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2 IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

3 CIVIL DEPARTMENT

4 .

5 LUKE GANNON, By his next
6 friends and guardians, et al.,
7 Plaintiffs,

8 .

9 vs. Case No. 10-C-1569

10 .

11 STATE OF KANSAS,
12 Defendant.

13 .

14 .

15 VIDEOTAPED DEPOSITION OF
16 DIANE DeBACKER, Ph.D.,
17 taken on behalf of the Defendant, pursuant to
18 Notice to Take Deposition, beginning 9:59 at a.m.
19 on the 31st day of July, 2012, at the office of
20 Appino & Biggs Reporting Service, Inc., 5111
21 Southwest 21st Street, in the City of Topeka,
22 County of Shawnee, and State of Kansas, before
23 Lora J. Appino, RPR-RMR, Certified Shorthand
24 Reporter.

25 .

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11 ALSO PRESENT:

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13 Ms. Kristine Bateman, Videographer

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16 EXHIBITS

17 DeBACKER DEPO EXHIBIT NO.: MARKED

18 No 421 State Department of Education

19 July 2012 minutes 104

20 No 1300 Kansas ESEA Flexibility Request,

21 Revised July 11, 2012 6

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1 (THEREUPON, Deposition Exhibit No 1300
2 was marked for identification by the reporter.)

3 THE VIDEOGRAPHER: Today is the 31st day
4 of July, 2012, and the time is approximately 9:59
5 a.m. We are at the offices of Appino & Biggs
6 Reporting Service to continue the deposition of
7 Diane DeBacker in the matter of Luke Gannon, by
8 his next friends and guardians, et al. vs. State
9 of Kansas, Case No. 10-C-1569. Would counsel
10 please state your appearances for the record.

11 MR. RUPE: Alan Rupe and John Robb for
12 the plaintiffs.

13 MR. CHALMERS: Arthur Chalmers for the
14 State.

15 MS. WHELAN: Cheryl Whelan for Dr.
16 DeBacker.

17 DIANE DeBACKER, Ph.D.,
18 called as a witness on behalf of the Defendant,
19 was sworn and testified as follows:

20 DIRECT-EXAMINATION

21 BY MR. CHALMERS:

22 Q. Would you state your name for the record,
23 please?

24 A. Diane DeBacker.

25 Q. And your occupation?

1 A. Commissioner of Education for the State
2 of Kansas.

3 Q. And what's your educational background?

4 A. My educational background, I have a
5 Bachelor's degree in business education from
6 Emporia State University, Master's degree in
7 curriculum instruction from Washburn University,
8 and an Educational Doctorate in educational
9 administration from Kansas State University.

10 Q. Dr. DeBacker, this is a deposition that
11 is being taken for the purpose of providing your
12 testimony to the three judge panel in the lawsuit
13 that we just mentioned. I'm going to ask you some
14 questions principally focused on developments that
15 have taken place since the oral portion of the
16 trial was complete, but the proceeding is the same
17 pretty much as what you were used to when you gave
18 your deposition before. You understand?

19 A. Yes, I do.

20 Q. Now, to begin with, you became the
21 Commissioner of our Department of Education?

22 A. I became the Commissioner in -- in
23 November of 2010. That's when I was named the
24 Commissioner. I had served as interim
25 Commissioner for a year prior to that time.

1 Q. And before your role as a Commissioner
2 and interim Commissioner, were you with the
3 department?

4 A. I was, yes. I was --

5 Q. What positions did you hold at the
6 department?

7 A. I was Deputy Commissioner of Learning
8 Services and I also had previously held the
9 position of Director of Standards and Assessments.

10 Q. When did you hold the positions as Deputy
11 Commissioner of Learning Services?

12 A. I began in July of 2008.

13 Q. And how long did you have that position?

14 A. Until I was appointed interim
15 Commissioner in the fall of 2009.

16 Q. What did you do as the Deputy
17 Commissioner of Learning Services?

18 A. I was in charge of the Division of
19 Learning Services comprised of special education,
20 teacher education and licensure, title services,
21 research and development and standards assessments
22 and current tech ed.

23 Q. And when you were the Director of
24 Standards and Assessments, what was your job --
25 what were your job responsibilities?

1 A. That -- that's a specific team, the team
2 that develops standards and assessments for the
3 State of Kansas, oversees those processes.

4 Q. And what time period were you the
5 Director of Standards and Assessments?

6 A. The summer of 2003 through the summer of
7 2006.

8 Q. Now, did you hold that position when the
9 standards were changed and then implemented, what,
10 in 2006?

11 A. Yes. I was there during that time, yes.

12 Q. And what role did you have then in your
13 position as the Director of Standards and
14 Assessments in facilitating the implementation and
15 change of standards?

16 A. Well, I was -- I was more involved in
17 working with the development of the different
18 standards in the State of Kansas prior to us
19 adopting the Common Core Standards. We would put
20 together a statewide team that would review the
21 standards that were in place at the time, see if
22 any changes needed to be made and then bring those
23 to the State Board. Typically about an 18- month
24 process. So, I was involved in that more than the
25 implementation because when they were actually

1 implemented is when I left for another position.

2 Q. And then when you took that position as
3 the Deputy Commissioner of Learning Services, one
4 of your responsibilities would be to supervise the
5 standards and assessments. Is that right?

6 A. It's one of teams under my division,
7 under the division at that time.

8 Q. Let me talk to you stepping away from the
9 Department of Education. Could you kind of
10 outline for the panel what your employment
11 background has been after you got out of school?

12 A. Sure. I began my teaching career in 1982
13 at Lucky High School in Manhattan, Kansas, and I
14 taught high school business education. I was
15 there for one year before going to St. Mary's High
16 School where I taught high school business
17 education. I was there for two years. I went to
18 Washburn University to work on a grant program,
19 working with getting individuals back up to speed
20 in terms of their clerical skills so they could
21 re-enter the market. I then worked for another
22 grant program that was funded through the State
23 Department of Education running a statewide
24 curriculum center. From there, I went to the
25 Auburn-Washburn School District. I was a

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1 curriculum facilitator, then an assistant
2 principal at the high school, and ended my time in
3 Auburn-Washburn as principal of Washburn Rural
4 Alternative High School.

5 **Q. Go ahead. I didn't mean to interrupt.**

6 A. I went to the State Department of Ed as
7 director, stayed there for three years, and then
8 was hired as associate superintendent in the
9 Shawnee Heights School District. And then I
10 returned back to the state department in 2008.

11 **Q. So as to highlight your experience as an**
12 **administrator, you were an administrator at**
13 **Shawnee Heights when and for how long?**

14 A. Shawnee Heights, I was there from 2006
15 through 2008. I was there for two years as
16 associate superintendent.

17 **Q. And then before that, you had some**
18 **experience as -- in administration. Could you**
19 **give the panel the dates and positions?**

20 A. Sure. In the Auburn-Washburn School
21 District as an instructional facilitator, it
22 wasn't as much of an administrator as it was
23 overseeing all of the curriculum of grades seven
24 through 12 for the district. So that was from
25 1991 through '93. And in '93, I was named

1 assistant principal of the high school of Washburn
2 Rural High School, and served in that position
3 through 1998. And in '98, I was named the
4 principal of Washburn Rural Alternative High
5 School, and served in that position until 2003.

6 **Q. The Shawnee Heights position that you**
7 **held, could you just generally describe the**
8 **demographics of the students at that high school?**

9 A. Of the high school or the entire
10 district?

11 **Q. Well, I guess you would have been the**
12 **district, is what I would like to have as my**
13 **general demographics.**

14 A. District has around 4,500 students. At
15 that time I think we had about 4,000 students.
16 It's somewhere in that range. A 5A class high
17 school, so that gives you an idea of the size.
18 Demographics, you know, fairly general
19 demographics in terms of mostly white students,
20 free and reduced lunch. We had a couple Title I
21 schools, but not all of the elementary schools
22 were Title I schools. So that gives you an idea
23 of the -- the -- the -- in terms of the wealth of
24 the district.

25 **Q. And then if you could give the same**

1 demographic information for the other schools or
2 school districts in which you have had
3 administrative positions?

4 A. That would be the Auburn-Washburn School
5 District, a larger school district of a little
6 over 5,000 students. When I first went to that
7 school district, it didn't have nearly that many
8 in 1991. A 6A high school, so a little bit
9 larger. A more wealthy school district in terms
10 of students on free and reduced lunch, not as
11 many.

12 Q. In your experience, and not limiting it
13 just to the Department of Education, have there
14 been changes in the Kansas standards over the
15 years?

16 A. Oh, yes, absolutely. There has been
17 changes in the standards from 199 -- from 1982
18 when I first entered the classroom where we really
19 had no standards, to standards coming into play in
20 the early 1990s in our state.

21 Q. Presently, there is a statute in place,
22 isn't there, that addresses how frequently the
23 standards have to be reviewed and changed?

24 A. The assessed standards in the State of
25 Kansas, yes.

1 Q. I see. And what -- summarize it. What
2 does that statute require?

3 A. The statute requires that the standards
4 that are assessed across the state in the five
5 areas, math, reading -- math, reading, social
6 studies, history, government and writing, that
7 those have to be reviewed every seven years. And
8 reviewed is at the discretion of the State Board
9 as to the depth of the review.

10 Q. I want to switch gears with you -- well,
11 finish that thought, I guess, before I switch
12 gears. Have you observed how, then, over the
13 years changes in standards have been implemented
14 in the Kansas school systems?

15 A. Yes. Yes.

16 Q. Now switching gears. I want to talk to
17 you about accreditation requirements in the state.
18 Let me hand you what's been previously marked as
19 Exhibit 1126, and that's a copy of the Quality
20 Performance Accreditation Manual. And I put that
21 in front of you to give you a cheat sheet, if you
22 require it.

23 A. I appreciate it.

24 Q. But what I'm interested in is could you
25 summarize for the panel -- and they have heard

1 some testimony on this, they don't need to have it
2 in detail -- what are the requirements for a
3 Kansas school to be, a public school to be
4 accredited in this state?

5 A. To be accredited in the State of Kansas,
6 we use a system called Quality Performance
7 Accreditation, or we refer to it as QPA. And in
8 that system, schools must meet the quality
9 criteria that we've set out, plus the performance
10 criteria on the state math and reading assessments
11 in order to gain accreditation status. And
12 depending on how they meet that, how often they
13 meet or don't meet that, their accreditation
14 status could change.

15 Q. And does your department then track
16 whether schools are accredited?

17 A. Yes, we do.

18 Q. Is this a situation where once
19 accredited, only accredited -- always accredited?

20 A. No. No.

21 Q. How -- how would a school lose its
22 accreditation, in general terms?

23 A. Well, an accreditation status could
24 change, not really lose, but an accreditation
25 status could change depending on if they didn't

1 meet a certain amount of the quality criteria or
2 if they fell below the mark for a certain number
3 of years on the performance criteria. And then
4 your accreditation status could change from
5 accredited, which is the highest you can have in
6 Kansas, to accredited on improvement,
7 conditionally accredited or not accredited. Those
8 are the four levels.

9 **Q. In theory, there could be a**
10 **non-accredited school?**

11 A. Yes, there could be.

12 **Q. The quality criteria, I want to focus on**
13 **those for a second. How -- are those reviewed**
14 **each year?**

15 A. By the school district, yes. By
16 individual schools they are reviewed each year,
17 because in Kansas we accredit schools, not
18 districts.

19 **Q. How does an individual school go about**
20 **reviewing its quality criteria?**

21 A. Well, they do it all year long, but their
22 report happens once a year, and it's usually in
23 the summer months. Usually it would be in June,
24 July, we send an e-mail to all of the schools
25 saying quality performance checklist is online,

1 please complete yours. And what a principal does
2 is they simply go online. It's an authenticated
3 application, which means they have to have a
4 password to get into it, and they click yes or no
5 in terms of whether or not they have met the 11
6 quality criteria. So, it's a self-assurance based
7 system. We do prepopulate quality Criteria 5,
8 which deals with whether the teachers are highly
9 qualified, but everything else is a -- is an
10 assurance based system. Now, the -- that's on the
11 quality side.

12 Q. If a no is checked -- well, I presume
13 when you said there is a report provided, the
14 report is provided, what, to the Department of
15 Education?

16 A. Right. We post that on our website.
17 It's electronic.

18 Q. Is there a part of the department that is
19 responsible for looking at the criteria, quality
20 criteria, making sure that the self-reporting is
21 -- is actually provided?

22 A. We -- we only look at that if a school
23 moves down from accredited to conditionally
24 accredited, or if on the performance side they --
25 they become a school that's below the mark. But

1 if they don't, then we don't look at that. We --
2 that's why I said it's a self-assurance system.
3 Everything is going okay until we see some red
4 flags and we have to come into their lives.

5 Q. So if you have the forms completed in
6 place, then absent something that raises a red
7 flag, then you don't actually investigate the
8 criteria?

9 A. We don't.

10 Q. If we look at, in Exhibit 1126, under the
11 Table of Contents, it's got Section 2, Quality
12 Criteria, and it lists 11 quality criteria. Are
13 there, in fact, 11 quality criteria?

14 A. There is 11 yes or no questions that they
15 have to answer, yes.

16 Q. And I want to talk to you about just a
17 couple of them, because I think most of them have
18 been discussed. One of them is Criteria 5, which
19 is the licensed and fully certified staff. And
20 you said that that's something that in the forms
21 it's prepopulated. What does that mean?

