

No. 24-249

**In the
Supreme Court of the United States**

A.J.T., BY AND THROUGH HER PARENTS,
A.T. AND G.T.,
Petitioner,

v.

OSSEO AREA SCHOOLS,
INDEPENDENT SCHOOL DISTRICT NO. 279;
OSSEO SCHOOL BOARD,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

**JOINT APPENDIX - VOLUME I OF II
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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

A.J.T., a minor child, by
and through her Parents,
A.T. and G.T.,
individually and jointly,

Civil File No. 21-cv-
1760 (ECT/JFD)

Plaintiffs,

v.

**AMENDED
VERIFIED
COMPLAINT**

Osseo Area Schools,
Independent School
District No. 279; and
Osseo School Board,

Defendants.

Plaintiffs complain and allege as follows:

I.

PRELIMINARY STATEMENT

1. Plaintiff A.J.T. is fifteen years old, will begin the eighth grade in the fall, and lives with her Father and Mother in Maple Grove, Minnesota.

2. A.J.T. has disabilities that substantially limit a number of major life activities, requiring special education, related services, modifications and accommodations to access and participate in public school.

3. A.J.T. has attended the public schools in the Defendant Osseo Area Schools since October 21, 2015.

4. A.J.T. needs a full-time education like her peers but the District has refused to accommodate her disability-related need for an altered school day schedule starting at noon.

5. The District's refusals constitute discrimination on the basis of disability and have deprived A.J.T. of equal participation in, enjoyment and benefit of the activities, programs and services of the District.

6. A.J.T. and her Parents have suffered injuries and damages from the District's discriminatory conduct for almost six years as well as incurring significant personal and financial costs to secure her educational rights guaranteed by a trio of federal laws the District has chronically and persistently violated.

7. This action is commenced to secure their rights and relief for their injuries,

II.

JURISDICTION

8. This court has jurisdiction over this action pursuant to 20 U.S.C. § 1415(i)(2), 28 U.S.C. § 1331, 28 U.S.C. § 1343(a), 28 U.S.C. §§ 2201 and 2202, and declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

9. Venue in this district is authorized by 28 U.S.C. § 1391(b) because Defendants conduct business in this district and all of the events described in this Complaint occurred in this district.

II.

PARTIES

10. Plaintiff A.J.T. is a fifteen (15) year-old student and a citizen of the United States. Plaintiffs A.T. and G.T. are A.J.T.'s Parents and they are both citizens of the United States.

11. Plaintiffs live in Maple Grove, Minnesota.

12. A.J.T. is entitled to special education and related services on the basis of Lennox-Gastaut Syndrome, pursuant to federal special education laws. She is a "child with a disability" as defined in the IDEA, 20 U.S.C. § 1401(3), based on a health impairment as defined in 34 C.F.R. § 300.8(b)(9) due to a chronic or acute health condition causing limited strength, vitality, or alertness that adversely affects educational performance.

13. A.J.T. is also entitled to protection from discrimination pursuant to federal anti-discrimination laws. She is a "qualified individual with a disability" as defined in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its regulations due to a neurological condition that substantially limits a number of major life activities, including self-care, performing manual tasks, eating, walking, standing, reaching, lifting, bending, speaking, learning, reading, thinking, writing, communicating, interacting with others, and working. 34 C.F.R. § 104.3(j)(2)(ii).

14. A.T. and G.T. are entitled to protection from intimidation, threats, coercion and discrimination intended to interfere with their rights and privileges, including parental advocacy on behalf of A.J.T. to secure her rights as a student with disabilities, as

provided by Section 504 of the Rehabilitation Act. 34 C.F.R. §100.7(c).

15. A.J.T. is also entitled to protection from discrimination as a “qualified individual with a disability” as defined in Title II of the Americans with Disabilities Act,, 42 U.S.C. § 12131(2) and its regulations, 28 C.F.R. § 35.104 on the same basis.

16. A.T. and G.T. are entitled to protection from discrimination, including retaliation for their parental advocacy to secure A.J.T.’s rights as a student with disabilities, and interference with the exercise or enjoyment of their rights provided by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12203(a) and (b).

17. A.J.T. is entitled to a free appropriate public education and nondiscriminatory access to a public education under the comprehensive scheme of federal laws protecting those interests for students with disabilities - the IDEA, Section 504, and the ADA.

18. A.T. and G.T. are entitled to be free from intimidation, threats, coercion, discrimination, retaliation and interference with their exercise of rights because they have opposed the Defendants’ unlawful acts and practices and have exercised and enjoyed their rights to advocate for A.J.T.’s rights granted and protected by the IDEA, Section 504, and the ADA.

19. Defendant Osseo Area Schools, Independent School District No. 279 (“OAS”), is a governmental entity that administers the public schools within its boundaries under the management and control of the Osseo School Board. OAS receives federal financial assistance, including federal funding that is distributed by the Minnesota Department of

Education, for the specific purpose of providing special education services in a safe and non-discriminatory manner to children with disabilities. OAS is an “independent school district” as defined by Minn. Stat.120A.05, Subd. 10, and a “local educational agency” within the meaning of 20 U.S.C. § 1401(19).

20. OAS operates programs and activities through the receipt of federal financial assistance as defined in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and is a “recipient” of federal funding as defined in 34 C.F.R. § 104.03(f).

21. OAS is a “public entity” as defined in Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(1), and 28 C.F.R. § 35.104.

22. Defendant Osseo School Board is responsible for the supervision of its public schools and, among other things, ensuring that all children with disabilities are located, identified, evaluated and provided special education and related services in compliance with federal and state law, and are protected from discrimination so that they can participate equally to all others in public school facilities and programs.

V.

FACTUAL ALLEGATIONS

23. A.J.T. has been diagnosed with intractable epilepsy and a significant cognitive disability caused by Lennox-Gastaux syndrome, a condition characterized by recurrent and severe seizures, that makes learning and functioning in all areas very difficult or her despite a loving and supportive family, her good nature, her desire to learn and to please others, and her best efforts.

24. A.J.T. is eligible for special education as a student with an Other Health Disability under state criteria and has always required maximum services and supports in order to learn and stay safe at school.

25. A.J.T. is also protected against discrimination in public education on the basis of disability.

26. A.J.T. has attended Defendant Osseo Area Schools since October 21, 2015, when she relocated to Minnesota with her family from Kentucky.

27. Despite repeated parental requests the District has refused to provide A.J.T. with a full school day equal to the school day of her peers.

28. A.J.T. has been under medical care and treatment since the age of six months to reduce and minimize seizure activity in order to maintain maximum functioning and to avoid further damage to her brain and body.

29. A.J.T. and her Parents have established a care and treatment regimen under the direction and advice of her medical providers, particularly her treating neurologists, to maximize her sleep schedule in the morning in order to manage and minimize seizures and medications.

30. A.J.T.'s Parents and her treating neurologists have uniformly and consistently over the past twelve years determined that disrupting her sleep schedule in the morning causes an inevitable increase in seizure activity in the daytime.

31. In the fall of 2009, A.J.T. participated in a hospital treatment program for children with multiple disabilities at the Aaron W. Perlman Center, Cincinnati Children's Hospital, but was discharged from that program based on a medical determination

that her participation in the mornings put her at an unreasonable and unacceptable risk of increased seizure activity.

32. Since then, A.J.T.'s Parents and her treating neurologists have uniformly and consistently determined that she is unable to attend school or any other activities until noon, extending her morning sleep regimen in order to decrease her seizure activity during the middle of the day between noon and 6:00 or 7:00 p.m. despite diligent and earnest medical care and treatment to alter her schedule.

33. A.J.T. is extremely seizure heavy in the mornings when she wakes up and she is not available for instruction until noon.

34. Attempts to alter A.J.T.'s sleep schedule have resulted in dangerous and dramatic increases in seizure activity.

35. During times of heavy seizure activity A.J.T. cries, she is afraid, she needs to be comforted, she may fall or lose control of her body, and she may be in pain.

36. A.J.T.'s Parents cannot subject her to more of that than is absolutely necessary and have refused the District's proposals to experiment with her sleep schedule by starting her school day earlier than noon against medical advice, creating an unreasonable risk of harm and injury and an inevitable worsening of her problems.

37. Since 2009, all of A.J.T.'s treating neurologists and pediatricians have documented that A.J.T. cannot safely attend school before noon due to morning seizure activity related to her chronic condition, that her school start time must be modified to begin at noon, and her Parents have provided this documentation to her schools.

38. Five letters from three different prominent pediatric neurologists from July 1, 2015, to date are contained in the District's educational records for A.J.T., and included as exhibits at hearing, all advising that she cannot attend school before noon and requesting that her school schedule be adjusted but not shortened.

39. Since 2009, A.J.T.'s absence from school attendance before noon has been excused without exception by her public schools despite compulsory attendance requirements, including by Defendant Osseo Area Schools.

40. Since 2009, A.J.T. has been provided special education and related services on an altered schedule, starting at noon.

41. Before moving to the Defendant District in the 2015-2016 school year, A.J.T. attended public school in Boone County, Kentucky.

42. In the Boone County Public Schools A.J.T. received a full day of special education and related services from noon until 6:00 p.m., mostly in school but supplemented with some in-home instruction, in order to ensure she received a safe, appropriate and full public education equal to her peers.

43. In Kentucky, A.J.T. was provided the same number of hours as a full school day and the same number of hours her peers were provided.

44. A.J.T. made progress in learning, communicating, and socializing during her full school-day schedule in Kentucky while remaining safe and appropriately treated.

45. During instruction received at home between 4:00 and 6:00 p.m., both in Kentucky and when provided privately by her Parents in Minnesota,

A.J.T. made progress, improving her independence, communication and functional skills without any medical complications or negative effects, staying on task and with good stamina.

46. Dr. Joe Reichle, renowned expert in language and communication disorders, evaluated A.J.T. twice and established that A.J.T. does not learn as efficiently as a typical learner because her health condition impairs her learning and she does not learn well vicariously, so she can use all the time she can get to learn.

47. Dr. Reichle testified that A.J.T. is clearly way behind her peers in learning the most basic and important communication skills and is she is falling further behind every day in terms of rate of acquisition' "she can use all the available hours that she can get where she's motivated to learn."

48. District special education teachers working with A.J.T. over the past five years agreed that she would benefit from a full school day but were never consulted about the decision to shorten her school day.

49. Dr. Galen Breningstall, renowned expert in pediatric neurology and A.J.T.'s current treating neurologist, established that "the more instruction time [A.J.T.] has the better it is for her."

50. Before deciding to move to the Defendant School District her Parents communicated with District special education administrators and members of A.J.T.'s IEP Team, provided information about her disabilities and needs including her Kentucky IEP, and requested continued full-time instruction on an altered schedule.

51. During discussions with the District in August and September, District special education officials assured A.J.T.'s Parents that the District would continue to implement the Kentucky IEP schedule A.J.T. needed.

52. No additional medical or educational records were requested by the District.

53. On October 11, 2015, District special education administrator Amy Stafford announced at an IEP Team meeting that the District would not implement the Kentucky IEP schedule A.J.T. needed on the basis that "we don't provide both homebound and school support (modified)."

54. This decision was made by District special education administrators unrelated to any evaluation or documentation of A.J.T.'s individual needs, before any District staff had met or worked with A.J.T., without the input of anyone who had actually worked with A.J.T. including teachers, parents or medical providers, and outside of the IEP Team process.

55. This decision was a significant change in A.J.T.'s special education placement and was not informed or justified by any District re-evaluation.

56. A.J.T.'s Parents immediately objected on the basis that the District's decision discriminated against their daughter on the basis of disability.

57. A.J.T. began attending school in the Defendant School District on October 21, 2015, as her family had already moved into the District in reliance on the District's promises.

58. Immediately and throughout her education in the District, A.J.T.'s Parents continued to request a full school day through a variety of means, including

instruction at home by non-licensed but appropriately supervised staff.

59. For more than five years her Parents participated in many, many meetings with her IEP Team and various District officials up to and including its highest special education administrator, Kate Emmons, its Special Education Director, to ask that A.J.T. receive a full day of school starting at noon.

60. Upon information and belief, District officials conducted repeated, excessive, and unnecessary meetings without any good faith efforts to understand and serve A.J.T.'s individual needs, but instead intended merely to wear her Parents down and into submission in a manner likely to interfere with the enjoyment or exercise of ADA rights.

61. Director Emmons told A.J.T.'s Parents to hire a personal care assistant instead of the District providing an educator after regular school hours, reflecting stereotyped misperceptions about A.J.T. as child with disabilities only in need of personal care rather than as a learner in need of education.

62. District officials repeatedly told A.T. and G.T. that A.J.T. was not capable of gaining benefit from any more instruction or a full school day because of the severity of her disability, without any evaluation basis for those opinions.

63. Upon information and belief those opinions were not authentic or expressed in good faith because they lacked any basis in fact, but instead were intended to insult, harass, intimidate, and coerce A.T. and G.T. into relinquishing A.J.T.'s right to a full school day in a manner likely to interfere with the enjoyment or exercise of ADA rights.

64. The District agreed A.J.T. should have a full day of school but only if she could attend school on the standard school-day schedule, contrary to medical advice, the unreasonable risk of harm and injury that would be created, and without teacher or evaluation support.

65. Upon information and belief the repeated and baseless suggestions of District officials to experiment with A.J.T.'s care and treatment regimen were not made in good faith, but were intended to frighten, intimidate, and coerce A.T. and G.T. into abandoning their advocacy for their daughter.

66. For more than five years District administrators decided and declared that A.J.T. could not have a full school day starting at noon, citing shifting excuses unrelated to her medical and educational needs, her IEP Team's determination, or the full school day provided to her peers, recognized as pretext by the administrative law judge.

67. For more than five years A.J.T. was provided a shortened school day by District administrative fiat without the input of anyone who worked directly with her, including her Parents, her teachers, or her medical providers.

68. Such glaring procedural violations by well-trained, high level special education administrators who knew better than to make repeated unilateral placement decisions outside of the IEP Team process and unrelated to A.J.T.'s needs, were such glaring intentional violations that the only explanation is that they were motivated by an intent to punish A.T. and G.T. for their parental advocacy, to wear them down, and to force them to abandon their advocacy

efforts in a manner likely to interfere with the enjoyment and exercise of ADA rights.

69. Joy Fredrickson, District special education administrator, dictated the District's position at IEP Team meetings, and the opinions of teachers and Parents about A.J.T.'s need for a full school day were not even considered.

70. Over the past five years her Parents have continued to request a full day of school on an altered schedule, have participated in mediation, conciliation conferences, and other informal dispute resolution processes, and have worked diligently to promote cooperation with the District and avoid litigation.

71. The resistance of District officials to stop violating A.J.T.'s rights over almost six years came at great emotional and financial cost to A.T. and G.T., an outcome that seems intended to harass, punish, intimidate, threaten and coerce them into submission, and done in a manner likely to interfere with the enjoyment or exercise of ADA rights.

72. A.J.T. has received only four and a quarter hours of education daily when her peers receive six and a half hours, or a school day 65% of the standard school day in the District, causing her to receive 405 less hours of instruction each year than her peers receive.

73. Over the past five years her Parents have had to resist multiple efforts by the District to shorten her already truncated school day further, including reducing her day from four and a quarter to two hours and forty minutes daily when matriculating to the middle school in 2019 to match the earlier end of the regular school day.

74. A.J.T. and her Parents even had to resist and defend the District's baseless administrative hearing in 2019 that sought to shorten her school day below the already shortened schedule, resulting in an agreement to provide an independent educational evaluation and dismissal.

75. Yet, despite the production of an extensive expert independent educational evaluation with sound educational recommendations to which no disagreement has ever been expressed, District officials have failed and refused to implement the recommendations, including provision of augmentative and alternative communication technologies to assist A.J.T. to communicate.

76. Because there was no disagreement with Dr. Reichle's independent educational evaluation or any basis to disagree that A.J.T. needed everything recommended by him, there is no explanation for the refusal to provide it to A.J.T. except to spite her Parents, and to discriminate against them for their advocacy in a manner likely to interfere with their exercise and enjoyment of ADA rights.

77. At no time has the District ever established that A.J.T. needs a shortened school day, the only legitimate reason to provide one.

78. All of the District's evaluations of and IEPs for A.J.T. establish that she requires significant and intensive educational efforts and services to make meaningful progress.

79. In light of this evidence, the refusal of the District to provide A.J.T. a full school day can only be explained by discriminatory animus and retaliatory intent.

80. On October 16, 2015, District administrators decided “state law does not mandate this support from the school district.”

81. On March 18, 2016, District administrators decided A.J.T. should come to school before noon as her medical needs allowed and her IEP could be delivered with parttime attendance.

82. On June 6, 2016, District administrators decided A.J.T. could not have a full day of school on an altered schedule “due to the precedent it would start. [sic] For Osseo School District and other districts across the area.”

83. On March 26, 2018, District administrators decided after-hours instruction would not provide “continuity in environment” or “access to instructional materials and same aged peers”, and did not coincide with the school nurse regular schedule.

84. On March 26, 2018, District administrators decided after-hours instruction at home was too restrictive, limited access to instructional materials and assistive technology, and it had not evaluated A.J.T. to document data of her need for a full day of school.

85. On April 2, 2018, District administrators decided A.J.T. can attend school in the morning when her medical condition changes.

86. On June 14, 2018, District administrators decided that school nurse could support attendance before noon with more access to peers.

87. On September 30, 2019, District administrators decided that a special education teacher should assess A.J.T.’s ability to access instruction at home before noon, and should consult

with her neurologist to compare morning and afternoon seizure activity.

88. On July 17, 2020, and August 31, 2020, District administrators decided that A.J.T.'s typical seizure pattern requires services from 12:00 noon to 4:15 p.m.

89. The independent educational evaluation performed by Dr. Reichle in 2019 concluded that A.J.T. had a great number of unmet needs for improved language and communication services as well as augmentative communication technology, and recommended significantly increased goals, objectives and services, as well as a full day of instruction between noon and 6:00 p.m. because "it is very important that she receives as much time as possible for instruction during her alert hours."

90. Dr. Reichle's recommendations to improve A.J.T.'s IEP were not implemented because her part-time school schedule prevented full implementation.

91. Dr. Reichle's recommendation to use eye gaze technology with a speech generating device was never tried, though available in the District, even though "[h]er communication future lies in augmentative communication applications" and "[i]f it was successful it would change her life dramatically."

92. A device that provided eye gaze technology with a speech generating feature was procured by her Parents and given to the District to trial in the fall of 2017 that was never once turned on.

93. The parties agreed in a conciliation conference on August 31, 2020, that A.J.T.'s IEP would be amended to reflect that annual medical documentation would determine her hours of instruction.

94. After that agreement additional medical documentation was provided from Dr. Breningstall that determined A.J.T.'s hours of instruction should be from noon to 6:00 p.m., but the District ignored it and disregarded its previous agreement.

95. Had A.J.T. been provided a full school day over the past five years she would have gained greater communication, social and functional skills rather than falling further and further behind her peers.

96. Improved communication, social and functional skills are critical to the trajectory of A.J.T.'s development, including her independence, health, safety, satisfaction, dignity, relationships, self-esteem, social status, enjoyment and productivity.

97. District special education administrators knew or should have known that decisions to shorten the school day of a student with a disability must be based on evaluation data, the student's individual needs, and Team decision-making.

98. District special education administrators knew or should have known that shortening a student's school day without basis in a student's individual needs is substantially likely to result in violation of federally protected rights.

99. District special education administrators knew or should have known that reasonable accommodations to the standard school day must be provided in order to ensure equal access to school for students with disabilities.

100. The District, through its special education administrators, has acted with bad faith, gross misjudgment, or deliberate indifference to A.J.T.'s rights to an education equal to her peers in

compliance with principles of due process embedded in federal law.

101. District special education administrators decided that A.J.T. could not have a full school day on the basis of a mistaken belief that she is too disabled to deserve a full day of school.

102. District special education administrators made false promises to A.J.T.'s Parents that went unfulfilled, did not respond truthfully over five years to repeated parental requests for reasonable accommodations, refused to provide her a full school day despite evidence of insufficient progress with a shortened day, ignored the opinions of her teachers, her Parents and her physicians, and would not take appropriate action to protect A.J.T.'s educational interests, but instead consistently refused to provide a full school day and repeatedly proposed to shorten her school day further.

103. District special education administrators wrongly exalted nominal cost savings over A.J.T.'s needs and her right to a full school day equal to the full school day of her peers albeit on an altered schedule.

104. The District, through its special education administrators, acted deliberately and intentionally on the basis of stereotypes and misperceptions about the nature and severity of A.J.T.'s disability through exclusion, denial of benefits, refusal to provide reasonable accommodations and discrimination.

105. Upon information and belief, the District's policies or practices of refusing to provide reasonable accommodations to the standard school day schedule is more likely to injure students with disabilities who need them most.

106. The District provides tutoring at school buildings, homes and various other locations as well as a host of extracurricular and nonacademic activities after regular school hours to other students.

107. A.J.T. and her Parents exhausted the administrative procedures and relief available under the Individuals with Disabilities Education Act (“IDEA”) for the denial of a free appropriate public education, resulting in an order dated April 21, 2021 for an IEP that provides a full-day of school starting at noon and eye gaze technology with a speech generating device, as well as compensatory education services.

108. The relief obtained through the IDEA’s administrative hearing is insufficient to ensure her permanent equality of access to public education and to address and resolve all of A.J.T.’s injuries caused by the District’s disability discrimination.

109. The administrative hearing decision has not yet been implemented by the District, requiring a complaint to the Minnesota Department of Education on June 9, 2021 for enforcement that is pending.

110. The Complaint and Request for Hearing raised claims for relief from violation of the IDEA, as well as Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

111. A.J.T. and her Parents are entitled to additional relief from the District’s discrimination on the basis of disability that should now be awarded.

112. The District has appealed the IDEA administrative hearing decision by filing a complaint in this Court on June 21, 2021 in Case No. 21-CV-1453 (MJD/DTS) that was served after initiation of this action.

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VI.

CLAIMS FOR RELIEF

COUNT I

**Violations of the Individuals
with Disabilities Education Act**

113. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged herein.

114. The District violated significant procedural and substantive requirements of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.* resulting in an administrative proceeding that provided limited relief for the denial of a free appropriate public education to A.J.T. over the past two years.

115. The limited IDEA-related relief is not sufficiently comprehensive to secure a permanent injunction against future illegal conduct by the District or to adequately compensate A.J.T. and her Parents for their injuries and damages.

116. Defendants have refused to implement the administrative decision and A.J.T. has not yet been provided the relief ordered.

COUNT II

**Violations of § 504 of the
Rehabilitation Act of 1973**

117. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged herein.

118. The District's violations of the IDEA also violated Plaintiffs' rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

119. The District also violated different and independent procedural and substantive requirements of Section 504.

120. The IDEA does not provide the exclusive remedy for violations of the educational rights of students with disabilities.

121. The relief available and obtained from the IDEA administrative hearing is insufficient to permanently secure A.J.T.'s rights to a full school day equal to her peers or to fully compensate her or her family for their injuries that resulted from disability discrimination by the District.

122. The District is a recipient of federal financial assistance, operates programs and activities that receive federal financial assistance, and is subject to the requirements of Section 504, 29 U.S.C. § 794 and 34 C.F.R. § 104.2.

123. A.J.T. is a student with disabilities that substantially limit a number of major life activities, and is an otherwise qualified individual with a disability and a handicapped person under Section 504, 29 U.S.C. § 794 and 34 C.F.R. § 104.3(j).

124. The District denied and excluded A.J.T. from full and equal participation in and the benefits of its programs, services and activities, including effective methods of making instruction and instructional materials accessible, on the basis of disability in violation of Section 504, 29 U.S.C. § 794 and 34 C.F.R. §104.4.

125. The District's actions discriminated against A.J.T. in violation of 29 U.S.C. § 794 and 34 C.F.R. § 104.4(b) when it:

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- a. Denied her the opportunity to participate in or benefit from the aids, benefits of services it offers;
- b. Denied her the opportunity to participate in or benefit from aids, benefits or services that are equal to that afforded to others;
- c. Provided her aids, benefits, or services that are not as effective as those provided to others;
- d. Unnecessarily provided her with different or separate aids, benefits or services;
- e. Otherwise limited her in the enjoyment of all the rights, privileges, advantages and opportunities enjoyed by others receiving their aids, benefits and services;
- f. Deprived her R.M.M. of an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to her needs;
- g. Utilized criteria or methods of administration that have the effect of subjecting her to discrimination, or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the programs or activities; and
- h. Determining the site or location of services in a manner that has the effect of excluding her, denying her the

benefits of or subjecting her to discrimination under its programs or activities.

126. Defendants' failures and refusals to provide A.J.T. with educational opportunities equal to those provided to students without disabilities constitute a longstanding, ongoing and continuous violation of Section 504 and its supporting regulations. Unless permanently enjoined from doing so, the Defendants will continue to violate Section 504.

127. As a result of disability discrimination A.J.T. has been relegated to an inferior education program with less services, programs, activities, benefits and other opportunities, and an inferior status in the enjoyment of critical education services, resulting in educational, functional, communication, and social disadvantages in ways that diminish her current and future communication, health, independence, safety, self-esteem, relationships, dignity, productivity, satisfaction and well-being, in a direct affront to the purposes of federal special education and anti-discrimination laws.

128. As a result of disability discrimination A.J.T. has been significantly impeded in making progress towards the goals of equal opportunity, full participation, independent living, and economic self-sufficiency, contrary to the purposes of federal special education and anti-discrimination laws.

129. The District's actions discriminated against A.T. and G.T. in violation of 29 U.S.C. §794 and 34 C.F.R. §104.61 when it intimidated, threatened, coerced, interfered with advocacy, and otherwise retaliated in response to parental advocacy efforts in an attempt to silence, outspend, outmaneuver and

drive them into abandoning their claims. 114. As a direct result of disability discrimination including retaliation and interference with protected activity, Plaintiffs A.T. and G.T. have expended private funds to provide evaluations of A.J.T.'s disabilities and needs, as well special education and related services, and costs and attorneys' fees that will likely not be fully reimbursed in the IDEA proceedings even if they continue to prevail, in an amount to be established at trial that the District should be ordered to pay.

130. As a direct result of disability discrimination A.J.T. has suffered injuries and damages in an amount to be established at trial that the District should be ordered to pay.

131. Plaintiffs are entitled to injunctive relief, compensatory damages, costs and attorney's fees.

COUNT III

Violations of the Americans with Disabilities Act

132. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged herein.

133. The District's violations of the IDEA and Section 504 also violated Plaintiffs' rights under Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*

134. The District also violated different and independent procedural and substantive requirements of the ADA.

135. The IDEA does not provide the exclusive remedy for violations of the educational rights of students with disabilities.

136. The relief available and obtained from the IDEA administrative hearing is insufficient to

permanently secure A.J.T.'s rights to a full school day equal to her peers or to fully compensate her or her family for their injuries that resulted from the discrimination including retaliation and interference with advocacy by the District.

137. The District is a public entity as defined in the ADA and is subject to the requirements of the ADA, 42 U.S.C. §§ 12131, 12132, and 12203.

138. A.J.T. is a student with a disability that substantially limits a number of major life activities, and is a qualified individual with a disability as defined by the ADA, 42 U.S.C. § 12131.

139. The District excluded A.J.T. from participation in and denied her the benefits of its services, programs or activities, and subjected her to discrimination in violation of the ADA, 42 U.S.C. § 12132.

140. The District's actions discriminated against A.J.T. in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130 when it:

- a. Denied A.J.T. the opportunity to participate in or benefit from the aid, benefit or service;
- b. Afforded A.J.T. an opportunity to participate in or benefit from the aid, benefit or service that was not equal to that afforded others;
- c. Provided A.J.T. an aid, benefit, or service that was not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

- d. Provided A.J.T. different or separate aids, benefits or services than provided to others and refused to provide modifications necessary to its standard schedule in order to provide her with aids, benefits or services as effective as those provided to others;
- e. Otherwise limited A.J.T. in the enjoyment of a right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service;
- f. Denied A.J.T. the opportunity to participate in services, programs, or activities that are not separate or different;
- g. Utilized criteria or methods of administration that had the effect of subjecting A.J.T. to discrimination on the basis of disability, and had the purpose or effect of defeating or substantially impairing accomplishment of the objectives of its program with respect to individuals with disabilities;
- h. Refused to make reasonable modifications to policies, practices or procedures when necessary to avoid discrimination on the basis of disability; and
- i. Imposed or applied eligibility criteria that screen out or tend to screen out an individual or class or individuals with disabilities from fully and equally enjoying any service, program or activity.

141. Defendants' failures and refusals to provide A.J.T. with educational opportunities equal to those

provided to students without disabilities constitute a longstanding, ongoing and continuous violation of the ADA and its supporting regulations. Unless permanently enjoined from doing so, the Defendants will continue to violate the ADA.

142. As a result of disability discrimination A.J.T. has been relegated to an inferior education program with less services, programs, activities, benefits and other opportunities, and an inferior status in the enjoyment of critical education services, resulting in educational, functional, communication, and social disadvantages in ways that diminish her current and future communication, health, independence, safety, self-esteem, relationships, dignity, productivity, satisfaction and well-being, in a direct affront to the purposes of federal special education and anti-discrimination laws.

143. As a result of disability discrimination A.J.T. has been significantly impeded in making progress towards the goals of equal opportunity, full participation, independent living, and economic self-sufficiency, contrary to the purposes of federal special education and anti-discrimination laws.

144. The District's actions discriminated against A.T. and G.T. in violation of 42 U.S.C. §12203 and 28 C.F.R. § 35.134 by coercing, intimidating, threatening and interfering with parental advocacy efforts in retaliation for their efforts to secure A.J.T.'s right to a full school day.

145. As a direct result of disability discrimination including retaliation and interference, Plaintiffs A.T. and G.T. have expended private funds to provide evaluations of A.J.T.'s disabilities and needs, as well special education and related services in an amount

to be established at trial that the District should be ordered to pay.

146. As a direct result of disability discrimination A.J.T. has suffered injuries and damages in an amount to be established at trial that the District should be ordered to pay.

147. Plaintiffs are entitled to injunctive relief, compensatory damages, costs and attorney's fees.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Declare that Defendants have discriminated against Plaintiffs on the basis of disability by excluding A.J.T. from a full school day in violation of Section 504 of the Rehabilitation Act and Title II of the ADA;

2. Declare that Defendants have interfered with and retaliated against Plaintiffs for parental advocacy efforts;

3. Preliminarily and permanently enjoin Defendants from failing and refusing to fully implement the administrative decision to immediately provide A.J.T. a full school day, eye gaze technology with a speech generating device, and compensatory education services;

4. Preliminarily and permanently enjoin Defendants from attempting to shorten A.J.T.'s school day without complying with the procedures and standards required by federal special education and anti-discrimination laws;

5. Reimburse Plaintiffs for the costs and fees expended in providing evaluations, private services,

expert assistance and attorneys' fees to secure her rights under federal special education and antidiscrimination laws;

6. Award Plaintiffs compensatory damages in excess of Fifty Thousand Dollars (\$50,000);

7. Award Plaintiffs reasonable attorneys' fees and costs; and

8. Grant such other relief as the Court deems just and appropriate.

Dated: November 8, 2021 By: /s/ *Amy J. Goetz*

Amy J. Goetz

(#214711)

**SCHOOL LAW
CENTER, LLC.**

520 Fifth Street South

Stillwater, Minnesota

55082

Telephone:

(651) 222-6288

**ATTORNEYS FOR
PLAINTIFFS**

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VERIFICATION

We verify under penalty of perjury in accordance with the laws of the United States that we have read the foregoing Complaint and that all of the facts and statements made therein are true and correct to the best of our knowledge, and as to those facts stated on information and belief, we also believe them to be true and correct.

