did not respond to her e-mail did
16 you?
17 A In e-mail? No. In person? Yes.
18 Q You now have one teacher at Parkside that teaches art?
19 A We do.
20 Q And you had two?
21 A Correct.
22 Q So, the administration has not replaced your teacher?
23 A No, we were projected -- I think it was a loss of 200
24 students district wide, and so that was part of the reason
25 why, to right sides if you will.

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1 Q Oh, so that's why you haven't sought a replacement?
2 A It was a budget cut of one teacher at the middle school as I
3 understand it.
4 Q Oh, that budget cut was district wide, correct?
5 A Yeah, there was more than one cut.
6 Q I don't have anything further.
7 THE COURT: Mr. Mullins, anything --
8 MR. MULLINS: No, your Honor, I'm all set.
9 THE COURT: All right, ladies and gentlemen,
10 any questions for Mr. Patterson before I release him from
11 the subpoena? Okay, Mr. Patterson, thank you very much, I
12 was glad we were able to conclude your testimony here today,
13 so you're all set.
14 (At 5:22:58 p.m., witness excused)
15 THE WITNESS: Thank you.
16 THE COURT: All right, ladies and gentlemen,
17 we're gonna reconvene at 11:00 o'clock, so again it's gonna
18 be one of those days. I anticipate we're gonna finish the
19 case tomorrow, it'll probably go to closings and actually
20 the case may very well be in your hands by the way at late
21 afternoon if everything goes as anticipated. All right?
22 So, again I'd just like to remind you not to discuss the
23 case with anyone while you're at home. The case is coming
24 to its conclusion, but it would not be fair to either party
25 to begin discussions about the case before all the proof's

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1 and the instructions on law are in, so all rise for the
2 jury. And again if we can kind of plan to eat or bring
3 something with you that way we won't have to take that lunch
4 right around 12:00, 12:30, all right?
5 All right, I appreciate that we were able
6 to get that, Mr. Patterson, all completed here yet today,
7 utilize that, so we'll see everybody at 11:00 o'clock, so
8 okay..
9 (At 5:23:32 p.m., jury excused)
10 MS. BONANNI: Thanks, Judge.
11 MR. MILLER: Thanks a lot, Judge.
12 THE COURT: Okay.
13 (At 5:24:16 p.m., hearing was concluded)
14

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of two hundred sixty-five (265) pages, before the 4th Judicial Circuit Court, Jackson County, Michigan:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Monday, March 5, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ **Sally Fritz**
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 14, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No. 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

JURY TRIAL, VOLUME VII of VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Tuesday, March 6, 2018

APPEARANCES:

For the Plaintiff: MEGAN A. BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067-3848
(248) 398-9800

For the Defendant: TIMOTHY J. MULLINS (P28021)
JOHN LOUIS MILLER (P71913)
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084-5280
(248) 457-7020

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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1 Jackson, Michigan
2 Tuesday, March 6, 2018 - 11:11:19 a.m.
3 THE CLERK: -- Judge John G. McBain
4 presiding.
5 THE COURT: Thank you, you may be seated.
6 All right, we're back on the record in the
7 matter of Pennie Marie Davis versus the Jackson Public
8 Schools, file number 16-344-CZ. The record should reflect
9 the presence of both of the parties, their respective
10 attorneys.
11 Anything preliminary before we bring the jury
12 back in?
13 Okay. David, bring the jury in.
14 THE CLERK: All rise for the jury.
15 (At 11:12:22 a.m., jury returns)
16 THE COURT: All right, thank you. Everyone
17 may be seated. The record should reflect the presence of
18 all the jurors, all the parties, their respective
19 attorneys.
20 Mr. Mullins, we'll now start with the opening
21 -- or for the next defense witness?
22 MR. MULLINS: Your Honor, we'd call Principal
23 Barbara Pauli-Baird.
24 MR. MILLER: (Undecipherable).
25 MR. MULLINS: (Undecipheable). Please go

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1 right up there and take a seat right up there at that --
2 THE COURT: Okay, can I have you raise your
3 right hand? Do you solemnly swear, or affirm, that the
4 testimony you're about to give the court will be the truth,
5 the whole truth and nothing but the truth so help you God?
6 MS. BAIRD-PAULI: Yes.
7 BARBARA BAIRD-PAULI
8 (At 11:13:20 a.m., witness sworn, testified as follows):
9 THE COURT: All right, would you have a seat
10 right there and when you get comfortable can I have you
11 state your full name and spell your last name for the
12 record?
13 THE WITNESS: My full name is Barbara Jean
14 Baird-Pauli. Last name is spelled B-A-I-R-D, as in dog,
15 hyphen, P-A-U-L-I.
16 THE COURT: All right, thank you, Ms. Pauli.
17 Go ahead, Mr. Mullins.
18 MR. MULLINS: Thank you, your Honor.
19 DIRECT EXAMINATION
20 BY MR. MULLINS:
21 Q Ms. Pauli, you're currently employed at the Jackson Public
22 Schools --
23 A I am.
24 Q -- if I understand that?
25 A Yes.

1 Q And what's your position there?
2 A I am Principal for Instruction at Jackson High School.
3 Q Okay, and how long have you held that position?
4 A This is my tenth year.
5 Q Okay, and do you know Pennie Davis?
6 A I do.
7 Q And how long have you known her?
8 A I have known Pennie since approximately 1980 to '89 (ph).
9 Q Okay, and off and on you've been her supervisor?
10 A Yes.
11 Q And currently you would be her supervisor?
12 A That is correct.
13 Q Could you tell me -- could you tell the ladies and
14 gentlemen of the jury something about yourself? Your
15 background? High school?
16 A Sure, I'm a Jackson County graduate from Concord High
17 School. From there I attended Jackson Community College,
18 earned my Associate's degree. And then attended Eastern
19 Michigan University, earned my Bachelor's of Science
20 majoring in Special Education with a focus on Emotionally
21 Impaired. And then to University of Wisconsin Madison
22 where I received my Master's Degree in Education
23 Leadership.
24 Q I want to show you -- well, let me ask first on -- assuming
25 being the principal of the high school you move about the

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1 building and after all these years you're pretty familiar
2 with the building?
3 A That is correct.
4 Q Let me show you what's been marked as Defendant's Exhibit
5 21 and ask if that would be the room in which Ms. Davis
6 currently teaches out of?
7 A That is correct.
8 Q As they say, pictures tell us a thousand words but does it
9 have sinks?
10 A It does have sinks.
11 Q And counters?
12 A Yes.
13 Q Tables and chairs?
14 A Yes.
15 Q Is there a attached storage room to it?
16 A Yes.
17 Q And is that accessible from within the room?
18 A Yes.
19 Q And water and sinks, they work?
20 A Yes.
21 Q Let me show you --
22 MR. MULLINS: Move for admission of Exhibit
23 21, your Honor.
24 (At 11:16:06 a.m., Defendant's Exhibit 21
25 offered)

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1 THE COURT: Okay, any objection?
2 MS. BONANNI: No objection.
3 THE COURT: So admitted by way of stipulation
4 of the parties.
5 (At 11:16:10 a.m., Defendant's Exhibit 21
6 admitted)
7 BY MR. MULLINS:
8 Q Let me show you what's been marked Exhibit 22 and ask if
9 you can recognize that?
10 A Yes.
11 Q Is that one of the rooms that Ms. Davis previously taught
12 Art in?
13 A Yes.
14 Q And is it similar, 21 and 22, are they similar classrooms?
15 A They are very comparable. The current classroom is
16 actually a newer construct. However --
17 Q Newer what, I'm sorry?
18 A Newer construct. It was renovated in the last 20 years.
19 Q And for those who might know -- 20 years might not sound
20 that newer. How old is the high school itself?
21 A The high school was built in 1926.
22 Q And -- and does Exhibit 22 accurately reflect the rooms she
23 previously taught in?
24 A Yes.
25 MR. MULLINS: Your Honor, could we move for

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1 admission of Defendant's 22?
2 (At 11:17:15 a.m., Defendant's Exhibit 22
3 offered)
4 THE COURT: Any objection?
5 MS. BONANNI: No.
6 THE COURT: So admitted by way of stipulation
7 of the parties.
8 (At 11:17:18 a.m., Defendant's Exhibit 22
9 admitted)
10 MR. MULLINS: And I -- I'd ask to publish, if
11 I could, your Honor?
12 THE COURT: Okay, you may.
13 BY MR. MULLINS:
14 Q At -- at the high school does Ms. Davis have access to the
15 -- the photography, or dark room, at the school?
16 A Yes, the dark room is a room, if you will, that has hallway
17 access. Currently it is not, you know, as much use as it
18 may have been 15-20 years ago.
19 Q Okay, but -- but it's a room --
20 A But access is there, yes.
21 Q -- it's a room in and of itself that anybody, from any
22 classroom, could go to it --
23 A Correct.
24 Q -- and you ex right through the hall -- you access it --
25 A Access it from the hallway.

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1 Q -- through the hallway?
2 A Yes.
3 Q Okay, there's a -- a -- been some discussion that among her
4 assignments Ms. Davis is teaching some Physical Education.
5 I believe a girls Physical Education class?
6 A It's a P.E. class through our Pathways program which is our
7 School Within our School.
8 Q Okay, and has she indicated to you any problem, unhappiness
9 or complaint in teaching that class?
10 A No, no complaint about the assignment of teaching P.E.
11 Q Okay, and her mung -- among her -- in schools there's this
12 concept of certification. So you have to be certified by
13 way of education, through the State Board of Education, in
14 order to teach certain classes, is that right?
15 A That is correct.
16 Q And -- and she is certified to teach P.A.
17 A Yes.
18 Q I said -- P.E., Physical Education?
19 A Yes, Physical Education, P.E., yes.
20 Q Rel -- relative to you having been a teacher there for some
21 -- how -- how long have you actually been employed by
22 Jackson Public Schools?
23 A This is my 30th year.
24 Q Okay, and so you're -- and I don't know that we covered
25 that. Your chronology of -- as an employee at the school

1 district prior to being a principal, which you are now, why
2 don't you help me explain that to the jury if you could?
3 A Certainly, when I first came to Jackson Public Schools I
4 served as a Teacher Consultant for the Special Education
5 students working with the Emotionally Impaired and the
6 Cognitive -- Cognitively Impaired.
7 Q Okay, would you just -- and I know it's technical but --
8 A That's okay.
9 Q -- could you tell the ladies and the journal -- ladies and
10 gentlemen of the jury what -- what being a Teacher
11 Consultant in -- in Special Education is?
12 A Oh, certainly. Working as a Teacher Consultant you're
13 essentially a liaison between the general ed population,
14 Special Education population -- the teachers and provide
15 support for students and staff to best meet the needs of
16 our students who have special learning considerations and
17 such.
18 Q And what did you do after that?
19 A Then I transitioned to serving as Assistant Principal and
20 at that time I was a Grade Principal. And then from an
21 Assistant Principal I transitioned to serving as Associate
22 Principal. And from Associate Principal -- and Associate
23 Principal really the distinguishing difference is you
24 oversee scheduling, you still work with a specific grade.
25 And at Jackson High School we begin with a grade and stay

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1 with that grade until they graduate. At present they stay
2 with a grade principal through their Junior year and then
3 transition to me as seniors, but then I tried --
4 THE COURT: Ms. -- Ms. Pauli, can I -- can I
5 have you just elevate your voice a little bit?
6 THE WITNESS: Sure.
7 THE COURT: The acoustics are not great.
8 THE WITNESS: Is this a functional unit, or
9 not?
10 THE COURT: It's more for recording. So --
11 THE WITNESS: Oh, okay, sorry.
12 THE COURT: David, have you got the other --
13 THE CLERK: That mic doesn't have --
14 (undecipherable).
15 THE COURT: Okay.
16 THE WITNESS: Okay, I can project a little
17 better.
18 THE COURT: All right, thank you.
19 THE WITNESS: Sure.
20 MR. MULLINS: I never knew a principal who
21 couldn't project.
22 THE WITNESS: Well.
23 THE COURT: Just give us your principal voice
24 there -- stern, authoritative.
25 THE WITNESS: This is pretty much it. But

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1 then I transitioned from Associate Principal to Principal
2 for Instruction.
3 BY MR. MULLINS:
4 Q And over the course, be it in the school district or in
5 your building, is -- is it common from semester to semester
6 or year to year for teachers -- assignments to change as
7 the needs of the district, or the building, are -- might
8 also change?
9 A Absolutely, there may be teachers who work solely at the
10 high school. And then perhaps are shared between our
11 middle school and our high school. Teachers who have been
12 at the high school and transitioned to, typically, the
13 middle school. Endorsements are a factor.
14 Administratively that happens as well. But, as you
15 mentioned, the needs of the district, the needs of the
16 buildings dictate, or determine, that.
17 Q Okay, and even staying within one building your assignment
18 as to which classes you teach or what -- which grade or --
19 might there be changes there?
20 A They absolutely may change.
21 Q Now you're aware, I believe, of a -- and what brings us
22 here today, is an incident that occurred on October the
23 12th, 2015 regarding a student in Ms. Davis's art class, is
24 that right?
25 A Yes.

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1 Q And can you tell the ladies and gentlemen of the jury what
2 -- you know, how it first came to your attention and what
3 you did?
4 A Sure, it came to my attention initially through our
5 Assistant Principal who was the grade principal for the
6 young man involved. And at that point, shortly thereafter,
7 I called down and asked Ms. Davis to come to my office
8 because I wanted to ensure that she was okay and gain a
9 little more insight in terms of what had happened through
10 her. And so that's how I initially became aware of it.
11 Q And let me show you what's been marked as Exhibit 25 and
12 ask if you're -- dated Oct -- October 16th, 2015 and it
13 says, "A incident between M.H. and Pennie Davis." Could
14 you tell us what that is?
15 A Are you asking what the document is or what the contents?
16 Q What the document is.
17 A Certainly.
18 Q Do you recognize it?
19 A Yes, I do recognize this. This is a documentation of a
20 conversation in my office.
21 Q Okay, and is this something that you -- it says to Ben Pack
22 from Barb Baird-Pauli.
23 A That's correct.
24 Q It might seem obvious but is this -- document you prepared?
25 A That is correct.

1 Q Okay, so could you -- if you will recount to the ladies and
2 gentlemen of the jury, you asked her to come down and talk
3 with us.
4 A Mm-hmm.
5 Q With you and what occurred?
6 A I asked Ms. Davis to come to my office and she said that
7 she would be coming shortly but her time was a finite
8 nature because she had grant request that she was needing
9 to submit in a timely manner. And I said certainly, I
10 understand, but I'd like to see -- and within a few minutes
11 she came down to my office.
12 I asked Ms. Davis what had happened. She
13 indicated, from her perspective, that she was in class, a
14 student made a comment, she went to his table indicating
15 his comment was inappropriate, and that he responded back
16 with a comment and that had -- he had hit her. I asked her
17 if she was okay. Ms. Davis said, "I am fine. Really, I'm
18 just fine." And I inquired, "Are you sure you're okay?"
19 And she responded again, "I am fine." I asked her -- she
20 identified that it was her right hand. And so at that
21 point I asked her if it was okay to touch her hand. I was
22 checking for injury or sensitivity. And I did touch the
23 top of her hand. Reflected that it did not appear swollen.
24 And she did agree -- she also further indicated that she
25 does bruise easily so there may be some bruising later on

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1 that might occur.

2 And then I asked if the contact was an open

3 hand? Was it a closed fist? I was trying to ascertain the

4 nature of the contact. And she reflected that it was with

5 a closed fist and she did not want the young man back in

6 her classroom. And at that point I indicated that any time

7 a student were to be found having hit a teacher they would

8 not be allowed back in the classroom.

9 I told her I appreciated her coming down and

10 then she indicated that it was not a problem. And, again,

11 excused herself because she was going to submit a grant

12 request.

13 Q Okay. And for those of us, again not in your business, a

14 grant request -- what -- what does that refer to?

15 A Grants are written for a variety of reasons. Often times

16 to either obtain dollars to augment what budget doesn't

17 provide for. But to provide support and materials, or

18 experiences for students that the budget -- the general

19 budget doesn't allow for.

20 Q Okay, and does that Exhibit 25, does that accurately

21 reflect the conversation that you had had with Ms. Davis at

22 that time?

23 A It does.

24 Q And the -- the -- again, I'm looking at -- you indicated on

25 October the 12th an incident was reported to you, and you

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1 might have said it already, but is that when you spoke with
2 her, right, on October the 12th -- the date?
3 A That is correct.
4 MR. MULLINS: Okay, I'd move for admission of
5 Defendant's 25, your Honor.
6 (At 11:27:56 a.m., Defendant's Exhibit 25
7 offered)
8 THE COURT: Any objection?
9 MS. BONANNI: No objection.
10 THE COURT: So admitted by way of stipulation
11 of the parties.
12 (At 11:28:01 a.m., Defendant's Exhibit 25
13 admitted)
14 MR. MULLINS: Okay, I'd ask to publish it.
15 THE COURT: You may.
16 BY MR. MULLINS:
17 Q Now with this incident having been reported to you did --
18 A Mm-hmm.
19 Q -- you oversee, or did your building conduct, a -- an
20 investigation looking into what occurred?
21 A We did.
22 Q Okay, and can you tell me what you did in that regard?
23 A Sure, initially Mr. Zessin interviewed several different
24 students.
25 Q Why don't you tell us who he is.

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1 A Oh, Mr. Zessin, at the time, was the grade Principal for
2 the young man involved. And so would be directly
3 responsible for discipline of that student, and overseeing
4 that student in general education, etcetera.
5 Q Let me show you what's been marked as Defendant's Exhibit
6 17. Take a minute and page through it. And -- and what is
7 Exhibit 17, your Hon -- I mean Principal Pauli?
8 A Sure, no it is a combination of a -- an e-mail to me,
9 carbon copied to our HR Department and accompanying that
10 are copies of the interview process that Mr. Zessin
11 conducted on October 12th after the incident occurred.
12 Q Okay, and -- and, again, with the compilation here could
13 you tell the ladies and gentlemen of the jury what -- what
14 the investiga -- investigation comprised of, or what
15 occurred?
16 A Sure, there were I believe five, maybe six, students
17 interviewed. One of those students was a student that Ms.
18 Davis herself recommended that we interview. And I, in
19 turn, interviewed two of those students a second time. And
20 the interviews completed would reflect very consistently
21 between the interviews that Mr. Zessin conducted, the
22 interviews I conducted, that any contact between the young
23 man and Ms. Davis was inadvertent and a result of initially
24 Ms. Davis approaching this student, taking his materials,
25 the student wanting to hold on to those materials, she in

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1 turn again was taking those materials and in his effort to
2 retain them, so to speak, it was inadvertent contact in the
3 process.
4 Q And what were -- if you know, what was the material that he
5 had?
6 A It was an art project that he was working on.
7 Q Okay, and did -- did you understand that he was seated at
8 his desk, or table --
9 A That he --
10 Q -- as we see in the picture?
11 A -- was at his table, yes.
12 MR. MULLINS: Move for the exhibit -- of
13 Defendant's Exhibit 17, your Honor.
14 (At 11:32:06 a.m., Defendant's Exhibit 17
15 offered)
16 MS. BONANNI: This is the exhibit that was
17 riddled with hearsay that Mr. Zessin can try to get in.
18 But it's hearsay. She wasn't part of these.
19 THE COURT: I'd like just to take a look at
20 the exhibit.
21 MS. BONANNI: Sure.
22 (Bench conference from 11:32:27 a.m. to
23 11:33:41 a.m.)
24 THE COURT: All right, objection sustained at
25 this point.

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1 BY MR. MULLINS:
2 Q And that -- that exhibit was, I -- I think you had said the
3 -- the compilation of the investigation that you oversaw
4 was forwarded to Central Office, or the administration, is
5 that right?
6 A That is correct.
7 Q Okay, and -- and if I turn you to the very last page of the
8 investigation there's input there from Ms. Davis, is that
9 right?
10 A And are you referring to the page that Mr. Zessin has
11 signatured?
12 Q Next page after that there -- there's the -- there's his
13 typed, and then there's the handwritten, and then there's
14 the very last page -- very, very last page of the document.
15 A Okay. All right, the very last page I have has Joe Zessin
16 at the bottom of it.
17 Q Okay. Okay, and from that day on was M.H., the student
18 that she'd had the incident with, was he immediately
19 removed from her class?
20 A He was immediately removed from the class, yes.
21 Q Okay. And what, if you will, was -- what was done with
22 him? Was his schedule changed?
23 A He did have a modification of his schedule in that he was
24 not allowed to return to that class. He did receive a
25 consequence predicated on the investigation that was

1 completed. And completed his -- his other four classes but
2 he did not return to that classroom.
3 Q Did, at any time, from the time that you talked with him or
4 subsequently thereafter, did any of the students ever come
5 to you and indicate in any fashion that they themselves had
6 any fear of their classmate, this M.H., or that they felt
7 intimidated by him?
8 A They did not.
9 Q Was there any indication from any of them, either at that
10 time or any time afterwards, that the story that they told
11 you or the answers to the questions that you might have
12 asked them or Mr. Zessin might have asked them, were not
13 accurately what they saw or remember but that, again,
14 they'd been intimidated or -- or forced by some fear of Mr.
15 M.H. to do so?
16 A They did not.
17 Q Did, at any time subsequently, did Ms. Davis come to you
18 and submit any indication, or writing, that said these
19 student's accounts of what occurred or what they related to
20 you should be discounted because they had fear of M.H. or
21 had been threatened or intimidated by M.H. in any way?
22 A No. In fact, one of the people that we interviewed was a
23 person suggested by Ms. Davis.
24 Q There's -- there's been -- I understand you're Principal
25 but not the football coach -- but there's been some

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1 discussion about this M.H. being a football player. What
2 knowledge do you have of the nature, or the extent, or
3 position that he might have had in the football program?
4 A He was a football player. He was a J.V. football player.
5 He did not necessarily start games. To my knowledge didn't
6 even necessarily compete in all of the games.
7 Q Now, again, in addition to your interviewing the students
8 and -- and Mr. Zessin in -- interviewing students, I
9 understand a member of the Jackson Police Department came
10 to the school?
11 A That is correct. Officer Goins came in.
12 Q Okay, and let me show you what has been marked as
13 Defendant's Exhibit 11.
14 MS. BONANNI: Your Honor, may we approach?
15 THE COURT: You may.
16 (Bench conference from 11:38:54 a.m. to
17 11:39:28 a.m.)
18 BY MR. MULLINS:
19 Q So if I looked at -- there's a -- a cover page. And then I
20 look at the second page that's dated 10/12/15 and it says
21 fourteen fifty-nine hours, is that correct?
22 A Yes.
23 Q Okay, and -- and is that -- so -- and I see S. Goins. You
24 said his name was, what?
25 A Scott Goins, Officer Scott Goins.

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1 Q Do -- do you have familiarity with him?
2 A Yes, Officer Goins has been in and out of the building a
3 number of times.
4 Q Okay, is it -- is there anything unusual about a member of
5 the Police Department coming to the high school?
6 A Not at all. They come in and speak with our students as
7 guest speakers. They come in and simply do walk-throughs.
8 We view our Police Department as partners in the education
9 of our kids, and they view our kids as partners in the
10 safety of our community. And so it is not atypical for an
11 officer to come in. Other times, obviously, we do call
12 them in for support.
13 Q Okay, and so are you the first person he came to look up as
14 he came into the building?
15 A Once he came into the building -- we do have a -- an entry
16 area whereby visitors check in. And then, yes, it would
17 have been my office next.
18 Q Okay, and did he conduct a discussion with you? Interview
19 as to what the nature of the incident might be?
20 A He did. He came in and explained why he was there and
21 subsequently interviewed some of our students.
22 Q Okay, and he notes therein, a recording, an interview with
23 Principal Barb Pauli, is that right?
24 A Yes.
25 Q And is that consistent with what you had just indicated to

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1 us in your report?
2 A Absolutely.
3 Q And with what you indicated in -- in your investigation,
4 Exhibit 17?
5 A Absolutely.
6 Q And -- and you said -- and did he also interview Pennie
7 Davis?
8 A He did, to my knowledge, yes.
9 Q And I think you had indicated that he wanted to speak to
10 some students -- called some students down to interview?
11 A He did. He called two of the students. And, again, one of
12 those two students was one that Ms. Davis, herself, had
13 requested, or advised, that we interview. And so he did,
14 in fact, interview them, yes.
15 Q And -- and it's indicated here I'm -- interviewing a Hannah
16 and an Alexis?
17 A Yes.
18 Q Using the first names. Are they -- are they the students
19 that you know that he interviewed?
20 A Yes, Hannah and Alexis both were interviewed by Officer
21 Goins.
22 Q Okay, and they are -- are they students known to you?
23 A Yes.
24 Q Is there any reason to think that they would lie or
25 exaggerate in a situation like this?

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1 A No reason at all. In fact, one of the things that we look
2 for when we're interviewing is consistency of -- of the
3 interview result, if you will. And there was consistency
4 between what they had shared with Mr. Zessin, with me, and
5 with Officer Goins.
6 Q And he chatted with them. I presume took the information
7 down on some kind of a notepad or something like that?
8 A Yes, he does.
9 Q And off he went?
10 A They typically have a small notepad and --
11 Q Okay, did --
12 A He --
13 Q Did you have any problem, or concern, or objection to him
14 coming in and chatting with you, or your employee, or with
15 students from --
16 A Not at all.
17 Q Okay, and nothing unusual about that in various situations?
18 A There is nothing unusual at all about it.
19 MR. MULLINS: And I'd move for admission of
20 Plaintiff's 11, your Honor.
21 (At 11:43:45 a.m., Plaintiff's Exhibit 11
22 offered)
23 MS. BONANNI: Same objection.
24 THE COURT: It's a police report?
25 MR. MULLINS: Yes.

1 THE COURT: We haven't heard from Officer
2 Goins. It's hearsay and they're normally not admissible.
3 So I've allowed your witness to say that they've examined
4 it but at this point the court's not admitting it.
5 BY MR. MULLINS:
6 Q Now there have been a number of different documents that
7 have been talked about or introduced into evidence, and I
8 won't go through them all, but these documents indicate not
9 only did Ms. Davis want M.H. out of her room but that she
10 had fear at the site, or presence, or proximity of him, is
11 that right?
12 A That is correct.
13 Q So there came a point in time, as I understand it, that a
14 decision was made to exchange an art teacher from Parkside
15 to the high school, and relieve any fear that Ms. Davis
16 might have by transferring her to Parkside, the middle
17 school?
18 A Yes, that was through our Central Office Administration.
19 Q Okay, and a transfer in resolving that situation, did it
20 appear unusual, or unreasonable, to you?
21 A Absolutely not. There are teachers that transition between
22 our buildings. And, again, it frequently is between middle
23 school/high school and high school to middle school because
24 of certifications.
25 Q Now Ms. Davis has since -- this school year -- come back,

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1 as we've already covered a bit, to teach again in the high
2 school building that you're --
3 A She has.
4 Q -- in charge of?
5 A She has.
6 Q You're the, if you will, the chief boss in charge of that
7 building as head chief administrative officer, is that what
8 a principal is in a building?
9 A One might say, yes.
10 Q Okay, just in -- again, for those who might not be familiar
11 with schools. You hear the term Central Office, or that's
12 been said a time or two. In a building, or various
13 building -- elementary schools, middle schools, high
14 schools -- the principal is the --
15 A The overseer, if you will, of the building.
16 Q The top of the pyramid, so to speak, as far as
17 administration goes --
18 A Yes.
19 Q -- is that right?
20 A That's correct.
21 Q And -- and then Central Office is the Human Resources and
22 Superintendent and --
23 A Financial, etcetera.
24 Q -- the like, is that right?
25 A Curriculum.

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1 Q Okay, and since she then has come back to your building
2 this year then you would be her immediate supervisor, is
3 that right?
4 A Yes.
5 Q Okay, did -- do you adhere to the terms and conditions of
6 the collective bargaining agreement in dealing with her as
7 a teacher and all the other teachers in your building?
8 A Yes.
9 Q And do you treat her differently, or hold her, to any
10 different standards than you do any of the other teachers
11 or anybody else that you administer in the building?
12 A Absolutely not.
13 Q Did anybody indicate to you that you should be unfair or mo
14 -- more closely supervise, or be more critical of Ms. Davis
15 than any of the other teachers or any of the other people
16 you might supervise?
17 A Absolutely not.
18 Q If somebody told you to do that would you do it?
19 A Absolutely not.
20 Q Is Ms. Davis currently at -- at risk in any way of being
21 terminated?
22 A Absolutely not.
23 Q Is she currently at risk of being laid off?
24 A No.
25 Q Now evaluations do occur?

1 A Yes.
2 Q And the -- if you'll -- final evaluation is a -- is
3 documented at the end of the school year, is that right?
4 A That's correct.
5 Q And this is mandated by the State, by the Department of
6 Education, is that right?
7 A Yes, it is.
8 Q And does a teacher have certain responsibilities to -- in
9 completing, or having seeing to it, that their evaluation
10 is completed? Are there things that the teacher must do?
11 A There are. In the current State of the State, if you will,
12 a teacher's responsibility is to provide data. And that is
13 in the way of student achievement data. That's in the way
14 of data regarding parent contact information, lesson plan
15 samplings, if you will.
16 Q Okay, and once the data has been turned in is there then an
17 evaluation meeting, if you will, or discussion of the data
18 and a review of how the year has gone with some -- with
19 yourself -- someone like yourself who's the administrator?
20 A Yes, at Jackson High School, because we have four
21 administrators, we do it in teams of two. And it begins
22 with a meeting at the beginning of the year to, again,
23 outline what the evaluation procedure, process, time-lines,
24 etcetera. And then we hold a mid-year meeting. Between
25 that beginning meeting and the mid-year meeting there are

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1 two observations. After the mid-year meeting -- and at
2 that point we do review data. We review if there are other
3 things that need to be entered that have not been entered.
4 And then the second half of the evaluation cycle there are,
5 again, minimally two more eval -- or observations. And --
6 and then at the close of the year we have a final meeting
7 where the final outcome of that evaluation is shared.
8 Q Okay, and if -- if you get to the end of the year and a
9 teacher's off on leave, or ill, or at some -- something
10 else interfering with their activity, or presence, exactly
11 with the calendar end of the year, can they schedule the
12 final meeting with the administrator and submission of data
13 at a later date?
14 A Absolutely, it may be in July. It may be -- depending on
15 what that illness time frame is like, it may be upon the
16 return of school.
17 Q Okay.
18 A But, certainly, that is an option.
19 Q Okay, and if a teacher doesn't schedule such a meeting with
20 their administrator, and doesn't submit the data or the
21 submissions that they're supposed to make, is it likely, or
22 possible, for them to be rated effectively?
23 A It would not be possible to be rated effective, no. The
24 administrator would be forced into completing that
25 evaluation with the information that he, or she, had in

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1 hand.
2 Q So as a -- let's, again, talk about this year. As a
3 teacher, you'd indicated you do some observations or -- or
4 check on things on how they're going. How is the school
5 year going at the high school with Ms. Davis this year?
6 A It's been great. We've had -- we -- in fact, we just had
7 Ms. Davis's mid-year meeting recently and both observations
8 were quality observations, and data was submitted. The
9 parent contact information was submitted and current. And
10 she's in very good standing right now and has shared with
11 me that the collaboration between the Art Department
12 numbers has been very positive.
13 Q Okay, and when you -- again, that's kind of a term of art
14 of the business I guess when you talk about collaboration
15 between teachers, in layman's terms, what were you talking
16 about there?
17 A A teacher's meeting and discussing curriculum design, maybe
18 needs that currently exist, lesson planning, pacing guides,
19 common assessments, etcetera.
20 Q As -- as to putting -- or in addition to the classroom is
21 she treated any differently or does she have any greater or
22 less access to supplies or materials that one might use in
23 teaching art class as compared with the other teachers in
24 the art class?
25 A Absolutely not, and it's not uncommon that you share

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1 materials between teachers, etcetera.
2 Q Is there a -- any plan to eliminate an art teacher at the
3 high school at this time?
4 A There is not.
5 Q And as to -- there's been a discussion of -- of department
6 chairs. What -- there have been two or sometimes three --
7 two/three art teachers at the high school. What -- how --
8 how is the department chair handled? Or who makes that
9 decision?
10 A In terms of the decision as who is department chair, that's
11 something that comes through my office. And those
12 department chair rules are not static. In other words,
13 they may change. We've had two or three changeovers, in
14 fact, this year. And so sometimes it is a single person.
15 I have two departments right now where it's shared between
16 two people.
17 MR. MULLINS: Thank you. I have nothing
18 further at this time.
19 THE COURT: Cross-examination?
20 MS. BONANNI: Thanks, your Honor.
21 CROSS-EXAMINATION
22 BY MS. BONANNI:
23 Q Good morning.
24 A Good morning.
25 Q Principal Pauli, Deb Hirsh is an art teacher at the high

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1 school, correct?
2 A Can you repeat the --
3 Q Deb Hirsh?
4 A No, that is not a teacher at the high school.
5 Q Hearth?
6 A Deborah Hearth is, yes.
7 Q Okay, Hirsh -- Hearth. She's a art teacher at the high
8 school?
9 A She is.
10 Q And she is currently in Pennie's room -- the room that
11 Pennie had for 29 years?
12 A Deborah Hearth is currently in her assigned classroom. At
13 one time Ms. Davis did teach in that classroom.
14 Q And that one time was actually a stretch of like 29 years
15 that she was in that room?
16 A No.
17 MS. BONANNI: How long were you --
18 (undecipherable)?
19 MS. DAVIS: I -- (undecipherable).
20 MS. BONANNI: Oh, it was remodeled. That's
21 right.
22 BY MS. BONANNI:
23 Q It was remodeled, correct?
24 A We had a renovation at our high school back in '99-2000.
25 Q Okay, so back in '99-2000.

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1 A Mm-hmm.
2 Q So she's been in that room from 1999 until 2015?
3 A Fifteen years she was in that room?
4 Q And I have to go back in my own memory a little bit because
5 there have been more than -- or has been more than just Ms.
6 Davis at the high school teaching art.
7 Q Remember that -- were you there as principal when the
8 renovation took place?
9 A I was there during the renovation, that's correct.
10 Q Were you the principal?
11 A I was not.
12 Q Okay, that's -- I asked if you were the principal. So what
13 -- what role were you in?
14 A In '99-2000 I served as Associate Principal.
15 Q Okay, so were you aware that Ms. Davis was instrumental in
16 designing that art room? As part of the renovation was she
17 --
18 A What I heard you say was that she was instrumental in
19 designing the classroom. And during the preparation for
20 renovation the Superintendent at the time, the building
21 Principal at the time, along with some of the architectural
22 individuals collaborated with many. I -- I could not
23 confidently say that it was isolated to one person within
24 that Art Department.
25 Q Okay, so if Ms. Davis has a very distinct memory that she

1 worked with designers to help design this room, fair to say
2 you -- you wouldn't -- you wouldn't dispute that because
3 you don't remember one way or another?
4 A What I would say is that at the time the building
5 Principal, the architectures, etcetera, collaborated with
6 many.
7 Q Okay, and you don't know one way or another if Ms. Davis
8 was one of those collaborators?
9 A And, again, what I'm suggesting is our building Principal,
10 our architecture, the team, collaborated with many through
11 that process. I can't definitively say who they met with
12 within the Art Department.
13 Q Okay, and you don't have a memory of Pennie Davis being
14 assigned to any other classroom during that 15 year period,
15 is that a fair statement?
16 A You're saying that I don't have that memory. During the
17 time that I have recall -- during those years I don't
18 remember, or recall, a move -- shift. So my recollection
19 would be consistent with that classroom.
20 Q Okay, thanks. And part of what Ms. Davis did in this room
21 was cross-examine -- to your knowledge, and if you don't
22 know that's okay --
23 A Mm-hmm.
24 Q -- that she created shelving and different amenities to
25 make this art room the best room that she could? Were you

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1 aware of any of her efforts?
2 A If I'm understanding you correctly what you're suggesting
3 is that she built in additional shelving.
4 Q I didn't say shelving. I just said amenities.
5 A Okay, I --
6 Q Over the years she's worked on her room to make it have
7 amenities for the students?
8 A If that were the case that's pretty consistent with all
9 teachers, absolutely. They -- they would make it a space
10 appealing to students, etcetera.
11 Q Okay, and --
12 A Consistent with their content area.
13 Q Do you agree that art room she was originally in, for the
14 15 years or so with you, was about half the size of this
15 courtroom -- if you know?
16 A I -- because what I heard you say is it was half the size
17 of this courtroom.
18 Q Yes, give or take.
19 A I will tell you right now my spacial sense is not real
20 steep.
21 Q You know what, mine is not -- mine is good.
22 A But I will say this, it did -- it housed the same number of
23 tables, student work sites, that the current classroom
24 does.
25 Q All right, let's look at Exhibit 67. Shall we? This is a

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1 collection of photographs.
2 A Do I have 67?
3 Q It's in the back of your book. Let me help you. So I'm
4 looking at Exhibit 67 and it's all these -- these pages are
5 labeled and I'm gonna ask you if the first -- one moment,
6 I'm gonna count -- first nine pages are the art room that
7 Pennie Davis was in after the renovation for 15 years?
8 A The first page is act --
9 Q First -- the first nine pages.
10 A No, I understand what you're asking.
11 Q Okay.
12 A I'm going to go through them page by page.
13 Q Sure.
14 A The first page is actually a shared space and was designed
15 as a whole to use with our digital photography. And
16 currently that space is --
17 Q I'm sorry to interrupt you. I'm just gonna ask if we're
18 gonna go through this page by page I'm gonna ask that you
19 then at least on -- flip through all the pages and answer
20 this question. Are these pictures of the original art
21 room, as well as some pictures of room 122, which is where
22 Pennie Davis is currently assigned? And that way I can
23 move to admit this into evidence.
24 MR. MULLINS: Your Honor, the question is
25 compounded and I have to say I -- I can't understand really

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1 between room 122, original art room, other rooms.
2 THE COURT: Yeah, sustain and rephrase.
3 MS. BONANNI: Okay.
4 THE COURT: Rephrase the question.
5 BY MS. BONANNI:
6 Q What I'd like you to do first, Principal Pauli, is look at
7 all of the pages up -- let's do this. Let me help you.
8 I'm going to simplify this. I'm gonna give you a stack of
9 photos and I'm going to tell you these are all photos of
10 the art room that Pennie Davis was in for 15 years, Exhibit
11 67.
12 MR. MULLINS: Well, your Honor, object to the
13 form of the question. It -- it's leading. The question is
14 what does she -- if she recognizes them to be anything at
15 all? What -- what are they an accurate depiction of? When
16 we're talking about photos they need to be an accurate
17 depiction of something and --
18 THE COURT: Okay.
19 MS. BONANNI: Well, I guess the question --
20 are they an accurate depiction of room, whatever the number
21 is I don't know, but Pennie Davis's original art room that
22 she's had.
23 THE COURT: Well, I -- I guess the first
24 issue depends on what her answer --
25 MS. BONANNI: Yes.

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1 THE COURT: -- to the question is. If she
2 knows.
3 THE WITNESS: Looking through the photos,
4 page one is not an art room. It is a separate joined area.
5 It's a computer lab.
6 BY MS. BONANNI:
7 Q Yes, and then --
8 A Okay.
9 Q Is that at the door to the art room, is that correct?
10 A And, again, I'm not terribly geographic. This is in an
11 adjoining room between two art rooms.
12 Q Okay.
13 A I don't know that that door is going into the art room that
14 she previously used or the art room of the other teacher.
15 I can't tell by this photo.
16 Q Okay, so this computer lab with the door, is it at least
17 the door to one of the art rooms, you're just not sure
18 which one?
19 A Phrase the question one more time, please.
20 Q You're -- you're telling me that the two art rooms, Ms.
21 Hearth and the male art teacher, is joined by a computer
22 lab, correct?
23 A That is correct.
24 Q So as you sit here today, because of the challenges of
25 spacial reasoning, etcetera, you're not sure if this door

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1 is the door to Pennie Davis's old room or to the other
2 room, is that correct?
3 A That is correct.
4 Q Okay, so other than that confusion on your part are all the
5 other photos representations of the art room that Pennie
6 Davis was in for 15 years?
7 A Again, there's a couple of pictures in here that do not
8 strike me as being part of the classroom she was in. And
9 because of the angle in which the photos are taken it's
10 difficult to tell for sure.
11 Q Okay, which photos do you not -- are you not sure of?
12 A Your pages are not paginated so I'm not sure page number
13 wise. The clay mill. The clay kiln room.
14 Q Are you aware that there is a clay mill kiln room?
15 A I'm very well aware.
16 Q Okay, in the art room?
17 A In one of the two art rooms.
18 Q Which --
19 A There are --
20 Q -- when you say one of the two you mean the two --
21 A Meaning one of the two that are on the -- across from the
22 music classrooms.
23 Q The ones that Pennie Davis is not in?
24 A One of the two art rooms that are across from the music
25 classrooms -- in that wing.

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1 Q And that is the wing where Ms. Hearth and the other male
2 art teacher are located?
3 A That is correct.
4 Q So that would be part of their art room?
5 A It is part of one of those two art rooms, that's correct.
6 Q Okay, what's the next picture you don't know?
7 A I'm not confident of where the art room lighted table
8 storage room air brush area was taken.
9 Q You don't know where the light room is? The light table is
10 in the art room?
11 A You said I'm not aware of where the light table is. My
12 comment is I'm not sure which room this is.
13 Q Okay, so you don't know if that was Pennie Davis's old room
14 or the room that the male art teacher is in currently, fair
15 to say?
16 A I'm not sure whether it's 116 or 117, that's correct.
17 Q Okay, go ahead.
18 A And I would believe that the other photos are from room
19 117.
20 MS. BONANNI: Okay, I'm gonna move to admit
21 Exhibit 67.
22 (At 12:08:42 p.m., Plaintiff's Exhibit 67
23 offered)
24 MR. MULLINS: It's unclear to me if we're --
25 there was some limited number of pages referred to of the

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1 whole I don't know if it's 116/117. Somebody's written on
2 here room 122. I'm just -- I -- I don't mind some of the
3 pages. I'm just not sure how much -- all.
4 THE COURT: But this is the composite exhibit
5 with the photos, correct?
6 MR. MULLINS: So the nine pages of Plain --
7 Plaintiff's 67 I have no objection to, your Honor.
8 THE COURT: All right, so the parties have
9 reached a stipulation on those photos and we're gonna
10 staple them together.
11 MS. BONANNI: Yeah.
12 THE COURT: Very good.
13 (At 12:09:42 p.m., Plaintiff's Exhibit 67
14 admitted)
15 MS. BONANNI: Thank you, your Honor.
16 THE COURT: So that'll be a composite exhibit
17 then?
18 MS. BONANNI: Yes.
19 MS. HOLMES: Your Honor, if I may publish?
20 THE COURT: You may.
21 BY MS. BONANNI:
22 Q Was it your decision who to assign the rooms to? Is that
23 part of what the building administration does?
24 A Are you asking --
25 Q I'm asking in general.

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1 A Is it -- across the building, that is correct.
2 Q And so it was your decision where to assign Ms. Davis?
3 A It is my decision to where all teachers -- there were
4 several teachers shifted, actually every year. Not several
5 but there are teachers shifted in classrooms every year.
6 And so that is a decision that -- that I make, yes.
7 Q Okay, so you decided to put Pennie Davis in room 122?
8 A We decided that it was really important in adding an art
9 teacher in that that teacher would have access to water,
10 certainly a facility that allowed for adequate storage,
11 adequate space for seating for students, etcetera, and room
12 122 was that classroom. And the other piece, to be in
13 proximity to 116 and 117 because often times of shared
14 materials, etcetera.
15 Q Pennie Davis asked you if she could be in her old room, the
16 room she'd been in for 15 years, correct?
17 A She may have.
18 Q She e-mailed you. Do you remember that?
19 A I'd have to go back but she may have.
20 Q Okay, so you're not denying that she reached out to you?
21 A What I'm saying is that she may have.
22 Q Okay, do you remember whether or not you took that into
23 consideration?
24 A I take into consideration everything that somebody request
25 -- asks, and it was determined that room 122, because it

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1 had very equal facilities, opportunities for students to
2 learn, and recognizing that teachers do not own their
3 rooms, and recognizing that teacher's classrooms do shift.
4 Q And Ms. Hearth, she came from Parkside to the high school
5 to replace Pennie Davis, correct?
6 A When Pennie transitioned from Jackson High to Parkside Mrs.
7 Hearth did, in fact, transition from Parkside to Jackson
8 High School.
9 Q Okay, so she replaced Pennie Davis, in her room, in
10 teaching her --
11 A Ms. Davis moved from Jackson High to Parkside, Ms. Hearth
12 moved from Parkside to Jackson High School.
13 Q Okay, so you agree with me. She replaced Ms. Davis?
14 A What I said was that Ms. Davis was transferred from Jackson
15 High School to Parkside. Ms. Hearth was transferred from
16 Parkside to Jackson High School.
17 Q And Ms. Hearth and Ms. Davis are friends, did you know
18 that?
19 A I -- I have heard that.
20 Q Okay. And, you know, that's your decision whether to put
21 Pennie Davis back in her room, the room that she had worked
22 on and created, you could have made that decision to put
23 her back in the room and you did not? You could have moved
24 Ms. Hearth to the new room, right?
25 A What you're saying is Ms. Hearth could have moved. In the

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1 time that Mrs. Hearth was at Jackson High School she made
2 that classroom her own.
3 Q But I thought that the teachers didn't --
4 A And --
5 Q -- own their classrooms?
6 A That is correct.
7 Q And you know Ms. Davis had made -- and that's a great
8 point, thank you -- Ms. Davis had made that room her own
9 too for 15 years.
10 A Okay.
11 Q Right, you agree?
12 A You may agree. I'm not saying that.
13 Q Well -- well, you actually --
14 A But she used --
15 Q -- did say that.
16 A -- that room for 15 years, yes.
17 Q You did say -- you did say that Ms. Hearth in those two
18 years made that room her own. And --
19 A In a context of -- yes, she made it a very comfortable
20 site.
21 Q Okay, and so did Ms. Davis. She made it a very comfortable
22 site. And, in fact, you rated her either effective or
23 highly effective for all the years that you were Principal,
24 isn't that true, Mrs. Pauli?
25 A You're suggesting that she was rated highly effective for

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1 all of those years.
2 Q No, I am not. I said -- I said highly effective or
3 effective.
4 A Mm-hmm.
5 Q You rated her those things for the whole time that you were
6 Principal, isn't that true?
7 A That is not true. I was not the only one who evaluated Ms.
8 Davis.
9 Q Okay, so when you did evaluate Ms. Davis -- for all the
10 times you evaluated Ms. Davis you either rated her as
11 effective or highly effective, is that true?
12 A In the time that I evaluated Ms. Davis she was evaluated
13 effective. There was a school year, and this was using our
14 former evaluation tool -- there was a school year in which
15 the district made a decision that all teacher's evaluations
16 would be bumped up one tier, if you will. And so that year
17 Ms. Davis's evaluation, consistent with the directive from
18 our Human Resources, was moved to highly effective, that's
19 correct.
20 Q So I guess everybody was bumped up that year?
21 A That is correct.
22 Q So that year, according to the district's determination of
23 what makes a highly effective teacher, Ms. Davis was rated
24 by you at highly effective, isn't that true?
25 A Ms. Davis was rated effective but per the district's

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1 directive all faculty were bumped up one and therefore it
2 was listed as highly effective.
3 Q Okay, so you're not telling us that all of the people that
4 worked under you were rated as highly effective, are you?
5 A I'm telling you that all teachers, predicated on where
6 their evaluation was determined at the close of the
7 preceding year, was bumped up one level.
8 Q So were all of your teachers at the high school rated
9 highly effective that year -- all of them?
10 A I can't tell you what all teachers were rated. I can tell
11 you this, all teachers were bumped up one level.
12 Q Okay.
13 THE COURT: And that's just one year that
14 that happened, correct?
15 THE WITNESS: That is correct.
16 THE COURT: Okay, does -- does that mean that
17 some were rated highly effective and then others were rated
18 effective and then had their status increased to highly
19 effective?
20 THE WITNESS: That is correct.
21 THE COURT: Okay.
22 BY MS. BONANNI:
23 Q If they were a low ranking highly effective they may not
24 have been bumped up high enough to get to highly effective,
25 isn't that true?

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1 A If a teacher was rated on the lower end of highly effective
2 it's still within the range of highly effective.
3 Q Okay, so -- now -- oh, yes. During the time that you were
4 Principal Ms. Davis was also given some district-wide
5 acknowledgments for her teaching, do you -- do you have a
6 memory of that independently?
7 A Sitting here at this moment I -- I couldn't say absolutely
8 yes or absolutely not.
9 Q And you know that she also, and I believe this was under
10 your tenure, was lobbying for special art projects for her
11 students both in -- outside in the community of Jackson and
12 also within the community of the high school asking you for
13 permission -- administration, actually, of the district to
14 have murals painted on the walls. Do you remember those
15 things? Those contributions to your program?
16 A Can you clarify which walls you're referring to?
17 Q Outside of the wall of the art wing.
18 A Oh, that -- the art wing wall has displays from a variety
19 of students. And if we go back as far as the renovation
20 period there are particularly --
21 Q Those -- do you know those paintings on the walls?
22 A I'm familiar with the paintings on the walls.
23 Q Okay, because --
24 A I'm not sure --
25 Q -- we can show them to you --

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1 A No, I --
2 Q -- if you'd like to?
3 A I'm familiar with them.
4 Q Okay, so I was gonna say I have them if you'd like me to
5 refresh your recollection.
6 A No.
7 Q But those are Pennie's students. You knew that, right?
8 A They weren't only Pennie's students. I do know that.
9 Q Okay, the --
10 A And that's why I was giving you a historical perspective.
11 Q I appreciate that. What about the approval? She had to
12 get approval from the district to actually get the
13 materials and paint on those wall. Do you remember the --
14 the steps she took to get that implemented?
15 A If that was through district approval, that would not have
16 been through my office, and so I don't know that.
17 Q Okay, and then you also know that she was doing things with
18 women's shelters and her students were out in the community
19 doing different art works for comm -- the community, do you
20 remember that?
21 A And what I'm hearing you say is that she did different
22 activities, etcetera through the community. Very
23 consistent with what a lot of our teachers do at Jackson
24 High School. In our district Pennie did, in fact, reach
25 out to different areas.