22 A. We -- we take our licensed personnel
23 report, which is another report that we collect
24 electronically from school districts, and then we
25 take that information that then determines whether

1 there is a yes or a no in that for each school.
2 So instead of a school district -- and if you
3 think of a large district having to go through and
4 do that on their own, they have already done that
5 report once, why not us just prepopulate that.

6 Q. Now, page 20 of Exhibit 1126 has an
7 administrative regulation under the licensed and
8 fully certified staff.

9 A. Uh-huh.

10 Q. Do you see that?

11 A. Yes.

12 Q. Okay. And what is it then that under
13 that administrative regulation is required under
14 Criteria 5, the licensed and fully certified
15 staff, that these districts have to answer yes or
16 no as to whether they possess?

17 A. I'm not sure I understand your question.

18 Q. Bad question. What I'm trying to get at
19 is when the district is asked the question: Yes
20 or no, do you satisfy Criteria 5, what is it that
21 they have to have to be able to satisfy Criteria
22 5?

23 A. They have to have 100 percent of their
24 teachers assigned to the areas that are classified
25 as core under the U.S. Department of Ed be highly

1 qualified. And again, they fill out that report
2 earlier in the year. So when they get to this
3 particular yes or no in their June, July report,
4 that's already filled out for them.

5 Q. Does it also require that 95 percent or
6 more of all other faculty are fully certified --

7 A. Yes.

8 Q. -- for positions they hold?

9 A. Yes, it does.

10 Q. And if there is a no response to Criteria
11 5, that would then be a red flag that would
12 require some additional investigation?

13 A. Yes.

14 Q. Well, now, what is a highly qualified as
15 it's used in the Criteria 5?

16 A. Highly qualified means that they have the
17 right inputs into the -- their endorsed areas in
18 their license that they are teaching. In other
19 words, if I'm a math teacher, do I have the right
20 classes, the right degree in order to teach that?
21 So it's an input system. That means they are
22 highly qualified. When this first came into place
23 when this changed in 2005-2006, this was an area
24 that we had to -- a lot of people who were already
25 in the field and already teaching may not have had

1 the exact credentials for it, but they had the
2 experience, and so we -- we used -- used a rubric
3 that people could use called a house rubric to
4 determine whether or not they met it, maybe not by
5 their degree but by everything that they have done
6 up to that time.

7 Q. I want to talk to you about Criteria 1
8 and 2, which in Exhibit 1126 is described as the
9 School Improvement Plan and the External Technical
10 Assistance Team, and can you just describe
11 generally what those quality criterion are?

12 A. Every school, every school in Kansas has
13 to have a school improvement plan, whether they
14 are on improvement or not, and so they have to
15 have a plan in place. And that plan is really
16 what gives them their direction, their road map
17 that they are going to use in terms of
18 professional development throughout the year. And
19 so -- so that's what this School Improvement Plan
20 is. We do receive those on a five-year basis and
21 we do have staff that reviews those and then the
22 Board eventually approves those.

23 Q. And the external technical assistance
24 team?

25 A. External technical assistance team is a

1 team that every school has to have in place. It's
2 essentially an advisory council to that -- to that
3 school saying here is what we are doing and here
4 is what -- here is the assistance that we think
5 you may need. Your school assistance, your team
6 can be anybody from within your district or
7 outside, it just can't be anybody within your own
8 school.

9 **Q. What's the external part of it?**

10 A. External means that they are outside eyes
11 reviewing what you're doing. So it's kind of like
12 making sure that you're not -- you know, you don't
13 want to audit yourself. So having others look at
14 that.

15 **Q. Now, there is also a -- a performance**
16 **aspect of QPA, and I want you to for the moment,**
17 **for purposes of this question, turn the clock back**
18 **pre-waiver, and we'll talk about waiver in a**
19 **minute. Can you describe for the panel, please,**
20 **what the performance criteria are of the QPA**
21 **pre-waiver?**

22 A. Pre-waiver, the performance criteria is
23 that the schools had to meet a certain percentage
24 of students who were at meet standards or above in
25 order to meet that requirement. They had to -- to

1 do that on a consistent basis. If they did not do
2 that for two years in a row, then they would be
3 put on improvement.

4 Q. Now, I see there were other performance
5 criteria that dealt with graduation attendance,
6 participation rate and beyond the student
7 performance. Is that right?

8 A. Yes, you're right.

9 Q. What were those, generally?

10 A. We had three others. We had, as you
11 mentioned, we had graduation rate, attendance rate
12 and participation rate. Participation rate means
13 that we expected at least 95 percent of students
14 to participate in our State Assessments. That was
15 something that we held firm on is that we
16 shouldn't exclude any -- any group or any certain
17 student from taking the assessment, unless there
18 was just an extenuating circumstance. So we held
19 that at 95 percent for -- that's for participation
20 rate. For attendance rate, saying -- that was
21 mainly for grades K through 6; that we wanted kids
22 to be in school. So having high attendance rate.
23 The more you're there, the more you're going to
24 learn. And then finally graduation rate; that we
25 wanted a high graduation rate. So, yes, those

1 were part of the performance criteria, but I have
2 to admit that oftentimes when we would talk about
3 it we would forget to mention those three, and two
4 of those came back into our waiver.

5 Q. In deciding whether a school would
6 maintain a full accredited status or become
7 accredited, you've got the performance standards
8 and the quality criteria. How did they work
9 together?

10 A. Well, they -- they worked together in
11 that they were part of a package deal that we --
12 and this is one thing I think that we did right in
13 this system, is that we said it's not just all
14 about the inputs, and it's always -- it's always
15 also not just always about the outputs. So what's
16 going into your school? What's making it
17 successful? What's your curriculum like? How are
18 you meeting the statutory requirements in terms of
19 graduation requirements and other things, but then
20 also how are your students performing? So by
21 combining those together, that's our accreditation
22 system. Now, you could miss on one or the other
23 and still be on improvement. So -- so they --
24 they worked opposite -- not opposite, but they
25 always didn't have to go hand-in-hand. But we

1 found that if schools had the quality criteria in
2 place and they were meeting all of those, then
3 they typically normally were doing okay on the
4 performance side.

5 Q. I want to talk to you and drill down a
6 little bit into the meets standards or above.
7 What -- what standards are you talking about,
8 again pre-waiver?

9 A. Kansas proposed to the U.S. Department of
10 Ed, when NCLB was first put into place, a
11 progression of achievement for states -- or for
12 the schools in our state, moving from where we
13 were at to 100 percent at meets standards or
14 above. Kansas did a linear progression. So we
15 had, you know, a gradual progression up to the 100
16 percent. And so meets standards means that they
17 met the specified percentage of students above
18 that mark each year.

19 Q. We've heard what AYP means, I think, but
20 what does AYP mean in that context?

21 A. AYP is Adequate Yearly Progress, and it
22 means that you, as a -- as a school, were you
23 progressing toward that 100 percent at the rate
24 that we had prescribed in our -- our
25 accountability plan to the U.S. Department of Ed.

1 Q. And the standards, that was just on two
2 tests?

3 A. Just on math and reading, and that's all
4 that was required by the U.S. Department of Ed for
5 AYP.

6 Q. Did -- did the AYP look at how students
7 were doing and improving at the higher level? In
8 other words, past just meeting standards, did they
9 look at how kids were improving above that?

10 A. Well, we calculated that, obviously, but
11 -- but the only mark that really counted was if
12 you're above that meets standards or more.

13 Q. Is that also true as to the kids that
14 were not meeting standards? Did we look at how
15 people were approaching, for purposes of AYP,
16 standards, as opposed to the kids that weren't
17 even close?

18 A. We look at that data, obviously, and we
19 disaggregated the data, and the school districts
20 have tons of tools that we have provided for them
21 to look at that. But -- but in the end, as we
22 measured student achievement in Kansas, it all --
23 it was just who made it above the mark? And it
24 was that -- that meets standard mark that
25 mattered.

1 Q. Let me hand you what has been previously
2 marked as Exhibit 1003, and it's entitled Notice
3 of Intent to Submit ESEA Flexibility Waiver
4 Requests. Have you seen this before?

5 A. Yes.

6 Q. What is the ESEA?

7 A. That's the Elementary and Secondary
8 Education Act. It is the -- the federal act that
9 governs what happens in -- in schools across the
10 United States.

11 Q. And then you've got -- this document
12 refers to the NCLB as the No Child Left Behind Act
13 2001. What, generally, is that act?

14 A. That's the -- the actual law or act that
15 -- that schools in the United States -- that those
16 were -- ESEA is the umbrella and NCLB was what we
17 were living under right now and that should have
18 been reauthorized in 2007 but has yet to be
19 reauthorized.

20 Q. Explain that a little bit to the panel
21 when you say that it should have been reauthorized
22 but it hasn't.

23 A. It was -- it was scheduled to be
24 reauthorized in 2007 by Congress. Congress chose
25 -- has chosen not to reauthorize that up to this

1 point. And so NCLB is set to expire, to sunset in
2 2014 and -- but it should have been reauthorized,
3 it just hasn't. And, thus, that's why the U.S.
4 Department of Ed has allowed for states to apply
5 for flexibility.

6 Q. Now, these acts that we've talked about
7 at the federal level, the NCLB and ESEA, what
8 relationship, if any, did they have to the meets
9 standards or above requirement in the Kansas
10 Quality Performance and Assessments?

11 A. Direct. A direct relation.

12 Q. How so?

13 A. Part of NCL --

14 Q. I said assessment. I meant
15 accreditation. I apologize. Go ahead.

16 A. Under NCLB, every state had to submit
17 their accountability workbook. In other words, we
18 had to tell them how we were going to apply the
19 rules of No Child Left Behind specific to Kansas.
20 Every state got to do that a little bit
21 differently. That's why you saw different --
22 different progressions towards 100 percent
23 proficient from different states. And so it was a
24 direct relation. AYP didn't even exist in our
25 vocabulary before this was put into place.

1 Q. Well, now, under the ESEA and the NCLB,
2 do states receive federal funds?

3 A. Title I schools do, yes.

4 Q. And again, we are talking the pre-waiver
5 world here for a moment, but could you generally
6 describe how those funds were received by the
7 State of Kansas under those acts?

8 A. And I -- and I should go back. It's more
9 than just Title I, it's the title programs. So
10 there is more than Title I, but our waiver deals
11 with Title I schools. Those are mostly based upon
12 a formula. So depending on how -- you know, what
13 students you have in your state and the
14 demographics that they bring, an amount of money
15 is calculated for your state. That money is then
16 given to the state. And then at our level, at the
17 State Department of Ed level, we distribute that
18 money based upon different criteria depending on
19 which title program it is.

20 Q. Was there a time when the federal
21 Department of Education, and I think maybe you
22 alluded to this, invited waivers from the NCLB
23 requirements?

24 A. Yes, back in October of 2011.

25 Q. And how was that communicated to your

1 commission?

2 A. To -- to our state?

3 Q. Yes.

4 A. We received an e-mail from the U.S.
5 Secretary of Education, some type of
6 communication, I believe it was an e-mail, saying
7 that because of the lack of re-authorizing ESEA,
8 the Secretary of Education was using his authority
9 to allow states to put forth ways in order to hold
10 students accountable that were more realistic than
11 the 100 percent proficient or meets standards by
12 2014. So in October of 2011, myself and two other
13 staff members went to D.C. where we had
14 essentially a technical assistance meeting saying
15 here is what's going to be in the waiver. If you
16 want to apply for it, here is what's going to
17 happen, and that started the ball rolling for the
18 State of Kansas.

19 Q. And I want to look then and get a little
20 greater detail on Exhibit 1003 that's in front of
21 you. But before I do that, you also have a larger
22 exhibit in front of you that I'll represent to you
23 has been pulled down from your website that's
24 entitled Kansas ESEA Flexibility Request, Revised
25 July 11, 2012. What is Exhibit 1300?

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1 A. Exhibit 1300 is the hard copy of our
2 request to -- for ESEA flexibility. This is the
3 fifth, I believe, version of this. Our first one
4 was handed in in February, was submitted in
5 February. And then as we negotiated with the U.S.
6 Department of Ed on different parts of it and sent
7 in different versions, this was the final version
8 and this is the one that was approved.

9 **Q. And it was approved when?**

10 A. It was approved on July -- (pause)

11 **Q. We can just go July 2012.**

12 A. It was on a Thursday. It was July 2012,
13 and I would have to look at the calendar, but it
14 was, I believe, two weeks ago this coming
15 Thursday, yes.

16 **Q. Now, looking at the waiver from a global
17 standpoint, what does it mean, if anything, to
18 Kansas accreditation requirements?**

19 A. In terms of Kansas accreditation
20 requirements, in terms of how it applies to QPA,
21 it's the P part that will make a difference
22 because right now it's set up that schools have to
23 meet that specific percentage in order to -- to be
24 counted as being successful. In our ESEA
25 flexibility waiver, we've said there is more than

1 one way to look at achievement of schools. So,
2 whereas, under QPA it's one-dimensional, this is a
3 multi-dimensional look at student achievement.