Dated: November 8, 2021 /s/ *A.T.* and *G.T.*
A.T., Father and
G.T., Mother

IN THE UNITED STATES OF AMERICA
DISTRICT OF MINNESOTA

A.J.T., a minor child, by and through
her Parents, A.T. and G.T.; and A.T.
and G.T., individually and jointly,

Plaintiffs,

v. File No. 21-CV-1760 (ECT/JFD)

Osseo Area Schools, Independent
School District No. 279; and
Osseo School Board,

Defendants.

The VIDEOCONFERENCE DEPOSITION of
KATHERYN A. EMMONS, taken pursuant to Notice
of Taking Deposition, each party in their respective
location, before Gail M. Hinrichs, Registered
Professional Reporter and Notary Public, taken on
the 14th day of February, 2022, commencing at
approximately 9:00 a.m.

* * *

[5]

KATHERYN A. EMMONS,

after having been duly sworn, was examined and
testified on her oath as follows:

EXAMINATION

BY MS. GOETZ:

Q Can you state your full name, please?

A Katheryn Alice Emmons.

Q What is your current job title?

A Director of student services for Osseo area schools.

MS. GOETZ: Counsel, can we agree to convert the student and parent names to initials.

MS. BOOTH: In the transcript?

MS. GOETZ: Yes.

MS. BOOTH: Of course.

BY MS. GOETZ:

Q Ms. Emmons, will you agree that you won't have communications with others during this deposition?

A Yes.

Q No notes, chats, texts, emails or cues from others?

A Yes.

Q And that you won't have discussions about [6] your testimony over breaks?

A Yep, yes.

Q Can we agree to speak one at a time so the court reporter can get everything we say?

A Yes.

Q Will you answer all questions unless your attorney advises you not to answer?

A Yes.

Q Is there any reason you're not able to fully participate in today's deposition?

A No.

Q What documents did you review to prepare?

A See if I can remember. Let me think, did I review any documents? I reviewed the Section 504 policy of the district. That's it. I think that's the only document I reviewed.

Q Did you review A.J.T.'s educational records?

A I did not.

Q But you have read A.J.T.'s educational records?

A Not in its entirety. Parts and pieces.

Q What parts and pieces have you read?

A I read an occasional Prior Written Notice and I have reviewed an IEP several years ago. [7]

Q We're going to go over the Prior Written Notices, so I'll ask you, as you're looking at them, whether those were the Prior Written Notices you have read before. Unless you can remember which ones you have read?

A Sorry, I don't, huh-uh.

Q Who did you talk with to prepare for today?

A Counsel.

Q Anyone else?

A No.

Q Do you know of your ethical duty to tell the truth?

A I do.

Q Do you know of your ethical duty to protect students from harm?

A I'm sorry, could you repeat that?

Q Do you know of your ethical duty to protect students from harm?

A Yes.

Q To not discriminate?

A Yes.

Q To ensure equal access to learning?

A To afford the opportunity for equal access, yes.

[8] Q. You don't think it's your ethical obligation to ensure equal access to learning?

A I think it's my ethical opportunity to afford the opportunity for equal access.

Q What's the difference?

A Ensure. I'm not sure I can ensure anything.

Q Who can ensure equal access to learning?

A I can't answer that.

Q Anyone in the district responsible to ensure equal access to learning?

A I think in the district it is the district responsibility of all members to afford the opportunity for equal access.

Q And so there is no person in the school district responsible to ensure equal access to learning?

A I think an IEP team, when they are considering FAPE, that that's what they are doing. I think a 504 team, when they are doing it, that's what they are doing.

Ensure is -- it's like a guarantee, and I'm not sure we guarantee anything. I don't guarantee any outcomes.

Q And nobody in the district ensures equal [9] access to learning, other than an IEP team or a 504 team?

A I'm going to go back to my answer that I'm ensuring the opportunity to equal access, to afford equal access.

Q So it's not the responsibility of the director of special services -- is that your title?

A Student services.

Q It's not the responsibility of the director of student services to ensure equal access to learning?

A It's my job to ensure that we have processes in place so that teams can provide the access and opportunity to be afforded to students.

Q It's not the responsibility of the superintendent of the Osseo district to ensure equal access to learning?

A I can't answer that. I don't know.

Q Do you not know what the superintendent's job responsibilities are?

A Not to that extent, no, huh-uh.

Q Is it the responsibility of the school board to ensure equal access to learning?

A I think that the school board also, by their policies and procedures, sets out ways that the **[10]** district will comport itself to afford the opportunities.

Q Do you know of your ethical duty to understand and ensure compliance with state and federal law, including constitutional standards?

A Can you repeat that?

Q Do you know of your ethical duty to understand and ensure compliance with state and federal law, including constitutional standards?

A I believe I understand my role, yes.

Q And have I described your role, your ethical duty?

A You described part of my job description.

Q Have I accurately described part of your ethical duty?

A How about I've -- I have a responsibility for that.

Q What do you understand is the source of your ethical duties?

A The source of my duties are the job description under which I was hired and then to follow the mandates of MDE, follow the law, consult with counsel when I don't understand it, to follow the processes as set forth by our policies and procedures in the district. [11]

(At this time A.T. joined the proceedings.)

BY MS. GOETZ:

Q Do you have licensing boards that set ethical standards for you?

A It's been a while since I've reviewed the standards for my license, but it does set out norms of behavior.

Q And those are called ethical standards in the law, aren't they?

A I can't answer that. I don't know. I'd have to review it.

Q When was the last time you reviewed your ethical requirements?

A Probably attended a session at a conference a while ago. I can't even answer that. I don't know.

Q Do your ethical standards change from time to time?

A I don't think so.

Q How do you keep current with your obligation to comply with your ethical standards?

A I attend all of MDE's director's forums, and when I applied for my relicensure, which I just did a year or so ago, I look at it then, or prior to [12] applying for my relicensure.

Q Is that a requirement of your relicensure?

A I don't think it is. It's certainly not a box I ever checked.

Q Did you review, discuss or were you provided the exhibits that were marked for discussion today with anyone?

A No.

Q Can you look, please, at Exhibit 31.

MS. BOOTH: Ms. Goetz, we have 31A. Is that the exhibit you're asking her to turn to? We don't have a 31.

MS. GOETZ: Yes, 31A.

MS. BOOTH: Thank you.

BY MS. GOETZ:

Q Can you identify this document, please?

A It is my resume.

Q Is it current?

A Yes.

Q Is it complete?

A Yes, it's my resume, uh-huh.

Q Can you look at Exhibit 4, please? Can you identify that document?

A It's my license.

Q Is it accurate? **[13]**

A It is.

Q Is it current?

A It is.

Q So you have a number of licenses, elementary education, emotional/behavior disorders, learning disabilities. Those are all teaching licenses?

A Yes.

Q And then you have two administrator licenses, principal K-12 and director of special education, correct?

A Yes.

Q Do you comply with all of your licensing requirements?

A I do.

Q Will you look at your -- at Exhibit 7, please?

A Position description.

Q What is that?

A My position description.

Q Is it current?

A I don't -- it could be. I was hired into this job 11 years ago. It hasn't been touched since then. So I'd have to look at it. It's probably broad enough that it is. [14]

Q Having reviewed it, can you answer the question?

A Would you repeat the question?

Q Is that current?

A Oh, I think it is.

Q So you are responsible for, among other things, planning, supervising, and coordinating special education and Section 504?

A Where is that in this? Could you just point me to where you are reading from?

Q Under Job Summary, page 1.

A Okay. You know what, this isn't. Sorry. I no longer supervise English language learner programs, equity, and integration. So I just went to my job duty one. But yes to special education and Section 504.

MS. GOETZ: Counsel, can we get a current version of the position description, please?

THE WITNESS: There isn't going to be one. This is what they're going to have until I leave and they revise it.

BY MS. GOETZ:

Q So does the Section 504 coordinator report to you?

A She does. [15]

Q Are you the Section 504 coordinator as well?

A No.

Q And how does that role get designated?

A I designate it as director to assistant director.

Q Do you know why your superintendent thinks you are a Section 504 coordinator as well?

A No.

Q Don't you think he would know who the district's Section 504 coordinator or coordinators are?

A I think the superintendent would assume it was the director of student services.

Q Why?

A Because in most districts that's how it works.

Q And you operated as the Section 504 coordinator for a period of time, correct?

A Yes, I did, when I was the assistant director and then when I became director and then when I hired an assistant director, I delegated to the assistant director.

Q When were you the Section 504 coordinator?

A As the director, it would have been, I [16] believe, 2014-15, and then I was the -- as the assistant director from when I started in the district.

Q So when were you the Section 504 coordinator, 2015?

A. 20 -- I started with the district in August of 2001 and shortly thereafter Kathy Bushman, the director, designated me as the Section 504

coordinator. I don't exactly remember when she did that. And then until I hired the assistant director, it was me.

Q So what period of time would that have been?

A That would have been fall, because I'm not exactly sure when, of 2011 until 20 -- 2014-15. That was my last year as the 504 coordinator.

Q Part of your duties include monitoring programs for compliance with mandates and policies, right?

A Yeah, I would agree with that. Some programs, uh-huh.

Q And your responsibilities include disseminating information about due process and educational rights of students and parents?

A Yes. [17]

Q And serving as conciliator between parents and school personnel when special ed program recommendations cannot be resolved at the building level?

A Certainly one avenue, yes.

Q For only one avenue, what do you mean?

A There are other avenues for conciliation, other than the director.

Q Have you served as a conciliator between The T's and school personnel?

A No.

Q Why not?

A We've gone down other avenues. I mean they haven't agreed, they have done a conciliation -- is that what you mean by conciliator? I was in attendance at one.

Q Any other ways you have served as a conciliator in this case?

A In this case, let me think. I don't think so. I don't think so. I'm not sure exactly -- I don't think so. That's -- not in a formal -- like I'm not sure exactly what you mean by conciliator. I'm not even sure exactly the job description for it, but it's -- I've attended one conciliation meeting with The T's. [18]

Q Have you ever inquired about what your position description means when it assigns to you the obligation to serve as a conciliator between parents and school personnel when program recommendations cannot be resolved at the building level?

A No, no. And if we were talking IDEA and 504, there are avenues for conciliation that would be more relevant than the directors making a decision.

Q What's more relevant than the person in charge of the program conciliating a resolution?

A Well, there's -- when somebody doesn't agree, there's a conciliation conference with relevant members of the team that know more about that child and situation than I do; there is a facilitated IEP, if we're talking IDEA, again, members of the team who would know much more about that child and situation than I would; there is mediation, again relevant members of the team who know much more about the child and the family than I do; then there's an MDE complaint process.

Q And those are all more relevant than having the head of the department attempt to conciliate a resolution, in your view?

A I think that having people who know more about the situation and the student and the family is

[19] important because they know the issues and I don't.

So I'd be, like, the person brought in to say, okay, here is the situation, and then choose.

Q Why is that a bad idea?

A I didn't say it was a bad idea. I just think there are better ideas.

Q Why is that irrelevant?

A It's also not irrelevant. It's just there are better avenues for conciliation.

Q Why is that a less good alternative?

A I think the people on the IEP team are more conversant and, also, if we're going to talk about Section 504, the people on the Section 504 team are more conversant with the child's situation.

Q And so it is more relevant to have people who know the child making decisions?

A It is important that, yes, that the people who are making decisions know the IEP or the 504, the child's situation, the context, what has gone before. Yes, that's important.

Q In fact, that's required under the law, isn't it?

A Yes.

Q It is part of your responsibility to stay current on all education laws and rules, isn't it? [20]

A It certainly -- yes, it is certainly a worthy goal, uh-huh.

Q It's not your responsibility, just a goal?

A I stay current by attending the MDE websites, by getting an LRP daily bulletin.

Q But is it your responsibility?

A To the best of my ability, yes. But is it possible that something gets passed and I don't know

about it as soon as it's passed, yes, it is possible that something could be passed and I wouldn't find out about it for a short period of time.

But then I do and then I get an update and I read about it and then I determine if any action needs to be taken.

Q Who's responsible to make sure you are current?

A To the best of my ability, it is me.

Q Isn't it your responsibility to ensure the effective identification and assessment of and provision of student services to students who are disabled or have special needs?

A Okay, so let me make sure I'm understanding your question. It's my responsibility to ensure that we find students, evaluate them, and then provide services who are in need of those [21] services.

Q I'm just reading from your position description, Ms. Emmons, under duty responsibility number 5, the third bullet point. Is that not accurate?

A That is accurate, uh-huh.

Q And that includes students who are disabled and entitled to protection under IDEA and Section 504, correct?

A Yes, correct.

Q And it's your obligation to know laws, state mandates, regulations, and procedures related to, among other things, IDEA and Section 504, right?

A That is correct, uh-huh.

Q Do you comply with all of your position description requirements?

A To the best of my ability, yes.

Q Who's responsible to ensure you are compliant?

A So I do have a supervisor who tells me it's, you know -- but they don't, on a daily basis, come and check and see if I'm doing my job.

Q How often do they come and check and see if you are doing your job?

A I have check-ins every so often. **[22]**

Q How often?

A Weekly, biweekly, monthly.

Q And do you have annual reviews?

A I do.

Q And in those check-ins and reviews, are they making sure that you are doing your job?

A No -- not to the extent have I ever been asked by them are you staying updated on laws. I would say that they are expecting me to do that. So that is why I get LRP and then I attend the director's forums, I attend other conferences.

Q What other position responsibilities does your supervisor assume you're complying with without asking?

A I don't think I can answer that. I don't know.

Q You don't know what questions your supervisor asked in check-ins and reviews?

A I do, but we don't talk about my job description in those check-ins. We talk about current events, what's going on, what's coming up.

Currently we're talking about the district plan, the vision parts.

Q So who ensures you're doing your job in accordance with the position description? **[23]**

A I am thinking they're expecting me at this level to do that without needing for them to do a constant check-in on it.

Q Aside from a check-in, does somebody review your compliance with your position description requirements?

A No.

Q Who's your immediate supervisor?

A Dr. Bryan Bass.

Q How long has he been your supervisor?

A About a month.

Q Before that?

A Michael Lehan.

Q For how long?

A A year and a half.

Q Before that?

A Steven Flisk.

Q For how long?

A I'm thinking one year I think.

Q Before that?

A Kelli Parpart.

Q Can you spell her name, please?

A K-e-l-l-i, P-a-r-p-a-r-t.

Q For how long?

A Since the beginning -- since I became a [24] director.

Q That was 2015?

A Can I see my resume again? I don't remember.

MS. BOOTH: She's asking if she can look at her resume.

THE WITNESS: I don't remember when I started as the director, what year.

MS. BOOTH: I'm handing Exhibit 31A to Ms. Emmons.

THE WITNESS: Yes, since 2014-15.

BY MS. GOETZ:

Q Why is there so much turnover in that position?

A The assistant superintendent positions? They find other opportunities, they -- I don't know.

Q Who hires the assistant superintendent?

A The superintendent.

Q Who have been the superintendents that you've worked under in the district?

A Kate Maguire and Cory McIntyre.

Q What's the role of your supervisor?

A To support the activities of the student services, to work with me to ensure that I get what I need in order to be a good director, to -- like, well, [25] currently what he is doing is helping provide a roadmap in order to meet the current changes to this mission, vision in my department plan.

Q Is it your supervisor's job to ensure you're complying with your position description?

A I don't think that they would see that. I would say -- so like I do -- let me think about that for a minute.

I would think, you know, if I was a first-year teacher that would be one thing, but as a director, sure, I think it is technically their job to make sure that I'm doing my job correctly.

Q Isn't it also their role to correct you if you are not?

A If they felt that I was not doing my job, any part of my job correctly, they would correct me, yes, they would.

Q Have you ever been corrected?

A No.

Q Who are your direct reports?

A Do you want names, positions? What would you like?

Q Both, please.

A Okay. So I have seven coordinators -- eight coordinators now. They are -- let me see if I [26] can do this -- PC Clymer, Jan Bitzer, Laura McLuen, Sarah Lancette, Michelle Humphrey, Angie Vanhee, Candy Larson, and coordinator for health services Melissa Sennes, then I have an accountant Bridget Mengelkoch, I have 3 ESPs, those are administrative ESPs that work in the office, they are Andrea Mcpherson, Michelle Nelson, Erin Smith, I have a tuition billing clerk Matthew Wagner, I have assistant director Jill Lesné.

Q What is your role as their supervisor?

A To support them as they go do the work of special ed or health services in the district, make sure budgets are in line, make sure letters get out on time, that communications get sent, that tuition billing is accurate, to make sure third-party billing gets done, provide guidance and support, and correction as needed.

Q Is it your role to ensure that they comply with policies, procedures, laws, and rules?

A Yes, uh-huh.

Q How do you do that?

A I have -- for the coordinators, I have team meetings that we discuss if something were coming up that there's something new, if there's something different, if there's new law, new rule, new interpretation, and we discuss it at our SEAT team [27] meetings.

Q Do you do that in annual reviews?

A In -- not specifically do I say do they follow the law. That is one of the understood things if you're in special ed that it's governed by a certain set of laws. It's not how our -- it's under -- it would be under professional responsibility.

Q So you assume without asking at reviews that all your coordinators are following all the laws and the rules?

A So assume, hmm. I work with them quite closely so there's not really much assuming going on. I see them on an almost daily, weekly basis, they confer with me, I confer with them.

I don't meet with them at the beginning and then at the end. There's a lot of work between the first day of school and the last day of school.

Q And during regular conferring and meetings, do you discuss with them any questions with respect to laws or rules, policies or procedures?

A Generally not on an individual basis, unless somebody brings something up. And if they have a specific situation in which a particular law or rule is, then we will discuss in general if there was [28] anything that would be new or different, we would discuss at SEAT.

Q What does SEAT stand for?

A Special ed administrative team.

Q Is it your expectation that your coordinators will consult with you when there's a particular question about the application of policy, procedure, law, or rule?

A If they have a question about it, yes, they consult, uh-huh.

Q You're aware of your licensing competencies, aren't you?

A In a general way, yes, uh-huh.

Q Do you comply with them?

A Yes.

Q Describe your training in IDEA.

A So I have a license because I went to school for special education, and that was a long time ago. And then since then, attending conferences, attending all of the director's forum updates, sometimes consulting with in-house counsel or Laura, depending on whatever the situation is.

But I'm not a lawyer, so I'm a -- you know --

Q How often would you say you're trained in [29] IDEA?

A Like in totality or in parts and pieces?

Q How often do you receive training on IDEA?

A So in parts and pieces, I would say that most likely every MDE director's forum has some parts and pieces of IDEA.

Q Those happen how often?

A I think they're on a monthly basis now.

Q Any other training?

A I attend conferences, I went to the MASE conference and attended some legal updates. I couldn't tell you which ones. I read LRP, although there's very few Eighth Circuit cases in there, but it's

still just the general knowledge on stuff, and that comes up on my -- in my email every day so I'll glance at it and see if it's relevant. Or if I have an interest in it or if it's something unusual.

Q Who's responsible to comply with IDEA in your district?

A Everybody.

Q Who's responsible to enforce IDEA in your district?

A I would say if it's enforcing -- that's quite the word. To ensure compliance with IDEA, that would be me. **[30]**

Q Anyone else?

A Everybody. Everybody is responsible. So I will -- like I am the director, I meet with my coordinators, they meet with their child study teams, the child study team meets with their families. IDEA is all of our responsibility, but if you were to say, like, who is responsible as the director, that would be me.

But the coordinators are also licensed as directors and they see stuff I don't see, they attend different conferences that I do, they bring stuff to my attention as well. So that's why when you say who is responsible, I think they are, too. It's a symbiotic relationship. We are all trying to do the best we can with a ton of information, while practicing, you know, practicing or being in schools on a daily basis as well as trying to understand.

And Mr. Palmatier knows this. Sometimes I go I don't understand what this means because it's quite different at the legislature as it is in the school room.

MS. BOOTH: Sorry to interrupt. We heard a noise and I wonder if it's your client ringing in.

MS. GOETZ: Nope. He's already [31] joined.

BY MS. GOETZ:

Q Who's responsible to report noncompliance with IDEA?

A Whoever finds it.

Q Will you describe your training in Section 504?

A It has been a while since I'm not the Section 504 coordinator, but when I was the Section 504 coordinator, I attended Ratwik Law, Booth Law had some sessions, I had a conference about it, had some trainings with it.

There was a group that used to meet in Minneapolis, I don't think they meet anymore, or if they do I don't know since it's been a while, and we would discuss 504 concepts and issues, and that would be on -- it wasn't every month, I don't think. I wasn't able to make it every month if it was.

There was -- there's a group called Behr, B-e-h-r, that had a 504 conference that had somebody -- that was a long, long time ago -- Koch, somebody Koch who -- was the concept of -- he introduced me to the concept of paperwork and 504 because that was a long time ago.

Q How do you keep current with case law and [32] changes in interpretation and application of Section 504?

A I depend on Jill Lesné to brief me. I also -- LRP also has a 504 section, too, and they'll send stuff and I'll read that occasionally.

Q How do you ensure that Jill Lesné stays current with Section 504 decisions and applications?

A By providing her opportunities for training, giving her access to the same information that I have.

Q And how do you check that her understanding of Section 504 is accurate?

A It's accurate? Hmm, it's accurate. So she's -- she's attending conferences that are from reputable people, she's reading articles from reputable organizations, she's -- she's -- she's very self -- motivated isn't the right word. She's highly competent.

Q Do you ever discuss with Ms. Lesné Section 504, its requirements, its applications?

A Yes, on occasion, uh-huh.

Q What occasions bring you to those discussions?

A Oh, things like do we have things in our -- we have to post something in all of our **[33]** schools, we have to make sure that it's updated, that it's accurate. So we will look at that. Before she does a training with in-house counsel, she'll talk to me about it, when she finds stuff that's interesting, she will talk to me about it. Confusing, perplexing, I mean, fill in the blank there.

Q So she is a co-trainer on 504 to your staff?

A She is.

Q Is that consistent?

A Consistent with what?

Q Does she consistently co-train on 504?

A Yes.

Q Can you look at Exhibit 40, please, and 41. Do you recognize these documents?

A Not off the top of my head, no, huh-uh. But it says Booth Law Group, so I'm guessing they came from a training.

Q But you don't know whether you participated in this training?

A Not this particular one, no, huh-uh. They offer more than one -- or more than one time a year, it's my understanding.

Q Exhibit 42, can you look at that please.

MS. BOOTH: I'm sorry, 42 did you [34] say? My apologies.

MS. GOETZ: 42, please.

MS. BOOTH: I got lost in the detail. There you go, there's 42.

THE WITNESS: Uh-huh.

BY MS. GOETZ:

Q Do you recognize this document?

A I have seen it. November 2020, I'm not sure if this -- this may be the most recent that I've looked at, unless -- what year are we? '22? Yep, uh-huh.

Q Did you participate in this training?

A I did not.

Q Did you review these materials?

A When you say reviewed, just look at them, yes. Did I review them for feedback? Well, if I would have seen something, I would have asked. But yeah.

Q And will you look at Exhibit 43, please?

A Okay.

Q Do you recognize this document?

A I think I do. I think it's our Synergy paperwork for Notice to Conduct an Evaluation.

Q When is that --

A This is something they use at the school **[35]** level.

Q When is that supposed to be provided?

A This would have been provided by a school counselor or 504 person at the school to the parent.

Q When is that supposed to be provided?

A Prior to conducting the initial 504 evaluation.

Q Also prior to conducting an evaluation?

A This one says initial. I don't think so, no, huh-uh.

Q Do you know whether this notice was ever provided to A.J.T.'s parents?

A I do not.

Q If it was not, do you know why not?

A I do not.

Q Will you look at Exhibit 44, please. Can you identify this document?

A This looks like an eligibility form, again, from Synergy.

Q Synergy is your district's form file?

A Uh-huh, the electronic format, yes. Student information system.

Q When is this form supposed to be provided?

A It would be when the student qualifies for a Section 504 plan. **[36]**

Q Do you know whether this form was ever submitted to A.J.T.'s parents?

A I do not.

Q If it was not, do you know why not?

A I do not.

Q Do you know when she was determined eligible for Section 504 protection?

A I would assume, which is dangerous I understand, that when she qualified for an IEP, she was also eligible under Section 504. She received the same protections as under -- under 504 when she qualified for IDEA.

Q So there are no different protections for students under 504 than are required under IDEA?

A Different? I think that IDEA affords greater protections. 504 is included in those protections. So greater and. To me it's an and not an or.

Q So are there different protections under 504 than are available under IDEA?

A I'm trying to think. So Section 504 is access and opportunity and IDEA is progress. You need to make progress. It's hard to make progress if you don't have access and opportunity.

Q So is 504 different from IDEA in providing [37] the right to access and opportunity?

A So -- that's a good question. So if I have a student that, hypothetically, is being considered for 504, they're not getting the IDEA protections. We have a student with an IDEA protections, they would be getting both protections. The ability to have a harassment-free environment, the ability to not be bullied.

I'm using -- I'm sure there's formal legal language there, to not be bullied, to be able to attend class without being made fun of. And IDEA has, as you know, goals and objectives designed to make progress due to their disability.

Q So can you articulate what is different about 504 protection than what a student gets under an IEP?

A It appears I can't. If my prior example didn't work, then it appears I cannot.

Q And if you believe that a student gets all their 504 rights through IDEA, then there would be no reason to make a separate 504 eligibility determination, right?

A MDE opined that a while ago, that if a student was on an IEP that they had -- anything that would have been on a 504 should be included in the [38] IEP.

Q But my question is about your opinion. Is it your opinion that a student need not be found eligible under Section 504 so long as they have been found eligible under IDEA?

A Yeah, I believe that if a student has been found eligible for IDEA, that they are afforded Section 504 rights.

Q Other than MDE's opinion, what else tells you that?

A I have nothing. That's what I've got. It used to be a little different in our district and then when MDE made that opinion, that's what we followed. And we have followed it for years now, years and years. If I had an opinion prior to that, I don't remember it.

Q When did MDE make that opinion?

A It's been a while. I don't know because we've been acting this way for a lot of years.

Q What did that opinion say?

A Just basically to the effect that if a student has -- should not have a separate 504 and an IEP, that anything on an IEP should be included in the IEP (sic).

Q Who at MDE made that opinion? [39]

A I -- I have no idea.

Q Do you consider that opinion to have the effect of law?

A It's certainly something that they would give us guidance on, yes, uh-huh.

Q But do you consider it has the effect of law?

A If it is not law, that's not law. So those are two separate things. MDE is my guiding organization. The special ed department, they are the ones that give me updates that I depend on to provide guidance and so on.

So if they said do it this way, there's a good chance I'm going to do it that way unless I don't agree and then I will call them and have a conversation and then we will discuss and then I will do it their way most often, yep.

Q When this opinion was issued at some unknown time by some unknown person, do you recall disagreeing with it?

A Disagreeing? I recall being surprised. Like, oh, that's interesting because up to that point -- and as an example, we had students who were on speech-only IEPs and then they needed something else and just an accommodation. And so we would write [40] a separate 504 for that. And then -- excuse me, this came out and we switched that practice.

Q So you're familiar with and have read all the provisions of IDEA, likely multiple times; wouldn't you agree?

A Oh, yeah. Have I read it, yeah. But oh my gosh, yeah, no. No.

Q So how does this guidance that you've just described from MDE comport with the IDEA's provision that nothing from IDEA limits the rights, remedies, or claims under Section 504?

A Okay, so you're talking rights, remedies, and claims. That isn't what you're talking about here. You're asking if they can have a separate 504 or if they're covered under 504.

I mean, as this, I think, duly notes, that you have this -- isn't this a 504 claim -- isn't that why we're here, 504? So to me that's apples and oranges you're talking there.

Q So describe the differences in rights between students under 504, the differences in claims, the difference in remedies between students protected by IDEA and students protected by 504?

A So a student who is protected solely under 504 -- or actually it appears even under IDEA -- can [41] bring a claim of discrimination under 504 without claiming IDEA. At least I think so.

Again, I'm not a lawyer. Once it starts getting into the lawyers and the claims and the stuff that they bring, I start talking to counsel.

Q And I'm assuming you talked to counsel about these distinctions, and so my question is about what you know about those distinctions now?

MS. BOOTH: I'm going to object. You've asked her what are the differences between rights several times; she's answered.

THE WITNESS: Uh-huh.

BY MS. GOETZ:

Q Do you have anything you want to add to that answer?

A No.

Q Who's responsible to comply with Section 504?

A Everybody.

Q Who is responsible to enforce Section 504?

A Again, we have a Section 504 coordinator. It's in my job description, so me, and then I delegate to Jill Lesné, assistant director, and then she trains others. And then we have Section 504 coordinators, we also train principals so they're aware of the [42] responsibilities under 504.

Q Are they all responsible to enforce 504?

A Enforce. Boy, that word. They are responsible for implementing.

Q Who's responsible to ensure compliance?

A So the principals at the schools, they work with the families under their care and if a 504 issue comes up, then they navigate it at their level and if it becomes greater than them, then they consult with Jill. And if it becomes greater than Jill, then she consults with counsel, and she will include me in that.

Q If 504 rights are subsumed under IDEA in your district, aren't all the members of the IEP team responsible to ensure compliance?

A So 504 is access to -- to opportunities. So by nature, writing goals and objectives with accommodations and services, that's what they are doing as well.

They'll look at what accommodations and supports does the student need. So if the student wasn't on an IEP, as an example, then it would be possible that those accommodations and supports would be included in a 504 plan because they are what

the child needs either to have access or to make progress. [43]

Q I understood your testimony to be that 504 is, essentially, subsumed under IDEA and so my question is -- first tell me did I misunderstand your testimony?

A So I would say that it wasn't an or. It's not 504 or IDEA. It's 504 and IDEA. Every child has a right to a bully-free environment, they have the right to have access to an educational opportunity.

Q And the IEP team, for a child who has an IEP, is responsible to ensure compliance with Section 504; is that correct?

A They're responsible to -- to look at that individual child and then make decisions based on that individual child.

And if that individual child has some needs for access, then -- here's my one example. Pencil grip. So a pencil grip may not -- can't always say never because I never say never -- may not write well without a pencil grip, and so that would be an accommodation that would be put into the IEP. Now that's an access.

Now, if it was like the child then cannot make progress in writing, then it would be a goal and objective.

Q So if the IEP team is charged with looking [44] at access issues, then is the IEP team charged with the opportunity to ensure that consideration is consistent with Section 504?