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1 Q How soon after May 2017, when Pennie got word that she
2 would be transferred back to the high school, how soon did
3 you actually know?
4 A That became known to me during the Summer. I can't tell
5 you an exact date.
6 Q Do you remember at what point in time during the Summer
7 Pennie Davis was finally given a room assignment?
8 A If you're asking me an exact date I -- I can't. But,
9 again, there are other teachers who -- because we shifted
10 some things over the Summer -- that had shifting room
11 assignments.
12 Q Do you remember why it was that there was a delay in time
13 from the time that Pennie was alerted that she would be
14 back at the high school teaching art --
15 A Mm-hmm.
16 Q -- that you were informed, which was at some point in the
17 Summer. Can you explain that lag in time between the
18 decision being made by the district and your being
19 informed?
20 A And -- and that -- that's a decision that the district
21 made. That would be something the district would be able
22 to answer.
23 Q Okay, so you don't know why it took them so long to tell
24 you?
25 A That would be something the district would be able to

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1 answer.
2 Q Now the room that you assigned to Pennie Davis there were
3 issues and Pennie had to file a grievance in order to get
4 certain things corrected. Do you remember that grievance?
5 A When we were going through that classroom site that there
6 was a piece on the I want to say west wall -- but, again,
7 my directions aren't strong -- that had a piece of wiring.
8 And I know that I went down and checked that out. And we
9 did put a request in through facilities. And they did, in
10 fact, take care of it. Pennie's concern was that if a
11 student were to bump against it it would be perhaps a -- a
12 safety risk and so we took care of it.
13 Q So can you remember why it was that Pennie was required to
14 go to the formality of having to file a grievance in order
15 to get these issues corrected?
16 A I don't know why Pennie made that decision.
17 Q Okay, let's look at Exhibit 68. I'm showing you pictures
18 of some of the issues that were in that room at the time
19 that Pennie was asking to be corrected. Do you remember
20 seeing these photos before?
21 A I don't have recall of the photos. I know the room well
22 enough to recognize the -- the wall.
23 Q Okay, so you will confirm that these are some of the issues
24 with some -- this is in the Room 122?
25 A I would confirm that this is a picture.

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1 THE COURT: I -- I do have one question about
2 the two art rooms. Was Ms. Davis's original art room --
3 did that have a kiln and a room where the -- where the --
4 THE WITNESS: It was in an adjacent room.
5 THE COURT: Okay, then --
6 THE WITNESS: It was not in the immediate
7 room.
8 THE COURT: Okay, did -- did her new room
9 that she was given, did it -- did it have a kiln and the --
10 the ability to do the pottery in the same manner?
11 THE WITNESS: The room specifically does not.
12 At the same time it's very clear that if you were to be
13 teaching a pottery class, or a sculpture class, which is
14 not currently Ms. Davis's assignment, that access to that
15 would be made available.
16 THE COURT: Okay.
17 BY MS. BONANNI:
18 Q Well, just to follow up on the Judge's question. Are you
19 aware, Principal Pauli, that Ms. Davis's teaching a course
20 called 3D?
21 A I'm very well aware.
22 Q Okay, that's a --
23 A In fact, I believe it's called Beginning 3D.
24 Q That's a sculpture class, in part, isn't it -- in part?
25 A There may be components to that.

1 Q That might require use of the kiln?
2 A And, again, we share facilities.
3 Q Okay, so anyway back to the photos. Can you confirm that
4 these are photos of Room 122?
5 A In that there's nothing else in context outside of the
6 photo, I couldn't tell you where necessarily these came
7 from.
8 Q Well, remember one of the things that Pennie was
9 complaining about is that there were exposed light sockets?
10 A What I'm sharing with you is, in the context of the photo,
11 I don't know where that photo was taken.
12 Q Okay, I thought you just told me a moment ago that you were
13 familiar --
14 A And I recognize something like this in a room.
15 Q Let me -- let me finish my question.
16 A Okay.
17 Q Thank you. You've indicated that you're familiar enough
18 with Room 122, to know the walls and what's in the room.
19 And I'm asking you if this -- these photo -- photographic
20 depictions are consistent with your understanding of Room
21 122?
22 A What I do recognize is this.
23 Q The first page. Do you recognize the second page?
24 A What I do recognize is this.
25 Q The first page -- I'm sorry, the second page appears to be

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1 a close up of the first page.
2 A I -- I couldn't tell you based on the -- the quality of the
3 photo there and --
4 THE COURT: Turn it towards me so I can see
5 which one is --
6 THE WITNESS: Certainly, this is the second
7 one.
8 THE COURT: Okay.
9 BY MS. BONANNI:
10 Q Okay, so is it fair to say that the only photo, in all of
11 these photos, that you can tie to Room 122 is this first
12 page of the exhibit?
13 A I would say that's the -- the closest I can come to saying
14 that, yes.
15 Q Okay, so let's just admit page one of Exhibit 68, we'll
16 remove the rest but I'm gonna ask you questions about them.
17 You remember the problems -- some of the things in that
18 grievance that Pennie Davis filed about the room?
19 MS. HOLMES: You gonna offer --
20 (undecipherable).
21 MS. BONANNI: Oh, I'm gonna offer Exhibit 68
22 into evidence.
23 (At 12:25:25 p.m., Plaintiff's Exhibit 68
24 offered)
25 THE COURT: Is that the one picture?

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1 MS. BONANNI: Just the one page.
2 MR. MULLINS: No objection.
3 THE COURT: All right, so admitted by
4 stipulation of the parties.
5 (At 12:25:33 p.m., Plaintiff's Exhibit 68
6 admitted)
7 MS. BONANNI: Sorry.
8 BY MS. BONANNI:
9 Q So there were exposed piping that Pennie Davis worried
10 about and raised to your attention?
11 A Pennie did raise that, yes.
12 Q And there was not only one exposed pipe, there were
13 multiple. Do you remember that?
14 A I do not recall multiple.
15 Q Do you remember that there were also concerns about light
16 -- I'm sorry, electric sockets without covers?
17 A No, the -- the concern that came to me was on the inside
18 wall when you walk into the classroom. And that's what was
19 reported to facilities so that they could address that.
20 But I don't recall --
21 Q You don't remember the detail? Would looking at the
22 grievance perhaps refresh your recollection as to the
23 extent of the problems that Pennie Davis was raising?
24 Would that help you, do you think?
25 A I don't know without seeing it.

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1 Q Okay, why don't you take a look at Exhibit 50.
2 A Is it in here?
3 Q Yes, Exhibit 50. And you see this is the -- do you agree
4 this is the grievance that Pennie filed on Oct -- August 3
5 of -- just before school starts?
6 A Per this document it appears -- yes.
7 MS. BONANNI: I'd like to offer Exhibit 50
8 into evidence.
9 (At 12:27:47 p.m., Plaintiff's Exhibit 50
10 offered)
11 THE COURT: Any objection, Mr. Mullins?
12 MR. MULLINS: Actually, yes, your Honor.
13 Submitting a level two grievance, which what -- which this
14 is, is inappropriate if -- if the level one is to ask the
15 Principal first, "Will you do this?" If that foundation is
16 laid then I wouldn't have an objection. Otherwise, it's
17 really just a made up document.
18 THE COURT: Can I go ahead and see the
19 exhibit? So this is part two of it?
20 MS. BONANNI: (Inaudible).
21 THE COURT: Yeah, because -- (inaudible) --
22 foundation that she recognizes it.
23 MS. BONANNI: Okay.
24 THE WITNESS: And this shows it was
25 distributed to Ben Pack.

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1 BY MS. BONANNI:

2 Q And I'm asking you that question just now. It indicates

3 that on Oct -- August 21st, 2017 Pennie made her request to

4 Ben Pack, Bar -- and Barb Baird-Pauli, and at a separate

5 time Jeff Beal, and there was no response. Do you see

6 that?

7 A I am reading that, yes.

8 Q Okay, so then once there's no response then she files for

9 grievance, correct?

10 A When there's not a response it would be the logical next

11 step.

12 MS. BONANNI: Offering, again, Exhibit 50

13 into evidence with that foundation.

14 THE COURT: All right. Well, objection's

15 overruled. I think he's -- she has established a

16 sufficient foundation for recognition of the exhibit. So

17 the defense objection's overruled.

18 (At 12:29:23 p.m., Plaintiff's Exhibit 50

19 admitted)

20 BY MS. BONANNI:

21 Q Other than the fact that Ms. Hearth had been in the room

22 for two years was there any other reason why you refused to

23 permit Pennie Davis to return to the room that she had been

24 in 15 years prior?

25 A We opened up a new classroom. That classroom was --

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1 understanding that Ms. Davis is a shared staff member also
2 between our School Within a School and Jackson High School,
3 Room 122 is, in fact, in closer proximity for the transit
4 for the students in our School Within a School. And what
5 was important was that the facility offer appropriate
6 support in the way of student work stations, water access,
7 etcetera and it did, in fact, do that.
8 Q Well, at the time that Ms. Davis was transported over to
9 the high school her transfer letter indicates that she will
10 be teaching art at the high school.
11 A Mm-hmm.
12 Q Correct?
13 A I don't know that I saw that transfer letter.
14 Q And the School --
15 A That's a -- Central Office.
16 Q -- Within a School that you're referring to is the
17 Alternative High School that is located in the basement of
18 the Jackson High?
19 A That is not correct.
20 Q That school used to have a separate building?
21 A That is not correct.
22 Q Who are the students who make up the Pathways Program?
23 A Jackson Pathways is a combination of students that were
24 either attending Jackson High School, other schools, may
25 have come from our Alternative School.

1 Q Which is the -- was that Wilson?
2 A It's called T.A. Wilson.
3 Q T.A. Wilson. And then T.A. Wilson has sort of transitioned
4 into a night program?
5 A T.A. Wilson is an afternoon/early evening program. Jackson
6 Pathways, on the other hand, is -- and was designed in
7 functionality to work with our students who are behind in
8 credits with much more of a career prep, if you will, focus
9 -- exposure into the community. These are students who,
10 again, are students that have attended Jackson High School,
11 have attended other high schools, and may have attended
12 T.A. Wilson. But it is, in fact, a School within a School
13 to offer students an opportunity -- an educational
14 environment that affords them a greater connection between
15 school and community. They are doing service projects.
16 They're working with Consumer's Power. They're working
17 with -- oh, Jack Three (ph) --(multiple speakers)--
18 Q Do the other art teachers --
19 A -- on Friday things.
20 Q -- teach at Pathways too?
21 MR. MULLINS: Please, your Honor, she should
22 be able to finish the question.
23 MS. BONANNI: Oh, I'm sorry.
24 MR. MULLINS: Ms. Haines.
25 MS. BONANNI: I thought you were done.

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1 BY MS. BONANNI:
2 Q Are you done?
3 A I am not.
4 Q Okay, keep going.
5 A The Career Prep piece is a -- a vital piece. And the focus
6 is to afford them a high school diploma following the MMC
7 Curriculum and nearing, to the best of our ability, the
8 same curriculum. It does share teachers between Jackson
9 High School and Jackson Pathways.
10 Q Okay, have you completed your answer?
11 A Pardon me?
12 Q Are you done?
13 A I am.
14 Q Okay, so the decision -- the decision to move her to Room
15 -- or to put her in Room 122 you're saying is because she's
16 teaching at Pathways and it's closer to get there?
17 A Ms. Davis's classroom assignment is Room 122 for a variety
18 of reasons.
19 Q Okay, now it's down --
20 A One, it's in close proximity to the other art classrooms.
21 It's also in close proximity to the transit of our Jackson
22 Pathways students who come right up the steps and to the
23 right. And also, importantly in terms of instructional, is
24 providing the same opportunity for learning in which the
25 students do have.

1 Q Does she teach Pathways students in her art room?
2 A Yes.
3 Q Okay, does she teach --
4 A Aside from -- if I may interrupt for a moment -- aside from
5 the physical education class. That's taught in the
6 gymnasium area.
7 Q Do the other teachers teach Pathways students?
8 A They don't necessarily teach Pathways students but they do
9 have split assignments.
10 Q So why did you assign Pennie Davis to teach art to Pathways
11 students and not to Jackson High students?
12 A Because Pennie is the only other teacher whereby, as we
13 look at the construct who has the physical education
14 certification --
15 Q But that wasn't my question. I'm not asking about gym.
16 Because gym is taught in the facility, not her art room,
17 correct?
18 A Your question was why is her assignment split between
19 Jackson High and Pathways.
20 Q Well, I want to know -- my question right now for you,
21 Ma'am, is is she teaching art to Pathways students?
22 A She is.
23 Q So are the other art teachers assigned to teach Pathways
24 students art?
25 A At the present trimester, no.

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1 Q Why did you assign Pennie to teach Pathways art class
2 instead of any of the other teachers who are fully capable
3 of teaching Pathways students art?
4 A In understanding that there are several teachers who are
5 teaching both at Jackson High School and Jackson Pathways.
6 Q I -- I was just -- I was just limiting myself to art.
7 A And I think it's really important to embrace that it's not
8 limited just to art. There are shared teachers through
9 Jackson High School that their assignments are shared
10 between Jackson Pathways and Jackson High School.
11 Q So let's leave it --
12 A And --
13 Q Let's leave it at this. You have a choice as Principal to
14 assign a teacher to work with whatever student population
15 you decide. And in this case you decided to assign Pennie
16 Davis to teach art to Pathways students and you did not
17 decide to have the other two art teachers teach art to
18 Pathways students, correct?
19 A That is correct.
20 Q And you also assigned Pennie to teach gym to Pathways
21 students, correct?
22 A That is correct.
23 Q The assignment that Pennie got, her assignment -- I can
24 show you the letter. It indicates she will be teaching art
25 to Jackson High students. But, fair to say, as the

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1 assignment has unrolled she is not doing that exclusively,
2 is that correct?
3 A Her assignment is not exclusively Jackson High School. It
4 is a shared assignment between Jackson High School students
5 and Jackson Pathways.
6 Q The art room that you've assigned her to is down the hall,
7 around the corner from the other two art teachers, is that
8 correct? You can look at Exhibit 56 if it will help you
9 visualize it.
10 A Yeah, actually that I --
11 Q You can -- you can turn to 56.
12 A Okay. No, it is down the hall and -- and to the left -- or
13 to the right, excuse me. In close proximity.
14 And if I may come back very quickly to your
15 other question. One of the pieces that I had noted several
16 years ago from coming into the district is Ms. Davis had a
17 particular strength working with students who perhaps were
18 more struggling students and that did, in fact, play into
19 some of that decision-making.
20 Q You did not -- you're two thirds through the school year,
21 is that about right?
22 A We are two thirds.
23 Q And Ms. Davis is still on a IDP?
24 A She is not presently.
25 Q Since when?

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1 A We have not found it -- because of the experience that
2 we've had. She has had such a great transition to Jackson
3 High School that the concerns that previously existed are
4 not existing.
5 Q So why was Pennie not informed that she is no longer on a
6 IDP?
7 A I don't have an answer for that.
8 Q Well, that's good to know. What's her rating gonna be this
9 year now that we're two thirds of the way? What is your
10 gut? She gonna be effective? Minimally effective?
11 A Based on what we have --
12 Q Highly effective? What do you -- what are your thoughts
13 and are you the one rating her?
14 A The -- and Ms. Davis knows this -- the rating is
15 determined, predicated on observations from two
16 administrators. My Associate Principal and I are the
17 administrators who are observing Ms. Davis and completing
18 that evaluation. And as it looks right now -- I can't
19 predict between now and -- and May, but predicated on what
20 we have observed thus far she will be well within that
21 effective range. But, again, until all the data is in,
22 etcetera I can't tell you the final outcome.
23 Q IDP is a tool that's used for an employee who is not
24 performing at a effective level, fair to say?
25 A That is fair to say. An IDP may be used on a stu -- on a

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1 teacher -- or with a teacher who is, in fact, in the
2 effective range but there may be some areas that need to be
3 addressed.
4 Q Okay, but typically before you're placed on the IDP, which
5 requires regular meetings and accountability, the teacher
6 is informed of certain areas of deficiency and then placed
7 on a IDP, is that the proper flow of how this typically
8 works?
9 A The proper flow for an IDP is there would be a meeting
10 convened. There would be identification of areas that are
11 of concern and then collaboratively develop those goals and
12 have subsequent meetings. Our observations thus far during
13 the school year.
14 Q Who are the ratings -- these ratings every year, data --
15 data, that keep mentioning, comprises 25 percent?
16 A Currently, yes.
17 Q And, fair to say, that the NWE data is data that you alone,
18 as Principal, are able to access because it's throughout
19 the building?
20 A Can you define NWE data?
21 Q I'm sorry WEA data.
22 A Can you define WEA data?
23 Q NWEA?
24 A The NWEA data.
25 Q I think you knew where I was going but --

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1 A I want to be certain that we're talking the same --
2 Q Okay, NWEA data, that is data that's about the whole
3 building, is that correct? And you, as Principal, can
4 access this?
5 A All teachers, all administrators have access. Teachers
6 have access to their own data.
7 Q But not all the data?
8 A Define --
9 Q Not all the NWEA data?
10 A Define what you mean.
11 Q By -- for the whole -- for every grade. Every grade within
12 --
13 A A teacher --
14 Q -- your school.
15 A -- has only access to his or her data.
16 Q Thank you.
17 A Administration has access to building data, yes.
18 Q And what I've learned from Mr. Patterson is that 15 percent
19 of this 25 percent score comes from this NWEA data and that
20 the remaining 10 percent is what is called local data.
21 A That is correct.
22 Q Thank you. Pennie's years with you, no complaints from
23 teachers or students about her, never written up, never
24 suspended, never disciplined? Fair to say in 15 years with
25 you?

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1 A Not that I can recall.
2 Q Currently, since she's transitioned over, no complaints, no
3 issues?
4 A As I mentioned earlier, Pennie has identified, and her
5 other department members have identified, that they have a
6 great collaborative team correctly -- or currently.
7 Q And you remember when Pennie Davis was transitioned out of
8 the school and she was moved to Parkside that there was a
9 petition that students, including a girl named Caitlyn
10 (sp), circulated, got signatures, and presented? Do you
11 remember that -- asking that she not be let go -- do you
12 remember that?
13 A I don't recall that, understanding that Ms. Davis was not
14 let go.
15 Q Transitioned, I said, over to Parkside?
16 A Oh, I thought you said the petition was to -- for her not
17 to be let go.
18 Q Not to be let go from your school.
19 A Oh, okay.
20 Q Do you remember that?
21 A I don't recall a petition. And if I had, in fact, seen
22 anything like that -- because I don't make that decision --
23 that would have been turned over to the appropriate people
24 who make that decision.
25 Q Now you, as a building administrator, when a teacher's

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1 having issues with a student your expectation is that they
2 follow protocol and they reach out to try to handle the
3 student issue by reaching out to administrators, parents,
4 etcetera?
5 A When a teacher has a challenge with a student, you're
6 asking?
7 Q Yes.
8 A When a teacher has a -- an issue with a student, or a
9 concern with a student -- particularly at the high school
10 level -- first phase would be to talk with the student.
11 Q Yes, that's right. Pennie talked about that. The first
12 phase is to try to resolve it with the student and not have
13 it escalate.
14 A That is correct.
15 Q Are you -- you're aware that she took that step when it
16 comes to this issues that she was having with M.H.?
17 A I'm not aware of conversations -- she did not have any
18 conversations with me regarding this student.
19 Q Well, you remember when she provided you with a pupil
20 exclusion form that also had attached to it a chronology of
21 all of the things that Pennie had done? And, in fact, I
22 counted them up and she'd made 21 contacts with various
23 administrators and parents about M.H.?
24 A There are not 21 indications in that young man's file to
25 suggest that he had been written up for discipline.

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1 Q That's not -- I wasn't --
2 A Or concerns.
3 Q No, no, I think you misunderstand me.
4 A Okay.
5 Q I'm not talking about 21 disciplines. I'm talking about 21
6 contacts with either administrators, parent, counselor,
7 football coach -- trying to get assistance -- oh, and also
8 the student -- try to de-escalate what Ms. Davis identified
9 as aggressive behavior.
10 A I am not aware of 21 contacts.
11 Q You are aware as of, at least, the time when she turned in
12 her pupil exclusion from class request that she had made
13 these contacts. Do you remember learning that?
14 A Do I remember --
15 Q Do you remember learning that Pennie Davis had been
16 engaging in self-help measures to try to de-escalate what
17 she identified to be a student who was showing aggression
18 and defiance in her classroom?
19 A What I heard you say is that she exercised self-help
20 measures with a student who is demonstrating aggression in
21 the classroom and my recollection is there were only a --
22 two or three write-ups and they were not for aggression --
23 talking back, using bad language.
24 Q Ms. Pauli, don't you expect as Principal of your school,
25 that before engaging in discipline, that the teacher is

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1 going to try to take measures to manage any issues with a
2 student that are short of engaging in discipline and
3 student log entries?
4 A What we expect is a classroom management system that the
5 relationship piece is developed such that they would
6 address those pieces, absolutely.
7 Q Okay, so if Pennie Davis was having problems with a student
8 it would be your expectation that before she engage in
9 disciplinary measures that she contact parents, talk to the
10 student, engage in -- talk to administrators to try to get
11 the issue resolved, is that fair to say?
12 A When a teacher is struggling with a student it would be
13 expected that they would engage -- first of all, in making
14 use of their classroom management system. Secondly, use
15 that relationship development to address behavior with that
16 student. And if that was not working we would expect that
17 he, or she, would then submit a log entry indicating that
18 they have, in fact, worked with that student and provided
19 substantiation that they had done so.
20 Q Okay, let's look at Exhibit number 3. This is a pupil
21 exclusion form and I just want you to confirm that these
22 are the appropriate steps to take to exclude a pupil from
23 class. This is your school form?
24 A This is a -- a pupil exclusion form used, yes.
25 Q Okay, and at the back of that form, if you flip to the

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1 third page -- third page, you'll see a typed-written list
2 of the steps taken.
3 A I do not see that.
4 Q Oh, that's right. We marked it separately. I'm showing
5 you Exhibit 7. These are the notes that Pennie Davis took
6 and then -- took those handwritten notes and then put them
7 in type-written form and attached them to a pupil exclusion
8 form. Are these the kinds of steps that you would expect a
9 teacher to take if she's having issues with a student in
10 the class?
11 A I would expect that, with the documentation, would be the
12 result of those contacts.
13 Q I'm sorry?
14 A I would expect that with that documentation be the result
15 of those contacts. And I would expect that by the second
16 or third one that that same teacher would have involved
17 either a counselor or administrator and documented that.
18 Q Yes. And, in fact, don't you remember Mr. Zessin telling
19 you verbally, and also in a written communication, that Ms.
20 Davis had taken steps and had outlined these steps: phone
21 call home, meeting with parents, meeting with counselor and
22 meeting with principal?
23 A And what's you're repeating is what's here. What I'm
24 saying is I would expect documentation of what took place
25 in those conversations.

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1 Q Okay, and Mr. Zessin, your Assistant Principal, the grade
2 principal, was the administrator who was extensively there
3 at these meetings?
4 A I don't know that.
5 Q Well, if it weren't --
6 A And I don't see that documented.
7 Q If it weren't you then it would naturally be him, correct?
8 A You're suggesting it would naturally be him and what I'm
9 suggesting is unless it's documented I don't know that
10 that's taken place.
11 Q Isn't it noted on the document that she met with Mr.
12 Zessin, do you see that there, and the parent but the
13 parent did not come?
14 A It looks like -- I don't know if this was 8/28, 9/28 meet
15 with Joe and student. I don't know what took place in that
16 meeting.
17 Q Okay, so no one told you but extensively, at least as far
18 as the notes indicate, a meeting took place. And if a
19 meeting did take place that would be consistent with what
20 your expectations would be, correct?
21 A Consistent with my expectations would be not only notation
22 of a date of a meeting but what went on during that
23 meeting.
24 Q Okay, and --
25 A A purpose of the meeting, what transpired in the meeting,

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1 what the outcome of that meeting is.
2 Q Okay, and once your right-hand man, the Assistant
3 Principal, is involved it would be the Assistant
4 Principal's responsibility to ensure that all school
5 policies are adhered to, do you agree?
6 A It's the responsibility of all of our faculty including
7 administrators, counselors, teachers, that our school
8 guidelines are adhered to.
9 Q Now you were familiar with this student, M.H.?
10 A Yes.
11 Q And you were aware that there were issues that he had in
12 the classroom?
13 A I'm aware of a handful of -- of log entries.
14 Q Are you aware of more than a handful of log entries from
15 your time at the high school?
16 A I'm aware of a handful of log entries at Jackson High
17 School, yes. And we're talking about the duration of this
18 time.
19 Q So when you say the duration of this time you're not
20 talking about M.H.'s high school career, you're talking
21 about the -- the -- this time frame? This October --
22 A No, I'm talking about M.H.'s.
23 MS. BONANNI: Okay, I'd like to approach.
24 (Bench conference from 12:52:36 p.m. to
25 12:52:55 p.m.)

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1 THE COURT: All right. All right, ladies and
2 gentlemen, I'm going to go ahead and give everybody about a
3 15 minute recess. We've been going quite a while so we'll
4 let everybody kind of stretch, you know. I want to talk
5 with counsel about your concern before everybody leaves,
6 all right. So everybody can be at ease.
7 THE CLERK: All rise for the jury.
8 (At 12:53:06 p.m., jury excused)
9 THE COURT: (Multiple speakers) -- step down
10 from the witness stand. We're gonna take a ten or fifteen
11 minute recess so if you --
12 THE WITNESS: Is that okay?
13 THE COURT: Yeah, you can feel free to -- all
14 right, thank you everyone may be seated or be at ease.
15 All right, Ms. Bonanni, I wanted to address
16 your concerns before we got to that intersection.
17 MS. BONANNI: Yeah, thank you. So my concern
18 is that, you know, you've got a school policy that we've
19 entered into evidence that talks about how when an
20 administrator is evaluating -- an -- and building
21 administrator is evaluating a situation that happens at
22 school that they are to consider the student's disciplinary
23 record when making decisions. Now, Mr. Pack, Mr. Beal -- I
24 can't remember which one of them, I think it was Mr. Beal,
25 said, "Well, that's the building administrator, that's not

1 me. But, yes, that's the rule." So --
2 THE COURT: Building administrator, you
3 meaning --
4 MS. BONANNI: Principal.
5 THE COURT: -- is Princ -- okay.
6 MS. BONANNI: So now at this point in time
7 with the principal saying I'm only aware of a handful, and
8 they're arguing that they did the right thing and did this
9 investigation, and the school policy is dictating that they
10 are required to look at the -- the entire student
11 disciplinary record. I think I get it in for that limited
12 purpose. And I'm not going to spend a lot of time on it.
13 Trust me, but I think I get to lay a foundation as to what
14 we were dealing with at the school. Because she's just
15 told the jury there's only a handful during my tenure.
16 She's been there now, at this stage, 15 years.
17 THE COURT: Well, I guess clearly maybe some
18 -- some definition of what a handful is. So, Mr. --
19 MR. MILLER: Well, I'll let Mr. Mullins --
20 THE COURT: Mr. Mullins?
21 MR. MILLER: -- to see if he has anything to
22 add but --
23 MR. MULLINS: Well --
24 MR. MILLER: One, it's --
25 MR. MULLINS: I -- I don't see it as any

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1 different than what we raised in the Motion in Limine.
2 That, you know, A, you've ruled on it. B, it's propensity
3 evidence. C, a lot of those other entries are hearsay,
4 entered by other people, and, again, she hasn't denied that
5 the -- I mean what -- what she's trying to do is put M.H.
6 on trial as opposed to --
7 MS. BONANNI: No, it's about Ms. Pauli's --
8 MR. MULLINS: If I could just --
9 MS. BONANNI: -- decision.
10 MR. MULLINS: Just -- if I could just get a
11 chance to kind of chat here a little bit.
12 MS. BONANNI: Sorry.
13 MR. MULLINS: So --
14 THE COURT: Well, and again some of this is,
15 you know, it's not really -- I mean it's he had some
16 marijuana wrapped around, you know, some pills or something
17 and he was expelled for 180 days.
18 MR. MILLER: And it's an attempt to impeach
19 with extrinsic evidence. And she didn't make the decision
20 to transfer this young gentleman. That was testified that
21 it was Superintendent Beals.
22 MS. BONANNI: But --
23 MR. MILLER: And he said he wasn't aware of
24 it.
25 MS. BONANNI: Well, let me --

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1 MR. MILLER: Whether she was aware of it in
2 disciplining Marcus, I mean is not really -- (multiple
3 speakers).
4 MR. MULLINS: Some of them are even --
5 MS. BONANNI: Ac -- actually it is.
6 MR. MULLINS: -- after the event in question.
7 MS. BONANNI: Because they're the one that's
8 deciding that this -- this touch is incidental. And the on
9 -- there -- I mean I'll show you the policy that says when
10 to -- when a student have violated student code (ph), which
11 he violated threatening. The used threatening language.
12 He threatened a teacher. They're supposed to look at his
13 disciplinary history. It says it. I will show you that
14 language. So I'm not going to get into the pot. That
15 happened after this anyway. I'll redact everything after
16 Pennie is taken out. But this history, it's defiant, not
17 listening. So she has to know that he's got challenges and
18 that he has issues. And for her to day I'm only aware of a
19 handful is disingenuous.
20 THE COURT: All right. Well, what -- what
21 I'm going to allow you to do is I'm gonna -- I'm gonna get
22 -- allow you to do some clarification on that with her
23 outside the presence of the jury.
24 MS. BONANNI: Okay.
25 MR. MULLINS: All right.

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1 THE COURT: So it may be easier for me to
2 make that ruling when I see what her answers are.
3 You got a working copy of that for the other
4 side too?
5 MS. BONANNI: Yeah, they have it.
6 THE COURT: Are you primarily looking to get
7 in specifically the ones that are high -- really the ones
8 on -- on the second page are already pretty much in,
9 correct?
10 MS. BONANNI: Yeah, I -- I mean actually
11 because I -- I really wasn't prepared for her to state
12 there were only a handful so I wasn't preparing to. But I
13 -- I'll look. It is things -- disrespectful, harassment,
14 disrespect, skipping, defiant, said "shut up", I mean just
15 that -- there are recurring issues of defiance and -- and
16 even another teacher -- defiance, left class without
17 permission -- you know, this is what Pennie's trying to
18 grapple with and to say there's only a handful of incidents
19 -- that's not a fair representation to this jury.
20 MR. MILLER: Okay, under Rule six -- I think
21 six thirteen rule (sp) of -- I mean, you aren't supposed to
22 impeach with extrinsic evidence. It's in Article six of
23 the rule -- Rules of Evidence. And this isn't the lawsuit
24 against Marcus and what he may or may not --
25 THE COURT: No, I -- I --

1 MS. BONANNI: This is not --
2 MR. MILLER: -- have done wrong.
3 MS. BONANNI: -- extrinsic evidence.
4 MR. MILLER: Will you stop interrupting and
5 let --
6 THE COURT: Let -- let --
7 MS. BONANNI: It's not extrinsic.
8 MR. MULLINS: Mark -- I mean --
9 THE COURT: -- her go ahead and finish. Go
10 ahead.
11 MR. MULLINS: Just the part --
12 MR. MILLER: It's not a lawsuit against
13 Marcus. It's a lawsuit against the school saying she filed
14 a police report and was retaliated after the fact. The
15 administrators --
16 THE COURT: Well, I'll let you -- I'll let
17 you borrow my Rules of Evidence and -- and we're gonna --
18 I'm gonna take a break for about ten minutes -- my staff,
19 or so. And what I'm gonna allow you to do, as I indicated,
20 Ms. Bonanni, is to bring her back and we'll -- we'll find
21 out what these handful are, all right, outside the presence
22 of the jury.
23 MS. BONANNI: Okay.
24 THE COURT: Okay. And, by the way, one thing
25 that I've looked over in the instructions, I know I got --

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1 (inaudible) -- rule upon that because I don't -- do you
2 have a definite plaintiff verdict form --
3 MS. BONANNI: Yes.
4 THE COURT: -- (multiple speakers) -- verdict
5 form.
6 MS. BONANNI: We certainly do, yes.
7 THE COURT: Let me see the verdict form first
8 though.
9 MS. BONANNI: Okay.
10 (At 12:59:37 p.m., hearing recessed)
11 (At 1:35:49 p.m., hearing reconvened)
12 THE COURT: All right. Ms. Bonanni, did we
13 reach an agreement or are we gonna still do some
14 exploration -- further exploration of this issue outside
15 the presence of the jury?
16 MS. BONANNI: Yeah, I mean I guess we can do
17 that if -- if you prefer I can just sort of explain what
18 I'm gonna ask.
19 THE COURT: Okay. Well, if you want to do it
20 by that way as long as -- before we -- I just didn't want
21 to --
22 MS. BONANNI: Yeah, so let me --
23 THE COURT: -- get in some of these areas in
24 front of the jury if they weren't properly matters. So, go
25 ahead.

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1 MS. BONANNI: Okay.
2 BY MS. BONANNI:
3 Q So, Principal Pauli, according to the Jackson High School
4 Handbook, Exhibit 10 in your book here, re -- repeat
5 violations will result in progressive consequences.
6 Administrators will consider the student's disciplinary
7 history when assigning consequences. Is that a fair
8 reading of the Jackson High School preamble of the second
9 -- secondary code of conduct for students?
10 A What page are you on?
11 Q I'm sorry, page -- it's the -- page -- the second page.
12 Right there.
13 A That -- you were reading that as it is written, yes.
14 You're reading as -- as it's written, yes.
15 Q So that is correct?
16 A (Inaudible).
17 Q And so when a teacher fills out a log entry, and I believe
18 it's called a referral, is that correct?
19 A The former term was referral. Since the new systems it's
20 called a log entry.
21 Q Okay, so when a teacher makes a log entry that log entry is
22 forwarded to your e-mail box, is that correct?
23 A That is not correct.
24 Q That log entry is not forwarded to you?
25 A That is -- that is correct.

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1 Q So unless you are somehow alerted you do not know about log
2 entries from stu -- about students within your high school?
3 A Understanding that the structure of our high school we have
4 four grade principal -- responsible individuals and so the
5 log entry, initially, goes to a secretary who then forwards
6 it to the respective grade principal. So in the case of
7 M.H., given that he was under the guidance of Mr. Zessin,
8 it would have gone to Mr. Zessin.
9 Q Okay, and then does it ever make its way to you?
10 A When I do a report to look at the cycle of referrals,
11 number referrals, etcetera. Basically analyzing.
12 Q And then as principal it would then be your expectation
13 that in the event of repeated log entries about a
14 particular student in a given school year, or over the
15 course of time, that you would then expect the Assistant to
16 let you know if there's an issue?
17 A What you're suggesting is if a student, in a given year, is
18 demonstrating behavior that warrants additional concern
19 that they would bring it to my office, yes.
20 Q Okay, that would be your expectation? Yes?
21 A Yes.
22 Q And then in -- further, in the event of an incident related
23 to that student, involving that student, according to then
24 the code of conduct administrators must then look at the
25 student's disciplinary history in order to assign a

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1 consequence, isn't that true?
2 A As it reads here, "Administrators will consider the
3 student's discipline history."
4 Q So that means that before even considering it they're gonna
5 have to access it, correct?
6 A One would suggest that, yes.
7 Q And in this case M.H. was accused of violating student code
8 through threats and also an assault?
9 A Reported to, yes.
10 Q So in order to determine and investigate this part of the
11 consideration would be looking at the student's history?
12 A Actually the first step would be to investigate the report
13 that's immediately in front of a person and to discern
14 accuracy of the report and really the dynamics of that
15 report.
16 Q And then -- I mean I don't want to do the exam but, of
17 course, there was an allegation of a threat. Not just an
18 assault but a threat, which comes with -- because he has a
19 history of defiance and other disorderly conduct/physical
20 contact with students over the course of the past 365 days
21 -- Mr. Zessin/Ms. Pauli's made entries. That's kind of
22 where I'm gonna go to at least establish that he had a
23 history of defiance, of disorderly conduct. And at least,
24 too, in so far as investigating the threat which is a
25 violation, and also the assault which is a potential

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1 violation.

2 THE COURT: Okay.

3 MR. MILLER: Judge.

4 MS. BONANNI: And assigning consequence.

5 THE COURT: Okay, let me go ahead and hear

6 from Mr. Miller.

7 MR. MILLER: I have a whole lot of objections

8 here so bear with me. First, there is a separation between

9 what's happening with student M.H. by building

10 administrators who are making that determination and what's

11 happening to Ms. Davis, the plaintiff, which was Central

12 Administration. These are entirely separate issues. And

13 the Central Administrator's responsible for reassigning

14 her. They've already testified. We did not look at this

15 report. This report contains this child's disciplinary

16 record from 2010 to 2017. That is not relevant to this

17 matter. And it's propensity evidence under 404(b). And,

18 before we broke I was talking about how extrinsic evidence

19 isn't proper. In one citation I'd like to bring to the

20 court's attention, published Michigan Supreme Court case,

21 *Barnett v Hidalgo,* 478 Mich 151 a (2007) case states,

22 "Extrinsic evidence may not be used to impeach a witness on

23 a collateral matter even if the extrinsic evidence

24 constitutes a prior inconsistent statement of that

25 witness." This is so far afield of the actual issue here

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1 of whether Superintendent Beal retaliated against
2 plaintiff. We aren't putting this child on trial for what
3 he may or may not have done in the past, and it is
4 incredibly prejudicial under MRE 403. I mean that's why
5 plaintiff wants this evidence. They want the jury to look
6 at this child's seven year disciplinary report and reach
7 the conclusion, "Oh, maybe this kids shouldn't have been in
8 school. Maybe these school employees shouldn't have been
9 trying to work with this kid anymore." It's entirely
10 improper and this court's prior ruling on this issue, the
11 last two times, has been dead on.
12 THE COURT: All right, thank you.
13 MS. BONANNI: Just a quick response. First,
14 Cen -- they're now trying to say Central Office was
15 separate but we have heard testimony that, "She's making it
16 up. It didn't happen. She hit her own hand with a
17 hammer." And, you know, to that point what is relevant
18 here is whether Pennie Davis had a belief -- a reasonable
19 belief that the law was violated. That she was threatened.
20 That she was assaulted. And that's why she went to the
21 police.
22 You know, that's what this is about. And for
23 this -- you know, the implication that Ms. Pauli's giving
24 us is that there was only a handful -- I mean that's what
25 the jury was left with, "a handful of entries." Well,

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1 that's not true and I should be able to establish with her
2 that there's more than a handful. And if we want to redact
3 everything after Pennie Davis leaves I'm fine with that.
4 If we want to limit it to the past 365 days where Mr.
5 Zessin and --
6 THE COURT: Well, let -- let me ask you. I
7 think clearly one of the most significant ones in there is
8 the fact that he apparently had drugs and, you know, was
9 dismissed from school for, what was it, six months?
10 MS. BONANNI: I -- I don't --
11 THE COURT: And that -- that clearly doesn't
12 --
13 MS. BONANNI: I don't want that.
14 THE COURT: -- have any bearing at all.
15 MR. MILLER: And there's even --
16 MS. BONANNI: That's after --
17 MR. MILLER: -- sexual misconduct. I mean
18 highly prejudicial.
19 MS. BONANNI: That's --
20 THE COURT: All right, well --
21 MS. BONANNI: -- after.
22 THE COURT: All right. Well, the court's
23 ready to make a ruling. I think it's right in MRE 404,
24 "Evidence of other crimes, wrongs or acts is not admissible
25 to prove the character of a person in order to show an

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1 action in conformity therewith." It -- and so I'm gonna
2 find at this point that -- you know, I'm going to confine
3 it to -- to the matters that she reported, which is still a
4 handful of, and I think it would be clearly more
5 prejudicial than probative to allow this other evidence,
6 the sexual assault, drug dealing, and that kind of thing in
7 his alleged many year history with the Jackson School
8 District.
9 MS. BONANNI: It is prejudicial to the
10 student who is not here, who is a anonymous figure, and not
11 to the school.
12 THE COURT: It -- it's also prejudicial to --
13 because then I -- I think the inference to the jury is,
14 "Oh, he was involved in drug dealing activity."
15 MS. BONANNI: Well, I think that --
16 THE COURT: He -- no, I know. He was
17 allegedly involved in sexual assaults and the school
18 district somehow allowed him to continue on.
19 MS. BONANNI: But that can be handled through
20 redaction and I don't want that. And that's after this
21 whole thing anyway. What I do want is these multiple
22 incidents of defiance, of not listening to teachers.
23 There's a teacher, within the year before, who's saying,
24 "He bullied me. This kid bullied me." So there is that
25 and that is what Pennie saw when she looked at his log.

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1 And that is what Zessin -- and this is gonna come up again
2 in Zessin. Zessin's the one that she's just testifying to
3 is getting these pings. He's getting these e-mails. So he
4 knows. So maybe it's not at her level but I am gonna raise
5 it with Zessin and there's -- it just doesn't seem fair
6 that if we're gonna characterize this student as being --
7 having only a handful that I don't get to in some way
8 cross. And if you're telling me that crossing Mr. Zessin
9 on issues that are not sexual harassment, or the drugs and
10 anything before -- confine myself to the past 365 days,
11 that's fine. But, you know, they're saying she made it up.
12 They're gonna argue, I know it, to this jury that she
13 didn't have an honest --
14 THE COURT: Well, let me -- let me see your
15 -- your document again that had the ones highlighted.
16 MR. MILLER: And may I briefly --
17 THE COURT: You may, Mr. Miller.
18 MR. MILLER: -- respond, Judge?
19 THE COURT: Go ahead.
20 MR. MILLER: I mean also under 403 this is
21 getting incredibly cumulative. Plaintiff has already
22 testified about the problems she has had with this
23 particular child. And I find it incredibly ironic that the
24 last exhibit defendant tried to enter into evidence was the
25 incident report that was actually e-mailed to the building

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1 administrator and plaintiff had objected to it being
2 improper. This is something that the building
3 administrator sitting here said she didn't review.
4 THE COURT: Okay. Well, you guys just tried
5 to move in the police report too despite the fact that
6 they're almost never admitted into evidence.
7 MR. MILLER: She did review the --
8 THE COURT: Civil or criminal.
9 MR. MILLER: -- police report though.
10 THE COURT: No, I -- I understand. But you
11 tried to move it into evidence too.
12 MS. BONANNI: And I -- I should add one more
13 thing, actually, which I didn't ask her because I thought I
14 better stop or this is all just my exam but, you know, the
15 union did alert this principal to issues involving this
16 student as well. So in addition to the natural course of
17 receiving it there's also a union president that alerted
18 her. And -- so I'm talking about the year before up to the
19 point, so October.
20 THE COURT: So if I'm trying to understand,
21 the only other one that you're looking at would be --
22 because clearly the sexual harassment's not coming in.
23 MS. BONANNI: No.
24 THE COURT: But the dis -- the disrespectful
25 4/16th one, correct?

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1 MS. BONANNI: Yes. I was looking at --
2 THE COURT: And the other ones we've already
3 -- have been admitted, correct? The 10/1 ones through --
4 MS. BONANNI: So there's -- there's a
5 physical contact that Mr. Zessin notes in September of '14.
6 There's an -- a physical contact in October of '14 from
7 Zessin. There's disrespect in April of '14.
8 MR. MILLER: Judge, these are more than a
9 year --
10 MS. BONANNI: There's teacher bullying --
11 MS. BONANNI: -- more.
12 THE COURT: I understand.
13 MS. BONANNI: -- in April of '14. That's
14 what I was seeking. And Zessin, at least for a few of
15 these in '14, he's the one writing them.
16 MR. MILLER: Judge, he wasn't even in the
17 high school at this time.
18 MS. BONANNI: But it's not about the high
19 school.
20 MS. HOLMES: Actually, he was a sophomore at
21 the time of the assault which was the 2015/2016 school
22 year. Unless he skipped the freshman year in 2014 he would
23 have been a freshman.
24 MS. BONANNI: Thank you, that's true.
25 MR. MILLER: Whether student M.H. was

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1 appropriately disciplined in this matter, or whether an
2 administrator could have taken another action, is not the
3 issue. This is so far collateral as to whether Ms. Davis
4 reported an act -- the actual violation of law or a
5 suspected violation of law. And whether Superintendent
6 Beal retaliated against her. This is highly prejudicial.
7 It's propensity evidence.
8 THE COURT: Well, let me ask. When a -- when
9 this matter came to your attention do you then look at the
10 log entries to get context about how to respond?
11 THE WITNESS: When something comes to my
12 attention my first step is to investigate validity of
13 what's come to my attention.
14 THE COURT: Okay, and we talked about that.
15 That would be first and foremost. You'd look at --
16 THE WITNESS: Correct.
17 THE COURT: -- the actual complaint itself.
18 THE WITNESS: And then we would look at
19 immediate history. We would look at the time frame that
20 they were in high school. I heard a reference to four of
21 '14. He would have been an eighth grader at that time. So
22 if you look at log entries for this student they don't
23 begin until 9/10 of '14. And the vast majority of them
24 were skipping, leaving early, phone, wouldn't take my hood
25 off. There was a student to student challenge --

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1 THE COURT: So -- so is --
2 THE WITNESS: -- in a P.E. class.
3 THE COURT: -- he in the high school in four
4 '14?
5 THE WITNESS: He was a 9th grader --
6 THE COURT: 9th grade.
7 THE WITNESS: -- in '14-'15, 10th grader in
8 '15-'16, junior in '16-'17. He would be a senior this
9 year.
10 THE COURT: In which of these -- did you look
11 at these yourself or was that more of Mr. Zessin as I'm
12 given to understand?
13 THE WITNESS: Mr. Zessin would have been the
14 -- the primary.
15 THE COURT: All right. Well, at this point
16 I'm -- I'm not -- I'm gonna -- I want to see how Mr. Zessin
17 -- (undecipherable) --
18 MS. BONANNI: Okay.
19 THE COURT: -- this. All right?
20 MS. BONANNI: That's fine.
21 THE COURT: So I don't think it would be fair
22 to impeach the principal if this is -- this wasn't
23 something she reviewed.
24 MS. BONANNI: So then I think what I would
25 like to do, if I may, is to at least, since we left at sort

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1 of a hanging, is to at least establish that foundation that
2 these do not -- these log entries do not come to her as a
3 matter of course, that they go to Zessin. And then I will
4 leave this topic.
5 THE COURT: Okay. Is that acceptable with
6 you, Mr. Mullins and Mr. Miller?
7 MR. MULLINS: Well --
8 MR. MILLER: Well --
9 MR. MULLINS: Go ahead.
10 MR. MILLER: I do have a little bit of an
11 objection at these log entries and holding a packet. I
12 think it's an appropriate question, "Do log entries come to
13 you?" And the answer's, "No," and then we can move on.
14 But by holding a five page document, "Did this come to
15 you?" I mean it's doing exactly what we're trying to
16 prevent.
17 THE COURT: Well, they're obviously not
18 seeing any conduct and log entries is plural. So I'll
19 allow you to question about log entries at this point.
20 MS. BONANNI: Thank you.
21 THE COURT: Without getting into specifics.
22 We'll see what happens with Mr. Zessin.
23 All right. Jay, I'm -- sorry. You can go
24 ahead and get the -- bring the jury back in.
25 THE CLERK: All rise for the jury.

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1 (At 1:52:55 p.m., jury returns)
2 THE COURT: All right, thank you. You may be
3 seated.
4 Ms. Bonanni, go ahead.
5 MS. BONANNI: Thank you so much.
6 BY MS. BONANNI:
7 Q Principal Pauli, the log entries that teachers put in the
8 student log, they are automatically provided to someone
9 within your administration. Who is that person?
10 A They are initially sent to a secretary. The secretary in
11 turn then distributes them to the respective grade
12 principal. So in the case of this young man it would have
13 gone to his grade principal.
14 Q Okay, so --
15 THE COURT: And who was his grade principal?
16 THE WITNESS: Mr. Zessin.
17 THE COURT: All right, go ahead.
18 BY MS. BONANNI:
19 Q So, fair to say, you have nec -- no idea necessarily what a
20 student log is going to look like unless someone alerts you
21 to it or shows it to you?
22 A That is correct.
23 THE COURT: And am I correct in understanding
24 this student's log various teachers can make entries into
25 that, or school principals, correct?

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1 THE WITNESS: That is correct.
2 THE COURT: Okay. Go ahead, Ms. Bonanni.
3 BY MS. BONANNI:
4 Q So the -- the log, and the receipt of the log, is really
5 the Assistant Principal who reports to you?
6 A That's correct.
7 Q Okay, thank you. Now if I understood you correctly the --
8 the incident between M.H. and Ms. Davis, that you
9 interviewed students?
10 A That's correct.
11 Q And you indicated earlier, when talking about the different
12 meetings that teachers might have with administrators with
13 students and parents, that you expect your administrators
14 to attend those meetings and take notes?
15 A What you're saying is I expect that administrators would
16 attend meetings and take notes. I would expect that not
17 only the administrator, I would also expect the -- if it's
18 a teacher involved, that they would also have their
19 documentation.
20 Q Okay, now in this case with interviews re -- related to the
21 incident on October 12th, 2015 I, for one, have never seen
22 notes from you. Did you take notes?
23 A I would have taken notes at that time, yes.
24 Q Well, I don't have notes. Do you understand why that might
25 be?

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1 A I don't know that I was asked for them.
2 Q Now you're aware that the students that were interviewed by
3 the police on the 12th were also the students that were
4 interviewed by Mr. Zessin?
5 A Some of those students, yes.
6 Q Two students were interviewed by the police?
7 A That is correct.
8 Q And those same two students, Hannah and the other young
9 lady --
10 A Alexis.
11 Q -- were both interviewed by Mr. Zessin as well?
12 A They were two of the five or six that Mr. Zessin
13 interviewed, yes.
14 Q Now talking about contact and what happened in that room
15 that day. You understand that in order to be a victim of
16 an assault that you need not have a broken arm or a broken
17 bone?
18 A Yes.
19 Q You understand an assault is a touching that is intended to
20 cause some sort of harm?
21 A That is intended to, yes.
22 Q Okay, and you know now -- I mean I don't know that you knew
23 it then on the 12th -- but at some point in time during that
24 week you became aware that Ms. Davis had gone to the pol --
25 to the doctor on the day of the incident and on the 15th?