4 **Q. Okay. And what other impacts will the**
5 **waiver have, other than on accreditation?**

6 A. Oh, you know, I think it will have
7 significant impact on what we do in our
8 classrooms. We have become so focused as an
9 educational system on just, you know, meeting the
10 requirements of the test that we have kind of lost
11 some of what we should be doing in schools. And
12 this is not something that's a surprise to people.
13 As we focused on math and reading and focused on
14 making that assessment score, you know, what have
15 we left behind? Have we -- have we put science to
16 the side? Have we put social studies? Have we
17 put music? Have we put -- put everything else?
18 And so this allows us -- I mean, accountability
19 still matters under the flexibility waiver. We
20 still have to give the math and reading State
21 Assessments, but it's not going to be based upon
22 did you make the score. It's going to be based on
23 how did you do in terms of achievement? You know,
24 how did your kids perform? We still have the five
25 performance categories, but it's also going to be

1 looking at how did you grow? What was the growth?
2 You know, did you grow from 30 percent not being
3 meeting the standards to 70 percent? That should
4 be given credit. In the previous system it
5 wasn't. It's also going to look at how you close
6 the gap. Because every school, no matter how --
7 how high achieving they are, have a gap. And
8 finally, it's going to look at how we take those
9 students who were low proficient or below
10 standards and how did we reduce their gap. So it
11 really will give a school a whole, a multitude of
12 ways of looking at student achievement, which I'm
13 going to give schools credit. They have been
14 doing that already, but they have never been given
15 any credit for doing that, and that's what was
16 wrong with AYP.

17 Q. Let me talk to you then about Exhibit
18 1003. I told you we were headed there. And it
19 has Kansas is seeking the following waivers, and
20 it lists 11. Now, I understand this is a much
21 earlier document than the old waiver, but take us
22 to the end game for a second. Did Kansas get the
23 waivers that it requested, these 11 waivers?

24 A. Yes, on 1. Yes on 2. Yes on 3. 4, I'm
25 not sure on. I'm not sure on 4. 5, yes, but

1 we've had that in place. 6, yes. 7, yes, but we
2 don't believe that there will be much -- many
3 funds to reserve for rewards schools. That's not
4 a requirement that funds be reserved. If we have
5 any left over, that will be. 8, yes. 9, yes.
6 10, yes. And 11 I'm not sure.

7 Q. On 4 and 11 where you're not sure, would
8 we find the answers somewhere in Exhibit 1300?

9 A. I don't believe we would. We would find
10 the -- those answers in our --

11 MR. RUPE: Did you mean 1200?

12 MR. CHALMERS: 1300. I think it was --
13 the waiver has been -- I think it should be 13.
14 12 has already --

15 MR. RUPE: You gave it to me and it's
16 marked --

17 MR. CHALMERS: I tricked you.

18 MR. RUPE: -- 1200. All right.

19 A. I don't believe it would be found in
20 1300. In our letter notifying us of our approval,
21 those are specifically outlined, and I'm not sure
22 that --

23 BY MR. CHALMERS:

24 Q. Okay.

25 A. -- that we have -- that you have access

1 to that yet, but we can make that available.

2 Q. Well, let's talk about these specific
3 items and then about the waiver a little bit.

4 First, No. 1 in Exhibit 1003 talks about a waiver
5 from determining AYP, and I want to talk about the
6 year beginning 2 -- or beginning with 2013,
7 because that's what's coming up. Will AYP now
8 under this waiver be part of the Kansas
9 accreditation process or part of the Kansas
10 educational process?

11 A. AYP will not be part of student
12 achievement in Kansas.

13 Q. What, if anything, will be or serve that
14 role that AYP had been before?

15 A. The four different measures of how we
16 will look at student achievement.

17 Q. What are they?

18 A. Well, some of them are outlined there on
19 1B. Achievement, obviously. So students take the
20 assessment, they get a score. So we'll see where
21 that lands them. So achievement. Also on growth.
22 How has -- you know, what's the growth been of
23 your school? And then on reducing the gap. And
24 then there is a fourth one, as you said. This
25 letter was a little early in our process, but

1 there is a fourth one of reducing the number of
2 students who are below standard. So we actually
3 have four. And that is reflected in Exhibit 1300,
4 but it's not reflected in Exhibit 1003.

5 Q. Well, let's talk about score for a
6 moment. The scores you are talking about are on
7 standardized tests?

8 A. Yes, on the state math and reading
9 assessments.

10 Q. And right now, it's on math and reading
11 only?

12 A. Yes.

13 Q. And how will the -- will this impact,
14 this waiver, if it will, the cut scores on math
15 and reading?

16 A. We -- we have not changed our cut scores.
17 We still have the same proficiency level. So the
18 five proficiency levels and the cut scores will
19 remain the same until the new assessment is put
20 into place in the '14-'15 school year under the
21 Smarter Balanced Assessment that we anticipate
22 using at that time. That will take Board action,
23 so I'm not saying that that's absolutely going to
24 happen, but we will have new assessments in
25 '14-'15.

1 Q. And we have heard of the Smarter -- the
2 Smarter Balanced. Is that connected with Common
3 Core Standards?

4 A. It's -- it's connected in Kansas with the
5 Common Core Standards because the assessments are
6 based upon the standards that you have in place.
7 So because Kansas adopted the Common Core
8 Standards of math and English language arts, the
9 Smarter Balanced Assessment's based upon those.
10 So the answer to your question is yes.

11 Q. Now, under the NCLB, at least until it
12 sunsets, I suppose, there is a moving level of
13 requirement of what you have to have to be
14 proficient, and you talked about that. Is that
15 moving level still part of the score analysis?

16 A. No, it will not be. We --

17 Q. How -- how do you decide what the
18 proficiency level is?

19 A. We have -- we proposed and were approved
20 in our flexibility waiver to use something called
21 the Assessment Performance Index or the API. And
22 the API is based upon our levels of accreditation
23 -- or levels of student achievement. And then
24 based upon that final score and then where they
25 fall in terms of different quartiles, that will

1 give a school an idea of what they need to do to
2 improve. So if you think of it this way, we only
3 had one way -- there was only one score that was
4 acceptable in Kansas prior to this time. Now, you
5 know, with, what, nearly 1,300 plus schools in
6 Kansas, we are going to have 1,300 plus Assessment
7 Performance Indexes because it's based upon what
8 happens in that school.

9 **Q. Well, now, under AYP as of 2014 -- I'm**
10 **sorry, the No Child Left Behind, as of 2014, there**
11 **was this goal that you would have 100 percent**
12 **proficiency on the State Assessment scores. Is**
13 **100 percent proficiency still part of this API?**

14 **A. Well, it wasn't 100 percent proficiency.**
15 **It was 100 percent of your students at meets**
16 **standards or above, and that's a big distinction**
17 **that I think needs to be made.**

18 **Q. Okay. Explain to me why -- why is that a**
19 **big distinction before we move on?**

20 **A. Well, 100 percent proficiency means that**
21 **-- everybody at 100 percent means that everybody,**
22 **you know, even sitting around this table we are**
23 **all going to score at 100 percent or more. That**
24 **-- that wasn't AYP. It meant that 100 percent of**
25 **your students were at that meet standards or**

1 above. A big distinction.

2 Q. And with that distinction, will the 100
3 percent meets standards or above be part of the
4 new score part of the under the waiver?

5 A. No.

6 Q. Well, what replaces that?

7 A. Well, we have four ways that replace
8 that. In terms of assessment scores, I would say
9 the API, the Assessment Performance Index, is the
10 one that would get closest to that. And,
11 essentially, we -- we give points for -- at each
12 different level of performance for a student. So
13 we have five levels of performance, all the way
14 from academic warning, which gains zero points, to
15 approaches standards, to meets standards, to
16 exceeds, and exemplary. So the higher you go up,
17 the more points, 250 point increments. So
18 beginning at that second level up, approaches
19 standards, 250 points the school would get for
20 every student at that level. As you move up to
21 meets standards, 500 points. Then you go to 750.
22 And exemplary is 1,000 points. So you look at how
23 many students fell in each of those areas, you add
24 them all together, you divide it by your end
25 number, the number of students who took it, that

1 gives you your API, your Assessment Performance
2 Index. And then based upon some statistical
3 analysis that we have done at the state, we then
4 divide those into quartiles. And based upon where
5 your score fell in that quartile, it then tells
6 you what your gain should be next year.

7 Q. Under the API index, is it -- is it
8 contemplated that at some stage there -- there
9 won't be -- well, there is kind of a level where
10 you plateau or you're not going to have kids
11 meeting standards?

12 A. We -- we talk about a plateau in our
13 waiver more in terms of just a philosophical; that
14 there becomes a natural plateau with any
15 assessment that you put in place, and we don't
16 know where that natural plateau is going to be yet
17 in Kansas. We can kind of predict it with our
18 current assessments because we've had those around
19 for quite a long time, but with the Smarter
20 Balanced we don't know. So what our expectation,
21 though, from the state level to schools is we
22 expect them to continually move kids out of the
23 bottom categories and into the top. And that's
24 what we have done all along, even under NCLB. But
25 once it got to that meets standards, it really

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1 didn't matter how much further they went. And so,
2 you know, once they were above that mark, it was
3 like, well, we made it and we don't have to go any
4 further. Now, we know that that's not what
5 schools did. We know that schools continue to
6 push kids and try to get them to the higher levels
7 because that is also how you met Standard of
8 Excellence in Kansas. And Standard of Excellence
9 is our own -- our own reward system that we had in
10 place that would say to schools: Move kids to
11 those higher categories, move more up and more out
12 of those lower categories. So I don't want to
13 imply that once schools got students at meets
14 standards, they quit, because they certainly
15 didn't in Kansas. But, there was no incentive for
16 them to do so. So, you know, one of reasons that
17 we are glad we no longer have AYP.

18 Q. Now, the second thing you had indicated,
19 besides score, was growth that is being used in
20 place of AYP, meets standard or not meets
21 standard. And maybe you've already explained
22 that, but could you generally describe what you
23 mean by growth?

24 A. Growth means that we -- we can now, under
25 this flexibility waiver, we can give schools

1 credit for growth. And so we have used the
2 example over the years of a school district that,
3 you know, was very low on student achievement when
4 NCLB was first put into place, you know, 30
5 percent of their students at meets standard or
6 above. Now it's 70 percent. That's tremendous
7 growth. But in the -- in the former system, no
8 credit was given for that, other than a pat on the
9 back saying nice job. But they still were
10 classified as not -- not meeting standards and
11 still were on improvement.

12 **Q. Is that the KCK district?**

13 A. That would be one of the examples, but
14 there is others. There is many, many other
15 districts in the same boat. So what this will do
16 is say we will calculate what your growth was
17 based upon where you are at, where we think your
18 projected growth is, based upon the demographics
19 of the students that you have in your school
20 district and everything else, what should your
21 projected growth be. And so then if you meet that
22 projected growth, then that also is -- is cause
23 for saying you made it. And again, 1,300 plus
24 growth models -- not models, but growth
25 projections out there because it's based upon the

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1 individual school.

2 Q. And the growth you're talking about then
3 is -- well, I think you illustrated that where you
4 can have, you know, improvement that may have been
5 less than what was required by the old AYP but
6 still significant improvement, and that's what you
7 want?

8 A. That's right, and that was one of -- you
9 know, as we have lived with No Child Left Behind
10 for 10 years, you know, about two year's into it
11 that was quickly realized that, yeah, we -- there
12 was no way to give credit, other than saying, like
13 I said before, nice job, in our accountability
14 system nowhere to recognize that. And how
15 frustrating that was for schools.

16 Q. Now, then you had as a third item
17 reducing the gap. What gap are you referencing?

18 A. We are talking about the gap that every
19 school has between their highest achievers and
20 their lowest achievers. So even if you have a
21 school that has students performing at 90 percent
22 and above, you still have some that aren't. So
23 what's your gap? And so we are saying if, as a
24 school, you want to look at that as the area for
25 you to work on this next coming year or the next

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1 three years, reducing your gap by half within the
2 next six years. So some people's gap could be 10
3 percent and reduce that by half in six years.
4 Other people could have a gap that's quite large,
5 30, 40 percent. And so what this does is allow
6 them to maybe look at some -- some students, not
7 necessarily subgroups because subgroups no longer
8 come into play nearly as much with this waiver,
9 but just looking at, you know, who is in your gap
10 and what are you doing for those students in your
11 gap.

12 **Q. The gap is now color and economic blind?**

13 A. Well, we hadn't figured gap before, so
14 it's hard to agree with you on that because we've
15 never -- we haven't figured gap in the past. But,
16 we know that subgroups have just dominated the
17 headlines for schools under NCLB saying that
18 students with disabilities or students on free and
19 reduced lunch, or whatever the category, they
20 cause school X to be on improvement. That will no
21 longer be the case. We still will figure
22 subgroups and disaggregate the data by subgroups
23 because that was one of the good things about NCLB
24 is it required us to scratch below the surface and
25 look beyond the all students subgroup. But no

1 longer will a subgroup put a school on improvement
2 or put a school on a list of focus or priority
3 schools.