A IEP teams make individual decisions and have been trained on, like, the parts of the IEP, how to write a present level, how to write a goal and objective, how to use data to inform those decisions.

What does the child need to progress to either make progress or to get access. And that's where they write into accommodations on an individualized basis.

Q Are they trained to make those decisions in compliance with Section 504?

A They are trained to not discriminate.

Q And discriminate –

A We would not withhold a pencil grip from a student who needed it.

Q So is the IEP team -- are the members of the district's IEP teams trained to make decisions that are consistent with Section 504?

A I think so, then, yes, because they are trained to not discriminate, to make individual decisions, to follow the IEP from the beginning information to the end of the information, and that includes access and student.

Q Who's responsible to report noncompliance [45] with Section 504?

A In what way? So what do you mean?

Q Who in the district is responsible to report noncompliance with Section 504?

A Again -- I have to take this to the practical level, Ms. Goetz, because I don't understand your question. So -- because it's a global, like in the history of mankind, has anybody ever not complied with it. So I need an individual thing so let me think for a second.

Responsible for not complying with Section 504. So at the school level, huh. Okay, so I would say everybody. Anybody. Anybody? Anybody. Anybody who becomes aware of it.

Q Will you describe your training in the Americans with Disabilities Act?

A That goes along with the Section 504. I'm not trained in the whole of the Act, just the Section 504 of it. And I told you my training prior to this.

Q No specific training in the ADA?

A Other than it was, as it is, included in other trainings regarding special education. Probably not. Not that I can recall, huh-uh.

Q What's the difference between the ADA and [46] Section 504?

A That section was one section of the ADA law. It's Section 504 of the Americans with Disabilities Act. There are other sections.

Q What's the difference between the ADA and IDEA?

A Different laws.

Q And what is different about them?

A One is IDEA, Section 34 CFR, and one is ADA -- I have no idea what it is, if that's even a section of the federal code. They're different laws.

Q Do you know how they're different?

A One is ADA and one is IDEA. That's my understanding.

Q Who's responsible to comply with the ADA?

A Everybody. Everybody.

Q Who's responsible --

A It's our responsibility to not discriminate based on religion, creed, sexual orientation, disability -- race, religion, creed, sexual orientation, disability. There's probably more. It's just never a good idea.

Q Does the ADA cover all those protected classes?

A I believe they do. And more. There's [47] probably more, but I would have to review it.

Q Who's responsible to enforce the ADA?

A The ADA itself, I know that our director -- executive director of human resources is responsible for Section 504. ADA, isn't that -- I would say, again, everybody. We all follow the law. We all follow the law.

Q Who's responsible to report noncompliance when someone doesn't follow the law?

A Whoever becomes aware of noncompliance. Okay, so reporting. Report -- okay, we've gone around that circle. I'm not going there. All right, got it.

Q Can you look, please, at Exhibit 35?

A Uh-huh, our handbook, 2021.

Q That's last year's employee handbook?

A Yes, uh-huh.

Q You're required to be familiar with the district's nondiscrimination policy, aren't you?

A Yep.

Q You've read this handbook, haven't you?

A I have, uh-huh.

Q And you comply with its provisions; is that true?

A I do.

Q You're required to report any potential [48] violation of the school district's discrimination -- nondiscrimination policies regarding students with disabilities, correct?

A To whom? Does it say in here?

Q Are you required to report violations of policy?

A Report or take care of it? Okay, so if it was IDEA and someone doesn't agree with something or thinks something should go a different way, we have other avenues, we have conciliation conference, we have mediation, we have a facilitated IEP.

Q I'm going to stop you. That's not what I'm talking about. I'm talking about the nondiscrimination policy. You're familiar with that?

A Yes, don't discriminate.

Q. My question is whether you're required to report any potential violation of that policy regarding students with disabilities?

A Required to report it. So it comes down to my job -- they would report it, most likely, to Jill. Okay, all right, Section 504, I'm going to take it out of the theoretical here.

Somebody says we aren't doing it, they report to Jill, Jill follows the process, and then goes through the process of that reporting. So if I [49] saw it, me, director of student services, and I saw something that I said, hmm, that looks a little different, I would probably first probably to the principal and then to Jill if it can't be figured out at the school level.

Q Will you look on page 37.

A Yeah.

Q Second bullet, reports are required to go to you; is that right?

A Okay, hang on. Hang on a second, it's an attached -- let me unattach it here. Oh, yeah, that's been updated. I think -- uh-huh.

Q That reflects that the student disability discrimination claims should come to you?

A Yes, uh-huh.

Q As the 504 coordinator?

A Yes, uh-huh.

Q Were you the 504 coordinator in the 2020-21 school year?

A No, but if it would have come to me, I would have forwarded it to Jill Lesné.

Q Why were you listed as the coordinator last year?

A I have no idea.

Q Are you listed as the coordinator again [50] this year?

A I think it's been corrected. I talked to the executive director and asked for that correction.

MS. GOETZ: Can we get a copy of the 2021-2022 handbook, Counsel?

MS. BOOTH: If there is one, yes.

BY MS. GOETZ:

Q Is there one, Ms. Emmons?

A I don't know.

Q You don't know whether there's a current employee handbook?

THE WITNESS: Do you know? I think they update it every year, correct? Because at the beginning of the year we do all those --

MS. GOETZ: Mr. Palmatier is not answering questions.

THE WITNESS: Got it, sorry. I get that. I'm sorry, my mistake.

MR. PALMATIER: For the record, I didn't answer any question.

MS. GOETZ: And for the record, Ms. Emmons was looking to you for the answer.

THE WITNESS: And he did nothing.

MR. PALMATIER: I actually turned away, for the record. **[51]**

BY MS. GOETZ:

Q Is there a current employee handbook, Ms. Emmons?

A I believe there is.

Q Do you know whether you are listed as the 504 coordinator in previous employee handbooks?

A I was.

Q Were you listed as the 504 coordinator in every employee handbook, even after you delegated that responsibility to Ms. Lesné?

A Yes. Now, that I've seen the 2021, the answer would be, yes, most likely.

Q And who submits Assurances of Compliance annually as the 504 coordinator?

A I don't know. To be honest, I'm not sure we do that. And if we do, if it's a technical part of something, I'm unaware of it.

Q Assume that the district does do that and assume that it's required every year. Do you know why it's required every year?

A I don't. And you're asking me to assume that it is. So I'd have to check on that.

Q So you don't know that the Department of Education requires the district's assurance that it complies with Section 504 every year? **[52]**

A That is correct. I am unsure of that, uh-huh.

Q Can I ask you to look at Exhibit 27, please.

A Okay. Oh, we use an online reporting system, okay.

Q So this is a letter from MDE to me from January 18, 2022, responding to my request to the district's Assurances of Compliance, right?

A Okay, yep, uh-huh.

Q And then look at 28, if you would, please. Do you see on page 4 that you are listed as having reported compliance every year as the coordinator?

A I'm not sure -- oh, page 4 -- is this page 4? What are we talking about? Is this page 4? It's Exhibit 28.

Q It's printed in a different form than what I have it. Do you see within the document that you are listed as the 504 coordinator?

A I do, uh-huh.

Q And that you reported to MDE every year that your district complies with section 3504?

A Uh-huh. I didn't, but somebody did certainly, uh-huh.

Q But your name is listed as the reporter, **[53]** is it not?

A It is, uh-huh. It's listed as the -- what is it 504 name? It's listed as the 504 name. I've never seen this.

Q Can you look at Exhibit 29, please. Yeah, it's tiny.

A Yeah.

Q Do you recognize the form?

A I do not.

Q That's the form MDE tells us you fill out every year.

A Well, somebody in the district, right.

Q But it's listed under your names, right?

A And a bunch of others. I'm not sure, is this the form that goes with my name? That's my question. I haven't seen either one of these.

Q Do you know why the district assures that it complies with 504 to MDE every year?

A Probably because we do.

Q Do you know why the State requires that assurance?

A I don't.

Q Do you know that federal funding is contingent upon the district's compliance with Section 504? [54]

A. Okay, yes, I just had an epiphany, yes.

Q. And that the State is the keeper of the pocketbook of federal funds?

A Yes, that is true.

Q Going back to Exhibit 35, page 36, please.

MS. BOOTH: She said page 36.

THE WITNESS: Oh, am I on page 36?

Sorry.

BY MS. GOETZ:

Q Excuse me, 37, please.

A Yes, 37.

Q The second paragraph on page 37.

MS. BOOTH: We can't hear you, Ms. Goetz.

BY MS. GOETZ:

Q Second to the last paragraph on page 37 identifies the organizational core value that everyone has equal intrinsic value. Do you see that?

A No. Where are you?

MS. BOOTH: Under 13, Good Practice.

THE WITNESS: Oh, yes, I see it. Uh-huh.

BY MS. GOETZ:

Q Do you agree that's the organizational core value? **[55]**

A Yes.

Q What does that mean?

A That students, staff, anybody who comes into our district has value and to treat them accordingly.

Q Is it equal value?

A Equal and intrinsic, yes, uh-huh.

Q What do each of those terms mean?

A That means that -- for me what it means, I can't speak for everybody -- but equal and intrinsic value is that if I'm in a conversation with somebody, that I value them for the person that they are. And when I'm in a conversation with somebody else, I value them for the person that they are and what they bring to the table, that there's not a difference between what Person A brings to the table and what Person B brings to the table.

Q And that goes for learners as well as staff?

A Staff, students, families, community members. People bring value to the table.

Q Does that mean that A.J.T. has the same innate or inherent value as any other learner?

A Yes.

Q Will you look at Exhibit 36, please? **[56]**

A Yes, Policy 102.

Q Are you familiar with that policy?

A I am.

Q The purpose is to establish and maintain a learning environment that affords equal educational opportunities, free from discrimination based on disability, among other things, right?

A Yep, among other things, yep, uh-huh.

Q Is it your responsibility to comply?

A Yes.

Q. Is it your responsibility to ensure others comply?

A Yeah, I believe that we -- it's a collective responsibility that we all ensure an environment free from discrimination.

Q But as the director of student services --

A Yes, if I note it -- I'm sorry, sorry.

Q As the director of student services, it's particularly your responsibility, isn't it?

A Not particularly, no, but, yes, as a director and as somebody who is a director, it is certainly one of my responsibilities.

Q Is it your responsibility to correct noncompliance?

A Yes, along with others, depending on the [57] situation and what it is and depending -- yeah, I'd have to see the context, but, yes, uh-huh.

Q The district's policy is to provide equal educational opportunity for all students seeking to enroll or enrolled in the district, right?

A Yeah, uh-huh, or to provide the learning environment that affords for equal educational opportunity.

Q How was A.J.T. provided an equal opportunity to be educated with a school day of less than 50 percent of her peers at enrollment?

A So -- okay, so we're out of in general and talking specific now. The parents make the child available to us at noon and we have not filed truancy

for the time that -- from the beginning of the school day until she appears.

So we're affording her an equal educational opportunity by not getting tied down into truancy because the parents and the doctors have said she can come to school at noon. We accept that information and then we develop a learning plan for the time that she's with us so that she can make progress on goals and objectives under IDEA.

Q How was A.J.T. provided an equal opportunity to be educated with a school day of [58] 65 percent of her peers since the fourth grade?

A Again, her parents make her available, we've excused it, we've accepted the doctor's notes, like we do for other students, none to quite this extent, but we've accepted the doctor's notes that say she cannot be available until noon. And then the IEP team developed goals and objectives, excuse me, so that she could make progress.

She's getting very intense services, more so than others. So in the course of a school day, they have recess, they have lunch, they have passing time, they have time to work on their homework. A.J.T. is getting very intense services for a period of time that other students aren't getting.

Q How do you know that?

A Sorry?

Q How do you know that?

A How do I know what? That she's getting intense services? That A.J.T. is getting intense services for a period of time so that she can make progress on her goals and objectives.

Q How do you know that?

A What part -- I'm sorry, I'm not getting it.

Q She is getting intense services to make **[59]** progress on goals and objectives. How do you know that?

A She's educated outside of the typical school day, one-on-one. That's intense services.

Q How do you know that?

A How do I know she's getting one-on-one services? I'm sorry, is that what you're asking, how do I know that?

Q How do you know that?

A It was the IEP team decision to extend her school day to 4:15. I've known that for a while. I'm sure one of the coordinators told me early on that that was the decision.

And I know that the ALJ found that she should get services in the home from 4:30 to 6:00, where there are no other students. There are no other students from the end of the school day at Maple Grove Middle School to the time that her mom picks her up. She is the only one.

Q And you know all this because a coordinator told you this some time ago?

A Well, initially to the 4:15, that has been in place for quite a while, I believe.

Q And so your answer to how do you know all this is a coordinator told me early on? **[60]**

A To 4:15. And then the ALJ decision informed the 4:30 to 6:00.

Q What good would it have done to file a truancy action when five or six doctors have excused A.J.T. from attendance for medical reasons?

A None, which is why we didn't do it. We accepted the information, we allow her to start at noon.

Q Doesn't equal mean the same?

A Oh, hmm, boy, there. Equal. I think in the purest definition, sure, uh-huh. But when we're talking about afforded an equal opportunity, that's where we get into the differences. Because if I get caught up on, you know, the meaning of a single word -- again, Ms. Goetz, I'm a practitioner. If I have a student who doesn't understand fractions and then 10 who do, is it an equal opportunity to make all 11 of them sit through another fractions lesson? Or is it equal opportunity to work with the one student who doesn't get it so he then has access to the next lesson. So I can't get caught up on one word.

Q Is 50 percent the same as 100 percent?

A No.

Q Is 65 percent the same as 100 percent?

A In terms of pure percentages, no. No, [61] huh-uh.

Q In terms of equal?

A So, again, you're equating time with equality and I'm saying that the time that she is getting, that the instruction she is getting during the time we have her is allowing her to make progress.

So I'm not saying hour-for-hour. We have students -- there's over 21,000 students in the district. Some students go to doctor's appointments, some students are under, unfortunately, a doctor's care for chemo or for other serious and significant illnesses and so for a period of time we make accommodations.

And again, it's not hour-for-hour. Care and treatment, again, you know for all the, again,

students that are struggling with addiction, we make different opportunities available for them so that they can get afforded the educational opportunities.

Q The school district also makes reasonable accommodations for disabled persons under this policy, right?

A Correct, uh-huh.

Q What accommodations, other than not starting her school day until noon, were provided to A.J.T.? [62]

A Well, starting her school day at noon and extending it at the end of the school day, other than that, I'm sorry, I'm not aware of all the particulars of her accommodations. I don't know.

Q Why not a modified school day schedule?

A That is a modified school day. She comes at noon, we educate her to 4:15 --

Q Let me stop you. I don't think you heard my question. Why not a modified full day schedule?

A. All right. Again, we're getting caught up -- or I'm getting caught up in a word. It is a modified full school day. She could come or we could -- you know, doctors have said, along with the parents, she can't come until noon. We accept that.

She is getting an educational program with her peers for part of it and without her peers for another part of it. That, to me, is a modified program based on her IEP.

Q What's a standard full day schedule?

A For who? For like an -- excuse me, an elementary, middle schooler? Like middle school, because she's in middle school right now.

Q For student's A.J.T.'s age.

A Yeah, I'm not familiar with the middle school, but they have math and science, they go **[63]** between classes, they have lunch, they get a break here and there.

Q Let's just talk about hours. They get 6-1/2 hours of school each day, don't they?

A Hour-per-hour, yes, uh-huh.

Q So why not a modified 6-1/2-hour schedule for A.J.T.?

A Her parents make her available to us at noon. School starts at -- I don't even know, 8:00 o'clock, I don't know, I'm sorry, 8:20, 8:40. You'd think I know that.

We have agreed with her doctors and her parents for her to start at noon. And then we have worked with the time on the other side of noon to provide an education so that she can make progress. And my understanding is that she is.

Q Why not modify a full day schedule so she can start at noon and end 6-1/2 hours later like her peers?

A But that's equating hour-for-hour and I've already said that's not how, I think -- I think in the time that the IEP team has proposed from noon to 4:15, can she make progress on her goals and objectives.

So hour-for-hour isn't the conversation. It is what does she need in order to make progress on **[64]** her goals and objectives. There's nothing that I have seen or read in the law that says hour-for-hour, 6-1/2 hours equals 6-1/2 hours.

What I understand the law to be is that she's afforded the educational opportunities so that she can make progress. And that's what we have done.

Q Who told you --

A Sorry.

Q Who told you that her IEP team decided what she needed in terms of hours of a school day to make progress?

A Boy, I don't recall actually because that was quite -- I think initially it was quite a long time ago. I know that when she went to middle school there was another discussion about changing the hours or keeping them, and I had a conversation, I believe, with Jan Bitzer about that and she said the team decided to keep it at 4:15, that they felt that was the best way for her to continue to make progress.

So initially, I'm sorry, I don't remember, but definitely -- and she's been in middle school now I think, three years. I think three years is my -- if I'm correct in that.

MS. BOOTH: Ms. Goetz, would this be -- or are you coming to a place where we could take [65] a break? Sorry.

MS. GOETZ: Sure. Should we take a ten-minute break now?

MS. BOOTH: That works.

THE WITNESS: Thank you.

(At this time a short break was taken from 10:40 a.m. to 10:55 a.m.) (Mr. Palmatier did not rejoin the proceedings at this time.)

BY MS. GOETZ:

Q Ms. Emmons, may I remind you you are still under oath?

A Yes.

Q You just testified that A.J.T. was not provided a modified full day schedule, that was decided a long time ago, and then also at middle

school, that the team decided on both occasions; is that correct?

A I don't think that was my testimony.

Q Okay. What did I have wrong? Correct me.

A The team provided a school day allowing the student to come at noon, per the doctor's and parents' request, and then developed a program from noon to 4:15 that would help her meet the goals and objectives on her IEP. [66]

Q So why was A.J.T. not provided a full school day from noon to 6:30 like her peers had a 6-1/2-hour day?

A A.J.T. is not coming to school until noon. Her peers start the school day at the beginning of the school day.

Q Any other reason?

A The team determined that, given the fact that her parents and doctors want her to come to school at noon, then they developed a program intended for her to make progress on her goals and objectives.

Q Any other reason?

A No. Not to my knowledge.

Q So you understood from Jan Bitzer that the IEP team decided not to give A.J.T. a full school day when she matriculated to the middle school; is that right?

A I understood from Jan Bitzer that the IEP team determined that if A.J.T. continued to come to school at noon, that the plan that they developed from noon to 4:15 would allow her to make progress on her goals and objectives.

Q And the team included her parents?

A I would assume so.

Q So you believe or did Jan Bitzer tell you **[67]** that her parents agreed to end her school day at 4:15?

A Jan did not go into any specifics about who agreed with what. You have the information that I have, that I was told.

Q Were you told that her parents specifically objected to the proposal to end her school day at 4:15?

A I just told you what I knew, and that's what I know.

Q So you did not know that her parents objected to ending her school day at 4:15 when she was at the middle school?

A Not specifically. I know that there were multiple objections. Over specifically what, I'm sorry, I don't know.

Q Do you know that her teachers -- well, let me ask you this: You sat through the administrative hearing in this case, didn't you?

A I did not.

Q Did you sit through any part of it?

A I did not.

Q Have you read the administrative hearing decision?

A I did read the decision, yes.

Q So you know that the hearing officer said **[68]** the record reflected that her teachers did not weigh in on the decision to shorten her school day?

A I don't recall reading that.

Q Do you recall reading that her parents consistently objected to ending her school day before a full school day?

A I -- I'm going to testify that I read the conclusions about what we needed to implement and

the rest of it is -- I believe I read it and if it said it then I read it.

Q So what do you know about whether A.J.T.'s teachers supported ending her school day before 6-1/2 hours elapsed?

A Nothing.

Q What do you know about what her parents said about ending her school day before 6-1/2 hours elapsed?

A They objected.

Q So how is it that the team could have decided to end her school day at 4:15 if you don't know what her teachers had to say about it and you did know her parents objected?

A At an IEP there is discussion, the district team then makes a proposal through a Prior Written Notice, and the parents may accept or reject [69] at that point.

Q Looking again at Policy 102, Exhibit 36, it applies to all of the academic and nonacademic programs of the district and is enforced before, during, or after school hours at all functions and events, right?

A Correct.

Q How is that applied to A.J.T.'s education after the normal school hours ended?

A I think there's some assumption that a school day is hour-for-hour when we have a student who is not able to come to school until noon.

Q Do you not assume that?

A I do not assume that. I assume that the IEP is written so that the child can make progress.

Q So you don't assume that every child gets a full school day?

A Yes, that is correct. We have other instances.

Q So have you discussed your belief that A.J.T. is not entitled to an hour-for-hour equal school day with anyone else in the district?

A Counsel and I have had a discussion.

Q Anyone else?

A No. **[70]**

Q Who told you about the first decision, a long time ago you testified, that there was a decision that A.J.T. should not have a full school day? Who told you that?

A I don't remember.

Q What did they tell you?

A The team agreed to extend the end of the school day since A.J.T. was not able to come to school until noon.

Q The team meaning her parents and her teachers that --

A That's what I know.

Q And when you say the time, do you mean her parents and her teachers agreed?

A Again, that's what I know, what I was told.

Q And the IEP team must include parents and teachers, correct?

A Correct.

Q Policy 102 requires an investigation of all complaints of discrimination, whether formal or informal, verbal or written, based on a student's protected class status, right?

A Uh-huh.

Q Is that right? [71]

A Yes.

Q Are you aware of any investigations of any complaints of discrimination against A.J.T. or her parents?

A No.

Q Policy 102 requires investigation procedures to provide appropriate due process standards with minimum protections, including notice of the process to file a complaint; is that true?

MS. BOOTH: Sorry, we got interrupted for just a second. Mr. Palmatier has joined us again.

(Mr. Palmatier rejoined the proceedings.)

THE WITNESS: Could you repeat the question?

BY MS. GOETZ:

Q Policy 102 requires investigation procedures that provide appropriate due process standards with minimum protections, including notice of the process to file a complaint, right?

A Yes.

Q When was that notice provided to A.J.T. or her parents?

A I don't know. [72]

Q The policy requires written notice to the complainant of the disposition at each stage of the process. Are you aware of any notice of disposition of a complaint investigation?

A No.

Q The policy requires a fair and equitable appeal process. Do you know what that process is?

A It goes to Jill Lesné from the school, from Jill Lesné to counsel.

Q The policy requires notice that retaliation is prohibited; is that true?

A Yes.

Q When was that notice provided to A.J.T. or her parents?

A I don't know.

Q The policy requires assurances of appropriate corrective and remedial actions for violations, right?

A Yes.

Q When was that assurance provided to A.J.T. or her parents?

A I think there's also a big assumption that I'm aware that a complaint was filed. I'm unaware of a complaint that was filed; therefore, all these other questions, my answer is, no, I don't know. **[73]**

Q Is that your answer to the last question?

A I think so, yes.

Q I'm going to ask it again so you can be sure.

A Thank you.

Q When was that assurance provided to A.J.T. and her parents?

A I don't know.

Q The policy requires notification of the right to file complaints with other state and federal agencies, right?

A Yes.

Q When was that notice provided to A.J.T. and her parents?

A I don't know.

Q The policy requires discipline or appropriate action against employees that violate the policy, correct?

A Yes.

Q Do you know of any discipline or appropriate action against any employee for violation of A.J.T. or her parents' rights?

A No.

Q The policy requires discrimination prevention programs, correct?

A Correct. [74]

Q Other than what you've testified to already, what training and education on discrimination prevention have you received from the district?

A I have testified to the training that I have received.

Q Other than that, any other discrimination prevention training?

A. The district has an annual Read The Policy training, for lack of a better word, that everybody is required to take.

Q Do you participate?

A Yes.

Q Have you every year?

A I have.

Q Have you read the policy?

A Yes.

Q Every year?

A Yes.

Q The policy defines the term discriminate to mean, quote, to treat a person in a disparate manner because of that person's disability, end quote, among other, right?

A Yes.

Q What does disparate mean?

A Different. [75]

Q What's been your training on when and how to shorten a student's school day?

A The training comes in meeting the needs of the student. So in a case-by-case basis, the context is that student and that student's situation.

Q. What rules, regulations, laws, or policies govern that process or that decision?

A. Section 504 of the IDEA and 34 CFR both allow for differences in a student's education because we are to, one, for 504 afford for equal educational opportunities, and for IDEA for that student to make progress on the goals and objectives that the IEP team has identified.

The parents and the doctors shortened her school day. The district allowed for that student, for A.J.T., to come at noon.

Q So it's the parents' and the doctors' fault that A.J.T. didn't get a full school day?

A It is the parents and the doctors who -- well, the parents who provided a note saying that she should start at noon and the district accepted that note.

And, again, like I've testified before, we're not filing truancy on her. We're allowing that [76] the parents and the doctors have said we recognize school starts at a certain time, she cannot make that time, we want her to start at a different time.

Q And so whenever the regular school day ends, so does her school day?

A That is not exactly true now because we have extended the end of her school day so that she can make progress on her goals and objectives.

Q How long has that been extended to? Before the hearing, what was the extent of her school day?

A I believe it was 4:15.

Q Who decided on 4:15?

A I -- I've already testified what I was told and when.

Q So you don't know?

A I don't know.

Q Do you know when it was decided that her school day would end at 4:15?

A Again, I've told you what I knew and when.

Q So you don't know?

A I don't know.

Q Why not 5:15?

A I don't know.

Q Why not 3:15? [77]

A I don't know.

Q Why not 2:15?

A I think that would be, actually, before the end of the school day. So if she's coming at noon and ending it before, that would be an unusual decision.

Q Doesn't the school end at 2:10 for middle schoolers at Maple Grove Middle School?

A I thought it was 2:40, but I could be incorrect.

Q So do you know why it wasn't decided that her school day should end at 2:15?

A I do not.

Q What's the average number of students with disabilities at the district?

A I'm sorry, could you repeat that?

Q What's the average number of school age students with disabilities in the district?

A I don't know the average number. I know we provide services to over 3,000 students.

Q What's the average number of school age students in the district?

A We have over 21,000 students in the district.

Q And of the 3,000 that get services, are [78] those IEP, 504, or a combination?

A Yes, thank you for clarifying. Yes, the 3,000 students are students that are receiving services through an IEP. There are more students, and I don't know the number of students, receiving accommodations and supports through a 504 plan.

Q Do any students receive services through 504?

A I don't know.

Q Who would know?

A Jill Lesné or a 504 case manager at a site, depending on the plan.

Q Who monitors those numbers?

A Each school is responsible for managing their 504 caseload.

Q But services, you mentioned accommodations and modifications under 504, not services. Services are permitted and, when necessary, required under Section 504, too, aren't they?

A Yes.

Q What's the average number of school age students in programs, services, or activities outside of the standard school day?

A I don't know.

Q What's the average number of students that [79] participate in athletic activities?

A I don't know.

Q Extracurricular activities?

A I don't know.

Q Community education?

A I do not know.

Q Tutoring?

A I do not know.

Q Homebound?

A I do not know.

Q Who would know?

A Homebound, we have a coordinator for homebound services.

Q Who is that?

A Laura McLuen, Dr. McLuen, she keeps up on that.

Q Do you know that there are school age students in programs, services, or activities outside the standard school day?

A I don't know.

Q You don't know that there are any students that participate in athletics?

A I will suppose that there are students involved in athletics, okay, yes.

Q Do you know that there are students [80] involved in extracurricular activities after school?

A That I don't know.

Q Do you know that there are students involved in community education activities outside of school?

A I know there's Kidstop.

Q And by outside of school, I mean outside of the regular school day. Does that change your answers?

A No. Kidstop is child care and that's run by community education.

Q And you don't know if children -- that students participate in any extracurricular activities after the school day?

A You know, I'm sorry, I don't.

Q What about tutoring activities?

A I'm sorry, I don't.

Q Homebound activities?

A That will most likely be a yes. There are most likely students on homebound receiving services outside of the school day.

Q Do you know the average number of school age students provided services outside of district school?

A I do not. **[81]**

Q In the home?

A I do not.

Q In hospitals?

A I do not.

Q Care and treatment facilities?

A I do not.

Q Other locations?

A Well, okay, so for the interrogatory, I can say this. I asked at the time and I believe there were 18 students in care and treatment and an equal number of homebound students.

That number may have changed. I have not kept up with it because that is in and out. But as of that date, that was what I was aware of.

Q What are the reasons children receive homebound services?

A They are medically unable to come to school.

Q How many hours of homebound service do they get?

A Generally, one hour per school day.

Q What's that based on?

A I think it was based on the homebound statute or rule.

Q And is that the rule that sets a minimum [82] service requirement of one hour a day?

A I think it's a minimum, yes, uh-huh.

Q And is that tied to the district's ability to bill the State and receive funding for that student?

A I'm sorry, I don't understand the question.

Q Is the minimum service requirement of an hour a day tied to the district's ability to bill the State to receive financial assistance to serve that student?

A I'm not sure I still -- I'm still not quite clear on your question.

Q If a district doesn't serve a student at least an hour a day, you don't get funding from the State, right?

A Yes, I think the minimum would be one hour.

Q But for a student on an IEP, that minimum is not the standard, correct?

A Correct.

Q And the student's school day on homebound is to be determined how?

A The doctor's note says what the student is -- cannot come to school for and then the 504 [83] coordinator would work with the parents on what the student can stand, like what's their capacity to learn and what's their need. Do they need credits, what do they need in order to move -- work towards graduation.

Q Why are students placed in care and treatment facilities?

A They have an addiction. They have a need for care and treatment.

Q How is the alternate location of service for students placed outside district schools, how is that determined?

A I don't understand the question.

Q How do you determine where a student receives services when they're placed outside of the school?

A I don't know.

Q What's the average number of students provided less than a full school day?

A I don't know.

Q How many students today are provided less than a full school day?

A I don't know.

Q Who would know?

A I -- I don't think that's a data that we track. I think that every 504 coordinator is tracking [84] their 504s, counselors know who is on care and treatment.

Q How many students on IEPs are provided less than a full school day?

A I don't know.

Q Who would know?

A Case managers.

Q Of the students provided less than a full school day, what's the average number that have disabilities?

A I don't know because I'm not even sure that there is other -- well, I don't know.

Q Do you know whether there is any other student provided less than a full school day?

A I do not.

Q How is the amount of service determined when a child is provided less than a full school day?

A So I want to go back to that question because then I said at the time that we did the interrogatory, I knew that there were 18 students on homebound and 18 students, approximately, in care and treatment.

So then I would say at that moment there were approximately 36 students who were not receiving a typical school day in terms of hours. [85]

Q So every student on homebound receives a shortened school day; is that your testimony?

A No, that's a possibility is what I can say. I don't know. It's a possibility.

Q Every student in a care and treatment facility gets less than a full school day?

A I believe that they are in care and treatment and that is paired with their education. So they get a full day of service.

Q Do you know --

A And some of that is their educational time so that they can make progress towards graduation.

Q Do you know whether every student in a care and treatment facility receives less than a full school day?

A I don't, no.

Q Do you know that the care and treatment statute in Minnesota requires a determination of the amount of education and, preferably, a normal school day for those children?

A Preferably, yes.

Q So you know of no other student with a shortened school day, other than the assumptions about these 18 and 18?

