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THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, ANDREW GANNON, and
GRACE GANNON, by their next friends
and guardians, Jeff and Meredith Gannon;
JADA BURGESS and JETT BURGESS, by
their next friend and guardian,
Jennifer Kennedy; COLTON OAKMAN, by next
friend and guardian, Schelena Oakman;
CAMERON PINT, by next friend and guardian,
Martha Pint; ALEXIS SEEBER and BRADY SEEBER
by their next friends and guardians,
David and Misty Seeber; LEVI CAIN, by next
friends and guardians, John and Becky Cain;
JEREMY COX, by next friends and guardians,
Darrin and Lois Cox; ALEC ELDREDGE, by next
friends and guardians, Danie and Josh Eldredge;
JOSEPH HOLMES, by next friends and guardians,
Jim and Joy Holmes; LILY NEWTON, by next friends
and guardians, Matt and Ivy Newton; ALEXANDER OWEN,
by next friend and guardian, Glenn Owen; MIKE RANK,
by next friend and guardian, Ryan Rank; QUANTEZ
WALKER, by next friend and guardian, Beulah Walker;
MARIXSA ALVAREZ, by next friend and guardian,
Bianca Alvarez; PRISCILLA DEL REAL and
VALERIA DEL REAL, by their next friend and guardian,
Norma Del Real; TONATIUH FIGUEROA, by next friend
and guardian, Adriana Figueroa; DULCE HERRERA,
GISELLA HERRERA, and KAROL HERRERA, by next friend
and guardian, Eva Herrera; MIQUEAL SHOTGUNN,
by next friend and guardian, Rebecca Fralick;
ALEXI TRETO, by next friend and guardian,
Consuelo Treto; TED BYNUM, by next friend and
guardian, Melissa Bynum; BRIEANNA CROSBY, by
next friends and guardians, Evette Hawthorne-Crosby
and Bryant Crosby; GEORGE MENDEZ, by next friends
and guardians, George and Monica Mendez;
AMALIA MURGUIA, by next friends and guardians
Sally and Ramon Murguia; NATALIE WALTON, by next
friend and guardian, Clara Osborne;
UNIFIED SCHOOL DISTRICT NO. 259; UNIFIED SCHOOL
DISTRICT NO. 308; UNIFIED SCHOOL DISTRICT 443;
and UNIFIED SCHOOL DISTRICT NO. 500

Plaintiffs,

vs.

Case Number 10-C-1569

THE STATE OF KANSAS,
Defendant.

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22
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24
25

INDEX

OPENING STATEMENTS BY MR. RUPE	8
OPENING STATEMENTS BY MR. CHALMERS	46

EXAMINATION INDEX

CYNTHIA LANE	
DIRECT BY MR. RUPE	86
VOIR DIRE BY MR. CHALMERS	191
DIRECT BY MR. RUPE	192

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

	EXHIBIT INDEX	
		ADMITTED
1		
2	Plaintiffs' Exhibit	
3	17 SFFF000535	93
4	41 PRIMER000090	112
5	43 PRIMER000123	112
6	44 PRIMER000122	114
7	45 PRIMER000123	114
8	47 PRIMER000110	159
9	48 PRIMER000122	114
10	49 PRIMER000092	114
11	50 PRIMER000090	112
12	52 KEC000001 through 000047	164
13	54 KSDE002853 through 002929	115
14	56 KSBE000801	133
15	59 KSBE001206 through 001298	133
16	60 KSBE000807 through 000872	133
17	68 LEG003951 and 003952	137
18	69 JUD009915 through 009920	138
19	70 KSDE137545 through 137551	139
20	72 LEG003950	141
21	73 KSDE138614 and 138615	147
22	74 KSDE138524 through 138546	147
23	76 KSDE002493 through 002498	150
24	80 KSDE145211	144
25	81 KSDE145212	145

	EXHIBIT INDEX (CONT.)		
1			
2	82	KSDE145210	153
3	83	KSDE142795 through 142802	153
4	84	KSDE142803 through 142811	153
5	85	KSDE145505 and 145506	184
6	86	NEAP000017 through 000060	195
7	87	SFFF000534	185
8	91	ACHIEVEMENT000027	95
9	92	ACHIEVEMENT000025	96
10	93	ACHIEVEMENT000026	96
11	101	ACHIEVEMENT000553 through 000671	94
12	103	ACHIEVEMENT000001 through 000012	176
13	104	ACHIEVEMENT000013 through 000024	178
14	105	KSDE146201	179
15	111	USD500 002289	201
16	112	USD500 002290	201
17	113	USD500 00229x	205
18	114	KSDE145543 through 145554; and ACHIEVEMENT000065 through 000076	195
19			
20	122	NAEP000088 and KSDE002578	189
21	389	KSDE145564	93

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: You can be seated.

3 Thank you. Morning.

4 MR. RUPE: Morning.

5 THE COURT: Let me call the case.

6 It is Luke Gannon, et al, v. The State of Kansas.

7 It's 10-C-1569. Get your appearances here.

8 MR. RUPE: Alan Rupe, Jessica
9 Garner, and John Robb for the Plaintiffs.10 MR. CHALMERS: Arthur Chalmers,
11 Gaye Tibbets, and Jerry Hawkins for the defendant,
12 Your Honor.13 THE COURT: This is a special panel
14 of the Court appointed by the Chief Judge of the
15 Court of appeals it was Gary Rulon, at the time, to
16 handle any finance cases filed, and one was filed;
17 here we are.18 This is Robert Fleming and the
19 Labette County District Court. This is Robert
20 Fleming of the Labette County District Court. This
21 is Jack Burr, I believe, of Hodgeman.22 JUDGE BURR: Sherman. Almost
23 Colorado.24 THE COURT: And I'm Franklin Theis,
25 District Judge of Shawnee County. I don't think we

1 have any special things. There's a motion pending;
2 we'd like to take that up, if Counsel don't mind,
3 either at the conclusion of some other proceedings or
4 towards the end of the day, but we'd like to get
5 right with it today.

6 MR. RUPE: That's fine,
7 Your Honor. I do have a housekeeping request. I
8 think we've worked together and got everything in
9 here, but we have a several administrators that
10 aren't able to bring their cell phones in, and if
11 they have them on mute and have them not ring, they
12 do get email from time to time. And to the extent we
13 can allow -- accommodate them on that, they're very
14 interested in this case but they also have a school
15 district to run, and if that's possible, I'd ask that
16 that be allowed.

17 JUDGE THEIS: We don't have any
18 problem with cell phones as long as they don't ring,
19 or if members of the press are here, I recognize if
20 they want to, you know, text out, that's fine. But
21 we'd appreciate no talking, no ringing.

22 MR. RUPE: Okay. Thank you,
23 Your Honor.

24 JUDGE BURR: I just hope mine
25 doesn't ring.

1 JUDGE THEIS: Set a bad example.
2 We'll proceed. We'll discuss it
3 later about the procedures, but I would assume we'd
4 start with opening statements today. I suggest
5 maybe -- I don't know how long you're going to take,
6 Mr. Rupe.

7 MR. RUPE: Well, I had planned on
8 about an hour, and I have a timer here to keep me
9 under control.

10 JUDGE THEIS: We don't have the
11 10th Circuit red, yellow, and green lights, so yeah,
12 that's fine. I thought we'd do that, maybe take a
13 very short break, and then allow the defense to
14 present theirs, and we'll go to lunch after all
15 that's over.

16 MR. RUPE: Great. If I could get
17 an easel set up, Ms. Garner is going to set up an
18 easel and I've got some blow-ups that I want to point
19 the Court to as I go through the outline of the case.
20 I think if was to move the cart back like six
21 inches -- thank you.

22 MS. GARNER: How is that? Can
23 everyone see?

24 JUDGE BURR: You're fine.

25 MR. RUPE: The map shows the

1 Plaintiffs in this lawsuit and where they are from.
2 We've got Kansas City, Kansas School District, USD
3 259 Wichita, then we've got Hutchinson and Dodge
4 City. All of the plaintiffs are parents and kids and
5 school districts that fall in those areas.

6 What we're going to be discussing
7 for the next few days with you is a situation in
8 which there are two gaps in the State of Kansas. One
9 is the achievement gap and the other is the resource
10 gap.

11 A significant percentage of Kansas
12 kids, for example, 30 to 40 percent of the African
13 Americans, are not proficient in reading and math.
14 The resource gap is one in which the Kansas schools
15 are facing increasing demands in the 21st century.

16 The State is charged with the
17 responsibility of continuous improvement of schools
18 in the state, and the difference between those ever-
19 increasing demands and the resources that are
20 dwindling has created the second gap that we're
21 concerned with.

22 And an examination of those two
23 gaps during the next few days is going to point to
24 two clear and unequivocal conclusions. Number one,
25 we are leaving behind a large percentage of Kansas

1 kids because they are, the State of Kansas, is not
2 providing them an adequate education. And number
3 two, the State of Kansas is not living up to its
4 constitutional obligation to provide suitable funding
5 for an adequate education for a large percentage of
6 Kansas school kids. That's going to be perfectly
7 clear by the end of this presentation.

8 Ten years ago, in a courtroom
9 upstairs -- nearly ten years ago, in a courtroom
10 upstairs, we talked about the achievement gap in a
11 case called Montoy v. the State of Kansas. And what
12 is in front of you is a blow-up from that trial. And
13 at that time in 2003, this slide, from a presentation
14 by the deputy commissioner at that time, indicated
15 that at that time about half of our students, perhaps
16 two-thirds, flourished; the other one-third to
17 one-half of our students flounder. That was the
18 situation ten years ago.

19 Now, look where we are today. And
20 if you look at Plaintiffs' Exhibit 106, you'll see,
21 starting on the left-hand side, the pile diagram,
22 17.4 percent of the all student population is below
23 standard. Below standard roughly equates to not
24 proficient, roughly equates to getting a D or an F.
25 That's my characterization. I don't think any

1 educator would say that, but it is below proficient.

2 White kids are 13 percent below
3 proficient. But then look at the kids that we are
4 addressing as the kids that are not getting adequate
5 education in Kansas. Start with free and reduced
6 lunch, close to 29 percent. Hispanic, close to 29
7 percent. English language learners, close to 39
8 percent. African Americans, north of 40 percent of
9 African American kids are below standard in the State
10 of Kansas as the result, we'll show you, of
11 inadequate funding.

12 So the achievement gap was what we
13 just showed you, and what we're going to be talking
14 about now is the resource gap. And what the evidence
15 will be is that there have been increasing demands --
16 and I'm showing Exhibit 105, the Plaintiffs'. There
17 have been increasing demands, as requirements of
18 federal law and state law demand, that student
19 performance increase, and at the same time there has
20 been dwindling resources.

21 The red line on the bottom is the
22 base state aid, and you can see the amount of the
23 cuts that have occurred since that Montoy case which
24 was tried ten years ago, and the case was ultimately
25 dismissed by the Kansas Supreme Court in 2006.

1 Here is another demand that is
2 occurring among the plaintiff school districts and
3 districts just like them in the State of Kansas. The
4 demographics of Kansas public schools ain't what it
5 used to be, and the student population, as a result
6 of a recession and as a result of migration, has
7 resulted in a substantial increase in the number of
8 kids that qualify for free and reduced lunch. Those
9 would be disadvantaged kids, kids of poverty. That's
10 the picture of Kansas school districts today.

11 JUDGE THEIS: Does that have an
12 exhibit number?

13 MR. RUPE: Yes, that's Exhibit
14 Number 105.

15 MS. GARNER: It's 107.

16 MR. RUPE: 107. Okay. Go to the
17 next one.

18 That's Plaintiffs' 37, that I've
19 put up there now. The Montoy decision laid out what
20 is before you now, and that is a statement -- and by
21 the way, all this is in Exhibit 1. This is the
22 primer that we have submitted to the Court, and this
23 is from 208 and 234 in the primer.

24 But the Montoy court set forth some
25 requirements for what is needed in order for the

1 State of Kansas to be in compliance with Article 6
2 Section 6 of the Kansas Constitution. And those
3 things are: Number one, suitable funding; number
4 two, equitable funding; number three, an adequate
5 education for all Kansas kids, or suitable education
6 for all Kansas kids, and a direction to the
7 legislature to focus on the actual costs of producing
8 the outcomes that the federal, state, requires.
9 Those outcomes would be those increasing demands on
10 student performance, over time.

11 So the Montoy court said, look at
12 the actual costs of producing those outcomes as they
13 increase overtime. Now, the question is -- hang onto
14 that for just a second. Let me address what we're
15 going to see in terms of evidence of what constitutes
16 a suitable education.

17 Going back some time, the Court,
18 Kansas Supreme Court, and the Kansas Legislature have
19 repeatedly indicated that the Rose Factors based on a
20 case from Kentucky some years ago in 1991 -- the Rose
21 Factors are part of the definition of what
22 constitutes a suitable education. And we'll see that
23 Kansas courts and the Kansas Legislature have both
24 adopted those Rose Factors as what, in part,
25 constitutes a suitable education.

1 And again, in Montoy, they focused
2 on the actual cost, and indicated that in order to
3 produce that suitable education, in order to produce
4 the outcome that is requested, required, it is
5 necessary to fund education based on the actual cost
6 of producing that end result.

7 Well, after the Montoy case, as a
8 result of legislative changes in the wake of Montoy,
9 funding increased and the school districts in Kansas,
10 with that funding from Montoy, were able to do
11 marvelous things for Kansas kids. You've already
12 seen that the achievement gap for African
13 Americans -- and evidence will be, the achievement
14 gap for African Americans dropped from a gap of 80
15 percent to now nearly 40 percent.

16 That's what those school districts
17 were able to do with the disadvantaged kids with the
18 Montoy money. And you'll hear plenty of evidence
19 about what these school districts that are plaintiffs
20 here were able to do in the wake of Montoy, before
21 the cuts occurred.

22 And the evidence will be that
23 educators in Kansas either know or can learn the
24 strategies that work to improve student performance
25 among those disadvantaged kids, but they just don't

1 have the resources today to do it. And when Montoy
2 was dismissed, the Court looked at the legislative
3 action that had occurred.

4 The Kansas Legislature, in 2006,
5 had adopted a three-year plan, that called for
6 education spending to increase north of \$700 million.
7 They had, as an interim measure, injected substantial
8 money into the system at the direction of the Kansas
9 Supreme Court.

10 The Legislature, at that time, had
11 established a 2010 Commission to look at the very
12 issue of school finance and educating kids in Kansas,
13 and to focus on what was needed in order to keep the
14 system working so it improved student performance as
15 those kids went through school.

16 There was a Legislative Post Audit
17 study that you will hear about in which the
18 Legislative Post Audit team focused on what the cost
19 of those outcomes was, and they made recommendations
20 to the Legislature concerning the actual cost.

21 And in addition to the increases
22 during the pendency of the program -- or of the
23 Montoy case, there was a three-year plan put in place
24 for 2006 to '07, '07 to '08, '08 to '09, that would
25 have, had it been completed, increased public

1 education funding \$700 million -- a little north of
2 that -- a year.

3 But two years into that plan, the
4 Kansas Legislature pulled the plug on the recovering
5 patient, the disadvantaged kids in Kansas. And the
6 evidence will show the patient has flatlined and
7 begun to decline because they aren't able to achieve
8 the kinds of performance they need to achieve in
9 order to keep up because of funding.

10 There have been massive cuts of
11 \$511 million that translated to huge losses somewhere
12 in the neighborhood of 121, to \$141 million in
13 losses. You'll see that the State walked away from
14 their responsibility and shifted the responsibility
15 to the local school boards so that the property taxes
16 and the property situation with ad valorem tax has
17 caused a disequalizing situation. But the greatest
18 loss has been to the plaintiff school districts and
19 to the kids and the school kids in Kansas who can't
20 and don't receive that adequate education.

21 The Gannon case begins where Montoy
22 ended, two years into the three-year plan. Let me
23 give you a little background about school finance and
24 just get -- most of this is in our primer, but I've
25 been doing this a while, and I just want to give you

1 a little background to kind of bring us up to the
2 filing of this case.

3 In 1965, the Kansas voters created
4 a constitutional amendment, Article 6. Kansas is one
5 of virtually all the states that has an education
6 article in its constitution. The first look at
7 school finance was in 1972 in Caldwell v. The State
8 of Kansas. And that was the first decision -- it was
9 by the Johnson County District Court, and that
10 decision took to task the notion of inequity; my
11 characterization not theirs.

12 But the Court basically said that
13 funding schools through local taxes through property
14 taxes created inequities. We all know what a mill
15 would raise in, say, Burlington, that has huge
16 property wealth because of a power plant, and what it
17 raises in someplace like Galena that does not have
18 property wealth.

19 The difference in what a mill
20 raises is so great that the Court said, if you run
21 your school system, which is a statewide system, on
22 property tax, that creates inequity. A child's
23 educational opportunity -- my words -- should not
24 depend on your ZIP code. It should be the same,
25 since the duty to educate Kansas kids is a duty owed

1 to all kids, regardless of the property wealth of
2 their school districts.

3 1973, in response to that, the
4 Kansas Legislature amended or created a statute,
5 School District Equalization Act. That basically
6 said, if there's high assessed valuation, then you
7 get low state aid, and if there's low assessed
8 valuation, you get high state aid, and they equalized
9 the inequity.

10 They instituted some budget
11 controls about how you could budget for the year
12 based on previous years. 1979, the Legislature
13 removed the budget controls and it was every school
14 district for themselves. They could raise their
15 property tax and spend on education as much as they
16 possibly could.

17 You will see from these school
18 districts that are poorer school districts compared
19 to others in the state, that there's a real problem
20 with what we call gravity. And that is, in a school
21 district that doesn't have much wealth, it is tough
22 to raise taxes in order to fund public schools.

23 In a situation, like some places in
24 Johnson County, where the median income is north of
25 \$85,000 a year, and where there is substantial income

1 and property wealth, they don't have any problem in
2 going to the voters to increase spending for schools.
3 But in somewhere like Dodge City, or Kansas City,
4 Kansas, where the average income is less than \$37,000
5 a year, and property wealth is diminished, asking the
6 voters to pay their share in those communities is
7 antigravity. It simply is very hard to do in those
8 communities.

9 And in 37-some years in Kansas
10 City, Kansas, you're going to here testimony about
11 how often they've been able to convince the voters to
12 raise taxes in order to fund schools, and it's not
13 very often.

14 In 1975, 41 districts challenged
15 the SDEA, and that came out of Chautauqua County.
16 The Legislature responded with a change in the law,
17 and the matter was transferred on remand by the
18 Kansas Supreme Court to Judge Vickers in this
19 building and he declared SDEA, at that time, to be
20 constitutional.

21 In 1990, a number of school
22 districts, including Wichita, Newton, Baxter Springs,
23 the Turner district filed a case that was captioned
24 Mock v. The State of Kansas. And that's in your
25 primer. That ended up in front of Judge Bullock.

1 And Judge Bullock in that case --
2 and just by the way, that's when John Robb and Alan
3 Rupe came on the scene in school finance. In that
4 case, Judge Bullock issued a preliminary pretrial
5 ruling in advance of trial indicating several
6 principles in question and answer form -- and this is
7 set out in your primer -- in question and answer form
8 in which he telegraphed that the existing law, SDEA,
9 would probably be unconstitutional. And the
10 Legislature, as a result of basically a settlement
11 conference, the Legislature changed the law and
12 adopted the School District Finance Quality
13 Performance Act, SDFQPA, in 1992.

14 The school districts, Wichita,
15 Newton, Baxter Springs, and Turner, were asked to
16 dismiss the case in light of the new law. All did
17 except the group we represented, Newton, the Newton
18 group. And they pushed on because they thought the
19 law that was adopted was based on factors that caused
20 some schools to get substantial money while other
21 schools were left disadvantaged.

22 And so, the Newton group pushed
23 on. Burlington, several schools from Southwest
24 Kansas and Blue Valley School District in Kansas City
25 all intervened in that case.

1 And in 1993, upstairs, Judge
2 Luckert, after a lengthy trial, ruled that the
3 funding of public education in Kansas -- it was
4 unconstitutional. This was, by the way, in the 229
5 case, which is the Newton group. The claim was
6 purely an Equal Protection claim under the Kansas
7 Constitution and not a claim under Article 6.

8 And what the Kansas Court said
9 on -- what the Kansas Supreme Court said on appeal
10 from Judge Luckert's ruling was that she had erred
11 because she said it had to be based on a rational
12 basis, that any decision had to be the result of a
13 rational basis in terms of the cost of public
14 education under the Equal Protection Clause, and she
15 had ruled it was unconstitutional because it wasn't
16 grounded in any rational educational reason.

17 It was the result of a political
18 auction by the Legislature on how much was going to
19 be spent on education. And the testimony in that
20 case from the legislators was that they didn't look
21 at cost. They simply auctioned off among school
22 districts -- or among legislative school districts
23 who gets what. And they ruled it unconstitutional.

24 On appeal, the 229 decision, which
25 is set out in your material, indicates that funding

1 is a matter that is left to the Legislature to some
2 extent, that it is fluid. But the Court found that
3 there was, for common sense reasons, a basis to
4 explain the difference between funding between the
5 school districts. Again, keep in mind that was an
6 Equal Protection argument at that time.

7 And I think the language in 229 is
8 instructive in looking at the difference in funding
9 to different school districts. The Court has a quote
10 that we have provided you: When it seems that a line
11 or point that must be made, there's no mathematical
12 or logical way to fix it precisely, the decision of
13 the Legislature must be accepted unless we can say
14 that it is, quote, very wide of any reasonable mark.

15 They went on to say, the funding of
16 public education is complex, constantly evolving.
17 The Legislature would be derelict in its
18 constitutional duty if it just gave each school
19 district a blank check each year. Reliance solely on
20 local property taxes would be disastrous for the
21 smaller or poorer districts which had depended on
22 state aid. Rules have to be made and lines drawn in
23 providing suitable education or suitable financing.
24 The drawing of these lines lies at the very heart of
25 the legislative process and compromise lies inherent

1 in that process. Case dismissed.

2 In 1999, Dodge City and Salina
3 School Districts, with parents and kids from those
4 districts filed a lawsuit before the Shawnee County
5 District Court, and it was assigned to Judge
6 Bullock. And in that case there were two challenges
7 to the SDFQPA, one was the repeat of the Equal
8 Protection grounds and due process grounds that had
9 previously been before the Court in the 229
10 decision. And we added, when we filed the Montoy
11 case, a claim under Article 6 Section 6 of the Kansas
12 Constitution, arguing that the funding was simply not
13 adequate to provide a suitable education as required
14 by that article.

15 So, for the first time, the Court
16 was confronted with not only the Equal Protection
17 claims, but the adequacy claims under Article 6. A
18 personal comment, I still remember, in 2001, walking
19 by what some people will remember are fax machines,
20 and watching a fax come across the machine that was
21 from the Shawnee County District Court. And Judge
22 Bullock, sua sponte, dismissed the Montoy case citing
23 the 229 decision and indicating that it was purely a
24 legislative function and not for the courts.

25 In Montoy I, we appealed Judge

1 Bullock's ruling and asked the Court for a trial, and
2 we were granted a trial. The Supreme Court reversed
3 Judge Bullock, indicating that suitability is not
4 stagnant. And we had the trial upstairs. Judge
5 Bullock ruled, as a result of that, in 2003, that the
6 Kansas Legislature was in blatant violation of
7 Article 6 of the Kansas Constitution.

8 That matter then went up on appeal
9 to the Kansas Supreme Court four times. And by the
10 end of Montoy, there had been injected, as I
11 indicated earlier, 285 million in the '04/'05 school
12 year, a recommendation for a three-year plan that
13 called for north of \$700 million a year for three
14 years, the creation of a Legislative Post Audit, the
15 2010 Commission, and an effort by the Kansas
16 Legislature to look at the cost of those outcomes
17 that were demanded by the 21st century, and to
18 consider the outcome to provide a suitable education
19 to provide equity and to focus on the actual costs.

20 Let's talk a little bit about how
21 this formula works. And I'm going to leave it to
22 somebody that -- the clients that have a little more
23 knowledge of how the formula works on a day-to-day
24 basis, and I'm going to be very general in my
25 explanation.

1 But Kansas has what is called a
2 foundation system for school finance. And that is
3 that there starts with the base or a foundation, and
4 then there are add-ons for additional weighting
5 factors. And weighting factors are geared to the
6 needs of a school district depending on what those
7 needs are.

8 So the way it works is, you start
9 with a foundation. And let's say it's one student as
10 the foundation, and there's a set amount of money for
11 that one student. And then as you work through the
12 weights, you add additional -- it's like handicapping
13 the student, you add additional money to that base
14 because of the needs.

15 And here are the weights. At-risk
16 kids, those are kids at poverty, that is a weight,
17 at-risk 4-year-old; low enrollment weighting, in
18 other words, if you're a small school district and
19 can't enjoy the economies of scale of larger school
20 districts, you get additional funding because of low
21 enrollment.

22 On the other end of the spectrum
23 there are special needs of large school districts.
24 You take a school district like USD 259 that has more
25 than 45,000 kids in it, and those districts have the

1 same special needs as other districts that are that
2 size.

3 Bilingual weighting, those are the
4 English limited language situations. Vocational
5 training is a weighting. At-risk is a weighting.
6 High-density, non-proficient, new facilities
7 weighting -- if you have new facilities, operating
8 those create a special need. Transportation, virtual
9 student, ancillary, special education, declining
10 enrollment, KAMS, cost of living weighting.

11 And what do you do is you take
12 those weights and you add those up, and you get a
13 total weighted enrollment. So it might be 1.6, 1.7,
14 and you take that times the base state aid per pupil,
15 and that gives you -- you get the end result of what
16 you're entitled to get from the State.

17 You add in your local option budget
18 money, which is based on local contribution, and the
19 end result is you get a legal general fund
20 re-computed with the LOB money and your base state
21 aid per pupil with the weighted enrollment, and then
22 you get the final total in the end. That was
23 Exhibit 19.

24 On Exhibit 18, it's explained what
25 the weights are in a little more detail, and I won't

1 go back through those. And then, on our Exhibit 9,
2 we have some examples of how it works. This is 259,
3 Plaintiff, and in Exhibit 20, you see what their
4 total general fund plus LOB is as the result of the
5 arithmetic that I described earlier -- Kansas City,
6 USD 500, Dodge City, and Hutchinson -- that's how you
7 compute how much money the state -- based on state
8 law, that's how they compute how much money those
9 school districts are entitled to.

10 Let's take an example here. And
11 just so you have an understanding of how it works,
12 take a school district that has say 1,187 kids, you
13 assume computed weights for the most costly students,
14 add a 10,000 -- or 1,038 student weighting. That
15 would give a total enrollment of 2,225, times the
16 base state aid of 3,780.

17 And then you go to the local option
18 budget and you can re-calculate the general fund
19 using a base of 4,433. The law says you compute the
20 base based on what the statute is, but that is
21 different than the amount you actually receive. The
22 statute says you get 4,433, but you actually get
23 3,780.

24 And so you base your LOB on the
25 statutory amount rather than the actual amount, and

1 then you get a re-calculated general fund of
2 9,800-and-some dollars, apply the LOB percentage of
3 24 percent -- school districts can go up to 30
4 percent without voter approval, 31 percent with voter
5 approval -- and you get the number 2.3.

6 You combine the general fund and
7 the LOB, 8.4 million, plus 2.3, that's 10 million to
8 fund most district operations. This happens to be
9 Parsons. This is just an example of how the formula
10 works.

11 Every school district in the state
12 has to levy a 20 mill levy of property tax, and that
13 is funded in the general fund. There's an
14 explanation here of the local option budget, and the
15 local option budget is not 100 percent equalized.
16 The amount differs from year to year based on what
17 the Legislature does, but currently, it is equalized
18 at the 81.2 percent percentile.

19 And this means that, as explained
20 here, what is done with the school districts below,
21 the 81.2 percent percentile, they are given state
22 equalization aid, and that boosts their purchasing
23 power to give them additional state aid.

24 And there's no equalization aid for
25 the districts 18.8 percent and up. So the wealthiest

1 18.8 percent of the districts simply levy however
2 many mills locally it takes to fund their LOB, and
3 the poorest districts calculate their LOB, apply
4 their state equalization percentage to the total, and
5 they get the state LOB equalization aid for that
6 portion of the LOB that they can't raise locally.
7 And they simply levy however many mills locally it
8 takes to fund the balance.

9 The LOB, wealthiest district, 2.3
10 might be raised with a local 10 mill levy, if they're
11 a school district that has high property values. LOB
12 funding of the poorer school district, assuming 58
13 percent state equalization aid percentage -- just
14 assume that is their percentage -- 2.3 times 58
15 percent is 1.3. That's paid by LOB state
16 equalization aid, and the balance, 994,000-and-some,
17 might be raised with a local 21 mill levy, or
18 whatever the levy is needed to raise the difference.

19 LOB funding poor district, the LOB
20 state aid under appropriated and prorated, assume 58
21 percent state equalization aid percentage, 2.3 times
22 58 percent is 1.3, and it's supposed to be paid by
23 LOB state equalization.

24 For 2011 and 2012, there was an
25 under-appropriation, and thus, only paid at 85.7

1 percent of the entitlement. So only 85.7 percent of
2 the 1.3 that the State indicated it would pay by way
3 of equalization aid was actually paid. And the local
4 balance of 994,000 is increased by 196 to 1.19 and
5 might be raised with a higher mill levy. And this
6 under-appropriating of LOB state aid, thus, would
7 cause a 3.6 local mill levy increase to keep the same
8 dollars.

9 So this is an example of how the
10 formula works and how the under-appropriation shifts
11 the responsibility to the local property tax voters,
12 or simply shifts a loss to the school district.

13 JUDGE THEIS: Did we catch a number
14 on that?

15 MR. RUPE: Yes, this is
16 Exhibit 21. Thank you, Your Honor.

17 The large ones are all in the very
18 front of your notebooks that we provided you, the
19 blow-up of exhibits.

20 Okay. Let's focus on what I talked
21 about before. That's exhibit what?

22 MS. GARNER: 38.

23 MR. RUPE: 38. From 229 is the
24 Rose Factors. This is what we consider to be
25 suitable education. 229 looked to these factors,

1 which you'll hear throughout the course of the trial,
2 but it has to do with oral and written communication,
3 sufficient knowledge of economic, social, and
4 political systems, sufficient self-knowledge,
5 sufficient grounding in the arts, sufficient training
6 or preparation for advanced training in either
7 academic or vocational fields, sufficient level of
8 academic or vocational skills to enable public school
9 students to compete favorably in a global society
10 through quality performance accreditation.

11 The act provides a legislative and
12 regulatory mechanism for judging whether the
13 education is suitable. Kansas law adopted 72-6439(a)
14 and repeated those Rose Factors. Sometime later,
15 they repealed that statute.

16 But then, in KSA 72-1127, which is
17 current law, those exact same Rose Factors appear as
18 what the Legislature sets forth is a suitable
19 education and what they instruct the State of Kansas
20 to provide through instruction adopted by the State
21 Board of Education.

22 JUDGE THEIS: Are those generic or
23 do they have numbers?

24 MR. RUPE: The 72-1127 is
25 Exhibit 39. And the 229 factors are Exhibit 38.

1 And the chain of custody on the
2 Rose Factors starts with Judge Bullock, who, in the
3 Mock decision, used those Rose factors to define what
4 a suitable education was.

5 The Rose decision had been decided
6 by the Kentucky Supreme Court the year before. And
7 then the Legislature has picked it up, and it has
8 been in existence ever since, along with -- you'll
9 hear evidence that school districts have also adopted
10 that as the element of a suitable education.

11 We have in Kansas a unique
12 situation which we basically have four branches of
13 government. We have the State Board of Education,
14 which has what the courts have described as self-
15 executing powers. And they have set forth the
16 elements of suitability and what they say needs to be
17 achieved.

18 And one of those is what you have
19 in front of you in Exhibit 251, and that is, ensure
20 that all students meet or exceed high academic
21 standards and are prepared for their next steps in
22 the world of work, post-secondary education.

23 Also as part of suitable, we have a
24 number of federal and state requirements. We'll hear
25 about the No Child Left Behind and the AYP

1 requirements, and here are, in Exhibit 74, the AYP
2 requirements for each year going to 2014 for
3 K through 12 reading. Exhibit 74 is for math. I
4 just said reading. Now let's go to math.

5 MS. GARNER: That's also
6 Exhibit 74.

7 MR. RUPE: Oh, okay.
8 74 is math. Seventy ...

9 MS. GARNER: They're both in the
10 same exhibit, 74.

11 MR. RUPE: They're both from the
12 same exhibit. How many lawyers does it take to
13 count? We've got two 74s, but they're from the same
14 exhibit. One is reading and the other the math.
15 These are the AYP targets under No Child Left Behind
16 from 2004 to 2014.

17 In addition, you'll hear, as part
18 of providing a suitable education, we have
19 accreditation, QPA, Quality Performance
20 Accreditation. We have school year requirements by
21 statute. We have the Kansas State Board of Education
22 and the Kansas State Department of Education
23 licensure requirements. There are state standards
24 that we'll hear about.

25 Kansas is in the process -- they've

1 adopted, they're implementing what are called Common
2 Core Standards that establish standards for the
3 future for what kids have to learn. And embedded in
4 the notion of those standards is not just
5 achievement, but the ability to not only achieve, but
6 also do; to put to use the mathematics, to put to use
7 the reading, so that you just don't learn and get
8 tested on it. There's a whole new set of standards
9 on how you implement those provisions. And that's
10 called the Common Core Standards. You'll hear more
11 about that.

12 Graduation, college readiness,
13 college requirements, qualified admissions, federal
14 laws on special education, federal laws on civil
15 rights, the state board mission that we mentioned, No
16 Child Left Behind, there are a number of challenges
17 that are in the category of requirements that all
18 schools in Kansas are required to do, and that
19 constitutes the suitability.

20 There's also a number of demands.
21 We looked at an exhibit earlier that showed the
22 explosion of disadvantaged kids and kids of second
23 language -- English as a second language.

24 So with the situation in Montoy and
25 the additional money, and with the increasing demands

1 on school districts, including these Plaintiffs and
2 the Plaintiffs' kids, on what they have to
3 accomplish, this Exhibit 241 is what the Kansas
4 Legislature has done beginning in 2008, and '09.

5 The statutory base was supposed to
6 be \$4,492 based on that three-year plan adopted in
7 the wake of Montoy. The reality is -- and you can
8 look at the rescission bills and the appropriation
9 bills and the cuts -- the result is that the base has
10 been substantially reduced, and it is, today, 3,780.
11 That's the 2011/2012 number.

12 In addition, there have been
13 special ed cuts. There have been -- and this is
14 fully briefed in our trial papers, so I won't get
15 into it here -- but for the purposes of this
16 discussion, capital outlay equalization, which is the
17 subject of the class action, was eliminated. And it
18 is evidence that we would point to in terms of
19 inadequate funding, as well as the claim we make on
20 the class action claim, nearly \$22 million plus LOB
21 equalization aid that was reduced, as I explained
22 earlier. So the total cut is about 511 million.

23 This is an example of -- let's put
24 up the next one, which is Exhibit 233 -- is a diagram
25 of the funding and you can see where the Montoy money

1 came and then the cuts that started to occur in 2009,
2 and we're at 3,838.

3 Let me show you what the situation
4 is in terms of the costs of education, because I told
5 you, in Montoy, the Court was impressed with the
6 Legislature looking at the actual cost. You will
7 hear about two studies that have been done, talking
8 about what the actual cost of education is.

9 One was Augenblick & Myers. And
10 Augenblick & Myers' projection -- and John Myers will
11 update that report for you in testimony in this
12 trial -- but the base should be from 4,650, today, to
13 about \$5,900 as the rate, 5,965, is what he will tell
14 you is what that base should be today. Legislative
15 Post Audit is the red line and it shows --
16 Legislative Post Audit's number would be the base
17 today, should be at 6,142.

18 Dale Dennis will testify in this
19 case. He's with the State Department of Education.
20 And he ran numbers on what the base should be, and
21 his number is 5,723. These are all looking at the
22 actual costs of providing education in the State of
23 Kansas to reach those outcomes that are part of
24 suitable. The resources that the Legislature has
25 allotted, looking at the base are here, 3,838. In

1 terms of Montoy, the money was an increase, and now
2 it is not.

3 Let's go to the next one.

4 So what you're going to see is that
5 the costs, the actual costs have gone up, while the
6 resources have gone down. And there'll be -- I just
7 showed you, sorry, Exhibit 237, and before that,
8 Exhibit 236.

9 On 253, Dale Dennis set forth the
10 funding cuts and what those cuts have caused to
11 school districts. And we'll hear a lot of testimony
12 about what each school district has had to do as a
13 result of those cuts. And he listed from a survey he
14 did, and he'll testify to this, what those cuts have
15 been; and it is frozen salaries -- teachers in the
16 Plaintiffs' school districts have not received
17 increases in years -- reduced or eliminated
18 professional development, reduced or eliminated
19 school resource officers, increased the size of the
20 classroom, reduced early childhood programs, all the
21 strategies that work in educating those disadvantaged
22 kids like extended learning programs,
23 pre-kindergarten programs, summer school programs,
24 tutoring programs, those kinds of things, as
25 strategies that reach those kids that are in the

1 non-proficient, those programs have had to be
2 eliminated or reduced. And you'll hear plenty of
3 testimony about those cuts and what those cuts have
4 been.

5 JUDGE THEIS: What were those
6 numbers again, Mr. Rupe?

7 MR. RUPE: I'm sorry, Exhibit 53.

8 MS. GARNER: 253.

9 MR. RUPE: 253. It's two pages of
10 Exhibit 253.

11 And from a number of sources you
12 will hear that money matters in education, and you
13 will be able to see it for yourself. And that is
14 that when funds are expended on strategies that work
15 to reach those non-proficient kids, they respond with
16 outstanding results.

17 And from a slide from the
18 commissioner of education, Plaintiffs' Exhibit 294,
19 you'll see that Legislative Post Audit said there was
20 a causal connection between money spent and better
21 student performance. Dale Dennis has made the same
22 observation in Plaintiffs' 296, that there's a strong
23 association between money spent on student
24 performance -- on education and student performance.

25 So in terms of the reason we're

1 here for additional funding, those results, as you
2 can see from the Montoy situation, and the testimony
3 and the evidence that'll be laid out before you, that
4 additional money can cause significant results in
5 student performance. And the corollary of that is
6 true, as well. And that is, when the money is
7 removed from the schools, that the performance
8 flatlines.

9 Now, it doesn't just drop. It
10 diminishes overtime. And what the evidence will show
11 is that there is a lag effect on money spent and
12 student performance. And what I mean by that is --
13 an example will be clear as we go through this
14 trial -- you take additional funds, you direct those,
15 say, to professional development.