4 **Q. And then there is reducing students below**
5 **standards. What is that?**

6 A. This was one that we did not have in our
7 original request. So if you look back at our
8 February submission, you won't see this. But when
9 we submitted our request to the U.S. Department of
10 Ed, their very first look at it in terms of the
11 peer review, they thought with the API, the
12 Assessment Performance Index, that we could be
13 masking student performance. The higher student
14 performance could mask anybody who is at a lower
15 student performance. So they asked us to look and
16 see if there was anything within our system or
17 requests that we could do to address that. And so
18 what we did is we suggested looking at the number
19 of students who are below proficient, those bottom
20 two categories, and reduce that number by half
21 within the next six years, and that satisfied the
22 U.S. Department of Ed. We didn't feel like we
23 compromised anything because we were very
24 committed to the Assessment Performance Index. I
25 had a meeting with one of the Assistant

1 Secretaries of Ed, Michael Yudin, a face-to-face
2 meeting with him a few months ago when we were
3 doubtful on our waiver. And I explained to him
4 that every state kind of has a signature part to
5 their waiver, and our signature part is the API.
6 It's the Assessment Performance Index. It's
7 really what is taking our Standard of Excellence
8 that we have done for 10 years and taking that
9 then all across the state, and -- and that's part
10 of our accountability plan. So, I know I veered
11 off a little, but reducing the number of students
12 below proficient is really just taking that
13 number, looking at how many you have and reducing
14 that by half in six years.

15 Q. Now, the Exhibit 1003 has reference to
16 the ESEA flexibilities offered in exchange for
17 rigorous and comprehensive state developed plans
18 designed to improve educational outcomes for all
19 students, close achievement gaps, increase equity
20 and improve the quality of instruction. And what
21 you have now described, these four items, they
22 make up the API. Is that correct?

23 A. No, API is only one of those.

24 Q. Oh, I'm sorry. Which one is that?
25 That's the score part?

1 A. That -- right, yeah.

2 Q. These four items, as they are now
3 described, they make up the performance part, plus
4 the graduation rate and the participation and
5 everything --

6 A. Right.

7 Q. -- we talked about?

8 A. Correct.

9 Q. And these four requirements, and the
10 others we have talked about, do they accomplish
11 what the flexibility, the ESEA flexibility
12 offered? That is, to provide a rigorous and
13 comprehensive state-developed plan.

14 A. Yes, we -- we believe what we put forth
15 does. We believe that it gives schools a much
16 more accurate picture of what's happening, other
17 than one test over a couple of days during the
18 school year.

19 Q. Are these achievable?

20 A. Yes.

21 Q. How so?

22 A. Well, for one thing, there is -- there is
23 not a specific mark that you have to make. So,
24 you know, there is -- we -- if you think about
25 AYP, that there was that 100 percent, there was

1 that ceiling that you had to be at. In all four
2 of the ways that we are going to be looking at
3 what's happening in schools in terms of student
4 achievement, there is never a top. I mean, the
5 top is as far as you can achieve, and there is
6 also -- there's not a bottom. We don't say you
7 have to have zero percent of your students who are
8 -- you know, we don't say that you have to reduce
9 the below proficient by zero -- or to zero. We
10 don't say that you have to reduce your gap by
11 zero. So, absolutely, they are attainable.

12 **Q. Are they attainable on the basis of the**
13 **present quality inputs that are in the**
14 **accreditation system in Kansas?**

15 A. Yes. Yes, they are, but we do know that
16 QPA, and I know you are aware of this, but we will
17 be changing our accreditation system as well. You
18 know, we've kind of had this thing happening
19 simultaneously. We have been working on the
20 waiver and then we have also been working on a new
21 accreditation model that looks at much more than
22 just 11 self-assurances and the performance. We
23 are looking at five areas. So -- so that will
24 change. It would have been nice if we could have
25 done them both at once, but I think I would have

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1 had a staff who all needed mental health by that
2 time if we had done all that at once.

3 Q. Do you see any reason that this -- this
4 is not attainable because of the present levels of
5 funding in the state?

6 A. You know, we -- we didn't put a price tag
7 on the waiver. I mean, it's -- you're still
8 giving the same assessments that we had been
9 giving, still have the same expectations in terms
10 of if you think of the 11 quality criteria, you
11 still have to have student accountability, and --
12 using our current system. So we didn't -- we
13 didn't say that the flexibility waiver would cost
14 any more money. We certainly didn't say it would
15 cost any less money either. Of course, there is
16 the Legislative Post Audit that is going to be
17 looking at any cost, any additional cost that may
18 have happened with the waiver. But we -- we
19 didn't look at the waiver -- we didn't look at the
20 waiver thinking: Do we have enough money to do it
21 or do we have enough money not to do it? We
22 looked at it as we have to have an accountability
23 system for the State of Kansas and what's the best
24 way to credit schools for the hard work that they
25 are doing and for the students and their

1 achievement. And we believe that we have a much
2 better way, other than AYP.

3 Q. And I appreciate that answer. I want you
4 to take it a step further, though. Based upon
5 your opinion, is there any road block that you see
6 to implementing the waiver given the level of
7 funding in the state for this next year?

8 MR. RUPE: Well, I'm going to object,
9 counsel. And -- and like everybody else, I want
10 to hear her answer, but you did not designate her
11 as an expert to testify on this issue. I would
12 have approached this a lot differently had you.
13 We designated our superintendents to testify on
14 this issue as experts. We designated witnesses
15 who would offer up opinions and you had an
16 opportunity to explore in discovery their opinions
17 before trial. This is a trial deposition and I
18 would object.

19 MR. CHALMERS: I appreciate the
20 objection. I think when you look back you will
21 see we did designate her.

22 BY MR. CHALMERS:

23 Q. You can go ahead and answer, if you
24 remember the question.

25 A. Can you reask it?

1 Q. I'll tell you what, maybe we can read it
2 back because I'm not sure I can. And it will be
3 subject to the objection raised by counsel.

4 (WHEREUPON, the last question was read
5 back by the reporter:

6 "Q. Do you see any reason this is not
7 attainable because of the present levels of
8 funding in the state?")

9 A. Again, we didn't -- we didn't -- we
10 didn't go into the waiver request and asking for a
11 waiver based upon the level of funding. We
12 approached the waiver as to what's -- what best is
13 the way to recognize student achievement in
14 Kansas.

15 BY MR. CHALMERS:

16 Q. Okay. There have been -- well, are you
17 aware that there have been folks that have tried
18 to look at what the cost of Common Core Standards
19 are?

20 A. Yes. Outside groups, yes.

21 Q. And you're aware that it depends on --
22 that those costs vary from people who have looked
23 at it. Is that right?

24 A. Yes.

25 Q. Are you familiar with the Fordham study

1 that came out just last May?

2 A. I haven't read it.

3 Q. Let me talk to you about, again, Exhibit
4 1003. No. 2 was that there is a waiver from
5 identifying Title I schools for improvement,
6 corrective action and restructuring. What is that
7 waiver about?

8 A. That allows us to -- to identify the
9 schools that will get extra assistance in a
10 different way. So we will now be looking at
11 priority, focus and reward schools. Specifically
12 priority and focus. Priority schools will be
13 those schools that are the lowest five percent
14 achieving schools over the past four years. And
15 then that's about 33 schools in the State of
16 Kansas because we are only using Title I schools.
17 And then focus schools are the next lowest, 10
18 percent, based upon gap. And we look at that over
19 a two-year period. So focus -- priority and focus
20 schools will be how we identify schools that get
21 extra assistance. And so we no longer have to
22 look at schools on improvement, districts on
23 improvement, corrective action.

24 Q. Well, now, schools on improvement,
25 corrective action, restructuring, that was the --

1 the mechanism for deciding what schools got
2 federal money assistance under the NCLB. Is that
3 right?

4 A. Yes. Yes, to a certain extent, but it
5 also then is a -- is a mechanism that identified
6 schools that weren't making the mark, and they may
7 not have even received any extra money. So it
8 really is the mechanism that caused the unfair
9 headlines for -- for schools across our state.

10 Q. So you might have schools that were not
11 getting any of the federal money or any additional
12 assistance that weren't making AYP that now
13 theoretically have, because there is a greater
14 flexibility under your waiver, the opportunity to
15 get some additional assistance. Is that how it
16 works?

17 A. They can get some additional assistance.
18 Priority schools and focus schools, absolutely.

19 Q. Okay. Well, let's briefly talk about
20 these three categories for a second. The reward
21 schools are the schools that are performing at a
22 higher level?

23 A. We -- we are going to define reward
24 schools in two ways: High performing and high
25 growth. And those will be our top 10 percent. So

1 again, 66 percent -- or 66 Title I schools will be
2 identified as reward schools.

3 Q. Is it possible to have a reward school
4 that had, under the NCLB, failure to meet AYP?

5 A. It could be possible, especially in the
6 high growth area, absolutely. We, again, we
7 haven't released our list of schools yet. We have
8 to do that by tomorrow, and -- I mean, literally
9 August 1 is the deadline that our state has. And
10 so that is statistically possible. I don't know
11 if that's going to happen in Kansas.

12 Q. Okay. And priority schools, those are
13 the ones that you say have the lowest -- the
14 lowest five percent. That's on test scores in
15 Kansas?

16 A. That will be based upon the API and it
17 will be based upon four years of data.

18 Q. And that will be focusing still on math
19 and reading?

20 A. Correct.

21 Q. At least short term?

22 A. In what we have put in our waiver, yes.

23 Q. Is there some thought that eventually
24 that might expand out from math and science?

25 A. Yes, there is.

1 Q. From math and reading.

2 A. And part of -- part of our hesitancy in
3 putting it in is that, you know, this waiver gets
4 us -- gets the State of Kansas into a different
5 system before ESEA is reauthorized. You know,
6 there is the anticipation that ESEA will be
7 reauthorized once the presidential election is
8 over. So, you know, sometime next year. Who
9 knows. And it's possible in that reauthorization
10 that they will encourage states to put more in
11 than just math and reading. We could have in this
12 waiver. That was a possibility. There are some
13 states that put more in, but we didn't -- we
14 didn't want to introduce that much change in
15 Kansas in the waiver.

16 Q. Okay. And then you have focus schools,
17 and I think you described the criteria for focus
18 schools relating to the gap. And is this the same
19 gap that we were talking about before?

20 A. Yes. Yes, and it's for two years of
21 data. So gap is based upon two years. Focus
22 schools are based upon two years.

23 Q. And then the extra assistance they
24 receive, what do you mean by that?

25 A. Well, we -- we will receive federal money

1 that we can put toward schools that are focus and
2 priority schools, and so that money will go out to
3 the schools. Then based upon a Technical
4 Assistance Network that we will have in place in
5 Kansas, they will then work to develop a school
6 improvement plan, a technical assistance plan,
7 work with providers who can help them meet their
8 areas where their gaps are and -- and go from
9 there. It's -- that also is changing in the State
10 of Kansas, and the waiver was part of that and
11 then other just changes we made at the agency.

12 **Q. Will the Kansas Learning Network still be**
13 **involved as the technical assistance?**

14 A. It will. It will, but the Learning
15 Network will be under this operation of a
16 different group than it has been in the past.

17 **Q. And the technical assistance, will that**
18 **be provided by the state then?**

19 A. No. No. Technical assistance will be
20 provided by whomever the providers of the district
21 and the Learning Network agree upon. So it will
22 be -- you know, if the school is one of the
23 priority schools and they want to use a program
24 that maybe they have been using or a program
25 that's new, that will be up to them, as long as

1 it's approved through the -- through the Technical
2 Assistance Network. So the State of Kansas
3 provides very little technical assistance,
4 hands-on technical assistance. We provide guidance
5 and distribute the money, but very little
6 technical assistance.

7 Q. And this extra assistance, will it be
8 paid for with federal dollars?

9 A. Yes.

10 Q. Now, I think there has been testimony in
11 this case that there has always been strings
12 attached to the federal dollars. What strings
13 will be attached to this extra assistance?

14 A. Well, the school has to put forth an
15 improvement plan, and the strings attached will be
16 whether or not they are meeting that plan in order
17 to continue to receive the federal assistance,
18 receive assistance in the network. We have never
19 had that as an issue in Kansas. When we have had
20 schools that landed on the schools of improvement
21 list, most of the time they are very open and
22 welcome to assistance.

23 Q. Well, by way of example, will there be
24 requirements under this waiver for outside
25 mentoring that is separate from the schools?

1 A. That -- that will be up to the school to
2 make that determination. Every school that is a
3 priority school will go through what's called a
4 needs analysis. And it's really a 360 degree look
5 of what's happening in our school in terms of, you
6 know, finances and purchasing and how we hire and
7 what curriculum is in place and just the whole --
8 everything that we do in a school. Then based
9 upon that analysis, the -- the Learning Network
10 will write a report saying here is what we saw,
11 here is what we found, here is what we think your
12 gaps are. Then that report then goes to the
13 superintendent. The superintendent typically
14 would take that to your Board, or their local
15 Board saying here is what they found; how do we
16 want to address it? And then they start building
17 a plan for assistance. And that plan for
18 assistance may be different in one school than it
19 is in another school. You know, we -- we have
20 seen that happen before. So we don't -- we don't
21 dictate what they have to do and what model they
22 have to use, but we will be very careful. You
23 know, if they wanted to bring in something that
24 isn't evidence based or hasn't been proven to
25 work, the -- the Learning Network is going to say

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1 we might want to talk about that.

2 Q. Does this -- this approach under the
3 waiver provide more flexibility then to the
4 individual schools on how to address those issues
5 that either led them to be a focus or priority
6 school?