A Yes. I'm unaware of others. So my answer [86] to that would be I am unaware of others.

Q Do you know of any -- any students with an extended school day?

A I don't, other than A.J.T.

Q And extended school day means sometime after the end of the normal school day.

A Are you telling me the definition or is that a question?

Q Define extended school day.

A I would say services that take place outside of our regular school hours.

Q How do you define services that are provided in addition to a full 6-1/2-hour school day? What are those called?

A I don't know.

Q Isn't that an extended school day?

A Okay.

Q Do you know of any student who receives an extended school day?

A I don't, other than A.J.T.

Q But A.J.T. doesn't receive services in addition to a full 6-1/2-hour day, does she?

A By my definition, an extended school day was anything outside of the normal school hours. So for her, her day is extended. So she does have [87] extended day services.

Q And before the hearing decision, that was 4-1/4 hours per day, right?

A Yes.

Q Do you know that the IDEA regulations define school day as the same for all children in school, including children with and without disabilities?

A No. So, okay, so maybe I do. They define a school day as any middle schooler would start at 8:40 and -- or 8:10 and go until 2:40, for example. So in that, that's what I believe the IDEA means is that that's a typical school day and it would apply across the board for all middle schoolers in that school.

Q But the regulations say nothing about hours, do they?

A No, they do not say hour-for-hour.

Q And they don't say -- strike that.

Do you know that the regulations define the term school day as the same for all children in school, including children with and without disabilities?

A And I can say that for Maple Grove Middle School, that school day is defined for all school -- **[88]** for all students as beginning at a certain time and ending at a certain time. That's the school day.

Q That's not my question, Ms. Emmons.

A Yes.

Q Do you know that the regulations define school day as being the same for all children in school, including children with and without disabilities?

A And I've just told you my interpretation of that statement.

Q And what I want is your answer to my question, please. Do you know that --

A Sorry, my mistake.

Q Do you know that the IDEA regulations define the term school day as being the same for all children in school, including children with and without disabilities?

A And I have shared with you my definition, yes.

Q I'm not asking for your definition. I'm asking whether you know how the IDEA regulations define school day?

A Yes, they define the school day as being the same for all students.

Q Those with and without disabilities, [89] right?

A That is correct.

Q Do you understand that Section 504 guarantees full program accessibility?

A Oh, I don't believe that. I don't believe it guarantees anything. I think we are to afford the access for educational opportunities. I do not believe that it guarantees any specific outcome.

Q Do you understand that Section 504 imposes clear duties of accommodation?

A Yes.

Q Do you understand it ensures an equal opportunity to participate in school?

A Yes.

Q Do you know that it ensures equal treatment?

A In any given context, equal treatment, yes.

Q What do you mean by that?

A Any student who has a medical diagnosis of cancer who needs to undergo chemo, we would excuse them from school. Another student comes to school with a diagnosis of cancer, we would also excuse that

student equally to go and be afforded their treatment. We wouldn't hold one truant and one not truant. [90]

Q Do you understand that Section 504 ensures equal treatment?

A Could you point to me what you're talking about? Because I need the whole sentence.

Q No, I can't. My question is do you know that Section 504 --

A No.

Q -- ensures equal treatment? And your answer is no?

A I don't know.

Q Do you know that 504 ensures equal opportunity to benefit?

A I would have to see this sentence. I don't believe that benefit is -- it affords equal educational opportunities, but I'm not sure about benefit being in that sentence or where it would appear.

Q Do you understand that the ADA guarantees equal access to, participation in, and benefits from services, programs, and activities without discrimination?

A Can you say that one more time? It guarantees what?

Q Do you understand that the ADA guarantees equal access to, participation in, and benefits from [91] services, programs, and activities without discrimination?

A And I'd have to see the whole paragraph. I believe that there is -- yes, it affords access.

Q Does it guarantee equal access?

A Guarantee is the word I'm getting hung up on because, yes, it should afford equal access. For

example, students try out for a soccer team. Some students with disabilities, some without disabilities. All students, if they meet the requirements of whatever soccer is, should be able to try out, regardless of their disability status.

So to me that's the equal access. But if they don't meet, like, whatever the standards are for soccer, then I don't think that it guarantees access to being on the team.

Q So what's your answer to my question? Do you understand that ADA guarantees equal access to services, programs, and activities without discrimination?

A I'm going to say yes to that.

Q Do you understand the ADA guarantees equal participation in services, programs, and activities without discrimination?

A Equal participation in without [92] discrimination. I'm going to say yes.

Q Do you know the ADA guarantees equal benefits from services, programs, and activities without discrimination?

A I don't think it's equal -- I don't think they guarantee an outcome. Access, yes; equal outcome, no.

Q So is your answer to my question no?

A Repeat your question.

Q Do you understand the ADA guarantees equal benefits from services, programs, and activities without discrimination?

A Again, is this in a paragraph or are these bullets? What is this context?

Q It's just a question, Ms. Emmons, and it's a question about what you understand the ADA provides.

MS. BOOTH: Ms. Goetz, would you repeat the question one more time, please?

BY MS. GOETZ:

Q Do you understand that the ADA guarantees equal benefits from services, programs, and activities without discrimination?

A I don't know on that one. I'd have to have a context.

Q What does discrimination mean in the [93] context of Section 504 and ADA?

A Treating somebody differently based on their disability. So 504 is access to educational opportunities without regard to their disability, but it does not afford equal outcomes.

Q So does discrimination in the context of 504 and the ADA mean to treat unequally?

A I believe that when we do a Section 504 plan that we have considered that individual needs of the student and developed accommodations and supports that other students don't get in order that that student may have access to their education in ways that other students don't need.

So that is unequal, but it is affording the student with a disability the things they need.

Q So it's not discrimination to provide a student more or different services if that's what they need?

A In the context of making progress towards graduation, making progress on their goals and objectives.

Q What about in the context of 504 and ADA?

A The same is true. If a student needs an accommodation in order to make progress towards graduation, that is what the 504 team determines.
[94]

Q If a student needs an accommodation or a modification in order to have equal access to services, programs, or activities, is that required?

A Again, out of context it's very -- I'm trying -- every -- yes, maybe. Yes.

Q Can you look at Exhibit 37, please. Are you there?

A I am, thank you.

Q Discriminate is defined as treating a person in a disparate manner because, among other things, a disability, correct?

A Yes.

Q What does disparate mean in that sentence?

A I'm not exactly sure.

Q What do you think?

A I would say different.

Q Distinct?

A I'm sorry.

Q Does it mean distinct?

A Let me find the sentence and I'll see.

Q Roman Number II(B).

A Where am I, II(B).

MS. BOOTH: Yes.

THE WITNESS: So I would say different.

[95]

BY MS. GOETZ:

Q Does it mean distinct?

A That doesn't fit for me.

Q Does it mean incongruous?

A I've said it means different.

Q So the answer is no?

A The answer is, for me, no.

Q What does equal mean in the context of Section 504 and ADA?

A It means all students should have the ability to make progress towards their graduation and the school district's responsibility is on an individual basis for students who qualify for a Section 504 plan or IEP is to make plans to allow that student to make progress towards graduation. Accommodations and supports, goals and objectives.

Q Equal to whom?

A The equal to others getting their diploma.

Q Equal to peers without disabilities?

A They should have equal opportunity to make progress towards getting their diploma.

Q Does equal mean of the same measure, quantity, amount, or number as another?

A I don't know.

Q Will you define the term as used in [96] Section 504 and ADA? What does equal mean?

A I don't know. I can tell you what equal means to me as far as students going towards their diploma. Some students want to be engineers, they will take a heavy math/science curriculum. There are other students who are not going to follow that path and they take a different path, maybe social studies and arts or music, and even though they are not taking the same classes at the same time in the same way, they are still making progress towards their diploma.

Q Does equal mean identical in mathematical value?

A Good question. Not in this context, no.

Q Does equal mean the same?

A No.

Q Is there a duty to report suspected disability discrimination?

A Yes.

Q When you were told that A.J.T. got a shortened school day less than her peers, did you report that?

A No.

Q Why not?

A I don't view it as discrimination.

Q Why not? **[97]**

A She's getting the services and supports she needs in order to make progress on her IEP goals and objectives. That's an individualized decision.

Her parents have made her available starting at noon, and the IEP team determined a course of study that would allow her to make progress on her goals and objectives. That's not discrimination.

Q Who told you all this?

A Told me what?

Q That she's getting the supports and services she needs to make progress, that her IEP team determined her course of study?

A I believe that's what IEP teams across our district do and I guessed that hers did as well.

Q So nobody told you that?

A That she was making progress, yes. I did ask her teacher is she making progress, the answer was yes.

Q Which teacher?

A I asked Pam Kohlhepp at one point. I said is the student making progress and she said yes. That was the total extent of our conversation. At that point.

That was -- I just wanted to know, is the child making progress, and Ms. Kohlhepp said yes. And [98] I asked the coordinators is she making progress at certain times, like before the due process hearing, is the student making progress and the answer was yes.

Q Which coordinators?

A Jan Bitzer.

Q Any others?

A And a while during her -- the student's time at Cedar Island, I asked Joy Fredrickson, is the student making progress, and she said yes.

Q What was the context of the discussion with Joy Fredrickson?

A I don't recall. I'm sure it was an update.

Q Were you asking her for an update?

A No. They -- the coordinators provide me updates a lot on a lot of different things.

Q What did she say about A.J.T.?

A That's my recollection is she said she was making progress.

Q Anything else?

A There were a lot of meetings with the parents or parent. There was a lot of meetings with the parent.

Q Anything else?

A That's what I recall. [99]

Q What about with Jan Bitzer?

A I think I told you that. Didn't I tell you that she told me she was making progress when I asked before the -- and Jan also reports there's a lot of meetings with the parent.

Q Anything else.

MS. BOOTH: I'm sorry, what is the question? I think I lost it.

BY MS. GOETZ:

Q Anything else you discussed with Jan Bitzer regarding A.J.T.?

MS. BOOTH: Ever?

MS. GOETZ: Ever.

THE WITNESS: We have had discussions certainly implementing the Findings of the judge, finding teachers to work from 4:15 -- or 4:30 to 6:00, eye gaze, had an interest in the eye gaze.

There's -- so ever? I mean, she's been with Jan for three years. I'm sure there have been other conversations.

BY MS. GOETZ:

Q Any that you can recall?

A I'm telling you you're getting what I recall. Parents don't agree, parents don't agree, parents don't agree. And, again, it seemed to be a [100] lot of different things that the parents didn't agree to. So when they were going through conciliation, it is conciliation, the next they think, or this thing.

Honestly, I'm sorry, I don't remember all of the meetings or the purpose of the meetings or any of it. I don't. I'm not sure she told me about every

meeting she had either. I mean there's always that possibility as well.

Q Anything else you recall?

A That's it.

Q Other than progress and there were a lot of meetings, anything else you recall from conversations ever with Joy Fredrickson?

A No.

Q What conversations have you had with either of the superintendents about A.J.T.?

A I had one conversation with the superintendent during a school board meeting.

Q What did you discuss?

MS. BOOTH: Objection, it was a closed session, attorney-client privileged. I think you're thinking about the one with Cory?

THE WITNESS: Yes.

MS. BOOTH: She's asking about both superintendents. **[101]**

MS. GOETZ: So are you instructing the witness not to answer?

MS. BOOTH: Yes.

MS. GOETZ: Because there was an attorney in the room?

MS. BOOTH: No, because it was in closed session where attorneys were giving the board legal advice.

MS. GOETZ: I'm not asking about the legal advice. I'm asking about the discussion with the superintendent. Are you instructing the witness not to answer?

MS. BOOTH: I am not, no. I think it might be helpful to distinguish. If we start with Kate McIntyre -- Maguire. Would you repeat the question?
BY MS. GOETZ:

Q What did you discuss with either superintendent regarding A.J.T.?

A Nothing outside of that one meeting.

Q What did you discuss in that one meeting?

MS. BOOTH: Objection that meeting was attorney-client privileged and closed for that purpose.

MS. GOETZ: Are you instructing the [102] witness not to answer?

MS. BOOTH: I am.

MS. GOETZ: On basis that there was an attorney in the room?

MS. BOOTH: No, on the basis of the attorney-client privilege.

MS. GOETZ: Meaning that there was an attorney in the room?

MS. BOOTH: I've answered, Ms. Goetz.

MS. GOETZ: Well, we're going to have a problem with that answer because I think that -- I'm not asking this witness what the attorney said. I'm asking the witness what her discussions with the superintendents were. Those are different.

And I need to under the basis of your objection so that we can get the judge to resolve this problem.

MS. BOOTH: Sure. Ms. Emmons, did you ever have a discussion with Kate Maguire about A.J.T.?

THE WITNESS: Are you asking me?

MS. BOOTH: I am asking you, sorry.

THE WITNESS: Oh, sorry, I'm looking at the screen there. No. **[103]**

MS. BOOTH: Did you ever have a discussion with Mr. McIntyre outside of the closed board session about A.J.T.?

THE WITNESS: No.

BY MS. GOETZ:

Q What was your discussion with the Superintendent McIntyre about A.J.T.?

MS. BOOTH: She's already answered. I'm objecting. The meeting was closed pursuant to the attorney-client privilege for attorneys to speak to the board.

MS. GOETZ: But, Ms. Booth, I'm not asking this witness to reveal what the attorneys advised the board. I'm asking this witness to tell me what her discussion with the superintendent entailed.

MS. BOOTH: She's answered.

MS. GOETZ: She has not answered. You've instructed her not to answer.

MS. BOOTH: That's her answer.

MS. GOETZ: Because the meeting was closed for attorney advice? Is that the basis of the privilege?

MS. BOOTH: Yes.

BY MS. GOETZ:

Q Is that the only discussion you've had **[104]** with any superintendent about A.J.T.?

A Yes.

Q What discussions have you had with Jill Lesné about A.J.T.?

A I don't believe -- I don't believe Jill has been a part of any of the discussions, other than when she

was asked to testify -- or to do a deposition, and I told her to tell the truth.

Q Is that the extent of your communication with her about A.J.T.?

A That's what I believe her to know is whatever -- yes, yeah.

Q What about Amy Stafford, what discussions did you have with her about A.J.T.?

A I have absolutely no recollection of having a conversation with Amy Stafford.

Q Teresa Elliott, what discussions have you had with her regarding A.J.T.?

A I told her to ignore the legal stuff that was going on, that for her to teach A.J.T. well and do what she believed to be the right thing for A.J.T.

Q What did she tell you?

MS. BOOTH: I assume the question is about A.J.T.? **[105]**

BY MS. GOETZ:

Q What did she tell you about A.J.T.?

A That she loved her.

Q That she loved her?

A Uh-huh. She loved working with her, uh-huh.

Q Anything else?

A Not to my knowledge, no, huh-uh.

Q Other than your question to Pam Kohlhepp about whether A.J.T. was making progress, did she tell you anything else?

A I do not recall asking Teresa if she was making progress. I may have, but I don't recall.

Q I'm asking about Pam Kohlhepp.

A Oh, sorry.

Q Other than --

A Could you repeat the question then?

Q You testified that she told you A.J.T. was making progress when you asked. Did she tell you anything else about A.J.T. ever?

A No.

Q Did you ever have a --

A I do not recall. I don't recall.

Q Ever have a conversation with anyone else in the district regarding A.J.T.? **[106]**

A I do not recall, no, huh-uh.

Q Ever speak with your supervisor?

A With who?

Q Your supervisor?

A Not about A.J.T., huh-uh.

Q Never spoke with a supervisor?

A Not about A.J.T. I told him when he started there was a court case.

Q What did you tell him?

A That there was a court case that was ongoing.

Q Which one was that, which supervisor?

A Bryan Bass.

Q What did you tell him about the court case?

A That it was ongoing.

Q What else?

A That's about the extent of it. The details are too complicated to get into in the time that we have available and there's a lot to talk about.

So I just said, as an update, the district is involved in a court case, it is ongoing, a student at Maple Grove Middle School.

Q Anything else you can recall? **[107]**

A No.

Q Have you ever been involved in any discrimination complaints involving a student alleging discrimination on the basis of disability?

A Could you be more specific?

Q Have you ever been involved in any discrimination complaint involving a student and disability discrimination?

A I recall one instance of a parent who called, said her child was being discriminated against when trying out for a sports team.

Q What did you do with that complaint?

A I did an investigation.

Q Did you do that yourself?

A I did. It was a long time ago. Sorry.

Q What did you conclude?

A There was no discrimination based on disability.

Q Why not?

A The student's disability precluded the student from participating in the activity without the nature of the activity being changed beyond recognition.

Q Any other complaint?

A Not to my knowledge, no, huh-uh. **[108]**

Q Upon enrollment in the district, what are parents told about their child's school day?

A I don't know.

Q Isn't there an assumption that every student enrolling in Osseo will need a full school day?

A When they go to the enrollment center, I am -- I believe that they are given information about the student's school, which would include the hours of school operations.

Q And isn't there an assumption that every incoming student will have a full day of school?

A An assumption that everybody attending a particular school would attend during those school hours, yes.

Q There's no requirement upon enrollment to establish the need for a full day of school, is there?

A No.

Q There's no discussion of altering a student's school day unless it's based on a child's individual needs, right?

A Yes.

Q If special education students are making progress, their school days are not cut short, are they?

[109]

A Are we still talking about the enrollment process?

Q No.

A Could you clarify the question?

Q If special education students are making progress, that's not a reason to cut their school day short, is it?

A No.

Q What's the district policy on shortening a student's school day?

A I'm not aware that we have a policy on shortening a school day.

Q What's the practice?

A The practice is to, on a case-by-case basis, determine the facts of that case and determine the best way to proceed.

Q And those determinations are to be made based on a child's individual needs, right?

A Correct. And situation.

Q What do you mean?

A Well, the child exists within a context of what going on in that light.

Q How are a child's individual needs different than their situation?

A So a child could be undergoing treatment [110] for leukemia, the school isn't able to meet the needs of a child with leukemia. That is the context that the child is in, they're undergoing some treatment.

The educational component is we take that context and say, okay, what does that child's needs look like that day, what is their ability to participate. The parents say they're going to be at a doctor's appointment Monday, Tuesday for the next six weeks, whatever that is, and then the school team would determine how best to proceed based on an individual situation.

Q So if a child is too sick to tolerate a full school day, then that would be a consideration; is that what you're saying?

A Yes, yes. And not -- yeah, too sick to attend because we have students who are sick who can also, you know, get some education. So, again, it's a context. Like what is going on with that child.

Q Describe students who you know of who have had their school day shortened other than A.J.T.?

A I don't. I mean I can't provide that information.

Q Do you know of any other student that's had their school day shortened?

A I'm aware of in the past, you know, ten [111] years that I've been the director that there have been some students because of their situation and what they are going through that we have developed an educational plan that is different than a typical fourth grader, for example.

Q What have been the situations or what they're going through, can you describe those?

A I did give you the example of a child with leukemia. We had -- I don't know how extent -- you know, like without being able to personally identify a student because these are students with pretty severe medical needs and they could be identified.

So we had a student with brain cancer, we've had another student recently with a different -- I don't even know what kind of cancer. That seems to be the, you know, the ones that I'm most familiar with are ones that rise to the level of them being sick for a period of time and not being able to come.

And then -- I need a break. I need a break.

MS. BOOTH: Is this a good time to take a lunch break?

MS. GOETZ: Sure. Do you want to take 45 minutes? I have a lot to get through today. I'd like to pare it down to 45 minutes if we could. [112]

MS. BOOTH: We'll do our best to get back in 45. 12:45 then? 12:50 I guess? Sound good?

(At this time a lunch recess was taken from 12:05 p.m. to 12:55 p.m.)

(Mr. Palmatier did not return to the proceedings.)

BY MS. GOETZ:

Q Ms. Emmons, are you ready?

A I am.

Q May I remind you you are still under oath?

A Yes, thank you.

Q So before we took a break, we were talking about examples of children -- students who have had their school day shortened. You were talking about children that have cancer and cancer treatment and they are too sick to tolerate a full school day. Do you recall that?

A I do.

Q What is it about that particular condition or situation that makes them unable to have a full school day? Is it that they're too sick?

A You know, honestly, I don't know because each individual situation would be different. Sometimes their treatments are in the morning and then they come to school after; sometimes they're too sick. [113] You know, individual examples, I don't know the specifics. I just know that in the context of 504 that we develop an individual plan for each child undergoing similar situations or situations where they can't be at school for one reason or another.

Q Is it also the case that sometimes they can't come to school?

A Yeah, most likely. There probably are instances where the students, given whatever situation they're in, they can't come to school, uh-huh.

Q And in some situations, of course, school comes to them, right?

A Yes. In the situation where the doctor says medically they cannot attend for one reason or another, then that is homebound and then the school team has to figure that out, whether it's 504 or IEP.

Q Are there other examples of students who have their school days shortened of which you are aware?

A I think I've given you the example of care and treatment and homebound. Not to my -- no, I can't think of any.

Q Do not disabled students receive a full school day?

A Generally, yes, unless they fall into one [114] of those other two categories, homebound or care and treatment, or something that I'm unfamiliar with, that I don't know about.

Q Don't students with disabilities need special help in order to succeed in school?

A As a generalization, I think that IEPs are written so that students get goals and objectives -- so, okay, 504. So if a student is on a 504 plan and needs accommodations, I mean that's the whole intent of a 504 plan.

In an IEP the whole intent is that they receive goals and objectives designed to help them make progress and then accommodations and supports, like OT or PT, or whatever it would be to assist in that as well.

(Mr. Palmatier returned to the proceedings.)

BY MS. GOETZ:

Q It's been the district's position, has it not, that A.J.T. can have a full school day, but only if she starts in the morning like everybody else?

A No. We're -- we've extended her school day to 4:15, which is beyond the middle school school day. So, no, I don't think that's our position.

Q It's been the district's position, has it [115] not, that A.J.T. can have a full 6-1/2-hour school day, but only if she starts in the morning like everybody else?

A I actually think that she's getting -- well, she's getting six hours now because of the judge's rule. I don't know that we have a position on that. I think that the position is is that the IEP is designed to help her make progress. That's what we're implementing is her IEP goals and objectives.

Q So A.J.T. can't have a full 6-1/2-hour school day when her medical providers have concluded she's unable to come to school before noon; is that right?

A Medical providers, her parents have been the ones who have provided the notes. We have not had conversations, but one, with a medical provider. So our communication with them is via letter.

So the parents have provided a letter saying the child can start school -- they want her to start at noon and we've excused her from the morning and then extended her school day in order to meet the goals and objectives on her IEP.

Q You don't have any reason to believe that the letters that have been provided from medical providers are not actually from medical providers, do [116] you?

A No, no, huh-uh.

Q You're not suggesting the parents somehow made these notes or letters up and passed them off as physician letters?

A No, no, no.

Q And did you read the transcript from the hearing about her current treating neurologist's opinion that having her come to school in the morning would lead to an inevitable worsening of her condition?

A No.

Q Would that lead you to conclude, if you knew that, that it's irresponsible to suggest she come to school in the morning?

A I didn't read it, so I have no opinion.

Q Did you read all the other doctor letters that said she can't start school before noon?

A No.

Q You never read five letters in the student records that said she can't start school before noon?

A I am not the IEP team. I did not read the letters.

Q Were you asked your opinion about shortening her school day? **[117]**

A No.

Q Were you asked your opinion -- were you asked your opinion about whether to give her a full school day?

A No.

Q Nobody has ever consulted with you about this issue?

A So did they ask my opinion on it, let me rephrase.

They did not ask about shortening the school day or lengthening the school day. It was about something else, but not that.

Q What else was it about?

A Providing homebound at the same time that we're providing in-school instruction.

Q Who asked you about that?

A Joy and I had a conversation about that.

Q When was that?

A A long time ago. I don't remember exactly when.

Q And what was discussed?

A Homebound is when a student is medically unable to come to school. So I asked if this child was medically unable to come to school and the answer was no. [118]

So if a child is medically able to come to school, wouldn't the IEP team -- wouldn't the IEP team then consider what supports and services she needs in order to make progress on her IEP goals and objectives during the time that she's at school when she's made available to us.

Q Do you recall anything else about that discussion?

A That's the extent -- that's the extent of what I remember, yep.

Q Did anyone ever tell you that A.J.T.'s parents were flexible in terms of where the services were provided so long as A.J.T. got a full school day?

A Could you rephrase? I'm not sure I understand the question.

Q Did anyone ever tell you that A.J.T.'s parents were flexible about where the services would be provided so long as she got a full school day?

A That sounds like the same question, so I'm still not sure I'm understanding the question. Like --

Q Did anyone, anyone, ever tell you that A.J.T.'s parents were flexible about where she received services so long as she got a full school day?
[119]

MS. BOOTH: You've asked her the same question, Ms. Goetz, as you know, three times and she doesn't understand the question.

MS. GOETZ: Are you instructing her not to answer?

MS. BOOTH: I'm not.

BY MS. GOETZ:

Q Please answer.

A Did anybody -- I don't recall. Location of services? I don't recall. Let me think about that. Did anybody -- I think that dad -- I was in one meeting with the parent and he wanted services in the home, but -- so in that meeting, the dad talked about since the beginning of being in Osseo schools until such time as the meeting. And then I asked Joy if she agreed with his assessment and she did not and then she discussed her side of -- or like her perspective on that. And they -- it wasn't about extending the school day, though, because that's where I'm getting a little caught up, extending the school day. It was about services being provided in the home.

Q When was Joy's perspective about that?

A I don't remember. It was in this meeting, the dad talked and then Joy talked. That's what I [120] remember.

Q And so you don't understand that the parents' position has always been that A.J.T. could have a full school day anywhere and that they were conceding it could even happen at home because that would make it more convenient for the district?

A I believe that may have been the intent of that meeting that I was in, at least one of them. There were, it appeared many intents, but, again, I don't remember.

Q So do you know that the district has more than once told the parents that A.J.T. can have a full school day if she comes at the beginning of the normal school day?

A I believe that the district team has said something similar, like we stand ready at the beginning of the school day if A.J.T. is ever able to come.

So I don't want to equate that with the 6-1/2 hours. It's just an open invitation because it's unusual -- I mean in our experience, and again that's all I have to go by is my experience, for a student with a seizure disorder to never be able to attend, except starting at a certain time.

Q What information do you have that A.J.T. [121] will ever be able to attend before noon?

A None. None whatsoever.

Q So is it responsible to suggest that she come to school when her medical providers advise against it?

A The district has accepted the letters and have excused her from the morning portion of the school day. That's responsible.

Q How can she suddenly need a full school day if only her condition changes and she can come first thing in the morning?

A I'm sorry, say that again.

Q What about A.J.T.'s needs change in order for the district to be able to say, oh, now she needs a full school day; if only she can come at 8:10 like everyone

else, then she'll need a full school day, but if she can't come at 8:10 like everyone else, then she doesn't? Explain how that can be.

A I would imagine that if her health changes and she's able to start at an earlier time, that the team would review the services that they're providing from the end of the school take with no peers to whenever to have her have more access to peers.

And when we know that there's more access to peers, like in a classroom, there's seven or eight [122] students in a classroom. So that time with the teacher would then be divided amongst -- and the ESPs that are there, amongst the seven and it would not be as intense as the instruction that she is getting from 2:40 and now until 6:00 o'clock.

Q Was the district's suggestion to have A.J.T. come at 8:10 like everyone else intended to punish A.J.T. or her parents?

A Pardon?

Q Was the suggestion that A.J.T. come to school at 8:10 like everyone else, despite all medical evidence to the contrary, was that suggestion intended to punish A.J.T. or her parents?

A No.

Q Who has the authority to decide on a request or an accommodation?

A The school team, the IEP team. On 504 it would be the 504 coordinator, although she's with the IEP team, so it would be them.

Q Do you know that state law sets minimum hours of instruction for all students?

A Yes, yes.

Q Do you know there's no exception for students with disabilities?

A I am not sure I agree with that because we [123] have students who, by virtue of their IEP, get individual decisions made.

Q So does state law contain an exception when it sets minimum hours of instruction for all students, does it say except for certain circumstances for student with certain disabilities?

A I don't know. I've never read it. I do know that we make exceptions based on individual decisions. We make individual decisions.

Q But you don't know that state law permits that, do you?

A I don't, huh-uh.

Q Do you know that state rules set a minimum service requirement for students placed long term for care and treatment, preferably a normal school day?

A Preferably, yes, uh-huh.

Q And do you know that state rules require coordinating special education services with care and treatment?

A Yes.

Q So do you know that A.J.T. and her family moved from Kentucky in the fall of 2015?

A Oh, okay. I thought it was earlier, but okay.

Q That was the start of her fourth grade [124] year.

A Okay.

Q Do you know that?

A I do -- yes, now, uh-huh.

Q What was your first contact with her parents?

A It was at the meeting that I described before. And I don't know when that meeting was, if it was that year or the next year.

Q What was your first contact with A.J.T.?

A I have not had contact with A.J.T.

Q How many times have you met with A.J.T.'s parents?

A I have met with A.J.T.'s parents -- dad -- I have never met G.T., during that one meeting G.T. did not attend, and then I have been in a conciliation. And I believe that's it. That's -- I think that's it. Those are the two times I have met A.T.

Q How many times have you met with anyone to discuss A.J.T.'s education?

A Like I said, and earlier testimony, I had conversations with Jan, I had conversations with Joy and Jan, and I asked Pam if the student was making progress, and then I had a conversation with Teresa. [125] Elliott telling her to ignore the legal stuff to the greatest extent possible, you know, to teach her well.

Q Why did you tell Teresa -- why did you have that meeting with Teresa Elliott?

A It wasn't a meeting. It was -- I was in the building and I stopped by and have in and out conversations with things and she -- that's a good question. She appeared anxious about something.

Q Did she express concerns about the legal proceedings?

A No.

Q Then why would you tell her to ignore them?

A It was more not the proceeding itself, just the fact that it's ongoing. And I am -- in here I'm taking, I believe, that in meetings that were occurring, A.T.

was alluding to the legal stuff that was going on, and I said that's -- that's not the purpose, you know. Focus on the instruction, focus on what you need to do to make sure she's progressing.

Q Other than what you've testified about already regarding meetings to discuss A.J.T.'s education, any other meetings with anybody else about A.J.T.'s education you recall?

A Oh, one conversation with Melissa Sennes, [126] the health coordinator, about training for meds for seizures.

Q Anything else?

A That's -- that I think is the extent of my recollection.

Q You've never taught A.J.T., right?

A That is correct.

Q Never evaluated her?

A That is correct.

Q Read one IEP?

A I believe I've read one IEP.

Q When did you read that and for what purpose?

A It was with Joy, I just read it. She asked me to read it and I read it.

Q What did she want you to read it for?

A She wanted me to read it to see if it made sense.

Q Did it?

A It did to me at the time, yes. And I did not have any feedback, plus I'm not the teacher. I'm not going to sit in the district office and go, oh, write this goal and write that goal. That's not my role. But I understand it, yes.

Q Did you ever take part in an evaluation of [127] A.J.T.?

A No.

Q Ever read the district's evaluation of A.J.T.?

A No.

Q Ever read the independent educational evaluation of A.J.T.?