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1 You knew that, right?
2 A I don't know that she went on the day of the incident.
3 Q Okay, well, she did. But you did know that she went on the
4 15th as well --
5 A There --
6 Q -- to work well (sp).
7 A That is correct.
8 Q And I mean we can pull up the records but I'm gonna
9 represent to you that in that work well examination there
10 is a medical record that indicates that she had swelling
11 and contusion?
12 A This was three days after the event, correct?
13 Q Yes.
14 A Okay.
15 Q And you're not a physician?
16 A I am not.
17 Q And, fair to say, that one can have an injury and the
18 swelling may not immediately happen?
19 A I'm -- I'm not a physician.
20 Q Have you ever had a injury to anything on your body where
21 the swelling actually takes a few hours to manifest?
22 A Believe it, or not, I can't say that I have.
23 Q Okay. So I will tell you, at least the doctor -- the
24 doctor, that's what they observed. Same hand, same -- same
25 location. So fair to say although you may not have seen

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1 swelling, or an injury, you're not testifying before this
2 jury that there was no injury?
3 A No, what I'm testifying before the jury is that when I
4 asked Ms. Davis if she was okay she said that she was fine.
5 Was I -- I am not a physician.
6 Q Okay, and -- and the fact that she then sought medical help
7 that day, and then three days later, that was consistent --
8 you don't really have any personal knowledge of any of
9 that, isn't that true?
10 A That I don't have any personal -- I have no knowledge of
11 her going to a doctor on October 12th, no.
12 Q But you -- but you do know that there was sufficient force
13 in that room that day to cause some sort of injury to her
14 hand?
15 A I do not know that.
16 Q Well, you don't have any evidence to debunk or to
17 contradict that Pennie Davis was injured that day in the
18 room on the 12th because of the contact with M.H.?
19 A The student reports indicated that M.H. did not hit Ms.
20 Davis. That any contact was inadvertent and almost the
21 term "brushing" was in an effort to retrieve his
22 belongings.
23 Q What you told the police -- what you told the police is
24 that there was consensus that there was a push. That's
25 what you said.

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1 A May I look at that?
2 Q Sure.
3 A Which number is it in here? Or maybe I have it here.
4 MR. MULLINS: It's the one that hasn't gone
5 into evidence, I think.
6 MS. BONANNI: Yeah.
7 BY MS. BONANNI:
8 Q I just want to refresh your recollection as to the use and
9 have you look at the last line. I'm gonna help you because
10 the type is terrible.
11 A Oh, that pushed Ms. Davis's hand away.
12 Q Okay, and what you said -- what you reported to the police
13 officer was that the consensus was that M.H. pushed her
14 hand away.
15 A And that is per the police officer's write up.
16 Q Okay, but that's what you reported. You reported that the
17 consensus was some sort of push with the back of his hand.
18 A If I might suggest this is --
19 Q No, I'm just asking you --
20 A No, this is --
21 Q -- what you --
22 A -- a police officer's report.
23 Q Okay, so we may not --
24 A What I had reported --
25 Q -- have captured everything that you said?

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1 A I can't speak for the police officer.
2 Q Oh, okay. I thought it -- it was accurate? Report's
3 accurate?
4 A And what I have said was Ms. Davis attempted to take his
5 paperwork. He attempted to take it back. Inadvertently he
6 brushed up against her hand.
7 Q Okay, and you state inadvertently but did you ever, at any
8 time, talk to Ms. Davis?
9 A My conversation with Ms. Davis was on the day of the event
10 and following that -- or not following that -- included in
11 that conversation was, "Are you okay? Yes I am. I am
12 fine."
13 Q I -- I read your notes. We're gonna --
14 A Oh.
15 Q -- go over those, okay. But what I'm asking you -- I don't
16 see anything in your notes that even remotely touches on
17 walk me through that day, tell me what happened step to
18 step, tell -- and we're not talking about that exhibit.
19 I'm just asking you, Ma'am -- you didn't walk through
20 Pennie Davis, teacher for 29 years -- walk me through that
21 incident and tell me what happened from your perspective.
22 A My --
23 Q Could you do that?
24 A Yes, my comment to her was tell me what happened.
25 Q Okay, and are you -- why didn't you take a note of what

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1 happened then if -- if that's what she did was explain?
2 A The notation is I was in class. He made a comment. I went
3 to his table. Indicated that his comment was
4 inappropriate.
5 Q Okay, and then she told you, "He hit me?"
6 A No, then she said he responded back with a comment.
7 Q Okay, but then she reports that he hit -- he hit her?
8 A She said then he hit.
9 Q So my question though is a little bit different than that.
10 I'm asking you walk me through -- how did he hit you? So
11 you tell me -- you tell me, from your memory --
12 A And if you look further down it reads I asked, "How he hit
13 her." Further clarifying it was an open hand, more of a
14 slap or a closed fist. Ms. Davis indicated that it was a
15 closed fist.
16 Q Okay, so let me ask you this. This is what I'm asking but
17 you keep -- trying to ask you a direct question. How did
18 he hit her? Did he hit her like this? Did he hit her like
19 this? Did he hit her like this? Did he hit her like --
20 what did she tell you?
21 A Exactly what I just said.
22 Q Okay, so I'm asking you was it up and down? Was it --
23 because you said closed fist. So I'm asking you was it
24 this way? Was it up and down? Was it a big movement? Was
25 it a small movement? Did you ask her that?

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1 A I can only tell you what Ms. Davis said to me. And my
2 question was very specific. I asked how he hit her? And
3 her response was that he hit her with a closed fist. I can
4 only tell you what Ms. Davis reported to me.
5 Q Okay, but you did not ask her well how? Like up and down?
6 Or what was the movement like? Did other kids see it?
7 Would they have seen it?
8 A I asked her how did he hit you.
9 Q Okay, did you believe her?
10 A My -- my place was not to determine belief or disbelief.
11 In an investigation your place first of -- is to interview,
12 deduce -- or not deduce, but record that feedback.
13 Q But you believed that it was -- well, you had no reason not
14 to believe Ms. Davis's report to you. I mean sh -- did she
15 have a history of dishonest behavior?
16 A Well, Ms. Davis can tell you that.
17 Q No, with you.
18 A Has she been dishonest with me?
19 Q Yeah.
20 A I don't know.
21 Q No discipline problems with her?
22 A She has not had discipline challenges, no.
23 Q Now talk about your notes since you raised them. You
24 didn't take these notes until October 16th which was four
25 days after the actual incident and conversation, correct?

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1 A Your comment was I did not record these notes until October
2 16th. They were sent to Mr. Pack on October 16th per --
3 Q And Mr. --
4 A -- his request.
5 Q Mr. Pack asked you to write these notes.
6 A I write my notes anyway.
7 Q Well, you said per his request.
8 A To send him the notes.
9 Q Okay, well this is all I have. And all I have is that it's
10 a e-mail. It's been admitted into evidence and it's dated
11 October 16th. And in the e-mail you explain what happened.
12 A That is correct.
13 Q That is all I have.
14 A That's correct.
15 Q So you would agree that the date that is on these notes is
16 October 16th, 2015?
17 A What I would agree to is that they were sent in an e-mail
18 to Mr. Pack on October 16th.
19 Q Did you -- I haven't seen anything else. No handwritten
20 notes, nothing.
21 A Okay.
22 Q Now, Ma'am, at this point in time on October 16 you know
23 that Pennie Davis has been taken off work by the
24 administrators?
25 A I couldn't right here tell you what date that was.

1 Q Well, you know you sent these. And if you don't know
2 that's okay.
3 A Yeah. No, I do know that I e-mailed my notes to Mr. Pack,
4 yes.
5 Q And then my question though, if I can -- if I may. My
6 question to you is actually do you remember that you e-
7 mailed these notes to Mr. Pack after Pennie was taken off
8 of work on October 15, 2015 by the administration?
9 A If she was taken off work on October 15th as you suggest,
10 and this was sent October 16th, I think that would answer
11 your question.
12 Q Okay, do you know whether you or Mr. Zessin did any kind of
13 investigation into Pennie Davis's allegation that M.H.
14 threatened to beat the teacher?
15 A There was an investigation into that. And the report
16 obtained in that investigation was that the student was
17 sitting at his desk and, as students often do -- they might
18 be reciting lyrics to a song, they might be reciting
19 something from something they've read -- and per our
20 investigation he was reciting, or speaking so to speak,
21 lyrics from a song.
22 Q Well, that's what he said, correct?
23 A That's part of the investigation.
24 Q But isn't it also true, Ma'am, that other students
25 interviewed heard the word threat. They heard Pennie say,

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1 "That is a threat." And other students interviewed said
2 they heard him mumbling something but they could not say
3 what it was?
4 A There were other students who cited that they heard him
5 mumbling, didn't know what he said.
6 Q And there's no student that corroborates that M.H. was just
7 doing this song, or rapping?
8 A There's no student that would corroborate what he said
9 because they referred to him as mumbling and couldn't
10 understand.
11 Q But Pennie Davis heard him because she was the only one
12 near him. And she indicates to you, both in the incident
13 report and also the student log -- which I'm sure you read
14 that log. You read that student log?
15 A Are you asking me if I read it?
16 Q Yes.
17 A I have read it, yes.
18 Q So you know, and you knew at that time, that in the student
19 log, in the incident report, that Pennie Davis was
20 reporting that she heard what M.H. said and what M.H. said
21 was that he was going to beat the teacher.
22 A From reading the log entry, what was written, was that
23 there were threatening words recited. I don't know where
24 Ms. Davis was in the classroom at the time. Whether she
25 was in close proximity to the desk, at her desk -- I don't

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1 know the answer to that.
2 Q If you had --
3 A At the same time --
4 Q -- interviewed her you might have found out she was right
5 next to him. Right --
6 A At the same time --
7 Q -- across from him.
8 A -- the student reported that he was reciting, yes.
9 Q Okay, so you listen -- you took the student's statement but
10 you did not follow up with Ms. Davis to find out what was
11 said?
12 A We took both statements into consideration. We took the
13 interviews from the students into consideration.
14 Q So you --
15 A And --
16 Q -- decided to believe the student, in terms of what he
17 said, and not your teacher of 29 years with no discipline
18 problem
19 A We decided to follow the resulting of the overall
20 investigation.
21 Q At any time during this investigation did you go on the log
22 to consult the log to investigate or determine anything
23 about what Ms. Davis had been reporting, or what other
24 teachers had been reporting during this particular school
25 year? Did you do that?

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1 THE COURT: About M.H., correct?
2 MS. BONANNI: Yes.
3 THE WITNESS: Well, there were six logs up to
4 that point and four of those six were Ms. Davis's. And her
5 log entries prior to this would suggest a phone issue, a
6 walking into a home room -- walking out and he was not in
7 that home room, there was a report -- and I don't have it -
8 - this part committed to memory but where there was some
9 inappropriate language used. I don't know that it was
10 directed at anybody.
11 BY MS. BONANNI:
12 Q My question was did you consult that log -- those -- those
13 logs as part of this investigation? Pennie's logs?
14 A We may have looked at those to note if there was a pattern.
15 The focus of the investigation was the immediate
16 information in front of us. Because that certainly
17 separated itself from other log entries.
18 Q Well, as I read the log it appears that she is reporting
19 use of disorderly conduct and defiance on 9/25/2015.
20 Disorderly --
21 A I don't have that in front of me.
22 Q -- conduct with his speech, defiance of authority and
23 bothering other students. Do you see that --
24 A I don't have that in front of me.
25 Q -- in Exhibit 2? Look at Exhibit 2.

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1 A It does read that he used inappropriate speech. It does
2 read that he walked into a home room, used inappropriate
3 language, and it does read that he was using his phone and
4 refused to give it to the teacher.
5 Q Does it also indicate on 9/25/2015 disorderly conduct
6 violation number eight and defiance? Do you see that
7 entry?
8 A That's a category within our code of conduct if you will.
9 Q And it reads defiance of authority, he's using the f-word,
10 and bothering other students. Do you see that entry?
11 A Yeah, what I'm reading is disorderly conduct. I don't read
12 what was the response to that. But what I'm reading is --
13 Q Okay, I'm going to read it.
14 A -- disorderly conduct with his speech.
15 Q I'll -- I'll read it into the record then. Pennie Davis
16 enters, quote, "Disorderly conduct number eight and
17 defiance of S.C. Disorderly conduct with his speech,
18 quote, F -- quote F" and she's indicating the f-word?
19 A Inappropriate language.
20 Q Okay, "Defiance of authority and bothering other students.
21 This is the third write up and I shall try to call home but
22 we need to meet about this young man before he comes back
23 to class. He was sent to the office. I-S-T for third hour
24 on 9/24 and 9/25."
25 A The student, for his language, was removed from class for

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1 two -- two sessions. That's how we would interpret that.
2 Q End quote. My question is at the point in time when you
3 receive the report from Pennie Davis on October 12th, 2015
4 within her incident report and also her student log entry,
5 there had been previous incidents within the past week with
6 her of defiant behavior?
7 A There was no log entry within the week of October 12th.
8 There was no log entry within the week of September 25th.
9 There were two consecutive log entries, September 10th and
10 11th. First, was the phone and the other was walking into
11 home room using inappropriate language. And on the 25th it
12 was inappropriate language.
13 Q Well, I just read into the record the log on the 25th, okay?
14 A Yes.
15 Q And it actually says defiance of authority and bothering
16 other students, is what she's reporting.
17 A Yeah, I don't know what that means.
18 Q Okay, my point is simply that at the point in time when
19 Pennie alerted that this student had threatened to beat the
20 teacher, you agree that a threat of that nature is a
21 violation of student code?
22 A If a student were to do that and it was found with the out
23 -- question that a student had threatened a teacher, that
24 definitely would be in violation.
25 Q Okay, and that could either have a suspension of three days

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1 or 10 days?
2 A It would -- absolutely.
3 Q Did you con -- did you consult this log at all? When I say
4 this log I mean just these Pennie Davis entries and the
5 entries of this time frame.
6 A It's sitting here right now. I -- I can't tell you with
7 absolute. It would be unusual that I wouldn't look at
8 something. But I can't tell you with absolute.
9 Q Now Pennie Davis came back to -- to class on the 29th after
10 being off work for almost two weeks and she was -- came
11 back to teach. Fair to say issue was raised about the
12 November 4th/5th time frame to you letting you know that the
13 student was wandering and was near her room and had banged
14 the door. Do you remember that?
15 A I don't remember that on November 4th and 5th, no.
16 Q Okay, do you remember meeting with Amy Gish, and Amy Gish
17 presented you with the concerns about this situation?
18 A I do.
19 Q And is --
20 A That was, I believe, November 6th.
21 Q November 6th and you had a meeting on the 10th?
22 A I'm sorry?
23 Q Do you remember having a meeting on the 10th with -- with --
24 A I remember having a meeting. I don't recall --
25 Q Okay.

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1 A -- the date.
2 Q And during that meeting you and Ms. Gish mapped out a plan.
3 You discussed the fact that the mom -- M.H.'s mom had come
4 in and brought a copy of -- a PPO -- another PPO and -- at
5 least that's how it's described here -- and you and Ms.
6 Gish mapped out a plan of how M.H. would walk through the
7 school and how Pennie would walk through the school to make
8 sure that everything was working?
9 A Our focus was how M.H. would navigate from point A to point
10 B.
11 Q Okay, and is it fair to say that you and Ms. Gish worked
12 out a plan?
13 A That is correct.
14 Q And that plan was satisfactory to you?
15 A That is correct.
16 Q I want you to look at Exhibit 28, if you would? Are these
17 you -- is -- are these your notes? Are they -- is that
18 your handwriting?
19 A Some of that, not all of it.
20 Q Can you identify what handwriting is yours on this?
21 A Yeah, one through three and the information at the bottom.
22 Q Do you know whose handwriting is on this document with
23 yours?
24 A I do not know who that is.
25 MS. BONANNI: Okay, I'm going to offer this

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1 exhibit into evidence. Exhibit 28.

2 (At 2:18:20 p.m., Plaintiff's Exhibit 28

3 offered)

4 MR. MULLINS: No objection, your Honor.

5 THE COURT: So admitted by way of stipulation

6 of the parties.

7 (At 2:18:37 p.m., Plaintiff's Exhibit 28

8 admitted)

9 BY MS. BONANNI:

10 Q Fair to say this document supports the fact that you met

11 with Gish on the 10th and came up with a plan?

12 A You're referring to Amy Gish?

13 Q Yes.

14 A Yes.

15 Q In terms of moving Ms. Davis out of the high school, fair

16 to say, that was a decision that came from administration,

17 not from your office?

18 A From Central Office Administration, that is correct.

19 MS. BONANNI: I don't have anything further.

20 THE COURT: Any further follow up, redirect,

21 Mr. Mullins?

22 MR. MULLINS: Bri -- briefly, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MULLINS:

25 Q This last document, Exhibit 28, November the 5th, 2015 you

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1 have in front of you?
2 A Mm-hmm.
3 Q And that -- that -- it was typed out and submitted by
4 Pennie Davis, is that right?
5 A That is correct.
6 Q And in numerous different points, for instance, in sure --
7 in the introduction there she's indicating that she's
8 concerned about her safety, is that right?
9 A That is correct.
10 Q And in her -- concerns about her safety relate to this
11 student being there in the building, is that right?
12 A That is correct.
13 Q And -- yeah. And, again, she indicated that -- in the
14 introduction of point number two, again, she indicated
15 she's concerned for herself, is that right?
16 A Yes, that is correct.
17 Q And, again, in number three she's -- indicates that she's
18 -- has talked to -- to Amy Gish about her safety issues, is
19 that right?
20 A That is correct.
21 Q And -- and ends in number seven, indicating that -- that
22 she thinks that he presents a -- a school liability issue,
23 is that right?
24 A That is correct.
25 Q There -- there was -- just real briefly. There was talk

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1 about the different art rooms. The art room that she had
2 been in at one time previously. The art room that she came
3 back to, are they of comparable size?
4 A Absolutely.
5 Q Comparable student furniture -- chairs?
6 A Facility, yes.
7 Q Attached storage room?
8 A Mm-hmm.
9 Q You got to say yes for that.
10 A I'm sorry.
11 Q Recording there.
12 A Yes.
13 Q Yes or no.
14 A Sorry.
15 Q There was this discussion about -- in August of -- it looks
16 like a bunson burner bi -- pipe or some kind of a piping in
17 her room.
18 A Yes.
19 Q Or a wire or an outlet.
20 A Mm-hmm.
21 Q If -- is it unusual for a teacher to contact either -- I
22 don't know what the title is at your search -- do you have
23 a head of maintenance or head of milding -- buildings and
24 grounds or something like that?
25 A That's absolutely correct. We have a document that

1 teachers who are requesting -- it's called a work order
2 request.
3 Q Work order, right.
4 A And that work order request is filed with maintenance and,
5 as you well know, in August they're filling many of those.
6 Q Okay.
7 A And -- so yes.
8 Q And -- and so if you see, either in the course of the year
9 or something gets broken or you know light starts hanging
10 down or something like that, you can submit a work order
11 and then the maintenance department responds to it, is that
12 right?
13 A That is correct.
14 Q And these different items that were mentioned were all
15 adjusted or changed or fixed in Ms. Davis's room that she
16 worked in, is --
17 A Yeah.
18 Q -- that right?
19 A That is correct.
20 Q 122 I think you said?
21 A 122.
22 Q Okay.
23 A And the primary concern seemed to be that one fixture on
24 the wall.
25 Q Okay, and simply coming to you did she ever request to you

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1 prior to initiating a grievance just -- which -- which is
2 step one, could she simply have just come to you or come to
3 maintenance and it -- and issued a work order, and/or
4 chatted with you about having this --
5 A Yeah, the work --
6 Q -- this stuff addressed?
7 A -- order would have been phase one.
8 Q Okay.
9 A If the work order isn't addressed then it would be to --
10 initially my Assistant Principal who oversees that work
11 order request, if you will, and if that doesn't net the
12 right result then, yes, they would come to me and we would
13 proceed from there.
14 Q And did you ever refuse fixing any of these matters or --
15 A Absolutely not.
16 Q -- making these adjustments? Now you -- there was this
17 discussion about the fact that you had a new program, this
18 Pathways --
19 A Mm-hmm.
20 Q -- which was a -- a new program --
21 A Yes.
22 Q -- for students. Is there -- and this is something to take
23 -- someone who might be short a credits or the -- like to
24 help them -- I think you talk about vocational. Are you
25 talking about them getting a diploma and heading them

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1 towards a job?
2 A Yes, there are several different components to the Jackson
3 Pathways program. First and foremost, is that it meets the
4 Michigan Merit Curriculum requirements. And, in addition
5 to that, really placing a focus on working with students on
6 creating that connection between either work and school or
7 post-secondary educational pursuits in school, as well as
8 exposing them. And the Lomas Brown Partnership through
9 Consumer's is a good example of different opportunities
10 where they can experience various activities, time perhaps
11 in the community, and begin again to enhance that
12 connection with the ultimate goal that they would complete
13 their high school curriculum, have their high school
14 diploma and pursue life after high school.
15 Q Okay, as in get a job?
16 A Get a job, perhaps vocational training, perhaps collegiate.
17 Some of the students may go into the military. These are
18 simply -- it's a body of students who are largely students
19 behind in credits.
20 Q Okay.
21 A And so making those connections our effort is to motivate
22 them to see the importance of education and, again, ready
23 themselves for post-secondary.
24 Q Okay, so is there any reason why a teacher would find it
25 demeaning or insulting or less than what a teacher would do

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1 to teach students in a Pathway program or should it
2 otherwise be rewarding?
3 A It absolutely should be rewarding. There are five or six
4 teachers from our first trimester that were shared with
5 Pathways from P.E., to business, to art. And second
6 trimester there were at least three or four teachers who
7 were shared with Pathways. Keeping in mind that the
8 primary population in Pathways were in fact students within
9 the body of Jackson High School who fell behind in credits.
10 Our counseling staff works with them. They share between
11 Pathways and Jackson High students.
12 Q Back on what happened on October the 12th, you -- she
13 requested, "I don't want this kid around me anymore. I
14 don't want him in my class." You accepted that. You
15 immediately removed him from his class, is that right?
16 A He was removed from class, yes.
17 Q And you indicated, counsel had asked you about whether you
18 took no -- notes or not, and that's what Exhibit 25th is --
19 is your typed up notes, is that right?
20 A Yes.
21 Q Okay, thanks.
22 MR. MULLINS: I have nothing further.
23 THE COURT: Ms. Bonanni, anything further?
24 MS. BONANNI: Just a quick question.
25 RECROSS-EXAMINATION

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1 BY MS. BONANNI:
2 Q The Pathways -- prior to Pathways there was an Alternative
3 High School, correct?
4 A That is correct.
5 Q There is no longer an Alternative High School, correct?
6 A That is not correct.
7 Q It is Pathways and Wilson the night school?
8 A There are actually three components. T.A. Wilson at one
9 time serviced seven through twelve. And then it moved a
10 little -- well, not more, it moved to nine through twelve
11 with the advent of an opportunity at our middle school to
12 work more specifically with our middle school students.
13 And then this year T.A. Wilson is an Alternative High
14 School that functions on a late afternoon/early evening
15 time frame. And then we have Jackson Pathways which is our
16 School Within a School at Jackson High School.
17 Q So the program that would be comparable to the Alternative
18 High School program during the day is Pathways, correct?
19 A That is incorrect.
20 Q All right, what Pennie did to get her room corrected with
21 the exposed pipes, and the exposed electrical sockets, and
22 other -- not having furniture, all the things in her
23 grievance, you don't know, one way or another, whether she
24 filed a work request first for that, isn't that true?
25 A Sitting here right now I don't know.

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1 Q And isn't it also true that you don't know -- well, she did
2 call you. Do you remember that? She did call you to let
3 you know.
4 A I have a vague rec -- recall.
5 Q And she call --
6 A This is, remember, in August.
7 Q And she called Mr. Beal and she called Mr. Pack. Are you
8 aware of that?
9 A I would not be aware of that.
10 MS. BONANNI: No further questions.
11 THE COURT: Ladies and gentlemen of the jury,
12 any questions?
13 UNIDENTIFIED JUROR: I have a question.
14 THE COURT: Okay, would you just write that
15 down.
16 Jay, would you get the question and bring it
17 up to the bench so I can review it with the lawyers?
18 UNIDENTIFIED JUROR: I have one too.
19 UNIDENTIFIED JUROR: (Inaudible) -- too.
20 THE COURT: Okay. (Inaudible) -- pick them
21 all up.
22 (Bench Conference from 2:30:32 p.m. to
23 2:32:45 p.m.)
24 THE COURT: Okay, ladies and gentlemen, all
25 your questions but one of them were admissible. So good

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1 questions.

2 So, Ms. Pauli, I'm just gonna go ahead and

3 read the question but I'm gonna go ahead and -- I'm also

4 gonna hand the question to you so you can look at it. But

5 if you'd just address the jury because these are there

6 questions, okay?

7 THE WITNESS: Sure.

8 THE COURT: How many kids, other than M.H.,

9 were -- were not assigned a class during the school year --

10 during 2015-2016? Sometimes it helps you to look at the

11 question too. So --

12 THE WITNESS: The question reads how many

13 kids other than M.H. were not assigned a class during

14 school hours during the '15-'16 school year? I can't

15 honestly give a definitive number. I would say few and far

16 between.

17 THE COURT: Okay, even though you stated

18 Pennie advised you she was fine why didn't you still direct

19 her to go to Work Well just for protocol?

20 THE WITNESS: Okay, even though I -- or

21 Pennie stated -- or, excuse me, I stated that Pennie was

22 advised she was fine. Why didn't you still direct her to

23 go to Work Well? I did do that after I consulted with our

24 HR Department. I always check with HR to be definitive in

25 what I'm doing and to make sure I'm following protocol.

1 And upon that contact she was advised to go to Work Well.
2 MS. BONANNI: Just one follow up.
3 BY MS. BONANNI:
4 Q And by HR you mean Mr. Pack who's head of HR?
5 A He's the overseer, yes.
6 THE COURT: Okay, and this one I -- I think
7 is fair to say, was this document -- we think the jurors
8 were referencing Exhibit twenty fif -- five. Was this
9 document only prepared due to Ms. Davis providing the
10 school with her PPO?
11 What is docu: What is docu --
12 THE COURT: And if it's not 25 I -- I think
13 we were just making it --
14 UNIDENTIFIED JUROR: It is.
15 THE COURT: It is 25, all right.
16 UNIDENTIFIED JUROR: (Inaudible).
17 MS. BONANNI: She's looking at the wrong
18 book.
19 THE COURT: Wrong book.
20 MS. BONANNI: Wrong -- wrong -- let me help.
21 Okay, hold on.
22 THE COURT: We'll take a second here and get
23 --
24 THE WITNESS: It says 25.
25 THE COURT: Yeah, I think we --

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1 MS. BONANNI: Yeah. No, it's --
2 THE WITNESS: Are we over here?
3 MS. BONANNI: -- it's -- it's -- oh my God
4 (ph).
5 THE WITNESS: There's nothing in it. You're
6 okay.
7 MS. BONANNI: Wow, that's all I need (ph).
8 THE WITNESS: Here, let me get it out of your
9 way.
10 MS. BONANNI: (Inaudible) -- under here.
11 It's the e-mail.
12 THE WITNESS: Oh.
13 THE COURT: All right, that's not -- that's
14 not your fault. I probably should at the very beginning of
15 the trial made one use alphabets and the other use numbers
16 but we didn't. So we've got plaintiff's and defense
17 competing numbers sometimes.
18 THE WITNESS: Was this only prepared due to
19 Ms. Davis -- absolutely not. The PPO and this document are
20 independent of one another.
21 THE COURT: Okay.
22 MS. BONANNI: One follow up.
23 BY MS. BONANNI:
24 Q Mr. Pack asked you to write that e-mail, correct?
25 A He asked me to forward my documentation to him in an e-

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1 mail, that is correct.
2 Q And that forwarding of the documentation to him was done on
3 the 16th, correct?
4 A It was forwarded to him on the 16th.
5 Q And is there any kind of attachment on that e-mail or is
6 your notes comprised -- do your notes comprise of the body
7 of the e-mail?
8 A I can't be absolute but based on what I'm looking at, only
9 because this doesn't have e-mail information in it -- I can
10 tell you my systematic approach is it would have been a --
11 an attachment.
12 Q But --
13 A You're asking if it's in the body of the e-mail.
14 Q Yes, and your notes -- at least the way we're looking at it
15 today, not -- not your protocol -- this appears to be your
16 notes in a body of an e-mail dated the 16th?
17 A And what I'm suggesting to you is this, I make my note -- I
18 see what you're saying, I believe. Because of the To Mr.
19 Pack kind of thing?
20 Q Yeah, I mean it's --
21 A Okay.
22 Q -- an e-mail to Mr. Pack and then you say Dear Mr. Pack and
23 then here are your notes. It's in the body of the e-mail.
24 A And when I send something to Mr. Pack it often is in this
25 format because I -- I'm a little old school with formality.

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1 And so it may very well have been an attachment in this
2 format.
3 Q But as you sit here today, Ma'am, fair to say, tell this
4 jury, there's not an attachment on the e-mail, number 25,
5 that you're looking at?
6 A You're assuming that this is an e-mail.
7 Q This was produced to us by the district. So --
8 A Okay.
9 Q -- you know, there is not an attachment on that e-mail as
10 you look at it today?
11 MR. MULLINS: Your Honor, there's --
12 THE WITNESS: There is not an attachment.
13 MR. MULLINS: -- no foundation that's an e-
14 mail. It's a typed up memo but no indication that it's an
15 e-mail. But -- but we put it in evidence but just the --
16 MS. BONANNI: Well, she --
17 MR. MULLINS: -- wording.
18 MS. BONANNI: She did answer. I'd like her
19 to answer for the jury.
20 THE COURT: Okay.
21 BY MS. BONANNI:
22 Q It is not an attachment, it is part of the document.
23 A You're suggesting this is not an attachment.
24 Q Yes.
25 A And what I'm suggesting is this may in fact have been a

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1 printed out attachment. I don't know that. I didn't print
2 this document.
3 Q Well all we know today, as we sit here, is that it's dated
4 October 16th, 2015.
5 A We do know that.
6 Q And there's no other date on this document?
7 A There is actually the date of Oc -- on October 12th.
8 Q Where you're telling about the incidents of the 12th.
9 A When I'm documenting the -- yes.
10 THE COURT: All right. Why did it take four
11 days to send Mr. Pack -- sent to Mr. Pack. Shouldn't that
12 have been reported to the administration when you were made
13 aware of the situation?
14 THE WITNESS: And so the distinguishing piece
15 here is the date that the information was sent versus the
16 date that it would have been reported. The report to him
17 was prior to that but the date that he actually received
18 this document would have been the 16th.
19 THE COURT: Okay, I think my handwriting --
20 (undecipherable) -- here. Defendant's Exhibit 25, what
21 date was the document prepared? We've got the proper 25
22 we're referencing there.
23 THE WITNESS: I would have put this to typed
24 format either the night of October 12th or the following
25 day. My handwriting is atrocious and so I always take it

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1 from handwritten to this.

2 MS. BONANNI: Follow up question quickly.

3 BY MS. BONANNI:

4 Q We haven't seen your handwritten notes. So as you sit here

5 today do you know for a fact what the date was on your

6 notes?

7 A My notes would have been from October 12th.

8 Q Would have been --

9 A And you did see mine on an earlier document that you asked

10 me to look at.

11 Q Okay, so the notes that we have been given in this lawsuit

12 are --

13 A Mm-hmm.

14 Q -- are dated the 16th of October, correct?

15 A These notes, in terms of the memo to Mr. Pack, that's

16 correct.

17 THE COURT: Okay, what class was M.H.

18 assigned to after he was kicked out of art?

19 THE WITNESS: And I'm gonna rephrase this a

20 little bit. He was no longer allowed to report to art. He

21 was assigned to our in school tutorial room because he did

22 have four other classes.

23 THE COURT: Okay, either side want to follow

24 up on any further on the jury's questions?

25 MR. MULLINS: Do I? Yes.

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1 THE COURT: Sure, go ahead.
2 MR. MULLINS: And as relative -- very, very
3 briefly as to her cross.
4 REDIRECT EXAMINATION
5 BY MR. MULLINS:
6 Q Let me show you an e-mail that you received which is --
7 MS. BONANNI: Can -- can you tell us the
8 exhibit number?
9 MR. MULLINS: Exhibit 17. The one they keep
10 objecting to.
11 BY MR. MULLINS:
12 Q And that is from Joe Zessin to Barbara Baird-Pauli, that's
13 you, right?
14 A That is correct.
15 Q And it is car -- carbon copied to Benjamin Pack, is that
16 right?
17 A That is correct.
18 Q Subject date is -- incident interview with, the name is
19 blanked out, and students, is that right?
20 A That is correct.
21 Q Okay, and the time of that and the date of that, that was
22 sent Monday, October the 12th at 2:43 in the afternoon?
23 A That is correct.
24 Q And that has, as he indicates in there, here are my notes
25 regarding the incident today with Pennie and a student in

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1 class, is that right?
2 A That is correct.
3 Q And you would have received it at that time as well?
4 A Yes.
5 Q Okay, and that's -- that's what you're referring to about
6 it would have been reported right away that day?
7 A Absolutely. And, in fact, the -- Mr. Pack is on this e-
8 mail.
9 MR. MULLINS: Again, I'd move for admission
10 of Exhibit 17, your Honor.
11 (At 2:41:45 p.m., Defendant's Exhibit 17
12 offered)
13 MS. BONANNI: No, we've discussed this ad
14 nauseam. Mr. Zessin is the proper witness through which
15 this exhibit should come in, if it does.
16 THE COURT: Okay, and --
17 MR. MULLINS: Well, and --
18 THE COURT: -- I'm gonna continue with ruling
19 in that. We'll revisit --
20 MR. MULLINS: And to just respond. That's
21 something she received. It's a document that she received
22 in the course of her position as the principal of the
23 school participating on this investigation.
24 THE COURT: Okay. Well, I'm -- I'm gonna
25 allow that as part of the foundation. I'm likely to admit

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1 it through Mr. Zessin's testimony who's I anticipate gonna
2 be the next witness, correct?
3 MR. MULLINS: Well, I might save the jury of
4 that torture but -- with all that we've heard.
5 THE COURT: Oh, counsel approach then.
6 (Bench Conference from 2:42:18 p.m. to
7 2:43:07 p.m.)
8 THE WITNESS: All right, any further
9 questions?
10 BY MR. MULLINS:
11 Q My -- my last question I have was this thing about getting
12 the stuff fixed in the classroom. That -- if you look at
13 that -- that they put in the grievance form, that's dated
14 August 29th, is that right?
15 A I believe it was.
16 Q Okay. In other words, my question is simply the kids don't
17 even come back to school until after Labor Day, is that
18 right?
19 A Not anymore.
20 Q Okay. Well, back then?
21 A They -- they retur -- no, this would have been August of
22 '17 and we returned on the 23rd.
23 Q Okay, so -- and -- and, like you said, that -- that's when
24 you're doing all your fixing up and putting --
25 A That is correct.

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1 Q -- everything together and --
2 A There are finite number of people and infinite number of
3 tasks.
4 Q Okay, thanks.
5 THE COURT: And I just -- because they may or
6 may not call Mr. Zessin, can you hand me the one exhibit
7 right there? Is it 17 that you asked for -- that I said I
8 wanted...
9 But can you look over that exhibit for me,
10 right there, 17?
11 THE WITNESS: You're asking me to?
12 THE COURT: And you've indicated that you've
13 reviewed this in the course of this case, correct?
14 THE WITNESS: That is correct.
15 THE COURT: And can you just go ahead and
16 flip through it because it's more than one -- on 17 there's
17 more. There's some handwritten notes on the --
18 THE WITNESS: Yes.
19 THE COURT: Okay, and can you say that you
20 reviewed all this and do you recognize it?
21 THE WITNESS: I do.
22 THE COURT: Rec -- recognize where it came
23 from?
24 THE WITNESS: I do.
25 THE COURT: Okay, where did it come from?

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1 THE WITNESS: This came from Mr. Zessin.
2 THE COURT: And what time frame are we
3 talking about was it generated and did you review it?
4 THE WITNESS: It was generated the afternoon
5 of October 12th.
6 THE COURT: Okay.
7 THE WITNESS: And I proceeded -- bear in mind
8 this was 2:43, which is after school hours.
9 THE COURT: Right.
10 THE WITNESS: So proceeded the next day to
11 continue with the investigation.
12 THE COURT: Okay, and that's something that
13 you reviewed in conjunction with this incident? Or with
14 what occurred?
15 THE WITNESS: That is correct.
16 THE COURT: Okay.
17 THE WITNESS: That meaning this, correct?
18 THE COURT: All right -- yes.
19 All right, so I'm gonna find with that
20 further foundation that it is admissible whether you call
21 Mr. Zessin or not, all right?
22 MR. MULLINS: So I would --
23 THE COURT: Subject to --
24 MR. MULLINS: You've already found I've --
25 THE COURT: Yes.

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1 MR. MULLINS: In --
2 THE COURT: With that additional foundation
3 I'm satisfied.
4 MR. MULLINS: Give us a few minutes and we
5 can make a -- to just consult and --
6 THE COURT: Okay. Yes, why don't we consult
7 and --
8 MR. MULLINS: And we might -- we may very
9 well be done.
10 THE COURT: Sure. Seventeen is admitted over
11 plaintiff's objection with that further foundation.
12 (At 2:45:40 p.m., Defendant's Exhibit 17
13 admitted)
14 THE COURT: Ms. Pauli's all set?
15 MR. MULLINS: Oh, I'm sorry, no further
16 questions.
17 THE COURT: All right. Thank you, Ms. Pauli.
18 (At 2:45:49 p.m., witness excused)
19 MR. MULLINS: Okay, maybe --
20 THE COURT: You're all set.
21 THE WITNESS: Okay.
22 MR. MULLINS: -- a five minute break?
23 THE COURT: Yes. All right, so ladies and
24 gentlemen, this may conclude the case. I want -- like to
25 take an opportunity to just give you all a break and then

1 see how the lawyers -- if they're indeed done with their
2 case. All right, so all rise for the jury.
3 (At 2:46:04 p.m., jury excused)
4 THE COURT: And you're all set.
5 (At 2:46:19 p.m., hearing recessed)
6 (At 2:56:05 p.m., hearing reconvened)
7 (Bench Conference held from 2:56:05 to
8 3:04:54 p.m.)
9 THE COURT: All right. Well, I -- I think
10 the limited issue I got is -- is, you know, I think they
11 were reasonably relying on that this Zessin was gonna be
12 here if you didn't call him. So I'm going to allow them to
13 reopen their case and call him. So you either get the
14 witness here or we'll adjourn to get him here. So -- or we
15 reach a stipulation on the couple small things that I think
16 -- and, by the way, like I indicated before I'm being very
17 narrow in what I'm going in here. I'm -- I'm clearly not
18 going into the sexual incidents.
19 MS. BONANNI: Yeah.
20 THE COURT: I'm not going into the drug
21 dealing thing. I'm not -- because I'm -- I'm looking
22 primarily at some things that they may have looked at that
23 la -- related to his authoritative behaviors.
24 MS. BONANNI: Okay, so let me see if I can
25 talk to these two and see if we can stipulate first.

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1 THE COURT: All right, let -- let's see if we
2 can.
3 MR. MILLER: (Inaudible) -- school meeting
4 today. I mean he's not --
5 THE COURT: I understand. I understand.
6 MS. BONANNI: Do you want to go in here?
7 MR. MULLINS: Sure.
8 THE COURT: He's -- you got a district to run
9 and we've got a lawsuit to finish.
10 THE CLERK: So are -- (inaudible)?
11 THE COURT: We are. We're off the record.
12 The lawyers are going to --
13 (At 3:05:58 p.m., hearing recessed)
14 (At 3:24:12 p.m., hearing resumed)
15 THE COURT: All right. Ms. Bonanni, what --
16 what did we --
17 MS. BONANNI: Well --
18 THE COURT: -- achieve with our meeting with
19 counsel?
20 MS. BONANNI: Okay, so what we're trying to
21 do. I was -- the defendants were considering our
22 suggestion of just -- please disregard this top one -- but
23 our suggestion was to just stipulate to the entry of the
24 log entries of Pennie Davis and Zessin. They are
25 considering it and I don't know what their response is to

1 that.

2 THE COURT: All right.

3 MR. MILLER: Our -- I mean, is -- to

4 compromise we are fine with the first page but obviously

5 taking off the top one that's crossed out on mine. But the

6 second page, it's going back more than a year when this

7 young man was first a freshman. I just don't see any

8 probative value to it and I can't -- and I can't agree --

9 (multiple speakers).

10 THE COURT: It is the 10/7/2014?

11 MS. BONANNI: It's when he's a freshman at

12 high school that's -- Zessin is -- it's Zessin's entry. I

13 think it's appropriate.

14 MR. MILLER: With some sort of contact that

15 we know nothing about that took place in a P.E. class.

16 THE COURT: Okay, but you're trying to tell

17 me that you don't think somebody like Zessin would look at

18 that when he was evaluating this incident? And let's say

19 he was involved in a conflict in P.E. class where he had

20 physical contact with another student. And discussion,

21 student came to me with concerns that the -- stated -- so

22 what's the -- what's the second one?

23 MS. BONANNI: I just made that copy. Student

24 -- one second. It is --

25 THE COURT: Something about orchest --

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1 MS. BONANNI: -- student -- oh. Student came
2 to me today with concerns over things that M.H. has been
3 saying in orchestra class about her to another student.
4 M.H. admits to saying some things but said it was a joke.
5 He understands that further involvement in this situation
6 will result in more discipline. He agreed that this will
7 not happen again.
8 MR. MILLER: The 10/7/14 one didn't even rise
9 to the level of discipline.
10 THE COURT: Okay.
11 MR. MILLER: It very well could have been two
12 kids bumping into each other --
13 THE COURT: Okay.
14 MR. MILLER: -- in the gym and --
15 THE COURT: All right. Well, I -- I
16 recognize the context and I also recognize that I kept out
17 the more significant ones, the sexual assault allegations
18 and the drug dealing things which I don't think are
19 contextually relevant to the allegations here. So I'm
20 gonna admit those, all right?
21 (At 3:26:32 p.m., Plaintiff's Exhibit is
22 admitted)
23 MS. BONANNI: Thank you.
24 MR. MILLER: Thanks, Judge.
25 THE COURT: All right, over -- over the

1 defendant's objection. Your exception's noted.
2 All right, so what are we gonna do with -- we
3 got one instruction to finish up with. Do you two want to
4 get into closings now? Have me instruct them in the
5 morning? What's your thoughts? I'll start -- Mr. Mullins,
6 I'll start with you this time. And Defense you're gonna
7 rest on the record, correct?
8 MR. MULLINS: Yes, yeah. Yeah, we rest.
9 THE COURT: Defense rests, okay. Okay, so
10 noted by my clerk.
11 MR. MULLINS: We rest at this point. Thank
12 you very much, your Honor.
13 THE COURT: Mr. Mullins, what do you think
14 about closings?
15 MR. MULLINS: Closing I guess my -- I doubt
16 that we would get closings and instructions done by the end
17 of the day but I don't -- you -- you're the one who decides
18 when the end of the day is.
19 THE COURT: Okay. Well, I -- I'd kind of
20 like if you can each do your closings, and maybe we can do
21 the instructions, and they can plan on deliberating as soon
22 as they get here tomorrow which is gonna be about 10:30
23 tomorrow.
24 MS. BONANNI: Closings today?
25 THE COURT: Yeah, that was kind of my idea.

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MS. BONANNI: Okay.

THE COURT: Okay.

MS. BONANNI: I mean I'm ready but I feel like we still have to talk about the verdict form which I was gonna talk about in my closing. And --

THE COURT: All right, so you want to finalize -- you want me to send the jury home then, finalize instructions, then you each are gonna go home and make a whole notebook full of stuff.

MS. BONANNI: I've already got mine.

THE COURT: Closing arguments are gonna be --

MS. BONANNI: It's right here.

THE COURT: -- two and a half times longer.

MS. BONANNI: No.

MR. MULLINS: But it --

THE COURT: But -- not necessarily two and a half times more effective but --

MR. MULLINS: And I'm --

MS. BONANNI: I already -- I wrote mine this morning at 4:00.

THE COURT: All right, okay.

MS. BONANNI: It's right here.

THE COURT: Mr. Mullins?

MR. MULLINS: I'm happy to attempt to abide by the court's parameters of -- as to what the time should

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be on closings. I -- and I --

THE COURT: An hour for each, is that reasonable?

MS. BONANNI: Sure.

THE COURT: Hour? All right.

Okay, all right. Well, why don't we look at the jury instruction packet then.

MS. BONANNI: Oh, yeah we have -- (undecipherable).

THE COURT: So I got --

MS. BONANNI: -- on that.

MR. MILLER: What about the verdict form I gave you?

THE COURT: -- verdict form I have --

MS. BONANNI: Oh, no, we -- we like ours.

THE COURT: -- and which Ms. --

Why don't we go ahead, Jay, and send the jury home then, all right? Let them know 10:30 tomorrow. It'll be for closing arguments and instructions, all right, but we're done with the case. Let -- let them know that the lawyers are gonna do a little bit more here with the Judge but we're -- the case is concluded in terms of proofs.

Okay, so why don't I just go through them real quick. 301, standard instruction -- have you got your packet or do you want me -- run each of you one? Have you

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1 each got --

2 MS. HOLMES: Yes.

3 THE COURT: You pretty much stipulated in

4 everything I think but the -- and I cleaned up one of your

5 instructions just on typing and that was instruction number

6 -- the special inst -- plaintiff cannot recover for def --

7 for incidents that occurred. I just cleaned that up so

8 there wasn't any handwritten stuff in there. So you -- are

9 we just down to the special instruction then?

10 MR. MILLER: Me --

11 MS. HOLMES: Actually, your Honor, I noticed

12 an error --

13 THE COURT: A causation instruction?

14 MS. HOLMES: -- in the protected activity

15 instruction.

16 THE COURT: Which instruction number?

17 MS. HOLMES: It's 107.02 in the whistleblower

18 instructions.

19 THE COURT: Does it got like a number like

20 3.1, 12?

21 MS. BONANNI: Unfortunately, no, just 107 --

22 THE COURT: 107.

23 MS. BONANNI: -- .02.

24 THE COURT: Okay, what's -- what's right

25 before that? Oh 107.01?

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1 MS. HOLMES: Yes, the whistleblower --
2 THE COURT: Okay.
3 MS. HOLMES: -- explanation.
4 THE COURT: Explanation, okay, there.
5 MS. HOLMES: So the protected activity should
6 say, "An employee reports a violation, or suspected
7 violation, of a law or regulation by his or her employer or
8 a third party to a public body." And third party, that
9 comes from the model instruction. It actually includes co-
10 worker as well but I don't think that's necessary to add.
11 THE COURT: Okay, Mr. Miller?
12 MR. MILLER: Well, this is plaintiff's
13 instruction.
14 MS. HOLMES: And I just said it -- it was an
15 error. It was an oversight. It's not anything
16 intentional.
17 MR. MILLER: I mean I'm fine with the model
18 instruction in this regard, whatever it is. If counsel's
19 representing that it has other verbiage that's included, I
20 would need to independently --
21 THE COURT: All right, why -- why don't you
22 go ahead and just have you write that on there.
23 MS. HOLMES: Yep, absolutely.
24 THE COURT: And then I'll have -- type it on
25 and have my clerk type it tomorrow. And we'll have them

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1 take a look at that too.

2 MS. HOLMES: Op, I have the wrong one. I

3 have the explanation one that's the protected activity.

4 THE COURT: Protected activity means?

5 MS. HOLMES: Yes, thank you. Thank you.

6 THE COURT: Okay.

7 MR. MILLER: May I approach, Judge?

8 THE COURT: You may.

9 MR. MILLER: And this is one instruction that

10 we talked about yesterday with -- that's plaintiff's

11 changes too, which I'm -- I'm fine with. So it's -- we can

12 retype it or --

13 THE COURT: Okay.

14 MR. MILLER: -- whatever the court prefers.

15 MS. BONANNI: I know what you're talking

16 about.

17 MR. MILLER: (Multiple speakers).

18 THE COURT: Okay. Yeah, this is the one we

19 talked to -- special instruction. Okay, you can retype

20 that and give that to me tomorrow.

21 MR. MILLER: All right, and then it's -- I'm

22 not sure if plaintiff gave you her proposed verdict form?