7 A. You know, I'm not sure that under the
8 waiver that that's provided as much as it's under
9 how we are managing that.

10 Q. Okay.

11 A. So, I mean, it's a little of both. I
12 don't think you'll see that specifically jump out
13 in the waiver request, but just how we have set up
14 the learning network, how the money will be
15 distributed to the schools is different. So, yes,
16 I think they will see much more flexibility.
17 Also, the group that's overseeing it are Kansans,
18 so just several changes there.

19 Q. The focus schools, will those be limited
20 to only Title I schools?

21 A. Uh-huh, yes.

22 Q. And same as the priority schools?

23 A. Yes.

24 Q. Now, then there is, in this item 3 of the
25 waiver, identifying districts for improvements or

1 corrective action. We talked about that. That's
2 no longer part of what will happen, is that right?

3 A. No. Districts are no longer part of
4 this; it's only schools.

5 Q. And then the fourth item is the waiver
6 from limitations on use of -- well, that's the one
7 that you couldn't -- you didn't know. So let's
8 skip to No. 5. There is from the requirement that
9 Title I schools have a poverty percentage of at
10 least 40 percent to become a school wide. How
11 does the waiver apply to this or remove this
12 obligation if the schools have a poverty
13 percentage of at least 40 percent?

14 A. Well, and that's -- a state always could
15 exempt a school from that. So if we had a school
16 that had 37 percent poverty, they could apply to
17 be a school wide. We -- our State Board has
18 already had that authority. So 5 is really not
19 new; it's just identifying it. I don't know if
20 every state didn't do that, but Kansas has
21 commonly done that.

22 Q. So there is some flexibility allowed in
23 Kansas to identify what is a Title I school?

24 A. Oh, yes. Yes.

25 Q. And then 6 is distribution of school

1 improvement funds. How will that change, or have
2 we already talked about that?

3 A. Well, we've talked about it a little. In
4 the past, a distribution for the funds has come
5 through the Kansas Learning Network and then kind
6 of doled out to the schools and the districts.
7 Under the waiver -- and, again, it's not
8 completely due to the waiver. There is some other
9 circumstances that came into play. The money will
10 be distributed directly to the schools, and then
11 the schools will then use that money to -- to, I
12 guess, purchase their technical assistance or
13 approve technical assistance. So we still have
14 the requirement that they have to have an
15 implementation coach. We still have a requirement
16 that they have to have a district facilitator. So
17 some of the monies are already reserved, but the
18 bulk of their money is going to be what do we
19 think is going to help us meet the gap in our
20 needs analysis.

21 Q. Again, as managed, it provides more
22 flexibility than pre-waiver?

23 A. Yes. Yes.

24 Q. Then there is the item 8, a waiver from
25 provisions of Title II-A, teacher quality. What

1 is that about?

2 A. Really, when you look at quality Criteria
3 5 where it was an input system based upon what you
4 had and what you had on your license, if you were,
5 this moves to identifying highly effective
6 teachers. So we move away from the system of
7 inputs to a system of are you effective as a
8 teacher. So this is all part of Principle 3 in
9 our waiver request.

10 Q. And I'll talk to you about that a little
11 bit more in a second. Let's finish the list here.
12 No. 9 was a waiver from limitations on the amount
13 of funds available under the transfer --
14 transferability provisions. What was that about?

15 A. That just gives them flexibility to -- to
16 move funds around a little bit more than they had.
17 Again, in Kansas we have already had some of that
18 happen. So it's not a big movement for us.

19 Q. And then 10, that's a waiver from the
20 distribution of school improvement grant funds to
21 any priority school. What was -- what's that
22 about?

23 A. We have -- I believe we have seven VI
24 schools right now. And what we wanted to do was
25 make sure that those funds and what they were

1 doing wasn't yanked out from underneath of them
2 under this waiver; that they could continue those
3 on because those schools have made some major
4 changes and we don't want to say just because we
5 got this waiver, guess what, you have to switch
6 everything you are doing. So that allows us to
7 keep that continuity with those schools.

8 **Q. You mentioned that there is a third**
9 **principle of the waiver. Are there principles**
10 **that are -- that are been referenced as to what is**
11 **necessary for the waiver?**

12 A. Uh-huh.

13 **Q. What are those?**

14 A. We had to answer four principles in our
15 application. One was -- Principle 1 was all about
16 do you have -- do you have standards in place that
17 will prepare kids to be college and career ready?
18 And do you have an assessment system that can
19 measure those? So as we talked about Common Core
20 and Smarter Balanced. Principle 2 was how are you
21 going to hold students accountable? How are you
22 going to have a system of differentiated
23 accountability? That's what we have been talking
24 about with the four different looks at student
25 achievement. Principle 3 is all about do you have

1 a teacher and a leader evaluation system in place
2 that also has a component of student achievement.
3 And then principle 4 was, in doing all this, how
4 are you going to make sure that you don't put more
5 burden onto the districts and the schools and how
6 you are going to ensure that you aren't just
7 asking for more and more and more.

8 **Q. Now, let's talk about Principle 1 for a**
9 **moment. What will, under the waiver, Kansas do to**
10 **satisfy the college and career ready expectations?**

11 A. We -- we had already done that in Kansas,
12 or at least part of it, in that when the Board
13 adopted the Common Core Standards in 20 -- in
14 October of 2010. And then we had committed the
15 state to exploring a different assessment system
16 by being a governing state in the Smarter Balanced
17 consortium. So Principle 1 was one that we were
18 very confident in answering in our waiver request.
19 We still have to give them more information than
20 what they liked in the beginning request, but --
21 but we were able to answer that because of what
22 had already been put into place.

23 **Q. And I show you what has been previously**
24 **marked as Exhibit 1130, and that's a Kansas Common**
25 **Core Standards Fact Sheet. I don't know the date**

1 that this was prepared, but does that summarize
2 generally what the Kansas Common Core Standards
3 are about?

4 A. Yes. Again, I don't know the date of
5 this, but, yes.

6 Q. I want to just talk to you briefly -- I
7 don't want to duplicate this in length in the
8 deposition more so than I need to, but why -- kind
9 of pulling back from this, why do states need
10 standards at all?

11 A. Well, I mean, I think especially -- you
12 know, when I -- I'll go back to 1982 when I first
13 started teaching. We didn't have standards, and
14 it really was whatever textbooks were on your desk
15 when you went in and what the district had
16 purchased for you and so that's what you taught.
17 And so it was -- you know, there was -- there was
18 no standardization. There was no -- what I was
19 teaching in business ed at Lucky High School in
20 1982 wasn't the same thing that they were teaching
21 at Manhattan High School. So Kansas put standards
22 into place long before other states did saying, as
23 a state, we expect this to be happening in these
24 core areas. We expect math to be this in Kansas.
25 And so the standards are very important, and

1 especially now as we have moved into this age of
2 -- age of just global competition. You know,
3 where our students, the students graduating from
4 our schools are going to be competing for jobs
5 with people from all over the world, whether they
6 are sitting in their living room doing it or
7 whether they are traveling across the country
8 doing it. So standards are -- are critical. We
9 also found from our employers that they expect
10 people to come out with a certain level of
11 standards in order to be successful in their
12 businesses and keep our Kansas economy going.

13 **Q. In a layman's sense, are the standards we**
14 **are talking about kind of an end point description**
15 **of this is what our students are expected to know**
16 **at different times as they progress along?**
17 **Expected to know and expected to be able to do?**

18 A. Yes. Yes, they are, and in our K through
19 12 system, at least.

20 **Q. Are Common Core Standards, both content**
21 **and application of the knowledge, requirements?**

22 A. The standards themselves are more
23 content. What we do with those standards,
24 especially in assessing them, that's where some of
25 the application comes in. I mean, they're -- and

1 that's what we have been missing in our current
2 assessment system. As we moved away from having a
3 performance based assessment to an assessment
4 system that was really based upon convenience for
5 everybody and multiple choice, we got away from
6 really assessing at the state level anything of
7 now you know the stuff, now what can you do with
8 it.

9 **Q. Exhibit 1130 indicates that the**
10 **standards, that is the Common Core Standards, are**
11 **aligned with college and work expectations. What**
12 **does that mean?**

13 A. As they -- as the Chief State School
14 Officers, CSSO, and NGA, the National Governor's
15 Association, developed the standards, they made
16 sure that those standards were -- were benchmarked
17 in terms of what business and industry was
18 looking. And also, in terms of if you're going
19 straight into college, you know, what do you need
20 to know in order to be successful as you go into
21 post-secondary education. So they did work with
22 higher ed and with business and industry to make
23 sure that they -- whatever we put in place as our
24 standards would prepare them for their next steps.

25 **Q. The Board of Regents has certain**

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1 requirements for -- for students before they are
2 automatically accepted in our state. I'm talking
3 about our State Board of Regents at those Board of
4 Regent schools. Are you generally familiar with
5 those?

6 A. Yeah. Qualified admissions, yes.

7 Q. Will the Common Core Standards somehow
8 have any relationship with, and the implementation
9 of those standards have any relationship with
10 qualification for the Board of Regents' schools?

11 A. Yes.

12 Q. How so?

13 A. They absolutely could. With us being a
14 governing state and a Smarter Balanced consortium,
15 one of the agreements that we had to have in place
16 before we could even apply for that is that our
17 system of higher ed had to agree that once a cut
18 score is established for those new assessments, so
19 the new assessments that will be in place in
20 '14-'15, once that cut score is established, if a
21 student meets that cut score, they have automatic
22 entry into credit-bearing courses in math and
23 English language arts. So -- so, yes,
24 assessments, State Assessments will take on a
25 whole different role in that term because you make

1 the mark on the State Assessment, then you don't
2 have to worry about taking a remedial class in
3 English language arts and math. In our university
4 system, Andy Tompkins, who is the CEO and
5 President of the Board of Regents, he signed off
6 on that agreement and one of the reasons that we
7 were able to be a governing state and Smarter
8 Balanced.

9 **Q. What does internationally benchmarked**
10 **means as it relates to standards?**

11 A. They looked at standards from other
12 countries, countries that we hear commonly that
13 are -- are beating us in terms of an educational
14 system. And so they looked at what they are using
15 and they said how do ours compare? And so they,
16 you know, the Common Core Standards raised --
17 raised -- raised the level of standards in the
18 United States and --

19 **Q. So I take it -- I take it the Common Core**
20 **Standards that have been adopted in Kansas are**
21 **internationally benchmarked?**

22 A. Correct.

23 **Q. And they are benchmarked to indicate**
24 **what?**

25 A. To indicate that this is -- this is the

1 level that will prepare students to be successful
2 as they move on, whether that's straight into a
3 career, whether that's straight into
4 post-secondary education. Those are the two areas
5 that they mentioned. We commonly mention also be
6 successful in the military and successful in other
7 places, but it's -- that's what they are
8 benchmarked to do.

9 **Q. How has Kansas gone about implementing**
10 **the Common Core Standards so that they work their**
11 **way into classrooms?**

12 A. At the state level we have provided a lot
13 of guidance on how the transition should take
14 place. And so last summer we held summer
15 academies on the Common Core Standards, and it
16 really was just a familiarity: Here is what the
17 standards are, here is what they mean for you as a
18 classroom teacher. This summer we held summer
19 academies with the focus on what's your transition
20 plan, because the Common Core Standards have to be
21 implemented in schools ready to go by 2013. So
22 that gives you a year to get them in place, get
23 them under your belt before those new assessments
24 can get in place in '14-'15. Now, we have not
25 dictated how that has to happen. We are local

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1 control state, so we -- we give a master plan in
2 our waiver. In one of the appendices you will see
3 this timeline for implementation. We know of some
4 districts that they have already started. They
5 started putting the Common Core Standards in place
6 in those lower grade levels and then they are kind
7 of phasing them in over the next couple of years.
8 We know there are some districts that haven't done
9 a thing. And I don't know if they were waiting
10 for them to be -- be -- you know, for something to
11 change or if they just -- we don't know, but our
12 message has been you need to start implementing
13 them. And whether you start on the tail end or
14 you start on the higher end, it doesn't matter.
15 Just start implementing them.

16 Q. Has -- has KCK represented that they have
17 been implementing the Common Core Standards?

18 A. I haven't visited with them about that.

19 Q. The -- the Common Core Standards then
20 that are being implemented, that's a standard
21 change. Is it like the standard change that
22 happened back in 2002 through 2005 period?

23 MR. RUPE: Object to the form of the
24 question, vague.

25 BY MR. CHALMERS:

1 Q. If you understand the question, you can
2 answer. He's making an objection for the record.

3 A. Standards have changed over the years,
4 but our standards were revised in a -- in a
5 different manner. So I would say that this is --
6 this is a much more significant change, the Common
7 Core Standards, absolutely.

8 Q. And the significant change is in what
9 respect?

10 A. Mainly the content. What we expect
11 students to know has moved to a lower grade level.
12 You know, if I were explaining it to somebody who
13 knows very little about Common Core Standards and
14 about standards, I'd say typically what you were
15 learning maybe in fourth grade math, you're now
16 going to learn in third grade math. And -- and
17 that's, I think, what is -- has been the biggest
18 challenge for school districts. I mean, you think
19 about teachers in our classroom. Somebody who,
20 especially, has 10 years or less experience, all
21 they know is current standards, all they knew is
22 AYP. And to, to, you know, rethink that and
23 rethink what they have to teach is significant.
24 That's why, as I have talked about Common Core
25 Standards, the main thing that has to happen is

1 professional development for teachers. You can --
2 you can't expect a teacher who has been teaching
3 third grade for the past 10 years to not have some
4 professional development. Because what they are
5 teaching in third grade, come next year at this
6 time will change. Now, not -- and it will change,
7 and what that second grade teacher and that
8 kindergarten teacher. And so the professional
9 development to get the teachers up to speed is
10 what's needed the most.