A No.

Q Never read Dr. Reichle's IEE?

A No.

Q Anybody ever discuss with you his evaluation and recommendations?

A Some things about data. Like collecting data, like we should collect data in a certain way. They asked -- Jan asked if we could do a contract with Dr. Reichle for certain parts of an IEE and I said, yes, because I sign off on contracts, could we do a contract. And then we had to extend the contract or something to that effect.

Q Do you know that Dr. Reichle recommended that A.J.T. should be educated between the hours of noon and 6:00 when she's available for instruction?

A No. I didn't read the report.

Q Why not?

A I'm not the IEP team and I don't want [128] people thinking that I am. So sometimes when they come to me and I've read something, they want me to tell them an answer or they want me to tell them what to do, and that's not my role.

I don't want people thinking I'm sitting in the district office -- I am the person that knows A.J.T. the least -- and I think you should, fill in the blank. It's not my role. I don't want them to think that it is.

Q How many IEEs at public expense does your district provide every year?

A Several. I don't know.

Q How many IEEs at public expense have you approved during your time as director?

A Again, several because I think we get several every year and I approve them every year.

Q What did you spend on the IEE Dr. Reichle performed?

A I have no idea.

Q How do you know that you are getting what you are paying for if you don't read them?

A Somebody reads them, it's just not me.

Q Who read Dr. Reichle's IEE report?

A Depending on when it was done, it would either be Joy Fredrickson -- or maybe it was multiple [129] times, I'm not exactly sure -- it would either be Jan Bitzer, Joy Fredrickson and possibly -- possibly the case manager.

Q Other than what you testified to about a brief discussion you had with Teresa Elliott and Pam Kohlhepp, did you ever discuss A.J.T.'s needs with other teachers or those two?

MS. BOOTH: The other teachers are what? I didn't hear the end.

BY MS. GOETZ:

Q Those two teachers.

A No.

Q Did you ever discuss A.J.T.'s needs with her medical providers?

A No.

Q You are not part of the IEP team meeting where Dr. Doescher discussed A.J.T.'s needs?

A I was not.

Q Do you know who Dr. Doescher is?

A One of A.J.T.'s doctors.

Q Do you know that?

A No. You just said it so that's why I caught it.

Q Did you ever listen to the tape recording the district made of that IEP team meeting with [130] Dr. Doescher?

A No.

Q Do you know where that tape is kept now?

A With A.J.T.'s records.

Q Do you know who decided it would be a good idea to tape that meeting?

A Good idea? I -- Joy was anxious about the meeting, having to manage multiple perspectives, multiple people, facilitate the meeting, ask the questions, formulate the next one. That is the only opportunity that had ever been made to talk to a doctor and she was anxious.

And I told her, in order for her to be sure that she is capturing it, because she was afraid she would not and then she would miss something or miscapture something, I told her she could tape the meeting, if she so chose.

Q And you say it was the only opportunity to talk to A.J.T.'s doctors, but you know, don't you, that every year her parents sign an authorization permitting the district to talk with her doctors about her medical condition and her medications?

A No, I did not know that.

Q You don't know that that's the district's standard form with medication administration, that [131] parents are asked to -- and in this case these

parents did -- authorize discussions with the medical provider about anything regarding the medical condition?

A No, I was unaware of that.

Q So did you make the decision that Joy should tape that meeting?

A I offered it as a suggestion for her to manage the meeting without having to bother about capturing exactly what people were saying.

Q Did you tell her to do it without getting the consent of her parents?

A We did not talk about consent or no consent. It was one way for her to manage the meeting.

Q Did you tell her to tape the meeting without notifying the parents?

A No.

Q Did you tell her to tape the meeting without getting the consent of the physician?

A Taping the meeting did not require consent, so no.

Q Did you tell her to tape the meeting without notifying the physician?

A No.

Q Whose idea was that? **[132]**

A Again, I think I've answered that question.

Q Whose idea was it to tape the meeting without notification or consent of either parents or the physician?

A I answered your question.

Q Whose idea was it?

A I told Joy how to manage a meeting that she had a lot of anxiety about. She had multiple perspectives, she had people that were in this meeting

that were bringing a lot of information to the table and she was anxious about capturing the amount of information, the way that the information would be conveyed, and she was worried about misconveying something that would have been at the meeting. And I offered her a solution.

Q And you did not tell her to tape that meeting without parent or provider notice or content. Do you know who told her to do that?

A Nobody told her to do it. I offered her a solution to allay her anxiety about this meeting.

Q So it was Joy Fredrickson's idea alone to tape

--

A I gave her --

Q Hold on, hold on -- to have a meeting without notice or consent? **[133]**

MS. BOOTH: I'm sorry, I didn't hear the question.

BY MS. GOETZ:

Q It was Joy Fredrickson's idea? If you didn't tell her and you don't know if anyone else told her, then it was Joy's idea to tape that meeting without notice and consent of the parent or the provider; is that right?

A I told her one option to capture the events of the meeting so that in the future she did not misconvey or misrepresent information that was provided in that meeting was to tape it.

Q And you don't know who decided that it would be wise or appropriate or proper to tape that meeting without parent or physician consent or notice?

A The intent of taping the meeting was to gather accurate information in order for her to not misconvey or miscommunicate in the future.

Q understand that, Ms. Emmons. Please just answer my question.

A That is my answer.

Q Do you know -- do you know whether anyone advised her to tape that meeting without notice or consent of the parents or the provider? [134]

MS. BOOTH: Objection, it's been asked and answered.

BY MS. GOETZ:

Q If you don't know, just say you don't know.

MS. BOOTH: I'm objecting. She has said.

MS. GOETZ: Okay. Are you advising her not to answer?

MS. BOOTH: You're asking a different question.

MS. GOETZ: Then your objection makes no sense.

MS. BOOTH: Language is important. That's my objection.

BY MS. GOETZ:

Q Do you know of anyone who advised Ms. Fredrickson to tape that meeting without knowledge or consent?

A No.

Q Do you think that's a good practice?

A I do.

Q Do you think that builds trust when parents and providers discover a surreptitious recording? [135]

A I believe that Joy needed to tape it so that she could accurately capture what was going on in that meeting. It was a meeting where she alone was going to be capturing, trying to understand, ask the next question, manage all the personalities of the meeting, and it was one way that she could do it. It's not illegal, she did it, I support it.

Q Why hide that fact from the parents and the provider?

A I can't answer that.

Q You don't think that that meeting, taping a medical provider discussing a child with an IEP team, you don't think that created protected health information?

A Honestly, I never listened to it. I don't know exactly what was shared.

Q And do you know that protected health information cannot be gathered without notice and consent?

A I'm not sure that -- what was provided during the meeting.

Q Did you ever discuss A.J.T.'s needs with the school board?

A Her needs, no.

Q Did you discuss with A.J.T.'s parents the [136] expectation that the Kentucky IEP would be implemented when they moved here?

A No.

Q Do you know what the Kentucky IEP required?

A No.

Q You don't know that it required instruction and supports daily from noon to 6:00 p.m.?

A No.

Q Wouldn't it be helpful to have known that when you were consulting about shortening her school day?

A No. I'm -- was I consulted about shortening her school day? I don't believe I was consulted about shortening her school day. That's the assumption in your question.

I was consulted should we accept a doctor's note that the student is going to start at noon, the answer is yes, and then what should the school team do to ensure she is making progress towards her goals and objectives, that's the IEP team. That's their job, their role. They extended the school day past the end of the school day and she's getting intense services.

Q No one ever asked you about when her [137] school day should end?

A No.

Q Why not?

A I'm not a part of the school team.

Q But that controversy has spawned six years, and as the director of student services, no one has asked your opinion about whether she should continue to have a shortened school day or she should get a full school day?

A They've asked my opinion on whether she should be provided services that are beyond the school day, but then, again, I say, like I said before, they come to me, they want that answer, they want me to make that determination.

And one of the reasons I don't read the documents is because I don't want them to think that I'm sitting in the district office all-knowing and say yay or nay to their proposals.

Q So who corrects their proposals when they're wrong, if not you?

A We have a process that is followed.

Q What is that?

A The -- the parents may object, we can do a conciliation, a mediation, a due process hearing, a facilitated IEP. There are processes in place for **[138]** IDEA and we discussed the processes in place for 504.

Q And all of those things have occurred over six years, multiple times, haven't they, in this case?

A Multiple times, uh-huh.

Q And still there's no resolution, right?

A I believe that's why we're here is because once it becomes -- school teams are unable to decide, we turn it over to lawyers.

Q And so we have to go to federal court to get a decision correcting what could be an IEP team mistake because the process doesn't include a correction mechanism by you as the director?

A I don't believe it would be a correction. I believe that A.J.T. is getting, within the time frame from noon to 4:15, she is getting time with her peers and then she's getting a very intense set of services.

Q But you don't know that because you don't read the documents?

A You asked me what I believed. That's what I believe.

Q Well, which is it? Do you know that she's getting the right services or do you not know because you don't read the documents?

A I have no answer for that. **[139]**

Q Do you know that upon enrollment -- actually, before she was enrolled -- her parents told school staff

and administrators that A.J.T. enjoyed a six-hour day in Kentucky?

A No.

Q Do you have any reason to doubt that was the length of her day in Kentucky?

A I have no opinion on Kentucky --

Q And you have no knowledge --

A -- and the services that they provided because in Minnesota, when a student comes to Minnesota from another state, any other state, the IEP team is to take a look at that IEP, determine eligibility for Minnesota and then determine what that would look like in our district.

Q So you have no knowledge of what A.J.T. received in Kentucky?

A I do not.

Q You didn't read the due process hearing complaint?

A Which one?

Q Did you read the due process hearing complaint filed by the parents?

A That I might have, yes, the complaint itself, yes. Did that mention Kentucky? I don't [140] recall that.

Q You don't recall that that included a statement about the Kentucky IEP being six hours a day?

A No.

Q You didn't read the hearing officer decision in this case?

A I did read the hearing officer decision where he said we will provide the six hours.

Q You don't recall the hearing officer found that A.J.T. received a six-hour day in Kentucky?

A No.

Q You didn't read the complaint in the discrimination case at issue here?

A I would have to see it to see if I read it. Off the top of my head, I don't recall it.

Q Wouldn't it be your practice as the administrator in charge of 504 in the district to read a 504 federal court complaint served on the district?

A It will be, but I'd still have to see it to see if it went to Jill or if it went to me or if it went to Mr. Palmatier.

Q Would you expect your superintendent to read that complaint?

A He does not report to me. I do not have [141] expectations of him.

Q Would you expect the school board chair to read that complaint?

A The school board chair does not report to me. I do not have expectations for her performance.

Q What do you know about the discussions of the length of A.J.T.'s school day when she was enrolled?

A I have stated what my discussions have been.

Q What information was available about A.J.T. at her enrollment, do you know?

A I do not.

Q You attended one IEP team meeting and one conciliation conference, right?

A Yes, uh-huh, yes.

Q You don't remember when those were?

A The conciliation was relatively recently and the IEP meeting was when Joy was here. So that was some time ago.

Q Why would you have attended both of those meetings?

A By request.

Q Request of who?

A I believe that I attended the IEP team [142] meeting at the request of the parent and the conciliation at the request of the coordinator.

Q Why would the parent request your attendance at a meeting?

A I have no idea.

Q You didn't ask?

A I did not.

Q And they didn't tell you?

A They did not tell me, no.

Q Why would the coordinator request your meeting -- your attendance at a meeting?

A She didn't want to meet one-on-one and there were no other members available at the time for the conciliation.

Q What was the first knowledge you had that A.J.T.'s parent requested a full day of school starting at noon?

A When I was requested to attend that -- I'm sorry, ask the question again. I might have not heard the end of it.

Q What was the first knowledge you had that A.J.T.'s parents requested a full day of school starting at noon?

A When I was requested to attend that meeting, Joy did give me some background on the parent [143]

and what they would most likely want to talk about during that meeting.

It wasn't necessarily, I don't recall, being a full, full day. And I am putting full day in quotes because full day is relative, but certainly services.

Q And that was the conciliation conference or the IEP team meeting?

A I think it was -- I'm just saying I think it was an IEP team meeting that I attended.

Q What background did Joy give you on the parent?

A That they careful came from Kentucky, they had some desires about what services would look like in Osseo.

Q What were their desires?

A She said he would make it very clear in the meeting because he was going to start at the beginning of when he moved to Minnesota and he would be -- he would go through the whole timeline. And then I asked Joy, when he had finished his timeline, if she agreed with that and she did not and then she gave her perspective.

Q When was her perspective?

A Like I said, I don't recall. I don't [144] recall his and I don't recall hers to any great extent, any great extent at all.

Q What did Joy tell you about what the parent wanted?

A She said he would tell me in this meeting, that he wasn't happy with Osseo area schools.

Q Anything else?

A That's my recollection.

Q What did you tell Joy in response?

A If she wanted me at the meeting, too. I asked her do you want me to be at the meeting and she said yes. She said if A.T. wanted it, she thought it would be, you know, good to accede to that request.

Q Any discussion about the nature of the dispute?

A The nature of what dispute?

Q Dispute that led to the request that you attend the meeting?

A She may have. I don't recall.

Q Any discussion about possible solutions?

A No.

Q Any other discussions about the parent request for a full day of school?

A No. Are you referring to that meeting? Is that what you say that? Is that what you mean, [145] Ms. Goetz?

Q Do you understand that the parent has wanted a full day of school for A.J.T since they moved to Osseo?

A I believe that they have wanted six hours to extend beyond the school day, yes, uh-huh.

Q So have you had discussions with anyone else about the parents' requests for a full day of school for A.J.T.?

A I think I've answered that multiple times about the discussions that I've had.

Q Any other discussions?

A Not that I can recall.

Q Do you think their request for a full six-hour school day was reasonable?

A So I'm going to say I can't answer that.

Q Do you think that request was necessary in order to ensure a full day of school?

A I can't answer that either.

Q A.J.T. is eligible for 504 protections, right?

A Yes.

Q She's eligible for ADA protections, right?

A Yes.

Q Were there any discussions of which you're [146] aware about a Section 504 evaluation?

A No.

Q Was there any Section 504 evaluation performed?

A I don't know.

Q Any discussion about a Section 504 accommodation plan?

A I believe that the IEP team discussed accommodations and supports within the context of IDEA, which would include any accommodations and supports and services that the student would need in order to access her education.

Q What did the IEP team discuss with respect to accommodations to ensure equal access to a full day of school?

A I have not been a part of IEP teams that have discussed that.

Q So you don't know?

A I don't know.

Q There has been no Section 504 accommodation plan for A.J.T., correct?

A Other than the accommodations that are included in her IEP.

Q What do you know about any discussion about A.J.T.'s or her parents' Section 504 rights?
[147]

A Sorry, I'm not sure I understand the question.

Q What do you know about any discussion regarding A.J.T.'s or her parents' Section 504 rights?

A I'm unaware of any discussion.

Q Are you aware of any provision to her parents of Section 504 rights?

A I've asked that -- you've asked that and I've answered, no, I'm unaware. I did tell you about MDE's opinion about 504, if there were 504 considerations, that they should be included in her IEP.

So my answer is that her supports, services, and accommodations are included in her IEP, and those would allow her the access to the opportunities, the educational opportunities, given her circumstances.

Q Does Section 504 ever require anything more than IDEA would?

A I don't know the answer to that question.

Q Don't you think you should know, as the director of special services, student services, and the ultimate overseer of Section 504?

A If I needed to know that, MDE would have provided that guidance to directors, and I'm not aware [148] of any guidance that they have provided in that direction.

Q Do you think MDE has the obligation to make directors, special ed directors, in Minnesota aware of 504 rights?

A MDE provides guidance on a monthly basis to directors on a wide variety of topics. So do I believe the state Department of Education should be a partner with directors of special education or student services? I do.

Q My question is do you think MDE has an obligation to make special ed directors aware of 504 rights?

A I believe my answer to the last question is my answer.

Q I'll ask it again. Do you think MDE has an obligation to make special ed directors aware of Section 504 rights?

A I believe they do.

Q Why do you think -- what makes you think so?

A Because they're the state Department of Education. They are the ones who help us enact the administrative rules from the legislature, they help us interpret. They -- that's their role. **[149]**

Q Do you think MDE has enforcement authority over Section 504?

A I do not.

Q But they have training obligations?

A They have training and I say that because the federal funds flow through the state department. So I'm going to answer that I don't know.

Q Do you know that A.J.T.'s treating medical providers have consistently required a noon start time, right?

A I'm sorry, say that again. They've consistently what?

Q Do you know that A.J.T.'s medical providers, her treating medical providers, have consistently required a noon start time? Right?

A Well, doctors provide information to the school team and then the school team determines whether or not to accept or reject.

So they say that A.J.T. should, needs to, whatever the language, I haven't read the letters, start at noon and the school team accepts that.

And then because the principal is the one who is responsible for attendance, he then excuses the student for the start of the school day up until noon.

Q On what basis would a school team accept [150] or reject a medical opinion about when a student is able to attend school?

A It would be very unheard of or rare for a school team to not accept a doctor's note, except in the instances where the licensed school nurse talks to the doctor and explains the school context and says this is what school is like. Sometimes doctors don't understand the school context about what we do and how we do it, just like we don't understand medical offices.

So -- and in a rare instance, and I can't give you a specific example, along with the parent, they've come to a different understanding about what the student can and cannot do at school.

Q But you're not aware of any such conversation happening regarding A.J.T., are you?

A The only time I'm aware of them talking to the doctor is the one time with Joy.

Q Where the meeting was surreptitiously recorded?

A Where the meeting was recorded.

Q Without knowledge or consent? Is that the meeting we're referring to?

A I think I've been asked that and answered that question. **[151]**

Q I'm wondering if that's the meeting that you're referring to?

A It's the only meeting I'm aware of. So, yes, that's the meeting. But surreptitiously, it's --

Q Why would a school team reject a medical provider's opinion that a student can't be in school at any particular time?

A The school team would not reject the letter. If, on occasion, it doesn't make sense, the licensed school nurse would then, with the release, talk to the doctor and say here's what school looks like, here's what we do, does that help when fleshing out your letter.

Other than that, they would accept the letter and allow, just as in this instance, I'm not talking about every student. If we're talking about A.J.T., the parents provided the doctors' notes, the school accepted the notes, allowed her to start at noon, and then developed a school plan from that.

Q Will you look at Exhibit 10, please.

A I have it in front of me.

Q Have you ever seen that letter before? From developmental pediatrician -- developmental behavioral pediatrician, P. Manning Courtney, right?

A That's this letter that's in front of me, **[152]** yes.

Q And can I ask you to read it, please?

A The whole thing?

Q Please.

MS. BOOTH: Out loud? Do you want her to read it out loud?

MS. GOETZ: No, just read it to yourself.

THE WITNESS: Got it.

BY MS. GOETZ:

Q Are you done?

A One second, thanks. Yes, I'm done.

Q Do you know that this was provided to the district before A.J.T. was enrolled?

A I do not.

Q Did you ever discuss this letter with anybody?

A I did not.

Q Any reason to question this medical opinion?

A No, huh-uh.

Q Do you know of any contrary medical opinion?

A Contrary --

Q Contrary to what's expressed here. **[153]**

A No, I've seen no other documents related to A.J.T. on this.

Q Has the district obtained any contrary medical opinion to that which is expressed here?

A I don't know.

Q You've not received that information; is that fair?

A That is correct, uh-huh, I have not received it.

Q And there's been no question that A.J.T.'s start time would be modified to noon; is that correct?

A That is correct. They asked that her start time be at noon, and again the principal accepted it and said, yes, we will excuse her for the morning hours.

Q And there would be no reason not to accept it because to not accept it would mean that she is truant, right?

A Correct, so they accepted it.

Q And there would be no reason to send her over to the juvenile court with her parents to face truancy charges, would there?

A Clearly not.

Q Because the juvenile courts would never order her to go to school against medical advice, [154] would it?

A I don't think they would.

Q So Dr. Manning Courtney says she's benefitted from in-home instruction in the late afternoon to accommodate her adapted schedule. Do you see that?

A Uh-huh, I do, uh-huh.

Q Do you have any reason to question this opinion?

A No, huh-uh.

Q Are you aware of any contrary educational opinion?

A No.

Q Why was A.J.T. not provided the adapted schedule recommended here; do you know?

A This letter also states that she has been involved in very intensive and appropriate interventions privately and through her school placement. It does not say what that division was. So, again, it outlines what she had, but it doesn't indicate which was which.

This is me reading it just now, Ms. Goetz. So those would be the questions that I would have asked if I had been provided this letter.

Q Would that have been helpful information [155] to decide about the length of her school day when she first arrived?

A In order to get a full picture of what A.J.T.'s day looked like, yes, I would like to -- if it was me and I am the IEP team, which I'm not, that is something that I would have explored maybe. Maybe.

Q Do you know why nobody did?

A I don't. I'm not sure who saw this letter.

Q Assume that the parents provided it to the person in charge of A.J.T.'s enrollment, just assume that. Can you assume that?

A I'm not big on assumptions, but okay.

Q Who should the letter have gone to?

A Our enrollment process is the parent comes to the enrollment center, provides documents for enrollment, birth certificate, other stuff, like where they're living, any educational records, of which I'm assuming that this was one of them.

We have a due process ESP -- a special -- a special education building coordinator, SEBC, at the enrollment center and they gather up all the records, and if it's a student that may be placed in a self-contained setting, then that SEBC would coordinate with the coordinator on placement. [156]

Then that school team would then take over and determine, again, is the IEP from out of state, does it meet Minnesota guidelines for eligibility, do we need to do more testing, what do we need in order to write an IEP that meets Osseo area schools format and goals and Minnesota's way of doing things.

Because we may or may not do things differently in Minnesota than in Kentucky.

Q Assume that this letter was provided after enrollment to the first convening of A.J.T.'s IEP team.

A Uh-huh, uh-huh.

Q Who would have gotten the letter then?

A The same people that I talked about in my previous answer.

Q Teachers don't determine a child's medical treatment, do they?

A No.

Q Physicians and parents determine a child's medical treatment, right?

A Absolutely, yes.

Q Any reason to think that A.J.T.'s physicians are mistaken or dishonest about what her medical treatment should be?

A I don't know what her medical treatment [157] is, so I have no response to that. I'm assuming that they -- the parents -- well, I'm not even assuming this.

I believe parents love and care for their child and they are doing the best and I believe they are working with doctors that they know what to do. So I am assuming positive intent on that one.

Q So this letter from Dr. Manning Courtney at Exhibit 10, doesn't that tell you that her care and treatment requires her to be at home in the morning?

A If I had received this letter and I did not know A.J.T. and I had experience with other seizure disorders, then I might have wanted to ask every day? Every day until noon? Because that has not been my

experience with students with seizure disorders, even with this same syndrome.

And again, A.J.T. is her own person, with her own medical history. So she's not like any other student. But what I'm saying is that no other student -- and we have other students with seizure disorders who are their own person, with their own kind of medical things -- we have no other student who every single day cannot come until a certain period of time. If I received this letter, I might have [158] asked some questions and said never? Never once? Huh.

Q Do you know why nobody asked those questions?

A I don't, huh-uh.

Q Do you know why nobody ever picked up the phone and called Dr. Manning Courtney when they had a signed authorization to release from the parents to do so?

A I do not. No, huh-uh.

Q Do you know who would be in charge of correcting those mistakes?

A Well, I think that the licensed school nurse would have been consulted.

Q Who would be in charge of correcting the mistakes, people not questioning the doctor's opinion, people not picking up the phone to call the doctor to talk with them about a release?

A So, first of all, there's a whole host of things that I don't know in your questions. One, I don't know that the parents signed a release, I haven't seen it. I didn't -- like I said, I haven't seen it so I can't answer that question.

I don't know that they didn't want to and that the parents wouldn't allow that. Again, I don't [159]

know that. I don't know that the LSN didn't have a conversation with the parent asking can I talk to her current doctors.

What I do know is that the one time that Joy was able to talk to a doctor, it created a lot of anxiety because she thought this was her one-chance deal and that's why she had a lot of anxiety about it because she thought the weight was on her to, you know, some of this stuff in here, I don't know if it was in here or elsewhere or whatever she was trying to get.

Q Well, I want to you assume that the parent signed a medical release every year authorizing district personnel to talk with A.J.T.'s treating physicians. I've seen those documents. That was -- that was acknowledged in this hearing. Those are the facts. So I want you to assume those are the facts.

Why would Joy think this was some kind of outside opportunity, some kind of outlier opportunity if those are the facts?

A I don't know.

Q Who's responsible to correct a mistaken conclusion that, despite yearly authorizations to release information, that district officials were not permitted to talk to treating providers? **[160]**

A One, it is my assumption -- and again I am not the one who is at the IEP team -- so if the case manager knew and was able to talk to the doctors, then I wouldn't know that. And if Joy thought that and told me that, that's where I got that assumption. But Jan may not have that assumption. Maybe she is talking to the doctors. I don't know that.

Again, I have testified as to what my conversations were and what they were not. I mean

so maybe they are talking to the doctors and I'm unaware of that.

Q Why do compulsory attendance statutes exist; do you know?

A I don't.

Q Don't they represent the belief that education is necessary for all children?

A That is certainly possible.

Q Don't you agree that education is necessary for all children?

A I've been in this field a long time because I believe that education makes a difference, yes.

Q Why do instructional hour requirements exist; do you know?

A I do not. **[161]**

Q Don't they represent a belief that a standard school day is necessary for all children?

A I don't have enough information about the hours to answer that question.

Q Assume we have state laws that say there's a minimum number of instructional hours for elementary school students and a minimum number of instructional hours for middle school students and a minimum number of instructional hours for high school students. You don't know that law exists?

A No, I know it exists. I don't know why it exists.

Q Okay. Don't you think it -- don't you think it reflects a belief that education -- that there's a minimum expectation of education for all children?

A Yeah, I would think so. Yes, until we get into the exceptions for 504 and IDEA based on individual circumstances, yes.

Q Do you agree that full time education is valuable?

A I believe that education is valuable.

Q Full time education?

A Not necessarily, no.

Q But only children whose needs dictate less [162] than full time get less than full time, right?

A Could you say that one more time?

Q Only children whose educational needs dictate that they get less than full time instruction get less than full time instruction, right?

A So I believe that students on an individual basis, depending on what their situation is, may need a lot of things. And then the team gets together and kind of figures out how best to make that child's life work given -- let's use care and treatment. Given that the student needs time in care and treatment, the child needs time to be home and decompress, and the child needs an education.

That's the context of a 504 team around a student need and what they need.

Q And so, again, a child's individual needs is the basis for any determination of shortening a school day, right?

A Yes.

Q How is A.J.T. able to be educated with less time than her peers?

A A.J.T. has a school day with parts of time with her peers and parts of her time without with intense services. She has a teacher and a paraprofessional for a period of time with no other [163] students. And I think I know, but I'm not

exactly sure, that she could -- do other people stop by as well. It's the PT, OT, where are they in this?

So I don't know when they're stopping by or whenever it is. So she gets a lot of services and some of them are highly intense and some of them are when she is with her peers.

Q But that describes most special ed students, doesn't it?

A Not necessarily, no, huh-uh.

Q And we don't shorten the school day of students, special ed students, just because they get intense services, do we?

A When you say intense, are you using intense in the same way that I am, one-on-one or two-on-one, with nobody else around, the whole focus is on the student, is that how you're using intense?

Q Sure, if that's how you're using it.

A Pardon?

Q If that's how you define the term.

A Yep. That's how I'm -- us that's how I am, yes, using it is that A.J.T. is getting intense services for a period of time and now she's getting it from 4:30 to 6:00.

Q But students who get intense services, [164] just the fact that students get intense services, as you've defined them, is no reason to shorten their school day, is it?

A No. I have no other student who is getting that level of intense services in a school building with only her being the focus.

Q And why does she get such intense services?

A Because the school day ends and the team extended her school day.

Q Isn't it because she needs that level of intensity?

A That would be my understanding is that team decided that she needed some supports and services outside of the time she was getting with her peers.

Q And any child who needs that level of intensity of service has to be provided it under special education and 504, right?

A It is the job of the school team, whether it be a 504 team or an IEP team, to determine the goals and objectives that the student will need to make progress towards a diploma.

Q How many instructional hours per day does A.J.T. miss with the shortened school day before the [165] hearing decision?

A I don't -- I'd have to do the math. I don't know.

Q Assume the standard school day is 6-1/2 and she got 4-1/4. She missed 2-1/4 hours every day, didn't she?

A So she gets 4-1/4, it would be 2-1/4. Yep, uh-huh. If you do the math and consider hour-per-hour. But, again, as my previous testimony, I don't believe that progress and hour-per-hour are synonymous.

Q Doesn't missing instructional hours lead to an inevitable loss of learning?

A Not necessarily, no. No. No.

Q How was A.J.T.'s adapted schedule accommodated as requested by her parents, other than starting at noon?

A I don't know.

Q Do you understand the risk to her health and safety if she were to start school before noon?

A I know that the school has a note from the doctor saying she cannot start before noon. We accepted the note; she starts at noon.

Q Do you know that there were about five or six notes subsequent to this Exhibit 10 that you've [166] looked at?

A No.

Q Do you know of any treatment considerations that limit A.J.T.'s ability to participate in a full school day?

A No.

Q So do you know why A.J.T. was sent home at 4:15 every day until the hearing officer's order?

A I think I've asked and answered this. This is sounding very similar to other questions that you've asked.

Q Okay. Do you know that she's sent home at 4:15 every day, or was before the hearing officer order?

A Yes, I believe that. I believe that to be true, uh-huh.

Q And other than what you've testified to that the IEP team decided that based on her individual needs; is that accurate?

A I think that the IEP team had to consider when she could start and what she needed, yes.

Q So the IEP team decided that she would be done at 4:15; is that your understanding?

A That is my understanding, yes, uh-huh.

Q And that that decision was based upon her [167] individual needs?

A That is my understanding, that she was making progress in that amount of time, yes.

Q Who was consulted outside of the IEP team on those determinations from year to year?

A So if I'm understanding what you've told me correctly, the parents have provided a note on a frequent basis, I don't know if it's annual or whatever, saying, yep, it still stands, she cannot provide -- she cannot come to school until noon.

Q So your answer is medical providers may have been consulted?

A Yes, I think that the team would have gotten that information.

Q Who else may have been consulted outside the IEP team?

A I have no idea. I would imagine that the IEP team, along with the coordinator, would have consulted. When the child moved from middle -- from elementary to middle school, Jan told me that the team was keeping the time. That they had met and determined that that would be -- the goals and objectives, that they could meet those, you know, some in school, some out so she could still make progress if they left the time at 4:15. **[168]**

Q And when you say you understood the IEP team decided, what did you understand the teachers on her team said about that decision?

A I didn't differentiate any member of the IEP team on that. The parents have the right during a Prior Written Notice to object or to follow those avenues that are available to us. I did not differentiate on any other individual on the school team.

Q What do you know about what her teachers said about the end of her school day?

A I have no specific knowledge on that.

Q Would it surprise you if her special educators said they were never asked?

A So they never attended the IEP meetings?