16 You say, all right, teachers,
17 you're going back to school because you're going to
18 learn how to teach kids that are non-proficient, and
19 you're going to learn how to teach them so they can
20 improve their performance. And they learn great
21 strategies to do that.

22 These kids are not unteachable and
23 you direct those strategies at those non-proficient
24 kids and their performance goes up. And so the
25 teacher has the skills through professional

1 development to get to that end. And then you take
2 the money away.

3 Well, the teacher doesn't lose that
4 skill that he or she has developed. They continue to
5 have that skill for a period of time, and that's
6 called the lag effect. And what that means is that
7 until they move to some other job, because they
8 haven't had an increase in four or five years, or
9 some other school district recruits them away that
10 has more money, that teacher is going to be in front
11 of the classroom, still using those skills to ensure
12 student performance. So what you'll see over time is
13 that the performance has increased.

14 You'll hear a lot about the Kansas
15 assessment scores. And what we've done in Kansas is
16 establish cut scores. And we'll talk about those.
17 But the cut scores are what is needed to meet
18 standard. They're not very high in Kansas. And that
19 is, that to meet standard you have to get 68 percent,
20 at least, in a range, 68 to 80 on reading, and
21 general mathematics is 50 percent.

22 Now, under AYP, you'll hear it
23 explained, 100 percent of the student population by
24 2014 needs to achieve this basic meet standard. So
25 that means they have to get 68 to 80 percent in high

1 school, and 50 to 67 percent on mathematics. So in
2 terms of -- put the next one up, please.

3 JUDGE THEIS: Number? I keep
4 bugging you.

5 MR. RUPE: I know, I'm sorry. 76
6 was the exhibit.

7 JUDGE THEIS: Thank you.

8 MR. RUPE: So the achievement gap
9 is still significant and it remains that way today.
10 If you compare Kansas with the national test, which
11 we'll do, you'll see that there is a comparison. And
12 approaches standard and academic warning under Kansas
13 performance categories equates to below basic.

14 And the numbers nationally,
15 frankly, when the national tests are done, are not
16 very impressive at all for Kansas. Below basic: All
17 Kansas students, 21 percent; white, 16 percent;
18 African American, 42 percent on 8th grade reading; 34
19 percent, non-proficient Hispanic; free and reduced
20 lunch, 32 percent; 51 percent of English limited
21 language learners in exhibit -- what is it?

22 MS. GARNER: 122.

23 MR. RUPE: -- are non-proficient.

24 8th grade math: 20 percent, all
25 students; 14 percent white are non-proficient, but 41

1 percent -- 35 percent -- 41 percent African American;
2 35 percent, Hispanic; 32 percent, free and reduced
3 lunch; and 50 percent of the English language limited
4 learners are --

5 MS. GARNER: This was 87.

6 MR. RUPE: -- not proficient. The
7 next one is exhibit -- what is it?

8 MS. GARNER: 133.

9 MR. RUPE: 133. And that is from
10 the State Department of Education and shows what the
11 dropout rates are, four- and five-year cohort
12 rates -- we'll explain what that is -- but explain
13 the percentage of dropout, disaggregated by those
14 disadvantaged kid categories.

15 Kansas Legislature has been told by
16 the Revisor of Statutes Office, this is nothing new
17 to them. They've been told that they need to fund
18 based on actual costs.

19 MS. GARNER: 387.

20 MR. RUPE: In Exhibit 387, you'll
21 see evidence of what they were told as far as what
22 they needed to do in order to adequately fund
23 education and provide a suitable education. Evidence
24 will be clear as to what that is.

25 We continue to look at situations

1 where the demands have increased and resources have
2 dwindled in education, and we know that the State has
3 had the money. The evidence will show that the state
4 general fund ending balance was sufficient to the
5 blue is the -- this is Exhibit 298. The blue is the
6 actual state general fund ending balance, and the
7 green is the estimated ending balance as of April 13,
8 2012. So on that date, it was predicted that the
9 ending balance would be very positive, given the
10 economic conditions today.

11 And what has happened in the last
12 couple of weeks is that that state general fund
13 ending balance that looked positive is now going to
14 be a negative, and the ending balance with the money
15 available for schools has now been spent on a tax
16 cut. And as a result, the projections are not
17 optimistic for the future.

18 The end result of all of this is
19 probably best expressed by someone who will testify
20 on what the Kansas Legislature was told in the
21 commission they established, the 2010 Commission.
22 And in Exhibit 179, we'll see the 2010 Commission
23 report.

24 And what the Kansas Legislature was
25 told by the commission they created was, in summary:

1 The Commission believes we cannot sacrifice a
2 generation of Kansas students because the economy is
3 weak. It is time for the Legislature to take steps
4 to ensure that the revenue and funding policies of
5 the Legislature allow every Kansas student to achieve
6 his or her full potential.

7 MS. GARNER: 179.

8 JUDGE FLEMING: What was it?

9 MS. GARNER: 179.

10 MR. RUPE: The fact is, the kids
11 that are disadvantaged in Kansas don't have to be.
12 They can be educated with strategies that move them
13 from non-proficient to very proficient. And it has
14 been done when there are resources to do it.

15 And there have been massive cuts
16 that have translated to huge losses. And the losses
17 are expressed a couple of different ways, not only
18 monetarily, but the shift to the local taxpayers, to
19 burden the local taxpayers with an obligation that is
20 the State's. And that has resulted in inequity.

21 And as a result, the situation is
22 one in which school districts, in the areas of the
23 state that cannot afford to provide for their kids,
24 are not providing for those kids. They're doing the
25 best they can with what they've got, but it is to a

1 point that it is simply unconstitutional.

2 And the economy, whether we're
3 talking about the courts, or we're talking about the
4 Governor's Office, or we're talking about the
5 constitutional requirements for a legislature, and
6 certainly, the constitutional requirements to educate
7 Kansas kids, the economy cannot be an excuse for
8 living up to constitutional obligations.

9 And we have reached a point in
10 Kansas in school funding where it's time to say to
11 the Kansas Legislature, meet your constitutional
12 responsibilities and fund education in Kansas so we
13 don't lose another generation of kids.

14 I think we're done.

15 JUDGE THEIS: Mr. Chalmers, how
16 long do you think you'll be?

17 MR. CHALMERS: Oh, gosh,
18 Your Honor, I was thinking probably about an hour, as
19 well.

20 JUDGE THEIS: Why don't we take
21 about ten, 15 minutes here, come back, and that'll
22 break us about 12:30. Is that good?

23 MR. CHALMERS: We can do that.

24 JUDGE THEIS: Okay.

25 (A recess was taken.)

1 MR. CHALMERS: When you all are
2 ready. Thank you.

3 This is a unique case to me in that
4 I think everybody's on the same side. We all want to
5 see Kansas kids receive a good education. We all
6 want to have suitable provision for good education.
7 We may disagree as to whether that's been
8 accomplished or not; apparently we do, or we wouldn't
9 be here this morning. But everybody has the same
10 agenda.

11 And when the Legislature has done
12 what it has done and passed what it has passed,
13 considering all elements and all features of funding,
14 it's done a pretty good job, I think the evidence
15 will show, of making provision for finance of
16 education. It certainly has not acted in any
17 arbitrary fashion. It certainly has not put into
18 place rules or laws that are not reasonably related
19 to the purpose of trying to suitably finance the
20 education of K through 12 in this state.

21 Now, the language I used, that is
22 that there's a reasonable basis for what the
23 legislature did, and that its decisions were not
24 arbitrary, I think goes to what the Court is supposed
25 to do. I don't think the Court is supposed to get

1 into and weigh into whether the recent tax cuts were
2 proper or not. Supply-side economics decides that
3 validity or invalidity.

4 I don't think the Court is supposed
5 to get into questions of whether or not there should
6 be increases in taxes or decreases in taxes or cuts
7 in other programs, or whether we should finance
8 federal programs, unmandated programs, and then,
9 finally, whether we're doing as much, right now, as
10 we can afford. Those are things I think courts need
11 to avoid getting into, and I think the Court can and
12 should do that if it applies the proper standard.

13 When you look at how Kansas has
14 defined what is a suitable education, our Supreme
15 Court has said that we don't want to weigh into that
16 either, if we can avoid it. We'll look at what the
17 Legislature has done.

18 And so, in the 229 case, they
19 looked to the statute that talked about the
20 accreditations provisions then that looked a little
21 bit like the Rose Standards. In the Montoy case,
22 they looked to how the legislature had defined what
23 is a suitable education through its statutes, through
24 its regulations, and through a statute in particular
25 that came up and said, look, here's how we're going

1 to study and come up with the cost of education, and
2 in order to do that, here's how we define education.

3 When you look at where we are
4 today, on how we define suitable education, here's
5 how it spins out. First, after Montoy, there was put
6 in place a QPA program which is a program that goes
7 to the accreditation. It's quality plus performance
8 equals accreditation. That had not been in place
9 before Montoy.

10 Actually, in 2001 before Montoy was
11 decided -- it worked its way to the Supreme Court in
12 2003 for the first time. In 2001, they started work
13 on the standards that would make up this QPA
14 program. Takes a while to implement those
15 standards.

16 It was in 2003 that you ultimately
17 were able to adopt those standards. It was in 2005
18 and 2006 that they were able to implement them and
19 the testing based on those standards. The new tests
20 that were put in place were implemented for that, if
21 I remember correctly, the '05 -- no, I believe it was
22 the '06/'07 year. So after Montoy -- and this was in
23 the works regardless of the Supreme Court's
24 decisions -- there was past legislation in 2005 that
25 adopted, again, the Rose Standards.

1 You have a statute that says, look,
2 Board of Education, tell us what the accreditation
3 requirements are. You have a statute that says, here
4 are the factors now that you look at; Mr. Rupe refers
5 to as the Rose Standards from the Rose case.

6 And then, from those very broad,
7 generalized, aspirational goals, you get down to the
8 nuts and bolts of what you need to do to have a
9 suitable education in this state. And they do that
10 by defining what's in the QPA regulations. That's
11 all part of the regulations that's been through the
12 process and been adopted in the state.

13 They came out in 2005, after the
14 decision that the then statutes were
15 unconstitutional, and here's what they provide, in
16 summary. They provide a system where you have
17 performance criteria to decide whether or not the
18 districts and each schools are accredited. Those
19 performance criteria include participation rates,
20 that is that our kids are actually attending school,
21 attendance rates, participation rates in terms of
22 taking state assessment tests, and graduation rates,
23 and then performance on the tests.

24 And they expanded, actually, the
25 tests at that point. Before, I think it had just

1 been math and reading. Now they added social
2 sciences and writing and social studies to the list
3 of testing. But importantly, they look at not only
4 how students are doing on the test, but also, has
5 there been a demonstrated increase in overall student
6 achievement using certain expected gains formulas,
7 which are part of the QPA.

8 One of the criticisms of the No
9 Child Left Behind law that came up with the
10 standardized tests as the only benchmark for success
11 is that those only talked about reading and math --
12 and we'll talk about really what sort of the
13 education they're receiving generally -- and they're
14 just a snapshot as to how kids did on a test at a
15 given time. And of course, the question is, what
16 does the test reflect?

17 The accreditation program looks
18 beyond that in terms of its performance standards.
19 There's also a quality. And it also looks at it more
20 realistically. And it says, we'll look at how
21 schools are doing to improve people, to increase
22 performance over time, not just whether you meet some
23 cut-off point that was arbitrarily set by the federal
24 government.

25 There are also quality criteria.

1 And those include, there must be a school improvement
2 plan that includes results-based staff development
3 plan. There must be an external technical assistance
4 team. There must be locally determined assessments
5 that are aligned with the state assessments and
6 standards.

7 There must be formal training for
8 teachers regarding state assessments and curriculum
9 standards. And 100 percent of those teachers
10 assigned to teach those areas assigned by the state
11 as core academic areas have to be taught 100 percent
12 by teachers that are licensed, and you've got to have
13 95 percent or more of the faculty must be fully
14 certified for the positions they hold.

15 That the policies in place and the
16 individual districts must be in accordance with the
17 Kansas accreditation regulations. There are local
18 graduation requirements, curricula that show students
19 meet ratings qualifications admissions, that is to
20 get into some of the state schools. So you have to
21 show that you have curriculum to do that.

22 You have to have programs and
23 services to support student learning and growth and
24 other specialized programs and services to provide
25 equal access and local policies. These are all part

1 of what would be Exhibit 1121, which is the quality
2 performance fact sheet that the State puts together.

3 JUDGE THEIS: 1121?

4 MR. CHALMERS: That's right, 1121.

5 JUDGE THEIS: You're scaring me
6 now.

7 MR. CHALMERS: Yeah.

8 Under these standards you have
9 school districts self-assessing, schools self-
10 assessing. You have the State assessing. You have,
11 then, these performance requirements in order to be
12 accredited within the state. And I'm proud to tell
13 you that every school in this state is accredited.
14 And some -- a small percentage, I think less than
15 2 percent -- I think are kind of on a we-need-to-
16 improve status, but they are still accredited under
17 the QPA program that is in place that describes how
18 we will provide a suitable education in this state.

19 One of the principal areas of
20 dispute between the parties, I guess -- and I don't
21 want to sound like I'm being pejorative here -- is
22 that it's our position that Plaintiff has ignored all
23 sources of revenue in its presentation. And in doing
24 so has provided what I think is really somewhat of a
25 disingenuous picture of what the level of funding is

1 for our kids in Kansas. They talk only about a
2 portion of a formula, the base. And they don't talk
3 about federal moneys. They don't talk about, really
4 to any great degree, the local moneys that are
5 involved.

6 And I've got a number of boards.
7 They are all, I think, meant to be demonstrative, so
8 I don't have exhibit numbers. Some come from
9 exhibits, and we can provide, if it's appropriate,
10 the references from the exhibits. But actually, they
11 all come from exhibits, but I'm afraid I can't give
12 you the numbers.

13 But the first board makes the
14 somewhat obvious point, and that is, in the last year
15 for which we have this revenue data, the year before
16 last, that 53 percent of the money is coming from
17 state fund. Then you have local funds and federal
18 funds. And yet, what you hear about is the base
19 amount that talks, in part, about this figure,
20 ignoring the rest of the resources available to the
21 kids in state funding.

22 When you look at those numbers
23 together, and state data shows that there are -- and
24 there's been a dip. This is the last available data
25 for state aid, federal aid, local revenue, and total

1 expenditures.

2 But the dip that we talk about is
3 not radical, and you have, in total expenditures for
4 long time, pretty healthy amount in terms of
5 spending. That description incidentally, and for
6 whatever it's worth, the per pupil expenditure on
7 average in '10/'11 per district was 12,283.

8 That number hasn't -- that
9 description in terms of the increases hasn't really
10 changed much from district to district. We've got
11 here, my home district in Sedgwick County. And it
12 shows an increase each year through 2011 in the
13 amount of money that is available, and about
14 approximately a thousand more per kid, on average.

15 In Reno County, which is Hutchinson
16 School District, there's a little bit of a reduction
17 this last year, or year before last. And it's right
18 at or pretty close to the state average in terms of
19 its numbers. But it has the increases that seem to
20 follow the state.

21 Down the road little bit in Ford
22 County in Dodge City, in pupil spending they've got a
23 couple ticks down, not any major decreases over the
24 period of time. And then in Wichita -- or excuse me,
25 in Wyandotte County, where you have probably the

1 highest per pupil expenditures in the state -- and
2 double check that, but I think that's true -- you
3 have a pretty steady growth, other than you've got
4 two things that happened in this last part of the
5 year, which are explained in part by -- these numbers
6 talk about all spending.

7 They talk about not only
8 operational costs, they talk about bond and interest;
9 that is the bricks and mortar. And they talk about
10 capital outlay; that's the expense for machinery, for
11 the maintenance, and so forth.

12 So this is the whole picture and
13 not just the operational costs that Mr. Rupe was
14 talking about. And during this time period, as I
15 recall, there was the bond and interest that went
16 around that changed that a little bit and explained
17 why the local revenue flip-flopped a little up here.

18 Now, there have been discussion
19 about what's the cost of education. And a couple of
20 studies were done. And the evidence will be that
21 neither study is particularly reliable. The
22 methodologies were flawed, but they are studies that
23 were done.

24 There's the Augenblick & Myers
25 study, and it was done based on the standards that

1 were in place before 2003 and '04, based on data that
2 reached back into the 1900s, I guess, and based on
3 different standards in terms of testing now. But
4 there was that study, and that was the basis for the
5 Montoy decision, where they said, well, you defined
6 what the cost of education was and then you ignored
7 it.

8 Well, after that, when they got
9 into the remedial phase of Montoy, along came the
10 Post Audit study, the Legislative Post Audit, and
11 there were a couple fellows out of Syracuse, Duncombe
12 and Yinger, who were the consultants on that. And
13 they came up with a study trying to say, well, using
14 the principles of econometrics, how much would it
15 cost. And again, that study is flawed, we think the
16 evidence will show, but those are the studies that
17 were existent at the time that Montoy was resolved.

18 And what those studies did is they
19 looked at the state of how financing took place
20 then. And they said, well, we're talking only about
21 state money. We're going to pretend that there is no
22 local option budget. We're not talking about any
23 money -- because at that time, if a local entity
24 wanted to raise some additional money by property
25 taxes, it was considered for extra sort of spending;

1 it wasn't part of the foundation spending.

2 In fact, in the Montoy decision,
3 where ultimately it dismissed that case, they point
4 out that one of the changes since Montoy was
5 legislative changes that made the LOB, that is that
6 local option budget, part of the foundation funding.

7 So you have a study that was trying
8 to say, well, how much does it cost? What will it
9 cost, moving forward, if we're looking at 100 percent
10 of the money coming from the state, not from local
11 funding?

12 And then the LOB was -- the LPA,
13 the Post Audit folks were asked to take a study and
14 extend it out and say, well, what would the numbers
15 look like -- because the study was really aimed for
16 those first three years, and those studies have a
17 shelf life, and they're not really good for anything
18 after that, the experts will tell you. The Post
19 Audit said, tell us what the numbers would be if you
20 extrapolate it out; let's just take that and work it
21 out.

22 And there's an exhibit, and I wish
23 I could tell you the number, but it shows you the
24 estimated cost under the LPA study in 2006/2007
25 dollars for the successive years. So if you're into

1 '12/'13, it tells us the base needs to \$6,142. But
2 that base number includes only state money.

3 When this study was done, there was
4 federal funding. And the funds that they assumed
5 that we would receive from the federal government
6 would be about \$205 million a year. But it didn't
7 assume any growth in federal funds either.

8 So the question is, how have we
9 done against this standard, assuming it has any
10 validity. And I'm not going to tell you that I think
11 it does, but some information, how have we done when
12 you consider the other sources of revenue?

13 When the LPA study was done, they
14 had to figure out, what are we going to look at to
15 decide what is the money that is being spent, what
16 categories? And what they look at are those things
17 that are defined by the U.S. Census Bureau, and I've
18 got them listed here. And they show these
19 highlighted ones, the categories of spending that
20 they are considering that they have to satisfy to get
21 to their amounts.

22 This particular chart happens to be
23 the '10/'11 charts, again, the most available -- or
24 most available chart. And what it's trying to do is
25 peel out those things that you might spend, by way of

1 example, transportation, food services. It also
2 takes out what you spend on buildings and on
3 equipment. Those may have some effect, and certainly
4 they do, on student achievement and quality of
5 education, but if you're trying to look at how much
6 you spend each year on operational costs, these are
7 the categories that they go to.

8 The first question is, when we look
9 at those categories, what does it show? All
10 districts in the state show an uptick. And this is
11 in per pupil amounts -- went down in '10/'11 a little
12 bit. I think it went down a little bit in '10/'12,
13 it's going to go back up this next year, but it's
14 been fairly steady.

15 The numbers at the state level
16 apply pretty readily to the numbers for each one of
17 the Plaintiff school districts. There's Kansas
18 City. There, actually, continues the uptick. Now,
19 State can give money to the districts, but it doesn't
20 tell them how to spend it.

21 So if they give them money and they
22 say, well, I'd like to spend it on putting
23 instruction, putting teachers in the classroom, they
24 can spend it there, or they can spend it on
25 administration. They spend it however they think

1 it's best.

2 And that's because in the
3 Constitution, Article 6 -- we've always had a
4 constitutional requirement for public education in
5 the state, but it was in the '60s -- I think it was
6 '64, maybe it was '65 -- I think that's what Mr. Rupe
7 said -- a decision was made, let's recognize that
8 it's important to have local control of our kids.
9 Let's put in the hands of the local school districts
10 and educators how we spend the money.

11 Now, the checkbook stays up in
12 Topeka, but the districts spend the money. And
13 apparently, KCK found a way, at least through this,
14 to maintain their instructional operation expenses at
15 a higher amount. Hutchinson, pretty much the same
16 story; went down a little bit in '10. I presume it
17 went down in '11/'12. We don't have those numbers,
18 yet. We won't have them for another month or so.

19 Dodge City, pretty much the same
20 story; went up a little bit as to how they chose.
21 Wichita, pretty much the same story; down the last
22 few years; probably down the last two a little bit,
23 but not radically.

24 So how close is the state to what
25 the LPA study said? How close does it fit? And when

1 you take the operational expenses we just talked
2 about, add the LOB money, add the extra federal
3 money, so you have the -- and then you can be fair,
4 because remember, that number was in '06/'07
5 dollars.

6 So if you take what the LPA says is
7 the foundational amount in supplemental aid and
8 inflate it, you've got this green column. If you
9 take what the general fund is -- that is amount spent
10 on kids in operations -- the LOB -- that is the
11 amount that they raise locally, now part of the
12 foundation -- and the federal, backing out 205
13 million inflated so that you've got dollars to dock
14 their account -- and I'm not talking about inflation
15 here -- the State has actually been paying and
16 providing more than what the cost study suggested
17 back when they updated it.

18 If you want to add inflation, now
19 you've got to talk about what rate inflation to add.
20 If you just take a 3 percent inflation number --
21 that's what this chart shows -- then you can see that
22 this, '10/'11, now the state's a little bit behind in
23 terms of what the LPA study said.

24 Most of the expenditures for a
25 school district are salaries. It's a crazy thing

1 where they define what the market is and therefore
2 the inflation rate, but that's the reality of it.
3 Three percent may be realistic, but it's not the same
4 as going out and buying goods and services, for us,
5 when we talk about inflation rate. Point is, how
6 close are we to LPA study? The evidence will be,
7 pretty close.

8 Now, the Legislature then, in
9 deciding how much to appropriate, particularly in
10 hard times, knows about all these resources that are
11 available to the State. They also know that there's
12 money left on the table. The districts have the
13 ability to, through their local option budgets, go up
14 to 30 percent of an artificially inflated general
15 fund.

16 Now, that is to say, you do this
17 whole formula to figure out what each district gets;
18 that defines the general fund. Then, a local school
19 district can decide, I want to raise some additional
20 amount, but it's capped at 31 percent subject to an
21 election going up to 31 percent.

22 And that revenue is capped because
23 you don't want to have the very wealthy districts
24 having a comparative advantage in terms of what they
25 would raise. It's a revenue amount. And then, as

1 Mr. Rupe points out, there's the equalization funding
2 from the State that equalizes, to some degree, those
3 people that choose to do their LOB financing.

4 Point is, you have the maximum
5 authorized LOB, and then you have what they actually
6 spent in LOB over these years. And we actually have
7 the '10/'11 figures -- or excuse me, '11/'12 figures
8 for that. And they're leaving, well, 60 million
9 behind this last year, 62 million behind that they
10 could raise but chose not to raise.

11 Now, let's not be critical of
12 that. Constitution says that we have local control
13 for how we spend. Districts have local control on
14 how much they want to raise in LOB. The thought is
15 that citizens in a community are better suited to
16 know how much they need to spend or want to spend on
17 their kids, their neighbor kids, on their community's
18 kids.

19 There's also capital outlay fund.
20 Because we're talking most about operational costs,
21 we've not talked about those costs that you have for
22 buildings and those costs for machinery and for
23 maintenance of the buildings. Capital outlay is that
24 machinery and maintenance of building cost.

25 And the statute says that a

1 district can issue a mill levy of up to eight. And
2 what this chart shows is for the '10/'11 school year,
3 the green being the eight mills, what all districts
4 actually issued mill levies for, and then what the
5 Plaintiffs' exhibit school districts issued. All
6 districts, the additional amount, if they chose to
7 raise them up to the authorized amount by statute,
8 would be an additional \$92 million.

9 Then you have what's left over at
10 the end of the year before you start the next year,
11 cash balances. Districts get their money and they
12 generally come as one general fund. Now, there are
13 some that go to special areas. Particularly, the
14 federal moneys are redirected to certain areas.
15 There are certain grants that go to certain areas.
16 But the vast amount of their operational costs comes
17 by way of the general fund.

18 And they take that money and put it
19 into different buckets or silos, different funds.
20 And then, for instance, they may have a silo that
21 talks about money that is to be spent on at-risk
22 kids, or a silo, money to be spent on kids for
23 special education, which is a little bit different
24 because it's funded a little bit differently, but you
25 would have that sort of category.

1 And at the end of the year -- and
2 it's a fiscal year -- you have what's left in those
3 different silos. And what this chart shows is that
4 that amount that's left unspent, for whatever reason,
5 from 2006 to 2011. Statewide, it has grown so that
6 there's now, at the end of the fiscal year, there's
7 approximately \$1.7 billion sitting in their accounts

8 I don't want to mislead you or be
9 accused of misleading on this. That money has a
10 place to go. Some of it is earmarked already. It's
11 called encumbered. Some is unencumbered by earmark.
12 But what's happening is, is that you have a trend
13 that the Legislature sees of more and more
14 un-earmarked, unencumbered cash sitting in the school
15 districts' accounts.

16 Legislature responded this year.
17 It responded last year and the year before, which I
18 think it's the same senate bill number,
19 Senate Bill 111, and said, look, if you put it in the
20 wrong silo and now you can't get to it, let's give
21 you a little fluidity here; let's open the doors
22 where you can transfer things back and forth in the
23 hopes of allowing people in these difficult times to
24 have more cash available.

25 Picture shown for the State varies

1 a little bit district to district. In Hutchinson,
2 their cash reserves went up. They made the decision
3 that they would spend down their cash reserves over
4 four years, and so there's has gone up.

5 In Wichita, they appear to have
6 tapped into their cash reserve some -- at least the
7 numbers that we have -- and it's gone down. Dodge
8 City, the number continues to grow steadily. Kansas
9 City has numbers that are little unclear to me, but
10 you can take up with them whatever you will.

11 So you have the Legislature
12 deciding how to spend its money, considering all
13 sources of revenue, considering how the districts are
14 leaving money on the table and cash is going unspent
15 in making their decisions.

16 This year, the Legislature, which
17 is -- and I think, I'm defending this year. I know
18 we talked about what's happened in the past, and it's
19 certainly instructive. But this year what the
20 Legislature passed will increase fundings across the
21 state approximately \$40 million of the base amount.
22 The best calculation I have now is about 3,838. It's
23 gone up a little bit from what it had been the
24 previous year.

25 Now, Mr. Rupe showed you a slide

1 and argued, money makes a difference. And I want to
2 be absolutely clear on this: Nobody in this room,
3 certainly nobody for the State, thinks that money
4 does not make a difference. Now, there's a
5 difference between saying you can spend money and it
6 makes a difference, and saying, you just need to
7 increase more and more money.

8 At some point maybe it's
9 diminishing returns. At some point, maybe you don't
10 get their desired results. But as someone who has
11 the checkbook, the State, you've got to analyze where
12 that goes. And you're going to hear testimony from
13 experts that -- there's an expert out of California
14 who's probably the leading expert in the country on
15 this, Eric Hanushek. You'll hear testimony from
16 University of Missouri, Professor Podgursky, who both
17 will talk to you about how you can't assume that just
18 putting more money or paying more money will result
19 in increased student achievement.

20 But you saw the blow-ups that
21 Mr. Rupe put in front of you from the LPA study, and
22 I want to visit with you a moment, because maybe
23 that's important. First, the blow-up is from a
24 portion of the LPA study. The Legislative Post Audit
25 was asked, tell me what you think the costs are, go

1 talk to your experts, your consultants, and come up
2 with a number on that.

3 They were also asked, go tell me
4 whether or not money makes a difference and how. And
5 when they looked at whether money makes a difference
6 and how, they found that the science is -- well, it's
7 confused on that point. It's not so clear that just
8 spending more money will increase student outputs.
9 In fact, they suggest that you can't make that
10 decision.

11 What our experts will say is the
12 science just hasn't caught up with that. There are
13 too many variables, too many explanations as to why
14 one kid may not succeed as opposed to another, too
15 many things that we don't know on how to improve
16 educations for kids.

17 The U.S. Government has now spent
18 hundreds of millions of dollars in conducting studies
19 to try to figure out how can we address what Mr. Rupe
20 calls a gap between certain members of our society
21 and others in education. And they have taken
22 specific techniques that educators say that these
23 will work, the consensus says, this is the answer.

24 And they've tested them and found
25 out that it doesn't work that way. Maybe they don't

1 have results. Maybe the results are marginal. The
2 point is that when you are legislature funding, the
3 information you had was studies that are conflicting,
4 and then you had the LPA language.

5 So I want to talk to you about the
6 LPA language. I'm talking about the one-to-one
7 relationship, nearly, because we now have about a
8 decade of experience since that study came out. We
9 know what happened.

10 And we can say, well, okay, when we
11 increase spending, what happened in terms of student
12 outputs? Was there a one-to-one jump? As that study
13 suggested, there was, and as the premise of that
14 study, which generated how much money was spent,
15 suggested there was.

16 What you have is a blow-up showing
17 the test scores. Now, when the LPA tried to figure
18 out whether money made a difference, you have to
19 define what is the difference you're making, what is
20 the output -- is the language they used. So they
21 say, we'll take the math scores 4th grade, 7th grade,
22 and 10th grade, at the time, then they changed it to
23 11th grade, and then it's kind of any time during
24 high school, sort of a thing.

25 Then, there's 5th grade reading,

1 8th grade reading, and 11th grade, and then we'll
2 take graduation rates and we'll do a straight-up
3 average. So one-seventh for each, and that's what
4 this number is, by the way, is that straight-up
5 average.

6 This last year, we changed how we
7 calculate graduation rate. We could talk about that,
8 but better just probably let the evidence decide what
9 that is. It has to do with trying to -- we went to a
10 five-year program or four-year program, trying to
11 catch those kids that transferred in or transferred
12 out and get a more accurate reading. And we did that
13 for 2010, but we don't have the 2011 figures, yet.

14 So this is what the numbers came up
15 with. And what they show is in this red. 2007, when
16 we had the spike in spending from Montoy, we did have
17 an increase of about 5 percent across the board,
18 10 percent across the board. The next year of
19 increase, now it's a little bit less. Next year, an
20 increase, but not as much. Little bit less.

21 But interestingly, we're now in
22 2011, where we see the biggest spike down, and we see
23 an increase. And what's more fascinating, I think,
24 is back in '03/'04, we've got some of the biggest
25 increases in spending going on there. And yet, we're

1 showing -- actually, in terms of spending going on
2 there, we're showing increases that seem to
3 parallel -- or not going on there, parallel to this
4 later on.

5 I misspoke. Step back for that for
6 a moment.

7 These years are pre increases in
8 spending and, yet, we show increases that seem to
9 parallel. Now, why is that happening? I don't know
10 that there's an answer. We do know that in 2003,
11 they came up with different standards. We do know
12 that they were teaching different. We do know that
13 they were assessing different. Maybe that's the
14 explanation; maybe not.

15 The numbers for Dodge show a huge
16 spike in '07, but a decrease in the next year of
17 spending, then back up, and back up the end of this
18 year. Kansas City, I don't know what happened in
19 2004. It was a great year in terms of improvement.
20 But went up -- well, actually, the first time goes up
21 wasn't until the third year where we start having
22 cuts, where they start to have their bigger
23 improvements. These are the poverty kids down at the
24 bottom. And then, it continues to go up.
25 Hutchinson. Wichita. There's Hutch. There's

1 Wichita.

2 I want to back up for a moment. It
3 is troubling to me personally, and I think it must
4 have been troubling to everyone in Montoy, the
5 numbers back in '03 and '05. Those are the people
6 that are passing. 5th grade reading in Hutchinson,
7 16.3 percent of the kids of all that were proficient
8 back in 2003. Kansas City, 11.1 proficient. Dodge
9 City, 14, and you get your other numbers. The state
10 in general, those numbers were somewhat better, but
11 not much. But over time the numbers are up. I think
12 Judge Theis asked what's different now today than it
13 was in Montoy. That may be the biggest difference.

14 Now, I will try to show, then, how
15 does that work out, taking that data and talking
16 about this 1 percent increase operating -- you know,
17 percentage of increase of operation against -- we
18 assume that we're going to have an increase in
19 output. For every dollar, there'll be a .88 percent
20 chance -- or change in output. That might be wrong.
21 It would make these numbers higher.

22 But if Montoy was -- or the LPA
23 study was right, that's the number if you increase,
24 based on what we actually increased, that you get in
25 outputs, but you don't ever get that number. In

1 fact, the decrease, the number stays about stable.
2 When the decrease happens the year before last, it
3 goes up.

4 We're not showing the relationship.
5 Mr. Rupe wants to tell you, well, it has a lag
6 effect. I don't know that there's any data that
7 supports that. I will tell you it's inconsistent
8 with what the LPA studies were doing. The LPA study
9 didn't assume a lag effect when it came to its
10 one-to-one relationship.

11 This is Kansas City. It shows a
12 big reduction in '10. It shows an increase in '11.
13 It shows a tremendous increase in spending in
14 '05/'06, but a reduction in terms of outputs. Dodge
15 City, we've got the decrease. You've got huge
16 increases that pre-date Montoy.

17 You've got Hutchinson. You have a
18 decrease. You have huge decreases in money, no
19 increase in production. Decreases in money, presumed
20 decreases in outputs, and increase in outputs -- or
21 in achievement. In Wichita, you've got this huge
22 increase or change in outputs where kids are doing
23 better last year, after two and a half years of cuts.

24 The data doesn't support this
25 one-to-one relationship. What it supports is much

1 more complicated. So the State, then, when you
2 recognize all sources of funding, state, federal, and
3 local, is pretty true to what these studies say.
4 Studies don't seem to show, when you look at the
5 data, much reliability.

6 But where are we with the kids?
7 How are they performing? Well, performing pretty
8 well, actually. On Kansas reading, all students has
9 been a steady climb since 2001 to 2011. This last
10 year that we have data on -- and incidentally, we
11 should have results back sometime during the course
12 of this trial for this last year in terms of
13 standardized tests -- but for the '11 and '10, the
14 comparisons at state, with the most reduction in
15 spending in terms of appropriated amounts, we've done
16 better and kids have not been left behind.

17 The gap, wide in 2000, narrows and
18 continues to narrow as of the last data we have 2011.
19 That's in reading. That's on all grades that's for
20 what we define poor, which are the free lunch. The
21 reduced lunch, seemed like that's a fair measure,
22 too, but the gap continues to close.

23 The gap closed when you want to
24 look at in terms of Hispanics or African Americans.
25 That's not only in reading, that's also in math. The

1 math results in Kansas show the narrowing of the
2 gap. The math results show the narrowing of the gap
3 as it relates to poverty. And yeah, this last year
4 we had a bump in math performance even with less
5 money, and yes, steady increases in test scores from
6 2001 through 2011.

7 There's a suggestion that maybe the
8 Kansas test, which Plaintiffs put so much reliance on
9 to say, that's why we need more money, because when
10 you take the Kansas test and we do a study and say,
11 that tells us we need more money, that there's some
12 suggestion that the Kansas test is easy.

13 When you compare it to other tests,
14 they say -- take for instance Missouri, where a
15 mapping study has been done between the different
16 state tests, and they say that Missouri test score is
17 harder than in Kansas. The testimony will be that we
18 think ours is a rigorous test that meets our
19 standards and we don't think these mapping studies
20 make any sense or any difference.

21 But if you want to look at how we
22 do nationally, that's fine. If you want to look at
23 Kansas kids taking the same tests as kids across the
24 country, what does it show? It shows on the NEAP
25 test, which is sometimes referred to as the national

1 report card, it shows that Kansas performs better in
2 the nation in 4th grade math, 8th grade reading, 4th
3 grade reading, and 8th grade reading.

4 Now, not all kids take the SAT.
5 But in Kansas, when they do, Kansas kids perform
6 substantially better than the rest of the kids around
7 the nation. Not all kids take the SAT. More of them
8 in Kansas, than the SAT, I think -- but the ACT
9 trends show, once again, Kansas kids performing
10 better than the kids across the country.

11 There's been some discussion that
12 it's now inequitable to have a greater emphasis in
13 local funding than it is -- than it had been with the
14 LOB. Mr. Rupe talked to you about the Caldwell
15 decision that was decided, many years ago now, and
16 before the San Antonio v. Rodriguez case.

17 In San Antonio v. Rodriguez, the
18 United States Supreme Court was looking at the
19 challenge to Equal Protection. And the contention
20 was that the Texas system that relied wholly on
21 property taxes was unconstitutional because of the
22 differences in purchasing power of the communities.

23 United States Supreme Court
24 rejected that claim and said that there was a
25 rational purpose for a system that relies on property

1 taxes. That purpose is local control. It's the idea
2 of having your local community being involved in the
3 decision on how much to spend for schools. It's the
4 idea that they're better situated to understand what
5 really is necessary and that their involvement
6 provides a better check than someone in Topeka on the
7 possibility that administrators or teachers who have
8 the same intention we all have, which is to have the
9 best education for our kids, may not be the best at
10 deciding how much that costs.

11 It's interesting, one of the things
12 that Kansas did as part of the Augenblick & Myers
13 study was a professional -- now, I've -- buzz word
14 escapes me now.

15 MR. RUPE: Professional judgment.

16 MR. CHALMERS: Thank you. It's a
17 professional judgment approach. And what they did
18 was they got together a number of people,
19 administrators. They got together teachers and
20 people from communities. They sat down, and they
21 used that as their template to try to figure out how
22 much money.

23 Now, they said to them, don't worry
24 about money, just come up with what you need to have
25 the perfect school. And they did that study. Now

1 those studies are no longer in vogue, and in fact,
2 Mr. Myers was one of the ones that prompted that
3 study; says he does things different now. But the
4 testimony will be that those studies inherently come
5 up with a higher number.

6 And it's not surprising, I think,
7 when you look at people who have their hearts in the
8 right places in terms of trying to get more money for
9 the kids, that you're going to get the higher number
10 than maybe what you need in an efficient system.