11 Q. And then you talked about local control.
12 Could you expand on that a little bit on what you
13 mean by local control in our state?

14 A. From the State Board level, from the
15 state agency level, we don't dictate when they
16 have to put the standards in place. We don't
17 dictate where they should be in terms of
18 implementation. We give them guidance, and then
19 it's up to that local school district, local
20 superintendent, local board to make the decision
21 as to how they are going to do that. And then not
22 all states do it that way. Some states will tell
23 you you've got to be at this place at a certain
24 time. We don't in Kansas.

25 Q. Can the decision also kind of trickle

1 down to local, the local school?

2 A. Oh, sure, yeah.

3 Q. So the decision, for instance, to have a
4 third grade teacher now teach second grade could
5 be a decision that was made at the local school?

6 A. That's the only place it can be made. We
7 wouldn't make that decision at our level.

8 Q. Professional development, let's focus on
9 that for a second. The professional development,
10 is that a requirement of -- of -- under the
11 current QPA?

12 A. It's part of your School Improvement Plan
13 that you have to have professional development.
14 But again, that's up to the discretion of the
15 local district as to what that is. And it kind of
16 depends on what they have going on. If they are a
17 district that has been focusing on a multi-tiered
18 system of support, their professional development
19 may be all around that. Others do it differently.

20 Q. And the local control we talked about
21 might focus on what the professional development
22 would be this upcoming year or the next few years.
23 Is that right?

24 A. Yes.

25 Q. How is -- how has professional

1 development been funded in our state in recent
2 years?

3 A. Well, actual professional development
4 from the state level, from the legislative level
5 has been zeroed out. And so professional
6 development has been the responsibility of a local
7 district and using their own funds to do so.

8 Q. And the local districts under the local
9 control that we talked about have directed what
10 funds they think is appropriate for professional
11 development for the last few years. Is that
12 right?

13 A. Oh, yes.

14 Q. And are you aware of any study that's
15 been done that would indicate what additional
16 costs there would be above local -- or under
17 present professional development costs to
18 implement the Common Core Standards?

19 A. We have not done one in Kansas, no.

20 Q. But you indicated there was a study that
21 was -- that has been commissioned?

22 A. There -- Legislative Post Audit is
23 looking at that question.

24 Q. And so we have a record of that. What's
25 your understanding as to when that -- the

1 parameters of that study and when that study's
2 results will be issued?

3 A. They are actually looking at two things.
4 We have already had a couple of initial visits
5 from Legislative Post Audit on this. One, is they
6 are looking at the cost, any additional cost the
7 Common Core Standards may bring. And then they
8 have added also what additional cost, if any, the
9 waiver may bring. So there is really two parts.
10 Their indication to us is that they will have
11 their -- their study done late fall and ready to
12 present to the legislature beginning 2013.

13 Q. Okay. Well, you talked about
14 professional development in connection with the
15 Common Core Standards. The waiver changes that we
16 have talked about, are they associated with
17 potential increased costs, other than the changes
18 in curriculum? That was a bad question. I'll
19 rephrase it. What would be the focus on potential
20 increases in cost from the waiver, other than the
21 professional development from the Common Core
22 Standards implementation?

23 A. Again, we didn't look at cost as we were
24 preparing our waiver. If I would put myself in
25 the place of if I were a building principal or

1 superintendent and I was looking at this and what
2 difference it makes, it really, you know, is
3 getting down to how we -- how we look at our data.
4 And our schools are very good about, you know,
5 looking at individual student data and where
6 improvement needs to happen. But now they get to
7 look at it in multiple ways of growth and gap and
8 achievement and reducing the number of students
9 proficient. So -- so that will be a different
10 focus than they have ever had to do before.

11 **Q. The -- the results are still out as to**
12 **whether then there is going to be an increased**
13 **cost from the waiver and common -- an**
14 **implementation of the Common Core Standards or a**
15 **decrease in costs or the same costs?**

16 MR. RUPE: Objection. Lack of
17 foundation, compound, complex. She said she
18 didn't look at the costs.

19 BY MR. CHALMERS:

20 **Q. Again, you can answer if you remember the**
21 **question.**

22 A. We -- with Common Core Standards, with
23 our flexibility waiver, we did not -- we did not
24 consider cost in either of those in terms of
25 additional costs. We know that schools already

1 have standards in place. They already are
2 teaching, you know, to standards that we have. We
3 know that they are already giving assessments
4 based upon -- based upon standards and based upon
5 our current assessment. So all of that will still
6 happen under the waiver.

7 Q. We know that they are presently funding
8 professional development and that that will happen
9 under the waiver and Common Core will continue to
10 do so?

11 A. Yes.

12 Q. And the question I attempted to phrase,
13 and I think you have answered, is that the result
14 as to whether or not that will -- the waiver and
15 the Common Core Standards will increase costs to
16 schools, decrease costs or will be the same is
17 just not a question that we have an answer to
18 today?

19 MR. RUPE: Objection. Vague, asked and
20 answered. She's told you they didn't consider
21 costs. Lack of foundation, as well.

22 A. We -- we don't have the -- we don't have
23 a number.

24 BY MR. CHALMERS:

25 Q. Okay. Now, the second principle that you

1 talked about in the waiver, that the waiver had to
2 satisfy, was a state-developed differentiated
3 recognition of accountability and support, and
4 that will be the API that we talked about?

5 A. API is one of them.

6 Q. Okay. And the others were, again so that
7 I have a quick list of that?

8 A. Growth, reducing the gap, reducing the
9 number of students below -- below the standard.

10 Q. And now then the third one, which I think
11 started this discussion, was the supporting effect
12 of instruction and leadership. How does Kansas
13 address that principle?

14 A. Kansas was required to commit to having a
15 model evaluation system that districts could use
16 across the state. Right now we have 286 school
17 districts, so we have 286 different evaluation
18 systems. Part of the waiver is that we would --
19 would have at least available to districts a model
20 system that districts could use that really
21 measure the right stuff. And then also part of it
22 was that we had to have a component of that
23 evaluation system that took into account student
24 achievement. So Kansas, again, we were a bit
25 ahead of this because we had the Kansas Educator

1 Evaluation Protocol, or KEEP, already being
2 piloted throughout our state. That is a model
3 evaluation system that we developed, along with
4 ETS, the Educational Testing Services. We've had
5 that out there for a year with voluntary districts
6 and schools doing that. We wanted to pilot that
7 again this next year, and so we were ahead of --
8 ahead of Principle 3 in that regard. We had not,
9 however, as a state had the type of discussions
10 that we need to have in terms of student
11 achievement and how student achievement impacts
12 teacher and leader evaluation. So as part of a
13 waiver request and as part of a desire on the
14 State Board of Education, we formed something
15 called the Teaching in Kansas Commission II. And
16 the Teaching in Kansas Commission II will be about
17 40 individuals from across the state, teachers,
18 administrators, KNEA representatives, all of the
19 different organizations that represented higher
20 ed, saying if we have to put student achievement
21 somehow in our evaluation system, how is that
22 going to work? And so we'll spend the next year
23 doing that. And then districts that have their
24 own evaluation system that they think meets the
25 mark, we will evaluate those systems, see if they

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1 meet the certain requirements and then either sign
2 off on those or tell them they need to refine
3 those. So I don't believe that as a state we'll
4 ever get to the point where we have an evaluation
5 system the districts have to use, because, again,
6 the local control I think would get in the way of
7 that. But we would have a model out there for
8 districts to use and a way to evaluate what
9 districts already are currently using and see if
10 they work.

11 **Q. As you understand it, what's the purpose**
12 **of Principle 3?**

13 A. Principle 3 really is, in my opinion, the
14 U.S. Department of Ed's attempt of getting away
15 from a system that's based upon simply what do you
16 have on your license? And, you know, so I have
17 that I can teach shorthand. You know, what does
18 that mean? Which I actually do have that on my
19 license, but, you know, what does that mean? So
20 they want to get away from a system that just
21 looks at what you bring into the classroom and,
22 rather, looks at a system as what do you -- what
23 -- what has this teacher done in terms of student
24 achievement. A very difficult topic to address
25 with teachers, not only in Kansas, but across the

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1 United States. We are very fortunate that we have
2 a very good relationship with KNEA and others that
3 we can work on this, I think, and come up with a
4 way that uses multiple factors that weigh into
5 that. So it's not just how a student did on a
6 state math and reading assessment, it's what else
7 is happening that -- that you can bring into play?
8 We are -- this was the hardest part of our waiver,
9 believe it or not. It seems like Principle 2
10 would have been the hardest part: How are you
11 going to determine student achievement? But
12 Principle 3 is actually the principle that held us
13 up. It held up our announcement. It held us up
14 being approved. It's also the one that got us a
15 conditional approval. We say Kansas has a waiver
16 approval, but our's is conditional, and it's
17 conditioned upon us getting -- getting an answer
18 back as to how we are using student achievement
19 within the next year.

20 Q. Now, the Teaching in Kansas Commission
21 II, then, the 40 individuals you talked about,
22 that's kind of their task to try to figure out a
23 way to accomplish what the accountability system
24 by way of the assessment tests will be for
25 teachers. Is that right?

1 A. It -- their charge is to figure out how
2 student achievement impacts teacher evaluation in
3 the State of Kansas, teacher and principal, by the
4 way.

5 Q. Ultimately, and we talk about Principle
6 3, is it directed to the idea that we want to make
7 sure that our kids are being instructed by
8 qualified and highly effective teachers, and that
9 those teachers are being administrated by highly
10 effective administrators?

11 A. Yes, I would say that's -- that's
12 correct. I mean, highly qualified is important,
13 but we have just -- we are also moving toward
14 what's highly effective. What's an effective
15 teacher and how do we define that?

16 Q. And the Principle 3 brings kind of a
17 potential accountability way of looking at teacher
18 administrative performance that haven't been
19 present before the waiver. Is that right?

20 A. That's the attempt, yes.

21 Q. Now, just so that I have a record of it,
22 it was in 2010 that the State Department developed
23 the statewide model that you referred to as KEEP.
24 Is that correct, and piloted it?

25 A. We -- we piloted it this last year, so it

1 was during '11-'12. So, yeah, the development of
2 it would have been in '10.

3 Q. And it was piloted in 17 districts, 34
4 schools in '10-'11 -- or '11-'12?

5 A. I believe those numbers are correct.

6 Q. And then there is a pilot to KEEP. What
7 is that about?

8 A. That will start this year, start in
9 August. And again, we asked for -- for volunteers
10 saying we need to -- we need to test pilot this
11 thing making sure that we are measuring the right
12 -- the right information, and so do we have some
13 more volunteers. And we haven't limited -- this
14 is a teacher and leader evaluation, so we haven't
15 limited it to just teachers or just
16 administrators, and we have left it up to the
17 districts as to how they want to do it. So some
18 of our districts are doing it with every teacher
19 that's up for evaluation, so -- and some of them
20 are doing it with all new teachers. Some are
21 doing it with just administrators. And we have
22 allowed that flexibility because we need the
23 feedback really from all different perspectives.
24 So we have not limited who will take or, you know,
25 we haven't -- we have just really been very

1 open-minded about that.

2 Q. The -- the last principle was reducing
3 duplication and unnecessary burden. What in the
4 waiver was implemented to make sure that there
5 wasn't a manageability problem for schools and
6 teachers and districts from implementation of the
7 waiver?

8 A. Mainly -- and again, it's inherent within
9 the application. You aren't going to see
10 specifically what we did in there, but anything
11 that we already collect, how can we use that
12 information and not have to ask you for it again.
13 So as we, you know, look at the assessment
14 results, how can we use what we have to then apply
15 those in different ways. As we look at the
16 licensed personnel report, what can we pull out of
17 that to answer other questions. So that's what we
18 have done. That will be an ongoing process for us
19 in terms of just making sure that we aren't asking
20 more than -- more than we need, especially in
21 terms of data requirements from our school
22 districts.

23 Q. And did the waiver request satisfy the
24 federal agency's concerns about reducing
25 duplication and unnecessary burden?

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1 A. Yes.

2 Q. Now --

3 MR. RUPE: Art, how much longer do you
4 have? And if you've got a little bit --

5 MR. CHALMERS: Another 20, 30 minutes.
6 Do you want to take a break?

7 MR. RUPE: Yeah, we have been going about
8 an hour and a half, two hours.

9 THE VIDEOGRAPHER: It is -- it is 11:43
10 a.m. We are off the record.

11 (THEREUPON, a recess was taken.)

12 THE VIDEOGRAPHER: It is 11:53 a.m. We
13 are on the record.

14 BY MR. CHALMERS:

15 Q. The waiver will have an effect on the
16 accreditation requirements in the state, and you
17 referenced that. How will it affect the
18 accreditation for the 2012-13 school year?