Q Would it surprise you if her special educators testified at the hearing that they never were consulted about the question of the end of A.J.T.'s school day?

A I would be surprised that it wasn't discussed in an IEP team, yes, of which they are a member.

Q And you would expect, would you not, that teachers would be asked about and give their opinions on that important topic, wouldn't you? **[169]**

A I would -- I would -- I would suppose that they would have been discussing all components of the IEP, yes.

Q But you'd expect teachers to be asked specifically to give their opinion about this issue, wouldn't you?

A Well, you know, all teachers or the one required member of the IEP team? So I would expect the IEP team, of which the case manager or a special education teacher is a member, to have discussed components of the IEP, yes.

Q Especially the case manager should have been asked their opinion, right?

A Specifically asked their opinion or when they are discussing give their opinion or discuss it or talk about it or something. But to be asked do you think? I don't know if I agree with that.

As a professional, I think that that would -- that doesn't -- that does not resonate with me. If I'm on IEP team and I'm discussing things and we say, okay, what is it that we think, and so on.

So I do know when they were doing the transition, I believe the SEBC from the Maple Grove Middle School came and joined an IEP team because it wasn't on the first day of middle school that this was [170] decided. It's my belief that it was decided when they do the transition to middle school. So it might have been the elementary IEP team with a member of Maple Grove and a coordinator. So that's what I believe.

Q But an IEP team can't make a decision about shortening a child's school day without the input of her teacher, her special education teacher, can it?

A So which teachers are you saying -- are you talking about? What are we talking about here? Are we talking about her transition to middle school? What IEP team meeting are you talking about?

Q I'm not talking about any particular IEP team meeting.

I'm just saying no IEP team can make a decision about shortening a child's school day without the input of her special education teacher?

A And her special education teacher has input in the IEP team meeting. So -- and to be clear --

Q But my question is --

A -- the parents -- I'd like to finish my thought here. To be clear, the parents are the one who shortened the day. They're the ones who said my child [171] condition attend until noon, knowing that school starts a few hours earlier than that.

Q You just read Exhibit 10. Her doctors shortened her school day.

A Parents presented this to us. We don't know this doctor. They presented this to us, we accept it.

We accept it from the parent who brings us the doctor's information.

Q Do you have reason to think that the parents

--

A I do not.

Q -- made this letter up?

A No, I do not. I do not.

Q Okay. So why are blaming the parents for shortening her school day when we just looked at a doctor's letter that said she can't start until noon?

A Okay, so, again, we don't know the doctor. The parent provides the letter. It is not blaming them. They're providing a letter on behalf of their child.

Q But they are not shortening her school day; her doctor did. Do you disagree with that?

A All right, I'm going to read it again. Let me just be clear here just to say if they said that. **[172]**

Q Paragraph 3.

A Okay. Specifically due to morning seizure frequency and intensity, she does not attend school before noon.

Q What does the sentence before that say?

A Sorry, I missed that.

Q What does the sentence before that say?

A Specifically --

Q It starts A.J.T.'s medical.

A Her medical complexity also necessitates that her school schedule be modified. So again --

Q That's a medical opinion? That's her medical opinion, right?

A Good enough. School still starts at 8:00-something.

Q I know. But my question is --

A Medical opinion aside.

Q That's a medical opinion?

A Yes. And this medical opinion says she can come to school at noon or she shouldn't come to school before noon, whichever.

So we've excused her. We did not shorten the school day. We lengthened her school day.

Q So sending her home -- when she first arrived, the school proposed a three-hour school day. **[173]** Sending her home after three hours is lengthening her school day? Is that your testimony?

A That is not my testimony. I don't know what you're talking about.

Q You said the district lengthened her school day because she started at noon. When she came right after this letter was written, when she was enrolled, the district offered 180 minutes per day of instruction; do you know that?

A No.

Q So three hours of instruction is not lengthening her school day, correct?

A Was this at the very beginning? This is -- my -- I am working under my working theory is that she was staying until 4:15.

Q Here's my question: Is three hours of instruction a lengthened school day?

A No.

Q And here's my previous question: You can't have an IEP team make a decision about shortening

a child's school day without having their special ed teacher's opinion, can you?

A Case manager or -- yes, uh-huh. So --

MS. BOOTH: There's no question in front of you. [174]

Ms. Goetz, when it's convenient for you, I could use a break.

MS. GOETZ: All right. Let's take a ten-minute break. Until 2:35?

MS. BOOTH: 2:35 it is.

(At this time a brief recess was taken from 2:25 p.m. to 2:37 p.m.)

MS. GOETZ: Are we ready to continue?

MS. BOOTH: We need a minute, sorry.

BY MS. GOETZ:

Q May I remind you, Ms. Emmons, that you are still under oath?

A Yes, thank you.

Q Can you look, please, at Exhibit 16.

A Yep.

Q Have you seen this document before?

A No, huh-uh.

Q This was provided to us from the educational record.

A Okay.

Q Do you recognize the attendees?

A I do recognize the attendees, yes.

Q Who is Nancy Nordberg?

A She used to be a district behavior [175] specialist with the district.

Q And do you see the start -- it says start date, Monday, October 14, 2015?

A Uh-huh. Start date of A.J.T.'s coming to school, is that what I'm thinking this is?

Q That's my question. Do you know what that means?

A I don't, huh-uh.

Q Do you know see five lines up from the bottom of this page 1, the sentence that says: Nancy asked if they would like to continue with the IEP from Kentucky, the parents thought yes?

A Uh-huh, yep, I see that.

Q So Nancy thought it was an option that the IEP could be continued from Kentucky?

A Uh-huh.

Q Right?

A Yes, and hopefully -- yeah, there was some discussion around that.

Q And then if you look on page 2, three paragraphs up from the bottom, can you read that, please?

A I'm sorry, how many up from the bottom?

Q Three paragraphs up from the bottom, starting with dad asked. **[176]**

A Oh, yeah, uh-huh. Okay, got it, uh-huh.

Q So A.J.T.'s dad was asking for support in the evening and Amy -- that would be Amy Stafford, right?

A Yeah, uh-huh.

Q Amy, quote, shared that we don't provide both homebound and school support modified, end quote. Is that what you were testifying to earlier that if you are homebound, you're homebound and you can't get in-school support?

A In our district if you are homebound, that means you are medically unable to attend school and it was my understanding -- well, not my understanding at the time because I wasn't a part of the meeting, but, yes, homebound is when a student is medically unable to attend school. And this student was able to attend school.

Q And the district's TSES says otherwise, doesn't it?

A I don't know that.

Q You do you know that -- do you know what the district's TSES is?

A I do, yes, I do know that, yes.

Q It's the district's promise to the State about how it will run its special ed program, right? [177]

A Yes.

Q And you don't know -- do you participate in creating that document?

A Yeah. I delegate it to one of my coordinators, but, yes, it is in my department.

Q Do you oversee it?

A I do.

Q And so do you know that it says that students can have a combination of alternate methods of instruction, including homebound and in-person instruction?

A No, where is that? We might have to modify that.

Q So let's go back to Exhibit 16, the next sentence is, quote, dad felt this might conflict with ADA, he wants statute, says position is she can handle a full day, just can't start before noon. Right?

A Yes, uh-huh.

Q So he's complaining that that decision might constitute disability discrimination, isn't he?

A Uh-huh. It is -- yes, uh-huh.

MS. BOOTH: Kate, I'm going to ask you, just for the court reporter, can you answer yes or no. [178]

BY MS. GOETZ:

Q Do you know why nobody reported this to the 504 coordinator?

A Dan Wald was at the meeting, so I don't know. I guess that these are the notes, the summary, but I'm not sure the full context of the meeting, whether it was discussed or what else happened at this meeting. So Dan Wald is the principal at Cedar Island.

Q Would he have been the person to whom a disability discrimination complaint should have been directed?

A 504 -- it would have started with a 504 coordinator and then gone to the principal, yes, and then if the principal needed to consult and '14-'15, he would have -- '15-'16 -- this would have been '15-'16, this would have been Jill, I think, in '15-'16.

Q Do you know whether any complaint was investigated?

A I do not know.

Q Do you know whether any complaint was resolved?

A I do not know.

Q Do you know whether the parents were [179] provided any notice of their 504 rights with respect to complaints?

A I do not know.

Q Did anyone ever discuss what happened at this meeting with you?

A No.

Q And the last sentence on that paragraph, his position is she can handle a full day, it just can't start until noon?

A Yes. And, again, it is the parents who shortened the day, through their doctor's notes, and the district did not shorten her day.

Q So, Ms. Emmons, the parents didn't shorten her day, they just supported the medical determination that she couldn't start until noon, but as early as the very first contact that is documented with the Osseo district, her parents are asking for a full school day. Isn't that what this note reflects?

A It is.

Q Let me have you look at Exhibit 17.

A Okay.

Q Is that the district's TSES that we were just talking about?

A 2021, yes, uh-huh.

Q Will you look on -- my pages aren't [180] numbered so I have to count -- page 9, top paragraph, that starts with the appropriate program alternatives.

A Okay.

Q Do you see that paragraph?

A I do. I'm reading the paragraph before it for the whole context of the section.

Q Are you done?

A I am, uh-huh.

Q Doesn't this say that a pupil can receive special education services in more than one

alternative based on an IEP, including all of the methods in A, which cover one-to-one instruction, services in a small, structured, special ed classroom, and homebound instruction?

A Where are you seeing that?

Q Doesn't the last sentence of that sentence say: A pupil may receive special education services in more than one alternative based on the IEP? And program alternatives are then laid out, are they not, in subsection A right below that, which includes the three alternatives I just identified.

A Yes.

Q Okay. So when you say you can't get homebound and in-school instruction because if you're homebound you're just homebound, where does that come [181] from?

A When we are laying out the method of providing the special education services for the identified pupils, we have laid out ten possibilities.

Q But that's not my question. Please listen to my question.

When you said that if you're homebound, you're homebound, you can't get more than just homebound, what's the source of that authority?

A Homebound is for students who are medically unable to attend school.

Q Where do you get that language?

A I get it, I think, from statute or rule. Off the top of my head, I don't know. I'd have to research it.

Q And the statute or rule says you can't get homebound and in-school instruction?

A I think it says homebound is for students who are medically unable to attend school.

Q Does it specify that medical inability must extend for the whole day?

A I don't know that.

Q So this decision that was made that A.J.T. couldn't have homebound and in-school instruction made sometime before she started attending school, that was [182] made before she even came to her first day of school in the district, wasn't it?

A I don't know that.

Q But the document itself tells us so, doesn't it?

A I'm sorry.

Q The document itself tells us so, doesn't it?

A Oh, this document here?

MS. BOOTH: Exhibit 16 do you mean?

THE WITNESS: Exhibit 16?

BY MS. GOETZ:

Q It was written before her start date.

A What was the date of this meeting?

Q Well, why is that not noted; do you know?

A I don't.

Q Okay. But it was obviously written before her start date. It wasn't written after her start date, was it?

A It has no date assigned to it.

Q Okay. So assuming it was written before the start date, there's a decision made that she can't have evening support because it would constitute homebound and in-person instruction and that decision was made before she started school? [183]

A That was -- Amy shared that we don't provide both homebound and school support modified. I don't know what else was discussed.

Q Right. But it was decided before she even started in the district, right?

A I do know that that's what they discussed based on this document.

Q And it was decided unrelated to A.J.T.'s needs, right?

A Amy also shared that we need to do an evaluation since they switched states. So --

Q But they hadn't done an evaluation before they made this decision, had they?

A It doesn't look like she started school yet, so, no, we had not done an evaluation.

Q Do you know whether the -- do you know what documents, if any, the district had regarding A.J.T. at this point?

A I do not.

Q And how is that policy about alternate methods of instruction that Amy is relaying here, how is that related to A.J.T.'s individual needs, if at all?

A Could you repeat that question?

Q When Amy Stafford said you can't have [184] homebound and in-person instruction, that was based on a rule, not A.J.T.'s needs, right?

A It was based on the understanding that if you're unable to come to school, you get homebound services. And the IEP team would need to develop an IEP so that A.J.T. could make progress on her goals and objectives.

Q And that was made irrespective of A.J.T.'s individual needs, wasn't it?

A At this point A.J.T. hasn't started school, they haven't written an IEP, they haven't proposed an IEP, the school team has not proposed an IEP to the

parents, they haven't conducted the evaluation. There is a lot of information that this document doesn't share.

Q But it does share a decision that she can't get homebound and in-person instruction, right?

A It certainly shares Amy's opinion on that, yes, it does.

Q Who did Amy consult before she announced that decision?

A I do not know.

Q Did she talk to you?

A Not to my knowledge, no. I don't recall ever having a conversation with Amy about The T's [185] ever.

Q Do you know whether she consulted with anyone else before she announced this decision?

A I do not.

Q And deciding that A.J.T. could not have a full school day, that would be a significant change in her placement if she was coming from a state where she had a six-hour day, wouldn't it?

A Again, I think I've answered this question. The doctors and parent shortened her school day, not the Osseo area schools. So we allow her to come at noon and developed an IEP so she could make progress on her goals and objectives.

Now, again, I have this document. Like I've stated in my testimony, I haven't read her IEPs, I haven't reviewed her bio. So I don't know when what was proposed and what was not proposed and all the avenues that the IEP team explored or didn't explore.

Q How do you reconcile that statement, that her parents shortened her school day, with the clear

request here on this Exhibit 16 that her father is asking for a full school day?

A He's asking for six hours. The full school day in Osseo area schools for elementary would have been the time school starts to the time school [186] ends. The same thing in middle school. The school day is from the time school starts to the time school ends. We publish those dates and times, they're in our handbooks, they're on our website.

Q So your explanation is that A.J.T.'s father was asking for her to start school with everyone else?

A No. He was asking for her to start at noon -- to make an exception for her to start at noon, and then to continue on from that period of time without considering the IEP.

Like what is it that the IEP team thinks are appropriate goals and objectives and support that would allow her to make progress. That's the discussion.

Q And the decision she couldn't have a homebound component and an in-person component was similarly made without respect to her IEP or any evaluation information, right?

A At this point, it doesn't look like we had -- I mean she hadn't started school yet. We need access to the student in order to do an evaluation. It took a while to get approval or -- not approval. An agreed-upon evaluation plan.

Q Why did it take a while? [187]

A I do not know.

Q When did that process start?

A I would imagine, based on this document that you showed me, that it was under consideration.

Amy also shared that we need to do an evaluation since they switched states. So my guess is that the team would then have commenced working on developing an evaluation plan.

Q But you don't know that?

A I do not.

Q And you don't know that there was a delay?

A I do know there was a delay. I do know that it took a while when Joy came to me at one point saying they could not get agreement on an evaluation plan.

Q When was that?

A I don't know dates. I just know that she came to me and said it was a struggle, that they were not coming to an agreement, that they were now sometime away from A.J.T. starting school. I do not know. I'd have to review the file to follow that due process paperwork.

Q What were the struggles about?

A I do not know.

Q What did Joy tell you? **[188]**

A She told me there were struggles in getting the evaluation started or agreed to.

Q But nothing else?

A That's what I know.

Q What did you tell her?

A I asked what she had -- what avenues she had pursued.

Q And what did she say?

A Conciliation she'd offered, I believe, and again, others avenues. I can't speak because I don't remember.

Q What else do you remember about that conversation?

A That's the extent of it for that period of time.

Q Do you know whether anyone consulted with the 504 coordinator when A.J.T.'s father complained of disability discrimination?

A I do not. But, again, I don't know the whole context of that conversation. This is one or two lines in a summary.

Q And nobody consulted with you about that as the director and supervisor of the 504 coordinator?

A No.

Q Do you know if anyone consulted with the [189] superintendent?

A I do not.

Q Was there any proposed Section 504 evaluation at this point in time?

A I do not know.

Q Any provision of Section 504 parental rights?

A I do not know.

Q It appears the parents asked for the statute. Do you know if it was ever provided?

A I do not.

Q Can you look at Exhibit 18, please?

A Okay.

Q This is a Prior Written Notice dated 10/16/15, right?

A Yes.

Q And do you see in the first block, under Direct Services, skills classroom, 180 minutes a day, give or take, given her seizure activity? Do you see that note?

A No. Where are you?

Q In the first bullet point, four lines up from the bottom.

A Yes.

Q So the district was proposing three hours [190] a day of service, correct?

A Yes.

Q And then the next page, the first paragraph at the top, will you read that, please?

A Sorry, what am I reading?

Q Page 2, first paragraph at the top, starting with: The team discussed. Would you read that, please? Can you read it out loud, please?

A The team discussed a modified schedule to A.J.T.'s school day. A.J.T. cannot come to school in the morning due to her seizure activity through the night and in the morning. Mom and dad have discussed a modified schedule to further her education into the evening when her physical health is appropriate for leaning -- learning, or leaning. The district has denied this request saying state law does not mandate the support from the school district.

Q Is this the first you've heard of this reason for denying a full school day?

A Yes. I'm reading the whole Prior Written Notice.

Q But let me stop you and ask a question about this. You've not heard that this was expressed as the district's position before you just read this? [191]

A No.

Q Were you consulted about this decision?

A I was not.

Q Who made this decision?

A I can't answer that. I do not know. I could guess on some of this, but I'm not going to.

Q Do you know what state law would not mandate a full school day?

A No.

Q Not aware of any?

A I'm aware of laws that say respond to the individual needs of the student, but not in speaking of the school day, other than the ones that you've discussed in this -- today.

Q How does this decision relate to A.J.T.'s needs?

A So the explanation is the district accepts these terms -- so there's a bunch of stuff above. The district accepts these terms to the IEP due to the needs of A.J.T., or A.J.T.'s needs. These goals and objectives, services, and service minutes will work for A.J.T. in the school setting to educate and protect her due to her medical needs.

That is the explanation of why the district team -- or what they put on this. And it [192] looks like it was Jocelyn Hoffarth who wrote this. So that looks like it's why they did that.

Q Why they accepted the goals and objectives?

A District accepts these terms to the IEP due to the needs of A.J.T. So they outlined stuff above, academics, adaptations, indirect services, direct services.

So it looks like they believed that the direct services were 180 minutes. That's my assumption based on this is that's what they got from the deny Kentucky IEP.

Q The district -- that's the district's decision, right?

A It looks like -- sorry.

Q. That's the district's decision about what A.J.T. needed in terms of IEP adaptations, indirect and direct services, right?

A It appears that when they -- or somebody, Jocelyn, because it's written by her, I don't know if Joy would have reviewed it, when they reviewed the Kentucky IEP, this looks like that's what they understood the Kentucky IEP to contain. The district accepts these terms to the IEP due to the needs of A.J.T. **[193]**

Q Right. So that was the reason to accept the terms above?

A Yep, uh-huh.

Q But then the next page goes on to talk about why the district has denied the request for a modified schedule to continue into the evening. And that reason is that state law does not mandate this support from the school district, this support from the school district. That's the reason why she couldn't have instruction into the evening, right?

A That is definitely what this says.

Q And that's not related in any way to A.J.T.'s needs, is it?

A It says they've requested a modified schedule, the district is denying that request saying state law does not mandate this support from the school district. The team discussed a modified -- A.J.T. cannot come to school --

MS. BOOTH: The court reporter has got to take down everything you say.

THE WITNESS: Sorry. When I read the description, this IEP will only be in effect until no later than January 14 when the team can do a re-evaluation and propose a new IEP. In this time dad will have the opportunity to look in a modified -- **[194]** into a modified schedule through State IDEA and ADA laws.

BY MS. GOETZ:

Q But my question is: How does the decision that state law doesn't mandate more time after the regular school day, how does -- how is that decision related to A.J.T.'s needs? Can you tell?

A I cannot. They have a lot of time listed out on this IEP for her needs and it -- I don't see anything that would take it to more hours than what they proposed.

Q Would Joy have been in the -- in the habit of reviewing Prior Written Notices like this before they went out?

A I don't know. Sometimes yes; sometimes no. It depends.

Q But Jocelyn Hoffarth would not have taken it upon herself to decide state law mandated a refusal of the parent request for a full school day, would she?

A I don't know who was at the IEP meeting where all of this was discussed. So I do not know that answer either.

Q What state law would have been reviewed?

A I can't answer that. I don't know. **[195]**

Q Would it have been the state law requiring full implementation of the IDEA?

A Like I stated before, I don't know.

Q Would it have been the state law requiring full implementation of Section 504?

A My answer still stands, Ms. Goetz, I don't know.

Q Would it have been the state law requiring minimal hours of instruction for all students?

A I don't know.

Q Who would know?

A Actually, I don't know the answer to that question either.

Q Do you have an opinion about whether or not that statement is true?

A The statement that the district has denied this request saying state law does not mandate the support from the school district?

Q Correct.

A I think that that is not necessarily true.

Q Whose job is it to correct a mistake like this?

A Well, I'm seeing this now, let's see, this was written 2015. So --

MS. BOOTH: She's just asking you [196] whose job is it to correct it.

THE WITNESS: If it were to become known at the time that these folks worked for the district, it would be the coordinator. The coordinator would bring that to my attention, I would say, oh, my, and then we would correct it.

BY MS. GOETZ:

Q But you don't know whether the coordinator ever saw this?

A I do not.

Q And you never saw it?

A I did not.

Q So it went without correction; is that right?

A Oh, I'm sorry was that a question? Sorry.
What was your question?

Q So it went without correction, right?

A This was presented to the parents in this form, correct.

Q Any idea what federal law was reviewed in making that determination?

A I do not.

Q You don't know what discussion there was about whether A.J.T. needed a shortened school day at this point? **[197]**

A What I can tell from this document is that they have outlined the academics, the adaptations and direct services and indirect services that they are proposing to provide to A.J.T.

Q Can you also --

A It looks like the minutes that they are providing are within the minutes that they are proposing.

So regardless of what they say about state law into the evening, there is no proposal on the table that has minutes that would require that extended day.

So that IEP team did not develop a plan or a program that would have extended it past the time that they are proposing.

Q And so the parents' request for a full school day was apparently overridden by the district's proposal to only offer three hours. That's what this document tells me. Does it tell you the same?

A It tells me that the IEP team considered the academics, it considered her adaptations, the team considered her indirect services, and they also outlined the number of minutes. That's what this document tells me is that they were proposing this plan of action for A.J.T. for her school day. **[198]**

Q But this document does not reflect a conclusion by the team that three hours a day of school would provide her a FAPE, does it?

A Well, I'm not sure I agree with that because it does outline exactly what they thought she needed.

Q Who is the they?

A Well, whoever wrote this, the team, the school team.

Q What team? The school team, right?

A Yes. The school team did outline IEP academics, the adaptations, the indirect services, the direct services, and then also even went so far as to say what program she would be in.

It also says that this IEP is in for such a short amount of time that it would allow time, October 16 to January 14 -- so October, November, December, January -- three months for the team to get to know A.J.T. a little bit and then they would do this re-evaluation and propose a new IEP.

I don't know what the next IEP proposal was. This was intended to be a short, very short, amount of time. As you know, IEPs are written for a year and this was far less than a year.

Q This document does not discuss or reflect **[199]** a discussion about whether a full school day would harm A.J.T., does it?

A Harm her? That is not reflected in this -- this Prior Written Notice.

Q And it does not reflect a discussion about whether a full school day would benefit her, does it?

A This Prior Written Notice outlines the academics, the adaptations, the indirect services and direct services that the IEP team is proposing for A.J.T.'s school day so that she can make progress on her IEP goals and objectives for a short amount of time, until such time as we could conduct an evaluation to ensure she meets Minnesota state standards and eligibility.

Q When did A.J.T.'s IEP team determine a shortened school day is required in order to address her unique disability-related needs?

A I don't know that they did that.

Q Do you know who spoke to that on her IEP team?

A I do know that she presented me with a doctor's note saying that she should not start school before noon. So that is the time frame within which the IEP team is working with. And it appears that they reviewed the Kentucky IEP team and took out the [200] information on the actions proposed or refused and took a look at that and then developed a program designed to meet A.J.T.'s individual needs.

Q So the next sentence that you are reading there on Exhibit 18, there's going to be -- this was an interim IEP pending a re-evaluation. Quote, in this time dad will have the opportunity to look in a modified schedule through the State IDEA and ADA laws, end quote. Right?

A Yes, yes.

Q Isn't that another complaint that the shortened day constitutes discrimination on the basis of A.J.T.'s disability?

A One, again, the shortened school day is at the parents' request, and then the IEP team developed a plan for her to have goals and objectives that are reasonably calculated for her to make progress towards graduation.

Q So when did A.J.T.'s parents ever request a shortened school day?

A When they presented the note from the doctors asking for her to be starting school at noon.

Q That's the same as saying we want a short school day for A.J.T.?

A That is asking the school district to [201] excuse her for the morning hours.

Q But then they ask the district to educate her in the evening hours, didn't they?

A Yes, but the IEP did not call for that. If I am looking at this document that you've presented to me now, I'm looking at this, IEP adaptations, direct services, indirect services. It calls out the number of minutes. I don't see six hours in this proposal. I don't even see what would require six hours in this proposal based on what they are saying. I only have what you presented to me.

Q Right. And you have a fraction of the information needed to make that determination, don't you?

A I have what you're presenting to me.

Q And it's a fraction --

A I don't know how to answer that.

Q It's a fraction of the information you would need to determine whether or not A.J.T.'s needs require a shortened school day; isn't that right?

A Are you asking me as a director of student services or a hypothetical if I was the case manager?

Q Either.

A Okay. Yes, if I was the director of student services and somebody brought something to me [202] and I was willing as the director of student services to provide answers to an IEP team, which I've already said I'm not because I am the one who knows the student the least, then I would have posed questions that might be asked. If I'm a case manager, I would also, because I would be the one implementing the IEP, and I haven't seen the Kentucky IEP.

So -- so here's what I think is that they looked at the Kentucky IEP because that appears to be where they got this information from. So I guess as a case manager I have fewer questions because then I have the information that is available to me from Kentucky, I take that, I say thank you, Kentucky, for doing such a good job with A.J.T. up to this point and now she's in Minnesota and this is what we do in Minnesota based on our rules and laws and regulations and all of it.

So they took that, put this information in here, and then said, you know what we're going to do, we're going to conduct an evaluation to get more information. Which is an excellent step, in my opinion, because an evaluation gives you information. And they said that they will do this and I think that was an excellent thing to do.

This other language that they're saying --
[203]

Q It was required, wasn't it, Ms. Emmons?

A It depends. So that's a -- that's not an absolute. We have to look at what is presented to us

and then determine if what is given to us meets Minnesota eligibility requirements.

Q But you just testified that the IEP from Kentucky had --

A Can I finish my answer? I'd like to finish my answer.

And if the team determines that they do not have enough information, then they will propose an evaluation to ensure that she meets Minnesota eligibility.

Q But you just testified that the IEP apparently met all her needs because it was incorporated into an Osseo proposal. So why --

A That they knew at that point.

Q So why a reevaluation?

A Based on what they knew, they're taking this IEP -- this is obviously a child who needs service. So as opposed to saying we're not going to provide services until such time as we conduct an evaluation and determine eligibility under Minnesota state law, which would be ludicrous, they took a look at the IEP team, pulled out the information for the [204] support services and academics that the child needed, proposed that, along with the information that, hey, we're going to conduct an evaluation.

Q So a re-evaluation was not required at this juncture; is that your testimony?

A I think an evaluation -- any time they come into a state and they are new to the state, it's an initial evaluation, not a re-evaluation. She has to meet initial eligibility.

Q An evaluation was not required at this point or was?

A The team determined that it was. It says so right here.

Q What does the law require? Does the law require evaluation at this point or not?

A The law requires, like I've stated, if a student is coming from out of state, if we do not have enough information to determine Minnesota eligibility, we will conduct an evaluation.

Q Two days before this Prior Written Notice was written on the 14th, the notes that we looked at earlier reflected, as does this Prior Written Notice, that A.J.T.'s father was concerned that the district was engaged in disability discrimination by its position; is that right? **[205]**

A He thinks that A.J.T. -- let me see, where is that on here?

MS. BOOTH: Exhibit 16.

THE WITNESS: Oh, he asked if we will provide support in the evening. So, again --

MS. BOOTH: That wasn't her question. Ms. Goetz, could you repeat the question?

BY MS. GOETZ:

Q Exhibit 16, page 2, dad made a complaint that the district's refusal to give his daughter a full school day constituted disability discrimination, right?

A I think the dad is equating hours with IEP goals and objectives. I think it's -- he's here with a number of hours that my child gets --

Q No, no. I'm asking you about this note, Exhibit 16, page 2. It says, quote, dad felt this might conflict with ADA, end quote. And the "this" he's referring to is the statement by Amy Stafford that you

can't have both homebound and in-person instruction, correct?

A Yes.

Q So he made a complaint about disability discrimination on the 14th. Now turning to Exhibit 18, two days later is this Prior Written **[206]** Notice?

A Uh-huh.

Q Right?

A Uh-huh.

MS. BOOTH: You have to answer yes or no, Ms. Emmons.

THE WITNESS: Yes, yes.

BY MS. GOETZ:

Q And in this Prior Written Notice, the district indicates that her father should look at the law in response to that complaint. Is that how you read this?

A In this time, dad will have the opportunity to look in a modified schedule through State IDEA and ADA laws.

It appears that the school did not agree that it -- that it violated State IDEA or ADA laws.

Q Where does it say that?

A Well, if they're suggesting that the dad will have the opportunity to look at a modified schedule through State IDEA and ADA laws, I'm most likely inferring that the district team did not think that it did. But I'm inferring.

Q You don't know?

A I do not know. **[207]**

Q And you don't know whether that was ever decided, do you?

A That what was decided?

Q You don't know that it was ever decided that what was happening did or did not violate nondiscrimination laws?

A I believe that the school team proposed an IEP --

Q Hold on. I'm asking what you know.

A That's what I'm saying though.

Q Do you know --

A Do I know that they proposed an IEP, yes.

Q Do you know that anyone in the district decided that Amy Stafford's statement and the district's position on a full school day at this juncture did or did not violate federal or state nondiscrimination law?

A No.

Q And certainly there would not have been an investigation between October 14 and October 16, would there?

A I do not believe so.

Q And so when this document 18 says A.J.T.'s father should go look at the law, it doesn't also say the district will investigate, does it? **[208]**

A It does not.

Q It doesn't say the district will look at the law, too, does it?

A It does not.

Q And, again, there was no evaluation for 504 proposed or performed at this juncture, was there?

A There was, I think, an IDEA, which would have included supports, accommodations necessary for A.J.T. to access her education.

Q There was no provision of 504 parental rights at this juncture, was there?

A Not to my knowledge.

Q When the district did its re-evaluation, were you a part of that?

A I was not.

Q Have you ever seen the re-evaluation?

A I have not.

Q Will you look at Exhibit 19, the last three pages of that exhibit. That's a Prior Written Notice of educational evaluation/re-evaluation, dated November 5, 2015, right?

A Yes.

MS. BOOTH: Sorry, Ms. Goetz, can you direct us to where the date of the report is because they don't match. Are you asking about [209] page 18?

MS. GOETZ: I'm looking at the Prior Written Notice, the last three pages of this exhibit.

MS. BOOTH: The last three pages. It's right there.