23 THE COURT: Op, she did.

24 MR. MILLER: And this was the -- the counter.

25 My thought was plaintiff's verdict form is assuming that

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1 they've satisfied the first part of their prima facie case.
2 It's up to the jury -- decide whether plaintiff engaged in
3 protected activity.
4 MS. BONANNI: Well, then I think --
5 THE COURT: You guys normally put a caption
6 and stuff on your verdict form or not?
7 MR. MILLER: I prefer it just for filing and
8 not getting --
9 THE COURT: Okay.
10 MR. MILLER: -- lost normally. But --
11 THE COURT: All right, so -- because I -- I
12 prefer a caption on there too. That way then it can get
13 properly filed.
14 MR. MILLER: I agree, Judge.
15 THE COURT: All right, let me take --
16 (inaudible).
17 MS. BONANNI: (Inaudible) -- I don't have
18 another copy.
19 MS. HOLMES: I have it on my computer, Megan.
20 MS. BONANNI: It's okay.
21 THE COURT: All right. Well, why don't --
22 why don't we start? And you each got a copy of the two
23 verdict forms?
24 MS. BONANNI: I need one of yours John.
25 MR. MILLER: I gave you -- only had three

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1 copies and I gave one to you already.
2 THE COURT: All right, here, I'll -- I can
3 give you a copy.
4 MS. BONANNI: Thank you. Could you kindly
5 run one of mine too because I'm --
6 THE CLERK: I'll run them both.
7 MS. BONANNI: Thank you.
8 THE COURT: You've got two. One's for Mr.
9 Mullins.
10 MS. BONANNI: Thank you.
11 THE COURT: I got a couple -- (inaudible).
12 MR. MILLER: I'm not even sure he's part of
13 the conversation right now. So --
14 THE COURT: All right, that's fine.
15 MR. MILLER: Oh, thank you, Judge.
16 UNIDENTIFIED SPEAKER: (Undecipherable).
17 MR. MILLER: Oh, thank you, Judge.
18 THE COURT: All right, let's -- all right, so
19 the first special verdict form -- defendant is -- did
20 plaintiff engage in protecting whistleblower activity.
21 MR. MILLER: Which is part of the jury
22 instructions. And I mean, one of the model instructions
23 are plaintiff must reasonably believe that a violation of
24 law or regulation has occurred, and it goes on.
25 Plaintiff's proposed verdict form is essentially asking --

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1 I mean for a judgment as a matter of law whether
2 whistleblower activity happened.
3 THE COURT: I -- I agree, I think -- I think
4 defendant's is correct with respect to --
5 MS. BONANNI: So --
6 THE COURT: -- paragraph number one.
7 MS. BONANNI: -- what I would ask is that it
8 read did -- did plaintiff engage in protected activity.
9 Because the way the instruction reads on protected activity
10 -- it's called, definition, "Protected activity means." So
11 in -- take out the whistleblower because it is protected
12 activity.
13 THE COURT: What are your thoughts about --
14 MR. MILLER: I think it's semantics. I have
15 no problem with that.
16 MS. BONANNI: Okay.
17 MR. MILLER: I mean, that's what the jury
18 instructions are going --
19 THE COURT: All right, so I -- I can live
20 with -- take out -- so just -- engage in protected activity
21 or are we just gonna go --
22 MS. BONANNI: Yes, protected activity.
23 THE COURT: Okay. Okay, so we'll take out
24 whistleblower and put protected. Okay, so what about
25 number two? Did -- did defendant threaten to discriminate

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1 against plaintiff because of -- (undecipherable). Well, I
2 think that kind of flows now well with the other one now.
3 So --
4 MR. MILLER: And I think everything else I
5 cut and pasted from.
6 THE COURT: So --
7 MR. MILLER: Plaintiff's --
8 THE COURT: Okay. Yeah, I think that's
9 appropriate in two.
10 MS. BONANNI: That's fine.
11 THE COURT: And then -- so then we're at
12 three. Three I think we agree on there.
13 MS. BONANNI: And --
14 THE COURT: Four?
15 MS. BONANNI: Four I just don't agree because
16 it's very -- it's just not fair to define economic damages,
17 which actually everybody understands, and not define the
18 non-economic. So I would suggest that we use our language.
19 State the amount of non-economic damage and put in the
20 definition's examples just as they have for economics.
21 MR. MILLER: Well, actually I do think the
22 law is actually a -- I mean some of these things like
23 humiliation I think -- (multiple speakers).
24 MS. BONANNI: Yes, that is -- no, that is --
25 that is part of emotional distress damages. Humiliation,

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1 embarrassment, all those things par -- contribute.
2 THE COURT: Okay, we -- we did agree on the
3 Limine instruction about the, you know, all the physical --
4 MS. BONANNI: Yeah.
5 THE COURT: -- things. I don't have a
6 problem with number three. I think if you're being -- and
7 it kind of tracks with the symmetry of what we're doing
8 with the other one where you're setting lost wages --
9 MS. BONANNI: Yep.
10 THE COURT: -- and benefits and it kind of
11 shows a parallel --
12 MS. BONANNI: Yep.
13 THE COURT: -- structure at the very least.
14 All right.
15 MS. BONANNI: Okay.
16 THE COURT: Okay, so then we'd have that as
17 four. And then if you want to do -- whoever wants to do it
18 then I'd like to have caption on it --
19 MS. BONANNI: Okay.
20 THE COURT: -- at the top.
21 MS. BONANNI: Caption.
22 THE COURT: So if you want to redact anything
23 from the caption about --
24 MR. MILLER: Thank you.
25 THE COURT: I don't think you necessarily

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1 need -- that -- that way it's easier -- it's easier to file
2 --
3 MS. BONANNI: Yes.
4 THE COURT: -- things like that. All right?
5 MS. BONANNI: I understand.
6 MR. MILLER: And, Judge, it's at -- there's
7 one -- and I hate to be --
8 THE COURT: Oh, I'm sorry.
9 MR. MILLER: -- that guy --
10 THE COURT: No.
11 MR. MILLER: -- that always has one more in.
12 But there's this --
13 THE COURT: You -- Mr. Miller, you're just
14 gonna have that --
15 MS. BONANNI: You're like the --
16 THE COURT: -- that trait. It's not a bad
17 one.
18 MS. BONANNI: -- that clown that you go --
19 THE COURT: All right.
20 MS. BONANNI: -- ponk, and it --
21 MR. MILLER: There is this --
22 THE COURT: All right, so --
23 MR. MILLER: -- and actually -- I mean just
24 talking this through a little bit. One of the motions in
25 limine the court did grant. There can't be a claim for a

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1 future termination or layoff, something that hasn't
2 occurred. Because if that does occur there can be a new
3 lawsuit if it's causally related to her protected activity.
4 So I don't know if it's just a cleaner instruction to say
5 plaintiff can't recover for --
6 MS. BONANNI: We're not seeking recovery.
7 MR. MILLER: Well, then it -- yeah. I mean
8 then that's an easy instruction. That you're -- (multiple
9 speakers).
10 MS. BONANNI: Are you talking about the --
11 the other one that you just agreed to? The language?
12 MR. MILLER: No.
13 MS. BONANNI: I'm sorry.
14 MR. MILLER: No, it's --
15 MS. BONANNI: I'm not --
16 MR. MILLER: We had the special instruction
17 on the Teacher Tenure Act.
18 MS. BONANNI: This one.
19 MS. HOLMES: So you're saying do --
20 MR. MILLER: Correct.
21 MS. HOLMES: -- a special instruction rather
22 than this?
23 MR. MILLER: And I'm saying it might be
24 easier and cleaner as opposed to a whole bunch of law. The
25 court --

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1 MS. BONANNI: So -- and I -- and I --
2 MS. HOLMES: I would agree.
3 MS. BONANNI: -- I agree because these three
4 -- I mean, talk about confusing a jury. We're not here for
5 tenure contest, or a termination, or an Administrative Law
6 Judge. Like none of that applies. And I think that it's
7 -- it's confusing and could be really confusing to them and
8 cause them to make an error.
9 THE COURT: Okay.
10 MR. MILLER: So I would ask for an
11 instruction consistent with the motion in limine that was
12 granted. That plaintiff cannot recover for a termination
13 or layoff that has not yet occurred.
14 MS. HOLMES: That's fine.
15 MS. BONANNI: Okay.
16 THE COURT: Okay.
17 MR. MILLER: That all right?
18 MS. BONANNI: Yeah.
19 THE COURT: Do you want to do that as just a
20 simple cautionary instruction --
21 MR. MILLER: That would be easier than --
22 (multiple speakers).
23 MS. BONANNI: Like a cautionary instruction.
24 THE COURT: -- read before the verdict form?
25 MS. BONANNI: Yeah.

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1 THE COURT: All right.
2 MR. MILLER: So when --
3 MS. BONANNI: Yeah.
4 MS. HOLMES: Yeah.
5 THE COURT: Okay, good. And then so we're
6 gonna eliminate the one on the Teacher Tenure Act then?
7 MR. MILLER: I think --
8 MS. BONANNI: Yes.
9 MS. HOLMES: Yes.
10 MR. MILLER: -- that would be a good
11 compromise, Judge.
12 THE COURT: Okay, very good. All right, I'm
13 gonna give you back that one then so --
14 MR. MILLER: Thank you.
15 MS. BONANNI: And is that everything?
16 MS. HOLMES: No, we have one --
17 MS. BONANNI: Oh.
18 MR. MILLER: Oh, the causation instruction.
19 MS. BONANNI: Oh, that's --
20 MR. MILLER: (Undecipherable).
21 MS. BONANNI: -- a big one.
22 THE COURT: All right, let me -- let me go
23 there. So you got a couple jury instructions to revise and
24 the verdict form. So -- all right. So we're on the
25 causation instruction then?

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1 MR. MILLER: Yes.
2 MS. BONANNI: So point him to what you're --
3 MS. HOLMES: I think he's reading through.
4 MS. BONANNI: Oh.
5 THE COURT: Okay. Well, I was just taking a
6 look at the special instruction that you've got.
7 MR. MILLER: And here's a, I mean, case also.
8 I mean obviously if a model civil -- model instruction in
9 general doesn't comport with the law anymore, it's not
10 appropriate. And --
11 MS. HOLMES: Is that *Nassar*?
12 MR. MILLER: -- the law -- well, no, this is
13 a recent Michigan case that's citing the *Nassar* standard as
14 the appropriate standard now.
15 UNIDENTIFIED SPEAKER: What?
16 MS. HOLMES: What case is this?
17 THE COURT: *Thompson versus Department of*
18 *Corrections.*
19 MS. BONANNI: Do you have a copy for us?
20 MR. MILLER: I don't.
21 THE COURT: All right, that might be helpful
22 if I -- you want to go --
23 MS. HOLMES: Yeah. Well, we --
24 THE COURT: -- ahead and read that?
25 MS. HOLMES: We -- not --

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1 THE COURT: Talk about this first thing in
2 the morning?
3 MS. HOLMES: -- cited.
4 MS. BONANNI: Yeah, we have -- I mean we're
5 using the model instruction.
6 MS. HOLMES: Yeah, and when is that from?
7 MR. MILLER: Well this case is from *Thompson*
8 *v Department of Corrections*.
9 MS. BONANNI: From two thousand --
10 MR. MILLER: 2015.
11 MS. BONANNI: -- '15.
12 MS. HOLMES: Okay. Well, I -- this is still
13 the model instruction.
14 THE COURT: Okay, let me see which
15 instruction you're loo -- are you looking at 107.03?
16 MS. HOLMES: Yes.
17 THE COURT: Okay.
18 MR. MILLER: Well, my point is --
19 THE COURT: That's --
20 MR. MILLER: -- just --
21 THE COURT: -- different than --
22 MR. MILLER: -- I'm sorry.
23 THE COURT: -- mine too. Go ahead, counsel.
24 MR. MILLER: My point is that just because
25 something's a model instruction -- we cited the case law in

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1 our brief that the model instruction doesn't comport with
2 the law anymore. The court shouldn't give it. And several
3 years ago the U.S. Supreme Court re-examined the causation
4 standard in retaliation cases. And Michigan cases have
5 tracked a same causation standard and has the same language
6 because of --
7 MS. HOLMES: This is not a whistleblower
8 issue.
9 MR. MILLER: -- of Federal statutes and
10 Michigan statutes used because of. And in the retaliation
11 context Michigan Court of Appeals, when they recently
12 looked at this, have held that the *Nassar* standard is the
13 appropriate standard to apply. And I understand what
14 plaintiff counsel's saying right now, that this isn't the
15 whistleblower case, but --
16 MS. BONANNI: Yes.
17 MR. MILLER: -- the retaliation case --
18 MS. BONANNI: This is not a whistleblower
19 case, it's a 2015 unpublished case. This is whistleblower
20 and Channing has been reading up on this.
21 MS. HOLMES: Yeah. So, first of all, the
22 2013 *Nassar* Supreme Court decision, if that were the
23 correct standard to apply the trial courts in Michigan
24 would be applying it. And, in fact, we've had cases in
25 trial -- whistleblower cases -- and the Judges have

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1 continued to refuse this but for causation standard. Ms.
2 Bonanni was in front of Judge Connors in Washtenaw County.
3 I was in front of Federal Judge Denise Paige-Hood as
4 recently as August of last year and we still applied this
5 standard. There's just no precedent at all to apply the
6 but for standard, it's not being applied anywhere within
7 the state.
8 MS. BONANNI: And it is like -- it's a huge
9 departure.
10 MS. HOLMES: Right.
11 MS. BONANNI: Complete departure.
12 MR. MILLER: I mean, it's not a complete --
13 as far as this --
14 MS. BONANNI: Yes, it is.
15 MR. MILLER: -- a complete departure. It's a
16 developing line of cases.
17 THE COURT: Well, I'll tell you what. I'll
18 -- I'll read that case tonight and -- should give that to
19 Jay. Why don't you run me a copy, run plaintiffs a copy
20 too.
21 MR. MILLER: All right.
22 THE COURT: I -- I'm leaving towards the
23 standard instruction but I'll -- I'll read -- I'll read
24 that case and --
25 MS. BONANNI: And we'll -- we'll read it too.

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1 MS. HOLMES: Mm-hmm.
2 THE COURT: You can read it. Okay.
3 MS. BONANNI: We'll read it too.
4 THE COURT: All right, so --
5 MR. MILLER: I can make a copy, Jay.
6 UNIDENTIFIED SPEAKER: (Undecipherable).
7 THE COURT: Do you --
8 MR. MILLER: All right.
9 THE CLERK: Just one?
10 MS. HOLMES: I think that's my copy from you.
11 THE COURT: Is that yours?
12 MS. HOLMES: Yep.
13 THE COURT: Can I -- can --
14 MS. HOLMES: Oh yeah, absolutely.
15 THE COURT: Why -- why don't you go give me a
16 copy of that one so I can --
17 MS. HOLMES: Okay, absolutely.
18 THE COURT: -- put it right in my
19 instruction. Oh, actually -- actually I've got it.
20 MR. MILLER: And with the instruction they
21 did provide some additional briefing is to why --
22 THE COURT: Okay.
23 MR. MILLER: -- I think it's the appropriate
24 instruction.
25 THE COURT: Actually I -- I found one in your

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1 packet of your other ones but I'll go ahead and take this
2 one just in case. All right, and so he's running me a copy
3 of that case. So I'll just revisit the causation. That
4 should be the only issue that we've got then tomorrow
5 morning, right? Just that --
6 MS. HOLMES: Yes, your Honor.
7 MR. MILLER: I think so.
8 THE COURT: Okay. All right, anything
9 further?
10 MS. BONANNI: Nope.
11 THE COURT: So kind of -- we did agree then
12 kind of -- about an hour. So you're gonna adjust your time
13 to get -- have some -- because plaintiff you get to go
14 last. So like 45 minutes and then 15 minutes or whatever
15 --
16 MS. BONANNI: Yeah.
17 THE COURT: -- you want for rebuttal.
18 MS. BONANNI: Yeah, I'll figure it out.
19 THE COURT: Okay.
20 MS. BONANNI: I'll do my practice.
21 THE COURT: All right, very good.
22 THE COURT: Mr. Mullins, anything else?
23 MR. MULLINS: I'm good, your Honor, thanks.
24 THE COURT: All right. See everybody
25 tomorrow at --

THE CLERK: 10:30.

THE COURT: 10:30.

(At 3:44:34 p.m., hearing concluded)

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred fifty-nine (159) pages, before the 4th Judicial Circuit Court, Jackson County:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Tuesday, March 6, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Sally Fritz

Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 24, 2018

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STATE OF MICHIGAN

4TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

v File No. 2016-344-CZ

JACKSON PUBLIC SCHOOLS,

Defendant.

_____/

JURY TRIAL, VOLUME VIII of VIII

BEFORE THE HONORABLE JOHN G. MCBAIN, CIRCUIT COURT JUDGE

Jackson, Michigan - Wednesday, March 7, 2018

APPEARANCES:

For the Plaintiff: MEGAN A. BONANNI (P52079)
CHANNING E. ROBINSON-HOLMES (P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067-3848
(248) 398-9800

For the Defendant: JOHN LOUIS MILLER (P71913)
101 W. Big Beaver Road, Suite 1000
Troy, MI 48084-5280
(248) 457-7020

TRANSCRIBED BY: THERESA'S TRANSCRIPTION SERVICE
Sally Fritz, CER #7594
P.O. Box 21067
Lansing, Michigan 48909-1067

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None

WITNESSES: DEFENDANT

None

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EXHIBITS:	INTRODUCED	ADMITTED
None		

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1 Jackson, Michigan
2 Wednesday, March 7, 2018 - 10:49:00 a.m.
3 THE CLERK: -- Circuit Court is now in
4 session. The Honorable Judge John G. McBain presiding.
5 THE COURT: All right, thank you. Back on
6 the record then in the matter of Pennie Davis versus the
7 Jackson Public Schools. And I just wanted to go through
8 the jury instructions one more time. Okay, so we had a
9 couple of specials which I had typed up. Did we want to go
10 through placement of those first on the -- and was it a
11 cautionary, or special instruction -- plaintiff is not
12 seeking and should not be compensated for the following
13 conditions: tumors, rectal bleeding, use of a heart
14 monitor. So do you have a specific spot within the
15 instructions that you --
16 MR. MILLER: I have a -- suggest right after
17 the damages instructions would be.
18 THE COURT: Which -- which number's that?
19 MR. MILLER: There's the damages and then the
20 mitigation that follows right after 105.41. So I think it
21 would be a natural spot right after that.
22 THE COURT: Okay. All right, any -- any
23 objection to the placement there?
24 MS. HOLMES: I don't think so.
25 MS. BONANNI: No.

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1 THE COURT: Okay, and then your other spec --
2 plaintiff is not seeking -- cannot receive damages for
3 future employment events that have not occurred such as a
4 termination or layoff. Do you want that the same -- right
5 after the other instruction?
6 MR. MILLER: I think so, Judge.
7 THE COURT: All right. Okay, so let's just
8 go through them one more time. Make sure that we're --
9 that way I'm not doing them out of order or something that
10 you've got. So, first --
11 MR. MILLER: And you do still -- and I
12 apologize --
13 THE COURT: Oh, go ahead.
14 MR. MILLER: -- for interrupting. We do
15 still need a ruling on the causation instruction.
16 THE COURT: Okay. Yes, I did read your case.
17 I was gonna just take some more brief argument. I'm
18 inclined to go with the standard jury instruction,
19 especially since it's a standard jury instruction. The
20 other case is an unpublished case. So any -- any further
21 argument on that?
22 MR. MILLER: I'm happy to rest on the briefs
23 in the case on that, Judge.
24 THE COURT: All right, so -- so very good.
25 So the court's going to use the standard instruction then

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1 and I'm gonna go through that. I wanna make sure that
2 we've got that appropriately placed. So the first one
3 would be 3.01, standard instruction; 3.02, standard
4 instruction; 3.03, standard instruction; 3.04, standard
5 instruction; 3.08, standard instruction; 3.09, standard
6 instruction; 3.10, standard instruction; 3.11, standard
7 instruction; 3.15, standard instruction; 4.01, standard
8 instruction; 4.07, standard instruction; 8.01, standard
9 instruction; 60.01, jury deliberations; two page
10 instruction, appears to be a standard instruction; then we
11 have a stipulated special instruction which is, you know,
12 kind of what the court dealt with on the cautionary
13 instruction.
14 Then -- then 107.02, and it looks like the
15 parties want me to put in there, "by his employer or a
16 third party to a public body," I'm adding that. So I'm
17 going to have them re-type it with that one there so I can
18 -- and I'll have him give you a copy of each of that. So
19 it'll be nice and neat.
20 David, I just --
21 MR. MILLER: Did you have one zero -- or
22 1.701 also?
23 THE COURT: Yes.
24 MR. MILLER: In front of that? Oh, okay.
25 THE COURT: Yeah, so I'm going to give -- 102

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1 we're just gonna have that minor correction made too.
2 David will run that. 1.701, so then 107.02 will come after
3 that, 1.704, whistleblower's protection a good faith
4 belief.
5 MS. HOLMES: Your Honor, I would suggest that
6 the 107.03 that was the explanation that was contested, be
7 put after 107.02.
8 THE COURT: Okay, 107.3. Okay, where is that
9 at right now?
10 MS. HOLMES: It was the -- at the end of the
11 booklet because it was in contest.
12 THE COURT: Okay, let me see if I can find
13 that one.
14 MR. MILLER: Do you have a copy because it
15 wasn't in this --
16 THE COURT: You -- you can --
17 MR. MILLER: -- that I just copied.
18 MS. HOLMES: Oh, yeah.
19 THE COURT: -- type that one up with that
20 change.
21 MS. HOLMES: Just the standard.
22 MR. MILLER: Is this -- (undecipherable)?
23 MS. HOLMES: (Undecipherable).
24 THE COURT: Okay, so I've got 107.03.
25 MR. MILLER: May I make a real quick copy?

1 THE COURT: Sure, absolutely.
2 MR. MILLER: Thank you.
3 THE COURT: So you're proposing we just put
4 that right in front of 107.04 then, right?
5 MS. HOLMES: Right. Or, I believe there's
6 also special instruction that was inserted in between .02
7 and .04 as well.
8 MR. MILLER: Thank you.
9 MS. HOLMES: Thank you.
10 Your Honor, if I can show you what it is?
11 (Undecipherable).
12 THE COURT: Yeah.
13 MS. HOLMES: This was stipulated to. Maybe
14 it's in a different spot in your packet.
15 THE COURT: Yeah, it might be. Okay, so
16 you'd like that then where? Right between --
17 MS. HOLMES: I think just as long as it's
18 within the realm of the 10 -- after --
19 THE COURT: 10 --
20 MS. HOLMES: 103 to 104 or something in that
21 area.
22 THE COURT: Okay, so I got 103, 104.
23 MS. HOLMES: And then we can stick that in
24 there.
25 THE COURT: All right, I'll put it right in

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1 after 104.

2 MS. HOLMES: Perfect, thank you.

3 THE COURT: Okay, so then it looks like after

4 that we have 107.15, and then do we have 105.03 after that?

5 Okay.

6 MS. HOLMES: Yes.

7 THE COURT: Then we've got a special

8 instruction about plaintiff cannot recover from defendant

9 for incidents that occurred prior to November 12th, 2015.

10 So that instruction.

11 Then we have the instruction on damages,

12 50.01; then miti -- mitigation of damages for loss of

13 compensation, 105.41, and I think at that point I put in

14 special instructions. Two of those that we went over this

15 morning. And then do we still have 107.0 -- no, 107.03 is

16 out. So then I have a verdict form. I think I had

17 somebody just put the caption on it.

18 MS. HOLMES: Yes.

19 THE COURT: Okay, everybody got a copy of

20 that? So --

21 MS. HOLMES: I have a front and back one if

22 you'd like a --

23 THE COURT: No, that -- that's fine.

24 MS. HOLMES: Okay.

25 THE COURT: Okay.

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MR. MILLER: Oh, I was -- I was --

THE COURT: Do we have anything with the actual caption of the case on it?

MR. MILLER: It looks like she has it front and back.

THE COURT: Okay. Oh, okay.

MR. MILLER: I'm gonna make a copy.

THE COURT: All right. Okay, so I just wanted to put one minor thing about the record, about this morning, and Mr. Mullins, and just make sure that we got a record in that. I guess I should indicate for the record that I got a call early this morning from my secretary who told me that Mr. Mullins was apparently ill and not able to be here today. So I did meet with both counsel in my chambers and one alternative that I offered, since we do have a second attorney here that's been here through most of the trial, is to either continue today and/or wait until tomorrow and you can continue to tomorrow. So any -- any further record that you wanted to make in that, Mr. Miller?

MR. MILLER: No, Judge.

THE COURT: Okay.

MR. MILLER: The only thing I would say with the instructions -- I'm in agreement -- but, of course, I'll continue my objection as to the causation instruction.

THE COURT: Okay.

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1 MR. MILLER: For appeal.
2 THE COURT: So noted, and at this point I'm
3 not gonna call any attention then in the fact that Mr.
4 Mullins isn't here. So we'll just, you know -- just have
5 you do the closing argument.
6 Any -- Ms. Bon -- Bonanni, anything further
7 before we get into closing arguments?
8 MS. BONANNI: No. Ready.
9 THE COURT: All right, let's bring the jury
10 in.
11 THE CLERK: All rise for the jury.
12 (At 11:07:21 a.m., jury returns)
13 THE COURT: All right, thank you. Everyone
14 may be seated. The records should reflect the presence of
15 all the jurors, the plaintiff, her counsel, defendant and
16 -- ladies and gentlemen, you'll recall yesterday that we
17 concluded the proofs at the -- this time. Now both -- the
18 defendant has now rested their case. And at this point
19 we're gonna hear closing arguments. Because the plaintiff
20 has the -- the bur -- or the -- the burden of proof, if you
21 will, by a preponderance of the evidence. In their case,
22 Ms. Bo -- Bonanni gets to go first, and then we'll hear the
23 Defense close, and because the -- and then the plaintiff
24 gets a brief rebuttal close.
25 So we're ready then for the closing argument

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1 of the plaintiff. Go ahead, Ms. --

2 MS. BONANNI: Thank you, your Honor. Good

3 morning, everybody.

4 MULTIPLE JURORS: Good morning.

5 MS. BONANNI: This has been a long three day

6 trial. It's taken so much longer than we expected and I

7 sincerely apologize. But I also thank you and I think I

8 can speak on behalf of all of us here. Thank you so much

9 regardless of what happens because I know you have all been

10 paying attention. I see the notes. Very, very grateful

11 for that. It means the world to every single person in

12 this -- at these tables.

13 This is my time for closing argument. It's

14 my time to tell you what I believe the evidence has shown

15 but you are the finders of fact. So it's really up to you

16 but hopefully I can be a guide.

17 I think if anything has shown through,

18 through this trial -- Pennie Davis has a passion for

19 teaching, a passion for art, giving back to her community

20 through her students. It's a love of hers. It is a

21 calling. And I think there's a lot of people in their jobs

22 -- are -- when we find someone who has a calling, who has a

23 world -- it's her world, this -- really something special.

24 Something to be preserved and valued. And it's a job where

25 she was successful by the district's own measure throughout

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her entire career until the retaliation started.

The job was a critical, and is a critical, component of her identity. And that's something that Doctor Weisbrod talked a lot about. And when you consider this case, and the damages to Pennie Davis, I'm gonna urge you to look at Doctor Weisbrod's records. While you may not want to read them all he did prepare that chronology and it does give you an overview of everything that has happened to her.

I'm gonna walk you through this time-line a little bit before I talk about the law. In the time-line we know that in the school year, that 2015-16 school year, first month and a half Pennie Davis encountered a student, M.H., and M.H. was having issues, showing aggression, defiance. She wrote him up three times in the student log. That is what she is supposed to do. She went above and beyond. She made 21 contacts.

Please look at Exhibit 2 which is the log excerpts from M.H., and Exhibit 7, which are Pennie's notes. Contacts with the child himself. And I think this is so -- this evidence about how she tried to reach him is really important. I think to understand Pennie Davis, get a sense of who she is in her personality, not an attention-seeker. She spoke quietly to him. She whispered. She didn't wanna embarrass him. She tried to de-escalate him.

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1 When those efforts failed she got a little bit more broad.
2 She went to counselors, mom, administrators, Mr. Zessin,
3 Ms. Pau -- Ms. Pauli, to coach, the counselor -- even the
4 football coach -- and mind you Mr. Zessin, the grade coach
5 -- sorry -- the grade principal receives every single
6 student log entry made by every single teacher and
7 administrator about this student and all others. So he
8 knows because it comes directly to his e-mail box.
9 Pennie Davis was not getting any response.
10 And, as Amy Gish so aptly described this, as a student that
11 many teachers have been trying for many years to get help
12 for.
13 On October 12th M.H. walked into the room.
14 He was aggressive. He was hopped up. Students are getting
15 their materials. Pennie explained she took attendance.
16 And she did this demonstration for you how she was leaning
17 on the desk and how the hit came from the side with a
18 closed fist. It wasn't a this. It wasn't a this. It was
19 -- it was a hit like that. She lay -- leaned over the
20 table -- and I forgot, before he did that he said to her
21 that he wanted to beat the teacher. He was gonna beat the
22 teacher and that's a violation of student code. Contact --
23 unwanted contact that causes injury is a violation of the
24 student code. It's also a violation of the law.
25 During that moment Pennie told the student

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once again he can't threaten her. She wasn't loud and she wasn't screaming but students did hear her. She told him to go to the hall. To go to the -- the -- Zessin. To go out. He refused to leave, he got angry and that's when he hit her.

But Pennie Davis knew once M.H. was out of that room is that two things had happened. She had been threatened by a student and she had been hit by a student and she was in pain. And we know now -- we know in the days that followed that she received confirmation of that injury and an injury which, by the way, Pennie Davis herself said the day after, "I don't think it's broken but it's been wrapped and they did an x-ray." So she didn't think it was broken but she was in pain, she had a injury and medical documentation confirms it. Medical documentation confirms that it was swollen. Both clinics say contusion. And that's important. It's important because it's consistency. Every single thing that Pennie Davis did in this time-line was by the rules, by the book and it's consistent. And that means something when you're in that room deliberating.

One thing that I think we can all agree at both tables, that demonstration that Pennie did for you she never got to do that to the administration. She never was asked. She was never consulted. Never interviewed. And

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1 even when she was told, after being placed on this leave,
2 that there was some students that didn't corroborate. She
3 asked let me see this. They still didn't interview her
4 even after she ra -- I wanna talk to you. No one -- no one
5 wanted to talk to her. But we'll talk about that in a
6 minute.
7 After the assault Pennie Davis did follow the
8 rules as usual. She informed administrators. She informed
9 Pauli, Pack, Beal. And you heard Mr. Pack. He said he
10 even saw her walking to go to the Administrative Building
11 and that's how he found out because he talked to the
12 secretary of Mr. Beal. Pennie Davis reported that she was
13 injured. She was going to the police.
14 She had a brief conversation with Principal
15 Pauli in the hall. Principal Pauli asked her how the
16 student hit her. She said, "Closed fist." And she said,
17 "Did you put it in a log?" And Pennie explained, "No, I've
18 already done that. I did not -- I can't go back in once
19 I've entered it." That was the extent of it.
20 And you -- we seen Pauli's notes. She was on
21 the stand yesterday. Notes that were prepared. And this
22 is so important. Not only days after the event but also
23 after the explosive meeting on the 15th, after the
24 administration knew there was a PPO and they exhibited
25 their anger, and after, as you recall, Mr. Pack himself,

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1 after I had to show him his deposition, admitted that the
2 reason for those elevated feelings in that room was the
3 PPO. So those notes are not to be believed. That's not
4 how it happened.
5 But, regardless, after school that day on the
6 12th Pennie went to get the PPO. And it's, in fact, the
7 police to suggest that she get the PPO after she made her
8 police report. And so she applies for the PPO and
9 ultimately a few days later Judge McBain reviews that PPO
10 and approves it. So the school knew because Pennie went to
11 the police on the 12th. They knew she went to the police.
12 She called them on the phone and the police ended up coming
13 to the school. They know she's engaged in Protected
14 Activity.
15 So Protected Activity. You're going to hear
16 about this. I'm going to explain and show you the div --
17 the jury instructions but prosecution -- what I'm going to
18 tell you is that Protected Activity is going to the police.
19 That is included in this bundle of rights. And what you
20 will learn from your jury instructions is that what legally
21 matters here is this moment. This moment and the 12th after
22 school when Pennie Davis goes to the police. Her mindset
23 for this law to be broken, to be invoked, her mindset is
24 what matters. And what was in her mind at that time was
25 I've been hit, I was threatened and I'm going to seek

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1 medical attention for this injury.

2 What the jury instructions are going to tell

3 you is that if you find that Pennie Davis had an honest

4 belief that the law was violated then you must find that

5 Pennie Davis engaged in Protected Activity. Now I would

6 submit to you that the law was violated. The law was

7 violated when was threatened to be beaten. The law was

8 violated when she was hit. That's assault and it's also a

9 battery. Battery's the -- the hitting part. But that's

10 not what this law requires. This law doesn't require that

11 the law be violated. It requires that the person making

12 the report honestly believes that the law was broken. And

13 there is no evidence that has been submitted to suggest

14 that Pennie Davis wasn't honest in her own beliefs when she

15 made that decision after school to go to the police.

16 Protected Activity number two -- oh, before I

17 go on. I think this is important. Authority figures

18 supported Pennie's Protected Activity. We have a report to

19 the police which leads to the police ultimately referring

20 this matter to the prosecutor. And then we have a Judge,

21 our Judge, who reviews the facts, the PPO, approves it, and

22 puts it in place -- stamps it with an order. That's the

23 process that you go through with a PPO. Protected Activity

24 number two, you will -- you will learn that availing

25 yourself to the court, obtaining a PPO -- this is also by

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1 definition Protected Activity. So, again, what matters
2 here is that time, that moment, after school when Pennie
3 went to get this PPO after the police suggested she do,
4 whether she had a honest belief that that PPO was
5 necessary. That the law had been violated and she had a
6 right to get a PPO. It's about what she believes.
7 Pennie is quite -- she's private, she's quiet,
8 but she's honest open book and that's how I see -- and I
9 hope you do too, this evidence of her going to get medical
10 care right away. To me that's evidence of someone who's
11 just trying to take care of things. Trying to, you know,
12 make sure nothing gets worse. This isn't a person who's
13 waiting around for a few days and say, op, I -- send me to
14 Work Well. No, she's -- she's so straight forward. My
15 hand hurts, she gets it wrapped. Totally permissible for a
16 workplace injury for an employee to go get -- to go to
17 their own clinic. I don't think there's been any
18 suggestion that what she did was wrong. And, in fact, I
19 kind of pulled out of Beal but -- or Pack but he said he
20 was happy that she went and got care immediately.
21 Pennie's first contact with Pack and Beal
22 about this incident was on the 13th. This is in the
23 morning. And on the 13th they come to her class in the
24 morning and they remove her from class -- talk to her in
25 the hall. And I would submit to you that this is the

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1 moment where we start to catch a glimpse of what the
2 employer's motive is in that they are angry about Pennie
3 taking this matter outside the building, taking this matter
4 to the police and to the courts.
5 When you think about this meeting on the 13th
6 I want you to ask yourselves the way these gentlemen, Mr.
7 Beal and Mr. Pack, conducted themselves and the things they
8 said. Is this consistent, these actions, these words, with
9 school administrators who are concerned about a long-term
10 teacher who might be injured? A long term teacher who does
11 -- who has an excellent record. No record of like
12 exaggerations or false reports. Just an honest to God good
13 teacher. I say no. There's no empathy. There's such an
14 agenda. That's what shines through to me.
15 They ask her -- they -- they don't ask her.
16 They demand that she unwrap her hand. And you remember
17 this cons -- this comment about the shower that Mr. Beal
18 adamantly said, "I did not say that." He was on that
19 stand. He said, "I did not say that." But if you recall,
20 I'm going to ask you look at Exhibit 14, paragraph four.
21 It's in the letter. It's in paragraph -- I'm sorry,
22 paragraph two. It's in the letter where Beal asked her if
23 she showers with it on. And this is where credibility
24 comes in for you because a large part of what you do in
25 that room, I know, is weighing credibility. Who do you

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1 believe? And I think that, you know, this is where
2 credibility comes in. And, again -- credibility --
3 Pennie's telling them during this meeting, "I don't think
4 my hand is broken." She's not exaggerating. It wasn't
5 broken. It was injured. And that's exactly what the
6 medical records show. So Pennie was right and Pennie was
7 honest.
8 Also comment that was said in this meeting
9 that is uncontroverted evidence that I think comes up later
10 on in our time-line that's troubling is this whole
11 conundrum about x-rays. Now on the 13th when they took her
12 in the hall to talk to her Pennie indicated to Mr. Pack, "I
13 don't feel comfortable having an x-ray. I just had one."
14 He said to her, and I read in his testimony -- I hope you
15 remember that -- and I said, you know, "You said it wasn't
16 a problem. That the doctors would work it out between
17 them." He agreed he said that. And so that was what
18 Pennie's mindset was. But you know from our time-line that
19 a couple days later, on the 15th, they write a letter that
20 is chastising her for this x-ray and saying that she's
21 somehow being insubordinate for not providing these x-rays.
22 Insubordinate for not going to Work Well. And this is
23 where we're going to go next -- Work Well.
24 After the meeting on October 13th Pennie made
25 it clear that she would go to Work Well, no problem. But,

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1 you know, she can't just leave the class. It's job
2 abandonment and she would have been -- she could have been
3 terminated for that. She could have been definitely
4 disciplined for that. You heard Beal say that's a big no,
5 no. But that doesn't happen, according to Beal, because
6 the administration brings down subs. At no time, and
7 there's absolutely no evidence to suggest, that there was a
8 sub that showed up. There wasn't a sub. Pennie just
9 worked as she's supposed to do.
10 Exhibit 12, the voicemail from Jessica, from
11 the office. That voicemail is at 2:59 p.m. and as you know
12 from testimony from Pennie and others, school day ends at
13 2:20. Pennie was gone. We know from Exhibit 13, first e-
14 mail contact about Work Well is October the 13th 3:06 p.m.
15 again from Jessica. Pennie's gone. She is gone for the
16 day. She does not receive those contacts. And the next
17 day is a sick day so her next day at work is the 15th.
18 And here's another key piece of evidence, in
19 my opinion. You know you heard Mr. Pack on the stand. He
20 said I gave her a verbal directive in the morning of the
21 13th to go to Work Well. Credibility. I submit Pack is not
22 to be believed. His testimony is not consistent with his
23 own documentation. Documentation that was created at the
24 time of these events. Not now, at the time.
25 Pack says he was -- there was a verbal

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1 directive given in the morning of the 13th and yet no sub
2 was sent. Pack says there was a verbal directive to go to
3 Work Well in the morning of the 13th. And yet Exhibit 14,
4 again, which chronicles this incident. This is the
5 document where they put her out on -- or they -- they gave
6 her a -- a verbal reprimand. They indicated that she could
7 be subject to further discipline, including termination.
8 This is where they're saying she's insubordinate for not
9 doing to Work Well. But his own letter written at the
10 time. And this is Exhibit 14, paragraph four, "Directive
11 to Work Well not given until later that day on the 13th," --
12 later that day. Again, the consistency is voicemail from
13 Jessica, e-mails from Jessica in the afternoon on the 13th.
14 There was no verbal directive. No evidence of that.
15 Another excellent piece of evidence to show
16 motive -- intent -- the intent to retaliate against Pennie
17 Davis for her Protected Activity, Exhibit 35. Here's why
18 Exhibit 35 is important. Exhibit 35 is an e-mail from
19 December 9th, two thousand and -- 10th of 2015. Now, if you
20 remember from our time-line, at this point in time,
21 December, Pennie's been transferred to Parkside. This is
22 the month, the same month she's designated as a failing
23 teacher.
24 This e-mail, Exhibit 35, this is private
25 conversations between Beal, Pack and the IT fellow. And

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1 they're looking -- they're looking. And I'm thinking, as
2 I'm reading this putting this case together -- here's what
3 Beal writes to Pack, "I'm going to have a hard time finding
4 proof that she read her e-mail after work on the 13th. Do
5 you have a record of the call Jessica made from your
6 office?" And, of course, they're looking with IT and they
7 never find substantiation for anything Pennie did wrong,
8 because she didn't do anything wrong. Because she didn't
9 access this until when she said she did which was the 15th.
10 But this shows -- this timing is interesting.
11 There was no lawsuit. They weren't -- what are they
12 building case for? I think they were building a case to
13 try to find something -- find something -- misconduct.
14 Because this timing does not make sense. And as Pennie
15 told you, this lawsuit was not filed until February of
16 2016. Credibility. We were lucky to get this kind of
17 evidence because it's private -- private conversations.
18 And I think it's telling. It shows they're scheming.
19 In the morning of October 15th Pennie Davis
20 dropped off medical records. It's the medical records that
21 she promised Mr. Beal she would provide and she was asked
22 to provide those at the end of the meeting on the 13th. And
23 they consist of Med Plus records, Exhibit number 9. Now
24 Exhibit number 9 has the x-ray. I'm going to tell you that
25 x-ray wasn't there at the time. On the 15th she just gave

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1 him that doctor's handwritten sheet. We've shown it to
2 you. But it does, what that medical record did, was
3 justify to that administration that she did have a reason
4 to have that wrap on her hand. That it was medically
5 provided. She didn't put it on herself. But that's what
6 she did. She dropped it off.
7 And that afternoon, the 15th, in the middle
8 of student conferences was the meeting that was explosive
9 -- raised voices. The meeting was called by Beal. It was
10 called by Beal when he saw Pennie dropping off the PPO.
11 Now the PPO had to be signed. As I told you there's a
12 process. That was signed and as soon as she got that that
13 day, she went during her lunch, she brought it to the
14 office. And that was the catalyst. He called that
15 meeting. He said, "Get in my office." She's with Amy and,
16 you know, again, we're looking at what is motivating this.
17 What is our evidence of motive? What's motivating these
18 administrators to act in this way, treat her this way,
19 impact her job this way? And ultimately, on the 15th, take
20 her off work for an indefinite period of time.
21 So Mr. Pack and Mr. Beal were talking about
22 concerns that they had. That this is their version. That
23 what they talked about was whether she -- she needed light
24 duty. Whether she could do her job and that didn't -- that
25 was not part of the discussion and it was not ever part of

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1 the discussion. It -- they were mad. They saw the PPO.
2 They got mad. And, in fact, Mr. Pack, I asked him, "Was
3 the tone -- the elevated tone of that meeting at all
4 impacted by the PPO -- wasn't that -- that the re -- one of
5 the reasons?" And he said on that stand, "No." And then I
6 hope you remember this. I made him read page 34 and I
7 showed it to you guys. Page 34 of his deposition taken a
8 year ago. In fact, I ask the same question both times.
9 So a year ago I asked him, "Okay, so this
10 existence of this PPO was the real source of the elevated
11 feelings about this situation, is that fair to say?" He
12 answered, "That's part of it." I asked him, "It's a big
13 part of it, isn't it?" He answered, "It is part of it,
14 yes." And if you remember it was only after I whipped this
15 out and made him read his own testimony that he changed his
16 testimony and agreed that, yeah, it actually was -- was the
17 reason.
18 At the end of that explosive meeting Pennie
19 is told she's being taken off work for an investigation.
20 It's so bazaar. So strange that Amy Gish writes out a
21 request right there. She's -- they're so troubled --
22 handwritten. So you see a handwritten version and then
23 there's a type-written version of -- of that request. The
24 type-written version is 30 -- it's since after. I think
25 the first one is, obviously, the 15th. And then on November

1 6th she writes another one. Oh, you know what, I just made
2 a mistake. Exhibit 30 are the notes of her meeting. The
3 letter is Exhibit 21 and it's dated the 19th. That's the
4 typed version. There is also handwritten -- written on the
5 15th but I can't remember the exhibit number.
6 Gish's notes of the meeting are really
7 important because it -- it just shows the tone. They're
8 saying -- they're bringing up this x-ray situation. The
9 one that Pack said was okay for her to not submit to. And
10 Beal is saying to her, "How do you know x-rays are bad for
11 you?" I mean they are just gunning for her and they take
12 her off work.
13 So this investigation, Amy Gish tries to get
14 clarity, Pennie tries to get clarity. No -- not even sure
15 what's being investigated. So what the evidence shows us,
16 however, is that there is no further investigation into
17 really anything. I mean no student was interviewed after
18 October 15. Students were only interviewed on that 12th.
19 The time -- that time, that moment, that day. There was no
20 interviews with students. There was no interview of
21 Pennie. There was no further investigation. And I asked
22 Mr. Pack on the stand, "Was anyone else interviewed?" And
23 he said, "No, not to my knowledge but it's a building
24 issue." Mr. Zessin never came. He would have been the one
25 to do the interviews but I can tell you there's no piece of

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1 paper that evidences any kind in -- investigation or
2 interview after the 15th.
3 And the administration says that she's on
4 this leave. She is being paid but it's punitive. She is
5 not allowed to talk to anyone. She's not allowed to go to
6 school functions. She's not allowed to communicate with
7 staff or students and -- until this investigation is done
8 and it's really unclear when it's going to be done. It's
9 two weeks and I still don't understand why they took her
10 off that long.
11 The medical. At this point in time when they
12 took Pennie off work for this indetermined per --
13 indeterminate period of time they had no only Pennie's
14 records from Med Plus but she also brought with her to the
15 meeting on the 15th her Work Well records. And I think
16 that's interesting. It shows you how thorough she is, but
17 they get those Work Well records automatically because it's
18 their clinic. So they had those records. And those
19 records -- please look at those records. Exhibit I want to
20 say 51, page 8, you gotta count it in. They're not labeled
21 at -- pages aren't labeled. You just have to count eight
22 pages but it's the examination from that day on the 15th.
23 That day that they pushed her out and it says -- it
24 confirms swelling. That the doctor observed swelling and
25 contusion. Just as the Med Plus records show.

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1 So at this point in time, you know, you see
2 -- as Pennie's off at work she is -- repeatedly provided
3 medical records again, and again, and again. She provides
4 these x-rays from Med Plus on the 19th. We've attached her
5 fax transmittal sheets, her union provided documents and we
6 also know at the end of the day that on the 19th of October
7 Work Well performed another x-ray of her hand. Showed it
8 wasn't fractured. And they often do this with contusions,
9 as Pennie was explaining, as the swelling goes down they
10 want to take another x-ray just to make sure. So by the
11 19th of October this district had unequivocal confirmation
12 that the hand wasn't broken. So if there was any
13 legitimate medical reason for keeping her off work why did
14 it take another 10 days. Never have really fully
15 understand -- stood that either.
16 But while she's off work we do know -- while
17 she's off work we do know that, you know, they're sending
18 her letters, packets. He's mailing them. He's mailing
19 them to her address. You'll -- you'll see all this.
20 Mailing it to her address. It doesn't get there because
21 she doesn't have a mailbox. It goes to her P.O. It takes
22 forever. So then these deadlines she's like not -- she's
23 like getting things right as she's suppose -- oh, my God, I
24 gotta send the medical records again. So she's running out
25 the door.

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1 So every letter, and you'll read them in
2 succession, is threatening her with further ret -- further,
3 you know, trouble. Bad stuff is going to happen if you
4 don't comply. They all end with that. I mean that's not
5 what they say. They say, you know, the official language
6 of if you don't comply you will -- you could possibly
7 receive further discipline up to, and including,
8 termination. I think that's the language but you can read
9 it for yourself.
10 So there was no further investigation. And I
11 think, you know -- I've explained to you how the law views
12 what's important. And what's important here was in
13 Pennie's mind. But I do want to address the school's
14 investigation into the incidents because I think it's worth
15 mentioning. And it's worth mentioning because it really
16 was impacted by Pennie Davis's Protected Activity. And
17 when I say that what I mean is she engaged in Protected
18 Activity by going to the police. I think we can all agree
19 -- I see this -- that there was a real need by this
20 administration to keep things quiet. She didn't do that.
21 The investigation reflects that. And, you know, Zessin
22 didn't come to defend his investigation.
23 But Amy Gish told you -- she testified about
24 how investigations typically work. This one didn't follow
25 it. An investigation with high schoolers, high school age,

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1 they write their own statements and they sign them. It
2 preserves integrity. And what you'll see when you look at
3 the notes of Zessin's, scribbley scrabbly notes, not many,
4 very brief. What I read when I try to decipher those notes
5 is I see the word threat. I see touch. You know, the kids
6 -- I don't know where these kids were. They weren't around
7 the table. Very possibly they didn't see it as a hit.
8 Very possible they saw it as a touch. Very possible if I
9 talked to them, or they had a thorough investigation, you
10 might know where they actually were. They saw contact,
11 they heard threat, but no one heard exactly what was said
12 and that's because only Pennie was at that table.
13 In the Zessin investigation, you know, not
14 only did it not follow protocol, he wrote those notes so he
15 controlled kind of the narrative of what he decided to
16 write down but he new M.H. I mean Pauli was here and I
17 didn't really understand this until she testified but she's
18 the one that explained to us that the person who gets the
19 e-mails about issues and stuff at school is the grade
20 principal. And that was Zessin. So each of those pings,
21 any pi -- any ping -- I'm calling it a ping but any e-mail,
22 anything -- any student log entry is going to automatically
23 translate into an e-mail to Zessin. So he knows.
24 And in the log you'll see he even -- he even
25 made some entries, the excerpts of the student log. So he

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1 knew, you know -- and he knew. And he also knew from those
2 logs that Pennie had been complaining of defiant behavior
3 and aggressive language. So he had al -- this student,
4 M.H., had already in -- been in -- there had been a student
5 infraction. So by his own -- by the school's own policies
6 they were supposed to take his -- this kid's entire
7 disciplinary record into consideration when determining
8 what kind of discipline to level.
9 As to the threats made about Pennie Davis,
10 you will see there's absolutely no investigation of that.
11 Had Zessin investigated the threats, because the students
12 didn't hear anything. They heard a mumble and they heard
13 the word -- they heard Pennie saying, "Don't threaten."
14 Had they talked to Pennie she would have explained. Had
15 they talked to Pennie they would -- she would have also
16 explained, "You know, I've had two of these students come
17 to me crying saying they're afraid of him and they're not
18 being forthcoming and they feel bad."
19 Pauli -- one more comment about the
20 investigation. Yesterday Ms. Pauli said that she
21 interviewed students and took notes. I have never seen
22 those notes. Those notes are not part of this litigation.
23 They don't exist. I don't think it's true. She didn't
24 remember very much of anything. But those were never --
25 they have never been produced. And for a -- a principal

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1 who sat there and said if her Assistant Principal was
2 involved in a disciplinary meeting, or a meeting of any
3 kind with a student, she would expect them to take notes.
4 And she's not following this? I do not believe that.
5 You know, also the administration, despite
6 receiving corroborating medical evidence that Pennie was
7 hit and had a injury, is very clear they never sought to
8 share that with the building -- the principal, to let them
9 know that there was corroboration because that would
10 certainly impact the direction of an investigation. That
11 was never shared.
12 So after these two weeks -- who knows why the
13 date was picked but they returned Pennie to work and, you
14 know, there's a PPO in place but there's clearly no plan.
15 Student is wandering and it -- it appears to be working.
16 Pennie doesn't see him. It's fine. On the 4th she sees --
17 she sees M.H. He's not assigned to any class. He's not
18 assigned to any -- they haven't given him a replacement
19 class so he's wandering and he hits -- hits her door.
20 So she, again, consistent with her his --
21 consistency. Consistent with her history she follows the
22 rules and she sends a letter to Pauli. It is Exhibit 28
23 and I -- this letter, you know, what it talks about is
24 school liability, safety of students, my safety. It's
25 talking about PPO compliance. Like, look, this kid is

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1 wandering and I'm raising this because I would think
2 there's school liability and my safety, his safety. She's
3 looking for a solution. Read that letter. There's no
4 accusations. There's no anger. There's no agenda. Just
5 solutions I would submit.
6 And same for -- same philosophy going into
7 this motion that she files with the court, this
8 modification of the PPO. She files this on the 4th. She's
9 not asking for a change. But what she's asking for, is --
10 I asked -- I a ask he not be put in a room next to or
11 across from me. The assault is still in the court system.
12 She's asking again for a solution. And, in fact, Pennie
13 told you -- she testified on the stand and she said when I
14 was first getting this PPO I was told if there were any
15 issues like about how to comply with this, that we could
16 come back to the court.
17 Now look at this document, Exhibit 26,
18 because she doesn't get to circle some -- there's no --
19 there's no choice of need an audience with the court. It's
20 just either modify, extend or terminate. So she circled
21 modified. I get it but read this. She's not asking for a
22 chance and to assume she is is to really -- it's confusing.
23 For anyone to suggest anything different is untrue, not
24 factually supported. So please read this document to make
25 your own assessment.