19 A. We are discussing that right now. We --
20 we may, as a staff, bring to the State Board in
21 the next few months an option to just hold
22 accreditation statuses steady for this year.
23 Because -- because of the different way that
24 performances is determined, we are leaning towards
25 bringing that recommendation. But if we were not

1 to bring that recommendation to the Board, we
2 would look strictly at how a school achieved the
3 number of percentage of students above meets
4 standards. So we'd go -- we'd revert back to the
5 old AYP. Now, that would be a simple thing to do
6 because we all understand it. But for us as a
7 state we want to look forward, and so why use an
8 accreditation status that's based upon something
9 we no longer do. So that's what we are having a
10 discussion at the agency about, and we'll have
11 that discussion with our Board here in mid August
12 and, quite possibly, ask for just a hold steady on
13 accreditation statuses until we get the new
14 accreditation model in place.

15 **Q. And assuming that the old AYP is**
16 **maintained in the accreditation process, what --**
17 **what level are the standards set? Are we talking**
18 **about the '09-'10 standards, the '10-'11 --**

19 A. The '11, the -- the '10-'11 standards
20 would be the ones that we would use. We were
21 approved to use what we referred to as the '11
22 standards for AYP.

23 **Q. And that was part of the waiver that had**
24 **been granted for this upcoming year, past year?**

25 A. Right. Yeah, it's within the waiver, but

1 it's also a separate request that we made in kind
2 of as our hedging our bets that if we didn't get
3 the waiver, we'd at least be able to hold steady
4 at AYP.

5 Q. And I talked about the coming year, I
6 meant this past year --

7 A. Uh-huh.

8 Q. -- is how it was done, right?

9 A. Yes.

10 Q. Okay. Now, given the waiver and -- and
11 its relationship with the Common Core Standards,
12 are the standards in place for Kansas students
13 high academic standards?

14 A. The -- the current standards?

15 Q. Yes.

16 A. Well, our current standards are the
17 Common Core standards. Because once the Board
18 adopted them in October 2010, they are in place.

19 Q. And so maybe I should just phrase it that
20 way. The Common Core Standards -- I understood
21 maybe there was some relationship with the Common
22 Core Standards and the waiver in terms of getting
23 the waiver, but the standards are going to be
24 there one way or the other. Is that right?

25 A. Yes.

1 Q. Okay.

2 A. It was a requirement in the waiver, but
3 Kansas was two years ahead of that. We had no
4 idea when we adopted Common Core Standards in 2010
5 that a waiver was even going to be an option for
6 us as a state.

7 Q. And are the Common Core Standards then,
8 as they have been adopted in our state, high
9 academic standards?

10 A. Yes, we believe so.

11 Q. Now, are -- will the waiver present
12 measurable ways to determine whether kids are --
13 are meeting these standards?

14 A. (No response.)

15 Q. That's a bad question. Is there an
16 element of measurability, that is to say how kids
17 are progressing against the standards, in -- in
18 part or part of the waiver?

19 A. Yes.

20 Q. And that is what?

21 A. Well, the -- the assessments are based
22 upon the standards, and so -- and until -- this is
23 where I think it gets a little confusing for
24 everyone, is the current assessments are based
25 upon old standards. So the current assessments

1 are based upon standards that were prior to
2 October of 2010. And so what we have in many
3 schools throughout the state is they have started
4 implementing the Common Core Standards. And so
5 they are giving an assessment or having to take an
6 assessment based upon old standards. But yet,
7 many schools have put into place the Common Core
8 Standards. But because the Common Core Standards
9 are higher, we have said all along you're still
10 going to be fine on your State Assessments. Now,
11 once the Smarter Balanced assessments are put into
12 place for the '14-'15 school year, then everything
13 is aligned. But until that time, it's -- it's a
14 little different.

15 Q. Let me ask you about some special
16 districts, I guess. There are, what, four
17 districts in this state that have historically
18 have recently passed a waiver that allows them to
19 use ACT generated tests, as opposed to the Kansas
20 Assessment Tests. Is that correct?

21 A. Three districts.

22 Q. Three districts?

23 A. Three districts, and it's only at the
24 high school level.

25 Q. Assuming -- and have they all made a

1 waiver request again for the '12-'13 year?

2 A. Yes. All three were in front of the
3 State Board in July of this year.

4 Q. What is the status of that waiver request
5 in light of the waiver that's been granted to the
6 state that we have been discussing now for the
7 last hour or so?

8 A. The only relation -- I mean, they -- all
9 three of those districts, Clifton-Clyde, Kansas
10 City, Kansas, and McPherson, they will all still
11 be under the new waiver. It's just in the
12 assessment part at the high school level they
13 won't use the State Assessment, they'll use ACT
14 assessment as their -- as their high school
15 assessment.

16 Q. How -- if the waiver is granted again for
17 them to use the ACT assessment system either at
18 high school or other grades, how will that be
19 integrated into the Assessment Performance Index
20 for those districts?

21 A. We will -- we'll have to figure their's
22 separately, the same as we have to do right now.
23 So we have to get the data from ACT in order to
24 put that in place, and so we just -- we have to
25 hand figure those. It's -- I don't get involved

1 in that part, so I can't even tell you exactly how
2 it's done, but we have to wait for them to send us
3 our ACT results.

4 Q. Now, there are multiple pathways, as you
5 have described it, for a individual school to meet
6 their annual goals under the waiver. Is that
7 correct?

8 A. Yes.

9 Q. Will the -- these three districts, will
10 they have these same multiple pathways?

11 A. Yes.

12 Q. But one of them will, instead of using
13 the Kansas assessment test, will use the ACT test.
14 Is that right?

15 A. Correct.

16 Q. That's assuming that the federal
17 government approves their waiver?

18 A. Right, yes. Our State Board has approved
19 their submitting it, but now it's up to them to
20 submit it and the U.S. Department of Ed to approve
21 it or not to approve it.

22 Q. You were a member of the P-20 Education
23 Council. Is that correct?

24 A. Yes.

25 Q. That council, what were -- what were its

1 **purposes?**

2 A. That was by Executive Order of Governor
3 Sebelius when she was in office. She wanted to
4 bring together individuals from early education
5 all the way up to business and industry to -- to
6 look at the -- the vision and the scale of
7 education in our state, really from birth until --
8 until you no longer -- no longer work. Governor
9 Parkinson then continued on with that. A final
10 report was -- was laid on the desk of Governor
11 Brownback and -- and thus far another P-20 has not
12 been established either through Executive Order or
13 even in a more informal order.

14 **Q. Now, did that -- that group or council**
15 **analyze whether there was a gap between secondary**
16 **standards and the expectations of post-secondary**
17 **education?**

18 A. Yes. Yes.

19 **Q. And what is Achieve, Inc.?**

20 A. Achieve, Inc. is a non-profit
21 organization that looks at education, and they
22 specifically have what's called the diploma
23 project that they -- that they have implemented in
24 some states. Kansas has not adopted that. But
25 their executive director came in and visited with

1 the P-20 council and said, you know, here is what
2 we found in other states; you might be wise to do
3 the same. So we had a little bit of money from
4 the Kansas Health Foundation and we did a study.
5 It was all pretty much done in-house. We did have
6 some technical assistance from Achieve, Inc., but
7 Board of Regents and K through 12 looked at that.
8 We brought together entry level or instructors in
9 math and English language arts from the college
10 level to compare our current standards with the
11 Common Core Standards and tell us where there may
12 be a gap and how to proceed forward.

13 **Q. And what were the conclusions of the**
14 **study as to whether there was a gap between the**
15 **secondary standards and the expectations of**
16 **post-secondary education?**

17 A. The conclusion at that time with what
18 were the for -- the former standards is that there
19 was definitely a gap, as much of a perceived gap
20 as an actual gap between what we expect students
21 to exit high school with and three months later
22 enter college with. So there was definitely a
23 gap. We then carried that further and said, okay,
24 so now that we know this, you know, others have
25 told us, we knew it before, but now that we have

1 this information, what are we going to do about
2 it? Well, that was about the same time that the
3 Common Core Standards were coming on board. So we
4 had the group look at the Common Core Standards,
5 the same group. And that group emerged from their
6 studies saying that if students can do what's in
7 the Common Core Standards, then post- secondary
8 will have to change what they do. In other words,
9 they said those standards are so much higher than
10 what was then our current standards; that this
11 will change. This raises the bar for everybody.

12 **Q. Now, you said that there was a perceived**
13 **gap. There was -- was there a comparison made as**
14 **to whether the perceived gap existed more than an**
15 **actual gap?**

16 **A. Not -- not really a comparison because it**
17 **was actually found that there was a gap. I mean,**
18 **in terms of expectations with the two areas of**
19 **math and English language arts. But we**
20 **specifically put in that report that the -- the**
21 **perceived gap was there as well.**

22 **Q. And the report, did it indicate that the**
23 **gap, not the perceived gap, but the actual gap was**
24 **not that big of a gap?**

25 **A. That's correct. And I have not read that**

1 report for quite some time, so -- but that's my
2 general recollection of it is there was a gap, but
3 not as much as some thought.

4 Q. And then whatever gap that may have
5 existed, that is addressed by the Common Core
6 Standards?

7 A. That is what we concluded, yes.

8 Q. The -- the funding levels over the last
9 few or several years, however you define that, for
10 Kansas primary and secondary education have been
11 per pupil less than what they had been before.
12 You're aware of that, I assume?

13 A. Yes.

14 Q. During that time frame, have you been
15 looking at how kids have been doing on Kansas
16 achievement tests and how they are performing?

17 A. Yes. Every year we give a report. We
18 give three different reports in the past to the
19 state boards.

20 Q. And have you been looking at how Kansas
21 schools are doing in terms of maintaining their --
22 their accreditation statuses?

23 A. Yes. That's part of our report to the
24 Board.

25 Q. Generally speaking, how have Kansas kids

1 **been doing?**

2 MR. RUPE: Objection, vague.

3 BY MR. CHALMERS:

4 **Q. You can go ahead and answer.**

5 A. In terms of State Assessment scores, we
6 have seen an increase in State Assessment scores
7 every year for the past 10 years. So that's what
8 we have seen generally in the all students
9 category and most in all of the subgroups as well.
10 Not dramatic increases, but there have been the
11 steady increase, and, of course, we are basing
12 that upon the meets standards and above category
13 as well.

14 **Q. And have you been able to draw then a --**
15 **or form an opinion as to how it's possible that**
16 **Kansas test scores in those categories continue to**
17 **improve, even though there have been a reduction**
18 **on a per pupil basis in some areas in -- in**
19 **spending?**

20 A. We -- we attribute the continued
21 increase, or what we have seen thus far, to, one,
22 our teachers know the standards. They -- they
23 understand those. They -- they know the
24 assessments. They know how to prepare kids. We
25 do a lot of formative assessments in the State of

1 Kansas. We have built several tools that you can
2 do practice tests that are very close to what it's
3 going to be. So just the preparation that we
4 have, and people knowing the standards. Two, we
5 just, you know, we think there is -- there is this
6 momentum that's been built up. We are -- we are
7 continuing to work on the successes that we have
8 had, the standards that have been in place, the
9 assessments that have been in place. So we
10 really, as a state department, we don't look at
11 the money side of how the money has or hasn't
12 impacted State Assessments, we look at what's
13 happening within the actual classrooms with the
14 teachers and with the students and the community
15 getting students ready. We then always say, too,
16 you set a mark for us and Kansans want to meet
17 that mark. And whether the mark is at 87.5
18 percent or 91, we seem to -- seem to be able to do
19 it.

20 Q. Now, we talked about gaps and the various
21 ways this morning, but there has been discussion
22 of a gap between minority groups on their test
23 scores and -- and the rest of the students. Are
24 you familiar with that discussion about gaps?

25 A. Yes.

1 Q. What -- what has Kansas recent history
2 shown, well, over the last 10 years if we use what
3 you're talking about, about that gap?

4 A. What do we know about it?

5 Q. Well, I don't want to put words in your
6 mouth, but can you generally describe to the panel
7 how has that gap -- what's happened with that gap
8 over the last 10 years?

9 A. We have seen that gap narrow over the
10 past 10 years, anywhere from a gap that was 30 to
11 40 percent back 10 years ago to a gap that's
12 somewhere around 15 percent now. So in most of
13 the -- in all the subgroups we have seen the gap
14 narrow. But what we have also seen in the past
15 couple years is that narrowing isn't getting --
16 it's continuing to stay about the same level. You
17 know, we narrowed from 30 to maybe 15, but that 15
18 seems to be the persistent -- kind of like when
19 you're on a diet, the last 10 pounds are the
20 hardest to lose, and that's where we are at with
21 most subgroups.

22 Q. How is that being approached under the
23 Common Core or the requirements now with the
24 waiver? How are we addressing that gap?

25 A. I'm -- I'm not sure that I can answer in

1 relationship to the Common Core.

2 Q. Okay.

3 A. Other than we have raised the standards.

4 I mean, the Common Core was higher than previous
5 standards. But under the waiver, gap -- or
6 subgroups will continue to -- to be something that
7 we report out on, but subgroups won't be the
8 reason that a school is put on improvement.