11 So local control provides a method
12 to take a look at whether or not the request by
13 administrators and teachers are realistic,
14 particularly in hard times. On the other hand, in
15 our system there are a couple of points that Mr. Rupe
16 alludes to that I need to emphasize.

17 First, you don't, if you're in
18 Kansas City, Kansas, get the same amount per pupil as
19 you do if you're in Blue Valley, few miles down the
20 road. Blue Valley, they've got a very wealthy,
21 affluent area. You don't have kids that are in those
22 weight categories.

23 Kansas City, you have a high
24 concentration of poverty, tightly-concentrated
25 poverty. You've got kids that have historically --

1 although, Kansas City is a success story, folks.
2 You're going to hear testimony on that, on how well
3 it's done. But they have a high concentration,
4 still, of kids that are not meeting state standards,
5 and as a result, they're not proficient, they get
6 more money.

7 So you have a combination of those
8 weightings in the Kansas Cities of Kansas, get more
9 money per kid than does the Blue Valley. But not
10 only do you have those ways to try to equalize the
11 costs, but you also have state aid that comes in and
12 supplements when it's available, for instance, in
13 bond and interest.

14 If you build a building in this
15 state, there is equalizing up to 100 percent up to a
16 certain level through the state, so that if I want to
17 build a building in a poorer community, property-wise
18 poorer community, I don't have to raise my mill
19 levies disproportionately to somebody else.

20 Capital outlay they have always had
21 or they have had equalization money and they have not
22 funded it, and I'll talk to you about that in a
23 little bit. Then you have LOB funding. There's
24 equalization money there. Now, I'm sure what
25 Mr. Rupe said was clear to you. It wasn't to me, so

1 I'm going re-state it against the chance that you
2 heard it like I did.

3 The way the statute works on LOB
4 equalization is, is there's a number the Legislature
5 has picked. And I think it's the 81.2nd percentile
6 that we're going to go up to. So, in theory, if you
7 are a district that falls under that percentile, then
8 you get some money from the state. And the amount of
9 money you get is designed to equalize, so now
10 everybody is at 81.2. And then, those folks who have
11 greater wealth, maybe they're a little bit higher,
12 but you equalize up to that amount.

13 What's happened in the last few
14 years is the State has not had the resources to fund
15 that equalization, so they have paid, in some
16 instances, where I think last year it was either 85
17 or 86 percent of the equalization money that they
18 would have paid to get to the 81 percent percentile,
19 but still, there's equalization aid.

20 Capital outlay, now that's a
21 different thing. Capital outlay is for machinery.
22 It's for equipment. It's for maintenance on
23 buildings. You can take money that you get from the
24 general fund and you can put it into capital outlay
25 as a district.

1 So I send you money with the
2 weightings, so Kansas City gets more money than,
3 well, my home school, Shawnee Mission. It has that
4 money, and it also gets equalization on that money if
5 it decides to raise it through an LOB. And you can
6 take that money and say, I'm going to put some of it
7 in capital outlay money, so now I've got funds
8 there. You have equalization of capital outlay in
9 that respect.

10 Now, on the other hand, you can
11 raise the capital outlay and raise it yourself, or
12 you can leave it low and transfer it. I think you're
13 going to find evidence that what the districts have
14 decided to do is, we'll raise the LOB, we will funnel
15 the money into capital outlay and we'll get our
16 equalization and have the benefit of it that way.
17 That's the way the testimony's been set up.

18 Why did the Legislature do away
19 with the capital outlay? Nobody speaks for the
20 Legislature. Nobody tells you exactly what they
21 did. We know the rational basis for it, but I can't
22 put a witness up here that says what the Legislature
23 did. And the rational basis is, some schools felt
24 that they could use that money -- they have these
25 cash reserves in capital outlay -- better off in

1 operations. So give that 25 million to me in
2 operations and I'll decide whether I redirect it over
3 into capital outlay or not.

4 Important point being, if I raise
5 that money in capital outlay by the levy, I can't
6 transfer it into operations. So I have more
7 flexibility if I go another route. Legislature has
8 limited amount of money. They put the money where
9 the districts en masse had a better opportunity to
10 use it.

11 What you look at the mill levies,
12 and there'll be an exhibit on that, and you look at
13 what the differences are, I think what you'll find is
14 that there's not a wide range in what schools are
15 taxing their citizens.

16 Interestingly enough, in Kansas
17 City -- I think that was one of the examples Mr. Rupe
18 used -- their mill levies are, my recollection is,
19 somewhere around 60, 50, 65, all total. And yet, in
20 their neighboring communities, one where there are
21 higher property values, their mill levies are higher.

22 In Wichita, the mill levies for
23 some of the surrounding communities, the Derbys, the
24 Maizes, the Andover school districts are higher than
25 they are in Wichita. There is a range, but it is, I

1 think you'll find as you look at the data, not so
2 extreme that it should cause any real concern.

3 Moreover, I don't think there'll be
4 any testimony that as a result of the variances in
5 mill levies, there is not a district that is able to
6 educate its kids. The testimony that we've heard is
7 you need to get that base up to be adequate I thought
8 was saying that this whole concept of using this
9 local money was a problem.

10 So when the dust settles and this
11 case is over, we think that your mission will be to
12 say, did the Legislature act with reasonable basis in
13 the funding techniques that it's put in place and the
14 amount that it's funded in connection with its
15 obligations to provide suitable funding for
16 education? We think you'll be asked, did it act
17 arbitrarily?

18 By contrast, in Montoy, you had a
19 study that they ignored. That was the only
20 information they had. And I think it was a bad
21 study, but it's the only information they had. And
22 the Court's up there saying, well, if that's all you
23 have on cost, you asked for it, you designed it, you
24 told us what you needed, and then you ignored it;
25 that's arbitrary.

1 Now, the Legislature has changed
2 the law in that respect. It said, hey, look, we
3 clarified, and this is what they'd like to say. They
4 have said those studies are informational. They've
5 made it clear that even the studies that were done by
6 Augenblick & Myers and the LPA studies were
7 informational only. They're only a piece of
8 information provided. And as you've seen, they've
9 relied on it in part.

10 So have we reached this bright line
11 divider where the court, the Supreme Court says, you
12 know, we give great deference to the Legislature. We
13 presume the constitutionality, but we always hold the
14 idea that it's our responsibility, as those who
15 interpret the Constitution, to say if you've gone to
16 far.

17 The question is, have we gone too
18 far? And I think, after the evidence, you'll
19 conclude that the State has not gone too far, the
20 kids are doing well, the State's doing the best in
21 difficult times, and the Constitution -- excuse me,
22 the statutory financing in place, as well as the
23 funding levels and the weightings, are all
24 constitutional. Thank you.

25 JUDGE THEIS: Counsel, have any

1 opinion on lunch time?

2 MR. CHALMERS: I like lunch.

3 MR. RUPE: An hour, hour and 15
4 minutes. Doesn't matter.

5 JUDGE THEIS: Let's go hour and
6 fifteen and start about quarter of two.

7 (A recess was taken.)

8 JUDGE THEIS: You can be seated,
9 Thank you.

10 JUDGE FLEMING: What do the defense
11 exhibits look like?

12 MS. TIBBETS: There's one, two,
13 three -- looks like six notebooks.

14 JUDGE FLEMING: We could put them
15 in front of us but then we couldn't see.

16 MS. TIBBETS: In a few days, you
17 may appreciate that idea --

18 JUDGE THEIS: Call the fire
19 marshal.

20 MS. TIBBETS: We can bring them on
21 a disc tomorrow, if that's helpful.

22 JUDGE THEIS: Let's get through
23 today and work it out.

24 JUDGE BURR: We promise not to look
25 at them. Today.

1 JUDGE THEIS: Whenever you're
2 ready, Mr. Rupe.

3 We're ready. The Plaintiffs call
4 their first witness, Dr. Cindy Lane.

5 CYNTHIA LANE

6 Called as a witness for the
7 Plaintiff, was duly sworn by the reporter and
8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Tell the Court your name and what your title
12 is, please.

13 A. My name is Cynthia Lane, and I'm the
14 Superintendent of Schools for the Kansas City, Kansas
15 Public School District.

16 Q. Dr. Lane, you live in the Kansas City area?

17 A. I live in Kansas City, Kansas, and I have
18 been in that community, working in the community more
19 than 25 years. I've actually lived in the community
20 about ten years.

21 Q. So does the Kansas City, Kansas School
22 District have plenty of money to provide all its kids
23 with a suitable education?

24 A. I can absolutely tell you the answer to that
25 is no. And my comment is based on the fact that we

1 still have more than 35 percent of our children who
2 are not able to meet the standards that you heard
3 about this morning.

4 Q. We heard in opening remarks from the State's
5 attorney that we would not hear testimony to the fact
6 that any school district does not educate all of its
7 kids to a suitable level. Is that the case in Kansas
8 City, Kansas?

9 A. You know, that certainly is our desire, our
10 goal, and what drives us every day, but
11 unfortunately, it's not true. You know, it keeps me
12 up at night, frankly, to know that almost four out of
13 every ten kids are not meeting the expectations that
14 we have set for them as a state and as a nation.
15 It's very troubling.

16 Q. Let's get back to that in a minute. I want
17 to talk a little bit about you and the Kansas City,
18 Kansas School District, first. Tell us what your
19 educational background is.

20 A. I have a doctorate in education; actually,
21 it's in special education, from the University of
22 Kansas. My undergraduate work was done at
23 Pittsburgh, Kansas and -- I grew up in Parsons -- and
24 went to school at Pittsburgh for my bachelor's in
25 education, elementary education, and my master's

1 degree is in special education, specifically in the
2 area of behavior disorders, working with children who
3 have emotional disturbances.

4 Q. We know you grew up in Parsons. Give us a
5 little personal information about yourself.

6 A. Sure. Sure. You know, my family are long-
7 time Parsonians. In fact, Judge, you probably know
8 my family. They still actually reside right there in
9 Parsons.

10 And so I went to school there. I grew up in
11 a family that was -- small business people. My
12 grandmother owned the store in the downtown area.
13 And so, you know, I was really grounded in a couple
14 of things. Hard work is extremely important, and I
15 think about that on a daily basis as I try do what I
16 do. And family, family always comes first.

17 So as I do the work that I do in Kansas
18 City, Kansas, part of the reason that I think I'm
19 there is I'm driven to do for others what my family
20 had the opportunity to do for me.

21 Q. Okay. Now, tell us a little bit about the
22 demographics of the Kansas City, Kansas School
23 District.

24 A. Our demographics are almost a mirror
25 opposite for rest of the state. 41 percent of our

1 children are Hispanic; 38 percent, African American.
2 We have about 38 percent of our children who speak
3 English as a second language. This year our
4 demographics for white children were 13 percent of
5 our population is white.

6 We truly represent kind of a change in the
7 global society, where we have 59 different languages
8 and many, many folks from diverse backgrounds coming
9 to live and work in our community. I should mention
10 that we have 87 percent of our children living in
11 poverty, 87 percent who qualify for free or reduced
12 lunch.

13 Q. I'm going to hand you or have handed to you
14 Exhibit 110, please, Plaintiffs' Exhibit 110, and ask
15 you if you can identify that as a publication of the
16 Kansas State Department of Education report card for
17 2010/2011?

18 A. Yes, and this is particular report card is
19 for the Kansas City, Kansas School District.

20 Q. All right. So Plaintiffs' Exhibit 110 is a
21 report card that outlines the demographics that you
22 have described for Kansas City, Kansas?

23 A. That's correct.

24 Q. And so I'm on track, the district number is
25 located on the left, and the state number is located

1 on the right, in terms of demographics?

2 A. That's correct.

3 Q. Why don't you compare --

4 MR. RUPE: Move for the admission
5 of 110.

6 MR. CHALMERS: No objection.

7 Q. (By Mr. Rupe) Compare, if you would, the
8 difference between the Kansas City, Kansas School
9 District and the state when it comes to the African
10 American population.

11 A. We have just under 40 percent in this
12 report -- and again, this was last school year, the
13 2010/2011 school year -- 37.9 percent of our students
14 are African American, and 7.4 percent would be the
15 state numbers; so significant difference there.

16 Q. And then in terms of Hispanics?

17 A. The Hispanics, our demographics are 41.7
18 percent or almost 42 percent of our 20,000 students.
19 In the state, it's 16.3 percent.

20 Q. And Caucasians?

21 A. Our district has 14.4 percent Caucasian and
22 68.1 percent, the state's demographic of white.

23 Q. And then let's move to the economically
24 disadvantaged, the district has what percentage?

25 A. An alarming percentage of almost 88 percent

1 of our children, according to this report, are living
2 in poverty as compared to 47.6 percent in the state.

3 Q. And in terms of ELL, English -- well,
4 explain to the Judges what English language learners
5 are.

6 A. What that means is that the language spoken
7 in the home is something other than English. And
8 students who qualify for services as ESL students,
9 that means that they are not able to speak orally or
10 listen in the English language, or to read and write
11 in that language. So we provide services to both
12 help them meet the standards that we've set, plus
13 teach them English at the same time.

14 Q. Do a contrast of the district versus the
15 State of Kansas.

16 A. We have just under 33 percent, the specific
17 number is 32.9 percent, of our students who qualify
18 for English language learning services as compared to
19 under 10 percent for the state, 9.8.

20 Q. And then finally, the students with
21 disabilities, compare your school district to the
22 state.

23 A. The students who have disabilities, we have
24 14 percent of our population that qualifies for
25 special ed services under the area of disability, and

1 the state has 13.6. So that's the one area that we
2 have similarities.

3 Q. All right. Let me hand you Exhibit 389,
4 Plaintiffs', and ask you if that is a pie chart that
5 shows the ethnicity of the district with regard to
6 African American, Hispanic, white, other?

7 A. Yes, on the left side of this exhibit, it
8 shows the break-out in a visual format or a pie chart
9 of our demographics. Again --

10 Q. On the right side is the economically
11 disadvantaged?

12 A. That's correct.

13 MR. RUPE: Move for admission of
14 389.

15 MR. CHALMERS: You know what, I
16 don't think that that's been produced to us.

17 MR. RUPE: It has.

18 MR. CHALMERS: No, it hasn't.

19 This, however, is, I think, taken from something that
20 we've marked as an exhibit, and I don't have any
21 objection to it.

22 MR. RUPE: Thank you.

23 JUDGE THEIS: Yes or no?

24 MR. CHALMERS: No objection.

25 JUDGE THEIS: Admitted.

1 (Plaintiffs' Exhibit Number 389 was admitted.)

2 Q. Let me hand you what has been marked as
3 Exhibit 17. I don't think there'll be an objection
4 to this. This simply shows the map of Kansas, and
5 the location of the Kansas City, Kansas School
6 District in USD 500, is that true?

7 A. That's correct.

8 MR. RUPE: Move for the admission
9 of 17.

10 MR. CHALMERS: No objection.

11 JUDGE THEIS: Admitted.

12 (Plaintiffs' Exhibit Number 17 was admitted.)

13 Q. Now I'm going to hand you Exhibit 101 and
14 ask you if that is the report card published by the
15 State Department of Education for the entire State of
16 Kansas?

17 A. Yes, it is.

18 Q. And we covered the comparison in the
19 previous exhibit, 110, but 101 is simply the state
20 numbers, true?

21 A. That's correct.

22 MR. RUPE: Move for the admission
23 of 101.

24 MR. CHALMERS: I don't have any
25 objection, but I should clarify, Counsel, I've got

1 101 being not only the last one that's been
2 published, but 2004, '05. Is that what you're ...

3 MS. GARNER: It includes through --

4 MR. CHALMERS: If that's your
5 intent, I don't have any objection to --

6 MS. GARNER: -- 2004/2005.

7 MR. RUPE: These are the numbers
8 going back to '04/'05

9 MR. CHALMERS: I don't have any
10 objection.

11 MR. RUPE: Okay.

12 JUDGE THEIS: It's admitted.

13 (Plaintiffs' Exhibit Number 101 was admitted.)

14 MR. RUPE: Sorry.

15 Q. (By Mr. Rupe) Okay. And we have covered
16 what the state numbers are with regard to African
17 American, Hispanics, ELL, and so forth?

18 A. That's correct, we have.

19 Q. Then take a look at Exhibit 91, and does
20 that show a pie chart for the state, of the
21 economically disadvantaged and the non-economically
22 disadvantaged --

23 A. Yes.

24 Q. -- as published in the report card for the
25 state for 2010 and 2011?

1 A. Yes, it does.

2 Q. And the state number for economically
3 disadvantaged is 47.55 percent?

4 A. That's correct.

5 Q. And non-disadvantaged is 52.45?

6 A. That's correct.

7 Q. What did you say it was in your district?

8 A. Students with economic disadvantage is 87
9 percent, and the report you showed me had it even
10 higher, 87.9 percent.

11 MR. RUPE: Move for the admission
12 of Plaintiffs' 91.

13 MR. CHALMERS: No objection.

14 JUDGE THEIS: Admitted.

15 (Plaintiffs' Exhibit Number 91 was admitted.)

16 Q. And 92 is a pie chart showing ethnicity
17 statewide, is that correct?

18 A. Yes, it is.

19 Q. And that's by the Kansas Department of
20 Education report card 2010/2011, true?

21 A. That's true.

22 Q. And it shows white being 68.12 percent, and
23 African American being 7.44 percent, Hispanic 16.3
24 percent, and other 8.1 percent, is that true?

25 A. That's true.

1 MR. RUPE: Move for the admission
2 of 92.

3 MR. CHALMERS: No objection.

4 JUDGE THEIS: Admitted.

5 (Plaintiffs' Exhibit Number 92 was admitted.)

6 Q. Tell me again what the African American
7 population is in Kansas City, Kansas.

8 A. 38 percent.

9 Q. Okay. And then 93 is the ELL numbers for
10 the entire state showing that 90.2 percent statewide
11 are non-ELL, and 9.8 percent are English language
12 learners, true?

13 A. That's true.

14 Q. And it's with the report card for 2010/'11
15 from the Kansas Department of Education, true?

16 A. That's correct.

17 MR. RUPE: Move for the admission
18 of 93.

19 MR. CHALMERS: No objection.

20 JUDGE THEIS: Admitted.

21 (Plaintiffs' Exhibit Number 93 was admitted.)

22 Q. Now, contrast your ELL numbers, please.

23 A. 38 percent of our students qualify for
24 English as second language services.

25 Q. I'm going to move into an area where we talk

1 about what constitutes a suitable education. And
2 what I'd like to know is, was graduation last week in
3 Kansas City, Kansas?

4 A. Two weeks ago, the middle of May, mm-hmm.

5 Q. Tell the Court what your practice is with
6 regard to high school graduation in the KCK School
7 District.

8 A. Well, my practice has been to be on the
9 stage to shake the hands of every one of our students
10 who graduates. We have five high schools, and it's
11 always been a privilege to congratulate them on
12 taking that next step in their lives.

13 What I have to be very cognizant of,
14 however, when those kids are coming across the stage,
15 is I know there are several of them that are not
16 prepared for their future, a significant portion, if
17 you think back to the numbers I shared a moment ago
18 about almost 40 percent of our kids are not meeting
19 the standards. They may be able to receive a letter
20 grade to pass a class but they truly are not ready
21 for college and careers.

22 Q. Talk about the term suitable education, but
23 I want to get some information from you first. And
24 what I want to know is, when you watch those kids
25 walk across the stage to graduate, what is it you

1 want them to know by way of education?

2 A. What I want them to know is that they're
3 ready. They're ready to follow their dreams or their
4 passions in life, that if they choose to go to
5 college, they won't find themselves in remedial
6 course work. And unfortunately, for many of our kids
7 they do. And that's consistent across the nation,
8 frankly.

9 And I want them to rely on the fact that
10 their credential of the high school diploma really
11 does mean something and that they can pursue whatever
12 jobs and careers that they're interested in
13 pursuing. That's where we're headed. That's what
14 we're striving for, but the reality is we're not
15 there yet.

16 Q. The Judges have in front of them a primer
17 that we submitted earlier, and it's marked as
18 Exhibit 1. And I want to ask you some questions
19 about some Kansas law.

20 MR. RUPE: I'd move for the
21 admission of Exhibit 1.

22 MR. CHALMERS: I think it's
23 suitable as an exhibit. It's a legal argument, some
24 of which we disagree with, and there's no foundation
25 for it. I think it's something counsel made. I

1 don't have any problem with the Court looking at it,
2 but I don't think it should be admitted as evidence.

3 JUDGE THEIS: Does it have those
4 charts in it that you had?

5 MR. RUPE: Not that's not the
6 charts. That's the primer.

7 JUDGE THEIS: What's in Exhibit 1?

8 MR. RUPE: It's the court cases and
9 the copies of the Constitution. And I think the only
10 thing that is a narrative is we prepared a history
11 of -- that kind of went along the lines of what my
12 opening was -- a history of school finance as the
13 first section of it.

14 JUDGE THEIS: You can ask her about
15 it, but I'm not sure -- I'm sure we've had some other
16 stuff that's very similar for both sides, so ...

17 Q. (By Mr. Rupe) Let me ask you about it.
18 You've got it in front of you. Turn to the Bates
19 number Primer 80. In fact, let's do it this way.
20 Let me hand you specifically Plaintiffs' Exhibit 5.

21 Plaintiffs' Exhibit 5 is Article 6 of the
22 Kansas Constitution. Are you familiar with the
23 education Article in the Kansas Constitution?

24 A. I am.

25 MR. RUPE: Move for the admission

1 of Plaintiffs' 5.

2 MR. CHALMERS: If it will speed
3 things up, I don't understand why we're marking legal
4 documents.

5 JUDGE THEIS: So we can find them,
6 probably.

7 MR. CHALMERS: Well, if it's
8 helpful to the Court, I won't object. I'll just
9 withdraw the objection.

10 JUDGE THEIS: Why don't we --

11 MR. RUPE: I don't have any illegal
12 documents to mark, Your Honor.

13 JUDGE THEIS: Unless you really
14 have an objection about a witness talking about
15 something, then we'll go through the exhibits maybe
16 close of the day and fold them in. If you have
17 something you want to firm about then, we'll --

18 MR. RUPE: Like I said,
19 Your Honor --

20 JUDGE THEIS: If we couldn't have
21 the testimony, then that's a different matter.

22 MR. RUPE: Like I said, Your Honor,
23 we're agreeable to him putting his demonstrative
24 exhibits into evidence and putting stickers on them,
25 if we can just submit all the evidence to the Court

1 on both sides. And I think that would be the
2 easiest.

3 But let me proceed with asking the
4 questions to Dr. Lane about the Kansas Constitution.

5 Q. (By Mr. Rupe) As part of a suitable
6 education as instructed in the Kansas City, Kansas
7 School District, do you see any constitutional
8 obligation from the Kansas Constitution?

9 MR. CHALMERS: Your Honor, with all
10 respect to this educator, I think constitutional
11 obligation is for the Court. It's not a proper for a
12 subject for testimony. I object.

13 MR. RUPE: Well, this doesn't go to
14 what is legally required. This goes to what they
15 teach in the Kansas City, Kansas School District and
16 what they want their kids to know.

17 MR. CHALMERS: In which case, it's
18 irrelevant. You can't back door it if the
19 standard -- if she's trying to testify as to what the
20 standard is, that's for you all to decide.

21 JUDGE THEIS: I think she can
22 testify to what the standards are, what their goals
23 are, and whether they're being met or not, and then
24 someone else can make the decision.

25 MR. CHALMERS: I think that's fair,

1 but I understood him to ask --

2 JUDGE THEIS: Just form of the
3 question. It's the form of the question you don't
4 like?

5 MR. CHALMERS: I think that's
6 right.

7 JUDGE THEIS: I agree.

8 Q. (By Mr. Rupe) Does the Kansas City, Kansas
9 School District seek to provide a suitable education
10 to its kids?

11 A. Well, we absolutely do. Not only is it
12 required by statute, what we must teach, the subjects
13 we must teach, how long kids must be in school, it's
14 also the morally right thing to do, is to educate all
15 children regardless of the circumstances that they
16 find themselves in. So we absolutely do seek to do
17 that.

18 Q. And is part of the education of kids in the
19 Kansas City, Kansas public schools, did they teach
20 government?

21 A. We do teach government.

22 Q. Do they teach the Constitution as part of
23 that?

24 A. We do.

25 Q. And do you have any sense of whether there

1 is a constitutional requirement from the district in
2 terms of providing a suitable education?

3 MR. CHALMERS: I hate to delay the
4 trial, but you ought to really ask questions that are
5 appropriate. A legal question to a witness -- if
6 that's what this trial is going to be about, it's
7 going to make it a lot more lengthy. I object to the
8 form. I object because it's calling for opinion, and
9 he's outside the scope of proper expert testimony,
10 and certainly not a proper subject for lay testimony.

11 JUDGE THEIS: You could ask her
12 when she's deciding what's suitable for the kids,
13 what does she consider, for example, instead of a
14 leading question.

15 MR. RUPE: Okay.

16 Q. (By Mr. Rupe) As part of the suitable
17 education that is provided kids, what do you teach
18 them as far as the Constitution is concerned?

19 MR. CHALMERS: I still object to
20 the form. And if it's going to be what she teaches
21 on the Constitution, I object for lack of
22 foundation. She doesn't teach kids.

23 MR. RUPE: This is going to take a
24 long time, Your Honor.

25 MR. CHALMERS: It is if you ask

1 questions like that.

2 MR. RUPE: And I'm going to
3 continue to ask questions that define what the Kansas
4 City, Kansas School District provides as a suitable
5 education.

6 JUDGE THEIS: I think it's fine
7 that you ask her what she considers to be a suitable
8 education, not let her recite it, but I don't think
9 you need to make reference to the Kansas
10 Constitution, about her opinions, unless she's going
11 to say that, well, I looked at the Kansas
12 Constitution and -- you know, whether or not she
13 thinks it meets it, I'm not sure it doesn't meet a
14 standard that she believes satisfies suitable
15 education.

16 Q. (By Mr. Rupe) Let's talk about what you
17 define as a suitable education in the Kansas City,
18 Kansas School District.

19 A. You know --

20 Q. First of all, you explain to the Judges what
21 you consider to be suitable, and then I'm going to
22 ask you about some specific requirements.

23 A. Okay. The guidance that we follow -- well,
24 actually, it's not guidance. The requirements come
25 directly from the state. It's very explicit what

1 every school district in every school must teach its
2 children. And those are often referred to as the
3 standards.

4 For every subject there are standards that
5 are provided by the Kansas State Department of
6 Education and under the supervision of the state
7 board that tell us what it is kids need to know and
8 be able to do for every course. English, reading,
9 math, science, and social studies, and in the area of
10 fine arts, those are all very well spelled out.

11 So each school district is charged to ensure
12 that their children are learning those concepts.
13 Now, we may add to this, if we so choose, but the
14 standards are very detailed and very explicit down to
15 the individual skill that a student has to know in a
16 particular area.

17 Q. Who do you report to in your job?

18 A. Board of education.

19 Q. And is that an elected body?

20 A. It is.

21 Q. And do you know where the local board of
22 education derives its authority?

23 A. It derives its authority from the
24 Constitution, actually, in Article 6.

25 Q. And are you charged with the responsibility

1 by your local board to provide a suitable education
2 to the Kansas City, Kansas kids?

3 A. Our board would not use that language,
4 perhaps, but they would charge me to make sure that
5 every student that graduates from high school is
6 ready for their futures, ready for college, ready for
7 a technical career. That's their charge.

8 Q. You indicated there are specific
9 requirements by law that you need to follow in
10 providing education to your kids, and I want to call
11 your attention to Plaintiffs' Exhibit 39. And my
12 question to you is, as part of the suitable
13 education, is Plaintiffs' Exhibit 39 a list of
14 requirements by the State as to what needs to be
15 taught by accredited school?

16 MR. CHALMERS: I wonder if I could
17 just have a record of it, and then I don't need to
18 interrupt any further. But it's the State's view
19 that what is a suitable education is not defined by
20 witness testimony. Obviously, it's also our view
21 that it's defined by the Legislature. It's not
22 anything that is outside of the scope of
23 Legislature's responsibility.

24 And if I could have, with Counsel's
25 blessing and Panel's approval, continuing objection

1 to the opinion testimony by witnesses as to what is a
2 suitable education, then I don't think I have to
3 bother anybody. But I think I'd like to have the
4 approval of both Counsel and Panel to do that,
5 otherwise, I'm objecting because it's not a proper
6 subject for expert testimony.

7 MR. RUPE: Well, my response to
8 that is that's an incorrect statement of law. And
9 we've briefed that in our trial brief. It most
10 certainly is a responsibility to the school district
11 to provide suitable education, and it is the
12 responsibility of the Legislature to provide the
13 funding for that, and it is your job to determine
14 whether they've done it or not.

15 And I don't mind him making a
16 continuing objection. I'll accept it if he wants say
17 everybody time I say "suitable" that it's somehow
18 objectionable because that's something else. I don't
19 mind that. It will move things along.

20 MR. CHALMERS: If it's acceptable
21 to the Panel, I think I've made my record of my
22 objection.

23 JUDGE BURR: It's not going to make
24 any difference to any of the three of us. It's not a
25 trial to the jury, and I have no problem with the

1 continuing objection, but I don't know about my
2 colleagues.

3 JUDGE THEIS: I don't either. I
4 assume -- she's a school administrator, she has
5 certain expertise and expertness, and she has the
6 opinion as to what it takes to educate the children.
7 And I'm presuming you're going to elicit that from
8 her. So I don't particularly worry about the
9 language myself.

10 MR. RUPE: This case, this is the
11 first time I've ever tried -- Judge Fleming, what's
12 your view on it?

13 JUDGE FLEMING: I don't want to do
14 anything that delays this, I can tell you that.

15 MR. RUPE: Okay. I didn't know
16 whether it's majority rule or how we do this, but I'm
17 on track, so we'll move along.

18 With regard to Plaintiffs' Exhibit
19 39, and subject to Counsel's objection, I move for
20 admission of that.

21 MR. CHALMERS: No objection.

22 Q. (By Mr. Rupe) With regard to Plaintiffs'
23 Exhibit 39, do those factors that are listed in that
24 statute constitute, or is that a part of what you try
25 to accomplish as providing the kids in Kansas City,

1 Kansas a suitable education?

2 A. They are. And it's specifically entitled,
3 "Accredited Schools." And so we want all of our
4 schools to be accredited and we want our children to
5 have that kind of experience and credentials. So in
6 order to do that, we try to meet all of the these
7 requirements here. In fact, it uses the language,
8 mandatory subjects in the areas of instruction. When
9 something's mandatory, we pay close attention to that
10 to make sure we're following the requirements.

11 Q. Without going through them one at a time, I
12 think these were mentioned in opening statement and
13 attributed to the Rose case. But in terms of these
14 factors, is when -- when you look at what you provide
15 the kids in the Kansas City, Kansas School District,
16 is what you want for those kids these things that are
17 listed in KSA 72-1127, Plaintiffs' Exhibit 39?

18 A. You know, as I think about these, this is
19 what we want for all of our children. It talks about
20 developing them as fully-developed adults that can
21 speak and can write and engage in all kinds of
22 activities including the fine arts. And it talks
23 about developing students' mental and physical
24 wellness. So as I see those attributes, those
25 factors, it just reminds me of what we want for all

1 of our kids.

2 Q. Let me hand you Plaintiffs' Exhibit 40. As
3 we move through the statutory requirements, are there
4 requirements in Exhibit 40 KSA 72-1111 with regard to
5 what's required by way of attendance at schools?

6 A. Yes, specifically attendance for children up
7 to the age of 18.

8 MR. RUPE: All right. Move for
9 admission of Plaintiffs' Exhibit 40.

10 MR. CHALMERS: No objection.

11 Q. Let me hand you Exhibit 41. Are there
12 requirements for --

13 MR. ROBB: I can't hear if the
14 exhibits are being admitted.

15 JUDGE THEIS: I thought we were
16 going to wait a while unless they holler an objection
17 about it and we'd do it all at the end that way. I
18 don't have to open my mouth every third minute and
19 say admitted or not.

20 MR. ROBB: Okay. Thank you.

21 Q. (By Mr. Rupe) Plaintiffs' 41, what are the
22 statement requirements regarding school terms?

23 A. That's correct. It talks about the fact
24 that students need to be in school for a school year,
25 that's at least 186 school days, and it goes on to

1 talk about district's option in not using days to
2 determine their calendar; could use hours, and the
3 hours are 1,116 hours of required attendance.

4 Q. Let me hand you Exhibit 43, and tell me if
5 there are requirements regarding the number of units
6 and the number of grades of instruction in the public
7 schools.

8 A. This particular requirement states that
9 there are at least 30 units of instruction for
10 students who are enrolled in grades 9 through 12.
11 And in the lower grades, it talks about maintaining
12 and offering kindergarten and grades 1 through 12.

13 Q. Then let's move to Exhibit 50. Are there
14 requirements in Kansas law regarding specific subject
15 matter has to be taught?

16 A. There are requirements for both elementary
17 schools and for secondary schools, grades 6 through
18 12.

19 Q. With regard to graduation requirements, is
20 it true that there needs to be instruction concerning
21 government and institution of the United States,
22 particularly the Constitution?

23 A. Yes, it specifically outlines those in this
24 statute, 72-1103.

25 Q. And in terms of other required courses

1 reading, writing, arithmetic, geography, spelling,
2 English grammar, composition, history, and a list of
3 what needs to be taught in each elementary school?

4 A. That's correct. Government, health, and
5 hygiene are some of others that you didn't mention.

6 MR. RUPE: I'll try to do this in
7 blocks, Your Honor. I would move to admit what
8 hasn't been admitted, yet, and that series which is
9 41, 43, and 50. Those are just statutes on
10 requirements.

11 MR. CHALMERS: I don't have any
12 objection.

13 JUDGE THEIS: They're all admitted.

14 (Plaintiffs' Exhibit Numbers 41,
15 43, and 50 were admitted.)

16 Q. (By Mr. Rupe) Now, I think we indicated this
17 as we went, but those specific statutes are direction
18 by the Kansas Legislature on what needs to be taught
19 as part of suitable?

20 A. That's correct, direction to the state
21 board, who then directs it to the local level.

22 Q. Does the State Board of Education itself
23 have separate requirements?

24 A. They do.

25 Q. Take a look at Plaintiffs' Exhibit 44,

1 please. These are the enabling statutes for the
2 state board, but does the state board provide rules
3 and regulations on matters that are taught in Kansas
4 City, Kansas, in order to provide a suitable
5 education?

6 A. Yes, they do. The state board takes the
7 legislative requirements and it actually breaks that
8 down into criteria that each school district must
9 follow, and that's what that particular statute is
10 talking about, general powers of the state board.

11 Q. Let me hand you three exhibits, 45, 49, and
12 48. And take a look at these, and let's start with
13 45. Does the State Board of Education direct, as
14 part of a suitable education, what textbooks and
15 study material should be used?

16 A. The state board directs the areas of study
17 and that school districts may adopt specific rules
18 for choosing its own textbooks that meet those
19 standards that we talked about, those set of skills
20 for every subject, so the local board would do that.

21 Q. Then let's look at 48, and tell us what the
22 state board requirements are concerning literacy
23 programs.

24 A. Well, in addition to reading and English the
25 state board also requires that we teach personal

1 financial, literacy programs, and to develop our
2 students in the area of personal finance and
3 literacy. And this particular statute outlines what
4 that should entail.

5 Q. And take a look at Exhibit 49, are the
6 requirements concerning government and history?

7 A. Yes, the state board shall provide a course
8 of instruction in Kansas history and government
9 specifically outlined in a statute here.

10 MR. RUPE: In terms of the state
11 board requirements, I move for admission of 44, 45,
12 48, and 49.

13 MR. CHALMERS: No objection.

14 JUDGE THEIS: They're admitted.

15 (Plaintiffs' Exhibit Numbers 44,
16 45, 48, and 49 were admitted.)

17 Q. Let's talk about the accreditation system in
18 Kansas. What is QPA?

19 A. Quality Performance Accreditation.

20 Q. And explain to the Court what that is,
21 please.

22 A. You've heard some of this, this morning. It
23 is a set of requirements, both in the area of student
24 performance and in the area of quality control, that
25 schools must meet, individual schools as well as the

1 district.

2 Q. Let me hand you what's been marked as
3 Plaintiffs' Exhibit 54, and I believe this is also a
4 Defense Exhibit. Is Plaintiffs' Exhibit 54 the
5 quality performance accreditation manual?

6 A. It is. And this particular version was
7 revised in February of 2009.

8 Q. Is this the revised version?

9 A. Yes, it is.

10 MR. RUPE: Move for the admission
11 of Plaintiffs' 54.

12 MR. CHALMERS: No objection.

13 JUDGE THEIS: Admitted.

14 (Plaintiffs' Exhibit Number 54 was admitted.)

15 Q. Let's go through 54, if we could. In terms
16 of graduation requirements, does QPA explain and
17 define what the role of graduation standards are?

18 A. Yes, QPA actually articulates what's
19 required in statute, in terms of what courses
20 students have to have in order to earn credits and
21 what that level of that proficiency and credit needs
22 to be.

23 Q. Turn to page 8 in the QPA manual, which has
24 got a page number of 2863 in the lower right-hand
25 corner. In using that to refresh your recollection,

1 what does accredited mean?

2 A. Well, it means that the school itself fully
3 meets the criteria outlined, both in the area of
4 student performance and on those quality indicators.
5 This morning you heard about some of those and those
6 had to do with certification and the number of
7 students attending and how much attendance they have,
8 what's the graduation rate, those kinds of things.

9 Q. What does "accredited on improvement" mean?

10 A. It means that you haven't met one or more of
11 those for a period of two consecutive years.

12 Q. And "conditionally accredited" means?

13 A. Conditionally accredited means that you've
14 not met one or more of those for three consecutive
15 years.

16 Q. And "not accredited"?

17 A. Not accredited means that you've failed to
18 meet one or more of those criteria for five
19 consecutive years.

20 Q. Is QPA something the Kansas City, Kansas
21 School District has to comply with?

22 A. Yes, it is.

23 Q. What is a school improvement plan?

24 A. Schools are required to take a look at how
25 students are performing and to determine what's

1 causing positive performance, as well as what's in
2 the way of all students achieving, and create a plan
3 that addresses what the students need as well as what
4 they call a results-based professional development
5 plan. Frankly, what that means is, is that our
6 teachers are trained in order to implement strategies
7 that produce better results for kids. And that's all
8 parts of the plan.

9 Q. Explain to the Judges what the external
10 assistance team is.

11 A. We refer to that team as ETAT team, External
12 Technical Assistance. It is a team that's formed
13 when schools are either conditionally accredited or
14 accredited on improvement. It's folks typically from
15 the district level that come into work specifically
16 with the leadership team and teachers of a particular
17 school that's struggling.