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1 But, you know, Pennie works with the union.
2 Union Amy Gish, President, meets with Pauli. You're going
3 to see Exhibit 29 in your books. And this is excellent
4 because it shows they've really sat down and hashed out a
5 plan. And, in fact, you'll see the handwritten notes from
6 Ms. Gish. Motion to Modify. It looks like the mom had
7 actually brought it in. So Pennie wasn't, you know -- it
8 wasn't Pennie, it was the mom who brought it in to alert
9 the school, I guess, that there was going to be a court
10 motion, maybe to see if they would attend to make sure
11 there was a plan. You know, maybe mom doesn't want her chi
12 -- chi -- maybe she wants him to comply with this PPO. In
13 any event, problem solve. Problem resolved. Safety
14 concerns, gone. Okay, there is no piece of evidence to
15 suggest that once the administration of the building and
16 Pennie Davis got together to actually talk about this, that
17 there was any problem. There was no -- no problem. There
18 was a plan. So those exhibits are 28 and 29 that relate to
19 that plan.
20 Now the union -- I'm sorry, the
21 administration got a hold of that motion. So another court
22 intervention, another Protected Activity and reacted -- and
23 this is the word I'm going to use because it's like --
24 feels like the right word -- viscerally, like really
25 reaction -- like over-reaction, anger. They decide to

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1 remove her.

2 And really important fact here, Exhibit 32 --

3 can I borrow your book? Thanks Pennie. Exhibit 32, I just

4 wanna make sure, is -- yes, Exhibit 32. Please look at

5 this. This is an e-mail from Amy Gish dated the 12th of

6 November and she's telling Mr. Pack, "Barb Pauli has

7 already addressed the issue with M.H. in terms of avoiding

8 the hallway where Pennie's room is. There are ways for him

9 to access all of his classes and avoid that area. Barb and

10 I already met about that." So he knows before the 16th. He

11 knows before the 13th. He knows that there really isn't a

12 safety issue but it's the excuse that they use to punish

13 Pennie. And that is how this transfer is. It is a

14 punishment for her engaging in her Protected Activity

15 because it's -- there's -- it doesn't make sense.

16 You know, this statute was created by the

17 legislature. And the statue, and I'll show you in a

18 minute, specifically makes it illegal -- prohibits an

19 employer from changing the location of a whistleblower's

20 work assignment in retaliation for engaging in Protected

21 Activity like going to the police. So, you know, that's

22 what makes these exhibits, like the work flow, irrelevant.

23 Because -- just because you have a right under your Teacher

24 Tenure Law or your school Board policies, or whatever it

25 is, right, to move people willy nilly as the school deems

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1 -- deems appropriate or as the -- the school's needs
2 dictate, you cannot do it to retaliate. You cannot change
3 a work location in retaliation for Pennie going to the
4 police and getting a PPO. That is a -- a violation of
5 Michigan law.
6 And so I -- I think I said to you, you know,
7 how do we know this is the motive? You know, you're
8 looking at motive. And one of the ways we look is
9 circumstantial evidence. You'll read about that. And
10 that's -- that's when you ask yourself, "Does this trans --
11 transfer make any sense? I mean there was a plan. She was
12 safe. It was a knee jerk reaction after getting this court
13 document. And in, you know, not to mention it's completely
14 disruptive. It's disruptive. It's in the middle of the
15 school year. Putting her in a school where she doesn't
16 even have training. And putting this other teacher in the
17 school where she's never taught because she's only taught
18 middle school.
19 But forget about circumstantial. We have
20 direct evidence. We luckily have direct evidence. The
21 direct evidence of motive -- why they transferred her work
22 -- changed her work location. Ben Pack told us. Pennie
23 Davis testified to it. Amy Gish testified to it. He said
24 we don't go to the police here. It is a comment that he
25 made during the meeting where she was being moved. Where

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1 she had to sign that document. He told her. He felt
2 pretty emboldened.
3 And even Mr. Beal, himself, admitted in his
4 testimony that Pack was upset that she went outside the
5 building. And if you think about it the only thing that
6 Pennie Davis did in terms of going outside the building was
7 going to the police, and getting this PPO, and I guess
8 getting medical attention but no one seems to be very angry
9 about that.
10 The transition to Parkside was a punishment.
11 Let's talk about the move to Parkside. Retaliation -- she
12 loses money. She loses $2,500.00 a year. They remove her
13 from a job that she loved, that she thrived in. A room
14 that she created. Not only created but that she built. I
15 mean she actually built it to her specs. And you see in
16 those pictures like all the racks -- all the drying racks,
17 all that equipment. That is all things that she, over all
18 these years, has developed. And this curriculum that she
19 developed in a room she created. It's her world. It's her
20 identity. It's her universe.
21 And as you consider the evidence do not
22 discount the cost to Pennie Davis of being stripped of this
23 work location of 29 years for illegitimate reasons. The
24 statute specifically forbids this. And the place that she
25 went to at Parkside, she was vulnerable because they didn't

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1 train her. There's no evidence they trained her. And, I'm
2 sorry, but this IB curriculum, people go out of state, they
3 go to different cities and states for this like four day
4 trainings. She didn't get that. And, you know, again,
5 self-help. She gets a book. She reads the book. She's
6 talking to teachers. She's like trying to survive. And
7 you heard that testimony. Again, meetings -- Amy Gish,
8 with the principal Mr. Patterson, and he makes it clear to
9 her I know what happened at the high school. We can't deny
10 the relationships here. Patterson is the brother of Bill
11 Patterson who is on Mr. Beal's cabinet, his closest
12 advisers. Obviously Mr. Patterson, at Parkside, te -- felt
13 safe enough to reveal that. He was not helpful to her. He
14 told her within 32 days she was a failing teacher. How is
15 that possible? Twenty-nine years at this district,
16 excellent work -- like unblemished. And that's so
17 important -- unblemished. I told you that in my opening.
18 I'm going to say it again. It's her history. It's her
19 legitimacy -- unblemished. And suddenly, 32 days, she is
20 failing. And this IDP that they put her on, because she's
21 failing -- which her requires her to meet with Patterson
22 who is hostile to her, once a week I think, or once a
23 month. It's an IDP that Mr. Pack seemed to think that
24 she's been on the whole time. You heard him testify she's
25 been on this IDP even as recently as January of 2018 when

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1 he retired. We just found out yesterday she's off of it.
2 No one's told her. I learned that through this trial
3 experience.
4 It is this IDP meetings Pennie told you about
5 where the target, the ball, keeps moving and he keeps
6 giving her criteria to follow and she keeps doing what he
7 asks, and then he moves the target and then she does what
8 he asks. It's that back and forth. Weisbrod talked about
9 that. Weisbrod talked about how that impacts a person
10 inside in their soul each time something like that happens.
11 It's a re-injury. She walks two steps back even though
12 she's taken three forward. This is just the image of what
13 has been going on with Pennie Davis since engaging in this
14 Protected Activity and since having to endure this
15 retaliation.
16 Mr. Patterson told Pennie Davis in a meeting
17 that -- Amy Gish heard this too -- this is not going to end
18 well. And he made that comment in the beginning. Like --
19 like within the first 32 days. And it didn't -- surprise.
20 All ones -- Amy Gish tells you I've never seen anything
21 like this. Like, yes, you've seen ineffectives but never
22 someone who like all -- everything is all ones. And one is
23 the lowest. There isn't even a zero. One is the lowest.
24 And even at the time where she gets this
25 review she's on medical leave. Completely not related to

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1 this case, but related only in so far as she's off five
2 weeks before the end of school. So she's getting
3 assistance from the union to make sure that everything's in
4 place for her review. There is no evidence that the
5 employer provided, to even remotely suggest, that Pennie
6 was in -- insufficiently providing Mr. Patterson with data
7 throughout the year. If there were, you know for sure, we
8 would have it in this court. They would have had it as
9 exhibits. It does not exist. She was anxious as can be.
10 Taking pictures of her lesson plans to make sure because
11 they disappeared once from her room.
12 But any event, Patterson says in his
13 testimony, you know, it's this data -- data, data. It was
14 pretty confusing to me but I think I have a handle on it
15 now thanks to Channing -- data, that lack of data. But
16 what we understand now from the data, and Ms. -- Ms. Pauli
17 confirmed it, data consists of only 25 percent of this
18 review. NWEA data consists of 15 percent and that data's
19 provided by the building administrator, like Mr. Patterson.
20 So that leaves 10 percent -- 10 percent score. That --
21 that's what the worth is of that. Pennie Davis provided
22 that. And Amy Gish asked Mr. Patterson, because Pennie had
23 been out for the surgery and recovery, "What do you need?
24 What do you need? What do you need?" He told her she
25 provided it but still Pennie, you know, was rated a one.

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1 And, you know, she -- at that point she's following
2 internal procedures. This lawsuit has nothing to do with
3 -- with the procedure she followed. She's -- she only has
4 her union to work with so she's going to the union to, you
5 know, formally appeal this. And, you know, there was a lot
6 of talk -- a lot of suggestion that Pennie was somehow
7 dragging her heals and not -- not cooperating and there was
8 this big delay. Well, I think Pennie made it clear the
9 delay was she did cancel one of the meetings because there
10 lawyer was there and she kind of panicked because her
11 lawyer wasn't there and she didn't think lawyers should be
12 there, it's a school thing. But, in any event, she did her
13 two hour/three hour presentation and she was able to go up
14 one little tick.
15 The complaints at Parkside, you know, I think
16 it was pretty clear with 20 visits from the police at least
17 per year. Lots of complaints admitted. I mean we got this
18 -- couple of these random complaints but she wasn't even
19 disciplined for them. This book throwing I think we
20 explored that fully. They didn't take into consideration
21 that is physically was humanly impossible and that there
22 were teachers that were backing Pennie up because they knew
23 what she was going through and they're trying to convince
24 the administration. But, again, even that incident she's
25 not even -- it's not like she's dis -- you know, taking off

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1 work or charges are leveled. It's -- it's just -- it's
2 just there.
3 And the point is that, you know, they weren't
4 going to fully investigate. They weren't going to give her
5 a break. They -- she was just -- target. And, you know, I
6 think it was excellent that at least Mr. Patterson admitted
7 that she got a lot of compliments -- lots of compliments
8 even under those circumstances.
9 Pennie Davis has been fighting for years now
10 to return to where she was wrongfully removed. She has
11 fought through school channels. She has called the School
12 Board. She has used her union and made requests that have
13 been categorically, consistently, repeatedly denied. And
14 you have to ask yourself, you know, how did -- you know,
15 her independent efforts failed. And, you know -- you heard
16 the testimony that through this lawsuit and some cross-
17 examination and throwing down the gauntlet and saying, "Why
18 is this woman not back to work?" Finally -- push, push,
19 push -- sometimes the legal process is a really good thing.
20 And good evidence of her efforts and just the
21 road blocks that they put up unnecessarily. And I would
22 submit to you not just unnecessarily but, you know, further
23 retaliation. Messing with the terms and conditions of her
24 employment -- the conditions of her work. Exhibits 43 and
25 44, these are the text messages from Pack and Be -- Beal

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1 and Amy Gish where the concept of reinstatement is
2 explored. And it's Mr. Pack -- I mean Mr. Beal says, "No,
3 I can just transfer -- I -- you know, someone could be the
4 worst -- you know, they could be ineffective and I -- I can
5 move them." That's what he said. I hope you heard that
6 because -- then Mr. Pack in his text message, and also on
7 the stand, says, "No." Those text messages show that the
8 only way you can be transferred is there's an opening and
9 if you bid on it, and everyone's going to bid and I -- we
10 -- they get to consider everyone and you have to be
11 effective, so rated effective, or you successfully complete
12 IDP. We know that Pennie Davis is still minimally
13 effective. And we also know that she had not successfully
14 completed the IDP. Road block created by Pack contrary to
15 what Mr. Beal says is the district policy -- contradiction.
16 Now she -- got her back to work this year and
17 you saw the struggle even to deal with the room that she
18 was assigned. You know, she makes like lemonade out of
19 lemons. The room had exposed wires, exposed pipe. She --
20 you see from that grievance that she's asked -- she's like
21 reached out. Pauli admitted that. She called and nothings
22 happening. And it's not -- you know, it's five days before
23 school starts. That room is smaller. That room is not
24 equipped. That room doesn't even have storage. It doesn't
25 have an office. The other room was -- it's the best. I

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1 mean it was her room and it's truly an art room.

2 And I -- I really appreciated actually

3 Principal Pauli's testimony on this because I said to her,

4 "Why didn't you put her in that room? I mean she had

5 created it." She had been in there, I guess, for 15 years

6 under Pauli. And Pauli's response was, "Because Ms. Hearth

7 has made that room her own in two years." That contradicts

8 what Ms. -- Principal Pauli said in the beginning of her

9 testimony which is that no teacher owns the room or owns

10 the job. Well, it just goes to -- it's -- why not put her

11 back in her room. There's nothing stopping her. And --

12 and actually if you're going to use Principal Pauli's

13 rationale then you would say, well, Pennie -- and I think I

14 did -- Pennie created that room for 15 years.

15 But still -- and, you know, she's had trouble

16 with supplies. She told you about that. Not getting paper

17 but she works with her colleagues who are so supportive of

18 her. She works with her friends, and she moves on, and she

19 does great work.

20 So I -- you know, even what she's gone

21 through, it's not legitimate. She's the one teaching

22 Pathways. Pathways actually is, you know, it's in the

23 basement. It's -- it's a program. It is the -- it is the

24 version of the Alternative High School during the day. And

25 why is she getting those assignments? And why aren't they

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1 being shared equally? I mean she's got more seniority than
2 them and she was there for so long. Why her? It just
3 didn't make sense to me.
4 I mean, she gets to do what she wants to do
5 --Pauli. She gets to assign what she wants to assign. But
6 why is Pennie Davis always being the one to get the worst
7 assignments? I mean her transfer back to the high school
8 said, "You will teach high school art." So I'm worried for
9 her. I worry for her. And, in fact, there are three
10 teachers in the high school for the first time in like 15
11 years. And I don't know why that's -- that is but it's
12 true.
13 As Pennie testified, she is the lowest rated.
14 So in the event there is a budget cut, forget about
15 layoffs, but a budget cut or some change, she's the
16 vulnerable one. She's the one that will be sent to another
17 school because she is the lowest rated, at least at this
18 point in time. And, you know, I hope -- Pauli said she's
19 going to be effective. I hope that comes true. I hope so.
20 And I would think that this process has been a big part of
21 forcing some fairness in her life.
22 Those are -- those are the facts. Let's talk
23 about the law. So I'm going to remind you of what I told
24 you in the beginning which was about your -- your life and
25 you get to use your own -- (inaudible). Okay? Take the

1 evidence in the light of your own general knowledge and
2 experience, whether something seems reasonable or probable,
3 you know what that means and I want you to use your -- use
4 that -- use your experience.
5 But we're here because of the Whistleblower
6 Protection Act and I've been talking about some concepts.
7 I want to share them with you. You will get a packet of
8 jury instructions. So you can read this. And I just want
9 to highlight a few that I really want you to pay close
10 attention to and they deserve -- they deserve your
11 attention.
12 Whistleblower Protection Act provides an
13 employer shall not threaten or discriminate -- and by the
14 way that includes retaliation -- threaten or discriminate
15 against an employee regarding employment compensation or a
16 term, condition, location, or privilege of employment
17 because of Protected Activity -- term, condition,
18 privilege. All the things that we've been talking about
19 that have changed since Pennie engaged in Protected
20 Activity.
21 So I told you that Protected Activity
22 includes certain -- (noise on the record). I'm going to
23 read you the definition. Protected Activity means an
24 employee reports a violation, or a suspected violation, of
25 a law or regulation by her employer, or a third party, to a

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1 public body, unless the employee knows that the report is
2 false. Okay, and as you see here a school district, a
3 police department and a court are public bodies. Now the
4 third party here is M.H. So Pennie reported a violation of
5 the law, or a suspected violation of the law, committed by
6 M.H. to a public body -- the court, the police. That is
7 the Whistleblower Protection Act. So if you find that the
8 retaliation is related to that Act then find for Pennie
9 Davis.
10 Now we have an instruction and I -- I -- it's
11 really important so I'm going to pass it out to you so that
12 you can look at it. Okay, so what this instruction is
13 referring to -- this part of the Whistleblower Protection
14 Act explanation. Do you see here that it says, "Because of
15 Protected Activity," -- so "Employer shall not threaten or
16 discriminate against an employee regarding employment
17 compensation or a term, condition, location or privilege of
18 employment because of Protected Activity."
19 But the law, this instruction, further define
20 -- what does "because of" mean? "Because of" means -- I'll
21 read it. When I use the term "because of" I mean the
22 Protected Activity must be one of the motives, or reasons,
23 defendant threatened, or retaliated, against the plaintiff.
24 Protected Activity does not have to be the only reason, or
25 even the main reason, but it does have to be one of the

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1 reasons that made a difference in defendant's decision to
2 threaten, or retaliate, against the plaintiff. This is
3 cause -- called causation.
4 In order to prove causation plaintiff must
5 show that a decision-maker, or a person who influenced the
6 decision, knew of plaintiff's protected activity.
7 Knowledge may be shown by direct evidence or circumstantial
8 evidence such as timing of the decision, conduct or other
9 evidence from which knowledge can be inferred. You know,
10 by the time they changed the work location of Pennie Davis
11 they knew everything. I mean by the 13th the knew. By the
12 15th they knew of the PPO. They knew she had engaged in
13 Protected Activity and the evidence -- you know, because of
14 one of the reasons. It doesn't have to be the main reason.
15 Just one of the reasons that made a difference.
16 And, again, I'm going to remind you that we
17 have been given the gift of direct evidence here. Because
18 these administrators -- and, you know, maybe -- maybe they
19 were free with their words because they were under the
20 impression that they could just transfer people wherever
21 they want. I don't know, but they said, "We don't go to
22 the police here." They explained that this was the reason
23 -- one of the reasons. It doesn't have to be the main
24 reason. But Pack felt it was important enough to tell us
25 and the PPO was the source of the elevated tone of that

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1 meeting on the 15th where she was put off work, ultimately
2 transferred.
3 The circumstantial reason -- the employer's
4 decision to -- to -- that she be safe. It just doesn't
5 make any sense considering all the evidence around what was
6 going on which was she was safe, she felt safe, there was a
7 plan in place and no reason to think she wasn't safe.
8 Let's talk about her damages. And I think
9 I'm going to do that by looking at our verdict form. So
10 this is the form. Ultimately, you know, this is what --
11 the end of the day you're going to fill out. The first
12 question on our form is, "Did the plaintiff engage in
13 Protected Activity?" And you know from 107.02 that this is
14 Protected Activity. A suspected violation, or a violation,
15 of the law by a third party to a public body unless the
16 employee knows the report is false. So if you come away
17 from this thinking that Pennie Davis had a honest belief
18 that the law was going to be -- was violated, then you find
19 for her. And you find that she engaged in Protected
20 Activity.
21 The second question, "Did the Jackson Public
22 Schools threaten or discriminate against Ms. Davis because
23 she engaged in Protected Activity?" I mean I can make you
24 a laundry list. You've heard me talk about it for about
25 half an hour now. The -- the location, that transfer, the

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1 -- the treatment, the failing, the bad reviews, the
2 treatment of having to take pictures of your lesson plans,
3 telling her, "This isn't going to end well," fighting to
4 get her job back. This bundle of things that had happened
5 that she's told you about. I'm not going to repeat it. I
6 hope you know it. I think you know it. Yes, there was
7 retaliation. Okay, and remember, because she engaged in
8 Protected Activity. For these reasons -- again, the
9 motive, "because of", it doesn't have to be the main reason
10 just one of the reasons -- but please read that instruction
11 again and again.
12 Now here we are to damages. So if you find
13 "Yes" to these two then you move on to damages then.
14 Economic damages -- you can -- all know what that means.
15 Money, what you've lost out of pocket. It means wages. It
16 means benefits. And, you know, this case is not about
17 economic damages. I mean there are economic damages but
18 that's not the heart of this case. But I will tell you,
19 based on the testimony that we've heard, we know that
20 Pennie Davis once she was transferred out -- she is no
21 longer chair. That's $2,500.00 a year. This two thousand
22 fifteen. For a total of seventy-five hundred.
23 Pennie Davis explained to you that she pays
24 $20.00 co-pay for her appointments with Gallagher (sp),
25 with -- for her appointments with Weisbrod. That -- I

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1 totaled, you can count them up yourself, but I totaled -- I
2 counted them up in the records that you had. You can count
3 them too. There's 77 appointments. The $1,540.00. Those
4 damages go on into the future because she's still going
5 non-hopeful. I am hopeful that if -- and I said this to
6 Weisbrod. You know, if she -- if this woman gets a period
7 of time where nothing retaliatory is happening what do you
8 think -- you know, "Is she addicted to therapy?" I think is
9 what I said. And he said, "No, I think that's what she's
10 fighting for. I think that's what she wants. She doesn't
11 want to be here. She wants to be the way she's been in her
12 whole life until this time." So that's economic, okay.
13 Your challenge is the non-economic. This
14 statute, thankfully, permits a plaintiff to obtain
15 compensation for non-economic damages, including
16 humiliation, pain and suffering, emotional distress,
17 anguish, embarrassment. Those things that hurt you inside.
18 That -- that hurt in this way. And, you know, if you know
19 that if there were -- and I'm going to use a teacher term
20 -- if there were a rubric, if there were a formula, if
21 there were a chart, you know I would get it to you. And I
22 would be all over it -- tell you where to look. We don't
23 have that. And this is your challenge. I wish I did have
24 that but I don't. That's your job.
25 Your job is going to be try to figure out

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1 what's fair, what's just, what's right? And I trust you
2 but I'm going to give you a suggestion. This school
3 district has valued plaintiff's work to be $75,000.00 a
4 year. This is the amount of money that the district has
5 deemed appropriate for a year of Pennie's work. And so as
6 a guidepost, as you're thinking about this and considering
7 this case, you think about what is the cost of the
8 retaliation? What has that cost been to Pennie that she
9 has been forced to endure, and what she continues to
10 endure? And that the yearly wage that she receives for
11 working, for the work that she performs, is not
12 compensation for the non-economic injuries that the school
13 has caused her. And it's hard to put a price -- it really
14 is hard to put a price -- on mental health. It's hard to
15 put a price on living a life like she did before.
16 But you have learned through voir dire, that
17 process where we were talking to you, interviewing you
18 before you were empaneled on this jury, that this is the
19 only mechanism that we, as a society, have deemed
20 appropriate to right these kinds of wrongs. So you are
21 going to have to make that determination. But what, you
22 know -- the things that she's gone through, okay.
23 Weisbrod talked about it. He's not an
24 expert, as I said. He's a treater and he's known her now
25 for quite some time and he talks about humiliation,

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1 embarrassment -- depression, she didn't have that before.
2 She didn't have anxiety before. She's on -- she's on
3 medications. She has retreated. She's not doing her art.
4 She is tearful. She is worried. She is riddled with
5 worry. And please read his entries to get a flavor of the
6 profound nature of this.
7 But, you know, I think what was really
8 helpful was -- was Amy Gish explaining, because she knows
9 her as a union President, saying it's like she was cheerful
10 and bubbly before and now she's dead inside. There is a
11 change that's profound. So how do you measure that and
12 what I'm going to suggest that you do is that you use this
13 yearly wage as a bench mark -- as a suggestion.
14 And I suggest the proper award -- I suggest
15 is a multiple of that because this has gone on for a long
16 time. It's a multiple. I think the worst -- the cost of
17 what they've done to her -- demonstratedly done to her,
18 which we see through those records and through testimony is
19 -- is more valuable in that the cost is more to her than
20 what she's earned by working. I think you can use that
21 number when you're considering what's fair here.
22 But I leave it to your hands. It's a
23 difficult determination of what's proper compensation to
24 compensate Pennie Davis for her spirit that's been broken.
25 But, please, you know -- it's a spirit that she's fighting

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1 hard to repair. And that I believe she will repair.
2 So that's everything and I thank you so much
3 for your attention throughout this case.
4 THE COURT: Okay, thank you, Ms. Bonanni.
5 Ladies and gentlemen, I'm going to go ahead and give you a
6 ten minute recess and then we're going to go ahead and hear
7 Mr. Miller's closing argument on behalf of the Jackson
8 Public Schools. And then I'm going to be instructing you
9 after that. So I think this is a -- a good time for a
10 recess. So that way we can hear closing argument, brief
11 rebuttal, and then the court can move into your final
12 instructions.
13 All rise for the jury.
14 (At 12:20:33 p.m., jury dismissed)
15 (At 12:20:52 p.m., hearing recessed)
16 (At 12:44:51 p.m., hearing resumed)
17 MS. HOLMES: -- other instruction.
18 THE COURT: And I think I did --
19 MS. HOLMES: And that was the one --
20 THE COURT: -- determine it's already part of
21 another instruction, right?
22 MS. HOLMES: You had ruled in favor of the
23 model instruction rather --
24 THE COURT: Right.
25 MS. HOLMES: -- than the special instruction.

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1 So I just wanted to make sure it didn't make its way --
2 THE COURT: Yep.
3 MS. HOLMES: -- with all these papers --
4 (undecipherable).
5 THE COURT: Yep, you're all set.
6 MS. HOLMES: Okay, perfect.
7 THE COURT: I already caught that, thanks.
8 MS. HOLMES: Thanks.
9 THE COURT: Okay, let's bring the jury in.
10 THE CLERK: All rise for the jury.
11 (At 12:46:24 p.m., jurors enter)
12 THE COURT: All right, thank you. Everyone
13 may be seated. All right, ladies and gentlemen, we'll now
14 hear the closing argument of the Defense. Mr. Miller, go
15 ahead.
16 MR. MILLER: Good afternoon, everyone. I
17 feel I owe you a little bit of an explanation. Tim
18 Mullins, whose been here all along, isn't here today.
19 Apparently he ate something last night that did not agree
20 with him. So I got the phone call early this morning
21 saying, "You're up kid. I mean, you're going to give your
22 first closing statement." So and I can say I'm quite happy
23 to be doing it on behalf of Jackson Public Schools. I
24 think it's a phenomenal school district and I don't think
25 they've done anything wrong in this case and I'll tell you

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1 why.

2 For more than a week now you've listened very
3 patiently to a lot of testimony. You've looked at a lot of
4 exhibits and plaintiff has tried to suggest that she's been
5 retaliated against her being a whistleblower. I don't
6 think she's proven her case. We all know that on October
7 12th there was an incident in her classroom where she claims
8 that she was criminally assaulted by a student.

9 You will soon have an opportunity to read
10 Defendant's Exhibit 17. This is the exhibit that took
11 quite some time to get into evidence and it did get into
12 evidence yesterday. As you're reviewing that you will see
13 Joe Zessin, the Assistant Principal, that day, October 12th,
14 did conduct an investigation. That day he sent it to Ben
15 Pack and the principal. And in his typed up letter you'll
16 see that when he walked into the room on that day, in
17 quotes, "Several students immediately blurted out to me
18 that Marcus had not hit Ms. Davis." You'll see the
19 student's statements. They mention that there might have
20 been a push or there might have been a brushing of the
21 hand. Not a criminal assault.

22 You've also seen pictures of the classrooms
23 and the big tables. These are pretty big tables. The
24 testimony is that Marcus was sitting at one side working on
25 an oil pastel. I think the notes say he was drawing

1 vegetables. There was some sort of dispute. The notes say
2 Ms. Davis was trying to take the art work out of his hands.
3 Him on the other side of the table made some sort of
4 contact across this big table. Who assaults someone
5 forcibly with a closed fist sitting down across the table.
6 Four or five students said it wasn't a criminal assault.
7 And I don't think a criminal assault occurred here and I
8 don't think Ms. Davis reported anything illegal.
9 After this occurred Principal Pauli did call
10 Ms. Davis down to her office. You heard Ms. Davis say
11 that's not true. I had to go find her out. She didn't
12 even let me into the office at first. And it was -- it was
13 quite a process to be able to talk with her. That's not
14 what Ms. Pauli said. And Ms. Pauli said she asked how she
15 was. She said I'm fine. I might bruise easily but I'm
16 fine. I'm really fine. I have to go submit a grant
17 application, no big deal.
18 Plaintiff wants you to believe thought that
19 Ms. Pauli's a liar, Assistant Principal Joe Zessin's a liar
20 and these five students are all liars. You'll notice that
21 this is a theme throughout this case.
22 Ms. Davis's story as to why these students
23 were untruthful. Because that's what she's saying -- they
24 were untruthful. It is they were afraid. They came to me
25 after the fact and said I was afraid of Marcus. I had to

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1 lie. I'm sol -- sorry, Ms. Davis, I let you down. We have
2 the giant binder of exhibits from plaintiff here with all
3 kinds of e-mails and documents where Ms. Davis isn't shy
4 about filing a grievance or complaining or bringing things
5 to people's attentions. Where's the e-mail? Where's the
6 note that this student came to me. Ms. Pauli, this is a
7 serious concern. These students are being threatened and
8 harassed and they lie because of it. There isn't one piece
9 of document -- documentation that says that. We heard that
10 for the first time during this trial. Does that fit the
11 pattern of all the complaints and documentation? I would
12 suggest that it -- it doesn't.
13 But ultimately Ms. Davis did file a police
14 report. That's her prerogative. We've heard testimony
15 that the police come to the school all the time. We have a
16 good relationship with them.
17 The next day after this October 12th incident
18 Ben Pack and Jeff Beal went down to her classroom. You
19 heard both of them testify that they went down there to
20 say, "Hey, go to Henry Ford Allegiance. We see your hand
21 wrapped. We heard you were hurt. Go have it examined."
22 Ms. Davis wants to say it never came up in this
23 conversation. Give me a break. The Assistant
24 Superintendent of Human Resources went to her classroom and
25 you're saying that this wasn't a topic. The guy that

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1 handles worker's compensation.

2 More to the point Defendant's Exhibit 28,

3 which you'll have in your binder, is an authorization for

4 medical treatment to Henry Ford. That was completed that

5 day. That's incredibly coincidental that the Assistant

6 Superintendent of Human Resources and a written

7 authorization all happened that day on October 13th. She

8 doesn't go. She takes October -- she takes the 14th off.

9 The district assumed she probably went to the doctor.

10 She's not there, but she didn't. On October 15th the

11 district finds out she did go to the doctor. Good news.

12 But you'll see, as part of plaintiff's own exhibits. It's

13 Plaintiff's Exhibit 52, you have them. The district gets

14 notification that Ms. Davis went to the doctor and the

15 doctor advised her that an x-ray was necessary to check for

16 fracture. Patient refused. And then there's the

17 physician's report of work status. And the school district

18 was told Ms. Davis is on light work. She has restrictions.

19 Then we heard a whole lot about this October 15th meeting.

20 And we've heard a lot of stories. And it is your job to

21 determine who's being honest and who's not because someone

22 isn't being honest.

23 Ms. Davis got up on the stand, raised her

24 right hand and said, "Not one point during this entire

25 conversation did anything about my hand come up and not

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1 having medical documentation." Plaintiff's Exhibit 15 was
2 a letter memorializing that. Number two is directive to
3 report to Allegiance Occupational Health. The results of
4 your fit to work evaluation, and then saying you need to
5 provide this by -- until -- by October 19th and you're
6 putting on non-disciplinary paid leave until that occurs.
7 And why I think you can conclude here that
8 Ms. Davis isn't being truthful -- her friend, and un --
9 union President and advocate got up on the stand, also
10 raised her right hand and said, "I'm going to tell the
11 truth." And what did she say? She said, "Yes, this was a
12 topic of that conversation. Her return to work slip not
13 having an x-ray." Why would Ms. Davis not be honest about
14 that? Of course it was part of this conversation. It's in
15 the letter. Her union representative said it was but for
16 some reason now she's saying it isn't. Why?
17 Give me -- my mouth gets dry. A little bit
18 of nerves. So finally its -- she did go to the doctor that
19 day, and we know that, and her doctor did place her on
20 restricted work duty. So the school district made the
21 decision that she needs to be put on paid non-disciplinary
22 leave until the medical situation is sorted out. Not
23 really a big deal. She's paid the entire time.
24 Essentially a nice paid vacation. And really it's a paid
25 vacation for being opening insubordinate. Get your hand x-

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1 rayed, go to our doctor and she's refusing. This really
2 mean employer though puts her out on paid leave until this
3 gets sorted out.
4 And then you'll see on Defendant's Exhibit
5 26, and Plaintiff's Exhibit 52, she did go back to Henry
6 Ford on October 19th and at that time the records indicate
7 that plaintiff still had not provided the medical records
8 and x-rays from her own doctor. At that time, on that same
9 exhibit, the Henry Ford doctor kept plaintiff on
10 restrictions. And ultimately, as you'll see as part of
11 Defendant's Exhibit 27 -- which wasn't talked about too
12 much -- the actual written authorization returning her to
13 work without restrictions was November 2nd. There was a
14 phone call before that by a few days saying you're going to
15 be getting written authorization. She can come back to
16 work. But the actual written authorization clearing her
17 wasn't until November 2nd and that was Defendant's Exhibit
18 27 which will be in part of our binder of the exhibits that
19 had been admitted. And a whole lot of talk about Marcus
20 and what happened and why she was transferred.
21 We do know when she came back to work there's
22 a whole lot of discussion about her being afraid and having
23 fear. Immediately after this incident, as part of the
24 investigation that Ms. Davis wants to say didn't occur,
25 Defendant's Exhibit 20, she says I want Marcus out of the

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1 school. Not out of her classroom. She actually wanted
2 this kid kicked out the school at that time. Decisions
3 were made -- remove him from the classroom. We're going to
4 separate these two. She's afraid. She has subjective
5 concerns. We don't think in -- criminal assault occurred
6 but she's concerned and we're going to take steps to keep
7 them separated.
8 Ms. Davis then gets a PPO. And I know you --
9 you've heard a whole lot about all this so I'll be quite
10 brief. But it says, "Marcus is prohibited from appearing
11 at her workplace." She got this because she's -- she's
12 afraid but it doesn't stop there. In early November Ms.
13 Davis then says I saw Marcus. I think he might have even
14 banged on my door. I'm afraid. I'm afraid by the sight of
15 him. Ms. Davis then files a motion to modify her Personal
16 Protection Order. I feel unsafe. I have fear. This is
17 provided to the school district.
18 And one thing that hasn't really been
19 explained too much is Ms. Davis wants to say as of this
20 meeting mid-November everything is hunkey-dorey (sp). I'm
21 completely happy with my situation at the high school. No
22 reason for anything to happen. I'm going to suggest it's a
23 little bit disingenuous. Right here -- and I mean Ms.
24 Bonanni just said I mean take these at face value. I mean
25 this is a court document. It has this court hearing

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1 occurred on November 19th. Six days after she was
2 transferred to the high school. She came to court after --
3 she's not even in the same building as this kid, and says I
4 need to modify my PPO. If she was really happy with the
5 situation why would she have come here and taken the
6 court's time saying modify the PPO? It doesn't really make
7 sense, at least not -- at least not to me.
8 Ultimately, at the end of the day though, the
9 superintendent, he exercised his business judgment. You've
10 seen the collective bargaining agreement. It's Defendant's
11 Exhibit 5. The Superintendent and the Board of Education
12 has the absolute right to reassign teachers. You've seen
13 Exhibit 12. Lots of teachers are transferred and
14 reassigned all the time. Even with this transfer. I mean
15 while it's obvious another art teacher was transferred to
16 the high school when Ms. Davis was transferred to the
17 middle school. The union President got up here and talked
18 about how many times she'd been transferred in the
19 different buildings she's been in. This isn't unusual in a
20 school district. People are transferred all the time but
21 what's important is the superintendent was acting based on
22 her subjected fear. This has been a month now with, "I'm
23 afraid, I'm afraid, I'm afraid." What would have happened
24 if he didn't act, left them in the same building and Ms.
25 Davis was seriously hurt. That's not a lawsuit I

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1 personally want to be defending if the school district
2 hadn't taken appropriate actions. But thankfully the
3 superintendent did take action to keep them separated.
4 And Ms. Davis wants to say that -- I mean
5 this has been really, really rough on her being transferred
6 to the middle school. All along she's at the very top of
7 the collective bargaining agreement here. Step 12, the
8 circled number there. That's her base salary. She also
9 gets the big pension contribution. She gets Mesa Blue
10 Cross/Blue Shield, Cadillac level health insurance. She
11 gets paid days off. In fact, on a good year she's only
12 required to work 185 days per year. And we've heard during
13 the Summer even though she's apparently very depressed and
14 has lots of anxiety, she goes and works at MIS Speedway.
15 I'd suggest that doesn't really fit the profile that she's
16 trying to -- trying to suggest to you.
17 And once Ms. Davis got to the middle school
18 she's wanted to say -- you saw Mr. Patterson. That he's
19 this bad guy. He's very aggressive with her. I'd say him
20 sitting up there, I mean that's one of the calmest dudes
21 I've ever seen. I mean he was calm, professional and I
22 can't see him raising his voice or acting inappropriate to
23 any teacher. But while she's in the middle school, and
24 this Defendant's Exhibit number 11, there's an incident
25 that occurs. A student reports Ms. Davis got mad at me and

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1 she chucked a book at me. And you know what, that kid
2 actually had a red mark on her arm. I mean you could even
3 call it a contusion. There's some sort of mark on this
4 person's arm. And Ms. Bonanni suggests that there really
5 wasn't a whole lot of investigation that happened and we
6 should just discount that. You'll see Exhibit 11 were
7 written out student statements signed all saying the same
8 thing. And if this really is this big bad employer that's
9 just itching for a reason to get rid of her and they really
10 want to retaliate against her, isn't a report of a teacher
11 assaulting a student that's verified by five or six
12 students -- isn't that all the excuse they need if that's
13 really what they wanted to do? But that didn't happen.
14 She works there to this day.
15 Ms. Davis also wants to say that having to
16 treat -- teach 6th grade Art that's really, really
17 difficult. But doesn't really -- I mean mesh with the
18 other testimony. Ms. Davis sat up there and said I wrote
19 the curriculum for the art department all the way up,
20 elementary school through high school. This is the person
21 that supposedly wrote the art curriculum for the school
22 saying I'm set up to fail having to teach 6th grade kids.
23 It's teaching art to 6th graders or high school kids. It's
24 -- can't be that much different.
25 And we've heard about this student data and

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1 what was turned in and what wasn't turned in. At the end
2 of the year Ms. Davis was on sick leave. It happens. Tim
3 Mullins wasn't here today because he's sick. It happens.
4 But we had an eight month gap between when that occurred
5 and when she actually sat down with her administrators and
6 turned in the data. Eight months, it's -- I haven't heard
7 an explanation from anyone as to why -- why that's okay.
8 There is a lot of, I mean, kind of walking around it and
9 not really explaining it. But there's no good explanation
10 as to why, "Hey, Mr. Patterson, good news. I have my
11 student data. Let's sit down and pound this out. I think
12 my evaluation was unfair."
13 After this was cancelled over and over she
14 did meet with the superintendent and Mr. Patterson and what
15 do these horrible guys do again? They changed her
16 evaluation from ineffective to minimally effective. That
17 doesn't really sound retaliatory to me. I know when I was
18 in high school if I didn't turn something in for eight
19 months and took it to the teacher saying here it is please
20 raid my grade -- raise my grade from last semester, I'm
21 probably going to get laughed at. It's -- Ms. Davis
22 didn't. Her evaluation was changed and I think that was
23 quite fair.
24 And then we do know that Ms. Davis came back
25 to the high school. Student M.H. at a certain point of

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1 time was no longer a high school student. When that
2 occurred and he wasn't in the building Ms. Davis asked to
3 be transferred back. She was transferred back. M.H.
4 wasn't there. That's very strong evidence this is the
5 motivation as to why she was transferred in the first
6 place. If was really because we don't like Ms. Davis, she
7 should have never filed a police report, why would they
8 have transferred her back to the high school? I mean
9 that's the motivation we're looking for here. It's all
10 about subjective fear. M.H. isn't there. It makes sense
11 for her to go back to the high school.
12 Bef -- I've found it a little offensive
13 myself but we've heard some testimony and commentary from
14 attorneys that why did she get this unfair assignment of
15 having to teach some Pathways students? I think it's a
16 incredibly unfair characterization to say students, that
17 are high school students still, pursuing a vocational
18 degree are somehow lesser students and it's an inferior
19 assignment. That -- that's pretty insulting. These are
20 educators that should be working with any of the students
21 that they're assigned to. She's back in the high school.
22 She's teaching art and she teaches one unit of P.E. You'll
23 notice there wasn't one grievance about teaching P.E. Ms.
24 Pauli said there wasn't a complaint about teaching P.E.
25 This is someone that's been a former athlete and even a

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1 black belt in Taekwondo I think it is. It's -- wasn't a
2 big deal.
3 And -- but what we have heard that I had to
4 go work in a closet. It -- it was -- it was horrible. I
5 don't know how anyone could have -- could work in these
6 conditions. Exhibit 21, which is in the -- will be in the
7 exhibit book. This is Ms. Davis's current classroom. This
8 is the old classroom. I think if we mix these up and put
9 different stickers on them we're going to have a hard time
10 picking which classroom's which. They're pretty darn
11 similar.
12 And it was mentioned that in the open -- in
13 the closing statement here from plaintiff that she doesn't
14 even have storage. We -- we know that's not true. There's
15 testimony. There's actually an attached room that you can
16 open the door, go into and she has the separate storage
17 room. It -- it's not any different. She's in a nice
18 classroom. A newer classroom.
19 And there were complaints made by Ms. Davis
20 that, hey, there's old Bunsen burner pipes on the wall.
21 There's an -- it's been called exposed wiring. But an
22 outlet was missing a plate cover. This is right when
23 school's coming back into session. Maintenance and
24 custodial people are incredibly busy that time of the year.
25 It was fixed promptly. Not a big deal. But this does

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1 highlight if there's a complaint Ms. Davis is going to make
2 it. Which goes back to if these students really came to
3 her and said I only lied because I was so afraid and M.H.
4 is threatening me, where is that complaint? That's the
5 complaint I wanna see and that's the complaint that should
6 have been addressed.
7 As we sit here today we know, and Ms. Davis
8 didn't dispute, she still has a great job. She receives
9 her full health insurance. She can retire tomorrow if she
10 wants and receive her full pension. And work full time if
11 she wants at MIS if that's what she wanted as opposed to
12 just summers.
13 And we've heard -- heard this testimony that
14 Ms. Davis is so upset that she can't even engage in art for
15 her own enjoyment anymore. And you do have those records.
16 Doctor. Weisbrod -- it's -- I, unfortunately, wasn't in the
17 courtroom when he testified but you all got to hear what he
18 had to say. But I will tell you not one page of those
19 medical records does it say, "I'm unable to do the art that
20 I want to do." Why not? Well, where did that story
21 suddenly come from from someone that's been talking to a
22 therapist for this long. And -- and just walking through
23 the checkout line in a grocery store you see adult coloring
24 books that are designed for stress release and anxiety.
25 Art is therapeutic and she's saying she can't engage in her

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1 passion because she's -- she's stressed out and anxious.
2 Art's something fun -- is fun and that's relaxing. That's
3 up for you to decide whether -- whether you believe that.
4 As you're looking through Doctor. Weisbrod's
5 records, also same with Therapist Gallagher, you'll note a
6 whole lot of mentions of horses and having horses. Ms.
7 Davis testified, and I'll be honest, I had a hard time
8 following where she actually lived and if she owned horses,
9 who -- horses they were, were they part of her property.
10 But the record seemed very much to suggest she has horses.
11 Enjoys riding horses. Goes to dog shows. Has dogs. But
12 her therapist said, which again I wasn't here but what --
13 what I heard was that he confirmed a different address in
14 the medical records. It was 128 Highview Court in
15 Brooklyn. I don't know where she's actually living, if
16 that's not her real house. I know this address is a home
17 on Columbia Lake. It's not on a horse farm.
18 But at the end of the day Ms. Davis gets all
19 Summer off to enjoy herself. She gets Christmas break off,
20 paid. She gets Easter break off paid. She gets
21 Thanksgiving break off paid. It really sounds like a -- a
22 pretty good job. But Ms. Davis is suing the school
23 district.
24 Defendant's Exhibit 31 was a Board of
25 Education policy entitled Whistleblower Protection. The

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1 School Board takes things like this quite seriously. And
2 that policy, when you read it, it's almost a directive. If
3 something illegal has happened and you're being retaliated
4 against, bring it to the board's attention. If it's
5 involving the superintendent don't report it to the
6 superintendent, by pass him, bring it to the Board so they
7 can fix the problem. Why didn't she? We have seen
8 grievance after grievance but nothing about that. Why?
9 It's -- and I'm going to suggest to you this
10 is why. Ms. Davis wanted a lawsuit. This is why we're
11 here. Why not report this to the Board of Education if she
12 thought she was being retaliated against? She didn't but
13 yet she wants to hold the same Board of Education and the
14 school district liable for not even giving them a chance to
15 fix some perceived injustice. The only thing the school
16 district has done to Ms. Davis is to continue to employer
17 her, to receive this big salary, benefits, pension and a
18 whole lot of paid days off.
19 And first, I'm going to go through a few of
20 the things that -- since this will be my last opportunity
21 to talk to you all I want to mention a few things that Ms.
22 Bonanni had mentioned. Toward the end she said, "She did
23 not have any depression or anxiety before this." That's
24 not true. Look at the records. She treated in the past.
25 Plaintiff didn't tell you why she treated in the past and

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1 why it was for a narrow period of time, but it's in the
2 records. This is not the first time that she's seen a
3 therapist like this. Why was that just misrepresented to
4 you?
5 There was also talk about now that she's back
6 in the high school why not uproot another teacher and
7 switch rooms? To me it seems like -- Ms. Pauli said as
8 much, "Well, then I'm moving two teachers and completely
9 uprooting two teachers and having them change everything."
10 We have two incredibly similar classrooms and Ms. Pauli
11 made the building decision to have Ms. Davis in one and the
12 other teacher in the other. That seems like a pretty
13 reasonable explanation to me.
14 There's also been an inference today that Ms.
15 Pauli's notes weren't submitted to Ben Pack until the 16th,
16 four days after this occurred. And maybe this isn't a fair
17 characterization but I've -- what I read that to be as
18 there's some sort of conspiracy. We have found out that
19 she went to the police. We need to create this
20 investigation saying it didn't happen this way. But that
21 just doesn't hold water.
22 When you look at Defendant's Exhibit 17,
23 which has the e-mail enclosure letter, Joe Zessin's
24 complete investigation was completed on the 12th and sent to
25 Ben Pack and Ms. Pauli that same day at 3:00 p.m. That's

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1 pretty prompt. And it included Ms. Davis's very own
2 statement that said, "I want this kid out of the school."
3 So the suggestion that this investigation was some sort of
4 post-hawk (ph) attempt to retaliate against Ms. Davis, it's
5 just not true.
6 There was also talk, again, that's -- I'm
7 going to call it a conspiracy theory -- that in November
8 there was an e-mail saying, "Can we find out if Ms. Davis
9 accessed her e-mail on this day or did she check her phone
10 messages?" It's -- Ms. Davis wants to say that's
11 incredibly suspicious and is evidence that they're out to
12 get her. The part that was left out, and is pretty
13 important here, is Ms. Davis filed a grievance saying I
14 shouldn't have lost pay for those two days that I didn't
15 return to work because I didn't receive a phone call. The
16 school district's defending a grievance so they went back
17 and looked at the records saying did she receive it or
18 didn't -- didn't she? I'm not sure how that's really a
19 conspiracy saying they're out to get her.
20 At the end of this grievance the union and
21 the school district decided let's split the difference.
22 We'll give her a day back. She didn't come to work for two
23 days when she was told. Because there's been testimony
24 that apparently her iPhone doesn't receive e-mails or phone
25 calls out in Brooklyn, Michigan.

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1 And a couple of times during Ms. Bonanni's
2 opening -- and the Judge will instruct you all on the law.
3 Not just a few hand-picked instructions. You're going to
4 get a whole packet and have them all in front of you. But
5 Ms. Bonanni said Protect -- and I have it in quotes here,
6 "Protected Activity is going to the police." That's not
7 true. You'll get the instructions. She has to believe
8 that she's actually reporting a suspected or a real
9 violation of law. She never thoughts she was reporting a
10 criminal assault of this kid brushing her hand.
11 And also Ms. Davis just said through her
12 attorney that she was never consulted after the M.H.
13 incident. We just know that's not true. As part of
14 Exhibit 17 there's a written statement from her that day.
15 The same day she's called down to Ms. Pauli's office. It's
16 Exhibit 25. It was a typed out conversation. She was
17 talked to. Why say that she wasn't talked to? It's just a
18 monsterably-false. She was talked to that day. She just
19 doesn't like the outcome of the investigation that five
20 kids said this didn't occur. Marcus is sitting at the
21 table -- the other side -- wants to work on his oil pastel
22 drawing and she's trying to take it away and they're hands
23 bump. It's not a criminal assault.
24 And, I'll wrap it up here, but you were shown
25 the -- the verdict form with the questions. The first

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1 question that you're asked is did plaintiff engage in
2 Protected Activity? And the Judge is going to provide the
3 -- the full instructions. So I'm going to suggest that the
4 answer is no. Read Exhibit 17. Read Joe Zessin's
5 investigation. Read the student's statements. And you see
6 if you think it is reasonable for a 30 year veteran teacher
7 to characterize that as criminal assault. I'm going to
8 say, no, that wasn't reasonable. And I think the school
9 district should win right there, question one, check the
10 "No" box.
11 But then question two is, "Was Ms. Davis
12 discriminated against because of any Per -- Protected
13 Activity?" She was only moved after she kept saying, "I'm
14 afraid. I had fear." And, again, right here the motion to
15 modify, which is filed 9 days before she was transferred,
16 "I feel unsafe. I have fear." This hearing, again, did
17 not even occur until November 19th, six days after she was
18 transferred. Why come to the court and try to modify a PPO
19 of a child that's not even in your building anymore?
20 We've heard a lot of testimony that the
21 superintendent acted only because she was afraid. It
22 doesn't matter where the statement of fear was. Whether it
23 was in a police report or a PPO. This five or six
24 documents that are in your exhibit book, "I'm afraid. I
25 want him removed from the school." He was acting on her

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1 subjective fear. He has hundreds of employees. I think
2 300 teachers, 5,000 students, he made a business decision
3 to transfer a teacher, pay her the same amount of money and
4 keep these two separated. Exhibit 12 shows that this is
5 not uncommon. Amy Gish sat up there and said I've been
6 transferred a bunch of times. It's not uncommon.
7 If the district was really this big, bad
8 employer -- I mean, again -- I mean remember this is an
9 entity whose job is to educate the children of Jackson. If
10 teachers -- special education teachers, school employees,
11 they tend to be pretty good folks. I think it's quite a
12 leap to say the police are called, that's a bad person. We
13 gotta get rid of them. We've heard that the police and the
14 school have a very good relationship. The police are there
15 frequently.
16 But if Superintendent Beal did want to
17 retaliate against Ms. Davis why is this all that happened?
18 She was transferred for a period of time when M.H. wasn't
19 in the building. Then she's transferred back. There's a
20 book throwing incident. There's all these things where if
21 the school district wanted to be heavy handed and say
22 you're out of here. We're bringing tenure charges against
23 you. You're out of here. We're done with you. They could
24 have done that. If they actually wanted to retaliate
25 against her they would have fired her. They would have

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done something but they didn't.