THE WITNESS: But the date on this is November of --

BY MS. GOETZ:

Q Is it dated 11/5/2015?

A What am I looking at?

MS. BOOTH: She's just asking you what the document says.

THE WITNESS: This date and this date?

MS. BOOTH: Yes, we will stipulate that the document says 11/5/2015.

THE WITNESS: Yes.

BY MS. GOETZ:

Q Are you aware of any other proposal to evaluate A.J.T. from the district?

A No.

Q Is this the first or another number in a series?

A I have no idea. I don't know.

Q Does this reflect your earlier testimony [210] there was some kind of delay?

A Yep, that doesn't seem -- January 19 of '16.

Q Do you know whose writing that is up at the top, 30 days due date, January 19, '16?

A I do not.

Q Does this reflect any kind of struggle with the parents over evaluation?

A It does not -- this is cut off at the end of it. So I'm not seeing -- is it just the --

Q Does it reflect a struggle getting the evaluation agreed to?

A No.

Q And other than a checklist of functional responsiveness and a phy-ed observation, it's a record review, right?

A Yes, it seems very minimal.

Q Do you know why it was very minimal?

A I do not.

Q You don't have any information it was because of the parents' position, do you?

A That's my complete statement. It seems minimal.

Q You don't have any information that it's [211] minimal because the parents wanted it to be minimal, do you?

A That is correct; I do not.

Q You don't know whether this evaluation assessed whether A.J.T. needed a shortened school day?

A I do not.

Q You don't know that there's any data in this evaluation about whether A.J.T. needed a shortened school day, do you?

A I do not. I'm going to read the -- yeah, I do not.

Q And when you look at the notice, the proposal to evaluate, where would that evaluation fit in terms of an assessment of whether she needed a shortened school day? Show us where that's going to be assessed here?

A I'm not sure I understand the question.

Q Does anything in this evaluation proposal tell you that the district intended to or proposed to assess whether A.J.T. needs -- needed a shortened school day?

A There is no information here about talking to the doctors to get the information about why they said she could start at noon. So I would say no.

Q Would you expect there to be that [212] provision?

A I would have.

Q What makes you think that the doctor's letter that you already looked at should be questioned?

A Because it's an evaluation, because we consult with doctors to get more specific information, because sometimes what's put on a paper is highlights, and for us to understand better why never, never before noon. So that would be my question.

And it would be the licensed school nurse, because that hasn't been their experience, to my knowledge, any student on a seizure -- with a seizure disorder could never start before any period of time, 8:00 a.m., 10:00, whatever it would be.

Q And, again, you don't have any reason to doubt the veracity of that medical opinion you've read, do you?

A No, but I would have questioned it.

Q And, again, you don't know that anybody ever used the authorization to release the information that permitted those discussions, you don't know of anybody in the district ever picking up the phone and calling this doctor, do you?

A I do not. **[213]**

Q Do you know why not?

A I do not.

Q Who should have -- who would have been the supervisor to catch that problem?

A So if I -- I'd have to see who was on the -- I would have expected a licensed school nurse to be on the evaluation team, and I do not -- well, this doesn't -- this does not have a licensed school nurse, unless it's cut off here that I'm not aware of.

Q And, again, who is the supervisor in charge of ensuring that this kind of evaluation, program, plan is complete?

A Well, health services is in my department and we give direction through -- it was a district nurse at the time and now we have a health services coordinator and we give -- I give direction to the district nurse, the district nurse gives direction to her licensed school nurses, and I would have expected them to have participated in this. Again --

Q Who should have invited --

A Wait, wait, wait because I'm looking at this and the physical status is in here from Jacqueline Adamson, it wasn't on the permission. Great.

Q So the school nurse is on here and is [214] reviewing records?

A It does look like she reviewed records, yes. Uh-huh.

Q But the district did not propose to talk to A.J.T.'s medical provider, right?

A I'm reading through this to see what it says.

Q Reading through what?

A The report from Jackie Adamson.

Q Within the evaluation report?

A Yes, within the evaluation report.

Q What page are you on?

A 11.

Q Tell me when you are done.

A I will. Okay.

Q Nothing is in that section that talks about why Dr. Doescher, or any other medical provider, was not consulted, does it?

A No.

Q So going back to Exhibit 18, the Prior Written Notice, dated 10/16 of '15, that decision was made, obviously, before any evaluation by the district, right?

MS. BOOTH: I'm sorry, what decision are you talking about? [215]

BY MS. GOETZ:

Q The decision that state law does not mandate after school modified support.

MS. BOOTH: Do you have the question?

THE WITNESS: No, I don't. No, huh-uh.

BY MS. GOETZ:

Q Exhibit 18.

A Yes, Exhibit 18, yes, dated October of '15.

Q October 16 of 2015, states the district won't give A.J.T. a full day of school because state law does not mandate that. And my question is: This decision was made before any district evaluation of A.J.T., wasn't it?

A My belief this was written as she was starting school. So this was to be temporary until such time as they conducted the evaluation.

As you know, evaluations tend to take 30 school days. So it was not possible to evaluate her before she started. So the school team pulled out information from the Kentucky IEP and said that it was proposing that would be a FAPE.

Q And that was not proposed -- her [216] evaluation was not proposed, back to Exhibit 19, the last three pages, until November 5 of 2015, correct?

A Yes. I am not exactly sure what day she started. So there was a delay of a couple of weeks before they got the PCE to the parents.

Q Do you have any --

A Or ten days. I don't know if it was a delay or not because I'm not sure what school looked like at that point. So I'd have to go back to the calendar and count days.

Q And you don't have any information that her parents opposed any part of a re-evaluation, do you?

A I do not. Not based on these documents. There is a statement -- there's not a question. Forget it.

Q Is giving A.J.T. less education than her peers discrimination?

A A.J.T -- A.J.T.'s parents received a proposal about what the school team felt was a FAPE.

Q That's not my question. My question, again, is: Is giving A.J.T. less education than her peers in terms of hours in the day discrimination?

A I'm not equating hours with a FAPE. So the school team proposed a plan of services, supports, [217] accommodations, academics, et cetera, that they felt was a FAPE. I am not equating hour-per-hour.

Q So your answer is no?

A That was my answer.

Q No is your answer?

A Could you restate the question because I'm not -- I gave you my answer.

Q It's a yes or no question, Ms. Emmons. Is giving A.J.T. less education than her peers in terms of hours of the day discrimination?

A I do not believe so, no.

Q Why not?

A Because the school team proposed academics, adaptations, indirect services, direct services in a setting that they thought would provide a FAPE to A.J.T.

Q So can a school district provide a FAPE under IDEA and still discriminate on the basis of disability?

A I think that would be an inaccurate statement that we could provide a FAPE and discriminate.

Q Are you aware of any discussions of what having equal access to education meant in the context of A.J.T.'s school day? **[218]**

A No.

Q Are you aware of any discussion of her exclusion from equal participation in school?

A No.

Q Are you aware of any discussion about how to ensure her equal participation in school?

A No.

Q Is sending A.J.T. home after 4-1/4 hours exclusion from school when other students get 6-1/2 hours?

A A.J.T. is actually being sent home after all the other school kids are gone. So I do not believe it's an exclusionary practice. I think it's extending her school day past the end of the school day so that she can receive a FAPE.

Q So your answer is no?

A That was my answer.

Q Is your answer no? Because the question is: Is sending her home before she receives a full day of instruction exclusion?

A That would be a no.

Q Is giving her a shorter day than her peers equal participation in school?

A A.J.T. is at school when there are no other students there. So there is no participation **[219]** when she's the only one there. She gets to participate from noon until when the students go home with other peers, and at that -- end of that period of time, she gets a very individualized program with a teacher and

an ESP that are only focused on her for additional hours.

Q So is your answer no to that question?

A Could you repeat it?

Q Is giving A.J.T. a shorter school day than her peers equal participation in school?

A I have no answer to that.

Q Do you know whether there was any discussion ever about how to ensure A.J.T. had equal benefit from her education?

A I think that's what the IEP team did and does when they consider developing an IEP designed to meet her educational needs.

Q Do you know about any such discussion?

A No.

Q Does A.J.T. receive equal benefit from her education with a school day at 65 percent of what's provided to her peers?

A I think she's getting extra benefit because she's got a very individualized, intense services focused only on her. **[220]**

Q So your answer --

A Very efficient, very efficient to focus only on one student rather than in a classroom of seven to eight other students.

Q Does every special ed student who gets one-to-one help get a shortened school day?

A A.J.T. is unique. So to my knowledge, there is nobody receiving services quite in the way that she is. So I have no comparison.

Q There are no other students that you've worked with over all these years that get one-to-one instruction?

A Other than in homebound situations or care and treatment, nothing that strikes a chord with the services that we're providing to A.J.T., no.

Q And is the fact that she gets one-to-one instruction a reason to shorten her school day?

A One-to-one is the reason to shorten her school day? She gets the one-to-one in order to meet the goals and objectives so that she can make progress.

It isn't a reason to shorten her school day. It's so that she can make progress on the identified goals and objectives on her IEP.

Q Does A.J.T. have the same opportunity to [221] attend school when she is denied a full school day?

A She is not denied a full school day. As we've discussed on multiple occasions, her parents make her available at noon, per the doctor's orders, and then we begin educating her.

So I'm not equating -- again, this is my same answer, we're not equating the number of hours with a FAPE.

Q So a full school day is not the same school day as peers without disabilities?

A The school day at a middle school, I believe, goes from 8:10 to 2:40. A.J.T. comes at noon -- A.J.T. comes at noon and then we educate her until 4:15.

She's with peers for part of that day and then she is individualized, intense services the remainder of that time, plus now 4:30 to 6:00.

Q So her nondisabled peers get a school day of 6-1/2 hours?

A With lunch and other passing time and homework time, lots of breaks in that day. A.J.T. is

getting very intense services for several hours, which is much more extensive than what her general ed peers, if you do minute-per-minute like time that they're getting, that they're not walking between classes, [222] that they're not eating lunch, that they are not doing -- me time, I don't know what they call it in middle school.

Q But students who get intensive services don't get their school day shortened, do they?

A Students -- students with intense services, again, it would go back to the IEP. I do not believe so. I believe that when students come to school that their IEP -- for the intense services, students that are more restrictive environments are not necessarily shortened.

I can't speak across the system. We have quite a few students in there. There may be students that don't stay all day or that come later. I don't know that. I don't believe that to be true, but I don't know.

Q Do you place students in Setting 4 placements?

A Yes.

Q And those are placements where they are segregated from peers without disabilities, right?

A Yes.

Q And what's the school -- where are those Setting 4 programs?

A We partner with Intermediate District 287 [223] for the most part. We have students who are Osseo residents who live in other districts may participate in other Setting 4s, but for the most part our program is Intermediate District 287.

Q And Intermediate District 287 programs are for a full 6-1/2-hour school day, aren't they?

A That I cannot attest to, I don't know, because I do believe that they make individualized decisions.

Q Do you think that your students that are placed in 287 programs get shortened school days because the programming is so intensive?

A I believe that if they have altered their school day, that they have made an individualized decision.

Q Because that's what the law requires, right?

A Yes.

Q Are the part-time services A.J.T. receives as effective as the full-time services her peers receive?

A What part-time services is A.J.T. receiving? I don't understand that question.

Q Before the district was ordered to provide a full day of school, it only provided, at most, 4-1/4 [224] hours; isn't that right?

A Yes.

Q That's the part-time service I'm referring to. Because 65 percent is just a fraction of 100 percent, isn't it?

A 65 percent is a fraction of 100 percent.

Q And at 4-1/4 hours, when everybody else gets 6-1/2, A.J.T. gets 65 percent of the full school day of her peers. Is my math correct?

A A.J.T. receives the instruction, accommodations, adaptations and services that her IEP team identified for her to receive a FAPE.

Q And that's 65 percent of a full school day at most, right?

A The judge disagreed with that 4-1/4 and then ordered the district team to provide it from 4:30 to 6:00.

Q That's not my question.

A But that is the answer.

Q No. My question is: Isn't 4-1/4 a fraction of a 6-1/2-hour school day?

A Mathematically, yes.

Q Okay. And so that's the part-time service I'm referring to, and my question is: Are the part-time services A.J.T. receives as effective as the [225] full-time services her peers receive?

A And my answer is, yes, because the school team identified a program of services, adaptations, accommodations, et cetera, that I've answered before, for her to receive a FAPE.

And I know it comes down to hour-per-hour, but that is not the way FAPE is identified. FAPE is identified as making progress on her IEP goals and objectives, which the student was doing. It is my understanding she was making progress.

Q But, Ms. Emmons, when students make progress on their IEPs, we don't cut their day short, do we?

A No.

Q Can A.J.T. benefit from full time services?

A I have no idea. In light of her circumstances, I have absolutely no idea. I just read this doctor's report about her medical condition and I, honestly, I don't know. I'm not the best person to ask that.

Q What doctor's report are you talking about?

A It was in Jackie Adamson's report on the evaluation when she did the review and she consulted, [226] it appeared, with the parents on A.J.T.'s medical conditions.

Q Are full time services ineffective and of no value to A.J.T.?

A Again, I can't answer that.

Q Nobody has ever evaluated that, have they?

A I don't know.

Q Except for Dr. Reichle, who did an evaluation intervention in the fall of 2020. Do you know about that?

A I understand that he did conduct an IEE.

Q Do you understand that he also conducted an evaluation information (sic) to see what benefit A.J.T. derives from additional instruction after the end of the regular school day?

A I did not. I mean -- well, maybe I did. I don't know. Honestly, I don't know. Maybe.

Q. Wouldn't it be helpful as the chief decision maker on special education matters to know whether a preeminent expert like Dr. Reichle evaluated A.J.T. on this exact issue?

A I know that Dr. Reichle evaluated A.J.T. and came to some conclusions that were then presented to the IEP to consider.

Q Any discussion that you know about [227] regarding A.J.T.'s equal enjoyment from school?

A One passing comment. It may be Teresa Elliott who said A.J.T. loves her peers, she gets very energized by her peers. But that's not the words she used. She likes being with her peers, something along those lines. That's lovely.

Q When did Teresa tell you that?

A That was -- I don't know. I walk through schools and just say hi to people and someone said something along the lines of -- she said stuff about other students, too, that I'm not going to share with you. She makes comments about her students, about

they like this, they like that. She said, oh, A.J.T. loves her friends, I think is what it was, and I said, oh, that's good to know.

Q What else did she tell you?

A And, again, it's the other conversation about -- for me just to say when she was anxious about a meeting and then how legal stuff gets brought it and I said don't focus on that, focus on teaching, love A.J.T.

I'm not having in-depth conversations with teachers or -- about any student because, one, again, I don't believe they should think that I'm up at the district office saying do this or do that and, from [228] afar, deciding things that were going on in IEP teams.

That's why I trust IEP teams even though they all to need instruction. I mean people, you know, say funny things here and there and then we instruct and we correct on a -- we have practices in place.

Q Even when there's an ongoing dispute, like there has been in this case for six years, there's not a time when you roll up your sleeves and get involved to see what you can do to resolve it?

A When I roll up my sleeves? What does that mean?

Q I'm sorry, I get to ask the questions.

A And I don't understand the question.

Q Isn't there a time when you have an ongoing dispute between parent and school district, like there has been here for six years, that as the director of student services you become involved, look into the problem, read the records, talk to the people involved and try to resolve the dispute?

A I work through my coordinators who have extensive knowledge of what is going on in the schools

and coordinate with them to the extent that they determine that they need me.

Q Have any of them determined they need you [229] in this longstanding dispute?

A Jan has asked me to read a Prior Written Notice or two. There was a period of time when, I believe, that Joy felt they could not get agreement on an IEP that she asked for some help.

Q What did she ask you to do?

A She didn't ask me to do anything. She asked, I can't get agreement, we can't get movement, we're sitting, we're conciliating, we're meeting, meeting, and nothing is being decided or determined, what should we do.

I said there are avenues that are open to us, there's conciliation, there's mediation, there's an MDE complaint that the parents would get to file, there's a facilitated IEP, and there's a request for a due process hearing.

Q You gave her no particular specific guidance, just here are the dispute resolution processes?

A I'd asked what processes had she been involved in and conciliation didn't seem to be working. It was my understanding that facilitated IEP and mediation were not attractive to the parent, although I don't know that, it's reported that it wasn't an option or not agreed upon, not going there, [230] not doing it.

And so how long have we not been in agreement, and it was for a period of time, I don't remember the period of time, I consulted with counsel with Joy and we determined what steps should the district take because we can't stay in limbo forever.

Q Right. So if the record reflects there were multiple meetings, multiple mediations, multiple conciliation conferences, then the information you were getting from Joy was obviously incorrect, wasn't it?

A I'm sorry, say that one more time. What was the information that was incorrect?

Q Didn't you just testify that Joy said the parents weren't interested in a variety of dispute resolution fora?

A That's my understanding, yes.

Q And if the record reflected that there were multiple conciliation conferences, mediations, meetings, that would not be true, would it?

A No. She did say that there were multiple conciliations. I don't recall any mediations through MDE. I don't recall that.

Q But if there were, then her information to you would be mistaken, wouldn't it? **[231]**

A I think it was still we did not have a signature on an agreed-upon IEP. Whatever avenues she was attempting wasn't working.

Q And why is that that you didn't have an agreed-upon IEP?

A I don't know.

Q Isn't it because the parents wanted a full day of school and the district wanted a part-time day?

A I think there were multiple things. When I recall her talking to me, it wasn't just one thing, it was multiple things. But I don't know. I don't remember.

Q That was the primary dispute, wasn't it?

A Again, I can't state that either. I don't know.

MS. BOOTH: Ms. Goetz, we've been going an hour and a half. Can we take a short break?

MS. GOETZ: Only if we have to. I have a lot of material and only an hour left.

MS. BOOTH: I think we should at least take five minutes. The court reporter should have a break.

MS. GOETZ: Gail, do you need a break?

COURT REPORTER: If we're only going [232] another hour, I can keep going.

MS. GOETZ: Thank you.

BY MS. GOETZ:

Q Ms. Emmons, do you know of any discussion about the impact on A.J.T. of a shortened school day?

MS. BOOTH: I asked you a question. Do you need a break?

THE WITNESS: I could use the bathroom.

MS. BOOTH: We need a restroom back. We'll make it very short, Amy.

MS. GOETZ: Five minutes?

MS. BOOTH: Five minutes is great.

(At this time a short recess was taken from 4:02 p.m. to 4:05 p.m.)

(At this time Myranda Sandberg entered the proceedings and Marigrace Carney departed.)

BY MS. GOETZ:

Q Ms. Emmons, may I remind you you are still under oath?

A Yes, thank you.

Q Are you aware of any discussions about the impact on A.J.T. of a shortened school day?

A No. [233]

JA-202

Q Are you aware of any discussion about how reducing instructional time from 6-1/2 hours was necessary to meet A.J.T.'s individual needs?

A No.

Q How was that shortened day determined to be appropriate?

A From what I read in that document that you gave me, it looked like they outlined all the accommodations, service, et cetera, and then attached time to it.

Q You have no information that A.J.T. cannot tolerate a full school day, do you?

A I do not.

Q You don't have any information that she requires some kind of medical treatment that would impede her ability to have a full school day, do you?

A I do know that a doctor presented a note that she couldn't start before noon. So there is a medical component, yes.

Q But in the afternoon, any time after noon, is there any information you know of --

A No.

Q -- that A.J.T. has some kind of care or treatment that would require she could not be in school? **[234]**

A School ends at 2:40. No, I do not have any information that says she could not attend the school day.

Q And what about after 2:40, same question?

A No.

Q And --

MS. BOOTH: Ms. Goetz, I assume Myranda is one of your employees?

MS. GOETZ: She is. She's been participating or observing other depositions. Do you have an objection?

MS. BOOTH: No. Just a different name from earlier so I wanted to make sure we weren't having a Zoom issue.

BY MS. GOETZ:

Q And there's no information that A.J.T. would be harmed by a full school day, right?

A There is information from the doctor that she should not start before noon when school starts at 8:10.

Q No information that A.J.T. would be harmed by 6-1/2 hours of school beginning at noon?

A No.

Q Any information that A.J.T. could not tolerate a full school day of 6-1/2 hours starting at **[235]** noon?

MS. BOOTH: Objection, it's been asked and answered at least four times.

MS. GOETZ: Are you instructing the witness not to answer?

MS. BOOTH: I am not.

BY MS. GOETZ:

Q Please answer.

A No.

Q Is there any evaluation that concluded that A.J.T. needs less than a full 6-1/2-hour day starting at noon?

A I don't know.

Q Is shortening a student's school day for reasons of administrative convenience ever appropriate?

A No.

Q Do you know that excluding a student from school because of a disability is illegal?

A Yes.

Q Do you know that when A.J.T.'s school day was shortened she would not get the benefit of a full school day?

A Hours is what you're talking about again because school starts at a certain period of time and [236] ends at another certain period of time and her peers are with her for the period of time that she shows up until when they leave. And then she gets individual instruction after that.

Q Do you know that when A.J.T. received 4-1/4 hours of school, she would not get the benefit of 6-1/2 hours of school?

A She does not get 6-1/2 hours of school when she shows up at noon, that is correct.

Q Does A.J.T. learn as efficiently as a typical learner?

A I -- based on -- I would say no, no.

Q Does A.J.T. require more repetition in order to learn?

A I can't speak to her specific learning styles and what she needs individually for that. That's not my area of -- that is her case manager should be able to answer your questions about how A.J.T. learns.

Q Can't she use all the time should can get to learn?

A Again, I don't know. I don't know her. I don't know.

Q Do you know that a decision to shorten a student's school day less than the normal typical

[237] 6-1/2 hours in your district has to be based on evaluation data, right?

A And the student's needs, yes, uh-huh.

Q And the IEP team makes that decision, right?

A Certainly or a care and treatment team or in cases of homebound the 504 team.

Q Did you know that deciding -- when the district has decided to shorten A.J.T.'s school day without evaluation data, it would violate her rights?

A I can't answer that. I don't know that that's true. I don't know that they -- I believe that they did use data. They used data from the Kentucky IEP, they took the information from it, they put it in that Prior Written Notice and attached times to it.

Q So you think the Kentucky IEP has evaluation data that -- on which her Osseo IEP team could conclude her needs required less than a full school day?

A I can't answer that, I haven't read the Kentucky IEP. What I do know is that the Osseo IEP team, school team, took information from the Kentucky IEP, put it in a Prior Written Notice, and said this is what we're proposing. That is what I know.

Q Do you know that when the district decided [238] to shorten A.J.T.'s day, not based on individual needs, that would violate her rights?

A A.J.T. is getting time with her peers to the end of the school day and then the district extended her school day.

Q. Do you know that deciding to shorten her school day, if it wasn't based on her individual needs, would violate her rights?

A Shortening her school day was based on her individual needs. Her doctor wrote a note, which her parents provided to us, and, therefore, she's able to start school at noon.

Q But if it wasn't based on her individual needs -- the decision to shorten her school day was not based on her individual needs, would that violate her rights?

A If her parent unilaterally decided to keep her home at noon without any reason, that would be probably an issue, yes.

Q When the shortening of the school day, again, what I'm talking about is the district refusing to provide 6-1/2 hours when the parents asked, not the medical decision to start at noon.

A And, again, I do not --

Q Let me ask my question. **[239]**

A Sorry.

Q Do you know that -- when that -- that if the district decided to cut off her school day at 4-1/4 hours, if that was made without evaluation, that would violate her rights?

A Is this a hypothetical? If the -- if the district determined to do that?

Q Yes.

A I don't know is my answer.

Q Do you know that if the district decided to cut off her school day at 4-1/4 hours and that decision was not based on her individual needs, that that would violate her rights?

A Again, it's a hypothetical. If the district decided to do that. And, again, my answer is I don't have an answer or I don't know.

Q Do you know that if the district decided to shorten her school day outside of the IEP team process, that would violate her rights?

A In the hypothetical, yes, and I have no answer for that. I don't know.

Q Do you know that if the district decided to shorten her school day at 4-1/2 -- 4-1/4 hours, that that would provide her a school day of less length than her peers? [240]

A Again, a hypothetical, if. And I don't know.

Q When have you ever participated in a decision regarding the length of a student's school day?

A I participated in a 504 request from a parent in two instances, and this is going back quite a few years. One was something to do with dance and it was a fourth grade situation. The parent wanted to remove their child from the elementary school at the end of the day so that they could participate in a premier or evening dance team and then the student had math at the end of the day and the parent requested that the grade level schedule be revamped so that math could be provided earlier in the day. That's one example.

And then she wished her child to be excused so that she could attend this practice or whatever it was. I don't know. I wasn't a dance mom.

Q How was that decision made?

A Looking at the request of the parent, we denied the request to revamp the grade level schedule, but said because of extenuating circumstances for a unique opportunity for a short period of time that the student would be excused, the teacher would provide [241] the work, and the student could ask questions during their, for lack of a

better word, what I need time. It was for a short period of time.

Q Did the student have disabilities?

A Pardon me? No, huh-uh.

Another time a student was involved in children's theater production and needed to miss the end of the school day so that they could attend rehearsals and performances, or something along those lines, and requested to be excused a certain period at the end of the day, worked with the principal on both of these to see what was reasonable, how it would impact the student, would the student still make progress towards graduation.

Q Was this a student with disabilities?

A No, huh-uh. These are 504. So it wasn't a student -- and it was -- the only reason it was 504 was because of unique needs. I'm not even sure it was 504, but that's the avenue we went down because it was, you know, discrimination based on -- I have no idea what.

Q Any --

A The parents made an argument that it was a 504, so we went down the 504 lane on that.

Q Any circumstances where you've [242] participated in decisions on the length of a student's school day with a student with disabilities?

A Not that I can recall, no.

Q What was the real reason here why A.J.T. could not have a full 6-1/2-hour school day?

A The real reason? The real reason is because the team developed a plan based on when the child was being presented to them and determined the

goals, objectives, accommodations, and services that she would need in order to provide a FAPE.

A child is able to come to school at noon, the team determined that she would be with her peers from a period of time and when her peers went away, she would receive intense services. And that was designed so that she could make progress on her goals and objectives.

Q Is A.J.T. too disabled to benefit from a full 6-1/2-hour school day?

A I don't know enough about A.J.T. to answer that question.

Q Is it just too expensive to provide A.J.T. a full 6-1/2-hour school day starting at noon?

A I don't know that cost ever entered into it. Not ever any discussion I've ever been in.

Q Is it just too difficult to staff an [243] altered school day for A.J.T. so -- starting at noon and lasting 6-1/2 hours?

A Too difficult is subjective. It is difficult to provide -- to find a teacher who is -- and an ESP that are willing to work, but not too difficult because it's occurring.

Q Was the refusal to provide A.J.T. a full 6-1/2-hour school day starting at noon disability discrimination?

A No.

Q Why not?

A The team developed an IEP that had accommodations, supports, and services, along with appropriate goals and objectives, designed for A.J.T. to make progress towards graduation.

Q Why did you tell Amy Stafford to attend the first IEP team meeting for A.J.T.?

A I'm not sure I did. I was under the -- when I saw that, I'm not even sure Cedar Island was Amy's school. I thought it was always Joy's. So maybe Joy was on vacation or something along those lines. I don't know.

Q Coordinators don't always go to every IEP meeting, do they?

A No, huh-uh. [244]

Q Why do you ask coordinators to go to IEP team meetings?

A They are professionals, highly skilled and very good at their jobs, and they make that determination based on what they know about the situation, how they can support the team.

Q So a coordinator decides whether to go or not?

A They do, uh-huh. They do.

Q What do they need to know to participate in an IEP team meeting?

A I think any individual coordinator would tell you based on, you know, their experience, what their -- what their reasoning is for any particular meeting.

Sometimes it's at the request of a teacher, excuse me, a request of an SEP, a request of a parent, a request of a principal. There's lots of reasons they attend. I attend almost none.

Q Do coordinators attend IEP team meetings when there is a dispute with a parent?

A Often. Not always, but often.

Q Is that why Joy Fredrickson attended all these IEP team meetings for A.J.T.?

A I can't answer that. It's possible. I [245] don't know.

Q Yet you never discussed with her the attendance at the IEP team meetings?

A I did updates with the coordinators and she would tell me she was attending, along with attending others as well. This is certainly not the only IEP team meetings she was attending, by any stretch of the imagination. She would attend others.

Q What, other than what you testified to, did she tell you about her participation on the IEP team?

A I have nothing else to add.

Q What, other than what you've said before, did she tell you about the dispute with the parents?

A I have nothing else to add.

Q And what, other than what you've testified to, did you tell her about how to resolve the dispute?

A I have nothing else to add.

Q Can I have you look at Exhibit 20, please.

A Is this the same one -- oh, no.

Q These are -- these are notes from February 19, 2016 in A.J.T.'s IEP team. Is that accurate?

A Yes, different than the ones you showed me before. [246]

Q Have you seen this before?

A I have not.

Q So has anyone ever talked to you about the fact that at this meeting A.J.T.'s father continued to complain that the district's school day didn't meet his daughter's needs?

A I'm still reading.

Q But my question is what you were told.

A Nothing. Am I reading or not? No?

Q Did anyone ever tell you that as of this date, February 19, 2016, A.J.T.'s father expressed concern that her learning, her progress, was falling off because of the shortened school day?

A No.

Q And did anyone ever discuss with you that her parents were, again, requesting more time in A.J.T.'s school day?

A I don't recall that, no.

Q Can you look at Exhibit 21, please. This is dated March 18 of 2016, right?

A Yes, yes.

Q And will you turn to page 2, please, the second block, the second paragraph, starting with: The district rejected the parents' request for extended weekly instruction in the home. Do you see [247] that?

A No. Where are you?

Q Page 2.

A Uh-huh.

Q Second block, or the first bulleted point, an explanation of why the district proposes or refuses to take the action. Do you see that?

A Yep, I see it. Thank you. Uh-huh.

Q The second paragraph, the district rejected the parents' request for extended weekly instruction in the home; do you see that?

A I'm sorry, say that again.

Q Do you see that sentence?

A Yeah, that's what I'm asking, which sentence are you referring to?

Q Quote –

A The district, yes.

Q The district rejected the parents' request for extended weekly instruction in the home, end quote.

A Yes.

Q And the next sentence that the district stands ready to provide services and programming in school for a full day, or prior to noon as her medical needs allow, right? **[248]**

A Yes.

Q So the district position here appears to be A.J.T. can have a full school day if she starts in the morning like everybody else?

A So what I'm reading is the district previously proposed a four-hour school day based on A.J.T.'s medically documented needs for a shortened school day, the service time commensurate with the amount of services on the previous IEP, parents opted to pick A.J.T. up at 3:30.

Q But that's not what I'm asking you about. I'm asking you about the sentence I just read, the district was proposing to give A.J.T. a full school day if she could start like everybody else. Isn't that what this says?

A The district stands ready to provide services and programming in school for a full day, or prior to 12:00 p.m. each day as A.J.T.'s medical needs allow. That statement is true, we do stand ready.

Q Are you aware that anything changed with respect to her medical condition or her treating physicians' medical opinions between July 2015 and this date that would support that proposal?