18 Q. Look at page 16. It talks about the locally
19 determined assessments. Explain what that is,
20 please.

21 A. Well, you've heard that all schools are
22 required to give the Kansas assessments. But in
23 addition to that, we're required to have a set of
24 assessments that we choose that also measures our
25 students' performance and our curriculum. And so

1 local school districts can develop their own
2 assessments or can use another assessment tool that's
3 been adopted on a national level or from another
4 company.

5 Q. As required by QPA, is there professional
6 development that is required formal training for
7 teachers?

8 A. Yes. Yes, there is.

9 Q. Explain what that is.

10 A. Teachers have to receive training in content
11 areas even outside the one that they're expected to
12 teach so they're familiar with all the curriculum
13 standards in order to help address student needs.
14 They also have to have training in those
15 assessments. What are the assessments measuring?
16 What it is that kids need to know, and how are they
17 going to ask the questions, so they can prepare their
18 instruction in their lessons on a daily basis in
19 alignment with those expectations.

20 Q. Are there requirements on licensed and
21 fully-certified staff?

22 A. There are requirements that teachers -- 100
23 percent of your teachers are credentialed or
24 licensed -- sometimes you'll hear that called
25 certified -- in the content area that they are

1 teaching.

2 Q. What about requirements concerning the local
3 board. Look at page 23, and explain that to the
4 Judges.

5 A. This section outlines the requirements of
6 the board to develop policies and practices that are
7 in alignment with the state board expectations in
8 terms of curriculum, in terms of licensure of staff,
9 and in terms of the assessments that are used.

10 Q. And flip to the next page, 24. Are there
11 graduation requirements that are imposed by the State
12 Board of Education on what needs to be accomplished
13 in order to graduate?

14 A. Right. Beginning as 9th graders, as you all
15 know, kids have to earn credits to move forward in
16 their career as a high school student. And this
17 particular section reflects what's required in
18 statute, the minimum amount of competencies that a
19 student has to have. Now, local board can add to
20 that, but they cannot go below the minimum
21 competencies that the state board has outlined.

22 Q. All right. Then, with regard to Criterion 8
23 in QPA, is there a qualified admissions requirement?
24 Explain what that is in terms of the Board of
25 Regents.

1 A. What this is, is a set of course work that
2 the Board of Regents, our colleges and universities,
3 are requiring for students to be admitted to those
4 schools once they're graduated from high school.

5 Q. Are there additional requirements concerning
6 programs and services to support student learning
7 required by the state board and Criterion 9?

8 A. There are. What's in this section talks
9 about counseling services, library services, computer
10 services. So in addition to the courses, it's very
11 clear what schools have to offer in terms of all of
12 those other areas.

13 Q. Okay. And as part of the suitable
14 education, are these items such as fine arts,
15 language arts, library services, mathematics,
16 counseling part of the suitability that is offered?

17 A. Offered in Kansas City, Kansas?

18 Q. Yeah.

19 A. Absolutely offered and required by the
20 State.

21 Q. And then we turn to the 10th Criterion,
22 which is, Program and Services to Support Student
23 Learning. Explain that to the Court.

24 A. The areas in this 10th Criterion are the
25 areas of business and in consumer science that we are

1 to provide instruction in that area, offer foreign
2 languages, and offer industrial or technical courses,
3 as well.

4 Q. And then, what is the 11th Criterion, Local
5 Policies Ensuring Compliance? That's at page 33.

6 A. Mm-hmm. I think what this is suggesting or
7 stating is that the board cannot -- the local board
8 cannot set policies that are contrary to these
9 requirements that have been outlined by the state
10 board.

11 Q. Are there requirements on what student
12 performance needs to be contained in this performance
13 criterion section, Section 3 of page 34?

14 A. This speaks a lot to the term you might
15 hear, adequate yearly progress, and it talks about
16 the level of competency that students need to reach
17 in the areas of reading and mathematics, in
18 particular. Also, can speak to performance in
19 science, sometimes social studies and writing, but
20 the primary focus is reading and math instruction.

21 Q. And the requirements of the NCLB for annual
22 yearly progress, are those part of the State Board of
23 Education adopted quality performance accreditation?

24 A. They are part of that.

25 Q. And are those reflected in this student

1 performance criterion in the QPA manual?

2 A. Yes, they are.

3 Q. And is there a requirement concerning
4 participation rate?

5 A. Participation rate, it has to be at 95
6 percent.

7 Q. Explain that to the judges.

8 A. Glad to. The reason that was put into place
9 is there was concern that schools may choose not to
10 test certain students who likely are not going to
11 perform well. So they've set a criteria that 95
12 percent of your children in a given school year must
13 take each test that's required by the state.

14 Q. So that's a participation in the state
15 assessment requirement?

16 A. That's right.

17 Q. And then, there's an attendance rate,
18 Criterion 3 under performance. What is that?

19 A. Can you give me the page number?

20 Q. Sure, it's page 41.

21 A. Thank you. Next time you print this, print
22 it in bigger copy.

23 Q. We're trying to save some trees.

24 A. Okay. There is an attendance requirement
25 and that is for students in grades kindergarten

1 through middle school, and it's 95 percent.

2 Q. And is there a graduation rate requirement
3 that your school district is held to under the state
4 board adopted QPA?

5 A. There is a graduation rate and it's
6 reflected in performance Criterion 4, and it requires
7 that 75 percent of the students graduate every year.

8 Q. Okay. What happens when these accreditation
9 standards are not met?

10 A. Well, it depends on how many years they've
11 not been met. So, for the first -- if you've not met
12 them for two years in a row, then you're required to
13 develop a plan that is going to address those
14 criteria. If you don't have access and you continue
15 to not meet the criteria for three or five years,
16 then there are more and more requirements that come
17 from the state of programs that you have to implement
18 and actions that you must take for your children.

19 Q. Is it possible for a school -- and this is
20 on a school-by-school basis, right?

21 A. And also the school district.

22 Q. School district. Is it possible on a
23 school-by-school basis to not meet the standards and
24 remain accredited?

25 A. It's possible for a school not to meet the

1 standards and remain accredited until they've not met
2 the standards for five or more years. At that time
3 the school becomes unaccredited.

4 Q. So in terms of the statement that all Kansas
5 schools are accredited, that doesn't necessarily mean
6 that all schools are meeting the requirements?

7 A. That's true. They could be accredited
8 conditionally, but you know, really having some
9 challenges in terms of making sure all their students
10 are meeting these expectations.

11 Q. In terms of schools within your district
12 have there been schools that have been on
13 improvement?

14 A. Yes.

15 Q. Give us an idea of the number of schools.

16 A. That changes year to year depending on the
17 performance on the assessments, but as high as 14 of
18 our schools have been on improvement -- we have 50
19 buildings -- and as low nine. So we've had, for
20 years, schools on improvement and the district is
21 considered on improvement.

22 Q. And we may hear about this at some time, but
23 let me give you an opportunity to tell the Court
24 about it, do you have a school called the Sumner
25 Academy?

1 A. We do.

2 Q. Describe that school for the Judges.

3 A. Sumner Academy was created in 1978 in
4 response to desegregation requirements imposed by the
5 court. And what happened at that time is the
6 district formed what's called a magnet school. We
7 call it an academy.

8 Students have to apply to get into the
9 school and much of their application is based on
10 their ability to perform at very high levels on state
11 and national assessments. They also have to have no
12 disciplinary issues, a strong GPA, and most of them
13 have very strong parent involvement.

14 The school services children grades 8
15 through 12, and it provides an international
16 baccalaureate curriculum. What this means is their
17 curriculum is different from all the other schools in
18 our district and has an international measurement of
19 success that we have to adhere to in addition to the
20 state and federal requirements.

21 Q. Is the Sumner Academy an international
22 baccalaureate school?

23 A. It is.

24 Q. Is admission on application basis?

25 A. It is on an application basis.

1 Q. In terms of who is admitted, what is the
2 criterion?

3 A. They have to be performing at high levels on
4 the state assessment, they have to have a strong GPA,
5 they have to have a stellar disciplinary record, and
6 they have to be willing to engage in this very
7 rigorous curriculum.

8 Q. And let's set the bookends with the poorer
9 performing schools. What is the Kansas Learning
10 Network?

11 A. Kansas Learning Network was formed
12 approximately five years ago in response to the state
13 department wanting to provide some intensive level of
14 support to school districts who are on improvement,
15 not meeting the expectations, and Kansas City, Kansas
16 School District was one of first members of the
17 Kansas Learning Network.

18 Q. And describe for us, for those schools that
19 are on improvement or not making the QPA standards,
20 what kind of interventions are required.

21 A. Well, after-school tutoring for one,
22 Saturday school, extended hours, and opportunities
23 for longer school day, longer school year. Sometimes
24 depending on where --

25 JUDGE FLEMING: Just a second.

1 What's going on here?

2 JUDGE THEIS: What's it say?

3 JUDGE FLEMING: Says, system notice
4 urgent online repair. What's that mean?

5 MR. CHALMERS: Means something's
6 bad happened.

7 (An off-the-record discussion was held.)

8 JUDGE FLEMING: Sorry about that.

9 MS. TIBBETS: Glad it was you and
10 not us.

11 JUDGE FLEMING: Go ahead.

12 Q. (By Mr. Rupe) Speaking of interventions --

13 A. Right.

14 Q. -- would you describe for us, with those
15 lower performing schools, what, if any, state
16 resources become available?

17 A. There's additional money that came from the
18 Kansas Learning Network for us. It was about \$30,000
19 a year, and that was to address the issues that were
20 found and the needs assessment that Kansas Learning
21 Network did in conjunction with our district to
22 identify what's going well and what we need to
23 improve upon.

24 Q. Okay. And in terms of the numbers today,
25 how many schools are on improvement in the district?

1 A. The past school year we had nine schools on
2 improvement. Again, that's a year-to-year
3 determination based on performance on the state
4 assessment as a primary driver. And so that changes
5 depending on how well schools are doing to meet the
6 needs of their children.

7 Q. So there's no mistake about this later on,
8 with regard to those schools that are on improvement,
9 are they meeting the QPA standards?

10 A. They are not meeting the QPA standards.

11 Q. Okay. Now, we've talked about requirements
12 by statute, requirements by the state board
13 regulations. I want to turn our attention to
14 something that's called the Common Core Standards.
15 First of all, explain to the Court what those are.

16 A. Well, each state, as we currently sit, has
17 its own set of expectations or standards for
18 children, and every state sets those based on what
19 they determine to be suitable for their children.
20 And what has been noted is that the standards are not
21 often comparable. One state may have very high,
22 rigorous expectations for its children, while another
23 doesn't have that same high expectation.

24 So 45 states are joined together in
25 consortiums to adopt what's called the Common Core

1 Standards. All that means is, in the areas of
2 reading and math and science, and eventually some of
3 the other subjects, there'll be a national set of
4 skills and knowledge that students have to know and
5 be able to do in order to meet the expectations all
6 the way through kindergarten and through high school
7 graduation.

8 Q. Take a look at Exhibit 56, Plaintiffs'
9 Exhibit 56. And is that a publication from the
10 Kansas State Board of Education that shows generally
11 what the Common Core Standards are?

12 A. It appears to be. It's not marked that it's
13 from the state board, but it is something that I have
14 seen before.

15 Q. Okay. Well, I'll represent to you it is
16 from the state board. And does that introduction
17 accurately summarize what is the Common Core State
18 Standards?

19 A. It does. You know, one of the underpinnings
20 of the Common Core is that we need to be preparing
21 our children for college and for work expectations or
22 careers. So this document outlines that it's the
23 line to college and work expectations, rigorous --
24 and a big change for us coming in the future is that
25 right now our assessment in Kansas is a knowledge-

1 driven assessment. Common Core will require that
2 students actually have to apply or do something with
3 that learning, and so this document talks about
4 that.

5 Q. We've talked about other standards. This
6 would be a new standard that is being implemented,
7 true?

8 A. That's true.

9 Q. And in terms of the standards you've dealt
10 with, would you describe for the Judges what kind of
11 change this is?

12 A. It's really a significant change. If you
13 think about being able to assess what kids can do
14 with the knowledge, it's very different than just
15 being able to respond on a recall assessment. So it
16 will help us know if our kids are really prepared to
17 compete in the world that they're facing.

18 When we were in school, we were competing
19 with the neighbors that were in the community or
20 everyone in state. But our kids are now competing on
21 a global basis. So the Common Core is designed to
22 get us on par with those countries that are
23 out-performing us right now within the areas of math,
24 science, and reading.

25 Q. Let's hand you Plaintiffs' Exhibit 59 and

1 Plaintiffs' Exhibit 60, for a moment. And start with
2 59, can you identify Plaintiffs' 59 as the Common
3 Core Standard requirements for mathematics?

4 A. Yes.

5 Q. And 60, same question with regard to
6 English, language arts, literacy, and history, social
7 studies, science, and technical subjects?

8 A. That's correct.

9 Q. And previously, under No Child Left Behind,
10 was there any requirement concerning history, social
11 studies, science, and technical subjects?

12 A. No Child Left Behind, as it's currently
13 written, focuses only on reading and mathematics.

14 Q. So the Common Core requirements are
15 expanding the federal requirements and the state
16 requirements beyond English and math?

17 A. Right. So now we'll have a set of
18 expectations and standards in all of these other
19 content areas in addition to reading and mathematics.

20 Q. And in terms of professional development or
21 teaching your teachers to teach, is there a seat
22 change here in terms of what teachers need to learn
23 in order to teach?

24 A. Well, the national experts tell us that
25 every teacher is going to feel like a first-year

1 teacher because it's very different to plan
2 instruction where kids have to demonstrate their
3 knowledge. They're going to do that in a couple of
4 ways, that I understand it.

5 They have to not only create projects that
6 show that they've learned sets of content, but they
7 have to be able to write and analyze and argue with
8 the text to justify their positions. And that is
9 completely different than the expectations that are
10 in place today.

11 Today, students -- really, it's a multiple
12 choice test and they do recall and they identify
13 specific skills, but they don't have to justify their
14 thinking, they don't have to write, they don't have
15 to argue their point. So that's going to become very
16 different, one that we're already trying to prepare
17 for today.

18 Q. In terms of teaching the teachers, is there
19 a cost associated with that?

20 A. Professional development -- there's always a
21 cost associated with everything, frankly. And
22 professional development is key to ensuring that all
23 children are successful.

24 MR. RUPE: Again, doing this in
25 blocks, Your Honor, I move for admission of 56, which

1 is the state board publication, Common Core State
2 Standards, Exhibit 60, the standards for English, and
3 Exhibit 59 the standards for math.

4 MR. CHALMERS: No objection.

5 JUDGE THEIS: Admitted.

6 (Plaintiffs' Exhibit Numbers 56,
7 59, and 60 were admitted.)

8 Q. So, is the Kansas City, Kansas School
9 District able to opt out of compliance with Common
10 Core?

11 A. No. And even if we were, we would not. But
12 it's a requirement the State has adopted, one of the
13 45 states that have said yes to the Common Core
14 Standards. So it is required. And it's the right
15 thing to do, even though it's going to be very
16 challenging for us to try to figure out how to teach
17 at this deeper and to make sure that we have all our
18 kids successful, particularly in our community where
19 we still have so many who have not been successful in
20 our current set of standards.

21 Q. And is the Kansas City, Kansas School
22 District given any additional resources by the State
23 to implement Common Core Standards?

24 A. We are not given additional resources by the
25 State, outside of professional development provided

1 by the state department, lots of guidance and help to
2 think through. But it'll be up to the district to
3 figure out how to implement these in the classroom.

4 Q. Let me switch to some additional
5 requirements concerning special education and hand
6 you Plaintiffs' Exhibit 68. Would you discuss or
7 explain to the Judges what the federal government
8 requires by way of special education?

9 A. Well, let me first define what that means,
10 special education. It's for children in Kansas who
11 are both disabled and gifted. So you've got to think
12 of it in that wide spectrum. The federal government,
13 however --

14 Q. Hang on. What do you mean by "gifted"?

15 A. Children who are performing at very high
16 levels most often are tested at very high levels in
17 terms of their intellectual quotient, or their IQ,
18 kids who learning comes easy for.

19 Q. This would be generally the kind of kid in
20 the Sumner Academy?

21 A. Generally that kind of kid. Sumner Academy
22 has many kids who qualify for gifted services.

23 Q. Continue your explanation.

24 A. The federal government has outlined a set of
25 expectations that, regardless of the limitations that

1 a child might face in their disability, we need to
2 use their strengths so they learn the same content
3 that is required of any other child. And special
4 education provides individual planning for that
5 child, with the family, to determine how we're going
6 to make sure that they're moving forward, just like
7 their regular peers who do not face that kind of
8 disability. Lots of regulations and requirements
9 accompanied with children that have special education
10 needs.

11 Q. Are you familiar with the IDEA?

12 A. I am.

13 Q. And the Individuals with Disabilities
14 Education Act, does it impose additional special
15 education requirements?

16 A. It does.

17 Q. With regard to Exhibit 68, is that a listing
18 of those requirements?

19 A. It is.

20 Q. And again, is the Kansas City, Kansas School
21 District required to comply with those as far as what
22 they provide as part of a suitable education?

23 A. We are required to comply.

24 Q. Can you opt out?

25 A. If you choose to opt out from any federal

1 requirement, then you also choose to give up millions
2 of dollars that accompany that need. So it would be
3 untenable to think about that from a fiscal
4 viewpoint.

5 But it also means you're saying some
6 children aren't important, and we certainly wouldn't
7 opt out from that point of view either. Do what's
8 right for kids, and there are a lot of requirements
9 in order to do those things that are outlined in this
10 particular law.

11 Q. Then let me hand you back what is the QPA
12 manual Exhibit 54, briefly. And flip to page 3. The
13 QPA manual has requirements, as well, concerning the
14 Individuals with Disabilities Education Act, correct?

15 A. That's correct.

16 Q. So the State of Kansas, if I'm on track, has
17 adopted the IDEA as a state requirement, as well?

18 A. That's true, they have.

19 Q. And we've already talked about this but
20 Kansas has also adopted NCLB, No Child Left Behind,
21 as a state requirement, as well?

22 A. They have.

23 MR. RUPE: Move for the admission
24 of 68.

25 MR. CHALMERS: No objection.

1 JUDGE THEIS: Admitted.

2 (Plaintiffs' Exhibit Number 68 was admitted.)

3 Q. Let me hand you Exhibit 69, because I want
4 to ask you about this requirement. Are there federal
5 laws and federal court decisions that speak to your
6 district's obligation concerning non-English-speaking
7 students?

8 A. There are.

9 Q. Advise the Court what those requirements
10 are.

11 A. Well --

12 MR. CHALMERS: Your Honor, I think
13 you have the case in front of you. Maybe I should
14 just sit down; I don't mean to interrupt too much,
15 but we've heard a lot of discussion which was just,
16 read the rules, read the regulations. And it's
17 coming from a witness who didn't get it right, and I
18 have to object. I think it's best that we don't have
19 witnesses trying to testify what the law is.

20 MR. RUPE: Well, she's not
21 testifying what the law is. She's testifying about
22 what their district does to provide a suitable
23 education in light of the guideposts that are the
24 law. But she's testifying as to what they do.

25 JUDGE THEIS: As I understand it,

1 she was testifying as to what applies to them, and
2 that's, from my perspective, helpful.

3 MR. RUPE: Okay. Thank you,
4 Your Honor.

5 Q. Tell the Court what the requirement is.

6 A. We have 12 months to take a child who does
7 not speak English and get them up to standard in
8 every content area and also to speak English. So,
9 the requirements are to provide intervention and
10 explicit instruction based on the needs of that
11 particular child, so that they both not only learn
12 the content just like every other child, but they
13 also learn it in English.

14 Q. In terms of the proportion of ELL kids in
15 your school district, what is it?

16 A. 38 percent of our 20,000 students are
17 eligible for services.

18 MR. RUPE: Move for the admission
19 of Plaintiffs' 69.

20 MR. CHALMERS: I guess I don't
21 object.

22 JUDGE THEIS: It's admitted.

23 (Plaintiffs' Exhibit Number 69 was admitted.)

24 Q. With regard to the next exhibit I want to
25 hand you, it's Exhibit 70. Just without dwelling on

1 this, is Exhibit 70 a publication of the State
2 Department of Education that lists what needs to be
3 done in order to comply with the federal
4 requirements?

5 A. It is.

6 MR. RUPE: Move for the admission
7 of Plaintiffs' Exhibit 70.

8 MR. CHALMERS: No objection.

9 JUDGE THEIS: Admitted.

10 (Plaintiffs' Exhibit Number 70 was admitted.)

11 Q. We've heard this acronym, NCLB, No Child
12 Left Behind, tossed around. Explain to the Court
13 what that is.

14 A. Well, No Child Left Behind is a federal
15 requirement that we make sure that we're supporting
16 the educational needs of all children, regardless of
17 their background or their circumstances. And it
18 outlines those specific requirements that your state
19 sets forth in the areas of assessment; says that we
20 must meet those and certain percentages of kids must
21 hit those particular targets.

22 When we don't, it also outlines the kinds of
23 sanctions or interventions that the State must
24 implement with the school or a school district to
25 help correct those deficiencies, whatever's creating

1 the situation for children where the children are not
2 being successful.

3 So philosophically, it's absolutely the
4 right thing to do. It says we have to educate all
5 children to high levels. In practicality, it is
6 extremely difficult to meet those standards. The
7 right thing to do, but extremely challenging.

8 Q. Let me hand you Plaintiffs' Exhibit 72. And
9 in terms of No Child Left Behind, does Exhibit 72 set
10 out the mandatory requirements of No Child Left
11 Behind?

12 A. Yes, it does.

13 MR. RUPE: Move for the admission
14 of Plaintiffs' 72.

15 MR. CHALMERS: I'm fearful that by
16 allowing this witness to testify law that we're
17 creating an improper record. This, by no stretch of
18 imagination, contains all the NCLB statutes, and I
19 think I have to object to introduction and repeat my
20 objection to introduction of sections of law through
21 this witness.

22 JUDGE THEIS: It's incomplete?

23 MR. CHALMERS: Not qualified to
24 talk about it -- pardon?

25 JUDGE THEIS: It's incomplete?

1 MR. CHALMERS: You can see this
2 just talks about the scope and purpose of the
3 statute. She just said, this states all the
4 requirements. It doesn't.

5 MR. RUPE: This goes to the
6 mandatory nature of it. This part of the Exhibit 72
7 speaks to the mandatory nature of it that they can't
8 opt out.

9 JUDGE THEIS: I don't see a problem
10 with it. Admitted.

11 (Plaintiffs' Exhibit Number 72 was admitted.)

12 Q. (By Mr. Rupe) What is adequate yearly
13 progress?

14 A. Well, it means that you have groups of
15 students who are moving forward and meeting the
16 higher expectations established on the standards,
17 meaning that their performing at certain levels on
18 state assessments, and that that progress is
19 determined adequate because students are either
20 hitting the expected proficiency targets, or that a
21 school or groups of children are making a significant
22 growth that's determined by the state.

23 Q. Okay. Go back to the QPA manual,
24 Exhibit 54, if you would. And if you would look at
25 that, I'll get you a page here in a second. Look at

1 starting at -- I'm sorry.

2 I want to move along and go to the AYP
3 targets. Let me hand you Exhibit 80. I was thinking
4 it was in the QPA manual and it's not, so let's get
5 there. Explain to the Court what the Kansas reading
6 assessments are.

7 A. Well, a series of assessments given in
8 Grades 3 through middle school, typically Grade 8.
9 And then at some point during the student's high
10 school experience they are given an assessment over
11 the standards at that particular grade level in the
12 area of reading.

13 So what are the skills that a student needs
14 to know in reading for that grade level. What's a
15 3rd grader expected to be able to do; what's a high
16 school student expected to be able to do in the area
17 of reading, and the assessments test those knowledge
18 based skills.

19 Q. This is the requirement of the federal and
20 state requirements?

21 A. It is a requirement of federal and state.
22 The State determines what the assessment is and how
23 many of your students must be proficient on those
24 assessments. That plan is approved by the federal
25 government and we're all expected to follow it.

1 Q. Does Exhibit 80, a publication from the
2 Kansas Department of Education, set forth what the
3 AYP targets are with regard to kids in Kansas City,
4 Kansas, and statewide at the elementary level?

5 A. What it sets forth are the assessment
6 formats and how the test will be given. It sets
7 forth the adequate yearly progress target that's on
8 the bottom of the column on the left-hand side, and
9 it also talks about the performance levels that will
10 be awarded depending on your students' performance.

11 So for example, we have five levels in
12 Kansas. Students can be exemplary, students can be
13 in academic warning, and then there are different
14 categories in between.

15 Q. Is this AYP target for particular grades or
16 for all grades, K through 12?

17 A. There are different targets for students in
18 Grades 3 through 8, and for high school. The target
19 says for Grades 3 through 8 that 91.9 percent of the
20 students in 2012 are expected to either meet
21 expectations or perform at a higher level.

22 Q. What does that mean?

23 A. That means that they're able to pass at
24 least 68 percent of those indicators or more on that
25 given exam. And for high school students, that 90.7

1 of your students taking that test would reach that
2 level.

3 Q. Would reach what level?

4 A. Passing at least 68 percent of those tests
5 items.

6 Q. So 91 percent of the kids have to do at
7 least 68 percent?

8 A. That's true, or higher.

9 Q. And 3 through 8 and high school, 90.7
10 percent have to score at least 68 percent or higher?

11 A. That's correct.

12 MR. RUPE: Move for admission of
13 Exhibit 80.

14 MR. CHALMERS: No objection.

15 JUDGE THEIS: Admitted.

16 (Plaintiffs' Exhibit Number 80 was admitted.)

17 Q. And is 81 the same information with regard
18 to mathematics?

19 A. It is the same for mathematics. There are
20 different targets for math, but it is the same.

21 Q. Okay. The information flows along the same
22 lines. Explain to the Judges what the targets are
23 for mathematics.

24 A. In the area of math for students in Grades 3
25 through 8, 91.1 percent of your students have to be

1 proficient meeting that expectation, and for high
2 school it's 88.2 percent of your student body has to
3 meet that. That's all kids, no matter if you qualify
4 for services and special ed or ESL, that's the
5 expectation.

6 Q. So 91 percent have to be proficient. What
7 does that mean, proficient? What percentage pass?

8 A. The number for math is different than the
9 number in reading, and I don't have it precisely, but
10 it's somewhere in that 68, 65 percent of the answers
11 must be answered correctly in order to be proficient.

12 MR. RUPE: Move for the admission
13 of ...

14 MS. GARNER: 81.

15 MR. RUPE: 81.

16 MR. CHALMERS: No objection.

17 JUDGE THEIS: Admitted.

18 (Plaintiffs' Exhibit Number 81 was admitted.)

19 Q. (By Mr. Rupe) Okay. And then 73 is the AYP
20 fact sheet. And again, this is a publication of the
21 State Department of Education. And what does this
22 show with regard to reading and mathematics?

23 A. The area of reading, it outlines the targets
24 for schools for grades K-8, kindergarten through 8th
25 grade, and students in Grade 9 through 12, in the

1 area of reading and math.

2 Q. The requirements are what?

3 A. That 90.7 percent of your students in the
4 area of reading are successful in passing that test,
5 and that 88.2 percent in math.

6 Q. And so 90 percent have to finish with a 68
7 or better, is that what that means?

8 A. Yes, they have to correctly answer that many
9 questions on the assessment.

10 Q. All right. And the number in math is what?

11 A. 88.2 for high school and 91.1 for Grades K
12 through 8.

13 Q. Then let's look at Exhibit 74. What is
14 Exhibit 74?

15 A. This is the State Department of Education's
16 guidance on Kansas adequate yearly progress based on
17 No Child Left Behind.

18 Q. Okay. And does this have, on pages 16 and
19 17, charts that show what NCLB requirements are as
20 targets for Kansas kids in mathematics and reading?

21 A. Yes, it does. Those target levels increase
22 every year since the implementation of No Child Left
23 Behind. So back in 2002, in the area of math for
24 kindergarten through 8th grade, we were required to
25 have 46.8 percent of our students meet that level of

1 proficiency. Every year that has increased to 2012
2 levels that we've already talked about, 91 percent of
3 the children meeting that expectation, and it does
4 the same thing in the area of reading.

5 MR. RUPE: The previous exhibit was
6 what?

7 MS. GARNER: 73.

8 MR. RUPE: Move for the admission
9 of 73 and 74.

10 MR. CHALMERS: No objection.

11 JUDGE THEIS: Admitted.

12 (Plaintiffs' Exhibit Numbers 73 and 74 were
13 admitted.)

14 MR. RUPE: I've got blow-ups of the
15 two pages that you mentioned on mathematics and
16 reading, and I'd just like to -- close quarters
17 here -- I'm going to first hold up Exhibit 74, the
18 chart on mathematics. And explain to the Judges what
19 the targets are.

20 A. This is the one I was just talking about
21 where in 2002 the targets were 46.8 percent in the
22 area of math for kindergarten through 8th graders,
23 and 29.1 percent in the high school. Each year those
24 targets had increased with the expectation that by
25 2014, 100 percent of the students will meet those

1 expectations or exceed them.

2 Q. When you say, "100 percent," that means 100
3 percent have to be at least proficient?

4 A. That's correct.

5 Q. And that would be that 68 percent number
6 that you mentioned?

7 A. Right. Right, they have to pass the test,
8 in essence, at that level.

9 Q. In terms of mathematics, I think the number
10 is not 68 percent, but let me hand you an exhibit to
11 refresh your recollection, Exhibit 76. And can you
12 identify -- I got it. Can you identify what
13 percentage it is in mathematics?

14 A. Well, as the Court can see, it changes
15 depending on your grade level of --

16 Q. Let's take high school.

17 A. Let's take high school. You have to have at
18 least 50 percent of the questions answered correctly,
19 57 percent to be considered proficient, and then
20 exceeds and exemplary, additional questions have to
21 be answered correctly.

22 Q. So that 50 percent is a range of 50 to 67
23 percent have to meet standards?

24 A. Yes.

25 Q. So in terms of the targets by 2014, 100

1 percent of the kids have to meet half, 50 percent, on
2 the test?

3 A. Right, they have to answer at least half of
4 the questions correctly to be considered proficient.
5 100 percent of them, regardless of any programs that
6 they might qualify, at-risk, ESL, special education,
7 they're expected to meet that standard.

8 Q. So by 2014 when the state assessments are
9 given, 50 percent of the kids have to pass or be
10 meets standard?

11 A. That's correct.

12 Q. Now, let's do the same thing for reading
13 and. I'm going to put up Exhibit 76 and Exhibit 74,
14 and explain the same thing with regard to reading.

15 A. It works exactly the same except you can see
16 where we started was higher. So in the area of
17 reading for kindergarten through 8th grade, 51.2
18 percent of your student body had to answer questions
19 correctly.

20 Q. And you're indicating back in 2002, the
21 first year of NCLB?

22 A. Yes. And then continue on to 100 percent by
23 2014.

24 Q. 100 percent by 2014 have to do what on state
25 assessments?

1 A. In high school they have to answer at least
2 68 questions correctly out of the exam, 68 percent
3 correct, to be considered proficient. So that leaves
4 a lot of room for answering questions that are not
5 correct.

6 Q. And Plaintiffs' Exhibit 76, are those what
7 are called cut scores?

8 A. They are cut scores or target scores.

9 Q. Who decides these?

10 A. The State Department of Ed has decided those
11 levels of proficiency. And that's when I talk about
12 every state has a different test, this is an example
13 of where we don't have consistency across the
14 nation. What is considered proficient, how many
15 questions you have to answer correctly, or what the
16 test even asks of a student.

17 MR. RUPE: Move for admission of
18 76.

19 MR. CHALMERS: No objection.

20 JUDGE THEIS: Admitted.

21 (Plaintiffs' Exhibit Number 76 was admitted.)

22 Q. All right. Let's go through these
23 performance levels under No Child Left Behind AYP.
24 Let me hand you what's been marked as Plaintiffs'
25 Exhibit 82. And in terms of the categories under the

1 state reading and mathematics performance categories,
2 are there categories of academic warning, approaches
3 standard, meets standard, exceeds standard, and
4 exemplary for both reading and math?

5 A. Yes, there are.

6 Q. Okay. Using 82 to refresh your
7 recollection, explain what academic warning is.

8 A. We talked about those standards or those
9 knowledge level concepts that we expected students to
10 know at every grade level. So to be an academic
11 warning says to the family, your child is not able to
12 respond to questions around that topic, reading or
13 math, at the grade level. So it specifically says,
14 when a child is reading grade-level material to
15 himself or herself, does he or she fully understand
16 the material. If you're on academic warning, that
17 would mean you do not.

18 Q. Okay. And explain to the judges what
19 approaches standard is.

20 A. Basically, approaches standard says that
21 they understand some of the material but not all of
22 the material. And if you'd like me to proceed, meets
23 standard says that they understand the material at
24 the grade level, at least the percentage of the
25 material that those target scores said they needed

1 to. The next category is called "exceeds," meaning
2 that they understand the material completely. And
3 exemplary says that this student is really doing well
4 and has met or mastered that content at that grade
5 level.

6 Q. Let me throw in Exhibit 83 and 84, and just
7 ask you about 82, 83, and 84. Do those publications
8 from the State Department of Education define the
9 categories that are required by the State and by the
10 federal government?

11 A. Yes. What I'm looking at is performance
12 categories -- broken down the skills for the areas of
13 reading and math for Grades 3 through high school.

14 Q. And the detail, the Grades 3 through high
15 school are set out in 83, which is mathematics, and
16 84, which is reading?

17 A. That's right. And what it does, in very
18 broad, sweeping terms, it talks about the kinds of
19 concepts that kids have to know in each of the grade
20 levels and the subjects and where they fall in terms
21 of where should they be. As a parent, do I know that
22 my child is performing on track and on time like they
23 should be in terms of their learning, or are there
24 some deficits?

25 MR. RUPE: Move for admission of

1 82, 83, and 84.

2 MR. CHALMERS: No objection.

3 JUDGE THEIS: They're admitted.

4 (Plaintiffs' Exhibit Numbers 82,
5 83, and 84 were admitted.)

6 Q. All right. Let's talk about what happens if
7 you don't meet the standard. I'm going to hand you
8 Exhibit 75. And can you identify Exhibit 75 as a
9 publication of the State Department of Education?

10 A. I can.

11 Q. And in terms of the publication, does it set
12 out what the sanctions are on page 6 of Exhibit 74;
13 has a Bates number bottom right-hand corner, KSDE
14 145511. Does that set out what sanctions are?

15 A. It does set out what sanctions are. And if
16 I may, important to know that the federal
17 requirements only apply to schools who are eligible
18 for Title I money. What does that mean? Means you
19 have to have a certain percentage of your kids who
20 are living in poverty. So if you have a wealthy
21 school that has few children living in poverty, these
22 rules and regulations do not apply.

23 Q. Okay. And explain to the Judges -- using
24 that page I indicated to refresh your recollection,
25 explain to the Judges what the sanctions are for

1 those schools who do not meet AYP.

2 A. The sanctions are much like a ladder. So if
3 you're on improvement, meaning that you've not met
4 those expectations for two years in a row, then the
5 first requirement is that you develop a plan. It's
6 called an integrated improvement plan.

7 What does that mean? It means you're
8 looking at reading and math and looking at
9 professional learning. You're looking at the needs
10 of special ed and ESL, all interrelated, and you
11 draft a plan on what you're going to do to address
12 the challenges facing that school.

13 You also have to offer choice, meaning that
14 we have to draft a letter to every parent who has a
15 child in that school and let them know that that
16 school is not meeting the standards and offer them
17 the choice of sending their child to a different
18 school at the same level, a different elementary
19 school, middle school, or high school, and provide
20 transportation if the family chooses to take that
21 option, choice.

22 The third requirement in that first area is
23 that you have to spend at least 10 percent of the
24 federal money on professional development to help
25 your teachers and your staff meet the needs of

1 children. As you move up the ladder of not having
2 success with all children and meeting those targets,
3 there are additional requirements.

4 If you are in year two of being on
5 improvement, meaning you have not met the standards
6 for more than three years in a row, that you have to
7 offer what's called supplemental education services.
8 What does that mean? That means it's tutoring
9 outside of the school day, targeted specifically to
10 children who are not yet meeting standard. You must
11 provide tutoring. And in Kansas, they have a list of
12 providers that we may choose from or the family may
13 choose from in order to receive that tutoring --
14 services. Still have to do the integrated plan,
15 still have to do your professional development.

16 So you know, moving up the ladder, there are
17 additional requirements. To write a corrective
18 action plan, things are serious for a school who
19 still fails to have all of its students being
20 successful. So you have to write a plan that has
21 specific actions on what you're going to do based on
22 reasons for that group of kids and teachers in order
23 to improve their performance.

24 And finally, the last sanction is that the
25 school must be restructured. The principal has to be

1 removed. You have to remove staff from the building
2 who don't have evidence that they can help move
3 children forward. You have to re-staff your school.
4 You have to put in place a new curriculum which
5 includes tutoring, parent support services, and that
6 kind of thing.

7 So the further you get on that continuum of
8 not hitting the targets, the more and more
9 requirement that comes from the state and federal
10 government, and the less and less control a local
11 school district has in determining what to do.

12 Q. In terms of the category of schools on
13 improvement, tell the Judges what the experience of
14 the Kansas City School District is with schools on
15 improvement.

16 A. Well, we, this past year, had nine schools
17 on improvement, and they're at various places on that
18 ladder, if you will. Next year, we anticipate we're
19 actually going to have an elementary school that is
20 not accredited because they have failed to meet the
21 needs of their children for a significant number of
22 years; not at lack of effort, but just have not been
23 able to provide the resources that those children
24 need to be successful.

25 The district itself has been on corrective

1 action for a number of years, and so we must comply
2 with lots of requirements from the state department
3 partners, as well as the federal government in terms
4 of implementing programs and services.

5 Q. What do you mean the district itself has
6 been on corrective action?

7 A. Well, just like an individual school has to
8 meet the specific targets, so does a school district
9 as a whole. So we have to look at how students are
10 performing overall. And if we're not hitting those
11 same targets that we talked about for schools as a
12 large unit, then we have to follow a similar process.

13 I have to tell you that this is a major
14 driver for what happens in Kansas City, Kansas. It's
15 extremely heart wrenching to say to teachers and to
16 parents, we're not meeting the needs of the children
17 in this building.

18 We've had to remove principals. We've had
19 to fire staff. We've had to move staff to different
20 buildings and implement new programming. And it's
21 the right thing to do for kids, but it's extremely
22 challenging to implement this system.

23 Q. In your opinion, what action is necessary to
24 keep schools off the on improvement list or to keep
25 the district off the corrective action list?