They transferred her for a brief period of time and that's about it. Everything else is pretty minor. Classroom size. It's unfair that my classroom is a little bit smaller. Or it was unfair that Mr. Patterson gave me an ineffective rating. She didn't turn in the work and meet with the administrator, when she did it was fixed.

And there's further evidence of no retaliation here. You heard Ms. Pauli sit up there saying you've already completed the mid-year evaluation, all of her data's in, I'm confident she's going to be rated effective this year. She's doing good. Is that the sort of thing Ms. Pauli would be doing if she was out to get Ms. Davis? I'd sa -- I'd say it's not.

So for question two, I think the answer to that is, "No." They were not motivated by a police report, or a PPO other than what's contained in it saying, "I'm afraid and I have fear." That's what matters. And while I think Jackson Public Schools should win on question one and two, I'll briefly address the damages.

And on the verdict form you'll have it says in parenthesis (Wages and Benefits). She doesn't have any wage loss or any loss in benefits. There's talk of her losing a chairmanship. Ms. Pauli testified they change. This isn't -- no one has a right to a chairmanship. For

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1 non-economic damages the same facts are pretty relevant.
2 She's employed, works -- supposed to work 185 days a year.
3 Last year she worked 150. The year before 120. But she
4 gets summers off. She gets Christmas off. She's currently
5 receiving an effective evaluation. Not on an IDP Ms. Pauli
6 said. And she even has a fun job in the Summer working at
7 MIS.
8 She rides horses, even though she said she
9 doesn't, but you can go through the records yourself where
10 it talks about having horses and enjoying horses and
11 animals. She has dogs. She goes to dog shows. It really
12 doesn't sound like that bad of a life to me. All Jackson
13 Public Schools is -- employ Ms. Davis for a really long
14 period of time. To this day, until she decides to
15 voluntarily retire, she hasn't been retaliated against and
16 I don't think she has any emotional distress damages.
17 Thanks a lot.
18 THE COURT: Thank you, Mr. Miller.
19 Rebuttal close of the plaintiff.
20 MS. BONANNI: Really brief.
21 So just brief rebuttal as to things that Mr.
22 Miller told you. You know, the standard here is whether
23 Pennie Davis reasonably believed a violation of the law
24 occurred. Reasonable belief -- and remember she's engaged
25 in that Protected Activity at the end of the day on the 12th

1 before this investigation. And, you know, that
2 investigation now appears to be the center piece of Mr.
3 Miller's close. You were here, okay. Exhibit 17 they kept
4 trying to get in and my objection was bring Zessin. It
5 comes in through Zessin. Bring Zessin. Well, they got it
6 in and they never brought Zessin. If you recall the Judge
7 permitted that exhibit for a limited purpose. He did not
8 permit that Exhibit 17 to prove the truth of the statements
9 that are contained within it. He permitted that exhibit
10 for the limited purpose of the effect of those statements
11 on the listener, meaning the effect on Mr. Zessin but Mr.
12 Zessin didn't come. So that is the limited reason why that
13 exhibit comes in. So not for the truth of the statements
14 made and had Zessin come I certainly would have confronted
15 him with the fact as to why didn't your investigation
16 follow JPS protocol in terms of getting student statements?
17
18 Briefly, Pauli notes they were written at the
19 request of Mr. Pack on October 16th when he asked her to
20 write them. And this was after defendant knew about
21 Protected Activity. The therapist that Pennie went to was
22 twenty years ago for a brief time, okay. And I don't think
23 I was -- anyone was ever trying to conceal that from you.
24 And I think that she actually testified that that was what
25 happened.

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1 No complaint about working at Pathways. No
2 complaint about teaching gym. Pennie Davis is going to
3 make lemonade out of lemons. The re -- the issue with
4 Pathways is only raised to show that she is not being
5 treated the same as the other teachers. She is being
6 singled out and that is the only reason to bring that up.
7 Mr. Miller is arguing, basically, no harm, no
8 foul. She's still working. She still gets summers off.
9 But, you know, as he was saying that I was thinking of this
10 old Mastercard ad. And some of you on this jury are too
11 young to maybe remember it but -- and I don't know if they
12 still show it -- but the idea being that there's certain
13 things in life that are priceless. You know, things that
14 mean the most don't -- you know, it's hard -- it's hard to
15 put a price tag on things. And this is not about the fact
16 that -- she is working. We all know she's working and
17 that's not what this is about. This is about the thing in
18 life, her passion, the terms and conditions of her job, and
19 what the cost has been -- this retaliation -- what the cost
20 has been on her soul -- on her.
21 Thank you.
22 THE COURT: Thank you, Ms. Bonanni.
23 Ladies and gentlemen of the jury, I'm -- I'm
24 going to go ahead and deliver my jury instructions to you
25 and they are very detailed, as they often are in a civil

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1 case -- or a criminal case -- but I've taken a great deal
2 of time to make sure they're all neatly typed for you. I'm
3 going to give them to you arranged in exactly the manner
4 that I go over them with you on the record. And so you'll
5 be able to look at them. So I just want you to sit back
6 and -- and listen to them but recognize that you're going
7 to get an entire copy of them to use during your jury
8 deliberations.
9 Members of the jury, the evidence and
10 arguments in this case have been completed and I will now
11 instruct you on the law. That is, I will explain the law
12 that applies to this case. Faithful performance by you of
13 your duties is a vit -- is vital to the administration of
14 justice. The law you are to apply in this case is
15 contained in these instructions and it is your duty to
16 follow them. In other words, you must take the law as I
17 give it to you. You must consider them as a whole and not
18 pick out one or some instructions and disregard others.
19 Following my instructions you will go to the jury room and
20 deliberate and decide on your verdict.
21 It is your duty -- duty to determine the
22 facts from the evidence you have received in open court.
23 You are to apply the law to the facts and in this way to
24 decide the case. Sympathy must not influence your
25 decision. Nor should your decision be based -- or should

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1 -- your decision be influenced by prejudice regarding race,
2 religion, national origin, age, handicap or any other
3 factor irrelevant to the rights of the parties.
4 The evidence you are to consider consists of
5 the testimony and witnesses and exhibits offered and
6 received. The admission of evidence in court is governed
7 by the rules of law. From time to time it has been my
8 duty, as the Judge, to rule on the admissibility of
9 evidence. You must not concern yourselves with the reasons
10 for these rulings. And you must not consider any exhibit
11 to which an objection was sustained, or any testimony or
12 exhibit which was ordered stricken.
13 The lawyers statements and arguments are not
14 evidence. They are only meant to help you understand the
15 evidence and each side's legal theories. The lawyers
16 questions to the witnesses are also not evidence. You
17 should only consider these questions only as they give
18 meaning to the witness's answers. You should only accept
19 the things the lawyers say that are supported by the
20 evidence or by your own common sense and general knowledge.
21 However, an admission of a fact by a lawyer is binding on
22 his or her client.
23 I have not meant to indicate any opinion as
24 to the facts by my rulings, conduct or remarks during the
25 trial. But if you think I have you should disregard it

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because you are the sole judges of the facts.

In determining whether any fact has been proved you shall consider all of the evidence bearing on the fact without regard to which party produced the evidence. Facts can be proved by direct evidence from a witness or an exam -- or an exhibit. Direct evidence is evidence about what we actually see or hear. So, for example today, if we opened up the courtroom drapes and you looked outside and it was snowing out there, that would be direct evidence that it's snowing.

But evidence can also be proved by what we call indirect, or circumstantial evidence. Circumstantial evidence is an example of where the courtroom drapes were closed, somebody came in and they were brushing off snow flakes off their -- their trench coat. That would be circumstantial evidence it's snowing outside. Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You should consider all of the evidence, both direct and circumstantial.

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life. And to take into account whether any particular evidence seems reasonable and probable. However if you have personal knowledge of any particular

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1 fact in this case that knowledge may not be used as
2 evidence.
3 If you -- if you decide that a witness said
4 something earlier that is not consistent with what the
5 witness said at this trial, you may consider the earlier
6 statement in deciding whether to believe the witness, but
7 you may not considered as proof of the facts in this case.
8 However, there are exceptions. You may consider an earlier
9 statement as proof of the facts in the case if, A, the
10 statement was made by the plaintiff, the defendant or an
11 agent or employee of either party, or B, the statement was
12 given under oath subject to the penalty of perjury at
13 trial, hearing or in dep -- in a deposition, or C, the
14 witness testified during the trial that the earlier
15 statement was true.
16 As the jury you are the judges of the facts
17 in this case and you must determ wh -- determine which
18 witnesses to believe and what weight to give their
19 testimony. In doing so you may consider each -- each
20 witnesses ability an opportunity to observe his or her
21 memory, their manner while testifying, any interests, bias
22 or prejudice and the reasonableness of the testimony
23 considered in the light of all the evidence.
24 Although you may consider the number of
25 witness -- witnesses testifying on one side or the other,

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1 when you weigh the evidence as to a particular fact the
2 number of witnesses alone should not persuade you if the
3 testimony of the lesser number of witnesses is more
4 convincing.
5 I'm now going to explain for you some of the
6 -- some of the con -- definitions concerning the
7 Whistleblower Protection Act. Protected Activity means an
8 employee reports a violation, or a suspected violation, of
9 a law or regulation by her employer, or a third party, to a
10 public body. Unless the employee knows that the report is
11 false. The employee's motive does not matter and you
12 should not consider it in determining whether the employee
13 engaged in a Protected Activity.
14 When I use the term "because of" I mean that
15 the Protected Activity must be one of the motives, or
16 reasons, the defendant threatened or retaliated against the
17 plaintiff. Protected Activity does not have to be the only
18 reason, or even the main reason, but it does have to be one
19 of the reasons that made a different -- in the defendant's
20 decision to threaten, or retaliate, against the plaintiff.
21 This is called causation.
22 In order to prove causation plaintiff must
23 show that the decision-maker, or a person who influenced
24 the decision, knew of the plaintiff's protected activity.
25 Knowledge may be shown by direct evidence or circumstantial

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1 evidence such as the timing of the decision, conduct or
2 other evidence from which the knowledge can be inferred.
3 The plaintiff must reasonable -- reasonably
4 believe that a violation of -- of law, or a regulation, has
5 occurred. It is not necessary that an actual violation of
6 the law, or a regulation, has occurred but the employee
7 cannot have a reasonable belief she knows the report is
8 false.
9 The plaintiff has the burden of proving each
10 of the following elements: A, there was Protected Activity
11 as defined in these instructions, and B, the defendant
12 threatened or discriminated against the plaintiff, and C,
13 the threat/discrimination was because of Protected
14 Activity, and D, the plaintiff suffered damages as a result
15 of the threat or retaliation. Your verdict will be for the
16 plaintiff if you find that the plaintiff has proved each of
17 these elements. Your verdict will be for the defendant if
18 you find that the plaintiff has failed to prove anyone of
19 these elements.
20 Your task is to determine whether the
21 defendant retaliated against the plaintiff. You are not to
22 substitute your judgment for the defendant's business
23 judgment, or decide this case based on what you would have
24 done. However, you may consider the reasonableness, or the
25 lack of reasonable -- reasonableness of the defendant's

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1 stated business judgment, along with all the other
2 evidence, in determining whether the defendant retaliated
3 or did not retaliate against the plaintiff.
4 MS. HOLMES: Excuse me, your Honor, we have
5 one whistleblower that is not in your pack for some reason.
6 THE COURT: Oh, okay.
7 MS. HOLMES: Before we move on, sorry.
8 THE COURT: No, that's okay.
9 (Bench conference from 1:33:15 p.m. to
10 1:33:25 p.m.)
11 THE COURT: All right, during the plaintiff's
12 opening statement you will recall that there was an
13 argument made that our schools will be watching this about
14 -- that the jury should send a message. The purpose of the
15 jury is not to send a message. Rather, if you ultimately
16 find that the defendant -- if you find for the plaintiff
17 and against the defendant you must not -- you must
18 determine damages only for the harms suffered by the
19 plaintiff as set forth in these instructions.
20 As -- as I've stated, again, it's in further
21 clarification of the Whistleblower Protection Act we have a
22 state law known as the Whistleblowers Protection Act which
23 provides that an employer shall not threaten, or
24 discriminate, against an employee regarding employment,
25 compensation or a term, condition, location or privilege of

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1 employment because of Protected Activity.

2 Okay, and a school des -- and by way of

3 further instruction -- a special instruction -- a school

4 district, police department and a court are public bodies

5 under the Whistleblowers Protection Act. Plaintiff cannot

6 recover from the defendant for incidences that occurred

7 prior to November 12th, 2015. Any such information is

8 presented solely for background information and may only be

9 considered in determining the defendant's motives in

10 incidences that occurred on November 12th, 2015 or

11 thereafter.

12 If you decide that the plaintiff is entitled

13 to damages for her whistleblower claim it is your duty to

14 determine the amount of money which would reasonably,

15 fairly and adequately compensate her for each of the

16 elements of damage which you decide has resulted from the

17 retaliation of the defendant taking into account the nature

18 and extent of the injury.

19 You should include -- clude each of the

20 following elements of damage which you decide has been

21 sustained by the plaintiff to the present time: past

22 economic damages, future economic damages, non-economic

23 damages, emotional distress. If any -- any element of a

24 damage is of a continuing nature you shall decide how long

25 it may continue. Which, if any, of these elements of

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1 damage is -- has been proved is for you to decide based
2 upon the evidence and not upon speculation, guess or
3 conjecture.
4 The amount of money to be awarded for -- for
5 certain of these elements of damages cannot be proved in a
6 precise dollar amount. The law leaves to -- leave such
7 amount to your sound judgment. Your verdict must be based
8 solely to compensate the plaintiff for her damages and not
9 to punish the defendant.
10 The plaintiff must make every reasonable
11 effort to minimize, or reduce, her damages for loss of
12 compensation by seeking employment. This is called
13 mitigation of damages. The defendant has the burden of
14 proving that the plaintiff failed to mitigate her damages
15 or loss of compensation. If you find that the plaintiff is
16 entitled to damages you must reduce these damages by what
17 the plaintiff has earned and what the plaintiff could have
18 earned with reasonable effort during the period for which
19 you determine that she is entitled to damages. If you find
20 that the plaintiff is entitled to future damages you may
21 reduce these damages by an amount the plaintiff could
22 reasonably -- could earn or reasonably be expected to earn
23 in the future.
24 Whether the plaintiff was reasonable in not
25 seeking or accepting particular employment and quest -- is

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1 for you to decide. However, if the plaintiff is obligated
2 to accept an offer of employment, which is of like nature,
3 in determining whether the employment is of a like nature
4 you may consider, for example, the type of work, the hours
5 worked, compensation, job security, working conditions and
6 other conditions of employment.
7 The plaintiff is not seeking, and should not
8 be compensated, for the following conditions: tumors,
9 rectal bu -- bleeding or use of a heart monitor. Plaintiff
10 is not seeking, and cannot receive damages, for further
11 employment events that have not occurred such as a
12 termination or layoff.
13 This concludes my instructions on the law.
14 And if you have any questions about these instructions at
15 this point you can write them down or ultimately send a
16 question to the court, which I'll ultimately address with
17 the par -- lawyers and court. If you want to communicate
18 with me, or examine the exhibits that have been offered, if
19 you'll just send me a -- a note. It's not proper for you
20 to talk to me, or any of the witnesses, or any of the
21 parties to the proceedings.
22 Last, I'm going to give you, prepared for
23 your convenience, is what's called a verdict form. It's
24 styled with the caption of the case, Pennie Marie Dan --
25 Davis as plaintiff versus the Jackson Public Schools. And

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1 it walks through the analysis that was largely explained by
2 both of the lawyers. You start out with question number
3 one, did the plaintiff engage in Protected Activity? If
4 your answer to question one is "yes", proceed to question
5 two. If your question to number one is "no" you have no
6 further questions to -- to answer. Number two, did the
7 Jackson Public Schools threaten, or two, or discriminate
8 against Ms. Davis because she engaged in Protected
9 Activity? Then, again, if your answer to question number
10 two is "yes" proceed to question number three and four. If
11 your answer to question number two is "no" you have no
12 further questions to answer. And then question number
13 three is state the amount of economic damages, lost wages
14 and benefits. Ms. Davis has sustained as a result of being
15 threatened or discriminated against by the defendant. And
16 then it has a section for economic and future economic
17 damages. And then four, is state the amount of non-
18 economic damages -- pain, suffering, anxiety, emotional
19 distress, anguish, humiliation and embarrass --
20 embarrassment.
21 Ms. Davis has sustained as a result of being
22 threatened or discriminated. And again -- and, again, it
23 gives you a line for non-economic damages to date and
24 future non-economic damages.
25 Now, again, I think the -- the verdict form

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1 will walk you through all the required analysis that you
2 need to do to come to the -- your conclusion in the case.
3 So at this time I'm going to have all the jurors rise.
4 UNIDENTIFIED JUROR: (Undecipherable).
5 THE COURT: David, come on up.
6 THE CLERK: Are we -- are we keeping all --
7 (undecipherable)?
8 THE COURT: Yes.
9 MS. BONANNI: We also have Exhibit Books for
10 --
11 THE COURT: Okay.
12 MS. BONANNI: -- each of the jurors.
13 THE COURT: Are those ready to go back now?
14 MS. BONANNI: They are.
15 THE COURT: Okay.
16 MR. MILLER: We haven't actually had an
17 opportunity yet, Judge, to look over each other's.
18 THE COURT: Okay.
19 MR. MILLER: I'd, personally, like the
20 opportunity --
21 THE COURT: Sure.
22 MR. MILLER: -- to make sure it's only.
23 THE COURT: All right, we can do that. All
24 right, Madam Clerk, would you go ahead and swear my court
25 officer?

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1 THE CLERK: Do you solemnly swear that you
2 will, to the utmost of your ability, keep the jurors from
3 separating from each other, that you will not allow any
4 communication to be made to them, that you will not
5 communicate with them except on order of this court or ask
6 them if they have agreed upon their verdict, and that you
7 will not, until they render their verdict, communicate to
8 any person the state of their deliberations or the verdict
9 they have agreed upon, so help you God?
10 COURT OFFICER: I do.
11 (At 1:40:21 p.m., Court Officer Sworn)
12 THE COURT: Okay.
13 THE CLERK: Thank you.
14 THE COURT: All right, ladies and gentlemen,
15 all -- all rise and I'm going to have David take you back
16 to the jury room. In just a moment I'll be back with a
17 copy of the instructions and --
18 THE CLERK: You guys can bring your
19 notebooks.
20 (At 1:40:31 p.m., jurors dismissed)
21 THE COURT: All right, thank you. You may be
22 seated.
23 Ms. Bonanni, is there any objections in the
24 manner in which the court charged the jury?
25 MS. BONANNI: No.

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THE COURT: Mr. Miller, is there any objections in the manner in which the court charged the jury?

MR. MILLER: Besides the one objection as to causation that I've already preserved, no, Judge.

THE COURT: All right. Well, I'm going to go ahead and take back the -- the -- the jury packet then and the jury -- or the verdict form. So you each are gonna kind of review each other's exhibit notebook. And then --

MS. BONANNI: Yep.

THE COURT: -- momentarily I'll go ahead and have David deliver those to the jury.

MS. BONANNI: Yep.

THE COURT: All right?

MS. BONANNI: Thank you.

(At 1:41:24 p.m., hearing recessed)

(At 2:11:05 p.m., hearing resumed)

THE COURT: Yeah, I'm gonna wait for just a second and then bring the jury back.

MR. MILLER: Yep, that's fine.

MS. BONANNI: Is that okay?

MR. MILLER: Mm-hmm.

THE COURT: Okay. David, why don't you get the -- bring the jurors in.

All right. If it's okay, I'll read this and

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1 we'll send it back as part of the packet too.
2 MS. BONANNI: Sure.
3 THE CLERK: All rise for the jury.
4 (At 2:13:29 p.m., juror enter)
5 THE COURT: All right, thank you. Ladies and
6 gentlemen, you may be seated. I had just one other
7 instruction that all of us agreed that I should go over
8 with you and I'm going to send it back to supplement the
9 other instructions. Five out of seven jurors must -- must
10 answer yes on questions one and two of the verdict form in
11 order to proceed. It need not be the same five jurors for
12 each question. Similarly five out of seven jurors must
13 agree on the amount of damages as set forth in questions
14 three and four. It need not be the same five jurors.
15 Ms. Bonanni, do you agree with that rendition
16 of it?
17 MS. BONANNI: I do, thank you, your Honor.
18 THE COURT: And --
19 MR. MILLER: Yes, Judge, thank you.
20 THE COURT: -- Mr. Miller? Okay, thank you
21 very much.
22 (At 2:14:26 p.m., jurors dismissed)
23 THE COURT: David, I'm just going to have you
24 give this -- take the jury back and you can put this right
25 in with your other instructions in there.

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1 UNIDENTIFIED SPEAKER: I'll --
2 (undecipherable) -- take it back to them.
3 THE COURT: What's that?
4 UNIDENTIFIED SPEAKER: I'll type --
5 (undecipherable) -- and take it back.
6 THE COURT: Okay. Yeah, I'll have David type
7 it up and have each of the lawyers review it and then send
8 it right back to them. All right. Thank you.
9 You were correct about that. I'm glad you
10 caught that.
11 (At 2:14:43 p.m., hearing recessed)
12 (At 4:02:18 p.m., hearing resumed)
13 THE CLERK: All rise for the jury.
14 (At 4:03:13 p.m., jurors enter)
15 THE COURT: All right, thank you. You may be
16 seated. All right, has the jury reached a verdict in this
17 matter?
18 JURY FOREPERSON: Yes, we have, your Honor.
19 THE COURT: Are you the foreperson? Okay,
20 would you give the copy of the verdict -- or the verdict to
21 my Court Officer?
22 Okay, in the matter did plaintiff engage in
23 Protected Activity? Yes.
24 Did the Jackson Public Schools threaten or
25 discriminate against Ms. Davis because she engaged in

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1 Protected Activity? Yes.

2 State the amount of economic damages, lost

3 wages and benefits Ms. Davis has sustained as a result of

4 being threatened or discriminated against by defendant.

5 Economic damages to date ten thousand two ninety. Future

6 economic damages two thousand two forty.

7 Four, state the amount of non-economic

8 damages, pain, suffering, anxiety, emotional distress,

9 anguish, humiliation, embarrassment Ms. Davis has sustained

10 as a result of being threatened or discriminated against,

11 non-economic damages to date, one hundred and fifty

12 thousand three hundred and eight-two.

13 Future non-economic damages two hundred

14 twenty-five thousand five hundred and seventy three.

15 Does that represent the -- at least five of

16 the members of -- of the jury?

17 JURY FOREPERSON: Yes, your Honor.

18 THE COURT: Okay. And, Madam Clerk, can I

19 have you just query the jury as to that being their

20 verdict?

21 And, David, would you run a copy for each of

22 the parties?

23 THE COURT: Please rise so I can swear you

24 in, please. Raise your right hand. Do you jury

25 foreperson, do each of you other jurors, state on your oath

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1 that the verdict read by the Judge is the verdict of this
2 jury, so say you members of the jury?
3 UNIDENTIFIED SPEAKER: Yes.
4 THE CLERK: Thank you.
5 THE COURT: All right. All right, ladies and
6 gentlemen, if you want to -- I'm going to have David take
7 you to the jury --
8 MR. MILLER: Can I make a motion to poll the
9 jury, please, Judge?
10 THE COURT: You sure can. Yeah, absolutely.
11 Madam Clerk, would you go ahead and poll the
12 jury?
13 THE CLERK: Juror number one, is -- was that
14 and is this your verdict?
15 JUROR ONE: Yes.
16 THE CLERK: Juror number two, was that and is
17 this your verdict?
18 JUROR TWO: Yes.
19 THE CLERK: Juror number three, was that and
20 is this your verdict?
21 JUROR THREE: Yes.
22 THE CLERK: Juror number four, was that and
23 is this your verdict?
24 JUROR FOUR: No.
25 THE CLERK: Juror number five, was that and

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1 is this your verdict?
2 JUROR FIVE: Yes.
3 THE CLERK: Juror number six, was this and is
4 this your verdict?
5 JUROR SIX: Yes.
6 THE CLERK: Juror number seven, was that and
7 is this your verdict?
8 JUROR SEVEN: Yes.
9 THE COURT: All right. Well, ladies and --
10 THE CLERK: Are you happy with that?
11 THE COURT: All right, why don't you give a
12 copy of the verdict to each side.
13 Madam Clerk, I'm going to give you the
14 original verdict for the jury to roll in the matter it is
15 captioned -- the thing.
16 Ladies and gentlemen, I'm going to have David
17 take you over to the jury room. In just a moment I'll be
18 over to dismiss you. And -- so all rise for the jury.
19 (At 4:06:22 p.m., jurors dismissed)
20 THE COURT: Counsel, thank you. Did you want
21 your notebook back on your exhibits? All set?
22 MS. BONANNI: Judge? Judge?
23 THE COURT: Yes.
24 MS. BONANNI: May we -- may we talk to the
25 jury?

1 THE COURT: What I -- what I usually do is I
2 go talk to them and see if they want -- want to. Sometimes
3 they do and sometimes they don't. So but if you want to be
4 outside there --
5 MS. BONANNI: Yep.
6 THE COURT: -- I'll let you know if they want
7 -- all right. I'll make sure that David gets each of you
8 back then -- I'll return each of your exhibits back, okay?
9 Notebooks.
10 (At 4:06:56 p.m., hearing concluded)

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CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of one hundred and one (101) pages, before the 4th Judicial Circuit Court, Jackson County:

PENNIE MARIE DAVIS

v

JACKSON PUBLIC SCHOOLS

_____/

Location: Circuit Court

Date: Wednesday, March 7, 2018

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Sally Fritz

Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: September 24, 2018

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EXHIBIT D

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNY MARIE DAVIS,

Plaintiff,

vs.

JACKSON PUBLIC SCHOOLS,

Defendant,

FILE NO. 16-344-CZ

HON. JOHN G. MCBAIN

Michael L. Pitt (P24429)
Megan Bonani (P52079)
Robert W. Palmer (P31704)
Channing E. Robinson-Holmes (P81698)
Pitt, McGehee, Palmer & Rivers, P.C.
Attorneys for Plaintiff
117 West Fourth Street, Ste. 200
Royal Oak, MI 48067
(248) 398-9800

Timothy J. Millins (P28021)
John L. Miller (P71913)
Giarmarco, Mullins & Horton, P.C.
Attorneys for Defendant
101 W. Big Beaver Road, 10th Floor
Troy, MI 48084-5280
(248) 457-7020

ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL AND REDUCING PLAINTIFF'S ATTORNEYS' FEES

This matter went to trial on February 25th, 2018 and concluded with a jury awarding a $388, 485.00 verdict in favor of the plaintiff. This Court denies defendant's motion for a new trial. The plaintiff is correct in citing that a new trial can be granted if the court feels that the verdict goes against a great weight of the evidence. *Bosak v. Hutchingson*, 422 Mich. 712, 737 (1985). A review of the evidence presented to the jury allows this Court to conclude that the verdict was not against a great weight of evidence. Further, this Court does not find that any of the other eight reasons for granting a new trial under MCR 2.611(A)(1) are applicable. The jury was presented with eight days of evidence and its verdict should stand.

Further, the plaintiff's awarded attorneys' fees shall be reduced to $250 per hour. Under the American Rule, this Court has authority in awarding fees to the prevailing party and has a large amount of discretion. "[A] trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services." *Smith v. Khouri*, 481 Mich. 519, 530 (2008). When considering this factor, it is clear that the plaintiff's attorneys' fees should be reduced. Based upon this factor and others listed in *Smith*, this Court holds that a rate of $250 per hour is a fair assessment of the plaintiff's attorneys' fees. At this time, the Court has not seen sufficient documentation of the plaintiff's attorneys' hours. The plaintiff shall re-submit an affidavit of its billed hours with the rate of $250 per hour, unless an agreement can be reached prior to that by both parties.

IT IS ORDERED that defendant's motion for a new trial is hereby denied and that the plaintiff shall be awarded attorneys' fees of no more than $250 per hour and re-submit an affidavit with of attorneys' hours with the adjusted rate.

Dated: May 22, 2018

John G. McBain (P47476)
Circuit Court Judge

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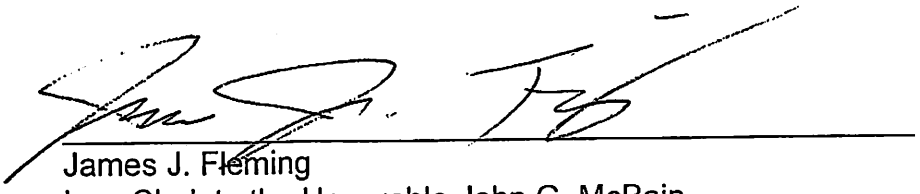
Proof of Service

The undersigned certifies that a copy of the above document was served upon both parties by first class mail on the 22nd day of May, 2018.



James J. Fleming
Law Clerk to the Honorable John G. McBain

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EXHIBIT E

M[redacted] I[redacted] Incident in Art class

Oct. 12: Called by Ms. Davis about Marcus' behavior in class. On the phone, she told me that she was hit by M[redacted] and that he threatened her. She told me that she was "done with him in her class" and that I needed to go down to the room to provide assistance.

I went down to the classroom and walked into the room. I looked around and did not see M[redacted]. Ms. Davis told me that he had left. While in the room, several students immediately blurted out to me that M[redacted] had not hit Ms. Davis.

I came back up to my office and Marcus was waiting. I interviewed him about this incident and the notes are on file in the 10th grade office.

He claims that the "threat" that was made was him doing freestyle rapping at his seat. He used the phrase "people are going to mess around and get knocked into next Tuesday."

There was some tension between M[redacted] and the teacher in class from earlier in the class period. He got involved in a conversation that Ms. Davis was having with other students and said "that's fascinating." (these students were not in the class, they were in Ms. Davis' room talking about dog-sitting). Ms. Davis told the students to "ignore him," which irritated Marcus.

After the "threat," Marcus was sent to the principal's office. As he was being sent out, Ms. Davis reached and attempted to grab his work. Marcus resisted this and eventually pushed back Ms. Davis' hand with the back of his hand. It was described as "soft" contact.

M[redacted] was assigned a suspension for the rest of the day. He will be in IST for the remainder of the week during 3rd hour.

I called M[redacted] mom and discussed this incident with her and told her the background of what happened. I also told her the current punishment.

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Ms. Davis was adamant about not having him back in class.

There were 4 interviews conducted with students from this class. All of these students reported that it did not appear that Marcus hit the teacher. Instead, what they saw was that he made contact with her hand as she was taking away his art project.

Joe Zessin

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Benjamin Pack

From: Joe Zassin
Sent: Monday, October 12, 2015 2:43 PM
To: Barbara Baird-Pauli
Cc: Benjamin Pack
Subject: Davis Incident- interview with [redacted] and students
Attachments: noreply@jpsmail.org_20151012_151341.pdf

Barb and Ben, here are my notes regarding the incident today with Pennie Davis and a student in class. I forwarded you my notes from google docs as well and will be adding to these based the interviews with students that I conducted this afternoon.

Thanks,

Joe Zessin
10th Grade Principal
Jackson High School
(517) 841-3797

Twitter: @joezessin
#JHS2018
#jxnvikings
Website: jzessin.wordpress.com

-----Original Message-----
From: noreply@jpsmail.org [mailto:noreply@jpsmail.org] On Behalf Of noreply@
Sent: Monday, October 12, 2015 3:14 PM
To: Joe Zessin
Subject: Scanned image from J.P.S- High School- Rm 208

DEVICE NAME: J.P.S- High School- Rm 208
DEVICE MODEL: MX-M350N
LOCATION: 544 Wildwood ave

FILE FORMAT: PDF MMR(G4)
RESOLUTION: 300dpi x 300dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader4.0 or later version, or Adobe(R)Reader(TM) of Adobe Systems Incorporated to view the document.
Acrobat(R)Reader4.0 or later version, or Adobe(R)Reader(TM) can be downloaded from the following URL:
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http://www.adobe.com/

A[redacted] H[redacted] 10/12/15

- Oil pastels
- She was asking some students about dog-sitting (these were students not from the class)
  - I was saying "fascinating" - sarcastically
  - Mrs. Davis said "just ignore him"
    MH - I said - "just ignore me - whatever..."
- the bell had already rung - 15-20 min into class
- they've been in the class before

(M.H.) I was rapping - "people are ~~[illegible]~~ going to mess around + get knocked into next Tuesday" (it's a freestyle rap that I make up)
- that was not directed at her

- P.O. = That is a threat, you can't be threatening people, get out.

- PO grabbed the paper of 3 vegetables / oil pastels

- (MH) resisted her grabbing the paper - the had no reason to grab my paper.
- I slid the paper back to her
- Moved her hand away - my hand touched her hand
  - the outside of my hand made contact w/ her fingers.
- I did not swing at her.

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10/12 - Newgass

- He didn't hit her
- She was moving her hand towards him -
He moved it away
- none of him hitting her hand off
- She touched his paper - he moved it away

He had been talking to himself - I couldn't hear
it was very quiet. - She then said she was threatened

10/12 - McLaughlin

- She was saying he was back talking - he really wasn't
- they were arguing about something
- Mary tapped the teacher with the back of his hand as she tried taking his paper
- She called me (Mr. T.) + said that she was threatened + left

10/12 - Granger

- She said he pushed her
- All he did was his hand was on the desk -
He pushed it away
- it was w/ the top part of his hand

before the "hit" - Go to the office - if you want to Scream -
I didn't hear him scream

000258

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Oct. 13

- Daily

517 569-3431

She was looking at his work

~~[illegible]~~ She said "I don't take threats"

- MH had said something - don't know what it was

- MH yanked her hair out of the way as she tried to get the paper

- Maybe medium strength

- She said it was a lot - I didn't think that it was

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Pupil Exclusion From Class Request:

RE: M[redacted] H[redacted]

I have repeatedly talked to M[redacted] about his daily behaviors: Bad language, throwing objects even trying to bully ....Write ups on 9/10,9/11 both disruptive to class not giving up his cell phone rude and very disrespectful. On 9/25 disorderly conduct "f____f____ Defiance of authority .... ask for a meeting and help from Joe Zessin On 9/28 meet with Joe Zsssin and M[redacted] and myself no parents came. I ask for parents to attend and that I was writing up an Exclusion from.

On Sept 9, 10, 11, 25, and 29 Called home no parent would get back with me.

Called and talk with Cindy Smith his Counselor 9/25, 9/29 9/29, 9/30 10/7, 10/9 to name a few dates.

Called and talk to Bob Dillon his football coach 9/28

Tried to get help several time from Joe Zessin with no to little help 9/10 9/11 9/25 9/28, and10/12 to name a few dates.

This young man never wanted to be in art class. He is bound and determined to get out of class no matter the coast to other students learning and their safety and no regards for the teacher safety.

On 10/12/2015

He was threatening to hit and beat the teacher ....then he struck the teacher hard enough to bruise and possibly fracture the teachers hand, (will need to wait 5-7 days for the swelling to go down to know for sure).

I do not feel safe for myself and my students with M[redacted] in any of my classes or homeroom I request he is removed immediately. I do not feel safe with him being at our school.

Thank you;

Ms P. Davis

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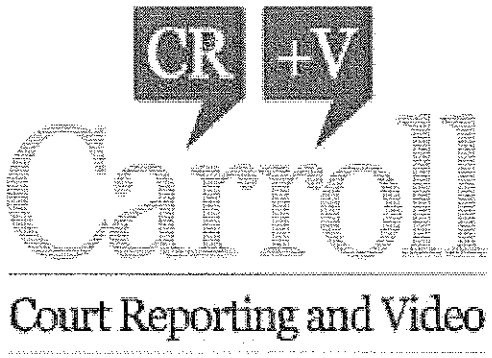
EXHIBIT F

In The Matter Of:

Pennie Davis v. Jackson Public School

Jeffrey Beal

February 10, 2017



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1 consisted of MH pushing Davis' hand away, you agree
2 that's an intentional act, he pushed her hand away?
3 **A. Does that rise to the level of intent to do harm or**
4 **injury? Our answer would still be no. Our**
5 **investigation did not indicate that MH assaulted**
6 **Ms. Davis with any intent to do harm or injury.**
7 Q. Were you aware at the time that MH had a history of
8 sexual misconduct as well as other incidents of
9 physical behavior, assaultive behavior?
10 **A. No.**
11 Q. Didn't you think to look at his history before making
12 this determination?
13 **A. This is an isolated incident with one teacher, one**
14 **student. His previous actions notwithstanding, they**
15 **wouldn't necessarily bear any bearing on whether or**
16 **not this incident rose to the level of assault.**
17 Q. But didn't Ms. Davis report to the school that he was
18 acting in an aggressive manner on that day toward her?
19 **A. I believe our investigation suggested otherwise.**
20 Q. Based on what?
21 **A. Based on student interviews.**
22 Q. Let's look at that investigation.
23 MARKED BY THE REPORTER:
24 DEPOSITION EXHIBIT 3
25 11:00 a.m.

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1 BY MS. BONANNI:
2 Q. So I'm handing you Exhibit 3 and this -- this has a
3 variety of documents in it but I believe that all of
4 the investigation documents are contained within this
5 packet.
6 **A. Yes.**
7 Q. And this packet is actually the grievance that was
8 submitted as a result of her being docked pay.
9 In any event, do you see the interview
10 statements that were part of the school's
11 investigation?
12 **A. Yes.**
13 Q. Okay. Can you tell me the Bates number of the
14 statements that you recall being part of the
15 investigation? The Bates numbers would be on the
16 bottom right.
17 **A. I would say that 257, 258, 259 were all part of the**
18 **investigation.**
19 Q. Okay. And do you recognize this handwriting?
20 **A. I don't.**
21 Q. Okay. Is this what you recall reviewing?
22 **A. Um-hmm.**
23 Q. Okay. That's a yes?
24 **A. Yes, sorry.**
25 Q. Okay. Tell me, show me where you believe it is

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1 supported that this was an unintentional contact
2 between MH and Ms. Davis.
3 **A. Bottom of 257, I slid the paper back to her, moved her**
4 **hand away, my hand touched her hand, the outside of my**
5 **hand made contact with her fingers. Student said I**
6 **did not swear at her.**
7 Q. I did not swing at her I think it says.
8 **A. Oh, you are correct.**
9 **Top of 250 --**
10 Q. No, let me ask you a question, I'm sorry, before you
11 move on.
12 **A. Okay.**
13 Q. Who's speaking here, what do you understand, who's
14 statement is this?
15 **A. The initials on the paper indicate MH.**
16 Q. I see.
17 Okay. Let's go on to 258.
18 **A. 258, under 10/12, Nearpass, he didn't hit her. She**
19 **was moving her hand, he moved it away, more of him**
20 **brushing her hand off.**
21 Q. Who's Nearpass?
22 **A. I don't know.**
23 Q. Okay.
24 **A. 10/12, I'm going to get this wrong, maybe Grainger at**
25 **the bottom, she said he pushed her, all he did was --**

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1 **I'm going to get that -- I can't read it -- her hand**
2 **away, pushed her hand away, and then looks like**
3 **Ms. Davis said go to the office.**
4 Q. Okay. Anything else?
5 **A. Those would be the statements in 257, 258, and 259.**
6 Q. And your recollection is that once you got involved in
7 this situation you were in fact reviewing these
8 handwritten notes from someone at the Jackson High
9 School?
10 **A. Yes, I have seen these notes.**
11 Q. Okay. Now, we don't know who took these notes?
12 **A. I believe Mr. Zessin was the initial principal -- or**
13 **assistant principal investigating at the time.**
14 Q. Okay.
15 **A. I believe and -- yeah, I believe Mr. Zessin was the**
16 **principal who took these notes at the time.**
17 Q. Okay. So how soon after the incident was the
18 conclusion made that MH had not intentionally
19 assaulted Ms. Davis?
20 **A. I would assume at the conclusion of the investigation**
21 **when he was disciplined in accordance with our**
22 **discipline code for another issue, you know, a lesser**
23 **incident.**
24 Q. And do you know when that was, how soon after the
25 incident that happened?

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1 **A. I believe he was disciplined that day.**
2 Q. Okay. So it is your recollection that the matter was
3 resolved fairly quickly, within the day?
4 **A. Within a day or two. I can't say for certain what**
5 **happened within the day but certainly within a short**
6 **period of time.**
7 Q. Okay. So we've talked about your meeting with
8 Ms. Davis outside the class on October 13 and your
9 communication about her going to WorkWell. What was
10 your next contact with this situation involving
11 Ms. Davis?
12 **A. I believe that Ms. Davis was in our office with -- in**
13 **my office specifically with Amy Gish, the union**
14 **president, and refusing to allow our doctor to X-ray**
15 **her.**
16 Q. Okay. We talked about that and you did get an X-ray
17 and a diagnosis and that issue was resolved, correct?
18 **A. That's correct.**
19 Q. What was your next contact with this situation
20 involving Ms. Davis' allegations that she had been
21 assaulted by a student?
22 **A. Bear with me because there was a period of time when**
23 **Ms. Davis had refused to allow our doctor to X-ray her**
24 **that she was on non-disciplinary paid leave while we**
25 **determined the level of our liability with regards to**

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1 **her workplace injury, and at some point beyond that**
2 **once she was returned to work we were presented with a**
3 **PPO from Ms. Davis with regards to -- and I say we, I**
4 **mean human resources or the building, I was not, but I**
5 **was made aware of a PPO.**
6 Q. Okay. Is it your recollection that the PPO came first
7 before she was placed on leave?
8 **A. No.**
9 Q. How do you know that?
10 **A. It's not my recollection.**
11 Q. I believe I have a --
12 **A. I don't have the exact date of the PPO.**
13 Q. Okay. I believe I have the date of your placing her
14 on the leave.
15 Okay. I am going to have you look --
16 **A. Is that the same document, Exhibit 3?**
17 Q. No. You know what? I'm going to give you another
18 exhibit. Let's look at this one.
19 MARKED FOR IDENTIFICATION
20 DEPOSITION EXHIBIT 4
21 11:10 a.m.
22 BY MS. BONANNI:
23 Q. Okay. I'm showing you what's been marked as Exhibit
24 4, and just because there were so many different Bates
25 numbers that weren't sequential I have handwritten

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1 MARKED FOR IDENTIFICATION
2 DEPOSITION EXHIBIT 5
3 11:42 a.m.
4 BY MS. BONANNI:
5 Q. Okay. So this is the PPO dated October 12th -- or I'm
6 sorry, October 13th is the date of the PPO.
7 **A. We show it received October 15th.**
8 Q. Okay. So I understand that it was received by the
9 school on October 15th but the PPO itself is dated
10 October 13th, 2015 it says at the bottom of the second
11 page.
12 **A. I see that.**
13 Q. Okay. So what did the school decide in terms of
14 honoring the spirit of this PPO and accommodating the
15 student as well as the teacher, what was the strategy?
16 **A. We honored this PPO to the letter. We removed the**
17 **student from her class and I don't believe that she**
18 **had any courses -- or that he would have any courses**
19 **where he would be in her classroom.**
20 Q. Okay. So the strategy was that these two individuals
21 could just avoid one another?
22 **A. That would be the expectation.**
23 Q. Okay.
24 **A. I mean my understanding is with a PPO that both**
25 **parties, both -- Ms. Davis would need to avoid the**

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1 incidents that took place between MH and Ms. Davis
2 after she returned to work following her leave on
3 October 29th?
4 **A. No.**
5 Q. And do you know when you actually removed her?
6 **A. I didn't remove her. The PPO instigated a change of**
7 **placement for her, a change of location. So we**
8 **followed the PPO to provide for her safety and moved**
9 **her from the high school to the middle school**
10 **classroom location.**
11 Q. But that's not what she asked for, was it?
12 **A. No, what she asked for was the student to be removed**
13 **from the building.**
14 Q. She asked, "I asked he not be put in a room next or
15 across from me." Do you see that?
16 **A. I do see that.**
17 Q. Where in this PPO does she say I want him out of the
18 building?
19 MR. MULLINS: I'm going to object. You're
20 confusing the witness; he's not a lawyer. She's got a
21 motion here as Exhibit 6. The only PPO you presented
22 is Exhibit 5 which says that he shouldn't be at the
23 workplace. So I understand you're quibbling as to
24 what --
25 MS. BONANNI: I don't know --

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1 MR. MULLINS: -- workplace --
2 MS. BONANNI: Okay. No speaking objections
3 pursuant to the Court Rules, please.
4 MR. MULLINS: Well --
5 BY MS. BONANNI:
6 Q. Look, there's two PPOs, you have both of them. Okay?
7 Right?
8 **A. I do.**
9 Q. And you worked with your team to figure out strategies
10 that would comply with the spirit of the PPO, correct?
11 **A. Yes.**
12 Q. And until the transfer happened, fair to say Ms. Davis
13 didn't file any grievances against the school saying
14 that she was unhappy with the protection being given
15 to her, correct?
16 **A. I don't believe I had any grievances with regards to**
17 **the protections we were offering her at that time,**
18 **that would be accurate.**
19 Q. Now, initially after the incident she did request that
20 the student be excluded from her class, correct?
21 **A. Yes.**
22 Q. And that request was in fact granted, correct?
23 **A. That's correct.**
24 Q. Was there ever any consideration to transferring the
25 student to the alternative high school?

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1 **A. No.**
2 Q. Why not?
3 **A. Because the discipline consequence didn't merit such a**
4 **transfer.**
5 Q. When does the discipline get to the point where it
6 does merit a transfer? Is there a certain level --
7 **A. When it rises to physical assault.**
8 Q. Now, the marijuana long-term suspension, is that going
9 to result -- or could that result in him being
10 transferred to the alternative school?
11 **A. That would be a typical behavior infraction that would**
12 **result in transfer to an alternative school.**
13 Q. Do you know if that transfer is going to happen or is
14 it too soon to say?
15 **A. I believe that transfer or that discipline was -- has**
16 **already -- the disposition for that's already taken**
17 **place. I can't tell you specifically where the**
18 **student's at but I do not believe he's at the high**
19 **school currently.**
20 Q. The Jackson High School?
21 **A. Correct.**
22 Q. Okay. So either he is at the alternative high school
23 or he is being home schooled or he is not schooled?
24 **A. He would be someplace other than the high school. I**
25 **don't know the disposition of where he's at at this**

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1 **A. I believe so.**
2 Q. Did the school consider her objections and consider
3 perhaps changing their position?
4 **A. Given the PPO that Ms. Davis filed, or the amended PPO**
5 **Ms. Davis filed, I don't know that there's an**
6 **appropriate response to that other than to transfer**
7 **her.**
8 Q. Are you familiar with Ms. Davis' evaluations since
9 being transferred?
10 **A. I am aware that she was unhappy with her evaluation**
11 **from last year and that we had scheduled a review but**
12 **that that review was postponed mostly because of the**
13 **civil litigation and she wanted to have her attorney**
14 **present.**
15 Q. Prior to her transfer, her performance -- you're not
16 familiar with her performance, are you?
17 **A. I'm not.**
18 Q. In your experience, have you ever seen a teacher go
19 from being highly effective to ineffective within the
20 span of a year?
21 **A. I have.**
22 Q. And in your past experience what has been the reasons
23 for the change in that performance?
24 **A. Could be a variety of reasons.**
25 Q. In your experience?

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1 position?
2 **A. I would say there's always an opportunity to transfer**
3 **back. I don't, I don't arbitrarily tell anyone that**
4 **they can or cannot transfer to a position if it's**
5 **open.**
6 Q. Is that something that the school would consider,
7 meaning removing the current art teacher at Jackson
8 High School and placing her back to the middle school
9 and putting Ms. Davis from the middle school back to
10 the high school?
11 **A. I would reconsider. I have no reason that we wouldn't**
12 **consider it. I haven't received that request but, you**
13 **know, one piece I would say is probably taking a look**
14 **at the student learning to make sure that -- you know,**
15 **at the middle of the trimester probably not, end of**
16 **the trimester potentially. Shy of saying yes or no,**
17 **that would be my answer.**
18 Q. So the art teacher at the Jackson High School
19 currently is Debbie Herse (phonetic) -- or one of the
20 high school art teachers is Debbie Herse. Are you
21 familiar with Ms. Herse?
22 **A. I am.**
23 Q. And prior to coming to Jackson High School to teach
24 art Ms. Herse was assigned to the middle school where
25 Ms. Davis is currently working, which is Parkside?

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1 **A. Okay.**
2 Q. And basically these two individuals switched places?
3 **A. That would be accurate.**
4 Q. Okay. So now that the PPO has been lifted, if
5 Ms. Davis were to request that the two teachers be
6 switched back to their original positions, fair to say
7 the school district would entertain that request?
8 **A. We would consider it.**
9 Q. Does that request have to come through the union or
10 could she just do it independently?
11 **A. The union is there to represent her. She is the one**
12 **with the rights. So it would come from Ms. Davis.**
13 Q. Okay. One second.
14 In our Interrogatories we asked that the
15 school provide us with files related to other teachers
16 who have had issues with students similar to
17 Ms. Davis, and it is in Interrogatory No. 3. I'm
18 going to show it to you, we don't have to mark it, but
19 I'm just going to have you look at Interrogatory No. 3
20 and the answer to that.
21 Interrogatory No. 3 is asking for you to
22 identify all of the JPS employees from 2009 to the
23 present who have been transferred or otherwise
24 disciplined as a result of interactions with students,
25 and the answer, there was an objection, but then the

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EXHIBIT G

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PUPIL EXCLUSION FROM CLASS

TO: Joseph Zessin & Barbara Baird-Paul

FROM: P. Davis

DATE: Sept 2015 — and Oct 12, 15

RE: P[redacted] H[redacted]

In accordance with article XIX, Paragraph F. of the Professional Negotiations Agreement between Jackson Public Schools and the Jackson Education Association, Inc. Jackson, MI (Aug. 28, 1992), which reads, F. 1 - A pupil may be temporarily removed from a classroom by a teacher when the verbal abuse, the grossness of the offense, the persistence of the misbehavior or the disruptive effect of the student interferes with classroom procedures, until action is taken by the appropriate administrator which will allow the pupil to be returned to the class in good standing. The teacher shall furnish the building administrator, as promptly as his/her teaching obligations will allow, with full particulars in writing on the problem, subject to established due process requirements. Verbal abuse of teachers shall be considered a violation of the policies of the Board of Education relative to student conduct. The board pledges that, in cases where such verbal abuse of teachers occurs, policies relative to correction of same will be followed.