9 Because as you look at the -- the growth measure,
10 that's -- that's for every individual school,
11 that's not based upon a subgroup, as you look at
12 reducing the gap, it's the gap of everybody who is
13 below what we think is the state level. So that
14 could be any student in that category. So -- so
15 we are happy about that; that no longer will a
16 subgroup be the reason for people to put blame
17 somewhere. But we also have to be very careful
18 that we don't forget subgroups. And that's really
19 what the U.S. Department of Ed, when they first
20 didn't like our Assessment Performance Index, they
21 thought that that is exactly what would happen,
22 which was never our intent.

23 Q. And we persuaded them that we were
24 addressing that how?

25 A. We persuaded them in a couple of ways.

1 One, is we ran comparison numbers and we said, you
2 know, based upon the API as compared to based upon
3 the AYP, here is how many more students were
4 actually going to be capturing those figures. And
5 we also persuaded them by putting in that fourth
6 -- fourth measure of addressing students who are
7 below proficient.

8 Q. And then in terms of -- that's how we
9 follow it, but in terms of how we address that
10 gap, is that part of the greater flexibility with
11 funding that is under the waiver?

12 A. Yeah, it could be for -- for those -- for
13 those schools who are priority and focused
14 schools, absolutely.

15 Q. And kind of to summarize things, as the
16 Commissioner of the State's Department of
17 Education, are you proud of what Kansas schools
18 are doing for students in the state?

19 A. Absolutely. Yeah, I mean, I have the
20 opportunity to be around a lot of other
21 commissioners and chief state school officers and
22 we have a lot to be proud of in Kansas, a lot to
23 brag about. We have a lot of people looking at us
24 saying how do you do that. So, yes.

25 MR. CHALMERS: Thank you. I don't have

1 any other questions at this time.

2 CROSS-EXAMINATION

3 BY MR. RUPE:

4 Q. I've got a few questions just to clarify.
5 In terms of the waiver, did it -- it didn't change
6 any test scores of any kids, did it?

7 A. No.

8 Q. In terms of -- I don't have this exhibit
9 with me, but there is an Exhibit 104 and I'm going
10 to just ask you some percentages. On Exhibit 104,
11 it shows all student performance and it says 14.6
12 percent of all students did not meet standard in
13 math. Would you agree that's 69,670 kids in
14 Kansas? So the question really is: Is 14.6
15 percent of all kids in Kansas, public school kids,
16 about 69,000?

17 A. I would -- I would have to trust your
18 numbers on that, but I assume that that's coming
19 from the bottom two categories --

20 Q. Right.

21 A. -- of -- of academic warning and approach
22 to standards.

23 Q. Right. White kids, 10.9 percent, 35,431,
24 does that sound approximately right in terms of
25 the percentage of white kids?

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1 A. Again, I -- it sounds right, but I don't
2 have that in front of me.

3 Q. Free and reduced lunch, 22.2 percent,
4 that looks like it's 50,374 kids. Does that
5 sound?

6 A. Sounds right, yes.

7 Q. Hispanic, 22.6 percent, 17,579 kids?

8 A. Sounds right.

9 Q. And ELL, 25.2 percent, 11,489 kids. And
10 African American, 32.6 percent, would be about
11 11,569 kids. Does that sound approximately
12 correct?

13 A. I'm going to trust that the numbers
14 you're reading are correct.

15 Q. All right. And is it a safe statement to
16 this panel that today there is a significant
17 number of kids in Kansas that are not meeting
18 standards?

19 A. I think it depends on how you define
20 significant. I think, you know, even one student
21 not meeting standards, that means that we are --
22 we're -- we need to do more in the State of
23 Kansas.

24 Q. And certainly when that one kid turns
25 into thousands, that would be significant?

1 A. There -- there are students who are below
2 proficient, that's for sure.

3 Q. I don't have this marked as an exhibit,
4 and we can mark it if -- if need be, but I want
5 to hand you a publication from the Kansas State
6 Department of Education, and I just want to ask
7 you if in the July meeting, 2012, the State Board
8 of Education voted to seek about 450 million in
9 budget increases for the 2014 fiscal year?

10 A. That's correct.

11 Q. And I assume they didn't ask that -- ask
12 for that legislature to increase funding by that
13 level because they thought education in Kansas
14 didn't need it. Is that a fair statement?

15 A. That's a fair statement. They had
16 considerable discussion about this topic.

17 Q. And then it looks like the Board -- let's
18 do mark this. Let's call it 421 and I'd move for
19 the admission of Exhibit 421?

20 (THEREUPON, Deposition Exhibit No 421 was
21 marked for identification.)

22 MR. CHALMERS: I'd like to see it.

23 MR. RUPE: Sure.

24 MR. CHALMERS: Do you mind if I voir dire
25 the witness about it before I make an objection or

1 not make an objection, counsel?

2 MR. RUPE: Well --

3 MR. CHALMERS: Here is my inquiry. I
4 don't know is this a -- and Doctor, is Plaintiff's
5 Exhibit 421, is this a reprint of a newspaper
6 article?

7 THE WITNESS: This -- this is what our
8 communication department puts out every month
9 following a Board meeting, highlights of the -- of
10 the Board meeting. And so it's produced by our
11 office and it's distributed to Board members so
12 that they can distribute it on to others. It's
13 standard. We do this every month.

14 MR. CHALMERS: I don't have an objection
15 to 421.

16 MR. RUPE: Okay, thank you.

17 BY MR. RUPE:

18 Q. And it looks like the Board's budget
19 request included funding for the base state aid
20 per pupil at the statutory level of \$4,492. Is
21 that correct?

22 A. That's correct.

23 Q. The Board requested 1.45 million for
24 mentoring and 8.5 million for professional
25 development, true?

1 A. That's correct.

2 Q. And also included a \$35,000 request for
3 Agriculture in the Classroom, 40,000 for Kansas
4 Association for Conservation and Environmental
5 Education and 100,000 for Communities in Schools.
6 Is that right?

7 A. That's correct.

8 Q. And it looks like the total increase
9 requested was 585 million. Is that accurate?

10 A. Where is that?

11 Q. In the second paragraph, it says --

12 A. Yes.

13 Q. -- approximately 585 million. Do you see
14 that?

15 A. Yes.

16 Q. Okay.

17 A. Can I talk a little bit about this just
18 further clarify -- not clarify but --

19 Q. Well, as long as you're not going to tell
20 me it's not necessary.

21 A. Oh, no, no, no, absolutely not.

22 Q. Okay.

23 A. But the State Board had considerable
24 discussion about this because they really wanted
25 to prioritize what -- you know, as the legislature

1 meets, obviously going with what the base state
2 aid should be according to law and then saying,
3 you know, let's then also let them know what are
4 our priorities and ensuring that teachers have
5 professional development, that that happen, and
6 ensuring that there be a mentor for each. So
7 that's why you see those pulled out. Typically if
8 we were to look at this report from last year when
9 the Board had this discussion, it's just all a
10 lump sum of money. You don't see those specifics,
11 but the Board really wanted to prioritize and make
12 clear to the legislature what's important in order
13 for our teachers and our students to be
14 successful.

15 MR. RUPE: I'd like to take just a few
16 minutes. I don't think I have many more
17 questions, if any, but I want to talk to a couple
18 of people and then I'll come back. So let's take
19 about five, 10 minutes.

20 THE VIDEOGRAPHER: It is 12:23 p.m. We
21 are off the record.

22 (THEREUPON, a recess was taken.)

23 THE VIDEOGRAPHER: It is 12:24 p.m. We
24 are on the record.

25 MR. RUPE: Thank you, Doctor. I don't

1 have any further questions.

2 THE WITNESS: Thank you.

3 MR. CHALMERS: Just a follow-up real
4 quickly.

5 REDIRECT-EXAMINATION

6 BY MR. CHALMERS:

7 Q. Exhibit 104 I've got on my computer
8 screen. That's the one that Mr. Rupe, I think,
9 referenced showing 14.6 of all students in the
10 state scored below proficiency, and that is
11 roughly around 70,000 kids. Is it your memory --
12 and that was for the year 2011. Is it your memory
13 that for all kids during that year, that the
14 percentage that were proficient was 85.4 percent,
15 which was about a little bit more than three
16 percent higher than what was the target for that
17 year?

18 A. Yes. According to what you have on your
19 screen, yes.

20 Q. I'm talking about Plaintiff's Exhibit
21 421. That recommendation that Mr. Rupe was
22 visiting about, that would be for the 2014 fiscal
23 year. Is that correct?

24 A. Correct.

25 Q. So that would be for the school year of

1 2013-2014. Is that right?

2 A. Correct.

3 Q. And the appropriation for that year,
4 that's not been made yet, has it?

5 A. No.

6 Q. And that's subject of discussion for next
7 legislature at the next legislative session?

8 A. Yes.

9 Q. Concerning the Board's, that is the
10 Kansas School Board's, State School Board's
11 recommendations on budgets, is it correct that
12 your department will prepare a detailed proposed
13 budget for your department's individual spending
14 each year and then provide that to your Board for
15 approval?

16 A. We prepare an individual budget for our
17 agency, yes, but that's all included with the
18 preparation of what we take for the -- to the
19 Department of Administration.

20 Q. And -- and that's submitted to the
21 Department of Administration and becomes part of
22 the budget dialogue for your agency. Is that
23 correct?

24 A. Correct.

25 Q. Does that proposed budget for your

1 agency, does that -- is that approved by the
2 Board? That is, your Board.

3 A. They don't approve it separately. It's
4 all as one large package that goes. So I guess
5 the answer is yes, but the State Board, obviously,
6 is much more concerned about the budget going to
7 the schools instead of our agency.

8 Q. Now, in terms of the information that
9 they gather for the budget that would relate to
10 the monies that would then be sent to the
11 individual school districts, what information does
12 the school district gather each year? The school
13 Board, rather, gather each year?

14 A. The State Board itself gathers nothing.
15 All those numbers and all the -- all the
16 recommendations are prepared by staff and then
17 brought to the State Board for discussion. And we
18 typically bring them several different scenarios,
19 several different funding levels, and the Board
20 has consistently over the past, since I have been
21 Commissioner, voted to -- to put forth a budget
22 that funds the law.

23 Q. And when you mean funding the law, you
24 mean funding at a base or be SSAP of 4,492. Is
25 that correct?

1 A. Correct.

2 Q. Now, in not this year's, apparently, or
3 perhaps this year's, but in the previous years'
4 school Board meeting where the budget was before
5 it, there was discussion among the school Board
6 members that the -- that the Board felt that it
7 needed to act as an advocate for the students. Do
8 you remember that discussion?

9 A. They have had that discussion every year,
10 yes.

11 Q. And is it your perception then -- and you
12 were present during this July meeting when the
13 Board met. Is that correct?

14 A. Yes.

15 Q. And is it your impression then that the
16 school Board members at our state level continue
17 to act, as they perceived it to be, to be an
18 advocate for the students when they made their
19 budget recommendation?

20 A. Yes. As a majority of the Board, yes.

21 MR. CHALMERS: Thank you. I don't have
22 anything else.

23 RE-CROSS-EXAMINATION

24 BY MR. RUPE:

25 Q. In fact, there were discussion among the

1 Board about living up to their constitutional
2 obligation under Article 6, Section 6 of the
3 Kansas Constitution, wasn't there?

4 A. There absolutely was.

5 Q. And in terms of the subgroups, you have
6 talked about the effect of the waiver on the
7 subgroups, but you're not here telling anybody
8 that we are writing off the subgroups, are we?

9 A. Absolutely not.

10 Q. And is that the children that are not
11 meeting standard that need the most attention
12 currently?

13 A. Subgroups, in terms of a definition, any
14 group that has 30 or more.

15 Q. But in terms of free and reduced,
16 Hispanic, ELL, African American, it's pretty well
17 accepted, isn't it, that those kids cost more to
18 educate?

19 A. Those are typically our subgroups in
20 Kansas.

21 MR. RUPE: That's all I have. Thank you.
22 Thank you, Doctor.

23 THE WITNESS: Thank you.

24 THE VIDEOGRAPHER: It is 12:30 p.m. We
25 are off the record. This concludes the

1 deposition.

2 MR. CHALMERS: It would be my thought that
3 this is not the sort of proceeding where there
4 would be the reading and signing for deposition.
5 Is that your agreement?

6 MR. RUPE: I agree. If we ask you to
7 waive your signature for the sake of expediency,
8 would you be agreeable to doing that?

9 THE WITNESS: Yes, I would.

10 MR. RUPE: All right. Thank you.

11 (THEREUPON, the deposition concluded at
12 12:30 p.m.)

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(WAIVED)

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DIANE DEBACKER, PH.D.

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1 CERTIFICATE

2 STATE OF KANSAS

3 SS:

4 COUNTY OF SHAWNEE

5 I, Lora J. Appino, a Certified Shorthand
6 Reporter, Commissioned as such by the
7 Supreme Court of the State of Kansas, and
8 authorized to take depositions and
9 administer oaths within said State pursuant
10 to K.S.A. 60-228, certify that the foregoing
11 was reported by stenographic means, which
12 matter was held on the date, and the time
13 and place set out on the title page hereof
14 and that the foregoing constitutes a true
15 and accurate transcript of the same.

16 I further certify that I am not related
17 to any of the parties, nor am I an employee
18 of or related to any of the attorneys
19 representing the parties, and I have no
20 financial interest in the outcome of this
21 matter.

22 Given under my hand and seal this
23 _____ day of _____, 2012.

24 _____
25 Lora J. Appino, C.S.R. No. 0602

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