1 A. Yes, you know, we talked earlier about
2 Sumner Academy. And Sumner is ranked the 64th best
3 high school in the nation. Same kids, same
4 community. What's different is that these students
5 have a lower people ratio. They have intensive
6 support. They have good, strong family structure.
7 So they're able to be successful there.

8 So for the schools who are not being
9 successful, we know what to do. We don't have the
10 resources to implement that across the board for
11 every child.

12 MR. RUPE: Move for the admission
13 of 75.

14 MR. CHALMERS: No objection.

15 Q. Let's go to 47. Take a look at Exhibit 47,
16 please, and I want to focus on -- well let's
17 identify -- 47 is another requirement of the State
18 Board of Education for Kansas law, requirement of the
19 state board, correct?

20 A. That's right and this specifically talks
21 about accreditation, the assessments that we are to
22 use and the standards or the curriculum that we are
23 to implement.

24 MR. RUPE: Move for the admission
25 of Exhibit 47.

1 MR. CHALMERS: No objection.

2 JUDGE THEIS: Admitted.

3 (Plaintiffs' Exhibit Number 47 was admitted.)

4 Q. And what I want to ask you about is that
5 requirement in subsection that says, the State Board
6 of Education shall design and adopt a school
7 performance accreditation system based upon
8 improvement and performance that reflects high
9 academic standards and is measurable.

10 Do you try to do that in Kansas City,
11 Kansas?

12 A. Absolutely. In fact, in our district we've
13 realized that even meeting the expectations
14 articulated by the state board, we have only 34
15 percent of our children going to college, and less
16 than 11 percent complete. So we have applied for a
17 waiver from having to administer the state
18 assessments because we felt like they were not
19 preparing our kids for their futures.

20 State board approved our waiver and we sent
21 that on to the federal government who said yes to
22 half of that. The half they approved said that we
23 could use the ACT, that college entrance exam that we
24 saw this morning, as our measurement of success.

25 So we want to raise our standards to the

1 point that when those kids walk across that stage,
2 that they're prepared -- not all kids go to college,
3 but they're prepared if they choose to -- and they're
4 also prepared for technical careers.

5 Q. So are you doing that for all your kids?

6 A. I wish we were doing it for all of our kids,
7 but I'm anticipating the preliminary results from the
8 Kansas assessment that we administered this spring,
9 and we have almost 40 percent of our students who did
10 not meet those basic standards. So we're not doing
11 it. We could do it if we could replicate the model
12 that we have in place at Sumner and some of our other
13 schools that have additional resources, but we can't
14 do that universally at this time.

15 Q. In terms of the college readiness of the
16 kids that graduate from a Kansas City, Kansas school,
17 if they meet the state standards, are they college
18 ready?

19 A. No. There have been studies that show
20 meeting the state standards in Kansas, across the
21 state, many of our children find themselves in
22 remedial college courses. Data that backs that up is
23 looking at the ACT, which is a generally accepted
24 college entrance examination. Are you college ready?

25 And the state average on that test is more

1 than 21, which is great. In Kansas City, Kansas, our
2 average is less than 17. To get into a university,
3 the minimum score is 21, and if your family needs
4 financial assistance, and most of our families do,
5 kids have to have a 24 or higher to access those
6 financial resources.

7 Q. In terms of what the State requires, is
8 college readiness part of the requirements?

9 A. At the current time it is not.

10 Q. In terms of the --

11 A. In terms of the standards set forth here.
12 QPA talks about college readiness, but in terms of
13 the particular standards reflected here in this
14 document.

15 Q. What about the requirements that were shown
16 on Exhibit 36?

17 A. Right. Those seven factors --

18 Q. Sorry, 39. Yes.

19 A. Right.

20 Q. In terms of those to requirements --

21 A. Yes.

22 Q. College readiness part of that?

23 A. They are. I think specifically they're even
24 referenced to college preparation, but I don't know
25 you need to --

1 Q. For academic achievement --

2 THE COURT REPORTER: I'm sorry,
3 Mr. Rupe?

4 Q. In terms of academic achievement beyond high
5 school, I think is how it's referred?

6 A. Yeah, thank you. Right, advanced training
7 in either academic or vocational fields, the student
8 can choose to pursue their life options. That can
9 imply the language of college and career readiness.

10 Q. Let me hand you Exhibit 52, because I want
11 to ask you about a commission that you were on. What
12 is the Kansas Education Commission?

13 A. Our commission of education and the state
14 board formed this commission of individuals made up
15 of public school administrators, university
16 personnel, and business partners to take a look at
17 what's called the Blueprint for Change, which is the
18 federal government's outline for helping our schools
19 move to higher standards. So the committee was
20 formed to analyze those areas in the federal
21 government's blueprint and to make recommendations to
22 the commissioner and the state board as to how they
23 might implement those.

24 Q. Would this include the standards that we
25 have been talking about this afternoon?

1 A. It would include those standards but also
2 additional standards. For example --

3 Q. In terms of college readiness?

4 A. Absolutely, college readiness, uh-huh.
5 Additional standards also outlined here are the
6 evaluation systems to judge the effectiveness of
7 teachers, has to have at least some portion of it
8 based upon student results, student achievement.

9 Q. And in terms of Exhibit 52, is that report
10 of the Kansas Education Commission?

11 A. Yes, the final report that was completed,
12 December 2010.

13 Q. And just out of curiosity, did this go to
14 the State Board of Education?

15 A. It did.

16 Q. Did it go to the Kansas Legislature?

17 A. It's my understanding that it was also
18 shared with the Legislature.

19 Q. Look at page 5 of the publication. Does it
20 set out the purpose of the commission?

21 A. Yes, there were five broad areas, and
22 they're outlined on page 5.

23 Q. And those areas involved college- and
24 career-ready students, great teachers and leaders in
25 every school, equity and opportunity for all

1 students, raising the bar, and rewarding excellence
2 and innovation and continuous improvement?

3 A. That's right.

4 MR. RUPE: Move for the admission
5 of Exhibit 52.

6 MR. CHALMERS: No objection.

7 JUDGE THEIS: Did you say, no
8 objection?

9 MR. CHALMERS: No objection.

10 JUDGE THEIS: Admitted.

11 (Plaintiffs' Exhibit Number 52 was admitted.)

12 JUDGE FLEMING: When would be an
13 appropriate time for us to take a recess?

14 MR. RUPE: Right now is fine.

15 JUDGE THEIS: Our court reporter
16 has children and deadlines, so probably we're looking
17 to quit at 5:00. Is that reasonable?

18 MR. RUPE: I think that's very
19 reasonable.

20 JUDGE THEIS: Okay.

21 MR. RUPE: It can be on this side
22 of 5:00 if a break point occurs.

23 JUDGE THEIS: While you're
24 breaking, maybe you can think of what you think may
25 be okay in the morning, too, so we can get regular.

1 MR. RUPE: All right.

2 (A recess was taken.)

3 JUDGE THEIS: Can we see Counsel up
4 here?

5 We don't need a record.

6 (An off-the-record discussion was held.)

7 JUDGE THEIS: It's come to our
8 attention that somebody's operating a recording
9 device, which would be just like the transmission of
10 a TV or radio. If that were true, you would be a
11 violation of our rules because you haven't got Court
12 approval. So if anyone's doing that, the order is to
13 cease and desist. And if you're discovered doing it,
14 you'll be booted forthwith, okay? We've got one
15 record here and that's all we need. Thank you.

16 MR. RUPE: You ready for me to
17 begin?

18 JUDGE THEIS: Can't hardly wait.

19 Q. (By Mr. Rupe) I want to talk about the kids
20 that -- and we'll cover the achievement tests in your
21 school district in a minute. But I want to talk
22 about the kids that fall in that non-proficient
23 category or the kids that fall in the not meets
24 standards, and ask you if there are particular
25 strategies that are used in your district and have

1 been used to help move the performance level of those
2 kids up?

3 A. There are strategies. There's not a
4 strategy that meets the needs of every student. What
5 we spend a lot of time doing is looking at data for
6 individual students and analyzing what they're
7 missing, and then we provide direct instruction in
8 that area.

9 You'll hear teachers talking about
10 intervention or Tier II groups. And they do that
11 based on what are the set of skills that the given
12 group of kids are missing, and create plans for
13 that. Oftentimes, that's re-teaching or teaching in
14 a different mode. Or frankly, for our kids they
15 learn best in groups, not necessarily as individuals,
16 so they can talk about, grapple with the concept, and
17 come up with an understanding of it as a group.

18 So it's all based on the performance data.
19 And as we look at that -- and we have the opportunity
20 every Wednesday afternoon to have our students go
21 home two hours early from school in order for our
22 teachers to take a look at what's happened
23 instructionally over the past week, what's working
24 well for kids, what needs to be re-taught, and where
25 can they move forward. And so we analyze and develop

1 those strategies based on whatever the given set of
2 skills are to student need, very explicit instruction
3 around those standards that we've talked so much
4 about.

5 Q. What role does a teacher in the classroom
6 play in terms of moving kids that are not proficient
7 to proficient or better?

8 A. The teacher, no matter where you are, no
9 matter what school system, what community, is the
10 most important aspect in being able to meet the needs
11 of the kids. And for kids who you're trying to get
12 up to par and then move forward and then be
13 proficient, you have to have the absolute best
14 teachers in front of them, because they have to know
15 how to develop -- bring kids up to the skills they're
16 missing, and accelerate them so they can be on track
17 with their peers.

18 The research is clear, my experience is
19 clear, the teacher is the number one most important
20 factor, the second most important factor is school
21 leadership, and third is the family structure.

22 Q. In terms of the teacher, what role does
23 professional development play in the development of
24 quality teaching?

25 A. It's a significant role, and that's why our

1 board is invested in releasing our students for two
2 hours every Wednesday, because they know that in
3 order to meet the needs of kids, you have to have
4 ongoing and embedded professional learning.

5 We provide instructional coaches in all of
6 our schools. We call them teacher leader. And their
7 job is to team teach and model and develop lesson
8 plans with teachers so we can try to meet the needs
9 of all the children.

10 And we also have regular professional
11 development that is not a sit and listen to a
12 lecture, but it's an actual time to try out
13 instructional approaches and to work on them with
14 colleagues, and then to try them out in the
15 classroom, take a look at that data, and then move
16 forward.

17 So earlier this morning you heard our
18 district praised. We're making some extreme movement
19 in our performance and we're real proud of that. The
20 key to that has been professional development. And
21 other school districts know that we spend a lot of
22 time and energy investing in that professional
23 learning. And our teachers become highly recruited,
24 frankly, to go elsewhere so they can help other
25 children.

1 Q. What is the phrase, "extended learning
2 opportunity," mean?

3 A. Well, all children are in school about six
4 and a half hours a day, and extended learning might
5 mean that students have a longer school day, they may
6 come to school on Saturday in order to work on some
7 skills, or they may be pulled out of a non-critical
8 content and ordered to focus on reading, math, and
9 science instruction.

10 Q. Would such things as mentoring, tutoring,
11 all-day kindergarten, preschool programs, after
12 school programs, summer school programs fit in the
13 category of extended learning?

14 A. All of those would apply. All of those.
15 And we have implemented all of those in our district
16 all-day kindergarten was put into place even though
17 we didn't receive additional funding, because we felt
18 so critical that that was needed for our children.

19 We have a preschool that has been identified
20 by the state department as one of the exemplary
21 schools in the state. It provides opportunities for
22 three-, 4-year-old children and kids who are not five
23 before September 1st to really provide some rich
24 experience. And in addition to that, we work very
25 closely with our community partners who provide

1 preschool so they know what kids need to do to be
2 kindergarten-ready.

3 Q. In terms of extended learning opportunities,
4 would you consider that to be a strategy that can be
5 used to improve student performance?

6 A. It can be. And we are starting our summer
7 session tomorrow, as we speak, but we have two
8 schools that are on different calendars. And what we
9 have found is that kids need to be in school longer,
10 particularly when they're already behind, not meeting
11 the standards. So these particular schools were
12 funded with some federal dollars in order for us to
13 really see if having a longer school year will make a
14 difference. And so far, we're pleased with the
15 preliminary and early results of those buildings.

16 Q. Let's talk about some extracurricular
17 activities such as supports, in terms of
18 extracurricular activities like speech, debate,
19 sports, do those serve any purpose in improving
20 student performance?

21 A. You know, I talked a little bit earlier this
22 afternoon about the need to have kids demonstrate
23 what they know. And there's not better example than
24 in those extracurricular activities, fine art, music,
25 debate, for students to have to put together,

1 holistically, their learning and to demonstrate it.

2 I know I'm not telling the Court anything
3 you don't know about; athletics and those kinds of
4 team supports are one of the best tools to develop
5 leadership, tenacity, hard work, and focus. And for
6 many of our children, we have 87 percent living in
7 poverty. If the school district was not providing
8 those experiences, they would not have access to
9 them. We see them as essential.

10 Q. Does it cost more for a school district to
11 improve the performance of a disadvantaged child?

12 A. Let's talk about what that means to be
13 disadvantaged and what it means to be at-risk.
14 Children who are at-risk, their families have the low
15 income. They may be living in a single parent
16 household. They may be living in a household where
17 there's not a high school graduate. Those kinds of
18 things.

19 And in those kind of environments, the
20 research has found, and our experience has validated,
21 that children come to school two or three years
22 behind, where their peers come to school from
23 families like ours that are more well-resourced. So
24 it does cost more money because we are, from the very
25 beginning that a 4-year-old walks into our preschool,

1 knowing that those children have not received that
2 kind of background information and experiences that
3 they need to be successful.

4 In the area of language, for example,
5 typical middle class child comes into kindergarten
6 knowing 30,000 words. A typical child coming from a
7 poverty background comes in with five to 10,000
8 words. So they haven't been exposed to the
9 language. They haven't had the experiences. So it
10 costs more for us to close those gaps.

11 Kids can learn. This isn't about, some
12 children just can't learn. It's about being able to
13 provide an environment that advances learning in a
14 way that meets their needs.

15 Q. Those kids coming from disadvantaged
16 backgrounds, do things like sports and field trips
17 serve any purpose?

18 A. Well, they serve a purpose of showing the
19 kids how the content applies in the real world. And
20 as I mentioned earlier, if a school district that has
21 high numbers of kids living in poverty don't provide
22 that, they don't get access to that -- I can't tell
23 you how many kids have told me that they've never
24 been outside Kansas City, Kansas. They've never been
25 to the Plaza in Kansas.

1 When we bring them to Topeka for events and
2 they go to the capitol, for example -- they've never
3 been outside of their community. So it's essential
4 for our children, to get them ready for the world so
5 they can contribute, that we provide those
6 experiences.

7 Q. Let's talk about achievement and how
8 achievement is measured in the Kansas City, Kansas
9 School District. What sort of achievement tests are
10 administered in the district?

11 A. We've talked about the Kansas assessment,
12 and we know that that's a requirement. But for us,
13 it wasn't enough to just wait until the end of the
14 year to give an assessment to see if the children
15 were on track in subject areas. And so two years ago
16 we revised our curriculum to include not only the
17 Kansas standards and those skills that Kansas says
18 our kids needed to know, but we brought in the ACT
19 college readiness standards and mapped those all the
20 way down to, what does a preschooler need to know in
21 order to be on track for college.

22 So the minute a child walks in our
23 preschool, we're trying to think of them as a
24 college-going student. So we needed tools to
25 measure, how are we doing. So every four and a half

1 weeks, we administer in the areas of reading and math
2 in elementary, and in reading, math, science, and
3 social studies in middle and high school, what we
4 call a check point assessment.

5 It's a brief assessment that's administered
6 to the children over the content that has been taught
7 that past month. And from there we determine, are
8 the kids ready to move forward, or if they're not,
9 what are there skill deficits. And then we put into
10 place supports, interventions, re-teaching, to meet
11 those needs.

12 We also use national assessments. I
13 mentioned the ACT as one. And we administer a test
14 of academic progress which is more aligned to the
15 national standards so we can gauge whether or not our
16 students are going to be ready to compete with
17 colleagues from across the United States. All of
18 those are used in addition to teachers give tests,
19 quizzes, and check in around whether their child or
20 children are gaining the knowledge that they have put
21 forth on a daily basis.

22 Q. Let's talk about statewide for a second.
23 The statewide achievement tests that are administered
24 are the state tests, and then we've heard about NEAP,
25 is that correct?

1 A. NEAP.

2 Q. And what is NEAP?

3 A. NEAP is the National Assessment of Education
4 Progress and it is administered on a random basis to
5 selected schools. So every year I'm notified what
6 schools have been selected to participate in that
7 NEAP assessment, and we administer that.

8 We don't get the results back as a district,
9 we don't get the results back as a school, but the
10 results come as an aggregate to the state to see if
11 the performance for our state is on track with the
12 performance of the other 49 states.

13 Q. I want to focus, if I could, with you on the
14 statewide achievement test, and then I want to
15 compare Kansas City, Kansas. See where I'm going?

16 A. (Nodding head.)

17 Q. So let me hand you Exhibit 103, Plaintiffs'
18 Exhibit 103? And is Plaintiffs' 103 the statewide
19 results for reading for all students, for white
20 students, for free and reduced lunch students, for
21 Hispanic students --

22 A. Yes.

23 Q. -- for English language learners --

24 A. Mm-hmm.

25 Q. -- and for African Americans, based on the

1 Kansas Department of Education publication, Report
2 Card 2010/2011?

3 A. That's correct.

4 MR. RUPE: Move for admission of
5 Plaintiffs' 103.

6 MR. CHALMERS: No objection.

7 JUDGE THEIS: Admitted.

8 (Plaintiffs' Exhibit Number 103 was admitted.)

9 Q. Okay. The first page on the statewide
10 results shows that 12.2 percent of all students in
11 the state score below proficient on state
12 assessments, is that right?

13 A. That's what it says, yes.

14 Q. The next page shows that, when it comes to
15 white students, 8.3 of all Caucasian students score
16 below proficiency?

17 A. That's correct.

18 Q. When it comes to poor students, the
19 disadvantaged, 19.5 percent score below
20 proficiency --

21 A. That's correct.

22 Q. -- true?

23 A. Mm-hmm.

24 Q. The next page shows that 21.6 percent of
25 Hispanics score below proficiency on the state tests?

1 A. That's true.

2 Q. The next page shows on English language
3 learners that 27.8 percent of those kids score below
4 proficiency on the state assessment?

5 A. That's correct.

6 Q. And it looks like there are 16,801 Hispanic
7 kids that are below proficiency, and 12,675 ELL kids
8 below proficiency?

9 A. Yes.

10 Q. And then African Americans, 27 percent of
11 all African American students in the state score
12 below proficiency on state assessments?

13 A. That's correct.

14 Q. Let's move to Exhibit 104. And by the way,
15 103 was reading assessment, wasn't it?

16 A. Yes, it was reading.

17 Q. Okay. Let's go to 104, which is math
18 assessments. And this the math assessment for the
19 same year, 2010/2011, according to the report card?

20 A. Yes.

21 Q. And is this aggregated the same way to race
22 and poverty?

23 A. Yes, it is.

24 MR. RUPE: Okay. Move for the
25 admission of 104.

1 MR. CHALMERS: No objection.

2 JUDGE THEIS: Admitted.

3 (Plaintiffs' Exhibit Number 104 was admitted.)

4 Q. And Exhibit 104, in math shows that 14.6
5 percent of all students score below proficiency?

6 A. That's true.

7 Q. That's close the 70,000 kids in Kansas, is
8 that right?

9 A. That's right.

10 Q. Among the Caucasian kids, on the next page
11 10.9 percent of all white students score below
12 proficiency on the state assessments in math, true?

13 A. That's true.

14 Q. That's 35,000 kids, right?

15 A. Yes.

16 Q. And then, the next slide shows that on math
17 assessments, according to the state assessment, 22.2
18 percent of the disadvantaged kids score below
19 proficiency?

20 A. That's correct.

21 Q. And that's over 50,000 kids in Kansas?

22 A. That's correct.

23 Q. The next slide is 22.6 percent of all
24 Hispanic students score below proficiency, and that's
25 close to 17,600 kids?

1 A. That's true.

2 Q. And ELL students are 25.2 percent below
3 proficiency, and that would be close to 11,500 kids?

4 A. That's true.

5 Q. And on the final slide, 32.6 percent of all
6 African American, about 11,500 and some, kids score
7 below proficiency who are African American on state
8 assessment?

9 A. That's correct.

10 Q. I held this chart up in opening statement.
11 Let me hand you Exhibit 104.

12 MS. GARNER: 105.

13 MR. RUPE: I'm sorry, 105.

14 Q. Does that show the increasing demands by way
15 of AYP -- and we'll get to it in a little bit -- but
16 the cuts in the base over the period of time, 2006
17 through 2013?

18 A. It does. It shows the level of proficiency
19 required on state performance in math and the base
20 aid amounts and the reduction in those.

21 MR. RUPE: Move for admission of
22 105.

23 MR. CHALMERS: No objection.

24 JUDGE THEIS: Admitted.

25 (Plaintiffs' Exhibit Number 105 was admitted.)

1 Q. And the call out box here shows in the year
2 2011, what we've already identified, and that is,
3 32.6 percent of all the African American students in
4 the state scored below proficiency?

5 A. That's correct.

6 Q. At a time when the resources in terms of the
7 state base decline?

8 A. What this shows is that the resources to
9 support the higher demands are going down, while the
10 demands continue to escalate.

11 Q. And then let me hand you Exhibit 106. And
12 this is kind of a summary of the other graphs, but
13 this graph from the report card shows the
14 disaggregated results for all students, white, free
15 and reduced, Hispanic, ELL, and African American for
16 Grade 11 mathematics in 2011, correct?

17 A. That's correct.

18 MR. RUPE: Move for the admission
19 of 106.

20 MR. CHALMERS: I don't know that
21 I'll have an objection to it, but I haven't done the
22 math and foundation hasn't been laid so maybe I can
23 look at it.

24 JUDGE THEIS: We'll reserve ruling.
25 You can go ahead with it, Mr. Rupe.

1 MR. RUPE: Thank you.

2 Q. This is from the Kansas State Department of
3 Education Report Card, correct?

4 A. That's correct, for 2010/'11.

5 MR. RUPE: I'm sorry, Your Honor,
6 did you admit this or --

7 JUDGE THEIS: Which one is it,
8 103?

9 MR. RUPE: 106.

10 JUDGE THEIS: No. You can talk
11 about it, but we're not admitting it, yet.

12 MR. RUPE: All right. Thank you,
13 Your Honor.

14 Q. Does this diagram, 106, show the achievement
15 gap?

16 A. It does. What it shows is for all students
17 where they're performing. And those five categories
18 that we've been talking about, how many are below
19 standard, how many are proficient, who are performing
20 exceeding standard and the exemplary category that
21 we've talked about. And for each of the different
22 demographic groups, it's broken out: All students,
23 and here are white students; here are students in
24 poverty, free and reduced, our Hispanic students;
25 these are English as a second language learning and

1 African American students.

2 Q. This is for 11th grade math?

3 A. And 11th grade math. So what is instructed
4 here is to take a look at these lower bars and to see
5 who's performing better and if the gap is closing.

6 You can see, for white students you have 13 percent
7 who are below standard. If you go over here to your
8 English as a second language learners, that number
9 jumps to 38.6 percent below standard.

10 Q. For African Americans?

11 A. African Americans, the number is 40.3
12 percent are not meeting state standards, 11th grade
13 math.

14 Q. Is your experience that these kids just will
15 never be able to do the math?

16 A. No, that's not my experience. My experience
17 is that our instructional approaches and resources
18 that we're currently using are not meeting their
19 needs.

20 Q. And for the Court's information and to make
21 sure we get that exhibit admitted, the data for that
22 exhibit --

23 MR. RUPE: -- which is?

24 MS. GARNER: 106.

25 Q. -- 106 comes directly from the Plaintiffs'

1 Exhibit 101. There's the disaggregated data for 11th
2 grade math on page 16?

3 A. Right. And what I'm being shown right now
4 is not a graph, but the actual numbers that make up
5 the graph. It's the same information.

6 Q. All right. Let's go to reading -- no, I'm
7 sorry, let's go to NEAP.

8 MR. RUPE: Give me Exhibit 85.

9 Q. I'm going to hand you Exhibit 85 and ask you
10 if that is a publication from the Kansas State
11 Department of Education explaining what the National
12 Assessment of Educational Progress is in Kansas?

13 A. That's correct, for 2010/'11.

14 Q. What is The Nation's Report Card?

15 A. It's a common measuring stick. NEAP, right
16 now, is the only tool that we have that is used
17 across all the states in the nation for random
18 students so we can measure whether or not we are all
19 moving forward as we need to. In the future, we'll
20 have the assessment of the Common Core, but right now
21 NEAP is the only tool that does that.

22 MR. RUPE: All right. Move for
23 admission of 85.

24 MR. CHALMERS: No objection.

25 JUDGE THEIS: Admitted.

1 (Plaintiffs' Exhibit Number 85 was admitted.)

2 Q. On the second page of Exhibit 85 on the
3 back, Bates Number 145506, is that a synchronization
4 of the Kansas assessment with the NEAP assessment.

5 A. Yes, it is, and it talks about what students
6 apply. So for example, students with disabilities
7 are English language learners are not part of the
8 NEAP assessment.

9 Q. Okay. And let me show you what is marked --

10 A. Mr. Rupe, if I can correct myself, they are
11 part of the NEAP. They are included. I misspoke.

12 Q. And Kansas under NCLB requires all students
13 to be assessed, and NEAP is voluntary?

14 A. NEAP is voluntary, except it's required for
15 Title I funds. So if you are a state that receives
16 Title I funds or a district, then it's not
17 voluntary. We are required to participate.

18 Q. Okay. And I want to show you Plaintiffs'
19 Exhibit 87 because I want to get an apples to apples
20 understanding of the Kansas performance categories
21 and the NEAP achievement levels. And I want to ask
22 you if Plaintiffs' Exhibit 87 synchronizes the Kansas
23 performance categories with the NEAP achievement
24 levels?

25 A. It does synchronize. In Kansas we have five

1 levels of achievement, and the NEAP they have four.
2 They've taken the bottom two, the academic warning
3 and the approaches standards, and called that one
4 category: Below basic.

5 Q. And the left-hand column comes from the
6 Kansas State Department of Education publications?

7 A. Yes.

8 Q. And the right-hand column comes from NEAP?

9 A. That's correct.

10 Q. Let me hand you Exhibit 82.

11 MR. RUPE: Is that already
12 admitted?

13 MR. ROBB: Yes.

14 MR. RUPE: Just use mine. Okay.
15 Thank you. Leave that one up there.

16 Q. Exhibit 82 sets forth the state reading and
17 mathematics performance categories, correct?

18 A. That's correct.

19 MR. RUPE: Move for admission of
20 Plaintiffs' 87.

21 MR. CHALMERS: No objection.

22 JUDGE THEIS: Admitted.

23 (Plaintiffs' Exhibit Number 87 was admitted.)

24 MR. RUPE: Okay. Let's look at
25 Exhibit 122 and focus on the NEAP scores that are

1 disaggregated in 8th grade reading and 8th grade
2 math. Now, so we're on the same page, the
3 non-proficient category we talked about would be the
4 same as the below basic category, is that correct?

5 A. That's correct.

6 Q. And under NEAP, all students tested in
7 reading performed at what level, below basic?

8 A. The below basic level, all students, there
9 were 25 -- and it does not indicate on the report. I
10 will assume that's percentages -- yes, percentages of
11 the sample. 25 percent scored below basic.

12 Q. Okay. And in Kansas, all students sampled
13 were below basic, 21 percent?

14 A. 21 percent.

15 Q. White was 16 percent?

16 A. Yes.

17 Q. Black, below basic for 8th grade?

18 A. And reading --

19 Q. Reading --

20 A. -- 42 percent below basic.

21 Q. Hispanic was how far below basic?

22 A. 34 percent, students were below basic.

23 Q. Free and reduced lunch, how many were below
24 basic?

25 A. Free and reduced was 32 percent.

1 Q. What about the ELL students in 8th grade
2 reading?

3 A. 51 percent were below basic.

4 Q. The 51 percent of the English limited
5 learners were below basic in an 8th grade reading
6 NEAP test?

7 A. That's correct.

8 Q. Let's do mathematics for 8th grade.

9 A. In the below basic category of all students
10 in the nation, 28 percent were below basic. In
11 Kansas, all students, that was 20 percent of our kids
12 were in the below basic category. For African
13 American students --

14 Q. Let's do white students first.

15 A. Okay. White, 14 percent were below basic.
16 African American is 41 percent were below basic; free
17 and reduced lunch students kids from poverty, 32
18 percent were below basic; and for English limited
19 learners, 50 percent below basic.

20 Q. And back up to Hispanic was 35 percent?

21 JUDGE FLEMING: What's the
22 significance of the very first one that's not
23 highlighted?

24 MR. RUPE: The national, all
25 student sample?

1 JUDGE FLEMING: Was that all
2 students --

3 MR. RUPE: Yeah, that's all
4 students in the nation. Then the next one down is,
5 Kansas, all students in Kansas. And then it's
6 disaggregated by subgroup.

7 THE WITNESS: It's important to
8 know that that's a sampling --

9 JUDGE THEIS: You're using a term I
10 don't think I've heard, "basic."

11 MR. RUPE: Below basic, if you look
12 at --

13 JUDGE THEIS: Is that the same
14 thing as below proficiency?

15 The WITNESS: It is.

16 MR. RUPE: This is the syncing
17 exhibit we just admitted into evidence. Below basic
18 under the national test, NEAP, syncs with approaches
19 standards in academic warning under the Kansas
20 performance categories.

21 JUDGE FLEMING: Okay.

22 MR. RUPE: This is what has been
23 called, in the past, non-proficient.

24 JUDGE THEIS: Okay. Well ...

25 MR. RUPE: Move for the admission

1 of 122.

2 MR. CHALMERS: No objection.

3 JUDGE THEIS: Yes or no? No?

4 MR. CHALMERS: No objection.

5 JUDGE THEIS: Admitted.

6 (Plaintiffs' Exhibit Number 122 was admitted.)

7 Q. Okay. Take a look at Exhibit 86. Is
8 Exhibit 86 a publication by NEAP?

9 A. Yes, it is.

10 Q. And this shows the comparison of state
11 proficiencies?

12 A. It's a, yes, mapping of state standard
13 proficiency standards to the NEAP scales.

14 Q. What I want to show you is or call your
15 attention to is page 10 and 11.

16 MR. CHALMERS: Before you discuss
17 this exhibit with the witness, I think you probably
18 ought to lay a foundation for it.

19 Your Honor, it's a mapping test
20 done by NEAP to which there's some dispute about its
21 methodology.

22 MR. RUPE: Well, I'm sure every
23 test has a dispute about methodology.

24 MR. CHALMERS: That's why I asked
25 you to lay foundation, Counsel.

1 Q. (By Mr. Rupe) With regard to the
2 publication, is it a NEAP publication?

3 A. It's a NEAP assessment progress, but it also
4 has the U.S. Department of Ed on here, so I would
5 assume it's a joint publication.

6 Q. And does your district, in order to receive
7 Title I funds, rely on this publication and the NEAP
8 scores?

9 A. No, we do not.

10 Q. Okay. In terms of the NEAP, what's the
11 requirement for your district as to taking NEAP?

12 A. Every year we're given a list of schools
13 that will be involved in the sampling and we
14 administer the assessment to those schools.

15 Q. Is there any discretion on not taking the
16 NEAP test?

17 A. There is not because we are a district that
18 receives Title I funds so we are required to
19 administer it.

20 Q. All right. So in terms of whether or not
21 you receive the Title I funds, the NEAP testing is a
22 requirement?

23 A. That's correct.

24 Q. Okay.

25 MR. RUPE: Move for the admission

1 of 86.

2 MR. CHALMERS: If I can clarify by
3 asking the witness some questions?

4 VOIR DIRE EXAMINATION

5 BY MR. CHALMERS:

6 Q. NEAP is an organization, right?

7 A. Yes.

8 Q. It does more than just does its own basic
9 standard test it gives, doesn't it?

10 A. Would you re-frame your question? I'm not
11 sure I understand.

12 Q. NEAP's mission and responsibility is to do
13 more than just administer and set up one assessment
14 test.

15 A. I'm not prepared to talk about their
16 mission. I really don't know what their mission is.

17 Q. NEAP, in this instance, as to this mapping
18 state proficiency standards, stepped outside of its
19 testing under its test, and attempted to compare, say
20 the Missouri standards to the Kansas standards,
21 didn't it?

22 A. This is the first time I've seen the report,
23 so I can't answer your question.

24 MR. CHALMERS: I don't think the
25 foundation has been laid, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. RUPE:

3 Q. Let me just ask you what it shows with
4 regard to --

5 MR. RUPE: I'm sorry, was there
6 something funny?

7 Q. (By Mr. Rupe) With regard to the document,
8 Exhibit 86, does it show that the --

9 MR. CHALMERS: The document's not
10 in evidence, Your Honor, that's the point. I mean,
11 if we're going to have a witness who's going to lay
12 the foundation for it, that's fine; then I can cross-
13 examine them on their methodology. But I can't do
14 that with a witness who doesn't know anything about
15 identity --

16 JUDGE THEIS: The question is, does
17 that describe the test they administer and is it
18 consistent with what she does. But apparently, it
19 has some things in it that she's not familiar with,
20 so better discuss what she's familiar with and let
21 the rest of it fly.

22 Q. (By Mr. Rupe) Let me ask, you do you have
23 knowledge of how Kansas compares to other states in
24 terms of below basic?

25 A. I do.

1 Q. What is that knowledge?

2 A. The knowledge is that --

3 MR. CHALMERS: Wait a second, I
4 think she's know now calling for and describes some
5 sort of hearsay, and I'm worried about this being the
6 mapping study for which is lacking in foundation --

7 MR. RUPE: The question was --

8 MR. CHALMERS: -- trying to bootleg
9 around what may be a lack of foundation on the study.
10 If you're going to put on the study, they need to lay
11 a foundation for it and let me cross-examine the
12 methodology of it. That's all I'm requesting.

13 JUDGE THEIS: The first question
14 would be what the source of her information about
15 that comparison is, and then we'll see if it's the
16 same.

17 Q. (By Mr. Rupe) What's the source of your
18 knowledge?

19 A. The source is just general awareness that --
20 based on my comment earlier, that Kansas standards do
21 not prepare students for college and career, and that
22 information has been tied often in the research to
23 the NEAP performance.

24 Q. And in terms of Kansas and performance below
25 basic, where does Kansas fall in the NEAP?

1 A. In the lower bottom core tile of
2 performance.

3 Q. Is that what's shown on page 10 of
4 Exhibit 86?

5 MR. CHALMERS: The document is not
6 in evidence.

7 MR. RUPE: I'm asking her just if
8 it's shown on that page --

9 JUDGE THEIS: Page 10 can come in
10 and the rest of it couldn't, Mr. Chalmers.

11 MR. RUPE: I move for the admission
12 of pages 10 and 11 that show Kansas below basic. And
13 I understand why counsel doesn't want this in, but
14 it's relevant, as explained by the witness, because
15 the district relies on this information in order to
16 prepare kids for college.

17 MR. CHALMERS: I don't know that he
18 does understand why I don't want it in.

19 I'd like the opportunity to cross-
20 examine on the methodology, Counsel, if you bring
21 somebody in.

22 But Your Honor, if we're going to
23 bring in 10 and 11, I'm sorry to have created this
24 thing. We'll let it in and I'll bring in my witness
25 and explain how it doesn't apply. I withdraw my

1 objections to 86.

2 MR. RUPE: Thank you.

3 JUDGE FLEMING: 86 is admitted?

4 MR. RUPE: Yeah --

5 JUDGE THEIS: 86 is admitted.

6 (Plaintiffs' Exhibit Number 86 was admitted.)

7 Q. Let's go to the achievement test results for
8 Kansas City, Kansas. I want to hand you
9 Exhibit 114. And again, we're looking at the Kansas
10 Department of Education Report Card, and we're
11 looking specifically at your district.

12 A. That's correct.

13 Q. In terms of your district, does Exhibit 114
14 show the reading assessments for all students, and
15 then disaggregated among white, poor, ELL, Hispanics,
16 and African American kids?

17 A. Yes, it does.

18 Q. Along with the disadvantaged kids?

19 A. Yes.

20 MR. RUPE: Move for the admission
21 of 114.

22 MR. CHALMERS: No objection.

23 JUDGE THEIS: Admitted.

24 (Plaintiffs' Exhibit Number 114 was admitted.)

25 Q. Let's see where Kansas City, Kansas falls in

1 this. It looks like on the first page about 33
2 percent of all students in the district score below
3 proficiency on state assessment?

4 A. In the area of reading, that's correct.

5 Q. In the area of reading. And then, in the
6 next reading assessment, 25.9 percent of the white
7 students fall below proficiency?

8 A. That's correct.

9 Q. 35 percent of the poor students fall below
10 proficiency?

11 A. That's correct.

12 Q. And I think in each of those instances the
13 number of kids represented is shown, but the 35
14 percent would be about 6,200-and-some kids?

15 A. 6,225 correct.

16 Q. Then, 33 percent of all Hispanic students or
17 2,785 kids fall below proficient?

18 A. That's true.

19 Q. ELL kids, 37.6 percent or 2,503 kids are
20 below proficient?

21 A. Yes.

22 Q. 34.7 percent of the African Americans, or
23 2,661 kids are below proficient --

24 A. That's true.

25 Q. -- in reading? And then we go to the math

1 assessments, and 31 percent of all students are below
2 proficient on math?

3 A. Right, just over that 31.5 percent are below
4 proficient.

5 Q. And then 26.3 of the white kids in the
6 district are below proficient on the state
7 assessments?

8 A. Yes.

9 Q. And that's 766 kids represented in that 26.3
10 percent?

11 A. Yes.

12 Q. And then 32.5 percent of all the poor kids
13 5,781 kids --

14 A. Yes.

15 Q. -- are below proficient?

16 A. Yes.

17 Q. Hispanic are 28.7 percent below proficient,
18 true?

19 A. Yes, it is.

20 Q. And ELL students are 30 percent below
21 proficient?

22 A. Yes.

23 Q. And 37.1 percent of the African American, or
24 About 2,845 kids, are below proficient?

25 A. That's correct.

1 Q. And those are the results of the state
2 assessments in reading and math for Kansas City,
3 Kansas, USD 500?

4 A. Right, for the 2010/'11 school year.

5 Q. Well, going back to the AYP, what resources
6 will Kansas City, Kansas need to reach those
7 achievement levels on annual yearly progress that
8 were set out in Exhibit 74 in mathematics and in
9 reading with the proficiency levels that we just
10 discussed?