F. 2 - A pupil may be permanently removed from class subject to due process requirements for reasons delineated above and when the following courses of action have proved to be ineffective.

(Please Check)

✓ I have talked with the pupil about his/her behavior and have offered suggestions to correct the situation.

✓ I have contacted parents with the concern over their student's behavior.

✓ I have discussed the problem with a counselor and urged intensive counseling for improved behavior.

✓ I have involved the appropriate administrator in the problem and, if appropriate, have asked for a parent meeting.

✓ I have maintained an accurate log describing incidents of persistent misbehavior.

Please give a detailed statement of problem, give details of each item that you checked, and state any other significant information.

Pupil Exclusion From Class Request:

RE: M[redacted]H[redacted]

I have repeatedly talked to M[redacted] about his daily behaviors: Bad language, throwing objects even trying to bully ....Write ups on 9/10,9/11 both disruptive to class not giving up his cell phone rude and very disrespectful. On 9/25 disorderly conduct "f____f____ Defiance of authority ... ask for a meeting and help from Joe Zessin On 9/28 meet with Joe Zsssin and M[redacted]and myself no parents came. I ask for parents to attend and that I was writing up an Exclusion from.

On Sept 9, 10, 11, 25, and 29 Called home no parent would get back with me.

Called and talk with Cindy Smith his Counselor 9/25, 9/29 9/29, 9/30 10/7, 10/9 to name a few dates.

Called and talk to Bob Dillon his football coach 9/28

Tried to get help several time from Joe Zessin with no to little help 9/10 9/11 9/25 9/28, and10/12 to name a few dates.

This young man never wanted to be in art class. He is bound and determined to get out of class no matter the coast to other students learning and their safety and no regards for the teacher safety.

On 10/12/2015

He was threatening to hit and beat the teacher ....then he struck the teacher hard enough to bruise and possibly fracture the teachers hand, (will need to wait 5-7 days for the swelling to go down to know for sure).

I do not feel safe for myself and my students with M[redacted]n any of my classes or homeroom I request he is removed immediately. I do not feel safe with him being at our school.

Thank you;

Ms P. Davis

Sent am 10/12/15
8:41 PM

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EXHIBIT H

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Med Plus South

212 South Main Street Brooklyn, MI 49230 517-592-6047
PHYSICIAN: Gene E. Kielhorn, D.O.

EVALUATION OF: GENERAL X-RAY

PATIENT NAME: DAVIS, PENNIE

AGE / DOB: 01/24/60
ID: 228-0286102 TEST DATE: 10/12/15 RPT DATE: 10/13/15

INDICATIONS: PAIN AND SWELLING

RIGHT HAND:

The right hand was examined in multiple projections. There is minimal narrowing of the interphalangeal joints. No fracture or bone erosion is seen.

IMPRESSION:

MINIMAL NARROWING OF THE INTERPHALANGEAL JOINTS.

Pt notified of results. 10/13/15 KDR

Gene E. Kielhorn, D.O.

Harvey Minkin D.O.
Harvey Minkin, D.O.

Return Chart to M.D.? Y N ☐ Send Progress Report

PHYSICIAN'S REPORT OF WORK STATUS

Name: Davis, Pennie
Date: 11/02/2015
Case #: 377-64-6441
Guar: CCMSI
DOI: 10/15/2015

Time In: _____
Time Out: 1503

Diag: 1. Contusion, hand (923.20).
2. Injury Purposely Inflicted by Person (E960.0).

Employer: Jackson Public Schools
522 Wildwood
Jackson, MI 49201

RECHECK

Date: _____

Time: _____

THERAPY

☐ PT ☐ Work Hardening

at: _____

_____ times per week

Medication Given? Y N

Patient care info given? Y N

WORK STATUS

Discharge from Care: 11/2/15

Regular Work: 11/2 thru _____

Off Work: _____ thru _____

Light Work: _____ thru _____

Limitations:

- ☐ No prolonged walking/standing
- ☐ No repetitive bending/stooping
- ☐ No kneeling or squatting
- ☐ No climbing of stairs or ladders
- ☐ No pushing or pulling
- ☐ No lifting over _____ lbs
- ☐ No reaching above shoulder
- ☐ No operation/work around moving machinery. No driving
- ☐ Ltd/No use of _____
- ☐ Keep bandages clean and dry
- ☐ Avoid exposure to extreme heat or cold
- ☐ Avoid exposure to irritants (dust, solvents, oil)

M.D.

Ut elvas

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EXHIBIT I

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EXHIBIT 2 FOU 29.17

Case Report

Summary

Print Date/Time: 10/21/2015 09:53
Login ID: madams
Case Number: 2015-00029338

Jackson City Police Department
ORI Number: MI3849700

Case

Case Number: 2015-00029338
Location: 544 WILDWOOD AVE
JACKSON, MI 49201
Reporting Officer ID: 007 - Goings

Incident Type: Assault
Occurred From: 10/12/2015 10:30
Occurred Thru: 10/12/2015 11:45
Disposition: Open-Under Investigation
Disposition Date: 10/19/2015
Reported Date: 10/12/2015 14:59 Monday

Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	13001	1313	ASSAULT & BATTERY/SIMPLE ASSAULT	1

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Suspect	1	Higgins, Marcus Eugene	108 LINCOLN CT JACKSON, MI 49203	(517)745-8363	Black	Male	11/23/1999 15
Victim	1	Davis, Pennie Marie	128 HIGHVIEW CT BROOKLYN, MI 49230	(517)881-0972	White	Female	01/24/1960 55
Witness	1	Ekong, Hannah	5500 S JACKSON RD JACKSON, MI 49201		Unknown	Female	08/15/2000 15
Witness	2	Adkins, Alexis	1029 HAMILTON ST JACKSON, MI 49202	(517)795-8832	White	Female	03/06/2001 14

Arrests

Arrest No.	Name	Address	Date/Time	Type	Age

Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.

Vehicles

No.	Role	Vehicle Type	Year	Make	Model	Color	License Plate	State

OfficerID: sgoings, Narrative

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497-29338-15
Off. S. Goings #007
10/12/15 1459 hrs

A&B - Original

Circumstances:
Dispatched to JPD for an assault report in the lobby.

Interview Pennie Davis:
Davis is an art teacher at Jackson High. Davis said she has been having a lot of behavioral problems with a student, Marcus Higgins. Davis said she has written him up many times, and has had to call his parents as well. Davis said Higgins has problems with his temper. Davis said Higgins does not want to be in her class, and she believes this is why he acts out in her class. Davis said the school put Higgins in her class because "there was no place else to put him."

Today Higgins was being disruptive, and when she spoke to him he became angry. She was trying to get him to calm down and eventually had to ask him to leave the class. Higgins then took a swing at her, and ended up punching Davis in the right hand.

Davis said she called security, but said they never came. Eventually Higgins did leave the class. She is not sure where he went. Davis said she has reported this incident to the school, but feels they are not doing much to protect her. Davis added that Higgins is a school football player and is about 6'00" tall, and 200 lbs, which is much bigger than she. Davis is concerned for her safety not only because of today's incident, but because of his past anger problems. Also, after school today some student approached her and told her to "watch out" because Higgins "is angry and wants to hit you."

Davis said the principal is going to suspend Higgins for the next school day, but after that is unknown when he will return.

Injuries/Medical Treatment:
Davis said her right hand is very painful, and she is going to have it checked out. There were no visible injuries at this time, and I did not notice any swelling. Davis noted that she is an artist, and she cannot afford to have an injury to her hand.

Davis called me on 10/12/15 and left me a voicemail. Davis said her hand is badly bruised and painful. She did have an x-ray, but due to the swelling, it was inconclusive. She has to go back for another x-ray in a couple of days.

Interview Principal: Barb Pauli
Pauli said she spoke to Davis right after the incident occurred. Pauli said she touched Davis on her right hand and asked Davis if she was okay, and she said that she was, but said she "bruises easily." Pauli did not see any swelling or bruising. Pauli said the 10th grade principal, Joe Zessin had already taken Higgins to his office. Pauli did not take any further action because Davis had told her that she was "ok."

Pauli said Mr. Zessin had interviewed a couple of the kids that witnessed the incident. Pauli said the consensus was that Higgins, "pushed" Mrs. Davis' hand away.

Interview Witness: Hannah Ekong
Hannah was interviewed by Mr. Zessin right after the incident happened. I had Mrs. Pauli call her down to the office so I could speak to her.

Hannah said Higgins was at his table working and was mumbling to himself. She couldn't really hear what he was saying, but Mrs. Davis walked over to his table and said something to Higgins about threatening her. Higgins kept working and Mrs. Davis reached out and pulled Higgins' paper towards her. He then pulled it back, and when Mrs. Davis reached out for it again, Higgins "brushed" Mrs. Davis' hand away. Mrs. Davis then said "oh you just hit me, now your out for good." She then walked over to the phone, and made a phone call. Higgins then just walked out, and a couple minutes later, Mr. Zessin came in.

Hannah said several times that Higgins "did not hit Mrs. Davis." Hannah said Mrs. Davis was standing across the table from Higgins and Higgins was sitting the whole time.

Interview Witness: Alexis Adkins
Alexis Adkins' name was given to me by the victim, Mrs. Davis. I had Mrs. Pauli call Adkins down to her office.

Adkins said she looked over when she heard Mrs. Davis talking to Marcus Higgins. Adkins said she saw Higgins "push" Mrs. Davis' hand away. Adkins said Higgins definitely did not "hit" Mrs. Davis in the hand. Adkins said she didn't really see what happened leading up to that.

Actions:
Pennie Davis was given the incident number and prosecution instructions. Davis said she does want to prosecute.
Higgins was not at school today, and I was unable to locate him for an interview at this time.

End Report
SMG/007
10/13/15 1820 hrs

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EXHIBIT J

Hon. John G. McBain
P47476

EXHIBIT
3
Pg. 2 of 7

Original - Court
1st copy - Law enforcement agency (file) (green)
2nd copy - Respondent (blue)
3rd copy - Petitioner (pink)
4th copy - Return (yellow)
5th copy - Return (goldenrod)

Approved, SCAO

STATE OF MICHIGAN
4th JUDICIAL CIRCUIT
Jackson COUNTY

PERSONAL PROTECTION ORDER AGAINST A MINOR (NONDOMESTIC), PAGE 1
☐ EX PARTE

CASE NO. 5-54-PJ

Court address
ORI MI- 312 S. Jackson St. Jackson, MI. 49201

Court telephone (517)788-4268

A. Petitioner's name: [redacted]
Address and telephone no. where court can reach petitioner: –

v

Respondent's name, address, and telephone no.: M[redacted] H[redacted]
106 Lincoln, Jackson, Mich. 49203

B. Full name of respondent (type or print)*: M[redacted] H[redacted]

Height	Weight	Race*	Sex*	Date of birth or Age*	Hair color	Eye color	Other identifying information
6'	200lbs	B	M	[redacted] 1993	Black		

Driver's license number (if known):

*These items must be filled in for the police/sheriff to enter on LEIN; the other items are not required but are helpful

C. Full name of respondent's parent, guardian, custodian (type or print): Maurice Hicks
Address and telephone no. if different from above: [redacted]

Full name of respondent's parent, guardian, custodian (type or print): T[redacted] H[redacted]
Address and telephone no. if different from above: [redacted]3

Date: Oct. 12, 2015 Judge: [illegible] Bar no.

1. This order is entered ☒ without a hearing. ☐ after hearing.

THE COURT FINDS:

☒ 2. A petition requesting an order to restrain conduct prohibited under MCL 750.411h and 750.411i and/or MCL 750.411s has been filed under the authority of MCL 600.2950a.
☒ 3. The respondent is less than 18 years of age, is unemancipated, and is not the minor child of the petitioner.
☒ 4. The petitioner is less than 18 years of age, is unemancipated, and is not the minor child of the respondent.
☒ 5. Petitioner requested an ex parte order, which should be entered without notice because irreparable injury, loss, or damage will result from delay required to give notice or notice itself will precipitate adverse action before an order can be issued.
6. Respondent committed the following acts of willful, unconsented contact: (State the reasons for issuance.)
Respondent has allegedly threatened, harassed and in time to the Petitioner.

IT IS ORDERED:

7. M[redacted] H[redacted] is prohibited from
Name
☐ a. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to
☒ following or appearing within sight of the petitioner.
☐ appearing at workplace or the residence of the petitioner.
☒ approaching or confronting the petitioner in a public place or on private property.
☐ entering onto or remaining on property owned, leased, or occupied by the petitioner.
☒ sending mail or other communications to the petitioner.
☒ contacting the petitioner by telephone.
☒ placing an object on or delivering an object to property owned, leased, or occupied by the petitioner.
☐ threatening to kill or physically injure Petitioner
Name
☐ purchasing or possessing a firearm.
☐ other: [illegible]

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OCT 15 2015
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(PLEASE SEE OTHER SIDE)

MCL 600.2950a, MCL 712A.2h, MCR 3.705, MCR 3.707

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STATE OF MICHIGAN
4th JUDICIAL CIRCUIT
Jackson COUNTY

PERSONAL PROTECTION ORDER AGAINST A MINOR (NONDOMESTIC), PAGE 2
☐ EX PARTE

CASE NO. 15-

Court address
ORI MI-
312 S. Jackson St. Jackson, MI. 49201

Court telephone no.
(517)788-4268

Petitioner's name
Jennie Davis

v

Respondent
[redacted]

IT IS FURTHER ORDERED:

7. (continued from page 1)

☒ b. posting a message through the use of any medium of communication, including the Internet or a computer or any electronic medium, pursuant to MCL 750.411s.

8. a. If the respondent is 17 years of age or more, violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty of a violation, the respondent shall be imprisoned for not more than 93 days and may be fined not more than $500.00.

b. If the respondent is less than 17 years of age, violation of this order subjects the respondent to immediate apprehension or being taken into custody. If found guilty of a violation, the respondent shall be subject to the dispositional alternatives listed in MCL 712A.18.

9. This order is effective when signed, enforceable immediately, and remains in effect until OCT 13, 2016. This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than this state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

10. The court clerk shall file this order with JPD/JCSD, who will enter it into the LEIN.
Name of law enforcement agency

11. The respondent may file a motion to modify or terminate this order. If this is an ex parte order, a motion to modify or terminate this order and a request for a hearing must be made within 14 days after the respondent has been served or has received actual notice of this order. Forms and instructions are available from the clerk of the court.

12. A motion to extend the order must be filed 3 days before the expiration date in item 9 or else a new petition must be filed.

13. Other:

RECEIVED
OCT 15 2015
HUMAN RESOURCES
JACKSON PUBLIC SCHOOLS

Oct. 13, 2015
Date and time issued

Judge

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EXHIBIT K

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

PENNIE MARIE DAVIS,

Plaintiff,

vs. Case No. 16-344-CZ

Hon. John G. McBain

JACKSON PUBLIC SCHOOLS,

Defendant,

/

PAGE 1 TO 93

The Deposition of PENNIE MARIE DAVIS,

Taken at 2696 McBlain Drive,

Jackson, Michigan,

Commencing at 10:12 a.m.,

Thursday, February 9, 2017,

Before Christina R. Raymond, CSR 7194.

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1 APPEARANCES:
2 MEGAN BONANNI P52079
3 Pitt, McGehee, Palmer & Rivers, PC
4 117 West Fourth Street, Suite 200
5 Royal Oak, Michigan 48067
6 Telephone: 248.398.9800
7 mbonanni@pittlawpc.com
8 Appearing on behalf of the Plaintiff.
9
10 TIMOTHY J. MULLINS P28021
11 Giarmarco, Mullins & Horton, PC
12 101 West Big Beaver Road, 10th Floor
13 Troy, Michigan 48084
14 Telephone: 248.457.7020
15 tmullins@gmhlaw.com
16 Appearing on behalf of the Defendant.
17
18 ALSO PRESENT:
19 - Ben Pack, Jackson Public Schools.
20
21
22
23
24
25

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25 October 15, 2015 Letter

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1 A. I didn't know it at the time but eventually he was.
2 Q. Well, was he in your classroom at all after -- did you
3 ever teach him again as a student after that date?
4 A. I don't think so. I can't recall because it's been
5 over a year and a half now.
6 Q. Okay. You wanted him out of your classroom?
7 A. At that point, correct.
8 Q. And he was transferred into another classroom in a
9 different part of the building, is that right?
10 A. Across the hall.
11 Q. All right. And --
12 A. As far as I understood.
13 Q. And you sought to have him removed from your workplace,
14 is that right?
15 A. No.
16 Q. You wanted him to continue at the school?
17 A. I wanted him -- two options. I asked for him to either
18 go to alternative school because I believe education is
19 very important especially for this young man too, as
20 all young people. He has a long record not only
21 assaulting a teacher, myself --
22 Q. My question is so you wanted him removed from your
23 workplace?
24 A. At first, yes.
25 Q. And after he was in a different classroom but still in

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1 Q. Showing you what's been marked as Exhibit No. 8.
2 MS. BONANNI: Do you have an extra of this
3 one?
4 MR. MULLINS: Actually I don't but we'll make
5 a copy.
6 MS. BONANNI: Okay.
7 BY MR. MULLINS:
8 Q. That's a PPO you obtained back at that time? September
9 17th, 1997?
10 A. Yes.
11 Q. And you indicated on there that it's making faces and
12 gestures at you and --
13 A. There was more.
14 Q. Moving in and around the school and in groups which he
15 should not have been in; is that what you had written?
16 A. Correct, sir, because at that time we had --
17 Q. Sorry. I just want to confirm if that's what you had
18 written on what we have here as No. 8?
19 A. Yes, sir.
20 Q. And you make reference to the fact in your complaint
21 that you were reprimanded for throwing a book at a
22 student in school, is that right?
23 A. Yes, and I have those papers because that never
24 happened.
25 Q. Okay. And when you say you have those papers are you

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1 around and walk the other way, and that is what is
2 expected of this young man.
3 Q. You're aware that the court order that you obtained
4 said that it is ordered that he is prohibited from
5 appearing at the workplace, at your workplace, you
6 being the petitioner? You may or may not be aware of
7 that?
8 A. No, I was not aware of that.
9 Q. Okay. And if you take a look at Exhibit No. 3,
10 paragraph 7, second box, do you see where it indicates
11 that he is prohibited from appearing at the workplace
12 of the petitioner?
13 A. Yes, but he was still there.
14 Q. And after?
15 A. Yup.
16 Q. Because does he attend school there?
17 A. Correct.
18 Q. You then were transferred to the middle school, is that
19 right?
20 A. Correct.
21 Q. And that was on November 21st after you sought the
22 modification of the PPO?
23 A. I would have to check the dates.
24 Q. Okay. But about that time after you had gone to court,
25 you sought the PPO, he was still in school, and

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1 therefore the school separated you and Maurice by
2 having him be at his school building and having you
3 switch with another teacher in another building,
4 correct?
5 A. Correct.
6 Q. And from that time on you had no further contact,
7 sight, sound, talk, or otherwise with Maurice at the
8 other school at your workplace?
9 A. At the new workplace, correct.
10 Q. The terms and the condition of your employment were
11 still pursuant to the collective bargaining agreement
12 and you continued to be paid?
13 A. I continued to be paid. And that's -- the work
14 environment is completely different than from the high
15 school.
16 Q. Well, it's a different grade level?
17 A. No, besides that. They are also IB. It's like -- if I
18 can explain it this way. And -- okay. You know,
19 European football is considered soccer, correct? It's
20 a metaphor. But here in America football is football.
21 That's how I see these schools.
22 Q. But far afield for me.
23 A. Okay. It's completely different. They have
24 different --
25 Q. Well, we can get to that later. Your attorney can go

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EXHIBIT L

Approved, SCAO

Original - Court
1st copy - Judge/Assignment clerk (green)
2nd copy - Respondent (blue)
3rd copy - Petitioner (pink)
4th copy - Return (yellow)

STATE OF MICHIGAN 4th JUDICIAL CIRCUIT Jackson COUNTY	MOTION TO MODIFY, EXTEND, OR TERMINATE PERSONAL PROTECTION ORDER	(A) CASE NO. 15-2441-PJ

Court address: 312 S. Jackson St. Jackson, MI. 49203

Court telephone no.: (517) 788-4268

(B) Petitioner's name: Pennie Davis | Age: 52

Address and telephone no. where court can reach petitioner:

v

Respondent's name, address, and telephone no.: [redacted] | Age: 5/4

MOTION

(C) 1. On Oct 12th (Date) a personal protection orde[redacted]

(D) 2. ☐ a. I am the respondent. I ask the court to conduct a hearing to ☐ modify ☐ terminate the order.
☐ b. I am the petitioner. I ask the court to conduct a hearing to modify the order.
☒ c. I am the petitioner. I ask the court to ☒ extend ☐ terminate the order.

Explain why you want the order modified, extended, or terminated. If box a. is checked, the respondent must show good cause if the order was issued after a full hearing or if more than 14 days have passed since the order was issued ex parte (without a hearing).

M[redacted] is in the room next to my room and I feel unsafe with him being so close in the area — We have 4 floors and [redacted] to be right next to my room. I have fear. I [illegible] be put in a room next or across from me. The ass[illegible] in the court system.

(E) ☐ 3. I have a next friend motioning for me. I certify that the next friend is not disqualified by statute and is an adult.

(F) Date 11/4/15

Signature of moving party

Complete this Notice of Hearing only if you checked box 2.a. or 2.b. above.

NOTICE OF HEARING

(G) You are notified that a hearing has been scheduled to modify, extend, or terminate the personal protection order issued in this case.

Judge: Hon. John G. McBain P47476

Date: 11/19/2015

Time: 10:30am

Location: RM 405

EXHIBIT 4 2017

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

The court can modify, extend, or terminate the order even if you do not attend the hearing. It is important for you to attend.

(H) Date Nov 4, 15

Signature of moving party

MCL [illegible]

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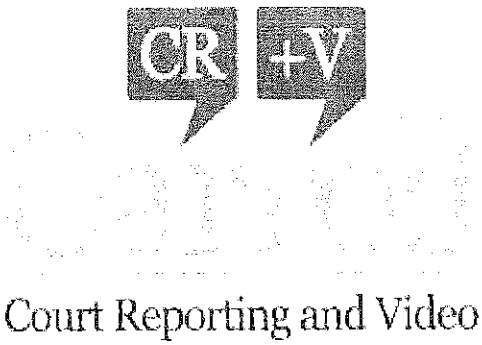
EXHIBIT M

In The Matter Of:

Pennie Davis v. Jackson Public School

Benjamin Pack

February 10, 2017



Court Reporting and Video

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1 questions, correct?
2 **A. Could have done that.**
3 Q. And also I am noticing that this letter references the
4 order because it says "see order for details." Do you
5 see that?
6 **A. I don't see that.**
7 Q. I'll just point it out for you.
8 **A. Okay. Yeah.**
9 Q. Do you see that mention for "see order for details?
10 **A. Um-hmm.**
11 Q. When you read this letter, and it's your testimony
12 that order was not included, did you think to contact
13 Ms. Davis or the union to indicate that the paperwork
14 that you had been provided was deficient?
15 **A. No, because at this particular point from the PPO that**
16 **was originated in the fall to keep the student away**
17 **from Ms. Davis we've already followed the judge's**
18 **request and, number one, he was moved from her class**
19 **and then with a followup to that, the amendment of**
20 **that PPO, Ms. Davis -- that sort of put us in a**
21 **situation where we had to follow the judge's order to**
22 **make sure that Ms. Davis and the student didn't have**
23 **contact.**
24 MS. BONANNI: Okay. We can take a break
25 now.

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1 **A. We did have a middle ground and some more -- another**
2 **course of action had to be taken.**
3 Q. Well, couldn't the course of action to be taken after
4 this modification of the PPO, couldn't that have been
5 to talk to the student and instruct him not to skip
6 class and spend his time in the classroom next door to
7 Ms. Davis?
8 **A. At that point I didn't know that that's what was**
9 **happening.**
10 Q. Well, is there any kind of documentation that would
11 reflect any actions that you took or building
12 administration took with regard to looking into this
13 modified PPO?
14 **A. Again, our concern was for Ms. Davis' safety. We**
15 **received this from the court to make sure we followed**
16 **what was given to us by the court. This appeared to**
17 **be the best resolution.**
18 Q. So you were worried about her safety and yet no one
19 from the school talked to her?
20 **A. You'd have to ask the building principal if she talked**
21 **to her.**
22 Q. Does it make sense to you if I were to -- let's assume
23 that no one talked to her before she got the
24 indication that she was going to be transferred. Does
25 that sound like acceptable protocol to you in a

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1 **A. I don't.**
2 Q. Do you remember saying something to the effect of that
3 you had decided to move her to Parkside because of the
4 fact that she went to the police and filed a PPO and
5 that we don't do that here in this district?
6 **A. I don't remember saying that at all.**
7 Q. Do you remember telling her that she was being moved
8 because she went to the police?
9 **A. I don't recall that either.**
10 Q. Do you remember telling her that if she hadn't filed
11 the PPO she wouldn't be moved?
12 **A. I don't recall that but I think that, again, we had a**
13 **plan of action in place. We did not want to move her.**
14 **Our reaction was to the modification because the first**
15 **plan was obviously not satisfying the court's needs,**
16 **the court's request, and that's how the transfer came**
17 **about.**
18 Q. The only issue that she's raising in the modification
19 of the PPO is the fact that the student is going into
20 the room next to hers, that's the only concern she's
21 raising.
22 **A. And, again, with high school students, young adults,**
23 **they're -- you know, to prevent that from happening in**
24 **the future the decision was made to make sure we**
25 **followed the order just to prevent that from ever**

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EXHIBIT N

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2017 WL 4176268
Only the Westlaw citation is currently available.
United States District Court, M.D.
Tennessee, Nashville Division.

Todd B. PASSMORE, Plaintiff,
v.
MAPCO EXPRESS, INC. and Delek US Holdings, Inc., Defendants.

No. 3:16–cv–01746
|
Filed 09/19/2017

Synopsis

Background: Former district manager of convenience stores filed suit against his employer claiming age discrimination, in violation of Age Discrimination in Employment Act (ADEA) and Tennessee Human Rights Act (THRA), and retaliation, in violation of Title VII, THRA, and Tennessee Public Protection Act (TPPA). Former employer moved for summary judgment.

Holdings: The District Court, Waverly D. Crenshaw, Chief Judge, held that:

[1] manager was employed by subsidiary, not its parent;

[2] company's reasons for terminating manager were legitimate and non-discriminatory, rather than discrimination based on age, in violation of ADEA; but

[3] fact issues precluded summary judgment on claims for retaliation, in violation of Title VII and THRA; and

[4] unlawful retaliation was not sole cause of district manager's termination, as required for TPPA claim.

Motion granted in part and denied in part.

West Headnotes (34)

[1] **Civil Rights** Practices prohibited or required in general; elements

Tennessee Human Rights Act (THRA) claims for discrimination and retaliation are analyzed in the same manner as claims brought under Title VII. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; Tenn. Code Ann. § 4-21-101 et seq.

[2] **Civil Rights** Multiple entities; third parties

Under the "single employer" or "integrated enterprise doctrine," two companies may be considered so interrelated that they constitute a single employer subject to liability under the ADEA. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[3] **Civil Rights** Multiple entities; third parties

In determining whether to treat two entities as a single employer for purposes of liability under the ADEA, court examines four factors: (1) interrelation of operations, i.e., common offices, common record keeping, shared bank accounts and equipment; (2) common management, common directors and boards; (3) centralized control of labor relations and personnel; and (4) common ownership and financial control. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[4] **Civil Rights** Multiple entities; third parties

Control over labor relations is the central concern when determining whether to treat two entities as a single employer for purposes of liability under ADEA. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[5] **Civil Rights** Multiple entities; third parties

The "joint-employer doctrine" involves a business that maintains sufficient control over some or all of the formal employees of another business so as to qualify as those employees' employer, for purposes of liability under ADEA,

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while the two businesses are in fact independent. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[6] **Civil Rights** Multiple entities; third parties

Whether a joint employer relationship exists, for purposes of liability for ADEA violations, depends upon such factors as: (1) supervision of employees' day to day activities; (2) authority to hire or fire employees; (3) promulgation of work rules and conditions of employment; (4) work assignments; and (5) issuance of operating instructions. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[7] **Civil Rights** Multiple entities; third parties

Joint employer status exists, for purposes of liability under ADEA, where two or more employers exert significant control over the same employees, and where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[8] **Civil Rights** Multiple entities; third parties

The agency theory of liability for ADEA violations examines whether the person or entity that took the allegedly illegal employment action was acting as the agent of another company, which may then be held liable as the plaintiff's employer. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[9] **Civil Rights** Multiple entities; third parties

To be an agent within the context of liability for violations of ADEA, entity must be an agent with respect to employment practices. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[10] **Civil Rights** Multiple entities; third parties

District manager of convenience stores was employed solely by subsidiary who had made offer of employment to him, rather than by parent company or a combination of the two, for purposes of liability for violations of ADEA; even though parent and subsidiary shared common headquarters, the two had different presidents, individual bank accounts, different capital structures, separate financial records, and independent employee payrolls, and subsidiary, not parent, owned and controlled its own real estate, equipment, and supplies. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[11] **Civil Rights** Nature and existence of employment relationship

To make out a prima facie case of either discrimination or retaliatory termination under Title VII, plaintiff must first prove defendant was his employer. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[12] **Civil Rights** Multiple entities; third parties

Even if a parent company has some influence over its subsidiary in certain employment decisions, it is not an "employer," for purposes of liability for Title VII violations, if it does not control those decisions in the manner seen in single employer situations. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[13] **Civil Rights** Discharge or layoff

A bona fide reduction in force (RIF) occurs, as will change elements of prima facie case of age discrimination under *McDonnell Douglas* burden-shifting analysis, when business considerations cause an employer to eliminate one or more positions within the company. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

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[14] **Civil Rights** Discharge or layoff

Civil Rights Promotion, demotion, and transfer

Civil Rights Adverse actions in general

Civil Rights Discharge or layoff

An employer's reduction in force (RIF) may not be used as a disguised adverse action to remove or demote a particular employee, in violation of ADEA or Title VII. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.; Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[15] **Civil Rights** Discharge or layoff

Civil Rights Discharge or layoff

In context of ADEA and Title VII violations, an employee is not eliminated as part of a work force reduction (RIF) when he or she is replaced after his or her discharge. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.; Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[16] **Civil Rights** Discharge or layoff

Civil Rights Discharge or layoff

An employee is not "replaced" following elimination of his position due to reduction in force (RIF), as required to support claim for violation of ADEA or Title VII based on adverse action, when another employee is assigned to perform his duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.; Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[17] **Civil Rights** Discharge or layoff

Civil Rights Discharge or layoff

An employee is "replaced" following elimination of his position due to reduction in force (RIF), as will support claim for violation of ADEA or Title VII based on adverse action, only when another employee is hired or reassigned to perform the plaintiff's duties. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.; Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[18] **Civil Rights** Practices prohibited or required in general; elements

To prove a prima facie case of age discrimination, an employee must demonstrate that: (1) he or she was a member of a protected age class, i.e., at least 40 years old; (2) he or she suffered an adverse employment action; (3) he or she was qualified for the job or promotion; and (4) the employer gave the job to a younger employee. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[19] **Civil Rights** Age discrimination

When an employee is terminated as part of a reduction in force (RIF), the employee must meet a heightened standard to prove his prima facie case of age discrimination under ADEA; he must present additional direct, circumstantial, or statistical evidence tending to indicate that employer singled him out for discharge for impermissible reasons. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[20] **Civil Rights** Age discrimination

On claim for age discrimination, in violation of ADEA, plaintiff bears ultimate burden of persuading court that he has been the victim of intentional discrimination. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[21] **Civil Rights** Age discrimination

In evaluating pretext and plaintiff's ultimate burden on claim for age discrimination, in violation of ADEA, court should consider all evidence in the light most favorable to plaintiff, including the evidence presented in the prima

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facie stage. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[22] **Civil Rights** Motive or intent; pretext

Convenience store operator's reasons for terminating 42-year-old district manager, in that there was a division reshuffling and reorganization, and the manager had been under-performing, were legitimate and non-discriminatory, rather than discrimination based on age, in violation of ADEA. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[23] **Civil Rights** Age discrimination

The isolated fact that a younger person eventually replaces an older employee is not enough to permit a rebuttal inference that the replacement was motivated by age discrimination, on claim for violation of ADEA. Age Discrimination in Employment Act of 1967 § 2, 29 U.S.C.A. § 621 et seq.

[24] **Civil Rights** Practices prohibited or required in general; elements

To establish a prima facie case of retaliation under Title VII, plaintiff must demonstrate that: (1) he engaged in activity protected by Title VII; (2) his exercise of such protected activity was known by defendant; (3) thereafter, defendant took an action that was materially adverse to plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[25] **Civil Rights** Causal connection; temporal proximity

Both Title VII and Tennessee Human Rights Act (THRA) retaliation claims must be proved according to traditional principles of but-for causation, and this requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; Tenn. Code Ann. § 4-21-101 et seq.

[26] **Civil Rights** Causal connection; temporal proximity

"But-for" causation required to prove claim under Title VII for retaliation is the same thing as "because of," "by reason of," or "based on" causation. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[27] **Civil Rights** Retaliation claims

Where an adverse employment action occurs very close in time after an employer learns of a protected activity, such temporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation under Title VII. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.

[28] **Federal Civil Procedure** Employees and Employment Discrimination, Actions Involving

Genuine issue of material fact as to whether convenience store district manager's protected activity of complaining to company's vice president and director of operations about company's unfair treatment of Egyptian employees and customers was but-for cause of his termination four months later, precluded summary judgment on manager's claim against convenience store operator for retaliation, in violation of Title VII and Tennessee Human Rights Act (THRA). Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; Tenn. Code Ann. § 4-21-101 et seq.

[29] **Federal Civil Procedure** Admissibility

On motion for summary judgment, the question is not whether documents in support of motion have already been authenticated; rather the issue is whether they can be presented in a form admissible at trial. Fed. R. Civ. P. 56.

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[30] **Labor and Employment** Reporting or Opposing Wrongdoing; Criticism and "Whistleblowing"

The Tennessee Public Protection Act (TPPA) is a narrowly crafted exception to the long-established common law employment-at-will doctrine. Tenn. Code Ann. § 50-1-305.

[31] **Labor and Employment** Reporting or Opposing Wrongdoing; Criticism and "Whistleblowing"

Labor and Employment Refusal to Engage in Wrongdoing

The Tennessee Public Protection Act (TPPA), sometimes referred to as Tennessee's Whistleblower Act, includes both: (1) discharge in retaliation for refusing to remain silent about illegal activities, and (2) discharge in retaliation for refusing to participate in illegal activities. Tenn. Code Ann. § 50-1-305.

[32] **Labor and Employment** Causal connection; temporal proximity

The Tennessee Public Protection Act (TPPA) requires plaintiff to prove that retaliation for protected conduct was the sole reason, not just the but-for reason, for an adverse employment action. Tenn. Code Ann. § 50-1-305.

[33] **Civil Rights** Causal connection; temporal proximity

Labor and Employment Causal connection; temporal proximity

An employer may be liable under "but-for" causation under Title VII for retaliation if other factors contributed to its taking an adverse action against an employee, as long as the protected conduct was the factor that made a difference, but "sole cause," as required for Tennessee Public Protection Act (TPPA) claim, is the only cause that, from a legal viewpoint, produces an event or injury. Civil Rights Act of 1964 § 701, 42 U.S.C.A. § 2000e et seq.; Tenn. Code Ann. § 50-1-305.

[34] **Labor and Employment** Causal connection; temporal proximity

Unlawful retaliation was not sole cause of district manager's termination, as required to support his claim against convenience store operator for retaliation, in violation of Tennessee Public Protection Act (TPPA); although manager had complained to company leadership of its failure to promote diverse employees, there were other factors in his termination, including manager's store's under-performance, manager's inability to pass an anti-money laundering test, and manager's lowest talent review score of all managers in his division. Tenn. Code Ann. § 50-1-304(b).

Attorneys and Law Firms

Ann Buntin Steiner, The Law Offices of Steiner & Steiner, Nashville, TN, for Plaintiff.

John P. Rodgers, Matthew C. Lonergan, Bradley Arant Boult Cummings LLP, Nashville, TN, for Defendants.

MEMORANDUM

WAVERLY D. CRENSHAW, JR., CHIEF UNITED STATES DISTRICT JUDGE

***1** In this employment case, Mapco Express, Inc. and Delek US Holdings, Inc. have filed a Motion for Summary Judgment (Doc. No. 25) on Todd B. Passmore's claims of age discrimination and retaliation. That Motion has been exhaustively briefed [1] by the parties. (Doc. Nos. 26, 33, 41, 45–1). For the reasons that follow, the Motion will be granted in part and denied in part.

I. Background

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In support of their respective positions, the parties have separate statements of material fact, ostensibly in accordance with Local Rule 56.01. That Rule contemplates the filing of a "concise statement of the material facts as to which the moving party contends there is no genuine issue for trial." L.R. 56.01(b). It also provides that "the non-movant's response may contain a concise statement of any additional fact that the non-movant contends are material and as to which the non-movant contents there exists a genuine issue to be tried." Id. 56.01(c). The purpose of both provisions is "to assist the Court in ascertaining whether there are any material facts in dispute[.]" Id. 56.01(a).

The parties' filings honor Local Rule 56 more in the breach than in the observance. For a single-employee employment discrimination case, the statements of fact are hardly concise. Combined, the parties offer 154 paragraphs of supposedly undisputed material facts and, when the objections are considered, their statements run 120 pages. What's worse is the parties disagree on the question of whether Mapco underwent a reduction in force, and Passmore disputes even the seemingly straight-forward question of whether Mapco was his sole employer for purposes of his claims.

Because of the way that the facts have been presented, the Court finds it appropriate to deviate from its usual course in ruling on a Motion for Summary Judgment. Instead of attempting to set forth a complete statement of the facts at the outset (which would be unwieldy and require a number of disclaimers), the Court will set forth the most basic facts and then discuss additional material facts as they become relevant to the legal analysis.

The basic facts, drawn from the parties' statements and responses (Doc. Nos. 35, 43) are as follows:

A.

Mapco operates convenience stores in several states in the southeastern United States, including Tennessee. Those stores are grouped into districts, and each district has a manager who oversees the operation of all the stores in his or her district. Mapco also groups the districts into divisions, and each division has a division manager.

***2** On November 6, 2009, Passmore signed an offer letter accepting employment with Mapco as a District Manager in Training ("DMIT"). Passmore began his employment with Mapco on January 4, 2010 and, at the time, was 39 years old.

After serving as a DMIT for several months, Passmore was moved into a district manager position in March of 2010. As a district manager, he oversaw the operation of between 9 and 13 stores, with the goal to ensure that they operated at the highest possible profit level.

In 2012, Andrew Heck became the division manager of the Nashville Division, and Passmore reported to Heck. In August of that year, Heck turned 39 years old.

B.

Passmore claims that, on various occasions, he complained to Heck that Heck's comments, actions, and/or directions were discriminatory against individuals and Mapco employees of middle-eastern descent. This included a complaint in January 2013 about not allowing foreign cab drivers to park in a store parking lot that was close to the airport, and not allowing Coptic Christian employees at that same store to keep the store's Christmas decorations up in January. In July 2013, Passmore also complained that Mapco's Anti–Money Laundering ("AML") compliance program and testing targeted specific employees in his district because of their ethnicity or national origin. Passmore also claims that at some point in 2013, Heck made comments and/or took other actions that Passmore considered discriminatory against Mapco employees of Egyptian descent, including (1) asking a then-district manager to repeat a joke that Passmore's stores were "Al–Qaeda training grounds," (2) wanting to move a store manager due to the store manager's race and national origin, (3) paying non–Egyptian store managers more in gift cards than Egyptian store managers for covering other stores, and (4) not moving an Egyptian store manager from one store to another because Heck did not want Nolensville Road (where the store was located) run "by a bunch of Egyptians."

In the Nashville Division there were 11 districts identified as District 1A to District 1K. In June 2013, Mapco realigned the Nashville Division and assigned Passmore to District 1C.

In the third quarter of 2013 and leading up to November 2013, there were only nine district managers for the eleven Nashville districts. To fill the two open district manager positions, Heck hired Jan Rakoczy and promoted Garrett Wagner, a Mapco store manager, to serve as DMITs. Although

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both had to undergo weeks of training before being permitted to run a district, Rakoczy signed an offer letter accepting a district manager position on August 28, 2013, and Wagner did the same on October 2, 2013.

C.

At this point, the parties' versions of events markedly differs. Defendants claim that, in mid–October 2013, Tony Miller, Mapco's acting president, informed Heck that Heck needed to eliminate a district manager position in the Nashville Division. This was allegedly required as a part of Mapco's move to eliminate a district manager in four divisions (Nashville, Chattanooga, Memphis, and Alabama), plus a loss prevention specialist, as part of budget cuts. Accordingly, Heck gathered financial data for the third quarter of 2013 for purposes of conducting "talent reviews" on the district managers working in his division. Under the category "performance management," the talent review measured "core responsibilities" and "behaviors." To determine the "core responsibilities" portion of the review, Heck created a spreadsheet that measured the financial performance of his district managers for the third quarter of 2013.

***3** With the exception of EBITDA[2] for which Passmore received a score of 4 ("exceeding expectations"), Passmore received a 2 ("needs improvement") on all of the "core responsibilities." Concerning "behaviors," Heck rated Passmore a 5 ("greatly exceeds expectations") for being "persistent" and "opportunistic," but rated Passmore a 1 ("below standards") for each of the following categories: "proud/excellence," "trustworthy/respect," "accountability," and "customer first."

According to Heck, Passmore received the lowest talent review score of all of the district managers in the Nashville Division. Heck also claims that he sought input about who to fire from Steve Adcox, his Assistant Division Manager, as well as Mike Terrell, who Defendants claim was Mapco's Director of Loss Prevention but Passmore claims was DelekUS AML's Compliance Officer. Regardless, Terrell claims that Heck was wavering between terminating Passmore or another district manager, but Terrell told him to let Passmore go. This was because, while the other manager (whose name he did not recall during his deposition) was also under-performing, Heck's "shrink[3] performance was very, very poor." (Doc. No. 25–7, Terrell Depo. at 59). Terrell also believed that the other manager was already looking for a job and would probably leave of his own volition, whereas Passmore "would probably not leave voluntarily." (Id.).

Heck ultimately decided to eliminate Passmore's position and terminate his employment. Defendants claim Heck discussed his decision with Miller and Jennifer Boulton, who Defendants claim was Mapco's Vice President of Organizational Development at the time, but who Passmore claims held that role as an employee of Delek. Both allegedly approved Passmore's termination.

On November 8, 2013, Boulton informed Passmore that he was being terminated because his position was being eliminated. Passmore admits that is what he was told, but claims it was a pretext used to fire him for unlawful reasons. In this regard, Passmore asserts that (1) the talent review was not signed and dated by Heck until November 20, 2013, weeks after the termination; (2) many of the numbers Heck used actually favored retaining Passmore over any of a number of the other District Managers; (3) Passmore received bonuses and awards shortly before he was fired; and (4) the day after his termination Wagner and Rakoczy were promoted to the position of division managers and the number of division managers increased from 9 to 10.

The parties' differences go far beyond those just recounted, but are more than enough to place their arguments in context. The issue becomes whether the differences are material and whether they require a jury trial on any one or more Passmore's claims.

II. Summary Judgment Standard

As this Court has noted in the past, the standard governing summary judgment has been restated on countless occasions and is well known. It suffices to note: (1) summary judgment is only appropriate where there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law, Fed. R. Civ. P. 56(a); (2) the facts and inferences must be construed in favor of the nonmoving party, Van Gorder v. Grand Trunk W. R.R., Inc., 509 F.3d 265, 268 (6th Cir. 2007); (3) the Court does not weigh the evidence, or judge the credibility of witnesses when ruling on the motion, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); and (4) the mere existence of a scintilla of evidence in support of the nonmoving party's position is insufficient to survive summary judgment, Rodgers v. Banks, 344 F.3d 587, 595 (6th Cir. 2003).

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III. Legal Analysis

***4** **[1]** Passmore brings both federal and state law claims. He alleges age discrimination in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.* and the Tennessee Human Rights Act ("THRA"), Tenn. Code Ann. § 4–21–101, *et seq.* He also alleges retaliation in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.*, the THRA,[4] and the Tennessee Public Protection Act ("TPPA"), Tenn. Code § 50–1–305.[5] Prior to reaching those claims, the Court must addresses whether Delek also employed Passmore, and whether Mapco underwent a reduction in force.

A. Delek as an Employer

Passmore argues that both Delek and Mapco were his employers. That argument fails whether considered under the single employer/integrated enterprise, joint employer, or agency theories of liability.

[2] **[3]** **[4]** "Under the 'single employer' or 'integrated enterprise' doctrine, two companies may be considered so interrelated that they constitute a single employer subject to liability under the ADEA and/or the ADA." Swallows v. Barnes & Noble Book Stores, Inc., 128 F.3d 990, 993 (6th Cir. 1997). "In determining whether to treat two entities as a single employer, courts examine the following four factors: (1) interrelation of operations, i.e., common offices, common record keeping, shared bank accounts and equipment; (2) common management, common directors and boards; (3) centralized control of labor relations and personnel; and (4) common ownership and financial control." Id. at 993–94; see N.L.R.B. v. Palmer Donavin Mfg. Co., 369 F.3d 954, 957 (6th Cir. 2004) (identifying those four factors as the "well-established criteria" for determining integrated enterprise status). Although "[n]one of these factors is conclusive, and all four need not be met in every case..., control over labor relations is a central concern." Id. (citing Armbruster v. Quinn, 711 F.2d 1332, 1336–37 (6th Cir. 1983)).

[5] **[6]** **[7]** "The joint-employer and single-employer doctrines are analytically distinct." Sanford v. Main St. Baptist Church Manor, Inc., 449 Fed.Appx. 488, 495 (6th Cir. 2011). "The joint-employer doctrine involves a business that maintains sufficient control over some or all of the formal employees of another business as to qualify as those employees' employer; unlike in the single-employer context, the two businesses are in fact independent." Id. at 491. The Sixth Circuit has stated that "[w]hether a joint employer relationship exists depends upon 'such factors as the supervision of the employees' day to day activities, authority to hire or fire employees, promulgation of work rules and conditions of employment, work assignments, and issuance of operating instructions.' " N.L.R.B. v. Centra, Inc., 954 F.2d 366, 370 n.2 (6th Cir. 1992) (quoting W.W. Grainger, Inc. v. NLRB, 860 F.2d 244, 247 (7th Cir. 1988)). Similarly, the Sixth Circuit has indicated that joint employer status exists where "two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." Carrier Corp. v. N.L.R.B., 768 F.2d 778, 782 (6th Cir. 1985); see Elkin v. McHugh, 993 F. Supp. 2d 800, 806 (M.D. Tenn. 2014) (citation and internal quotation omitted) ("To be a joint employer, VII requires the two entities to share or co-determine those matters governing essential terms and conditions of employment.... The major factors are the authority to hire, fire, discipline, affect compensation and benefits, and direct and supervise performance.").

***5** **[8]** **[9]** Finally, the "third approach examines whether the person or entity that took the allegedly illegal employment action was acting as the agent of another company, which may then be held liable as the plaintiffs' employer." Swallows, 128 F.3d at 993 (citing Deal v. State Farm Cty. Mut. Ins. Co. of Tex., 5 F.3d 117 (5th Cir. 1993)). "An agent is one who consents to act on behalf of another and subject to the other's control." Id. at 996 (citing RESTATEMENT (SECOND) OF AGENCY § 1 (1958)). "An agent within the context of the ADEA and other employment discrimination statutes must be an agent with respect to employment practices." Id.

[10] Regardless of the theory used, the evidence before the Court establishes that Passmore was employed solely by Mapco, not by Mapco and Delek or some combination of the two. Mapco was a subsidiary of Delek until Mapco was sold in November 2016. During all relevant times, Mapco and Delek had different presidents. They also had separate bank accounts, capital structures, financial records, and employee payrolls. Although the two companies shared a common headquarters, Mapco owned and controlled all of its own real estate, equipment and supplies.

More specifically in relation to Passmore, the offer letter he received made clear that he was going to work for Mapco.

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It began by saying that the company was "excited about your decision to join us at Mapco Express," and continued on to point out that "Mapco Express has an excellent comprehensive medical and dental insurance plan." (Doc. No. 38–8 at 1). At the conclusion of the letter, Passmore evidenced his intent to work for Mapco Express by signing and dating the following statement:

> I agree to the above terms of this offer of employment with MAPCO Express. I understand that this does not constitute an employment contract for any specific term, and does not alter the at-will nature of my employment with MAPCO Express.

(Id. at 2).

Furthermore, Passmore admitted in his deposition that he "was employed by Mapco Express," and acknowledged that the Position Overview for the District Manager position he held listed Mapco Express as the "appropriate company." (Doc. No. 25–3, Passmore Depo. at 30 and Exh. 4). All of the W–2 Wage and Tax Statements that Passmore received during his employment also identified Mapco Express as his employer. (Doc. No. 25–1 at 7–11).

[11] "To make out a *prima facie* case of either... discrimination or retaliatory termination under Title VII, a plaintiff must first prove the defendant was h[is] employer." Knitter v. Corvias Military Living, LLC, 758 F.3d 1214, 1225 (10th Cir. 2014); see Tipton v. Northrup Grumman Corp., 242 Fed.Appx. 187, 190 (5th Cir. 2007) (stating that plaintiffs have the "burden of coming forth with 'specific facts' " to establish that the parent company is an employer); Sanford, 449 Fed.Appx. at 495 (observing that for purposes of satisfying the numerosity threshold for employer liability under Title VII, the employee has the burden of establishing single-employer doctrine). Although he raises a number of arguments, Passmore falls far short of carrying that burden in relation to Delek.