A I've read the one doctor's note that you had me read in this deposition. **[249]**

Q Are you aware of any other medical opinion that she could start school like everybody else?

A I am not.

Q Will you look at Exhibit 24?

A Yep, okay. I'm stopping reading some of these because it's in the context, right? So I don't have all context and reading one or two sentences.

Q Prior Written Notice, dated June 6 of 2016, correct?

A Yes, June 6.

Q And the third bullet point, options considered and reasons why they were rejected. Will you read that out loud, please?

A The district discussed an extended school day and decided against it due to the precedent it would start across the school district and other districts across the area.

Q Have you seen that before?

A I have not.

Q Were you consulted about that language?

A No.

Q Were you consulted about this decision?

A No, no.

Q It's obviously not related to A.J.T.'s needs, is it? **[250]**

A No, not this.

Q What precedent was considered; do you know?

A I do not.

Q Do you know who wrote this statement?

A It looks like Jocelyn Hoffarth wrote this Prior Written Notice.

Q Who would have told her to write that sentence in this Prior Written Notice?

A I don't know. I don't know that anybody told her to. Again, at the meeting what was discussed, was that discussed at the meeting that they talked about precedents? It does explain some comments that I heard, but –

Q Well, the sentence says the district discussed an extended school day, not the IEP team, right?

A Yes, yes, uh-huh.

Q And the subject of that sentence remains constant. The district decided against it due to the precedent it would start?

A Uh-huh.

Q Is that right?

A Yes.

Q So a special ed teacher wouldn't come up [251] with that language, would they?

A I wouldn't think so, but I don't know. I don't know. That's my answer is I don't know.

I do believe that they proposed a FAPE in the description of the academics proposed or refused.

Q Who was the coordinator at this point in time?

A It's my understanding it would be Joy Fredrickson.

Q Does that sound like language she would have come up with?

A I can't answer that. I don't know.

Q You never talked about that with her?

A Not a precedent, no. It's -- that's not how we generally think. So no.

Q And you never talked to Jocelyn Hoffarth about that either, did you?

A No. I've not talked to Jocelyn about anything ever, to my knowledge. I don't remember her, to be honest.

MS. BOOTH: You've answered.

BY MS. GOETZ:

Q How would providing a full 6-1/2-hour modified school day to A.J.T. set a precedent for the district? **[252]**

A I don't know.

Q How would it set a precedent for other districts in Minnesota?

A I do not know.

Q Why would it matter?

A I don't know.

Q Ever participate in any discussion about A.J.T.'s equal access to education?

A I think I've answered this before a few times. No.

Q How about any discussion about A.J.T.'s equal participation in school?

A No.

Q And A.J.T. only got a partial school day because she could not attend in the mornings, right?

A She got a partial school day because she started at noon and then went to 4:15. By hours, not by FAPE.

Q Are you aware of any plan to evaluate A.J.T.'s need for a shortened school day?

A I know that the team has suggested some evaluation. What has been included in those PCEs, I do not know.

Q How do you know the team has provided some plan for evaluation of that? **[253]**

A It was in that one document and you showed me an evaluation.

Q Other than –

A Every three years she should be having an evaluation. So if that was -- what year? There should have been another one in '18 and another one in '21. So every three years there should have been more.

Q Other than that evaluation, are you aware of any plan or evaluation that's been performed to decide, based on data, her need for a shortened school day?

A No.

Q Aware of any plan or evaluation that's been performed that has assessed the impact on her of a shortened school day?

A I have not read the evaluation reports, as I have stated.

Q Has there ever been a plan to return A.J.T. to a full 6-1/2-hour school day until the hearing officer ordered it?

A No. Because, again, FAPE and hours do not equate in my mind.

Q Isn't 4-1/2 hours of school a day substantially shorter than the normal 6-1/2-hour **[254]** school day of her peers?

A It is shorter by hours, not by services.

Q Isn't 4-1/4 hours of school per day substantially shorter than the State's length of day requirement?

A State length of day requirement can be superseded by, in my opinion, by an IEP team who determines what FAPE looks like for a student.

Q But that wasn't my question. My question was: Isn't 4-1/4 hours of school per day substantially shorter than the State's length of day requirement?

A In that case I'm going to say I don't know because I don't know what the length of day is. I don't know that. I know there's a number of days. I don't know the hours.

Q Do you know whether Osseo provides the minimum to meet the State's length of day requirement or exceeds that minimum?

A I don't know.

Q Weren't A.J.T.'s educational services reduced to fit her reduced school day?

A It didn't appear so to me based on Prior Written Notice, no.

Q Based on that one document? **[255]**

A The one document you showed me, yes, uh-huh.

Q Any other information to inform your decision about whether her services were reduced to fit the reduced school day?

A No.

Q Do you know that her teacher, Teresa Elliott, told Dr. Reichle that her services were reduced to fit her reduced school day?

A I'm unaware that she stated that.

Q Is there a provision in the law for removal of certain students to balance the budget?

A Pardon?

Q Is there a provision in the law for removal of certain students to balance the budget?

A No.

Q Do you agree with the statement of OSERS -- you know who OSERS is, right?

A Uh-huh, yes.

Q From the comments and analysis from the federal regulation that says, quote, in all cases placement decisions must be individually determined on the basis of each child's abilities and needs and each child's IEP and not solely on factors such as category of disability, severity of disability, availability of [256] special education and related services, configuration of the service delivery system, or administrative convenience, end quote.

A What was the question?

Q Do you agree with that statement?

A Yes.

Q Does district leadership create the expectation that all children will attend school full time with very rare and clearly defined exceptions?

A I don't think that we have a unilateral statement like that for our IEP teams. Our IEP teams start with the presumption that a student would attend full day and then go from there.

Q How much money has the district saved by providing A.J.T. less than full time services?

A I think we are far in excess of what we would -- if she was attending a normal school day.

Q Can you look at Exhibit 11, please. Have you seen this document before?

A It does not look familiar to me, no.

Q It is a document dated January 19, 2018, written by Dr. E.C. Wirrell from Mayo clinic, correct?

A Right, uh-huh.

Q And it says that due to frequent morning seizures, she's unable to begin school until noontime, [257] referring to A.J.T., right?

A Yes.

Q When A.J.T. matriculated to the middle school, the end of the day moved forward to 2:40. Do you know that?

A What end of day are you referring to?

Q The end of the normal school day moved forward when she matriculated to middle school. Her school day -- the typical school day ended earlier for middle school students at Maple Grove Middle School, right?

A The typical middle school ends at 2:40, I believe.

Q And that's earlier than the elementary school?

A Later -- oh, yes, earlier, excuse me. That is correct, it is earlier.

Q And do you know that the district then proposed to cut her school day back even further than it had been providing before?

A I believe -- there might have been a discussion as she's matriculating, like we do with every other student, discussing what the school day would look like and then making an individual determination. [258]

I think I told you about that conversation with Jan Bitzer who said that they determined that it should stay at 2:15 even when she went to the middle

school. So I don't know anything about 2:40. I have no information about that.

Q Did Jan tell you that the district first proposed cutting her day back to 2 hours and 40 minutes to align with the end of the school day?

A I think that was in that conversation that that was a consideration, but it was not the one they moved forward with.

Q And that's because the parents objected mightily, right?

A I don't know. That wasn't a part of the conversation.

Q Did Jan also tell you the district then proposed to cut A.J.T.'s school day back to 3 hours per day to end at 3:00 o'clock?

A No.

Q Anybody ever discuss with you the end of her school day upon matriculation to middle school?

A The conversation I had with Jan is as I've just stated.

Q Anybody ever assess the impact of lost instructional time on A.J.T.? **[259]**

A It's my understanding she's making progress on her IEP goals and objectives.

Q Where do you get that understanding?

A When I ask the teachers is she making progress.

Q Anything else?

A That's -- I told you I have not read her file or her records.

Q How does A.J.T. learn when she's not in school?

A I have no idea. I have no idea.

Q Doesn't her removal from a full day of school stunt her growth?

A No, I disagree with that.

Q Isn't A.J.T. one of the students most in need of instruction?

A Having read her medical information, she's -- I believe she's in need, which the district is providing through their IEP.

Q Isn't it illogical and reckless to remove her from full time instruction?

A A.J.T. is getting time with her peers and then she's getting intense instruction on an individual basis.

Q So I take it your answer is no? **[260]**

A I think that she is receiving the education that she needs when the IEP team developed an IEP that would have her some time with her peers and then some times on an individual intense basis.

So I think she's getting what she needs and it's my understanding she's making progress. And, again, that's my answer.

Q So is it illogical and reckless to remove her from full time instruction?

A I can't answer that. I don't understand illogical and reckless. Those aren't terms I use when I'm discussing what IEP teams are proposing.

Q Does the district report to anyone the removal of students before the end of a full 6-1/2-hour school day?

A That's a MARSS question and I don't know the answer to that.

Q The district is required to do that for students who are suspended or expelled, right?

A Again, I have little to almost nothing to do with MARSS and reporting those are things done at the schools and not at the district office. I don't know.

Q What about early disciplinary removals, are those to be reported to the State? **[261]**

A Like suspensions? Again, it's a MARSS -- I don't know.

Q Are you aware of the other reasons why the district has stated it won't give A.J.T. a full 6-1/2-hour school day?

A No.

Q Nobody has discussed those with you?

A I've seen the precedent setting here.

Q State law doesn't mandate?

A And state law doesn't mandate. Those are the two offered by special ed personnel to the parents.

Q And she could come to school -- she can have a full day if she comes first thing like everyone else?

A That's true. I mean regardless of her situation, if it changes, that is true. I mean if it doesn't change, then -- then she doesn't come. So --

Q If her medical condition changed and she could suddenly start school at 8:10 like everybody else, then would she need a full school day?

A I would say that then she would be getting less intense services and she would be in with a group getting, along with seven other students, the divided time of teachers and ESPs -- well, not ESPs because **[262]** she has a one-to-one, I believe, is what I read on some document.

Q But that would be only if her IEP team agreed to change her service, right?

A Change what service? The one-to-one?

Q You just described a change of service delivery. If she were to come to school at 8:10 like everybody else, her service delivery would remain the same unless her team agreed otherwise, right?

A If she comes to school at 8:10, she's with her peers for her day. So I don't know what you're referring to when you say the IEP team would make a different decision. So I'm not following that, I'm sorry.

Q If she could -- if her medical condition suddenly changed and she could come to school at 8:10 like everybody else, then would she need a full school day?

A She would get a full school day. She would start at 8:10 and then leave when everybody else left. What I'm saying is the intensity of services would change because at this point from 2:40 to 4:15 and now 4:30 to 6:00, she's getting pretty intense services with only A.J.T. No peers in sight. **[263]** Nothing to distract.

Q So she wouldn't be sent home at 12:35 --

A No.

Q -- if she could arrive at 8:10 like everybody else?

A No, she would be getting the same service --

Q Why not?

A So she would be getting the same services that others would be getting. She would be in a classroom of eight students. She would not be receiving the same intensive level of services. And so her goals and objectives would most likely stay the same. I mean they're calculated for her benefit.

But at this point if A.J.T. is asked a question, they wait for her. I mean they're not waiting for six

other students to come back around to her. They're waiting for her. And -- so she's -- and, again, I don't know A.J.T. so I don't know what her capacity is for that. But --

Q Will you look at Exhibit 14, please?

A Uh-huh.

Q Have you seen this document before?

A This is a new one for -- or is this a different one than you've shown me? Different, same? [264]

MS. BOOTH: It's different.

THE WITNESS: Oh, it's different. Then, no, I haven't seen it before.

MS. GOETZ: Thank you, Ms. Booth.

BY MS. GOETZ:

Q It's a letter from Dr. Galen Breningstall, pediatric neurology, Gillette Children's, dated September 4, 2019, right?

A Yep.

Q And he says that A.J.T. needs to sleep late in the morning and if her sleep is disrupted she experiences increased seizures in the daytime, right?

A Yes.

Q And that that would create safety concerns and interfere with her capacity to learn, right?

A Yes.

Q So he asks again that A.J.T. be exempted from school attendance before noon?

A And we continue to exempt her before noon.

Q And he joined numerous other physicians and medical personnel requesting that her schedule be adjusted to accommodate this, right?

A And we adjusted it to extend it past the time other students leave. She receives very intense services. **[265]**

Q Will you look at Exhibit 15, please? Do you recognize this document?

A Oh, uh-huh, yes.

Q Have you seen this before?

A I have not. I have not, no.

Q Dated October 31, 2020, from Dr. Breningstall again?

A Yes, uh-huh.

Q And he again goes over her long experience with the exacerbation of A.J.T.'s seizure disorder when her sleep routine is disrupted, right?

A Yes, uh-huh.

Q Again, you don't have any medical opinion to the contrary, do you?

A I do not.

Q And that her increase in seizures in the daytime if her morning routine is disrupted?

A Yes.

Q And accordingly he says her day cannot begin until noon, right?

A And we do not expect her before noon. We have excused her.

Q Does he also say that it's important that A.J.T. receive a minimum of six hours of school attendance -- **[266]**

A Yes.

Q -- to help her communication and interaction?

A Yes.

Q Okay. And do you know that the IEP team -- were you at the conciliation conference where the district and the parent agreed that the medical documentation would decide her altered day?

A I don't think that -- no. It was just a little bit ago, the one that I was at. That's it.

But this is where the doctors and the school personnel would have a conversation because she's not getting any interaction with others after the kids leave, other kids leave. It's just her.

Q He doesn't say intersection with children.

A It says communication and interaction.

Q Right. But adults are interacting and communicating with her after the children go home, right?

A Yes, and it's my understanding that at home there is also communication and interaction that is going on there.

Q Does A.J.T. not benefit from communication and interaction with teachers?

A They do. And that's why we extended her [267] school day to 4:15.

Q Who decided to start a due process hearing against A.J.T. and her parents on February 2, 2019?

A 2019? That was in conjunction -- me, in conjunction with Joy, I believe, and -- is it Joy -- and in-house counsel, Mr. Palmatier.

Q Did you think that was a good idea?

A It was my understanding we had not had an agreed-upon IEP for a long period of time and that's a problem. So our avenues to resolve things are fairly limited. They are more open for parents and less for

districts. So our avenue was to request a due process hearing.

Q Why did you think that was a good idea?

A We could not stay in limbo.

Q And you were trying to get the parents to agree to a shortened day and they wouldn't?

A I don't know that that's true what we were trying to get the parents to agree to. I think we came out of that with an agreement to have an evaluation that would inform an IEP.

Q And that evaluation was the one done by Dr. Reichle where he concluded A.J.T. needed a six-hour school day?

A That I would need some recollection on [268] that because Dr. Reichle was an independent education evaluation and it was my understanding we were also to conduct something at the same time with the district.

So the district would take into consideration what Dr. Reichle's recommendations were.

Q Do you recall that he made about 26 recommendations for improvement to A.J.T.'s communication program and that she be educated between noon and 6:00?

A I recall that there were numerous considerations for the IEP team to consider.

Q Did you think that was a bad idea, his recommendations to serve her between noon and 6:00?

A I can't answer that. I don't know. I did not read his full report.

Q What did you and Joy discuss with respect to whether or not a due process hearing should be started against the family in 2019?

A I have to recall, like, 2019 if it was Joy or if it was Jan. So -- you know, I don't know. I'm not going to have time frames to know whether it was Joy or Jan.

Q Do you know --

A Unless I can draw it out.

Q Did you discuss that decision with the [269] superintendent?

A I did not.

Q How about your supervisor?

A I did not to my -- I may have, now that you mention it. I may have. I don't know.

Q Who would that have been?

A In 2019, February. Yeah, it goes by a school year. Generally they don't switch in the middle.

Q What was the nature of the discussion?

A With the attorney? With in-house counsel was--

Q No, no, no, with the supervisor. With your supervisor, the assistant superintendent.

A I'm trying to remember if I had the conversation. I'm working backwards here.

Q Do you recall a discussion with the board about that decision?

A No.

Q Do you recall any discussion at all about that decision other than with your counsel?

A I may have mentioned it to my supervisor, and I think it was Dr. Flisk at the time, just to let him

know that this was something that was being considered. [270]

Q Did he think it was a good idea?

A He had no opinion. I don't know.

Q Did you recommend that the district proceed in that regard?

A I did.

Q Why?

A Because my belief is that we were in limbo and had been in limbo for a long period of time without a signature and that isn't good for either side.

This is an avenue that was open to us. There aren't that many and if conciliation had consistently failed, it didn't seem like a great idea to keep barking up that tree.

Q And it was withdrawn -- the district's hearing was withdrawn without a signature on an IEP, right?

A I don't know that. I was under the impression that we got an evaluation out of it and then to go forward with an IEP.

Q But then the district ignored the recommendations in the IEE to give A.J.T. a full day of school from noon to 6:00?

A I think there were other recommendations, such as data gathering and ways of teaching that were [271] adopted to see if that would make a difference.

Q Did district officials tire of her parental advocacy?

A I believe parents have the absolute right to advocate for their child. No, we are not tired of their advocacy.

Q Did district officials think her parent would cave with litigation pressure?

A I don't believe that to be true either. I believe that there are limited avenues for a district to go down if we do not come to an agreement, and at some point it is very bad practice to stay someplace and just expecting things to change.

Q Don't you think it's very bad practice to sue a child with disabilities and her parents?

A I don't consider a due process hearing a lawsuit.

Q What do you consider it?

A I consider it a process available to the district to resolve some disputes.

Q How many times have you been involved in such a decision before?

A As far as, like, never being able to come to any kind of agreement over months and months and years and years? Never. **[272]**

Q As opposed to a decision to bring a due process administrative hearing claim against a disabled child and her parents?

A Like I stated before, I have never been in a situation where we've gone months and months and years and years without agreement. So this is a one-time -- one-time experience for me.

Q Will you look at Exhibit 13, please. Have you seen that document before?

A Is this another one that you're just showing me today or is this -- is this new just now or has it been shown to me earlier?

Q I've not asked you to look at it before. My question is have you seen it before?

A No, huh-uh.

Q It's another letter from a treating epileptologist neurologist, Dr. Wirrell, at Mayo, dated August 23, 2019?

THE WITNESS: Say again.

MS. BOOTH: I said just wait for the question.

BY MS. GOETZ:

Q Where Dr. Wirrell says that A.J.T. has a very serious seizure disorder, particularly problematic in the morning and she can't attend school [273] before noon, right?

A Yes.

Q He also says, quote, I would request that you adjust her schedule and provide accommodations for that, right?

A That is correct.

Q And so other than starting her day at noon, no full day accommodation was provided as a result of this letter?

A We extended her day past the typical school day of the middle school to 4:15 so that she could get very intense services after the other middle school students left.

Q Could you look at Exhibit 25? And I realize it's after 5:00 o'clock and I have just a few more lines of questioning, if you don't mind.

A I don't. Does anybody else?

Q Have you seen this conciliation conference before, this summary?

A I have reviewed some documents that Jan wrote. I don't know if I reviewed this specific one.

This doesn't look familiar. I don't think this is the conciliation conference I attended.

Q You don't think it was?

A I don't think it was. [274]

Q But as a result of the conference, the district proposed that the language on A.J.T.'s IEP would read, and I'm in the second box on first page; do you see?

A I do.

Q Annual documentation from A.J.T.'s medical team will determine the continuation of A.J.T.'s adjusted school day and the team will consult with A.J.T.'s medical team as needed, right?

A Yes.

Q So this is dated 8/25/2020?

A Uh-huh.

Q Right?

A Yes.

Q So when Dr. Breningstall documented A.J.T.'s school day as needing to span six hours starting at noon and that came after this agreement, why was that not honored?

A So that is where I think that the school team and the medical team would have a different understanding of what happens at school. So I do not know, I'm speaking, I do not know, that if the doctors understand what we do at school, how we do it, the intensity of services when it's one-on-one compared to when there are seven or eight other [275] students in a class.

Q So --

A I'm still speaking. When a doctor is making a recommendation for six hours, I don't -- that's like for me, it's like -- that's outside their scope as an MD.

Q Then why did the district agree to it in this conciliation conference?

A We agreed to six hours?

Q Why did the district agree to look to documentation from her medical team to determine her adjusted school day?

A We agreed to -- you know, we do look to her documentation for the school day. We don't start it until noon. Like I've stated before, the doctors -- like, let's say that when The T's moved here in 2015, they provided a medical note that said the child could not start until noon, if that was the last note we received and now we're in '22, then I might question that and say is there still a continuing need.

In my opinion, the parents are doing the right thing by providing updated notes saying, yep, she still cannot start until noon, which is what we've agreed to in this statement. **[276]**

Q Do you read this differently than I do? I read that the district has agreed that annual documentation by her doctors will determine her adjusted school day? Am I reading that differently than you?

A That's not the word I have. Annual consultation?

MS. BOOTH: She is looking at: As the result of this conference, we propose the following.

THE WITNESS: Where is that at?

MS. BOOTH: Directing you to right there (indicating).

THE WITNESS: Okay, got it. I was reading the wrong thing. I'm sorry. Yep, A.J.T.'s medical team will determine the continuation of A.J.T.'s adjusted school day. We're not expecting her before noon.

BY MS. GOETZ:

Q And so when her medical physician, her neurologist, documented that she needed a school day, an adjusted school day, that started at noon and ended at 6:00, why didn't the district continue to agree and simply implement that?

A Because, again, I think that that doctor [277] is outside the scope of his practice when he's telling the school how many hours a child should attend. That's our business.

Q Why did that --

A That's our business. Wait, I'm still, I'm still

--

Again, that IEP team is -- they're directed to take a look at the individual needs of this child, determine what goals and objectives she needs --

Q But I'm talking about what's on this agreement.

A I'm still going through my answer. We agreed we would not talk over each other and you agreed with that.

Q You agreed to answer my questions and you're not answering my question.

My question is: When the district agreed to defer that question to the medical team and the medical team gave their opinion, why did the district renege on that agreement?

A Again, here's my answer: The doctor is a doctor in a medical environment. We're a school in a school environment. A school day in hours is the school's purview. His purview or her purview is [278] A.J.T.'s medical needs. They tell us she's got this disorder, she cannot start until noon. That district team then takes that information and develops an IEP that is designed for her to make progress on goals and objectives with the appropriate supports.

Q Why did the district agree to defer that decision, then, in Exhibit 25, to the medical team?

A I think that they said we'll determine the continuation of A.J.T.'s adjusted school day. We have adjusted her school day to start at noon and we will continue that.

Q So you only read this as applying to the start of her day, not the end of her day?

A Determine the continuation of her adjusted school day, that could also be, hey, A.J.T. has got medically some medication or procedure or something that allows her to start before the school day. We would discuss that with them. That is also a way to interpret this.

Q Do you know that the provision of eye gaze technology with a speech generating device was ordered by the Administrative Law Judge on April 21, 2021?

A It was part of the order, yes.

Q You read that order?

A I read the order, uh-huh. [279]

Q Why did it take six months to get a device and implement that order?

A Well, part of it was, I believe, that A.J.T. was in Distance Learning Academy and not available to us

for the eye gaze. So there's some delay there. And the other part is supply chain issues is what I understand.

Even when we got one, it was broken. So we still have a temporary one right now. We have it, it's a loaner, and it's still on order. So it's even more than six months on order.

Q There is no question about the duty to comply?

A No.

Q There was no delay intended to punish A.J.T. or her parents?

A No.

Q Does she yet have a working device?

A She has a working temporary loaner.

Q And is that the device she needs?

A I think it's the same iteration of the device that we've ordered, yes.

Q. Does that go home with her for home instruction from 4:30 to 6:00?

A I have no idea. **[280]**

Q Assume it doesn't. Any idea why it wouldn't?

A I have no opinion on that. I don't know that it does or doesn't or why it did or didn't or any of that. I have no idea.

Q Do you know what training people have had regarding the use of that technology?

A I -- I'm thinking some came when we bought it, but I don't know.

Q Do you know what training the district has provided to her parents in the use of that technology?

A I do not.

Q Do you know whether or not that technology is available for A.J.T.'s use at home?

A I do not.

Q Doesn't A.J.T. need access to that technology at home?

A I don't know. I can't speak to the home. I have no idea.

Q So will you look at Exhibit 50, please?

MS. BOOTH: Sorry, Ms. Goetz, did you say 50?

MS. GOETZ: 5-0.

THE WITNESS: How much longer are we going? [281]

MS. BOOTH: How much longer do you have?

MS. GOETZ: I have 15 or 20 minutes maybe. Are you good to continue or do you want to reschedule for another day?

MS. BOOTH: I think you've used your allotted time; have you not?

MS. GOETZ: I have not.

MS. BOOTH: How much time have you used?

MS. GOETZ: Less than eight hours.

MS. BOOTH: How much less?

MS. GOETZ: I don't know. Do you want to reschedule for another day?

MS. BOOTH: No. But I'd like you to calculate how much time you have left and tell us that before --

MS. GOETZ: I'll do that on the break.

BY MS. GOETZ:

Q Are you looking at Exhibit 50?

A I am, uh-huh.

Q And have you seen this document before, the Prior Written Notice, dated January 3, '22?

A Who did this one? **[282]**

Q That's my question.

A It does not look familiar to me, no.

Q Do you know who wrote it?

A I do not. It looks like questions are to go to Teresa Elliott.

Q And do you see here on page 2, last paragraph, that the district's appealing the administrative law judge ruling? Did you know that before now?

A That we were appealing the ALJ decision, yes.

Q Were you a part of that decision?

A I was.

Q What was your opinion on that decision?

A That it should be appealed.

Q Why?

A There were things I didn't agree with.

Q Like what?

A Oh, I don't know specifically. I talked with counsel about it. I don't know specifically.

Q Did you talk with anyone other than counsel about it?

A I'm trying to remember if I told my supervisor. It would have been Michael Lehan at the time, but I don't -- on January 3 of 2022 -- or when **[283]** it was appealed. That was a while ago, wasn't

it? I probably mentioned it to Michael Lehan that we were going to appeal.

Q Did you mention to him why you thought that was a good idea?

A No. No.

Q Was it intended to punish A.J.T. and her parents?

A No. It was intended to dispute a decision that didn't make sense to me.

Q Was it intended to wear her parents down into submission with the district's position?

A No.

Q And then that sentence goes on to say that the district intends to offer a school day starting at the beginning of the regular school day, or when parents make student available, until as late as 4:15 should the decision be overturned, right?

A Yes, that's what that statement says, yes.

Q So the district intends, if the decision is overturned, to only give A.J.T. a full 6-1/2-hour school day if she can come to school first thing in the morning like her peers?

A It continues to provide a FAPE through the IEP process. [284]

Q Will it provide a full 6-1/2-hour school day if she can't come until noon?

A Again, I don't equate hours with FAPE.

Q But this says the district won't do that, doesn't it?

A It said the district will revert to offering a school day that begins as early as the start of the typical school day, or when parents make student available, until as late as 4:15 Monday through

Friday at a district site should the order be overturned on appeal.

Q So A.J.T. can have a full 6-1/2-hour school day if she can start in the morning like everybody else; is that what this says?

A Yes, if you're going by hours, that's what that says.

Q You don't know who wrote this?

A I -- it says the case manager is Teresa Elliott, but I am supposing that Jan Bitzer would not have sent this without reading it.

Q So you think --

A Or let Teresa send it without reading it.

Q She would have approved it?

A I think she would have approved it, yes, uh-huh. [285]

Q Without your review?

A I don't know if I reviewed this one, although it's just so recent, you would think I would remember, but I do not because there's some stuff in here, like the puzzle objective, functional objectives regarding the puzzle. This is all -- yeah, I don't recognize that part of it.

Q You don't have any information that anything other than A.J.T.'s medical care and treatment needs preclude her school attendance until noon, do you?

A Other -- no. The doctors say her seizure activity, her medical needs, preclude her attending before noon.

Q You have no information that her late start is because her parents won't make her available, right?

A That is correct.

Q Have you ever had a dispute with a family continue without resolution for over six years?

A No.

Q How does that affect district staff and administrators?

A I don't know.

Q How does it affect your ability to work [286] with parents?

A It's fine. I mean this is my business. This is a professional work day. I mean that's what I do. This isn't personal to me.

Q How does it affect staff ability to work with the student and the parents?

A Like I said before, I think I had that one statement or conversation with Teresa. I said ignore the legal stuff, you know, teach well.

Q Because she was concerned about how it was impacting her?

A I don't know that necessarily impacting her. She said that just in the meetings it seems -- the parents seem to drag in a lot of the legal stuff and it was just detracting or distracting or something to that effect about what they needed to do in order to develop an IEP.

Q How do you think that it has affected A.J.T.?

A I have no idea.

Q How do you think it has affected her parents?

A I have no idea.

Q Did you say you read or did not read the 504 ADA complaint? [287]

A What 504 ADA complaint? What are you referring to?

Q Did you discuss the 504 ADA federal complaint with anyone?

A I'm unaware of any 504 ADA complaint. I don't know to what you are referring.

Q Can you define the term deliberate indifference?

A I cannot.

Q Can you define the term retaliation?

A I cannot.

Q Did you tell Amy Stafford that A.J.T.'s parents allege the district had falsified data?

A Sorry?

Q Did you tell Amy Stafford the parents allege the district had falsified data?

A No.

Q Did you tell Jill Lesné?

A That the parents allege we falsified data? No.

Q Do you know that's what she testified to?

A I believe she's referring to the hearing where the counsel for the parents got up and told the judge that the district falsified data. And I told her that. I said this is -- I said that was an [288] interesting statement that I had never heard before.

Q And that's what you heard me argue to the court?

A Yes, that we were liars and falsified data. Made data up.

Q Did I use the word liar?

A Something along those lines, yes, I believe you did. Something along those lines.

Q How do you think it affects staff to be told that they're called liars and falsifiers of data?

A Well, the person that was told was Jill, not the teachers. So I can't speak to that unless they got it some other way, but Jan and I were there, Bitzer and I were there, along with district counsel. No teacher was in attendance.

Q How does that affect administration?

A If you mean administration Jan Bitzer and I, the two administrators that were there, it -- I -- it did not affect me negatively.

Q How did it affect Jill Lesné when you told her?

A Yeah, Jill Lesné. I don't think that she was impacted either in whatever way. I mean she has no relationship with the parents. I don't see that impacting it at all. **[289]**

Q Don't you have to have reliable data in order to determine progress?

A I believe we do.

Q You do have to have reliable data to determine progress?

A I believe we have to have it and I believe we do have it.

MS. GOETZ: That's all I have for you today. Thank you for your time.

THE WITNESS: Thank you. Thank you for your time.

MS. GOETZ: Do you have questions, counsel, or are we done?

MS. BOOTH: Can I talk to Ms. Emmons for a minute and come right back to you? Okay?

MS. GOETZ: Okay.

(At this time a short break was taken from 5:22 p.m. to 5:24 p.m.)

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MS. BOOTH: We don't have any questions.
We will read and sign.

MS. GOETZ: And as to your question about
how much time we expended, we've gone for 8 hours
and 20 minutes; 75 minutes of that was break time.
That's my calculation.

Do you have anything further? [290]

MS. BOOTH: We do not. Thank you.

MS. GOETZ: Thank you.

(Deposition concluded at 5:25 p.m.)

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