11 MR. CHALMERS: Lack of foundation.

12 JUDGE THEIS: Response.

13 MR. RUPE: My response is she's the
14 superintendent of the district, she is the CEO, and
15 she can tell us what resources are needed, if she
16 knows.

17 JUDGE THEIS: Sounds good to me.

18 To you?

19 JUDGE BURR: Yeah.

20 JUDGE THEIS: Let her -- overrule.

21 A. We obviously are not meeting the needs of
22 these children in the regular classroom in the
23 regular program. They need additional tutoring.
24 They need mentoring. They need an extended year.
25 They need a longer school day. They need targeted

1 intervention around their gaps.

2 Lower class sizes would be beneficial, as
3 well, but those are the kinds of things that we have
4 found to be very successful. You mentioned Sumner.
5 I can mention other schools, for example, Emerson
6 Elementary School who's providing intensive
7 enrichment long school days for the children, and
8 tutoring and strong parent involvement pieces. If we
9 had the resources to do that in all of our school, we
10 are confident that we could close this gap and
11 improve our achievement.

12 Q. The strategies you've discussed that work in
13 moving kids from non-proficient to proficient, come
14 at a cost?

15 A. Everything has a cost; absolutely it does.

16 Q. And in terms of the resources available to
17 the school district today, to meet those increasing
18 demands, do you have the resources today?

19 A. We don't.

20 MR. CHALMERS: For the record, I'd
21 like to pose the objection, lack of foundation. I
22 understand the Court's ruling, but I'm just trying to
23 make my record.

24 JUDGE THEIS: Overruled, because
25 she said she's -- they're not doing it, so -- and

1 what she needs, it adds up.

2 A. We have had to cut millions of dollars out
3 of our funding source in order to respond to the
4 decrease in the school finance formula. And in those
5 millions of dollars, we've had to sacrifice some of
6 the interventions that we've talked about, or not
7 being able to implement, in the first place, for
8 kids.

9 So if we had the resources, I'm confident we
10 could improve our results and decrease that 35 to 40
11 percent of our students not being proficient, but the
12 reality is, we don't. We had scores that started to
13 climb when the resources were put into place after
14 2005; you can see that in our data. And you can also
15 see that we are beginning to decline because we
16 haven't been able to sustain those kinds of inputs
17 for our students.

18 The bottom line is, not everybody learns the
19 same way and some children need more time, more
20 support, more intervention. They can learn the
21 material, it's just whether or not we're providing
22 the support in order to get them there.

23 Q. Let me show you what has been marked as
24 Plaintiffs' Exhibits 111 and 112. Let's start with
25 111. Describe what 111 is, please.

1 A. 111 is, both in graphic form and in numeric,
2 it is a breakout of our performance on state
3 assessments in the area of reading for the years 2006
4 through 2011.

5 Q. What was the purpose for which Exhibit 111
6 was prepared?

7 A. The purpose is to show by groups who's doing
8 well and who's not doing well and to ascertain
9 whether or not we have a gap in performance. And so,
10 you can see clearly on the graphic side of that, that
11 we absolutely have a gap in how our students are
12 doing.

13 Q. And this is data based on state assessments
14 for Kansas City, Kansas?

15 A. That's correct.

16 Q. And 111 is reading and 112 is math?

17 A. Yes.

18 MR. RUPE: Move for the admission
19 of 111 and 112.

20 MR. CHALMERS: No objection.

21 JUDGE THEIS: Admitted.

22 (Plaintiffs' Exhibit Numbers 111 and 112 were
23 admitted.)

24 Q. Okay. So we understand what 111 and 112
25 show, let's just walk-through 2011 on Exhibit 111.

1 Explain, if you would, each subset.

2 A. All right.

3 Q. For example, it says, F&R?

4 A. Let me back up to the first line that says,
5 AYP goal. And that's that target that we've been
6 talking about -- that's established by the state
7 department -- of the percentage of students who need
8 to be proficient or higher. And so for 2011, that
9 was 86 percent in the area of reading needed to be --
10 reach that goal.

11 Each of the other categories are what we
12 call subgroups, or the demographics so F&R stands for
13 students who qualify for free and reduced lunch. And
14 you can see, in 2011 we had 8,377 students in that
15 subgroup who were proficient, roughly 65 percent of
16 our students.

17 Right underneath that is the number of
18 students on paid lunch. The difference there is that
19 82, almost 83 percent of the students that are not
20 students from poverty situations scored proficient.
21 Would you like me to continue?

22 Q. Yeah, continue on by subgroup.

23 A. The next group listed is for the English
24 limited language learners, 62.4 percent were on
25 target in 2011, and that translates to 3,205

1 students. The next category is disabled children;
2 42.3 percent met the target, or 1,502 children.

3 The next group is based on race, so we have
4 our white students first, 74.1 percent met
5 expectations, while African Americans, 65.3 percent
6 were at or above proficiency in 2011 in the area of
7 reading. Now, this is all grade levels.

8 The next group, the Asian students. 60
9 percent of our Asian students were on target or were
10 proficient or above; that's 371 students. Hispanic
11 students, 67 percent of our Hispanic students met the
12 target, or 3,918. Next categories are gender. Our
13 male students, 64 percent were at or above standard,
14 or 4,815 of our young men, and for our female, 70
15 percent were on target, or 4,683 kids.

16 So for a school district last year, total of
17 67 percent of kids who are at or above standard 9,000
18 of our 20,000 children who took the assessment.

19 Q. Then, the same information is shown on
20 reading?

21 A. That was reading. The same information on
22 math?

23 Q. On math, I'm sorry. That's in 112?

24 A. That's correct.

25 Q. I want to ask you about something in that

1 you mentioned resources available. And we admitted
2 Exhibit 105. Just so I'm on track in terms of the
3 cuts you've described, following that Montoy decision
4 in 2006, 2007, 2008, did the Kansas City, Kansas
5 School District receive additional funding?

6 A. We did.

7 Q. In terms of the performance during that
8 period of time, if you look at the performance for
9 the same years in Exhibit 112, and Exhibit 111, is it
10 accurate that the performance scores for those kids
11 finishing above proficiency increased during the
12 years you received additional funding?

13 A. That's correct. You can see, particularly
14 in these graphic representations, that our
15 performance went up at the same time that the
16 resources were available and went up. You can also
17 see a slight slowing of that progress when the
18 resources began to decline.

19 Q. Which was in two-thousand --

20 A. 2009.

21 Q. -- nine.

22 JUDGE THEIS: What's the chart
23 number again, Mr. Rupe, just to remind me?

24 MR. RUPE: The chart is Plaintiffs'
25 Exhibit 105, and I compared it then with Plaintiffs'

1 111 and 112. And again, all these large exhibits are
2 in the front of your notebooks.

3 Q. Take a look at Plaintiffs' Exhibit 113,
4 please. What is MAP?

5 A. MAP is a nationally normed assessment called
6 the Measures of Academic Progress. It's developed by
7 a group called NWEA, Northeast Education Assortium
8 (sic). We administer MAP to our grade levels to see
9 how we're comparing on a national level. Our
10 students, performing as you would expect nationally.

11 MR. RUPE: Move for the admission
12 of 113 and 111 and 112.

13 MR. CHALMERS: I'm lost. 111, 112.

14 MR. ROBB: 11 and 12 are already
15 in. 13 is --

16 MR. RUPE: It's just 113.

17 MR. CHALMERS: And of --

18 MR. RUPE: 113.

19 MR. CHALMERS: No objection.

20 JUDGE THEIS: It's admitted.

21 (Plaintiffs' Exhibit Number 113 was admitted.)

22 Q. Okay. Walk us through Exhibit 113. What
23 does that show?

24 A. It's important to keep in mind that the 50th
25 percentile on the test is considered on grade level,

1 on track. What does that mean? If you have 100
2 individuals lined up, it's right in the middle, the
3 50th or higher, that you want to have your students
4 performing.

5 So the assessment shows that performance for
6 years 2007 through 2011, and breaks out by those same
7 subgroups that we've talked about on the Kansas
8 assessment. The top part of the particular exhibit
9 speaks to reading, and bottom part to math.

10 Would you like me to go through those
11 numbers?

12 Q. Yes, please do.

13 A. In 2011, for our students receiving free or
14 reduced lunch or poverty kids, we had 37.5 percent of
15 our students who were at the 50th percentile on grade
16 level or above. That was 6,490 students. For
17 students on paid lunch, it was 60 percent who met
18 that standard, or 749 children. For English limited
19 learners, 34.8 percent or 2,964 students. For
20 children with disabilities, 11.2 percent were able to
21 meet that standard, being on grade level or higher,
22 or 887 children.

23 The next grouping is of ethnicity. Our
24 white children, in the area of reading, we had 49.4
25 percent of our children who were at grade level as

1 compared to our black students, 39 percent, and our
2 Asian students, 25 percent.

3 And our Hispanic students 38.8, almost 39
4 percent, were on grade level, according to this
5 assessment. For our young men we had 35.8 percent
6 who were on track, and for our young women, there
7 were 44 percent who were on grade level. So our
8 district total is that we had just under 40 percent
9 of our children who were able to meet grade level
10 expectations on the MAP assessment in reading.

11 Q. And then let's do it for math.

12 A. All right. The area of math, our free and
13 reduced lunch we had 40.7 percent of our students who
14 were at standard or above. For our paid lunch
15 students, that was almost 63 percent of those student
16 or 742 individuals.

17 Our English limited students, there were
18 40.5 percent who met that expectation in math. And
19 for kids with disabilities, it was 13.3 percent or
20 873 students. For our white students, we had 54.3
21 percent that were at standard or above, which was
22 1,063 students. For our African American students
23 that was under 40 percent, 39.6, or 2,506 students.
24 For Asian, it was 33.8 percent. And for Hispanic, we
25 had almost 43 percent of our students on track, or

1 3,178 students.

2 In the area of math, our young men 41.8
3 percent met that standard of being on grade level or
4 above, while our young women, 44.3 percent met the
5 expectation. For a district total of 43 percent on
6 grade level, according to the MAP assessment in math.
7 And we tested just over 7,000 students in the area of
8 math in past year and 7,200 in reading.

9 Q. So basically, 40 percent of the kids in
10 reading and 43 percent of the kids in math were on
11 grade level in your district?

12 A. Right on grade level or above, leaving the
13 rest to be not on grade level, below grade level, or
14 not meeting expectations.

15 MR. RUPE: Your Honor, we're going
16 to switch to graduation and dropout rates and talk
17 about resources and then be done, but it's not going
18 to happen in 11 minutes. This is probably a good
19 place to break for the evening in order to make the
20 accommodations we need to make.

21 JUDGE THEIS: Fine. Is 9:00 okay
22 with you, in the morning?

23 MR. RUPE: That's fine with me.

24 JUDGE THEIS: All right. Everyone
25 have a nice evening. We'll see you tomorrow.

1 (Thereupon, the proceedings were
2 adjourned to June 5, 2012, at 9:00 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 4, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 210 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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EXAMINATION INDEX

CYNTHIA LANE

DIRECT (CONT.) BY MR. RUPE	216
CROSS BY MR. CHALMERS	284
REDIRECT BY MR. RUPE	381
RECROSS BY MR. CHALMERS	395
REDIRECT BY MR. RUPE	397
RECROSS BY MR. CHALMERS	397
BY THE PANEL	399

KELLI MATHER

DIRECT BY MR. RUPE	403
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(Plaintiffs' Exhibit Numbers 1 through 416 and Defendant's Exhibit Numbers 1001 through 1227 were admitted by stipulation of the parties on page 216.)

(For a complete list of exhibits, please refer to the 10-C-1569 Court Trial Index to Exhibits.)

P R O C E E D I N G S

1
2 JUDGE THEIS: You can be seated,
3 thank you.

4 MR. CHALMERS: Your Honor, before
5 we put the witness back on, I just want to alert you
6 to something that is coming up, and that is, tomorrow
7 there is a witness, Mary Stewart, who's been listed,
8 or at least Mr. Rupe has provided a list of people he
9 anticipates calling who's not, in our opinion,
10 properly identified. And I thought maybe we ought to
11 take that up sometime today so we don't have her
12 traveling here --

13 MR. RUPE: He handed me a motion
14 yesterday, and I'm trying to get it electronically
15 from him so we can have a look at it and have
16 somebody in the office back home respond to it.

17 He's trying to strike, like, ten or
18 11 of our witnesses. The good news is, Your Honor,
19 all these exhibits that he introduced for the first
20 time yesterday, the demonstrative exhibits, we have
21 reached an agreement. We're going to let him get all
22 those in and we're going to admit all the exhibits.
23 So we have accommodated him on his last-minute
24 demonstrative --

25 MR. CHALMERS: If you want to take

1 those out, Alan, I thought you were the one that
2 wanted them.

3 MR. RUPE: No. I said, if you want
4 to admit all the exhibits, I think that's a great
5 idea, moves things along. But I'm going to get some
6 credit for it because we've got some witnesses coming
7 in here that are en route right now, and he's known
8 about them for some time. And if he wants argue that
9 before tomorrow, that's fine. I'm not prepared to
10 argue it right now because I haven't responded to his
11 motion that I got yesterday.

12 MR. CHALMERS: I don't mind --

13 JUDGE THEIS: When's the first one
14 hit the deck, though?

15 MR. CHALMERS: Pardon?

16 JUDGE THEIS: When's the first one
17 scheduled to hit the deck?

18 MR. CHALMERS: I think tomorrow is
19 the first one.

20 JUDGE THEIS: We'll do it sometime
21 when we're through today.

22 MR. CHALMERS: This is the issue I
23 raised in the pretrial --

24 MR. RUPE: But we --

25 JUDGE THEIS: When we're all rested

1 and ready.

2 MR. RUPE: We have reached an
3 agreement, all the exhibits on both sides are
4 admitted. Neither side is obviously saying they are
5 accurate and true, and we intend to challenge every
6 one of them. For example, they've got, I think,
7 information from Lindsborg School District and one
8 other -- demonstrative exhibits, but we'll make
9 comment on that as we go.

10 JUDGE FLEMING: Does that include
11 the couple exhibits that you introduced yesterday
12 that were not admitted?

13 MR. RUPE: It includes everything,
14 so --

15 JUDGE THEIS: And that's a
16 stipulation?

17 MR. CHALMERS: Yeah, we're trying
18 to speed things along; let all the exhibits come in.
19 We have notebooks of them. What we anticipated we
20 would do is, as the trial went along and there was a
21 need to look at it, we would provide you a copy. And
22 then we can provide the notebooks to each one of you,
23 but we also will provide you a flash disc that has
24 electronic copy of the exhibits. Might be easier to
25 get to them that way, however you choose, but you'll

1 have that at the end, what our thought process is.

2 JUDGE BURR: Did you also agree on
3 who has to physically move them?

4 MR. RUPE: We both agree it's
5 somebody else.

6 JUDGE THEIS: That was keeping my
7 attention yesterday. Maybe I better call my
8 administrative assistant and get her now.

9 (Plaintiffs' Exhibit Numbers 1
10 through 416 and Defendant's Exhibit Numbers 1001
11 through 1227 were admitted.)

12 MR. RUPE: Are we ready to proceed
13 with the witness?

14 JUDGE THEIS: We are.

15 MR. RUPE: Okay.

16 CYNTHIA LANE, having been
17 previously sworn was examined and testified as
18 follows:

19 DIRECT EXAMINATION (CONT.)

20 BY MR. RUPE:

21 Q. Do you have a school in Kansas City, Kansas
22 USD 500 called Emerson?

23 A. I do.

24 Q. I'd like you to tell the Court -- is that a
25 grade school?

1 A. It's an elementary school.

2 Q. I'd like you to tell the Court the history
3 of Emerson Elementary.

4 A. I'd be glad to. Emerson Elementary School
5 is a small neighborhood school and in the part of the
6 community that's referred to as Argentine. And it
7 has a rich history of very much a community center.
8 Unfortunately, part of its history was that three
9 years ago it was declared the lowest performing
10 elementary school in the State of Kansas.

11 You may be aware that federal department of
12 education requires that our state department rank
13 order all schools based on their performance on state
14 assessment, and Emerson Elementary was at the very
15 bottom of performance; extremely discouraging and
16 heart wrenching to know that we had fewer than 30
17 percent of the children in that building who were
18 able to meet standard.

19 The demographic make-up of Emerson, at that
20 time, and continues to be about 50 percent African
21 American and about 48 percent Hispanic, so high
22 minority, very few Caucasian children in the school.
23 But we implemented some very extreme interventions,
24 if you will, that were funded by a federal School
25 Improvement Grant. We were really fortunate that

1 with this bad news came resources.

2 And very pleased to be able to tell you that
3 they have increased their performance on both the
4 reading and math state assessment to have more than
5 85 percent of their children meeting or exceeding
6 expectations just in the last three years. It's a
7 remarkable story.

8 Two weeks ago, the assistant secretary of
9 education, Jason Snyder, visited Emerson because he
10 had seen their results. And he came to see what
11 we're doing there and to hold that up to the nation
12 of what needs to be done to help kids succeed,
13 particularly kids that come from minority
14 backgrounds.

15 So we're real proud of Emerson and it's a
16 success story. And we're looking at that now, the
17 model that they used there, to try to replicate that
18 in some of our other elementary schools that are very
19 challenged.

20 Q. Let's talk about how that turnaround
21 occurred. What were the strategies that were
22 implemented at Emerson that caused the increase in
23 performance?

24 A. Well, the first thing we did was sit down
25 and have a conversation with every employee that was

1 assigned to the building. And part of the
2 conversation was to really determine whether or not
3 they believe that children, regardless of their
4 background and their poverty situation, could learn
5 at high levels of expectation. And to be honest with
6 you, about 50 percent of them did not believe that
7 the children that were attending that school could
8 truly perform and meet the high expectations met by
9 our state and by the district.

10 So we removed the principal and we replaced
11 50 percent of the staff -- it's a small building so
12 eight to 12 teachers, a principal and a secretary --
13 and began providing that group of individuals
14 intensive professional development, particularly in
15 the areas of literacy. We found that the staff
16 really didn't understand how to teach children to
17 read and write and to do that in a way that kids
18 could express what they knew effectively. So we
19 provided intense training.

20 We put in place a parent liaison who spent
21 the first year of school having porch visits, going
22 to each family's home to try to fully engage the
23 family in what was happening there. We've extended
24 their school year and their school day. Children
25 come to school at eight and stay until seven in the

1 evening, and we provide intensive literacy and math
2 instruction as part of their after-school program, as
3 well as enrichment kinds of things.

4 We implemented what we call a bookbag
5 program, so every week children take backpacks full
6 of books home, because we want parents to have a
7 meaningful way of helping their children improve. So
8 those are some of the things we have done.

9 Another thing I might mention is strong
10 partnership with some community agencies to help
11 families meet needs, help them pay utility bills,
12 help them access resources for food. And in some
13 cases, we make connections with their parents in
14 terms of employment opportunities.

15 Q. The strategies that you've identified, did
16 those come with a cost?

17 A. It came with a significant cost. Emerson
18 receives, in that grant, the initial year was
19 \$2 million in additional resources, and for a school
20 that has 180 children, that was significant. And
21 that amount has declined over the last -- last year
22 was about 1.2 million, I believe, and next year will
23 be slightly under a million dollars.

24 So the next challenge for us will be, now
25 that we know what we know, we know what the children

1 need in order to be successful and how to engage
2 families, how will we sustain those resources.

3 Q. And \$2 million grant came from what source?

4 A. Came from the federal School Improvement
5 Grant under -- the department of Title I -- or Title.

6 Q. Was there any additional state funding that
7 was supplied to Emerson three years ago that affected
8 the turnaround?

9 A. No. No additional state money; only the
10 federal grant.

11 Q. And with that federal grant you were able to
12 turn that school around to take it off the bottom of
13 the list of elementary schools in the State of
14 Kansas?

15 A. That's right. Their performance is now
16 very, very strong and very competitive.

17 Q. What did the school district do in order to
18 get the grant, this \$2 million grant, three years
19 ago?

20 A. It was a competitive grant process. Our
21 partners at the state department notified us that the
22 school was eligible. The first thing we had to do
23 was sit down and have real conversations about why is
24 it we're not meeting needs of these kids -- they call
25 that root cause analysis, what's in the way -- and

1 craft a plan using actual student performance data,
2 here's what we know now and here's what we expect,
3 and submitted that application. And we're pleased
4 that it was funded.

5 Q. In your opinion, did the additional
6 resources that were provided through the federal
7 grant have anything to do with the turnaround?

8 A. It had everything do with the turnaround
9 because without that, we wouldn't have been able to
10 purchase the -- we have a lot of technology now the
11 children are using and are learning.

12 We wouldn't have been able to do the
13 professional development to help teachers learn how
14 to teach literacy, in particular. We wouldn't be
15 able to provide that extended day for them. We
16 wouldn't be providing a summer session for the
17 children who need it. None of those resources would
18 be available.

19 Q. And what do the test scores at Emerson look
20 like today?

21 A. Reading is at 85 percent of the children
22 meeting or exceeding standards and math is just under
23 that at 83 percent, keeping in mind that they were in
24 the 30s just three or four years ago.

25 Q. Let's talk a little bit about graduation

1 rates, if we could. I want to hand you Exhibit 101.
2 And Plaintiffs' Exhibit 101 is the Kansas State
3 Department of Education Report Card 2010/2011 that
4 we've referred to before. And the first page is for
5 the entire state, is that correct?

6 A. That's correct.

7 Q. And the part I want to look at, we covered
8 this yesterday, but did not cover, and I want to
9 focus on, the four-year adjusted cohort graduation
10 rate. First, advise the Court what that is, please.

11 A. I believe it was last school year the nation
12 implemented a consistent graduation rate. How do you
13 calculate that? Prior to that, every state did it
14 their own way.

15 So this change that was put into place
16 allowed us to look at the four-year cohort, meaning
17 the groups of children that start in high school in
18 9th grade and moved forward together to graduation --
19 that's a cohort -- and were those children able to
20 meet the expectations of the state and the district
21 and graduate on time in four years. And that was a
22 change.

23 The change requires that we are accountable
24 for every student who enters the high school, meaning
25 that if you have kids that move in and out of your

1 school, you need to be able to validate where they
2 went. Did they re-enroll in another school in the
3 state, somewhere else in the United States, or did
4 they leave the country and enter a school? And until
5 you validate that they have re-enrolled, they're
6 considered to remain part of your cohort for
7 graduation.

8 So if you can't track those children, then
9 they're considered non-graduates. The goal of the
10 four-year adjusted cohort graduation rate is to
11 determine how many students are graduating from our
12 high school in the State of Kansas and elsewhere
13 across the nation in four years.

14 Q. At least when I got into this I thought it
15 would be pretty easy to figure out what graduation
16 rate was because you count the people that graduated
17 and then count the people in the class. But explain
18 to the Judges, that those folks that don't drop out
19 may not necessarily graduate?

20 A. Right. There's a difference between a
21 dropout and a non-graduate. A dropout is a person
22 who has officially said, I'm withdrawing, I have no
23 more interest in attending school. And there's a
24 process that we're required to follow that documents
25 that.

1 That's different than a person who is a
2 non-graduate. You could be labeled a non-graduate if
3 you are not successful in completing the requirements
4 in four or five years. After that, if it takes you
5 longer than that period and you still receive your
6 diploma, you're still counted against the school as a
7 non-graduate because you didn't graduate in the time
8 frame that we've given students to do that.

9 Q. So in terms of the graduation rate, and
10 we'll get through that in just a minute, but if the
11 graduation rate for a disaggregated group may be,
12 say, 70 percent, that doesn't necessarily mean the
13 dropout rate is going to be 30 percent?

14 A. That's right. And in fact, our dropout
15 rate, I believe, is somewhere around 6 percent
16 because we have fewer than -- no, 6 percent or fewer
17 kids who actually officially withdraw. But our
18 graduation rate in Kansas City, Kansas in this new
19 formula went from 75 percent down to just under 60
20 percent because we have students who are taking more
21 than four or five years to graduate from high school.

22 Q. Okay. Let's now look at Exhibit 101 that
23 you have in front of you. And let's talk about what
24 the four-year adjusted cohort graduation rate for the
25 state is. First of all, what is it in 2010,

1 statewide?

2 A. The four-year cohort graduation rate
3 statewide is 80.7 percent.

4 Q. Walk down the disaggregated graduation rates
5 on the four-year adjusted cohort rate.

6 A. For students who come from poverty
7 backgrounds, free and reduced lunch, it's 70.1
8 percent. Students with disabilities, the state
9 average is 68.7 percent graduate in four years.
10 Students who are English limited learners 66.8
11 percent.

12 Our African American students, 66.2 percent.
13 Four Hispanics, 70.3 percent. For our Caucasian or
14 white students, 84.5 percent. Asian students, 86.7
15 percent. And in the state we have a few American
16 Indian or Alaskan natives, that is a 68.5 percent
17 graduation rate. Native Hawaiian or Pacific
18 Islander, 72 percent, and then multi-racial is listed
19 at 72.2 percent.

20 Q. So we're clear, that means that percentage
21 of that disaggregated group actually graduated from
22 high school in four years?

23 A. In four years, that's the key.

24 Q. Now, let's do the same for the five-year
25 adjusted cohort graduation rate. This would be folks

1 that took five years to graduate?

2 A. And let me talk about the reason for that.
3 The rationale is, okay, so some students don't make
4 it to that finish line in four years. So the process
5 allows that we can then look at five-year cohorts,
6 students that graduate within five years. And
7 whichever one benefits the school or the school
8 district is the one that can be counted in terms of
9 adequate yearly progress, on those QPA indicators we
10 talked about yesterday. So on the five-year
11 graduation cohort, the state average is 75.2 percent.

12 Q. Then disaggregated by subgroup, if you
13 would, please?

14 A. Sure. Free and reduced lunch, 63.3
15 percent. Students with disabilities, 65.6. ELL
16 students, 62.2. African American, 60.5. Hispanic,
17 62.1. White, 81.1. Asian, 79.7. American Indian or
18 Alaskan Native, 63.3. Native Hawaiian or Pacific
19 Islander, 80.8. And multi-racial, 37.6.

20 Q. Okay. Then, if we look at the chart here on
21 Exhibit 133, let's follow along -- and this is for
22 collective years 2008 to '11, 2007 and '11. The
23 four-year and five-year adjusted cohort graduation
24 rates in the ending years, 2010/2011, all students is
25 four-year 83 percent, and five-year, 82.1 percent,

1 correct?

2 A. That's correct.

3 Q. So doing the math, 17 percent of all
4 students did not graduate in four years and about 18
5 percent of all students did not graduate in five?

6 A. Right. And keep in mind, that doesn't mean
7 they didn't complete at some point, but they didn't
8 do it in this time frame.

9 Q. Okay. And then, on the students with
10 disabilities, it's a 73 percent rate; so 26.4 did not
11 graduate, 71.8 percent in the five-year, meaning 28.2
12 did not graduate?

13 A. That's correct.

14 Q. Free and reduced lunch is 73.2 percent, 26.8
15 percent not graduating; five years, 72.2 percent,
16 27.8 percent not graduated?

17 A. That's correct.

18 Q. Let's drop down to free and reduced -- I'm
19 sorry, Hispanic is 73 percent, roughly 27 percent
20 didn't graduate. 72 percent in five-year, which is
21 about 27 percent did not graduate?

22 A. That's correct.

23 Q. White kids, 13.9 percent did not graduate
24 and 14.5 percent in five years?

25 A. Did not graduate within that time frame.

1 Q. Right.

2 A. That's important, because they likely
3 completed. Our dropout rate in Kansas, I don't have
4 it in front of me, but it's not significant.

5 Q. Let's cover African American, which is 72.4
6 percent, meaning 27.6 percent of the African American
7 kids in Kansas did not graduate in four years?

8 A. That's correct.

9 Q. And 31 percent did not graduate in five
10 years?

11 A. That's right.

12 Q. Now, we looked at and are going to spend
13 some time on achievement data in this trial. And
14 with regard to the achievement data, is it fair to
15 say that the kids that drop out are not included in
16 the achievement tests?

17 A. Well, if you drop out, you're not there to
18 take the assessment, so that would be a fair
19 assumption.

20 Q. Okay. I'm going to stop moving for the
21 admission of exhibits since they're all in.

22 JUDGE THEIS: Right.

23 MR. RUPE: I may, out of force of
24 habit do it, but I'll catch myself if I do.

25 Q. Take a look at Exhibit 110, please. What I

1 want to focus on in 110 is -- what is Exhibit 110?

2 A. 110 is the report card for the 2010/2011
3 school year for the Kansas City, Kansas Public School
4 District.

5 Q. So we've been looking at statewide data.
6 Now we're drilling down on your district, Kansas
7 City, Kansas?

8 A. Yes.

9 Q. Let's do the explanation of the four-year
10 adjusted cohort graduation rate for the entire
11 district. What is that?

12 A. The percentage is 59.7 percent of our
13 students graduate in four years.

14 Q. Compared to the statewide number which was
15 80.7 percent?

16 A. That's correct.

17 Q. Okay. Now let's talk about your free and
18 reduced lunch. What percentage of kids in free and
19 reduced lunch graduate in four years?

20 A. Percentage of our free and reduced lunch
21 students meeting that expectation is 59.4 percent.

22 Q. And statewide, it's over 70 percent?

23 A. 70.1.

24 Q. What about students with disabilities?

25 A. 52.8 percent of our students graduate in

1 four years.

2 Q. And the state average?

3 A. 68.7.

4 Q. ELL students?

5 A. 48.6. The state average is 66.8.

6 Q. African American?

7 A. 65.8 and the state average 66.2.

8 Q. Hispanic?

9 A. 51 -- excuse me, 55.1 percent compared to
10 70.3 percent.

11 Q. And Asian?

12 A. Asian would be 71.7 percent as compared to
13 86.7.

14 Q. Okay. I skipped over white.

15 A. Our white students, 51.3 percent as compared
16 to 84.5.

17 Q. 84.5 percent of the white kids in the state
18 graduate in four years, and it's 51 percent in KCK?

19 A. That's right.

20 Q. Let's go to the five-year adjusted cohort
21 rate, the district number is what?

22 A. It's kind of hard to say this out loud, but
23 our district number is 48.3 percent.

24 Q. Less than half?

25 A. Less than half graduate within five years.

1 Q. The state number is what?

2 A. 75.2.

3 Q. The free and reduced lunch number,
4 comparison?

5 A. 50.2 percent of our students graduate in a
6 five-year cohort as compared to 63.3.

7 Q. And students with disabilities?

8 A. 43 percent graduate from our district in
9 five years as compared to 65.6.

10 Q. Hang on. The English limited learning
11 students, what's the comparison?

12 A. 34.7 percent.

13 Q. Of those kids. Or --

14 A. Of our kids graduate?

15 Q. What is the state number?

16 A. 62.2 percent.

17 Q. Let's go to African Americans. What's the
18 number?

19 A. 53.4 percent as for the district as compared
20 to 60.5 percent for the state.

21 Q. Hispanic?

22 A. 46.9 percent for the district, 62.1 percent
23 for the state.

24 Q. And white?

25 A. 43.9 percent for the district as compared to

1 81.1 percent.

2 Q. I think we covered this yesterday, but with
3 regard to the kids that do not graduate, in your
4 opinion from where you sit, are there strategies that
5 could keep those kids in school to graduate?

6 A. There are strategies and some of the kids
7 remain in school; that's important to know that.
8 They just don't complete the requirements in the
9 given time that we set forth.

10 So we have found that, prior to entering
11 high school, we have to provide our students with
12 some deep understanding of the expectations of making
13 grades and completing work. That's kind of
14 foundational, because all the way through elementary
15 school and to middle school, regardless of your
16 performance, you know, you're encouraged and you're
17 moved through the curriculum, and supported and given
18 multiple opportunities.

19 But I like to talk to our kids about, you're
20 in the big leagues now when you're in high school
21 because you have to perform at certain levels in
22 order to pass and move forward. So having that basic
23 understanding is critical.

24 We also know it's important to implement
25 strategies where students are in small -- we call

1 them small learning communities. And what that means
2 is that they develop deep relationships with sets of
3 teachers who get to them know them well. They know
4 them not only from their classroom perspective, but
5 what are the challenges in the home? What are the
6 circumstances that the child is facing? We have
7 1,200 of our kids who are homeless. So knowing that
8 about a child helps you how to figure out how to plan
9 instructionally for what to do.

10 So having that deep relationship. Plugging
11 the gap in terms of those resources that students
12 need on the social side of them as human beings. Do
13 they need resources at home? Why is it that they're
14 not, maybe, attending regularly? That kind of
15 thing.

16 So the teachers then begin to really get to
17 know their kids as learners. They develop lesson
18 plans together. They provide opportunities for
19 students to get additional assistance and help. We
20 extend the day for our high school and middle school
21 students as well. And it's not infrequent for high
22 school students to have opportunities on Saturday to
23 come in for additional support.

24 So those same kinds of strategies that you
25 heard us talk about for elementary school are

1 relevant in high school. And wherever possible,
2 students who are struggling, we try to put them in
3 smaller classes that have a smaller pupil/teacher
4 ratio whenever possible.

5 JUDGE THEIS: Mr. Rupe, the way you
6 asked your last question, I'm confused. Does the
7 grad rate include the dropouts or not?

8 MR. RUPE: The graduation rate does
9 not include the dropouts.

10 THE WITNESS: The graduation rate
11 looks at, how many students graduate in four years,
12 or does it take them five years?

13 JUDGE THEIS: Once they are still
14 there?

15 THE WITNESS: You could be
16 attending but just not have completed and you're
17 considered a non-graduate.

18 MR. RUPE: So if it takes you six
19 years, for example, to get through high school,
20 you're not going to be shown in the dropout numbers,
21 you're not going to be shown in the four-year cohort
22 graduation rate number or in the five-year number,
23 you just disappear.

24 JUDGE THEIS: But I was talking
25 about the ones that left school, go to work, for

1 example. Those aren't included in the grad rates,
2 you're talking the --

3 THE WITNESS: They would not be
4 included in graduates. They would be included in
5 dropout if they follow the official dropout
6 process --

7 JUDGE THEIS: They're --

8 THE WITNESS: Or if we can

9 THE COURT REPORTER: I'm sorry, one
10 at a time.

11 JUDGE THEIS: They're excised from
12 what you're talking about now, the dropouts are?

13 THE WITNESS: It's the different
14 way of calculating, right. They are not a graduate,
15 but they could be a non-graduate because they didn't
16 graduate in the time frame. But they wouldn't be
17 counted as a dropout unless they officially withdrew,
18 or we lost track of them and could not validate that
19 they were in school anywhere. So you have to work
20 through all of those nuances.

21 For the graduation rate the
22 simplest way that I like to think about it, if the
23 students don't complete the race in the time that we
24 give them, four years, or let's give some a little
25 more, five years, then they're considered a

1 non-graduate. Even if in year six they get their
2 diploma, they're considered a non-graduate.

3 MR. RUPE: And the dropouts are not
4 included in either the four-year or five-year or the
5 numbers that disappear.

6 JUDGE THEIS: Verified dropouts.

7 MR. RUPE: Right.

8 THE WITNESS: Did I answer your
9 question?

10 JUDGE THEIS: We'll see.

11 THE WITNESS: Okay.

12 Q. (By Mr. Rupe) Do they have other strategies
13 like -- this shows when I was in school -- like a
14 truancy officer?

15 A. Thank you. Yes, we do. We have a truancy
16 officer and a truancy program that we provide in the
17 district. We also have school resource officers in
18 every one of our high schools. And we have a
19 mentoring program that we've developed in
20 relationship with our police department who work with
21 particularly young African American males, because
22 that's the group that we're most challenged with, to
23 try to make sure they stay engaged in school.

24 Q. In terms of those strategies, so there's no
25 misunderstanding, do those strategies cost money?

1 A. Everything costs money. As you know,
2 there's nothing in life that's truly free. So yes,
3 that costs money. And we use our federal dollars to
4 provide a lot of these kinds of supports. It's
5 drug -- Safe and Drug-Free Schools money, in
6 particular, that help support the truancy officer and
7 the SRO program.

8 Q. And this probably goes without saying but
9 before we go to the next exhibit, would you explain
10 to the Court the value of an education?

11 A. The value of an education. You know, I
12 imagine that you've heard or used the expression, a
13 lot of things can be taken away from you in life but
14 not your education.

15 It's critical. The research that's
16 currently been done shows the difference in long-term
17 life satisfaction and economics based on whether or
18 not you graduated from high school, finished high
19 school, or completed an advanced degree or technical
20 certificate. And the earning power is 98 percent
21 difference between someone who has a higher degree or
22 certificate versus someone who has not completed high
23 school.

24 So if you think about that, over time that's
25 a significant impact on the quality of life that we

1 provide individuals based on their educational
2 achievement.

3 Q. And is there a value to our state in terms
4 of an educated work force?

5 A. One of the number one economic drivers in
6 this state, if you think about it this way, in order
7 to reduce this poverty that is present in Kansas
8 City, Kansas and other communities, the only tool
9 that we have to really eliminate that is to educate
10 and train our citizens. And so it's vital. If we
11 fail to do that, then we can expect to have more and
12 more folks on assistance because they can't take care
13 of themselves.

14 Q. Let's look at Exhibit 135, if you would.
15 And I want to try to focus a little bit on the
16 dropout rate and the graduation rate, and ask you to
17 address to the Court what Exhibit 135 is.

18 A. This exhibit is a listing of all the schools
19 in Kansas. It provides their USD number and the
20 official name of the district for the 2011 school
21 year and it provides the dropout rate side by side
22 with the graduation rate for each of the districts.

23 Q. Okay. And it's in numerical order by school
24 district?

25 A. By the school district, USD number.

1 Q. 101 is Erie and 512, the last district with
2 a number is Shawnee Mission?

3 A. That's correct.

4 Q. Then, look up from Shawnee Mission from 512
5 to 500, and that's KCK. And explain to the Court
6 what the graduation rate is; first, what that is and
7 then the number of it. And then do the same for
8 the -- I said graduation rate. Do dropout rate first
9 and then graduation rate.

10 A. All right. This report is for 2011 school
11 year. And our dropout rate is listed as 3.23
12 percent. Our graduation rate 62.9 percent. So don't
13 try to make those numbers match, because they don't.
14 They're truly separate calculations.

15 Q. This is what I asked earlier, you would
16 think if your graduation rate was 63 percent, the
17 dropout rate would be 30 percent, but it's not?

18 A. It's not, because many of those students do
19 complete, but they don't complete in the time frame
20 that's been allotted.

21 Q. If they don't officially dropout, they are
22 just gone?

23 A. Well, they could be gone. And if we can't
24 determine where they are, they could be counted in
25 this dropout rate. So that's important to know.