A lot of Passmore's arguments are based upon the mistaken contention that Boulton and Miller were Delek employees during the relevant period. He claims that "Human Resources was run by Jen Boulton, an employee of Delek," and that both she and Miller "worked for both companies," with Miller serving as Delek's Acting President when Passmore was fired." (Doc. No. 33 at 34–35). Both, allegedly, "had input into the decision to fire Plaintiff" and approved "the initial hiring and promotions of Wagner and Rakoczy to district manager positions." (Id. at 36).

***6** However, Boulton testified in her deposition that she went to work for Mapco as the Vice President of Organizational Development in May of 2011, and that a "[y]ear and a half to two years" before her deposition on January 17, 2017, she "moved officially from working for the legal entity of MAPCO, and ...officially moved over to working for the legal entity of Delek US." (Doc. No. 25–6, Boulton Depo. at 7–8, 11). This suggests Boulton moved from Mapco to Delek in January 2015 at the earliest and was, therefore, was employed by Mapco at the time of the events giving rise in this suit. Passmore has not shown otherwise.

As for Miller, Passmore asserts that Miller testified in his deposition that he worked for Delek, not MAPCO, from 2009 onward. However, what Miller actually stated was that, even though he started working for Delek in 2009 as Vice President of Merchandising, he was the Acting President or President of "retail operations" at the time Passmore was fired, (Doc. No. 25–2, Miller Depo. at 4–5), meaning he held the role as an employee of Mapco. This is confirmed by the declaration of Amy Harrison, Senior Counsel for Delek US Holdings, who avers that, beginning in the Summer of 2013 and for the remainder of that year, Miller served as Mapco's President and was responsible for the day-to-day operations of that company. (Doc. No. 25–1, Harrison Decl. ¶¶ 8–9). Again, Passmore has not established otherwise.

Passmore also argues that in a 2013 Form 10–K filed with the Securities and Exchange Commission, Delek claimed "3,018 employees in its retail segment and stated these workers were employees of Delek." (Doc. No. 33 at 35). This, however, is too broad a reading of the 10–K. What it actually states is that, "[a]s of December 31, 2013, *we* had 4,366 employees, of whom 1,098 were employed in our refining segment, 124 were employed by Delek for the benefit of our logistics segment, 3,018 were employed either full or part-time in our retail segment and 126 were employed at our corporate office," with the "we" referring to "Delek US Holdings, Inc. and its consolidated subsidiaries." (Doc. No. 38–1 at 3, 23). The Form 10–K also identifies MAPCO Express, Inc. as one of Delek's subsidiaries, and later indicates that the "retail segment" of Delek was operated under various names, including Mapco Express and Mapco Mart. (Id. at 2, 3, 17).

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Passmore next argues that Delek and MAPCO used each other's letterheads and logos interchangeably and shared risk management functions, Delek's internal audit group audited Mapco's compliance program, and Delek and Mapco shared a common headquarters and employee handbook. He cites E.E.O.C. v. Dolphin Cruise Line, Inc., 945 F. Supp. 1550 (S.D. Fla. 1996) for the proposition that the use of shared logos/letterheads, offices and services are deemed to be a "strong indicia of interrelated operations." (Doc. No. 33 at 34–35). However, the court in Dolphin Cruise noted that there must be "sufficient indication that there is such active interrelationship between the entities that they can be regarded as a single employer of the charging party," and this determination must be based upon the "totality of the circumstances[.]" 945 F. Supp. at 1553. The totality of the circumstances in that case suggested a single employer because the following factors were also present: the sole owner of one company was also the president of both; lower level managers of both corporations assisted each other in the daily operations of the company; the parent company made employment decisions for both companies; and the companies were "marketed as twin operations," among many other things. Id. at 1554. See also Ahumada v. Belcher Mgmt., LLC, 2014 WL 2832674, at *5 (M.D. La. June 23, 2014) (finding that the parent company was not employer even though employee received documentation and policies under its letterhead when the decision was made by the subsidiary and employees paychecks came from the subsidiary); Ennis v. TYCO Int'l Ltd., 2004 WL 548796, at *4 (S.D.N.Y. Mar. 18, 2004) (rejecting single employer doctrine even though plaintiff's business cards and letterhead indicated that Sontirol was a Tyco company, plaintiff was encouraged to mention that affiliation in sales pitches, the benefit plans were administered by Tyco, plaintiff agreed to abide by Tyco's employment guidelines manual, and Tyco advertised itself as an employer of more than 200,000 people worldwide, including Sonitrol employees).

***7** **[12]** As Passmore recognizes, the critical question is "what entity made the final decisions regarding employment matters related to the person claiming discrimination." Swallows, 128 F.3d at 995. "Essentially, this factor seeks to determine which entity has the power to hire and fire the employee." Lisenbee v. FedEx Corp., 579 F. Supp. 2d 993, 1002–03 (M.D. Tenn. 2008) (citation omitted). "Even if a parent company has some influence in certain employment decisions... the factor is not satisfied if it does not control 'those decisions in the manner seen in single employer situations.' "Id. (citation omitted)

Passmore has not shown that Delek hired him, that Delek made the final decision to fire him, or that there was centralized control of labor relations and personnel as between Delek and Mapco. As such, his claims against Delek are subject to dismissal because Delek was not his employer.

B. Reduction In Force or "RIF"

In addition to disputing who employed Passmore, the parties dispute whether he was terminated as a part of a reduction in force. The significance of this dispute lies in the fact that (as discussed below) the elements of a *prima facie* case of age discrimination under McDonnell Douglas Corp. v. Green differ depending upon whether there was a *bona fide* RIF.

[13] **[14]** "A work force reduction situation occurs when business considerations cause an employer to eliminate one or more positions within the company." Bell v. Prefix, Inc., 321 Fed.Appx. 423, 428 (6th Cir. 2009). Although "[a]n employer need not dismiss any particular number of employees, or terminate a set percentage of the work force, to institute a reduction in force," LeBlanc v. Great Am. Ins. Co., 6 F.3d 836, 845 (1st Cir. 1993), "[a] RIF is not an open sesame to discrimination, Matthews v. Commonwealth Edison Co., 128 F.3d 1194, 1195 (7th Cir. 1997), and thus "may not be used as a disguised adverse action to remove or demote a particular employee," Gandola v. F.T.C., 773 F.2d 308, 312 (Fed. Cir. 1985).

[15] **[16]** **[17]** The Sixth Circuit has "described the inquiry a court must undertake to determine whether an employee was terminated as part of a reduction in force:

> ...'An employee is not eliminated as part of a work force reduction when he or she is replaced after his or her discharge. However, a person is not replaced when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work. A person is replaced only when another employee is hired or reassigned to perform the plaintiff's duties.' "

Pierson v. Quad/Graphics Printing Corp., 749 F.3d 530, 537 (6th Cir. 2014) (quoting Barnes v. GenCorp, 896 F.2d 1457, 1465 (6th Cir.1990)).

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Mapco insist that there was a valid RIF because it eliminated a district manager position in the Nashville Division, three district manager positions in the other divisions, and a loss prevention specialist position. That is, five positions were eliminated.

From Passmore's perspective there was no RIF. The day before he was terminated there were 9 district managers in Nashville and the day after there were 10 because Mapco promoted both Wagner and Rakoczy from their positions as DMITs.

The foregoing is a simplistic version of the parties's position on the question of whether there was a reduction of force. Despite the parties' wasting a great deal of ink on the issue, the Court finds it unnecessary to spill more, other than to note two common sense observations. First, if there was not truly a RIF, Mapco undertook an elaborate ruse to manufacture one in an effort to get rid of Passmore for nonpretextual reasons. Second, if there was a legitimate RIF, one would expect the decision to be covered with paperwork in the form of emails, letters and/or corporate directive, yet the primary support for Mapco's contention is that Miller supposedly instructed Heck to eliminate a position in Nashville. Even then, Mapco does not rely on Miller for this assertion perhaps because his recollection (according to his deposition testimony) is sketchy at best. Nevertheless, it is unnecessary to determine whether this case should be analyzed as a RIF case because the result is the same either way: Passmore has failed to present a jury question on his age discrimination or TPPA claims, but he has provided sufficient questions of fact so as to warrant a jury trial on his retaliation claims under Title VII and the THRA.

C. Age Discrimination

***8** **[18]** **[19]** "Typically, to prove a prima facie case of age discrimination, an employee must demonstrate that '(1) he or she was a member of a protected age class (i.e., at least forty years old); (2) he or she suffered an adverse employment action; (3) he or she was qualified for the job or promotion; and (4) the employer gave the job to a younger employee.' " Pierson, 749 F.3d at 536 (quoting Blair v. Henry Filters, Inc., 505 F.3d 517, 529 (6th Cir. 2007)). "However, when an employee is terminated as part of a reduction in force, the employee must meet a heightened standard to prove his prima facie case: He must present 'additional direct, circumstantial, or statistical evidence tending to indicate that the employer singled [him] out...for discharge for impermissible reasons.' " Id. at 536–37 (quoting Barnes, 896 F.2d at 1465).

[20] **[21]** Whether a RIF case or not, when a plaintiff submits evidence from which a reasonable jury could conclude that a prima facie case of discrimination has been established, "[t]he defendant must then offer sufficient evidence of a legitimate, nondiscriminatory reason for its action." Macy v. Hopkins Cty. Sch. Bd. of Educ., 484 F.3d 357, 364 (6th Cir. 2007) (citing Monette v. Elec. Data Sys. Corp., 90 F.3d 1173, 1186 (6th Cir. 1996)). "If the defendant does so, the plaintiff must identify evidence from which a reasonable jury could conclude that the proffered reason is actually a pretext for unlawful discrimination." Id. "The plaintiff's burden to demonstrate pretext in the final step then 'merges with the ultimate burden of persuading the court that [ ]he has been the victim of intentional discrimination.' " Provenzano v. LCI Holdings, Inc., 663 F.3d 806, 812 (6th Cir. 2011) (quoting Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)). "In evaluating pretext and the plaintiff's ultimate burden, the court should consider all evidence in the light most favorable to the plaintiff, including the evidence presented in the prima facie stage." Id. (citing Peck v. Elyria Foundry Co., 347 Fed.Appx. 139, 145 (6th Cir. 2009)).

If, as Mapco contends, there was a *bona fide* reduction in force, Passmore's age discrimination case fails at the *prima facie* stage. He does not argue, let alone point to any evidence, that would suggest Mapco singled him out for discharge because of his age. All he really argues is that he was 42 when fired, Wagner was 33 when he became a district manager, and an age difference of 6 ½ years "is sufficient to create an issue of material fact at the summary judgment stage." (Doc. No. 33 at 20 (citing Blizzard v. Marion Tech. Coll., 698 F.3d 275, 284 (6th Cir. 2012)). This is true enough but irrelevant in a reduction in force case because, by definition, the employee is not replaced. See Johnson v. Franklin Farmers Co–op., 378 Fed.Appx. 505, 510 (6th Cir. 2010) (stating that in RIF, "[a]n employee is not replaced for purposes of the fourth element of a prima facie case of discrimination when another employee is assigned to perform the plaintiff's duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work"); Schram v. Schwan's Sales Ent., Inc., 124 Fed.Appx. 380, 384 (6th Cir. 2005) (observing that in "a true RIF, the ultimate question is whether [one employee] replaced [another]").

[22] If, as Passmore contends, there was no true reduction in force, his age claims fail because Mapco has presented legitimate non-discriminatory reasons for termination, *i.e.* a division reshuffling or reorganization and alleged under-

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performance, and Passmore has not shown those reasons to be a pretext for *age* discrimination, or that those reasons did not actually or were not sufficient to motivate Mapco's decision, or even that they had no basis in fact. It is undisputed that, at the time of Passmore's firing, Heck was 40 years old, and in the protected class. It is also undisputed that Rakoczy, who was one of the DMIT's that became a division manager, was the same age as Passmore. And it is further undisputed that as of the time Passmore's termination, the ages of the remaining District Managers or DMITs in the Nashville Division were as follows: Ken Aggers (60), Tim Sprankle (55), Terry Cheffins (52), Mike Nelson (43), Bryan Quince (38), Michael Hurt (33), Jonathan Hutzel (33), Garrett Wagner (33), and Catherine Hart (32). In short, four district managers were older than Passmore, three significantly so. Passmore's termination based on age did a very poor job of lowering the average age of District Managers and DMITs.

***9** In its memorandum, Mapco argues that "[n]o reasonable jury would ever believe that Heck, age 40, chose to terminate Passmore, age 42, on the basis of Passmore's age while four other district managers who were older than Passmore kept their jobs." (Doc. No. 26 at 14). Passmore's response does not address this argument and, other than to confirm that he brings age discrimination claims under both Title VII and the THRA, he does not even mention age discrimination in his sur-reply.

[23] In his deposition, Passmore testified that the only basis for his age discrimination claim is the fact that he was over 40 at the time of his termination and that Wagner, his supposed replacement, was under 40. However, "the sole fact that he was replaced by a younger person is insufficient as a matter of law to raise a genuine dispute of material fact as to whether [Mapco's] nondiscriminatory reason for [firing] him was pretextual." Tennial v. United Parcel Serv., Inc., 840 F.3d 292, 305–06 (6th Cir. 2016). In other words, " '[t]he isolated fact that a younger person eventually replaces an older employee is not enough to permit a rebuttal inference that the replacement was motivated by age discrimination.' " Hedrick v. W. Reserve Care Sys., 355 F.3d 444, 462 (6th Cir. 2004) (quoting Chappell v. GTE Prod. Corp., 803 F.2d 261, 267 (6th Cir. 1986)). Summary judgment will be granted on Passmore's age discrimination claims.

D. Retaliation Claims

As with Passmore's age discrimination claims, his retaliation claims are analyzed under the burden shifting paradigm set forth in McDonnell Douglas. However, the essential elements of a *prima facie* case are different as between retaliation claims under Title VII and the THRA on the one hand, and the TPPA on the other. That difference affects the outcome of those claims and, accordingly, will be analyzed separately.

A. Title VII and the THRA

[24] "The elements of a retaliation claim are similar but distinct from those of a discrimination claim." Laster v. City of Kalamazoo, 746 F.3d 714, 730 (6th Cir. 2014). "To establish a prima facie case of retaliation under Title VII, Plaintiff must demonstrate that: '(1) he engaged in activity protected by Title VII; (2) his exercise of such protected activity was known by the defendant; (3) thereafter, the defendant took an action that was materially adverse to the plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action.' " Id. (quoting Jones v. Johanns, 264 Fed.Appx. 463, 466 (6th Cir. 2007)). For purposes of summary judgment, Mapco challenges only whether there was a causal connection between Passmore's protected activity and his firing.

[25] **[26]** "Title VII retaliation claims must be proved according to traditional principles of but-for causation,"[6] and "[t]his requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 133 S. Ct. 2517, 2533, 186 L.Ed.2d 503 (2013). The same holds true for retaliation claims under the THRA. Goree v. United Parcel Serv., Inc., 490 S.W.3d 413, 440 (Tenn. Ct. App. 2015).

Mapco argues that the last instance of protected activity occurred on July 17, 2013, when Passmore allegedly refused to terminate an Egyptian employee for failing an anti-money laundering quiz because Passmore thought it was discriminatory. Because this was almost four months before the termination, Mapco argues there was no temporal proximity and, furthermore, " 'temporal proximity alone will not support an inference of retaliatory discrimination when there is no other compelling evidence.' " (Doc. No. 26 at 24 (quoting Imwalle v. Reliance Med. Prods., Inc., 515 F.3d 531, 550 (6th Cir. 2008)).

***10** **[27]** Recently, the Sixth Circuit observed that "[i]n some cases temporal proximity alone may be sufficient." Savage v. Fed. Express Corp., 856 F.3d 440, 448 (6th Cir. 2017). "Where the adverse employment action 'occurs very close in time after an employer learns of a protected activity, such temporal proximity between the events is significant

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enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation.' " Id. (quoting Mickey v. Zeidler Tool & Die Co., 516 F.3d 516, 525 (6th Cir. 2008)). The Sixth Circuit went on to observe that it had "not considered any specific ceiling on the period of time that a court will consider sufficient to show temporal proximity," but had "found that a time period of a month or more may establish temporal proximity." Id. (citing Dye v. Office of the Racing Comm'n, 702 F.3d 286, 306 (6th Cir. 2012)) (finding that two months sufficient to show a causal connection); Singfield v. Akron Metro. Housing Auth., 389 F.3d 555, 563 (6th Cir. 2004) (stating that three months was "significant enough to constitute sufficient evidence of a causal connection").

The approximately four-month gap identified by Mapco is perhaps too long a time, standing alone, to show temporal proximity, but Mapco's argument does not take into account that Passmore lists a long litany of complaints about alleged discrimination against Middle–Easterners dating back to January 2013. Passmore also claims to have complained to Adcox in October 2013 about Heck's refusal to promote an employee to a manager slot because the employee was Egyptian, and that, less than a week before his termination, he complained about all of Heck's allegedly discriminatory acts to Brian Veasman, Mapco's Director of Operations.

Mapco shrugs off this evidence. For example, it claims the evidence relating to Veasman is irrelevant because he was not involved in the termination decision and because he claims not to have told Boulton about those complaints. However, Boulton testified in her deposition that Veasman was trained to bring reports about discrimination to Human Resources and that, in fact, it was his duty to forward such complaints to her. At the very least, this raises credibility issues and questions of fact regarding whether Veasman reported Passmore's complaint to Human Resources or Boulton, both of which are for the jury to decide.

[28] Construing the facts in Passmore's favor, whether Mapco's stated reasons for discharge were a pretext for retaliation also raises questions of fact for the jury. Mapco's position throughout has been that there was a reduction in force and that Passmore was let go because he was the poorest performing division manager. As noted, however, whether a RIF occurred is hotly contested. Furthermore, for allegedly being an under-performer, Passmore was the subject of only one counseling form during his employment. He was never formally disciplined for poor job performance, nor was he the subject of a performance improvement plan under Mapco's progressive disciplinary system.

[29] Moreover, for the months of August and September 2013, Passmore received bonuses, while many other district managers did not. In fact, only two of the eleven district managers received more in bonuses during this period than Passmore. [7] Passmore also did better than some of the other Division Managers in several of the categories assessed by Heck.

***11** Additionally, during an October 24, 2013 divisional meeting, Passmore received an award for "Mi Tienda," a program he developed for attracting more ethnic customers to his store, and was also chosen with four others to be placed on Mapco's "Wall of Fame." The award read:

> TODD PASSMORE
>
> This is in recognition of your personal commitment to owning the MY MAPCO state of mind.
>
> You took the initiative to rollout and own the Hispanic program for the company. This has resulted in an increase of $300,000.00 in yearly sales. Your ownership of the business is the highest standards of the MY MAPCO mindset. I personally want to recognize and thank you for all your efforts.
>
> Tony Miller
>
> VP of Operations
>
> Mapco Express

(Doc. No. 38–21 at 1).

Again, Mapco dismisses this evidence as not probative. It claims the Passmore's receipt of the Mi Tienda award "does not show that Mapco's reasons for selecting Passmore as the District Manager to divest were unworthy of credence," and, besides, the program "is no longer in existence." (Doc. No. 49 at 7). Maybe so, but giving Passmore an award that recognized a huge increase in sales, lauding his "high standards," and selecting him for the "Wall of Fame" less than a month before his termination at the very least presents a credibility question for the jury. (Doc. No. 41 at 10).

Further, the fact that Boulton testified bonuses were not necessarily based on a district manager's performance "but could depend on what was going on in a particular area... such

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as fuel pricing or a competitor shutting down across the street, (Doc. No. 49 at 7–8), does not rule out the possibility that Passmore actually received the bonuses for performance. As for non-receipt of progressive discipline, Mapco claims that there was discretion in the form the discipline imposed, but this argument does not negate the fact that Passmore received only one counseling.

Finally, Mapco argues that Heck rated Passmore lowest among the district managers, but Heck is also the one who was the subject of Passmore's discrimination complaints. A jury could view Heck as biased, that he selected Passmore instead of any number of other managers because Passmore complained about him, and conclude that "the desire to retaliate was the but-for cause of the challenged employment action." Nassar, 133 S. Ct. at 2528. Summary judgment is therefore not warranted on Passmore's claims for retaliation under Title VII and the THRA.

B. TPPA

[30] **[31]** The TPPA is a "narrowly crafted exception to the long-established common law employment-at-will doctrine." Sykes v. Chattanooga Hous. Auth., 343 S.W.3d 18, 26 (Tenn. 2011). "[S]ometimes referred to as Tennessee's 'Whistleblower Act,' " the TPPA " 'includes both (1) discharge in retaliation for refusing to remain silent about illegal activities...and (2) discharge in retaliation for refusing to participate in illegal activities.' " Williams v. City of Burns, 465 S.W.3d 96, 110 (Tenn. 2015) (quoting VanCleave v. Reelfoot Bank, 2009 WL 3518211, at *7 & n.3 (Tenn. Ct. App. Oct. 30, 2009)).

[32] **[33]** Like retaliation claims under Title VII and the THRA, the burden shifting framework is utilized, but with a notable difference. Unlike a THRA claim which requires only "but for" causation, "the TPPA requires the plaintiff to prove that retaliation for the protected conduct was the *sole* reason" for the adverse employment action. Id. (emphasis in original). [8]

***12** Leaving aside the apparent incongruity in claiming that age was a "but for" factor in the termination decision while at the same time arguing that the termination was based "solely" on the refusal to participate in illegal activity, Passmore has failed to meet the "high" bar and "stringent standard...for recovery," Sykes, 343 S.W.3d at 28, under the TPPA. Simply put, even after drawing all inferences in his favor, the record fails to establish that Passmore was "terminated solely for refusing to participate in...illegal activities[.]" Tenn. Code Ann. § 50–1–304(b).

In Williams, the Tennessee Supreme Court stated:

> In articulating a non-retaliatory reason for discharging the employee, the defendant employer in a TPPA case need not proffer evidence that unlawful retaliation was no part of its decision to terminate employment. Rather, the employer need only introduce admissible evidence showing that unlawful retaliation was not the sole cause of the employment action. That is, the employer must proffer evidence that, even if retaliation was a motivation for the discharge, there was at least one non-retaliatory reason as well.

465 S.W.3d at 115.

Clearly, Passmore believes he was a better and more productive manager than several-if not most-of the district managers that were retained, but "[a]n employee's opinion that he did not perform poorly is irrelevant to establishing pretext where the employer reasonably relied on specific facts before it indicating that the employee's performance was poor." Stockman v. Oakcrest Dental Ctr., P.C., 480 F.3d 791, 802 (6th Cir. 2007); see Adams v. Tenn. Dep't of Fin. & Admin., 179 Fed.Appx. 266, 272 (6th Cir. 2006) (court's role is not "to act as super personnel departments to second guess an employer's facially legitimate business decisions"). Regardless, Passmore's assertion that "[a]t least 4 districts performed worse than [his] on overages and shortages," and two districts performed worst [sic] than [his] district on both merchandise and cash overage and shortages," does not advance the ball in his favor because this means that the majority of districts managers performed better in those categories.

Further, it is undisputed that Passmore received a Coaching and Counseling Form on July 12, 2013 for "unacceptable behavior" relating to his employees' inability to pass the anti-money laundering test. It is also undisputed that, as a result, Passmore's district was prohibited from selling money orders

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until August 13, 2013. And, it is undisputed that he sent an email to Heck in August 2013, in which he indicated that his district was "not where [he wanted] it to be yet[.]" (Doc.No. 25–3, Passmore Depo. Exh. 49).

[34] The Court could go on, but the point is that Mapco had plenty of reasons for its employment decision and Passmore cannot show that unlawful retaliation was the *sole* cause of his dismissal. See Jones v. City of Union City, 2015 WL 9257815, at *12 (Tenn. Ct. App. Dec. 17, 2015) (holding that where defendant "submitted evidence that [p]laintiffs were discharged for at least one legitimate, non-pretextual reason [it] thereby affirmatively negated the final element of the Plaintiffs' TPPA claim-sole causation" making summary judgment appropriate); Levan v. Sears Roebuck & Co., 984 F. Supp. 2d 855, 870–71 (E.D. Tenn. 2013) (denying summary judgment on plaintiffs' common law retaliation claim, but granting summary judgment on TPPA claim because plaintiffs could not "show an exclusive causal relationship between their protected activity and the adverse employment action").

IV. Conclusion

***13** For the foregoing reasons, Defendants' Motion for Summary Judgment will be granted with respect to all of the claims against Delek, as well as Passmore's claims against Mapco for age discrimination and retaliation under the TPPA. The Motion will be denied with respect to Passmore's retaliation claims against Mapco under Title VII and the THRA.

An appropriate Order will enter.

All Citations

--- F.Supp.3d ----, 2017 WL 4176268

Footnotes

1 In the context of Passmore's request to file a sur-reply, Magistrate Judge Brown aptly observed that the briefing in this case was "getting out of hand," that "[s]urely, with the excess pages already filed, a surreply is not needed," and that the granting of leave to file one "would undoubtedly only result in a motion for a sur-surreply." (Doc. No. 48 at 1–2). Although Passmore objects to Magistrate Judge Brown's Order, he has not shown that it is clearly erroneous or contrary to law as required by Rule 72(a) of the Federal Rules of Civil Procedure. Nevertheless, the Court has considered Passmore's sur-reply in formulating this opinion.

2 EBITDA is an acronym for earning before interest, tax, depreciation, and amortization. (Doc. No. 25–4, Heck Depo. at 99).

3 "Shrink" refers to the theft or loss of merchandise and cash at a store. (Doc. No. 25–7, Terrell Depo. at 59).

4 "THRA claims are analyzed in the same manner as claims brought under Title VII of the Civil Rights Act of 1964," Marpaka v. Hefner, 289 S.W.3d 308, 313 (Tenn. Ct. App. 2008) (collecting cases). This includes the McDonnell Douglas v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) burden-shifting framework that the Tennessee legislature codified for all claims filed after June 10, 2010. Tenn. Code Ann. § 4–21–311 (2011).

5 In the controlling First Amended Complaint, Passmore also brought claims for a hostile work environment under Title VII and the THRA, as well as claims for wrongful termination and retaliation under Tennessee common law. He has voluntarily dismissed his hostile work environment claim (Doc. No. 24), and in his Sur–Reply concedes that his common law claims have "been preempted by state statutory law." (Doc. No. 45–1 at 1).

6 "But for" causation is the same thing as " 'because of,' 'by reason of,' or 'based on' " causation. Gentry v. E. W. Partners Club Mgmt. Co., 816 F.3d 228, 235–36 (4th Cir. 2016).

7 Mapco objects to Passmore's identification of the bonuses received by the district manager because the documents on which they are based are not authenticated. This is an interesting argument to make since Passmore claims they are based on Mapco's own documents produced during discovery. Regardless, "Rule 56 no longer draws a clear distinction between authenticated and unauthenticated evidence for purposes of summary judgment." Mangum v. Repp, 674 Fed.Appx. 531, 537 (6th Cir. 2017). On summary judgment, "[t]he question is not whether the [documents] have already been authenticated. Rather the issue is whether they can be presented in a form admissible at trial." Franklin Am. Mortg. Co. v. Chicago Fin. Servs., Inc., 145 F. Supp. 3d 725, 731 (M.D. Tenn. 2015) (citing Foreword Magazine, Inc. v. OverDrive, Inc., 2011 WL 5169384, at *2 (W.D. Mich. Oct. 31, 2011)); see Fed. R. Civ. P. 56(c)(2) (emphasis added) ("A party may object that the material cited to support or dispute a fact *cannot be presented* in a form that would be admissible at trial").

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8 The Court recognizes that the but-for standard may be "only marginally more efficacious than the sole cause standard," Lewis v. Humboldt Acquisition Corp., 681 F.3d 312, 325 (6th Cir. 2012) (Clay, J. concurring), but "but-for cause" does not mean "sole cause," Leal v. McHugh, 731 F.3d 405, 415 (5th Cir. 2013). An employer may be liable under "but for" causation "if other factors contributed to its taking the adverse action, as long as [the protected conduct] was the factor that made a difference." Jones v. Okla. City Pub. Schs., 617 F.3d 1273, 1278 (10th Cir. 2010). "Sole cause," on the other hand, is "[t]he only cause that, from a legal viewpoint, produces an event or injury." Leal, 731 F.3d at 415 (citation omitted). See Guessous v. Fairview Prop. Invs., LLC, 828 F.3d 208, 218 (4th Cir. 2016) (in TitleVII retaliation case "plaintiff's burden is only to show that the protected activity was a but-for cause of her termination, not that it was the sole cause"); Zann Kwan v. Andalex Grp. LLC, 737 F.3d 834, 846 (2d Cir. 2013) ("Requiring proof that a prohibited consideration was a 'but-for' cause of an adverse action does not equate to a burden to show that such consideration was the 'sole' cause.").

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EXHIBIT O

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2015 WL 1261539

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Ryan K. THOMPSON, Plaintiff–Appellant,
v.
DEPARTMENT OF CORRECTIONS,
Defendant–Appellee.

Docket No. 319668.
|
March 19, 2015.

Ingham Circuit Court; LC No. 13–000186–CD.

Before: BOONSTRA, P.J., and SAWYER and O'CONNELL, JJ.

Opinion

PER CURIAM.

***1** Plaintiff appeals as of right from the trial court order which granted defendant's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) on plaintiff's claims of employment sex-discrimination and retaliation. We affirm.

I. FACTUAL BACKGROUND

The facts of this case can primarily be broken down into four different disciplinary incidents involving plaintiff, a corrections officer formerly employed by defendant department, that eventually led to plaintiff's termination from employment. There are also general allegations of sex discrimination made by plaintiff that do not fit any of the four incidents.

A. INCIDENT NUMBER 1

This incident involves plaintiff's behavior with a female corrections officer, Brittany Markgraff, while the two were at work in one of defendant's correctional facilities. The two are of different ranks. An anonymous prisoner complaint was received that alleged that while plaintiff and Markgraff were operating the food lines, plaintiff grabbed Markgraff by the waist and pulled her buttocks toward his groin and that the two continued to flirt with each other. Prior to this incident, plaintiff had complained to a union official that Markgraff had initiated unwanted sexual advances. However, plaintiff had not filed a complaint with prison management. Shortly after the anonymous prisoner complaint, Markgraff filed a complaint with Captain Keith McConnell against plaintiff stemming from the incident described in the prisoner complaint. An internal affairs investigation was launched into the situation. The investigators interviewed plaintiff and Markgraff, as well as multiple witnesses to the incident. The investigation concluded that Markgraff's allegations against plaintiff were substantiated and that plaintiff had committed sexual harassment against Markgraff. No violations by Markgraff were found.

The warden of the facility, Paul Klee, agreed with the findings of the internal affairs investigation. However, Klee left the final disciplinary decision in the hands of defendant's Operations Support Administration in Lansing. OSA discipline coordinator Kathy Warner reviewed the internal affairs investigation and Klee's recommendation and imposed a fifteen-day suspension on plaintiff. Plaintiff filed a sex discrimination complaint against defendant with the United States Equal Employment Opportunity Commission.

B. INCIDENT NUMBER 2

This incident began when Warden Klee received a certified mailing from plaintiff claiming that he was framed in Incident Number 1, providing as evidence the prisoner complaint from Incident Number 1, three Visitor Incident Reports (VIRs), and a handwriting analysis that concluded the prisoner complaint and the VIRs were written by the same person. The three VIRs were signed by Corrections Officer Danielle D. Pietrangelo.

Because the VIRs were confidential documents that plaintiff was not permitted to provide to an unauthorized civilian, such as the handwriting expert, an investigation was launched into how plaintiff obtained the documents and whether he committed any violations for providing them to an unauthorized civilian. Plaintiff denied that he removed the VIRs from the facility, but did not dispute that he provided them to the handwriting expert. Following a process similar to the one pursued in Incident Number 1, Warner imposed a sixteen-day suspension on plaintiff.

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C. INCIDENT NUMBER 3

***2** This incident occurred after plaintiff and Captain McConnell got in a verbal exchange in an area of the prison known as "the bubble." Plaintiff filed a complaint against Captain McConnell regarding the incident, alleging that McConnell got within twelve inches of his face and yelled at him about his beard and then told him to drop his lawsuit or else McConnell would have him fired. McConnell denies making such a threat and asserts that he simply approached plaintiff, at a distance greater than the twelve inches plaintiff alleges, and told him to address the shaving issue. McConnell then ordered plaintiff out of the bubble and had him escorted off the premises.

Another internal affairs investigation was launched, which concluded that plaintiff had been insubordinate, engaged in conduct unbecoming, and violated rules and regulations. Warden Klee substantiated the findings of the internal affairs investigation and recommended plaintiff be terminated. Warner determined that termination was not appropriate and imposed a seventeen-day suspension.

D. INCIDENT NUMBER 4

This incident began after Corrections Officer Kirk Smith submitted a complaint to Captain McConnell regarding plaintiff's actions while he and Smith were on duty. Kirk alleged that plaintiff had berated and belittled two inmates. Plaintiff denied that he berated or belittled any inmate. Indeed, plaintiff wrote a misconduct report against one of the inmates that alleged the inmate refused to give plaintiff his identification when told to do so and that other inmates came out of their cells to cheer the inmate on. Smith stated that plaintiff's grievance was false because no prisoners came out of their cells and the inmate in question was willing to give his I.D. to Smith.

Defendant again launched an internal affairs investigation, which concluded that Smith's version of events was accurate and that plaintiff had treated inmates inhumanely. It was further determined that plaintiff had filed a false misconduct report. Warden Klee agreed with the findings of the internal affairs investigation and recommended plaintiff be terminated. Warner agreed, and plaintiff's employment with defendant was terminated.

Plaintiff then filed this present action, raising one count of sex discrimination under the Michigan Civil Rights Act (MCRA), MCL 37.2101 *et seq.,* one count of retaliation under the MCRA, and one of retaliation for filing a worker's compensation claim. Plaintiff thereafter filed an amended complaint that only alleged the gender discrimination and retaliations claims under the MCRA. Defendant moved for summary judgment on both counts of defendant's complaint under MCR 2.116(C)(10). Following a hearing, the trial court concluded that there was no disparate treatment in the Markgraff incident. The trial court also concluded that there was no other comparable employee in plaintiff's position. The trial court stated it could not fault defendant for not taking actions regarding some of plaintiff's complaints because it never had any knowledge of them. The trial court also found that there was no evidence Captain McConnell had any influence on the disciplinary decisions made. Thereafter, an order was entered granting defendant's motion and dismissing plaintiff's case. Plaintiff argues that the summary dismissal was error.

II. STANDARD OF REVIEW

***3** This Court reviews a trial court's grant of summary disposition de novo. *Maiden v. Rozwood,* 461 Mich. 109, 119; 597 NW2d 817 (1999). In a motion under MCR 2.116(C)(10), the court considers the evidence in a light most favorable to the non-moving party to determine whether the moving party is entitled to judgment as a matter of law. *Id.* at 120.

III. ANALYSIS

A. PLAINTIFF'S SEX–DISCRIMINATION CLAIM

The MCRA states that an employer shall not "discriminate against an individual with respect to employment ... because of religion, race, color, national origin, age, sex, height, weight, or marital status." MCL 37.2202(1)(a). If a plaintiff is able to present direct evidence of bias, the plaintiff can "prove unlawful discrimination in the same manner as a plaintiff would prove any other civil case." *Hazle v. Ford Motor Co.,* 464 Mich. 456, 462; 628 NW2d 515 (2001). However, because in many cases "no direct evidence of impermissible bias can be located," the plaintiff can "present a rebuttable prima facie case on the basis of proofs from which a factfinder

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could *infer* that the plaintiff was the victim of unlawful discrimination." *Id.* (emphasis in original).

In order to establish a prima facie case of discrimination, an employee must show that he was "(1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct." *Town v. Mich. Bell Tel. Co.,* 455 Mich. 688, 695; 568 NW2d 64 (1997). In order to establish that he is similarly situated to others outside the protected class, the plaintiff must show that "all of the relevant aspects of his employment situation were nearly identical to those of [a co-worker's] employment situation." *Id.* at 699700.

A presumption of discrimination arises once a plaintiff established a prima facie case. *Hazel,* 464 Mich. at 463. Once this presumption arises, "the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision in an effort to rebut the presumption created by the plaintiff's prima facie case." *Id.* at 464. Once the defendant articulates such a legitimate nondiscriminatory reason, the plaintiff, in order to survive a motion for summary disposition, "must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is 'sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff.' " *Id.* at 465, quoting *Lytle v. Malady (On Rehearing),* 458 Mich. 153, 176; 579 NW2d 906 (1998). "[A] plaintiff must not merely raise a triable issue that the employer's proffered reason was pretextual, but that it was a pretext for unlawful discrimination." *Hazel,* 464 Mich. at 465–466. In the present case, plaintiff has not presented any direct evidence that defendant took an adverse employment action against him because he is male. Instead, plaintiff seeks to establish a rebuttable prima facie case of discrimination.

***4** There is no dispute that plaintiff is a member of a protected class, was subject to an adverse employment decision, and was qualified for the position. The parties do dispute whether others similarly situated and outside the protected class were treated differently from plaintiff. Again, to satisfy this element, plaintiff must show that another employee not subject to an adverse employment action was in a position "nearly identical" to his own in "all relevant aspects." *Town,* 455 Mich. at 699–700.

With respect to Incident Number 1, plaintiff argues that he and Markgraff were similarly situated, but he was disciplined and she was not. Plaintiff's argument that he and Markgraff were similarly situated is premised on the fact that the anonymous prisoner complaint stated the two were equal participants in the observed behavior. However, the ultimate decision-maker, Kathy Warner, testified that she did not consider the prisoner complaint in making her discipline determination. Additionally, an internal affairs investigation took place where multiple parties and witnesses were all questioned. The report concluded that plaintiff had committed harassment but did not find any violations against Markgraff. In order for plaintiff to meet the similarly situated prong plaintiff would have to show a female employee who had similarly substantiated allegations of wrongdoing was disciplined less severely. In this case, Markgraff did not have allegations substantiated by an internal affairs investigation, and therefore, cannot be said to be in an employment situation that is nearly identical to plaintiff's in all aspects. [1]

Even if plaintiff were able to establish a prima facie case, defendant has a nondiscriminatory reason for treating Markgraff differently from plaintiff, that being that an internal affairs investigation substantiated allegations against plaintiff but did not substantiate any allegations against Markgraff. Plaintiff attempts to argue that defendant's stated nondiscriminatory reason for its actions has no basis in fact by challenging the underlying findings of the internal affairs investigation. This is akin to challenging defendant's professional judgment, which cannot create a genuine factual dispute on the issue of pretext. *Dubey v. Stroh Brewery Co.,* 185 Mich.App 561, 565–566; 462 NW2d 758 (1990). [2] See also *Town,* 455 Mich. at 704 ("The plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent.").

B. PLAINTIFF'S RETALIATION CLAIM

The MCRA states that an employer shall not "[r]etaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act." MCL 37.2701(a). Retaliation claims, like discrimination claims, can be proved by direct evidence of retaliation. See *Cuddington v. United Health Servs., Inc.,* 298 Mich.App 264, 275–276; 826 NW2d 519 (2012). In analyzing a direct evidence claim, the plaintiff first "bears the burden

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of persuading the trier of fact that the employer acted with illegal discriminatory animus." *Harrison v. Olde Fin. Corp.,* 225 Mich.App 601, 612; 572 NW2d 679 (1997). Additionally, the plaintiff must prove that he was qualified for the position and "that the discriminatory animus was causally related to the decisionmaker's action." *Id.* at 613. Once these elements are met, the employer is not entitled to summary disposition merely by stating a nondiscriminatory reason for its actions. *Id.* In the present case, plaintiff's direct evidence argument is premised on the notion that McConnell's discriminatory animus caused plaintiff's discipline and termination.

***5** Plaintiff cites to *Staub v. Proctor Hosp.,* 562 U.S. 411; 131 S Ct 1186; 179 L.Ed.2d 144 (2010), in which the United States Supreme Court held that if a supervisor performs a prohibited act that was intended by the supervisor to cause an adverse employment action, the employer may be liable even if the ultimate employment decision was made by an unbiased decision-maker after an independent investigation. *Id.* at 1192–1194.[3] *Staub* was concerned with a situation where an ultimate decision-maker would make a decision based on the performance assessment of other supervisors. *Id.* at 1192–1193. The Court reasoned that if the supervisor conducting the performance evaluations had an unlawful discriminatory motive in compiling the evaluations relied upon by the ultimate decision-maker, the employer should not be shielded from liability simply because the ultimate decision-maker did not harbor the same bias. *Id.* at 1193. At issue was a specific portion of federal law that stated that a plaintiff establishes a claim if discrimination was merely "a motivating factor" for the employment decision, even if other factors also motivated the employer. *Id.* at 1190–1191.

The MCRA does not have a provision such as the one at issue in *Staub.* While this Court has looked favorably on federal interpretations in direct evidence cases, *Harrison,* 225 Mich.App at 610, this Court has also stated that it "must not defer to federal interpretations when doing so would be inconsistent with any portion of our Legislature's enactment," *Barrett v. Kirtland Community College,* 245 Mich.App 306, 314–315; 628 NW2d 63 (2001). While there is authority that states an employer is liable if discrimination is a motivating factor, *Lytle v. Malady,* 458 Mich. 153, 175–176; 579 NW2d 906 (1998), retaliation cases continue to require a showing that retaliation must be a significant factor, *Barrett,* 245 Mich.App at 315. See also *Univ. of Tex Southwestern Med. Ctr. v. Nassar,* —— U.S. ——; 133 S Ct 2517, 2532–2533; 186 L.Ed.2d 503 (2013) (instructing that in retaliation claims, as opposed to discrimination claims, the "traditional principles of but-for causation" not the "motivating factor" standard would apply).

Viewing the factual issues in plaintiff's favor, *Maiden,* 461 Mich. at 120, we assume that McConnell did in fact tell plaintiff to drop his lawsuit or risk losing his job. However, plaintiff has not shown that McConnell's actions were the cause of any adverse employment action. Plaintiff argues that McConnell submitted fraudulent memorandums and compiled false allegations. However, the incidents were investigated and substantiated by internal affairs agents that McConnell did not have control over. Warner relied on the findings of the independent investigations, not the findings of a biased supervisor, that considered not only McConnell's version of events, but also plaintiff's version and the accounts of multiple witnesses in each situation.

***6** Absent direct evidence of retaliatory animus, a plaintiff can establish a circumstantial evidence case by showing:

> "(1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." [*Barrett,* 245 Mich.App at 315.]

In establishing the causation element, the plaintiff is required to show that "participation in activity protected by the [M]CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Id.*

Plaintiff argues that the causation element is satisfied because McConnell's alleged retaliatory animus is attributable to Warner pursuant to the "cat's paw" doctrine. However, for the reasons previously mentioned, McConnell's retaliatory animus did not cause Warner's decision to take adverse employment action against plaintiff, and, therefore, the cat's paw doctrine is not applicable.

The trial court did not err in granting defendant's motion for summary disposition under MCR 2.116(C)(10) on both counts of plaintiff's complaint and in dismissing plaintiff's case.

Affirmed.

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All Citations

Not Reported in N.W.2d, 2015 WL 1261539, 2015 Fair Empl.Prac.Cas. (BNA) 184,632

Footnotes

1 While plaintiff did make allegations to a union official about Markgraff's alleged conduct, there is nothing in the record that suggests plaintiff submitted this complaint to defendant's managers at the facility where he worked.

2 A plaintiff can show an employer's stated reason was pretextual for unlawful discrimination "(1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision." *Dubey,* 185 Mich.App at 565–566.

3 This legal principle articulated in *Staub* is referred to in federal jurisprudence as the "cat's paw theory." *Chattman v. Toho Tenax America, Inc.,* 686 F3d 339, 351 (CA 6, 2012).

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EXHIBIT P

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RECEIVED by MCOA 1/15/2019 4:28:20 PM

RE: Pennie Davis

Benjamin Pack
Sent: Thursday, November 12, 2015 8:08 AM
To: Amy Gish
Cc: Jessica Carter; Jeff Beal

Amy,

Thank you for this information.

The Personal Protection order is specific to one person, not a general blank protection from all people. The district must develop a plan to insure each person involved are safe, be it physically and mentally, or from any type of fraudulent behavior.

If Ms. Davis is no longer capable of working with students enrolled in Jackson Public Schools, please let me us know. Until then it is our responsibility to do our best following her PPO, keeping all involved safe, and keeping her working.

The district will be studying all the information and developing an appropriate plan. You will be made aware of the district decision very soon.

Ben

Ben Pack
Assistant Superintendent
Jackson Public Schools

-----Original Message-----
From: Amy Gish
Sent: Thursday, November 12, 2015 6:58 AM
To: Benjamin Pack
Subject: Pennie Davis

Good Morning Ben,

Just so you know...Pennie knows that Deb was assaulted. The T.A. in Deb's room wrote an account of what she witnessed. When Deb read it, she stated that she didn't realize how many times she had been hit and how many different places she was hit until she read the T.A.s statement. Pennie knows this. I don't think this move would make Pennie feel safe.

Barb has already addressed the issue with Marcus in terms of avoiding the hallway where Pennie's room is. There are ways for him to access all of his classes and avoid that area. Barb and I already met about that.

Thank You,

Amy

Amy Gish
Impact Coach
Jackson High School
JEA President

"Leadership is a potent combination of strategy and character.
But if you must be without one, be without the strategy."

~ Norman Schwarzkopf

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EXHIBIT Q

EXHIBIT
13
Ck. 2917

Memorandum

RECEIVED
FEB 24 2016
HUMAN RESOURCES
JACKSON PUBLIC SCHOOLS

To: Ms. Pennie Davis

From: Mr. Jeremy Patterson

Date: February 2, 2016

Re: Discipline Letter – Inappropriate Classroom Behavior

This letter serves as a formal written reprimand for your inappropriate classroom behavior on Friday, January 29.

On January 29, I received a complaint from a student in your 6th hour class, stating you were upset with the students because they were talking and disruptive. The student stated that you picked up a book, threw it, hitting her on her left arm, leaving a red mark on her arm.

During 7th hour on Friday, Mr. Patterson, Mrs. Jarvey, Mr. Cowan and Ms. Davis met regarding this complaint. I advised you that you would not be returning to your classroom 7th hour, a substitute teacher would finish the day, and that I would complete my investigation of the complaint. After receiving written statements from other students present during the incident, I have reason to believe that you did indeed throw a book that hit the student in the arm.

Again, I brought this complaint to your attention during our meeting on Friday, January 29. During this meeting, you indicated that you "did not throw a book at anyone" and that the student filing the complaint said "I'm going to get you fired". You stated you choose to ignore that statement. However, your actions of throwing the book, hitting the girl in the arm were confirmed by multiple students present in the classroom.

Previous conversations have been held between you and Mr. Weatherwax regarding your actions of inappropriate classroom behavior. In an e-mail sent to you by Mr. Weatherwax on Friday, January 8, he shared concerns from a student stating that you "got in her face". He encouraged you to respect students' personal space, build relationships, and cease inappropriate classroom behavior or disciplinary actions could follow. Jackson Public Schools' recognizes that all students are children under our supervision. Our job as educators is to respond to student misbehavior by following classroom routines and help students manage their behavior appropriately. You are being informed that the type of behavior you displayed is unprofessional and will not be tolerated in Jackson Public Schools.

You are expected to maintain a professional work environment at all times, which is conducive to Jackson Public Schools' expectations. Please be advised that further incidents of this nature are subject to further disciplinary action, up to and, including termination of employment.

I acknowledge by my signature below that I have been afforded the opportunity to review and sign this correspondence prior to it being placed in my personnel file.

See below
Employee Signature

Date

Administrator Signature

2-2-16.
Date

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CC: A, Amy Gish, JEA President
B, Mr. Pack Human Resources Director, Asst. Superintendent
C, Mr. Cowan, Building Representative
D, Mrs. Jarvey, Assistant Principal
E, Mr. Weatherwax, Assistant Principal
Personnel File

There was a meeting on 2-2-16 between Jeremy Patterson, Krista Jarvey, Pennie Davis and Amy Gish at MSP.

Amy Gish 2-22-16

I disagree with this
P. Davis
2/22/2016

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[redacted] 1/29/16

My teacher Mrs. Davis was getting mad at The class. When She was getting mad at the Class her face turned Really Really Red. She got Really Really mad cause everyBody was talking, and This Boy [redacted] was Being Distracted By this girl mea was talking to [redacted] She Picked up a Mins Book and Threw the Book at me. after Threw the Book at me She never threw. She Never said Sorry to me.

EXHIBIT
9
CUC 2917

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MIDDLE SCHOOL AT PARKSIDE
Written Statement

Print Your Name: [redacted] Grade-Team: 6th grade

Date Of Birth [redacted] Today's Date: 1/29/16

Name of other witnesses or students who saw incident?

[redacted]

Everybody in class

What happened or what did you see/hear?

Well in class, art Mrs. Davis was trying to get the class's attention, but nobody was paying attention. We're making altered books and She took mine and threw it, chucked it, at a student and yelled at everyone. She never said sorry to the students. number one rule is don't throw anything and she threw something and its kind of confusing.

The book hit her it left a huge red mark.

EXHIBIT 10 MK 29D

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RECEIVED by MCOA 1/15/2019 4:28:20 PM

MIDDLE SCHOOL AT PARKSIDE
Written Statement

Print Your Name: [redacted] Grade-Team: 6

Date Of Birth: [redacted] Today's Date: 1/29/16

Name of other witnesses or students who saw incident?

[redacted]

What happened or what did you see/hear?

Mrs. Davis was giving instruction and Kids wouldn't be quite. Meg was showing another student a book. Mrs. Davis got mad and threw the book it hit another student got hit on the arm.

EXHIBIT
11
JAN 29 '17

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RECEIVED by MCOA 1/15/2019 4:28:20 PM

MIDDLE SCHOOL AT PARKSIDE
Written Statement

Print Your Name: [redacted] Grade-Team: 6

Date Of Birth [redacted] Today's Date: 1-29-2016

Name of other witnesses or students who saw incident?

All of the Class

What happened or what did you see/hear?

I was talking out of turn. After that I had to change seats. Mrs Davis asked the students to stop talking and she seemed upset

EXHIBIT
12
Ex. 200