1 What does that look like? We have to --
2 first of all, we hope that the family comes in and
3 tells us, we're withdrawing. That is the hope
4 because many of our families don't. They frankly
5 don't even think about that. They need to move.
6 They need to leave; they do.

7 So based on our relationship with that
8 child, we try to track them down. Do we get a call
9 for records from another school? That's great if we
10 do. Then we can say they're attending, and they
11 wouldn't be counted as a non-graduate. If we don't
12 get a call for records, then we make phone calls to
13 try to determine if anyone knows where this child
14 went or where the family went, and sometimes that's
15 successful and sometimes it's not. We have many
16 immigrant families and many of them return to Mexico
17 for periods of time and we weren't able to find out
18 where they are.

19 So the key thing is trying to track them
20 down. If we find that they're attending school
21 somewhere, then they are not counted as a
22 non-graduate in our district. If we can't locate
23 them, then they're a non-graduate. And if they're
24 not located over time, then they become a dropout.

25 Q. Okay. And if they graduate in six, seven,

1 eight years, they weren't included either of these
2 numbers?

3 A. That's correct.

4 Q. Let's look at 161. And this is a
5 statistical profile from the Kansas Department of
6 Corrections, Fiscal Year 2010, offender population.
7 And I want to call your attention to page 12,
8 Figure 11.

9 A. All right. I'm with you, I think.

10 Q. Does this show among the inmate population
11 that 44.3 percent did not graduate from high school?

12 A. It does. It lists for grades zero through
13 11, 44.3 percent as the education level of the
14 inmates.

15 Q. What was the percentage that obtained a GED?

16 A. 32 percent obtained a GED.

17 Q. And what was the percentage that graduated
18 from high school or had post high school education?

19 A. 15.8 percent graduated from high school, and
20 for post high school, 7.9 percent of the population
21 attained post high school work.

22 Q. Are these numbers instructive to you in --
23 anyhow on the value of an education?

24 MR. CHALMERS: Objection. Calls
25 for speculation. Lack of foundation. Sorry, I'll

1 stand up.

2 JUDGE THEIS: What do you think,
3 Bob?

4 JUDGE FLEMING: I agree.

5 MR. RUPE: Sustained? Overruled?

6 JUDGE THEIS: Overruled -- or
7 sustained.

8 MR. RUPE: Sustained. Okay.

9 Q. (By Mr. Rupe) In terms of Kansas City,
10 Kansas and offender population, explain to the Court
11 what your knowledge is.

12 A. Well, we actually run the school in our
13 juvenile detention center. And what these numbers
14 would say to me is how critical that program is. We
15 have teachers and a principal that are housed at our
16 facility who are in close contact with our schools.

17 Because, even though a student may have made
18 a bad choice and created a situation for themselves
19 that requires legal intervention, we know how
20 important it is to provide them that education so
21 when they're out of that situation, they can move
22 forward in their life. So these numbers are
23 informative to me to make sure we can continue to
24 provide that resource to those young people that are
25 incarcerated.

1 Q. Let's go back in time to immediately before
2 the influx of money you described yesterday in
3 2005/2006 as a result of a case that was pending
4 before the Kansas Supreme Court. I want to go back
5 before then. And what I'm going to do is examine
6 what the situation was at that time, and then, what
7 it is today as bookends, okay? And then we'll cover
8 in the in between, as well.

9 Explain to the Court what the status of the
10 financial condition of the Kansas City, Kansas
11 district was prior to 2005/'06.

12 A. Prior to that I was working as the director
13 of special education for the school district and was
14 involved with the superintendent's management team at
15 that time. And the district was struggling. We were
16 implementing a reform that we call First Things
17 First, which is the way we learned about grouping
18 kids and teachers in relationship to each other, and
19 those teachers and students stay together over time.

20 So at the high school, you'd have the same
21 set of kids on your team for four years. And we
22 found that was helping. You can begin to see that
23 our performance was improving. We started that work
24 back in 1996 when only 3 percent of our kids were
25 passing the state math test; 3 percent. And just

1 under 12 percent of our kids, I think it was about 11
2 and a half percent, were passing the reading test.

3 So we started that reform, knowing that we
4 were really not meeting the needs of our kids. So
5 having the structural reform, where you really got to
6 know your student, seemed to be helping, but it
7 wasn't helping enough, and we were struggling to
8 figure out how we're to provide enough resources to
9 make a difference.

10 We also have a disturbing pattern. We were
11 losing 200 to 250 teachers a year. We have about
12 1600 teachers in our district, and on average that
13 many would leave, a few to retirement, but most would
14 leave to surrounding communities who were paying
15 higher salaries. And we were, at that time, not able
16 to do anything to close that salary gap.

17 So we often heard that young teachers would
18 come and work in our district because they wanted
19 that urban experience. It's very different to teach
20 in a very diverse environment than it is elsewhere.
21 And then, they would leave to go do what they needed
22 to do for their families to access higher salaries
23 for themselves. Can't blame them for that, but it
24 became a pattern. So every year we would have large
25 numbers of new teachers what were not trained, that

1 had no experience with urban kids. So that was the
2 general state of the condition of our district prior
3 to 2005/'06.

4 Q. And the first year that you received
5 additional funding, take a look at Exhibit 233. And
6 does 233 generally track the Kansas State -- or
7 Kansas based state aid per pupil for the years 1993
8 to 2013?

9 A. It does.

10 Q. Okay. Then what was the first year that you
11 received additional funding by way of the base?

12 A. The first year the additional funding came
13 in was the 2005/2006 school year.

14 Q. Okay.

15 A. That's represented here on the chart.

16 Q. All right. And how long was the -- well, I
17 was just about to ask you how long the three-year
18 plan was, but the Kansas Legislature adopted a three-
19 year plan that covered what years?

20 A. It covered the 2005/'06 school year,
21 2006/'07, 2007/'08 school year, that was the three
22 years, I believe.

23 Q. I think it was 2008/'09?

24 A. 2008/'09.

25 Q. So 2005 was interim, then the three-year

1 plan covered '06 --

2 MR. ROBB: '07, '08, and '09.

3 Q. -- '07, '08, and '09?

4 MR. CHALMERS: I'm lost on who's
5 testifying at this point.

6 MR. RUPE: That is the question. I
7 apologize. Good objection, Counsel.

8 Q. (By Mr. Rupe) Let's go back. What was the
9 three-year plan by the Legislature?

10 A. I think what's confusing is it was a three-
11 year plan, but the money came into the school
12 district in the 2006 school year. The real --
13 realization of that 2006/'07, 2007/'08, and then the
14 2008/'09 school year.

15 Q. And what was the occasion when the money
16 began to be cut?

17 A. After the beginning of the 2008/'09 school
18 year, funding --

19 Q. So that would be the third year of the plan?

20 A. Yes, the third year of the plan. So while
21 it was a three-year plan, it was not funded for three
22 years. School districts built their budgets
23 anticipating -- because we had, you know, warning
24 from our governor, frankly, and the legislative body
25 that the funding wouldn't be there. So we knew when

1 we entered the school year of 2009, that the funding
2 we had at the beginning of the year would not be the
3 funding that we would have when ended the year, so
4 reductions were made.

5 Q. All right. And the reduction occurred when
6 the base dropped to 4,012, and then continued to
7 drop?

8 A. It actually, during that year, dropped two
9 times. But that was where it ended, \$4,012. So it
10 provided for instability and anticipating what kind
11 of revenue you had to pay your bills during that
12 school year.

13 Q. Okay. Now let's focus on the years that you
14 had an infusion of additional funding through the
15 base, '06, '07, '08, and then the first part of '09.
16 Tell the Court what that money was used for.

17 A. You know, you heard in the work yesterday
18 this term "weights" that we receive money -- and it's
19 called weights. I like to say that it's children;
20 they're not weights. Because the money comes --
21 additional funding came to support the cost of
22 educating children from high-risk background,
23 at-risk, bilingual, special ed.

24 So the infusion of money was provided to
25 address the needs of those students. You might

1 recall that we talked yesterday that we have 87
2 percent of our children living in poverty. So that
3 means 87 percent of our kids qualify for at-risk
4 program intervention.

5 When you have that many children that are
6 coming from poverty, the first thing you should think
7 about is that every staff member and every teacher
8 needs to be trained on how to work with kids coming
9 from impoverished background. So we implemented,
10 system-wide, some intense professional development on
11 how to provide instruction for kids who lack
12 background knowledge, who don't have that experience
13 in their lives to bring into the classroom. So we
14 provided training on instructional strategies for
15 at-risk, the bilingual, and special ed students.

16 But we couldn't lose sight of the fact that
17 we were losing 200 to 250 teachers a year. So we
18 used some of that money to close our gap in terms of
19 what we're paying our teachers. Critically important
20 to have the best teachers in front of every child.
21 And when you're coming from a background where school
22 is the only place where you get experiences that help
23 develop you, you have to have the best teachers in
24 those classrooms.

25 So we infuse funding into our salary

1 schedule so we could be competitive with the
2 surrounding districts. Now, we still don't match the
3 surrounding districts, but we're closer to
4 competitive. So those are some of the things that we
5 did.

6 Also implemented tutoring programs, after-
7 school programs, developed partnerships with
8 community resources to provide counseling
9 intervention and services. We've try to infuse our
10 schools with technology so they have access to the
11 most current, recent information.

12 And library books, we hadn't replaced or
13 library books or classroom books for more than 30
14 years. So you can imagine the condition and the
15 quality of those materials. So we used some
16 resources to take care of that, as well.

17 Q. In terms of the additional resources that
18 you got in those years that I indicated, did you use
19 the kinds of strategies that you were able to use
20 with the federal grant money at Emerson to enhance
21 student performance?

22 A. We did. We put those tutoring programs in
23 place, some extended day opportunities. We talked
24 already about intervention during the day. And the
25 other piece of that was that the social and emotional

1 kinds of needs of our kids, really feeling like we
2 were able to provide resources to schools so they
3 could help kids who were hungry, who were homeless,
4 whose families didn't have resources for them.

5 Q. And I think this exhibit shows it, but in
6 terms of student achievement, looking at 105, what
7 happened during the years that you received
8 additional funding in terms of student achievement?

9 A. You can see that the achievement for the
10 state continued to climb with additional resources.
11 If we were looking at the Kansas City, Kansas data,
12 we mirror that, as well. We had significant gains in
13 performance following the ability to implement these
14 interventions for our kids.

15 Q. Were the effects immediate?

16 A. No. You know, these are children and
17 adults, grown-ups, and it takes us -- it takes time
18 for these things to have an impact. But they did
19 impact within a year or two; you can see that in our
20 data. It takes time. You know, it's not an
21 overnight fix. It's not spending an additional
22 dollar changes things tomorrow, but it did help.

23 Q. Did you spend money on professional
24 development?

25 A. We did extensive -- we continued that

1 Wednesday early release program. We brought in
2 outside resources to help develop our teachers.

3 Q. Did you send teachers elsewhere to learn how
4 to teach different strategies for urban kids?

5 A. We did. Particularly in the area of
6 literacy, we would send them to the national experts
7 to learn from those and bring the work back into the
8 schools.

9 Q. In terms of things like security and safe
10 schools and truancy officers, were you able to
11 resource those with the additional funds?

12 A. Those were all in place for every school.
13 They had access to those kinds of resources. We were
14 able to expand our department that serves our -- we
15 call them transitional families, our homeless
16 families. And out of those things -- and we lowered
17 our pupil/teacher ratio. We talked yesterday about
18 Sumner Academy's strategies, and they have a lower
19 pupil/teacher ratio, so we tried to do that as well
20 for all of our children.

21 Q. Explain to the Judges what it costs in terms
22 of a school's budget and money to reduce the size of
23 a classroom.

24 A. I don't know that I have those exact
25 figures. But if you think about it this way, we try

1 to staff our elementary schools with an elementary
2 teacher to 23 students. So if you want to reduce
3 that to -- ideal for kindergarten is around 15 to 18,
4 or in the early grades, 1st and 2nd, around 21.

5 Then, when you take those additional
6 students out of the class, then the cost is
7 purchasing another teacher, purchasing materials,
8 supplies, space, and all of those kinds of things in
9 order to provide that rich environment, so you can
10 accumulate that over time. It does cost more.

11 Q. In terms of this period of time when you
12 received additional resources, were there -- I think
13 actually 133 is -- I'm sorry, Exhibit 105 shows
14 this. But did the annual yearly progress required by
15 the State of Kansas and NCLB continue to increase?

16 A. Well, the demands on our work, what we're
17 being asked to do has gone up every year and
18 continues to go up regardless of the resources that
19 we receive.

20 Q. And we talked about what the definition of
21 suitable included yesterday in your district. In
22 terms of those increasing demands, would those
23 increasing demands be what you talked about yesterday
24 in terms of what constitutes a suitable education?

25 A. Right. And I hope that it was clear that

1 the suitable education is not defined by an
2 individual district, because there are many things
3 that we're told we have to do legislatively by the
4 state board.

5 So providing all of that instructional
6 opportunity while increasing the number of students
7 who are successful in that content is not
8 correlated. The expectations don't go down when the
9 resources go down. The expectations continue to go
10 up. We just need to figure out another way to make
11 it work.

12 Q. Were there changes in the graduation
13 requirements in terms of increased requirements in
14 that period of time?

15 A. The graduation requirement for No Child Left
16 Behind has been 75 percent and continues to be that.

17 Q. In terms of college admission requirements
18 and college readiness, did those demands increase?

19 A. They do increase. Truly being ready for
20 college and career is, in the layman's way of looking
21 about that, is that a child can go to college and not
22 be in remedial classes. That's been a change.

23 Q. In terms of the number of kids coming into
24 the district that were of poverty, did that number
25 increase in that period of time?

1 A. I don't have the number in front of me for
2 2005/'06, but we were under 80 percent poverty during
3 that period of time. Now we're almost at 90 percent,
4 so that has significantly increased. The numbers of
5 students coming in who require English as second
6 language services has gone up significantly. All of
7 those changes, demand's up --

8 Q. The demands on the district increased?

9 A. The demands are definitely up.

10 Q. Okay. Looking at the diagram so I don't
11 screw you up on the date, but what was the first year
12 of the cuts?

13 A. The cuts began in the 2009 school year. We
14 began the 2010 school year with cuts, as well.

15 Q. And in terms of what you have observed by --
16 strike that question. Let me ask it this way: What
17 did your school district do in response to the
18 reduction in state funds?

19 A. I was the assistant superintendent for
20 business and instructional services at that time.
21 And the superintendent and the board charged me to
22 come up with various plans that they consider on what
23 to reduce, trying not to impact our progress and
24 student achievement. We cut 400 positions out of the
25 school system that first year. It was 130 teachers.

1 What was extremely challenging and heart
2 wrenching, frankly -- because we knew what our kids
3 needed, and we were starting to chisel away at being
4 able to provide those things. So we went through our
5 budget line by line and implemented a process that we
6 call zero-base budgets with our principals and budget
7 managers, and asked them to come to the table with a
8 budget that could be justified, every expense, based
9 on what they needed for their kids.

10 We took that under advisement. They asked
11 for a lot of things that we had to say no to, and we
12 began creating a cut list. We eliminated our entire
13 Safe and Drug-Free Schools department. That was
14 tough in an urban community with lots of crime and
15 lots of drugs and lots of situations that our
16 children find themselves in. And we could no longer
17 sustain that; we eliminated that department.

18 We eliminated our federal programs
19 department, a department that helped us with all the
20 federal regulations, and we asked another person to
21 take on that work. We eliminated and cut back on
22 counselors. We eliminated and cut back on
23 librarians. We increased class size.

24 We froze equipment budgets. We cut out all
25 professional development that could not be done by

1 our own team in-house. We froze and reduced
2 expenditures on textbooks. We didn't buy textbooks.
3 We cut budgets, at that time, 10 percent, and later
4 on as the cuts continued, 20 percent, saying to
5 schools, figure out to how to do less (sic) with
6 supplies, resources, and materials. Those are some
7 of the things that come immediately to mind.

8 Q. Let me hand you -- Exhibit 256, in evidence,
9 is an affidavit you prepared in another matter. And
10 I'd like to hand it to you to refresh your
11 recollection on any -- and that is your affidavit,
12 isn't it?

13 A. It is.

14 Q. And that chronicles as of the time you
15 testified to the information in there, which was
16 February 7, 2011. The information in there was what
17 cuts had occurred by that time?

18 A. That's correct.

19 Q. Let me ask you about some of these that you
20 haven't testified about. The elimination of tuition
21 for teaching fellows, what was that?

22 A. We talk about that program. We talked about
23 the fact that our district was losing large numbers
24 of teachers, so we tried to get creative and develop
25 a partnership with Pittsburgh State University that

1 would invite people from industry and business who
2 maybe were at a place in their career that they
3 wanted to transition into something else to become
4 teachers.

5 And so the teaching fellows program was
6 established that takes professional individuals and
7 trains them to become teachers, and working with the
8 state department they become licensed. So in order
9 to do that we would pay them a salary, but we would
10 also pay for their tuition and instructional needs.

11 Well, when the cuts came, we felt we had to
12 eliminate that program completely. We also cut back
13 on maintenance and repair of our buildings. Our
14 buildings in our community average 56 years old, and
15 so they require a lot of tender, loving care. And we
16 cut back on that only to do things that required for
17 safety and emergencies.

18 In our urban school district, we tried to
19 provide transportation to students, as many as
20 possible. We don't follow the state guideline of two
21 and a half miles, but actually transport kids who
22 live a mile or mile and a half away from their
23 school. We've had to cut back on some of that. We
24 eliminated activity busses, so kids who stayed after
25 school for tutoring or for extracurricular activities

1 had to find their own way home.

2 Q. Talk about the central office and what was
3 done by way of cuts. That's in paragraph 4.

4 A. Thank you. We -- I mentioned that we cut
5 130 teachers, 136 to be exact. We eliminated six
6 principals and assistant principal positions, and
7 then cut 33 other positions that were support
8 positions out of the central office.

9 In our system, the central office is the
10 infrastructure for helping schools do the work. And
11 we were determined not to cut people's jobs that were
12 in schools, so we took the cuts at the central office
13 level. That was around \$11.5 million worth of work,
14 the things that I've mentioned so far.

15 Q. In terms of the preschool program, were
16 their cuts in the preschool program?

17 A. Preschool, we serve around 800 children in
18 our preschool and have been very proud of that. We
19 went from a 5-day- to 4-day-a-week program in order
20 to save on transportation costs, and so kids come to
21 school four days a week rather than the five.

22 And that was a hard decision for us to make
23 because the earlier we can get our kids into
24 education, the more success they have moving
25 forward. So eliminating a whole day of instruction

1 throughout the school year has a negative impact,
2 slows down their progress.

3 We also reduced special education by a
4 million dollars. We said to them, figure out a way
5 to meet the mandates and the needs of kids with a
6 million less dollars in your budget.

7 Q. What about paraprofessionals? The area of
8 instructional support, did you reduce the funding in
9 that?

10 A. We did. Our paraprofessionals have taken
11 significant reduction in salary and in hours. We cut
12 their hours back, and consequently, that's impacted
13 their salaries. And we've reduced the number of
14 paras to just those that are essential to do the
15 work.

16 Q. In your school district, did the paras
17 perform a function from time to time as translators
18 because of the number of English limited learner kids
19 you have?

20 A. The teachers' aides and sometimes
21 paraprofessionals at the preschool level, but we had
22 to cut back on teachers' aides. In fact, we
23 eliminated all of them and asked other people to step
24 up who have bilingual skills to help communicate with
25 our families.

1 Q. You talked earlier about the value of
2 extracurricular activities to kids in poverty. Did
3 the reduction in the cost of transportation for those
4 kids to those activities have any impact on those
5 kids?

6 A. Well, many of them weren't able to
7 participate, because if you think about it, kids from
8 poverty don't have access to transportation readily.
9 Oftentimes, their families either don't have a
10 vehicle or their families are working, and that one
11 vehicle for the family is with the working parent.

12 So fewer students are able to participate.
13 We've also had conversation about the need to
14 eliminate those extracurriculars altogether if the
15 funding continues to be cut. But at this point,
16 transportation is the piece that we've reduced.

17 Q. Did you have any reductions at all in
18 athletic, band, vocal music programs in the middle
19 and high school?

20 A. We have eliminated some of those in the
21 middle level, not at the high school level at this
22 stage, trying to maintain at least a core of those
23 experiences for our kids. If we don't provide them,
24 they don't have access to them. But it's been a
25 discussion that's been before the board on numerous

1 occasions about whether or not we can afford to
2 continue.

3 Q. In terms of the reduction, at the time you
4 prepared this affidavit, you indicated that you had
5 been reduced by over -- the district had been reduced
6 by over 21 million in state funding over the past two
7 years?

8 A. Right, that's state funding in terms of base
9 aid that we receive for students and the additional
10 money that we receive for students that are referred
11 to as weights, but they're children who need these
12 special intervention programs, those were cut.

13 Capital outlay equalization, the state aid
14 that allowed us to have support from the state to
15 repair and maintain our buildings and construct
16 buildings was eliminated. Equalization on the local
17 option budget, meaning the aid we receive in order to
18 be competitive with wealthier communities, was
19 prorated and the amount reduced. So that was a hit
20 that we received in two different ways.

21 We were supposed to receive -- we're 61
22 percent state aid on the LOB school district, meaning
23 that 61 cents of every dollar that we want to levy in
24 our local option budget comes from state resources,
25 but that amount was prorated so we received 53 cents

1 on every dollar rather than 61, so that accumulates
2 to significant loss.

3 But let me also add, reduction in state
4 funds is not the only thing a district has to respond
5 to. At the same time, state funding going down and
6 demands going up, health insurance, as I know you all
7 know, has been increasing at a significant rate,
8 utility costs have been going up. We're a business
9 as well, and we have to absorb those kinds of
10 increases in the atmosphere of a reduction of
11 revenue.

12 Q. I'm going to ask you some questions about
13 the comparison of the property wealth of Wyandotte
14 County and the Kansas City, Kansas School District,
15 as opposed to the districts that surround it. I'm
16 not going to ask you anything you couldn't learn by
17 driving from KCK through Johnson County, but I want
18 to ask you, what is the wealth, property wealth in
19 the Kansas City, Kansas School District?

20 A. The term that's used is assessed valuation;
21 what is the value of all the properties that are in
22 the community. Our assessed valuation is -- this
23 school year, is less than \$700,000 total of assessed
24 valuation. It has been, at its high point, 768,
25 \$770,000 of assessed value.

1 What does that mean? It means that for
2 every mill that we raise, that's the kind of revenue
3 that comes into the school district, as compared to
4 Shawnee Mission's which is three times higher than
5 the Kansas City, Kansas School District's valuation.

6 Q. In terms of the median income in Kansas
7 City, Kansas compared to the median income in Johnson
8 County, is there a difference?

9 A. There is. The latest report that I saw said
10 the median income in Kansas City, Kansas was just
11 over \$37,000, and in the Shawnee Mission School
12 District, 110, I believe, but I'm not sure about that
13 last figure.

14 Q. There's a substantial difference?

15 A. Right.

16 Q. In terms of the difference in salaries of
17 teachers today, after the cuts, between Kansas City,
18 Kansas and Blue Valley, what is the difference in
19 that salary?

20 A. Well, our entry level salaries are
21 competitive, but as teachers gain experience, the gap
22 widens. And anywhere from five to \$15,000 more in
23 Blue Valley, depending on your years of experience
24 and your education.

25 Q. If teachers have a choice to teach in a

1 classroom that has a 85 percent disadvantaged,
2 children of poverty, immigration-filled classroom
3 versus the demographics in Blue Valley, what's your
4 experience on those choices, if they can teach in
5 Blue Valley at a higher salary?

6 A. Well, it's challenging to work in an urban
7 school district. The work conditions are difficult
8 and teachers who are passionate and love the work
9 sometimes will tolerate those challenging work
10 conditions and less salary. But our experience has
11 been that at some point in a professional's career,
12 you begin to think about your retirement and your
13 long-term ability to raise money for your family and
14 you make those changes. So we have lost numerous
15 teachers to not only the district mentioned, Blue
16 Valley, but to Olathe and Shawnee Mission, to North
17 Kansas City, to communities that pay higher
18 salaries.

19 Q. Take a look at Plaintiffs' Exhibit 163, and
20 does that --

21 A. Thank you. Yes.

22 Q. -- provide information concerning the median
23 household income for Wyandotte County?

24 A. It does, yes. Thank you. It's the U.S.
25 unemployment -- employment and median household

1 income report.

2 Q. What does that show the Wyandotte County
3 median income is?

4 A. The income for Wyandotte County is \$37,483.

5 Q. And this is ranked low to high, is that
6 correct?

7 A. Yes, it is.

8 Q. And Wyandotte County is the 21st listed, low
9 to high on median household income, true?

10 A. That's true.

11 Q. And Johnson County is at the top -- actually
12 at the bottom, low to high. And its median income is
13 72,000?

14 A. That's correct \$72,006 median income to
15 twice that of -- almost twice.

16 Q. And 20 mills raised in Johnson County versus
17 20 mills raised in Wyandotte county, is there a
18 difference in those amounts of money raised?

19 A. Three times more in the Shawnee Mission
20 School District can be raised because of that
21 assessed value. Our assessed value being under
22 700,000 per mill, it means we have to raise that
23 three times that -- or our mills have to be three
24 times higher to access the same resources.

25 Q. Let me hand you Exhibit 257. What is

1 Exhibit 257?

2 A. This is the planning document that we refer
3 to as the phase plan that we use with our board of
4 education to provide them guidance on areas of
5 possible reduction to the budget.

6 Q. So let's place this in time in terms of our
7 time line. This plan began when?

8 A. This particular version began in the
9 2010/'11 school year.

10 Q. And talk to the judges about what the phases
11 are, Phase 1, Phase 2, new Phase 3?

12 A. In an ever-changing -- not quite knowing
13 where our school finance would land, we wanted to
14 provide the board opportunity to make decisions as
15 they had to react to decreased funding, so we
16 established what we call a phase plan. When the
17 funds are reduced this much, these are the areas that
18 we recommend that you cut, and we provided them a
19 list of things to review and perhaps eliminate.

20 If the cuts went deeper, we moved to the
21 next highest phase. So on this report you can see
22 that Phase 2 is marked, 2010/'11 school year.
23 Phase 1, the board reviewed and chose to implement
24 those recommendations in the '09/'10 school year.
25 Phase 2 were their considerations for the '10/'11

1 school year.

2 Q. Did those reductions occur in '09/'10 and
3 '10/'11?

4 A. Those reductions did occur in both of those
5 years.

6 Q. What about the reductions in Phase 3,
7 2011/2012?

8 A. The reductions listed there were done and
9 these were the areas that we recommended to the board
10 that they reduce their funding to respond to the
11 declining state aid.

12 Q. Exhibit 257 continues on to page 2 in terms
13 of Phase 3, is that correct?

14 A. That's correct.

15 Q. And so the reductions in Phase 1 were 2.4,
16 roughly; Phase 2, 5.4 roughly; and in Phase 3, they
17 were how much?

18 A. 8.2 million.

19 Q. And has anything been done with regard to
20 Phase 4 at this point?

21 A. Phase 4, it's also listed as, Old Phase 3.
22 As the cuts got deeper, we moved things around to try
23 to stay off really hurting kids, but Phase 4 begins
24 to implement things that directly touch our
25 students. And here's an example: Transportation.

1 It's noted from -- 2.0 from middle and high school,
2 to 2.5 miles.

3 Right now, the board transports elementary
4 school children who live .8 miles or farther away
5 from the schools. That is not on the plan because we
6 believe strongly that we still have to provide that
7 level of transportation. The State doesn't reimburse
8 districts who transport until 2.5 miles.

9 For middle and high school, our pattern has
10 been a mile and a half. That's far enough away from
11 our schools for kids to walk through many of our
12 neighborhoods. In Phase 4, we recommended to the
13 board that they expand that distance and require
14 students to live at least two miles away from a
15 middle school or high school to be eligible to be
16 transported.

17 We did not eliminate, at this time, the SRO
18 program, so that piece of this Phase 4 is not yet
19 implemented; could be part of the consideration. And
20 we talked about furloughing employees, the employees
21 that work just during the school year, having them
22 lose a day of pay, or looking at losing a day of pay
23 for those who work year-round, and so those numbers
24 are reflected there. Those have not been implemented
25 at this time.

1 Q. Has there been an effort in your district to
2 keep the cuts out of the classroom?

3 A. It's impossible to keep cuts out of the
4 classroom. If you're spending money in a way that
5 you should be, it's all about student achievement and
6 what's happening. But we didn't want to cut things
7 that were directly in the classroom. Even though we
8 had to cut teachers -- they're obviously in the
9 classroom -- we tried to not do that moving forward.
10 So we were reducing all of the support services and
11 those kinds of functions.

12 Now, somebody has to do that work or it
13 doesn't get done. So we realize that some of our
14 cuts have left us to not being able to respond to
15 families' needs, scrambling to get reports done that
16 are required by our state department or having people
17 work two jobs and getting paid for a single job.

18 Q. In terms of salary increases for teachers,
19 describe that over the period of cuts going back to
20 2009.

21 A. Talked about the losing teachers and that
22 one of the things that we did was try to improve our
23 salary schedule so we could keep our good teachers.
24 And we've had to stop that, frankly. Teachers either
25 haven't had a raise or had a 1 percent increase.

1 They've had no movement in terms of their,
2 what they call step movement, in terms of moving on
3 the salary schedule, for the last three or four
4 years. They've received perhaps a 1 percent or at
5 highest a 2 percent increase, and that's it.

6 Q. What's happened to your student/teacher
7 ratio, the class size in your district?

8 A. We've increased the ratio. The average is
9 one to 23 in elementary; one to 24 in middle and high
10 school. But the reality is, some classrooms have as
11 many as 35, 40 children in them.

12 We didn't talk about what happened to the
13 other staff in terms of salary. They receive no
14 increases and we have frozen salaries for all of our
15 other employees with the exception of some -- a
16 building principal, and we've cut hours for
17 paraprofessionals. We've eliminated any overtime.
18 So if we can't get it done during the regular
19 workday, it has to wait, unless it's a safety issue.
20 So everyone has been touched by those cuts.

21 Q. I'm sure you're going to hear about this in
22 a few minutes, but haven't these cuts given --
23 haven't they been a blessing that have given you the
24 opportunity to become more efficient?

25 A. It's not a blessing when you have to take

1 away things that you know work from your children.
2 And yes, we need to be efficient. Yes, you need to
3 hold me, as a superintendent, accountable for how
4 we're spending money and be able to demonstrate why
5 that's important to student achievement. But there
6 should not be a suggestion that school districts
7 waste resources, because I don't believe that we do.

8 In our school district, we have a line-by-
9 line analysis and conversation with parents,
10 principals, teachers, and community members about, is
11 this an important expenditure? Will it help us move
12 our students forward? And if it wasn't, we have
13 eliminated it; if it was, then we try to provide it.
14 Sometimes we know this is really necessary, for
15 example, counselors for our kids, and we have not
16 been able to provide those services to our children.

17 Q. Take a look at Exhibit 258. And I want to
18 make sure we've covered everything, but Plaintiffs'
19 258 are some of the reductions due to cuts in the
20 years indicated on that exhibit, is that correct?

21 A. That's right. The years are from 2009/'10
22 to the 2011/'12 school year.

23 Q. Those are all cuts implemented in the Kansas
24 City, Kansas School District?

25 A. Yes.

1 Q. In terms of the impact of these cuts, have
2 they made a difference on student achievement in your
3 district?

4 MR. CHALMERS: Lack of foundation,
5 Your Honor. Calls for opinion testimony beyond what
6 she has by way of experience or what we talked on
7 some sort of -- at least complicated statistical
8 analysis, and all you would be getting is basically a
9 lay opinion. And so I think that ought to be held
10 for the Court and I'd object.

11 MR. RUPE: I would respond to that,
12 Your Honor.

13 JUDGE THEIS: Give me your question
14 again.

15 MR. RUPE: Yeah, and that is --
16 yes, what was the impact of these cuts on student
17 achievement.

18 And I will indicate to the Court
19 that she has been identified as an expert.
20 Mr. Chalmers was told she was going to testify to
21 this. He took her deposition on it. So he can
22 certainly cross-examine her on it, but she knows that
23 money makes a difference and she can give her opinion
24 on that.

25 MR. CHALMERS: Counsel is confused

1 about my objection, and I don't want the Court to be
2 confused about it. She has an opinion. I have an
3 opinion. Probably a lot of people in this audience
4 have an opinion. But that doesn't mean that you have
5 the foundation to express an opinion on whether or
6 not the funding levels in this case had any impact on
7 the outputs. And no foundation has been laid for it
8 other than the fact she's a teacher and
9 administrator, and that's not sufficient. It just is
10 not proper.

11 It's not anything that goes within
12 the scope of her expertise. There's been no showing
13 that that's things that teachers or administrators
14 know how to do or can do. There's no showing that
15 you wouldn't require, as you would, a lot more
16 background experience and knowledge in terms of
17 statistics to be able to make that evaluation there's
18 no showing she's conducted that study. So it is a
19 lack of foundation.

20 MR. RUPE: He's trying to limit the
21 testimony on causation to scientific evidence, and
22 that's not the way the rules of evidence work. There
23 are lay opinions that can be given. There are
24 opinions that can be given. And this is a person who
25 I will go back and lay the foundation, if necessary,

1 for the Judges, so that you understand how long she's
2 been at this. You'll understand what her
3 observations have been and she can give her opinion.

4 MR. CHALMERS: In the trial brief
5 that we prepared talking about opinion testimony, it
6 also talks about lay opinions. And of course, that's
7 a very narrow area where you can express a lay
8 opinion. Typically, that's when you can't talk about
9 what you can see, hear, or smell --

10 MR. RUPE: Is that the trial brief
11 you handed me yesterday?

12 MR. CHALMERS: That's the trial
13 brief you received yesterday, but I think you're --

14 JUDGE THEIS: I'm going to say
15 something. If anybody disagrees, they can pipe in.

16 She's indicated the school is --
17 the goals and all these are aimed at proficiencies
18 and building students so they're capable of doing
19 it. So if she knows what the inputs are, she should
20 be equally qualified to know what affects them. So
21 it's a question of weight, not admissibility in my
22 view.

23 MR. RUPE: Thank you, Your Honor.

24 Q. (By Mr. Rupe) Do you want to give an answer
25 to the question?

1 A. I would love to give an answer to that. You
2 know, 30 years of experience, I hope, informs some
3 thinking. And I want to say this to the Court:
4 There's not a person in this room who's not more
5 accountable for progress of students than the
6 superintendent, not one. We are charged every day to
7 make sure that we make sound decisions for our
8 children.

9 So yeah, there has been a direct impact,
10 just as when the funding went up, we were finally
11 able to implement some of those strategies that we
12 know work for our children. And you know, funding
13 going down doesn't cause an immediate downfall. In
14 fact, I say to my staff, it's up to us to do whatever
15 it takes -- I apologize -- whatever it takes for our
16 kids.

17 So you can talk to any of the staff that
18 work with me and they will say exactly that. I have
19 a laser focus on what we need to do, and we will do
20 whatever it takes, even if that creates hardship for
21 the grown-ups in the system. So we're doing that,
22 pushing staff to the point where they're saying to
23 me, we can't take -- we can't do any more.

24 And this school year, you'll see in our
25 results, we're beginning to see the impact of

1 decline. Last school year we ended the year with the
2 highest achievement we've ever had, and I celebrated
3 that with our staff, even knowing that how they
4 perform on Kansas assessment doesn't mean they're
5 college ready.

6 This year is a different story. We've seen
7 a decline. I'm anticipating that we're back to
8 having 40 percent of our kids not meeting it. And so
9 the only thing the person who has 30 years of
10 experience and a team of very dedicated staff and
11 board members can conclude is, we are not meeting the
12 needs of our kids because we don't have the resources
13 to provide them the support they need.

14 Q. Take a look at Exhibit 171, please.

15 Let me ask you about your answer for a
16 second before you shift to that exhibit. In terms of
17 the effect of the decrease in the funding, you
18 described that the effect of the increase in funding
19 was not immediate on achievement. Has that been your
20 same observation with regard to the decrease?

21 A. These are human beings and things don't
22 happen instantaneously. We need to spend time
23 learning how to do our work and do it better, and
24 then implement that and make adjustments as we go.

25 At the same time, you know, on the other

1 end, when you're losing resources, you don't
2 instantly become void of your knowledge, background,
3 and experiences. And so people are continuing to try
4 to implement what they know works. Where you start
5 to see diminishing returns is when they don't have
6 access to those tools they need in order to make it
7 work.

8 Q. Let's drill down on an example that you
9 mentioned in terms of what you were able to do with
10 additional resources, and let's talk about
11 professional development. You indicated with the
12 additional resources you began to receive in 2006,
13 '07, '08 and first half of '09, you were able to send
14 teachers out of the district, bring people into the
15 district, and educate those teachers on strategies
16 that work with urban kids, right?

17 A. That's correct.

18 Q. Has that money been cut?

19 A. Let me talk to you about one particular
20 area. You know, one of the most important things
21 that we do for human beings is to help them become
22 literate citizens. So teaching reading is a highly
23 complicated skill that you need to have really
24 in-depth knowledge to be successful. So we would
25 frequently send our folks to the national reading

1 academy and national reading experiences, so they
2 could hear from the people that are identified as the
3 best and brightest on, how do you help people become
4 literate, both reading and the area of writing.

5 We've had to cut all of that out. And
6 here's how that impacts. You know, it's not just
7 nice to go hear a speaker, but you bring back the
8 information and you look at your current practice,
9 and you make adjustments based on what we learn. We
10 haven't been able to do that, so we have to rely on
11 the knowledge that we already have.

12 And when things aren't working, we have no
13 way, other than reading an article or book, to try to
14 figure out what is not working for this child, or to
15 bring in resources to help us look at what's
16 happening in the classroom and make adjustments,
17 moving forward. So that's an example of the kinds of
18 impact these cuts have had. We have to rely on our
19 internal knowledge, and sometimes that's not enough
20 to meet the needs of our kids.

21 MR. RUPE: Your Honor, I'm getting
22 real close to being done, but I want to go back
23 through my notes and chat with folks at my table.

24 JUDGE THEIS: Never worry about us
25 hollering because you're going to take a break.

1 MR. RUPE: Okay. If we could take
2 a morning break, if this is appropriate, I think I
3 could come back and finish up.

4 JUDGE THEIS: All right. Sounds
5 good. About 15, is that good for you?

6 MR. RUPE: That's fine.

7 JUDGE THEIS: 15, 20.

8 (A recess was taken.)

9 JUDGE THEIS: Be seated thank you.

10 Q. (By Mr. Rupe) I want to go back to the
11 questions I asked you about property wealth for a
12 minute and ask you, have there been any elections in
13 Kansas City, Kansas School District, either by way of
14 bond elections or increase in LOB elections,
15 anything -- describe the history of that for the
16 Court.

17 A. The board successfully passed a bond
18 referendum 11 years ago. It was the first one in 40
19 years.

20 JUDGE FLEMING: In 40?

21 THE WITNESS: In 40 years.

22 A. If you keep in mind the wealth of the
23 community, asking the voters to pass a bond issue or
24 to pursue higher taxes is something the board takes
25 very seriously. So 11 years ago, they passed a bond

1 referendum to put air conditioning and new windows in
2 all of the buildings and to try to upgrade the
3 technology and structure. So that's been in the past
4 40 years.

5 We have not gone out for the referendum to
6 raise the LOB to 31 percent because we're very much
7 aware that in a community where most of your children
8 live in poverty, where the median income is less than
9 38,000 a year, it's not impossible but highly
10 unlikely that the voters, who are very passionate and
11 supportive of what we do in schools, can afford to
12 increase their taxes at all. So the board is
13 committed to not asking for another general
14 obligation bond and promised that to the voters prior
15 to the passage of that last bond issue.

16 Q. I'm going to put up an exhibit from 107.
17 It's a page from 107. It's a blow-up, and it's from
18 the Kansas State Department of Education. The Bates
19 number is 138468. And that was shown during opening
20 statements as the percent of K through 12 increase in
21 student population trends. And I want you to
22 indicate, in the period of time that we're talking
23 about from 2006 through 2011, if there has been an
24 increase in your school district in free and reduced
25 lunch?

1 A. There has been. As I mentioned the number
2 before, 2005 was less than 80 percent of our children
3 on a free and reduced lunch. And we're now almost to
4 90 percent. So we have more children that are living
5 in poverty.

6 Q. So the state number for 2011 is close to 50
7 percent, but your number is where?

8 A. We're at 87 percent of our children.

9 Q. Okay. And then students with disabilities?

10 A. Students with disabilities, our numbers
11 somewhat mirrors what the state number is. We are
12 averaging around 12 percent of our children who are
13 children with disabilities.

14 Q. And ELL?

15 A. This number has gained significantly in our
16 district. We have 38 percent of our students who
17 qualify for ELL student.

18 Q. So your ELL number would be somewhere up in
19 here?

20 A. Right, and that has been increasing
21 significantly over the last three or four years.

22 Q. And the student trends in your district,
23 would you put those in the same category as the
24 increasing demands on the public school system?

25 A. Certainly. Our needy children, the needs

1 our children have, have been increasing at the same
2 time that we've been asked to do more.

3 Q. With regard to the Plaintiff kids in this
4 district, they are kids in your district?

5 A. They are.

6 Q. And they're representative of those --

7 A. Absolutely.

8 Q. -- issues we've talked about today?

9 A. They are.

10 Q. Are the kids on free and reduced lunch, the
11 kids that are minority, the kids that are English
12 language limited, are those kids more costly to
13 educate?

14 A. Well, as we've already talked about, they
15 require different interventions and additional
16 resources, so they are more costly. And that is who
17 our school district is. Just a reminder, we have
18 less than 13 percent white population in our
19 community, so our children have different needs.

20 Q. We talked about what you consider in your
21 district to be suitable and what you want for your
22 kids when they walk across that stage at graduation.
23 Are you able to provide in your district a suitable
24 education with the resources that you have?

25 A. We can answer that confidently for around 60

1 percent of our kids, but we have 40 percent who are
2 not proficient or higher on state assessments. And
3 we talked this morning about our graduation rate. So
4 we're obviously not meeting the needs of students
5 there either.

6 So no, at this present time, we are not
7 providing our students with the suitable education as
8 it's defined by our state. We're not.

9 Q. With additional resources, would you be able
10 to reach those kids and enhance their proficiencies?

11 A. It's not about the children's capacity to
12 learn. It's about being able to provide them
13 instruction in a way that helps them move forward.

14 And we have examples that we've talked about
15 already. Sumner Academy of Arts & Science, Emerson
16 Elementary School, and I can name others, places
17 where they are moving their children forward. So
18 with the additional resources, if I could replicate
19 in every elementary school what we have happening at
20 Emerson, I'm confident that our children would do
21 very well.

22 MR. RUPE: No other questions.

23 CROSS-EXAMINATION

24 BY MR. CHALMERS:

25 Q. I think it's important that before we get

1 too far into this that we clear up something that's
2 maybe confusing in some of the charts. And one of
3 the charts you were just shown early this morning was
4 Exhibit 105. That's the chart that Mr. Rupe showed
5 you of math assessments for African American kids for
6 your school district, is it not?

7 MR. RUPE: I'm going to object I
8 think I cleared that up. That's the AYP targets.

9 MR. CHALMERS: It says, math
10 assessments. These are AYP targets here. Maybe I
11 should be able to ask my question before you make
12 your objection.

13 MR. RUPE: I think the box is the
14 math assessments. The red box, the call-out box.

15 MR. CHALMERS: I don't understand
16 the objection.

17 I'll just rephrase so I can get --

18 JUDGE FLEMING: What's the legal
19 base for your objection?

20 MR. RUPE: Mischaracterization,
21 Your Honor.

22 JUDGE FLEMING: What?

23 MR. RUPE: A mischaracterization,
24 Your Honor.

25 JUDGE THEIS: Let him ask the

1 witness what his chart is and then --

2 MR. CHALMERS: I'll be happy to. I
3 don't want to misrepresent what Chart 105 is.

4 Q. (By Mr. Chalmers) Chart 105 is the
5 adequate -- or the state's adequate yearly progress
6 for African Americans, from some dates forward, is
7 that right?

8 A. It is, and --

9 Q. All right. Now, it has in it a line where
10 it says, the average -- the annual target. And that
11 annual target shows what the target is under No Child
12 Left Behind for math scores in the state, is it not?

13 A. The blue line does show that.

14 Q. Then, it has dates -- and this is what I was
15 really trying to focus on to make sure we're all on
16 the same page -- where it has the date, 2014, over
17 here at the far right, that would be what, the school
18 year 2014, that starts in '13, or the other way
19 around?

20 A. That's the '13/'14, school year.

21 Q. This is '12/'13, '12, '11, and so forth,
22 right?

23 A. That's right.

24 Q. And we focused down on this date here, then
25 this would be what '06? '05/'06, is that right?

1 A. That's right.

2 Q. Well, that's where I get confused because it
3 was in the summer of 2006 in special session that
4 there was a passage of the additional Montoy money.
5 So maybe we just need to look at it this way. Is
6 this -- maybe I misstated this. Is this, you start
7 your class in the fall of '05 and you finish in '06?
8 Or you start in '06 and finish in '07?

9 A. You have it right, '05 to '06 school year.

10 Q. This should be '05 to '06, and this would be
11 '04 to '05?

12 A. That's correct.

13 Q. That's how you read the chart?

14 A. That's correct.

15 Q. Do you remember that the Montoy decision
16 came down, and then it was in the summer of '06,
17 where the special session came in place, where we
18 first have the implemization. So that would be for
19 the '06/'07 year, wouldn't it?

20 A. My recollection is that it would have been
21 the summer of 2006. So yes, the '06/'07 school
22 year. And let me tell you how I have that
23 recollection, because our superintendent at the time
24 began her tenure here and made a change in her
25 administrative staff in this school year, and that

1 change involved me moving me into assistant
2 superintendent position, so that's how I think about
3 it.

4 Q. I appreciate that. And I don't want to be
5 unfair to you, because I read the chart differently.
6 I'm just trying to clarify. I had understood this
7 was '05/'06, '06/'07, '07/'08, but you read it
8 differently than that?

9 A. You know, I didn't create the chart --

10 Q. All right.

11 A. -- so I can't validate exactly what it
12 means. But that would be my assumption that's what
13 it's about. The typical way that we talk about dates
14 in a school system, the year ending is the fiscal
15 year, so that would have been --

16 Q. Let's talk about another chart and maybe we
17 can make less of a mess of this; I don't know. It's
18 Plaintiffs' chart 233, and it's the chart that shows
19 the base, Kansas base state aid per pupil, and it has
20 a fiscal year under it. And it has under the fiscal
21 year, would that be the '07 year that we have the
22 bump up?

23 A. The increase appears to me on this chart to
24 be the 2005/'06 school year.

25 Q. We know that's not right?

1 A. You're saying "we" know. Tell me more about
2 why you think that's not correct.

3 Q. We know the money that first came out was
4 for the '06/'07 year under Montoy?

5 MR. RUPE: That's not right.

6 A. Is there a question that you want me to
7 respond to?

8 Q. Is it your position that in 2005, before the
9 special session with the Legislature, that the
10 decision was made to fund more money in this state?

11 A. Is it my position that the funding was done
12 in 2005? Is that your question? I'm trying to
13 understand what you're asking me.

14 Q. You have agreed with me it was in 2006 -- we
15 can go back and look at the session log, but it was
16 the special session in 2006 where the appropriation
17 was passed where the permission was first granted to
18 issue money, and that that money was circulated for
19 the '06/'07 year. You agree with that, don't you?

20 A. The Fiscal Year 2006, I agree.

21 Q. And Fiscal Year 2006 starts '06 ends '07?

22 A. No. Fiscal year, the fiscal year is the
23 ending date. So it starts in 2005 in July and goes
24 through 2006, June 30th. That's the fiscal year '06.

25 Q. So you have in June '05, before the special

1 legislative session?

2 A. The fiscal year begins July 1st, it does --
3 and ends the following. So the fiscal year, the date
4 on there that says, FY, two-thousand-whatever-it-is
5 is the ending of the fiscal year.

6 Q. I may have this hopelessly confused, but I
7 just wanted it clear on how these charts read, as you
8 understand them. Exhibit 233, the fiscal year is the
9 last -- is the ending year?

10 A. As I read the chart, this indicates that in
11 the year 2006, Fiscal Year 2006, which ends in June,
12 is the year that we received additional funding.

13 Q. And the fiscal year in the chart that we've
14 been showing up, 105, you would understand that to be
15 ending '06, is that right?

16 A. If these dates -- and I believe they do --
17 represent the fiscal year, that would be correct,
18 Fiscal Year '06.

19 Q. Which makes sense, because if it's the '06
20 year that you indicate that the bump up is, this is
21 when you'd have the bump up shown on the chart,
22 right?

23 A. That's what the chart indicates.

24 Q. Now, we can agree, then, before that fiscal
25 year, the base was, what, 3,863 per kid, right?

1 A. That's correct.

2 Q. Now, the weightings in place before the
3 Montoy money, they were different, weren't they?

4 A. The actual -- when he talks about weighting,
5 my understanding is what he's asking is the percent
6 of additional money attached to the weight. So for
7 example, for at-risk --

8 Q. Let me ask it this way, because the statutes
9 refer to it as weightings, don't they?

10 A. Well, they do, but weightings -- we're not
11 talking about objects --

12 Q. And I appreciate that.

13 A. -- we're talking about children.

14 Q. Can we agree that the weightings were
15 different in 2005 and 2006?

16 A. There were changes in the formula.

17 Q. And when the changes in the formula took
18 place, additional weightings were given that actually
19 advantaged the KCK School District, isn't that right?

20 A. We received an increase in at-risk funding
21 for at-risk children, and other areas, as well.

22 Q. Now, these base numbers, can we also agree
23 that they don't reflect the additional kids, if you
24 will -- I think that's how you phrased it -- but the
25 weightings, do they?

1 A. That number reflects the base aid that you
2 get for any child regardless of their needs.

3 Q. Doesn't show what the weights are, do they?

4 A. Does not reflect the weights.

5 Q. Doesn't show what you have in LOB, does it?

6 A. No, the base aid number --

7 Q. Doesn't show -- doesn't show what you have
8 in federal funds, does it?

9 A. No, federal funds are not there, or any
10 other funding source.

11 Q. And it doesn't show what the actual
12 expenditures were for your district or for the State,
13 if we're using the state math, assessment for this
14 time period, does it?

15 A. I don't believe that chart is intended to
16 reflect expenditures.

17 Q. There's a document that your district is
18 required to prepare every year, or at least it has
19 been for last several years. It's referred to as a
20 profile information document, is that correct?

21 A. Budget profile, yes, sir.

22 Q. What I'll do is arrange for you to look at
23 the exhibit which I have, 1021, which is the profile
24 information for '11/'12.

25 MR. CHALMERS: Have we got one for

1 the witness?

2 MS. TIBBETS: Yeah, I gave it to
3 her.

4 Q. The document, profile information '11/'12,
5 what's your role in putting together that document?

6 A. I don't physically put together the
7 document. I guide the staff, under the guidance of
8 the board, on contents and the decision making that
9 goes into completing the document.

10 Q. You read it before it's finalized?

11 A. We read it and we submit it to the board for
12 review.

13 Q. And the board approves it?

14 A. The board approves the budget. They don't
15 approve this actual document.

16 Q. This document. What's done in your staff to
17 assure its accuracy?

18 A. Reviewed -- the staff that supervise the
19 director of finance are responsible for reviewing the
20 content and making sure it's accurately reflecting
21 what we intended.

22 Q. Has there been occasion where one of these
23 profiles has been prepared and reviewed by the board,
24 and a board member as dissented, and said, this isn't
25 accurate?

1 A. I've not -- I have no recall of a board
2 member dissenting that it's not accurate.

3 Q. Certainly, in the 2011/'12 profile there was
4 no dissent that you remember by a board member?

5 A. Let me be clear. The board reviews the
6 entire budget. This looks like an executive summary
7 of their budget, so the board does not take action on
8 this document, per se --

9 Q. You clarified they haven't voted on it. But
10 they look at it, and if there's a problem with it,
11 they would bring it to the attention of you and the
12 attention of your staff?

13 A. That would not be what I would suggest. The
14 board approves their entire budget. They don't go to
15 the executive summary to review that necessarily --

16 Q. So the board may not even care what this
17 says?

18 MR. RUPE: Objection. Calls for
19 speculation.

20 JUDGE THEIS: Well, the way it was
21 phrased, I don't think there's a problem with it.
22 It's a question of how the board uses it.

23 Q. I think the objection was overruled. You
24 can answer if you remember the question.

25 A. I'm sorry. I didn't hear when the decision

1 was.

2 MR. CHALMERS: That's all right.

3 A. Your question is, does the board care about
4 the document. And I would tell you that our board
5 cares, and their actions signify that they care. But
6 caring is a personal thing. Do they spend time
7 making decisions based on what is in this particular
8 document? They do not.

9 Q. Let me ask you about you personally. Do you
10 stand behind what's said in this document?

11 A. I think it has an accurate reflection. Is
12 it 100 percent accurate? I would suggest that it may
13 not always be that.

14 Q. How may it not be 100 percent accurate?

15 A. I haven't reviewed it for those details.

16 Q. You reviewed at some point, didn't you,
17 before it was issued, didn't you?

18 A. This is a -- let me explain how this works
19 and maybe that will help answer your question.

20 Q. I'm just asking whether you ever reviewed
21 it, ma'am, before it was actually issued and provided
22 to the State?

23 A. I understand that that was your question,
24 but I want to talk about it in terms of a broader
25 context --

1 Q. I know you do, and you'll have an
2 opportunity when Mr. Rupe talks to you about it. We
3 don't talk about it otherwise. I just want to know
4 if it's something, ma'am, that you reviewed and
5 approved?

6 A. We review the actual budget from which this
7 information comes from, and that information is
8 approved by the board. And certainly, nothing goes
9 to our board without our executive team, which I'm
10 responsible for -- says it's ready for board action.

11 Q. This is a document that is filed with the
12 State as the State requires, is it not?

13 A. It is part of the entire budget that is
14 filed with the State.

15 Q. And it is provided to the State so that
16 anyone that is interested in the budgets in your
17 community will be able to review and see what's
18 happening by way of the budget profile for this year,
19 2011/'12, isn't it?

20 A. That's the intention of the document, to
21 have a budget document that is easier to understand
22 and gain information, than to looking at the entire
23 budget, which would be four times as much as
24 information ascertained here.

25 Q. It's designed to be relied upon, isn't it?

1 A. It's designed to be a snapshot of what is
2 contained in the broader budget document.

3 Q. You don't wittingly put anything in it
4 that's untrue, do you?

5 A. We would put nothing in a document that we
6 knowingly think is untrue.

7 Q. If something was put in there untrue by one
8 of your staff members intentionally, you would
9 discipline that staff member, wouldn't you?

10 A. We have processes for disciplining staff who
11 don't follow our procedures. If there was a staff
12 member who deliberately misled or falsified the
13 document, then we would handle that following our
14 policies and procedures.

15 Q. Talk to you about, first of all, we heard a
16 lot about the problems in your district, and that's
17 the nature of this proceeding, I suppose. But you're
18 proud of your district, aren't you?

19 A. I'm proud of the accomplishments we've made
20 so far --

21 Q. And there are accomplishments, aren't there?

22 A. Yes.

23 Q. And page 1, which would be the third page in
24 on the budget, it lists some of those
25 accomplishments, doesn't it?

1 A. It does.

2 Q. It says, the Kansas City Public Schools has
3 achieved remarkable success over the past ten years.
4 Do you agree with that statement?

5 A. I do.

6 Q. They have achieved remarkable success, have
7 they not?

8 A. We have.

9 Q. Says, the Kansas City Public School is one
10 of only three districts in Kansas recognized in 2006
11 by the Academic Development Institute for significant
12 increases in student achievement, is that correct?

13 A. That's correct.

14 Q. Now, that would have been achievement prior
15 to Montoy money, wouldn't it?

16 A. It would have been the first year of Montoy
17 funding.

18 Q. Well, that recognition wasn't for the first
19 year of the Montoy money, was it?

20 A. The recognition was for the significant
21 increase in achievement that we've had over the last
22 12 to 15 years.

23 Q. And it says, the district was cited by Bill
24 & Melinda Gates Foundation as one of the most
25 significant reforms in urban education today. That's

1 true, isn't it?

2 A. That is true at that time, yes.

3 Q. The district was the recipient of the
4 National School Boards Association -- is that Magna,
5 M-A-G-N-A, Award?

6 A. That's correct.

7 Q. What is the Magna Award?

8 A. It is the recognition that's provided by the
9 National State Board Association for districts who
10 have made progress despite the odds.

11 Q. It has mention of Sumner High School being
12 recognized as being one of the top high schools in
13 the country. And you talked about that with
14 Mr. Rupe, did you not?

15 A. I did.

16 Q. Says on the next page that reading
17 achievement has increased from 11 percent of students
18 being proficient in 1996 to 64 percent meeting the
19 standard, at least as of the '11/'12; and that's a
20 correct statement, isn't it?

21 A. Yes.

22 Q. Math achievement is increased from 3 percent
23 of students being proficient in 1996 to 63 percent
24 meeting standard. And it says, these gains in
25 academic achievement cannot be matched by any school

1 district anywhere in the country. And you agree with
2 that, don't you?

3 A. Particularly the statement that says,
4 "gains." There are not other districts in the nation
5 that have shown that kind of significant improvement.

6 Q. Improvement -- or there was an
7 implementation in 2007 where laptops were given to
8 every high school student for their use in expanding
9 their educational opportunities, is that correct?

10 A. Yes.

11 Q. And then, all-day kindergartens were
12 implemented in 2007, is that right?

13 A. That's correct.

14 Q. And then it has some language that talks
15 about a vision, mission goal, and belief. And
16 generally speaking, what are those? I mean, the
17 Judges can read what that say, but what are those
18 for?

19 A. The purpose of a vision is to set forth an
20 opportunity of stretching and giving hope for the
21 direction that we need to go for our children. So
22 we're very proud that we're saying what our children
23 need is the best education possible, and so we're
24 striving to become one of the top ten districts in
25 the nation.

1 Q. And I wasn't trying to restrict it
2 necessarily to vision. Mission's another one that
3 says, inspiring excellence, every grownup, every
4 child, every day. That's another one of -- that's
5 the mission of your district?

6 A. That is the mission and what that conveys is
7 that it's important that all the grownups are
8 performing at the highest level for our children to
9 perform at the highest level. And if I may, the
10 goal, the singular goal of our work is to make sure
11 that every child is prepared for college and career
12 and is on track and on time, all the way through our
13 experience. That's our work.

14 Q. The language mission where it says,
15 inspiring excellence, every grownup, every child,
16 every day, I assume that that language is something
17 that came before your board and was passed on and
18 approved by your board?

19 A. The board approves our school district's
20 continuous improvement plan, and this is part of that
21 document.

22 Q. So they parsed this language and that became
23 the mission for your district, is that correct?

24 A. Well, I wouldn't say the board parsed the
25 language, but the staff brought it to them as a

1 recommendation and they approved.

2 Q. They just pass things willy-nilly?

3 Presumably somebody read it.

4 MR. RUPE: Objection.

5 Argumentative.

6 MR. CHALMERS: It is. I'll

7 withdraw.

8 A. Let me just say --

9 Q. Presumably, somebody on the board read this
10 and agreed and picked the words that -- inspiring
11 excellence, every grownup, every child, and every
12 day -- in approving what was recommended, is that
13 right?

14 A. The board did not pick the words. That was
15 presented by staff and myself, as the administration,
16 of what we must do for our children. And the board
17 agreed and they have adopted it.

18 Q. They didn't have to agree?

19 A. Well, no, the board doesn't have to do
20 anything --

21 Q. They could have picked different language?

22 A. They could ask us to take a look at the --

23 Q. They could have said, "inspiring
24 perfection"?

25 A. Is there a question there?

1 Q. They could have said, "inspiring
2 perfection", couldn't they?

3 A. Sure.

4 Q. That's not what you picked, that's not what
5 they picked, is that right?

6 A. The notion is that we have to be performing
7 at our best. It's not likely that we would take
8 language to say "perfection" because that's not
9 achievable.

10 Q. They could have said, making a guarantee to
11 our kids, that every kid, regardless of the
12 circumstances, will, on reading and math, meet a
13 standard set under No Child Left Behind statute. But
14 they chose not to, didn't they?

15 MR. RUPE: May it please the Court,
16 I want to interpose an objection. I think, number
17 one, this is argumentative. Number two, it is not
18 relevant.

19 The Kansas Constitution requires a
20 duty to every child and counsel is arguing with the
21 witness on what his client's constitutional
22 obligation is. So I would interpose an objection,
23 that it's argumentative and it's not relevant to the
24 inquiry here, which is the duty to every kid.

25 MR. CHALMERS: I'm inclined to

1 agree with the second part that it's not relevant.
2 But I thought we spent most of yesterday and part of
3 today having this witness talk about things that
4 really aren't relevant, which is her standard of
5 excellence. So I'm just trying to follow up.

6 JUDGE THEIS: I'm going to let
7 him -- my preference would be to let him continue his
8 inquiry. The question is what the level is or was
9 shooting for.

10 Q. (By Mr. Chalmers) And I can rephrase the
11 question, because if you remember it, you're better
12 than me; I don't.

13 Point is that the lever that your district
14 is shooting for is excellence and not perfection,
15 isn't that right?

16 A. What we're shooting for is to ensure that
17 our children graduate high school college ready for
18 their future, and that's what this is designed to
19 communicate.

20 Q. That's not what it says.

21 A. Well, that's a matter of interpretation.
22 When you look at, prepared for college and careers,
23 and on track and on time, that's what we mean by
24 that. And communicating that -- it isn't about our
25 children's circumstances that create the lack of

1 performance. It's about us figuring out what works
2 for each individual child and then being able to
3 provide that.

4 Q. The goal is that each student will exit high
5 school prepared for college and careers, is it not?

6 A. And at every level that they're on track and
7 on time for success.

8 Q. And the goal, then, is to accomplish that;
9 the mission is to do that with excellence?

10 A. We believe strongly that we must be at our
11 best in order for our children to have access to what
12 they need, so --

13 Q. Is that a yes or a no?

14 A. We accomplish that through pursuing our work
15 the best that we can.

16 Q. The goal is as we described; the mission is
17 to do it with excellence?

18 A. To pursue it with excellence.

19 Q. And in fact, your districts have made
20 tremendous progress in the numbers of students
21 meeting and exceeding standards set by your state, is
22 that correct?

23 A. We have. And if you look at our data, and
24 as I talked earlier today, we've moved children who
25 were not performing to more and more kids

1 performing. But the essence is, not everyone. We
2 are not meeting the needs of all of our children --

3 Q. And I appreciate your speech. I'm trying to
4 get through cross-examination and make my points
5 and --

6 A. I understand.

7 Q. -- and I don't mean to interrupt, and I
8 don't mean to be rude, but I really -- I've got a lot
9 of things I want to cover. And if you don't mind,
10 would you just answer the question asked? Do you
11 think you can do that?

12 A. I'm trying to answer your questions,
13 Mr. Chalmers.

14 Q. I want to talk about a few things that
15 aren't in Exhibit 121 that your school district has
16 accomplished. You have implemented new science
17 curriculum for grades K through 5, is that correct?

18 A. Yes, we have.

19 Q. That's part of a pilot program and
20 curriculum that you've implemented for that science
21 curriculum during -- that was, what, in what time
22 period did you implement that?

23 A. We began that implementation two years ago,
24 so this next year will be our third year.

25 Q. That would have been after the reduction in

1 the base amount?

2 A. It would be, as we analyze what our kids
3 need moving forward.

4 Q. Now, there are several of your buildings,
5 26, that get National ENERGY STAR Awards this last
6 few years, didn't they?

7 A. We implemented those efficiency strategies
8 in order to redirect money to the classroom, so yes.

9 Q. Of your schools that got Outstanding
10 Nutrition Environment awards, I think there was a few
11 of those, a couple of them in the last few years?

12 A. Yes.

13 Q. You have free, half-day preschool for
14 4-year-olds that you implemented since -- well, in
15 the last few years after the reductions in the base
16 amount?

17 A. Did you say free?

18 Q. Free, half-day preschool for 4-year-olds?

19 A. We have an at-risk preschool program for
20 4-year-olds and for special education students.

21 Q. Which is free to them?

22 A. It's paid for with at-risk dollars.

23 Q. Free to them?

24 A. Well, we don't charge tuition to any of our
25 students.

1 Q. There is an authority under the statutes
2 that I'm sure you're aware to charge for preschool,
3 but you chose not to?

4 A. We have 87 percent of our children living in
5 poverty --

6 Q. Not saying it's a bad decision, but you
7 chose not to?

8 A. The choice is based on not creating barriers
9 for children to access education.

10 Q. You also can, under the statutes, assess a
11 fee under some circumstances for the full-day
12 kindergarten. Your district has made the decision
13 not to do that, as well?

14 A. Following the same logic, we don't want to
15 create barriers.

16 Q. If you look what's required under the State
17 for accreditation, preschool, full kindergarten, is
18 not anything that's required.

19 A. But we now how essential it is to have our
20 children starting on the right path. So we provide
21 those services.

22 Q. That's true, those are not required?

23 A. Is not required, but it's absolutely
24 necessary.

25 Q. You implemented in every high school for

1 every high school junior to take the ACT test, what,
2 this last year, is that right?

3 A. This last year we have been approved by the
4 state board and by the federal government to use the
5 ACT as our accountability exam. So we give the ACT
6 rather than the Kansas assessment.

7 Q. That you consider to be an advantage and a
8 real plus to your district?

9 A. We consider it to be a meaningful test for
10 our students.

11 Q. You advocated the change, didn't you?

12 A. Absolutely.

13 Q. You asked for the waiver?

14 A. Yes.

15 Q. And you got it?

16 A. Yes.

17 Q. So I assume you see that as a positive step
18 in your district to now start teaching to the -- and
19 being tested on the ACT standards in high school?

20 A. It's really meaningful because that
21 assessment has meaning to the students where the
22 Kansas assessment really has only meaning to assess
23 our curriculum. So everyone one of our juniors being
24 able to take that assessment has a tool that they can
25 use to decide where they're headed in their futures.

1 Q. And the last time you've had the bond and
2 interest election, I think you said, was about 40
3 years ago?

4 A. No, 11 or 12 years.

5 Q. 11 or 12 years ago, I apologize.

6 A. Mm-hmm.

7 Q. And money for that bond and interest, I'm
8 assuming has long been spent, I mean, after it was
9 raised?

10 A. Specifically, that was for air conditioning,
11 new windows, and technology infrastructure. So yes,
12 it's been spent. Those improvements have been made
13 and now we're paying that off.

14 Q. Now, the district built a new administrative
15 building, spent around \$60 million on that. That was
16 funded with some special money but apparently not
17 bond and interest?

18 A. Did you say "60 million"?

19 Q. Was it 60 or six?

20 A. No. No, not 60 million. We funded that.
21 We had our curriculum, part of our central office, at
22 a shopping center called Indian Springs. And our
23 unified government condemned the building, and so we
24 had to move.

25 And part of the condemnation is that our

1 local government provided funding for us in order to
2 relocate. We used, then -- the funding is called a
3 Recovery Act money that was provided by the federal
4 government to be able to build this facility. And
5 over time, the actual payment to repay that is lower
6 than what we were paying in rent in that facility
7 that was condemned.

8 Q. What I'm trying to get a handle on is you
9 got some federal money as upfront moneys to be able
10 to build your new administrative building?

11 A. It's called a qualified school construction
12 bond.

13 Q. I wrote down 60 or heard 60. Was it six?
14 Is that what the number was?

15 A. The building itself was around 16 million --

16 Q. Sixteen, okay.

17 A. -- to construct.

18 Q. Is there anything else you're proud about
19 your district that we haven't talked about?

20 A. Really proud of the effort of our district.
21 The progress is there, but we're not satisfied;
22 that's important. You can be proud, give hope,
23 celebrate your successes, but never be satisfied that
24 you've done enough.

25 Q. The system, after Montoy, has -- and I know

1 you don't like the term, but it's used by the
2 statutes -- weights, and a formula for producing what
3 districts get in operational cost. You agree with
4 that, don't you?

5 A. The current school finance formula is based
6 on what it costs to educate children. So the term
7 weights, what I mean when I said I don't use that is,
8 because unless you know school finance, you don't
9 what a weight is. A weight is a child that has
10 needs.

11 Q. The present system has a base, and then
12 weights are applied to that base to calculate what is
13 the general fund, which is moneys available for the
14 district for operational cost, is that true?

15 A. That is true.

16 Q. The current formula that we just talked
17 about, that is the weights, or you call them
18 additional kids, it's not broken, is it?

19 A. It hasn't been funded, but if it were
20 funded, we believe it is a sound formula.

21 Q. Your position is the weights are fine, you
22 just need to provide more money to fund it?

23 A. The issue is that the funding was not
24 allocated even after it was promised. And yes, it
25 needs to be funded.

1 Q. But I want to be clear on this, the weights,
2 however you want to describe it, the statute talks in
3 terms of weights -- that formula is not broken, it's
4 fine with KCK?

5 A. The structure itself is a valuable process
6 because it's based on what it costs to educate
7 children. It hasn't been fully funded and it hasn't
8 been funded at the level that studies indicate it
9 needs to be. But the formula itself, if implemented,
10 provides resources needed for kids. But the base
11 itself has never gotten to the level that the studies
12 indicate it must get to, to cover the expenses.

13 MR. CHALMERS: Let's go ahead and
14 get 1029. We'll give it to her.

15 MS. TIBBETS: Okay.

16 Q. (By Mr. Chalmers) While we're doing the
17 logistics of finding things, I just want to clarify.
18 You say, "studies," plural. The Montoy -- there's
19 the LPA study, is that what you're talking about?

20 A. That study and Augenblick & Myers study.

21 Q. And the Augenblick & Myers and the Montoy
22 studies have different conclusions as to what the
23 weights are. So I guess the weights that you're
24 talking about are from the LPA study, is that right?

25 A. I'm not speaking specifically to either of

1 those, but the structure of the formula is based on
2 the fact that it cost different money to educate
3 different children. And so that formula provides for
4 that additional money for kids who cost more to
5 educate.

6 Q. Well, when you have asserted that it's not
7 being funded to those studies, it seems like you
8 ought to be talking about one or the other. Are you
9 talking it be LPA or the Augenblick & Myers, as they
10 have different weightings?

11 A. I don't believe, Mr. Chalmers, that I said,
12 funded to the study. But --

13 Q. You don't. Okay. Well, that's all right.
14 I might have misunderstood.

15 A. I'm sorry if you did. The structure itself
16 is in place.

17 Q. That's all I want to get it.

18 Now I want to talk to you about the
19 weightings, if I can ever get a copy of 150, so we
20 can both talk about the same thing.

21 MR. CHALMERS: Counsel, it's going
22 to be Exhibit 1029.

23 THE WITNESS: Thank you.

24 MR. CHALMERS: Thanks.

25 MS. TIBBETS: Uh-huh.

1 Q. You have in front of you a USD Form 150 for
2 the year '11/'12, is that correct?

3 A. That's correct.

4 Q. And I want to go through it quickly because
5 you and I are the only ones that have a copy in front
6 of it, but I think it will help illustrate how the
7 weights work. This is kind of like an IRS tax form,
8 isn't it?

9 A. What do you mean by that?

10 Q. It's a schedule. You start out with the
11 enrollment for 9-20-11 and gives you an enrollment
12 number, doesn't it?

13 A. Well, if you mean, does it start with a base
14 and build from that, yes, it does.

15 Q. Then it has line 2, it has the estimated
16 4-year-old, at-risk, FTE. What is FTE?

17 A. That means full-time equivalent. Full-time
18 equivalent.

19 Q. So it has the full-time equivalent kids that
20 fit in the 4-year-old at-risk category, gives you a
21 number of 285, doesn't it?

22 A. That number of preschoolers are in school
23 half a day.

24 Q. Then you add those two lines together, and
25 line 3 tells you, add the two lines together, right?

1 A. That's -- well, it doesn't say that in --
2 well, it does, line 1 plus line 2 --

3 Q. Just like a tax form --

4 A. It is the full-time equivalent of the
5 regular enrollment plus your preschool.

6 Q. Then you've got line 4, which is, estimate
7 the low enrollment, high enrollment for districts.
8 And then you have a number that's provided in there
9 and a factor. And the factor in this instance is a
10 .035040. And that's a factor that is applied in your
11 districts because of high enrollment, is that
12 correct?

13 A. That is -- that is the weight. When your
14 weight is --

15 Q. That's okay. We'll talk about it. But that
16 is a factor that's for high enrollment, isn't it?

17 A. That's correct.

18 Q. Then you have that number that is added
19 together, and yet gives you an additional number of
20 students of 656.5 students, doesn't it?

21 A. That weighting results in that number.

22 Q. Then you have an estimated weighting for
23 bilingual enrollment, and there you take the number
24 of kids that are estimated to be full-time
25 enrollment, bilingual education, and then you

1 multiply that by the applicable weighting. And here,
2 what is that weighting?

3 A. The weighting --

4 Q. Or you divide it, actually. But here,
5 there's a division done under this table, is it not?

6 A. That's correct.

7 Q. How does that division work where we finally
8 reach to the number for the bilingual education --
9 excuse me, the voc education and the weighted at-risk
10 students?

11 A. Would you ask your question again?

12 Q. Sure.

13 A. How does the weighting work?

14 Q. Well, here, I didn't do it very well, and I
15 appreciate you giving me an opportunity to try it
16 again. There's a weighting for bilingual education,
17 there is one for vocational education, and there is
18 one for at-risk student environments; there's
19 separate weightings, is that correct?

20 A. That's right.

21 Q. And those weightings, in these particular
22 lines 4, 5, 6, and 7 are giving certain numbers, and
23 I'm just trying to ask if you understand how those
24 calculations take place? Really references another
25 table, but if you know, that's fine.

1 A. Well, the calculations are based on the
2 number of full-time equivalents. You don't get --
3 it's not a head count. It's how much time they're --
4 spent in class with that particular service, times
5 whatever that math factor is, to get those numbers.

6 Q. And there's a table, apparently -- you
7 referenced here -- and you have a multiplication
8 factor for a bilingual of a .395; that's how much you
9 get in addition per kid that fits in that category,
10 is that right?

11 A. That's right.

12 Q. .5 for the voc rehab, you get essentially
13 one half more for the voc rehab, right?

14 A. It's not rehab, it's vocational --

15 Q. I'm sorry, I keep saying that.

16 A. But yes, we get .5 weighting for that.

17 Q. The at-risk students, you get a .456 more on
18 top of the base for each at-risk student, don't you?

19 A. That's correct.

20 Q. Then, you have those numbers. So by way of
21 illustration, in your state -- or in your district,
22 rather, under line 7, there are, for the
23 calculations, an additional 7,319.3 full-time
24 equivalent students because of the concentration you
25 have of at-risk students?

1 A. That's correct.

2 Q. Now, then there's a high at-risk weighting
3 that also applies. And that applies based on a
4 calculation of where the kids are located in terms of
5 how concentrated the kids are within areas of the
6 school. And in your instance, because the
7 concentration is such, highly concentrated, and that
8 number allows for an additional 1,065.1 full-time
9 equivalent students in the calculation?

10 A. Right. That's how that weight works,
11 mm-hmm.

12 Q. Then there's a non-proficient student
13 weighting. And that is, they look at the kids that
14 aren't meeting standards, and they multiply that by
15 .0456 and that allows an additional 36.5 students,
16 full-time equivalent students for your district,
17 doesn't it?

18 A. Yes, it does.

19 Q. There's a new facility weighting, a
20 transportation weighting, and together those give you
21 and additional, what, around -- between eight and 900
22 students, is that correct?

23 A. That's correct.

24 Q. Then you have a special education weighting,
25 and that's really special education money that is

1 calculated differently that flows through the
2 system. But that allows to you an additional 4,211.4
3 special education weighting kids, right?

4 A. Calculates that FTE, that's correct.

5 Q. Now, then what you do is you take all these
6 add-ons from the kids, from the original 18,476, and
7 you come up with what your number is with those
8 additional weightings. And that number is 35,107 as
9 of the '11/'12 year, is that correct?

10 A. Take the main FTE enrollment for children
11 and add additional weights, depending on the needs of
12 the kids, and it comes up with a full-time
13 equivalency of 35,107; that's how the formula works.

14 Q. What you do is you take that number and you
15 multiply it by the base and that gives you your
16 operating budget. And the operating budget for your
17 district, for '10 -- excuse me, '11/'12, was
18 \$132,704,460, is that right?

19 A. That would be -- we commonly refer to that
20 as the general fund, and it's officially the
21 operating fund budget for the district.

22 Q. So the weighting increased -- for all the
23 weightings that you had that apply, increased this
24 base amount to your district as shown on
25 Exhibit 105 -- as we're talking about this year,

1 aren't we, in there -- it increased it about -- about
2 half?

3 A. Right here.

4 Q. Right there. Thank you. It increased it
5 about half. You get about double the amount of money
6 per kid in the general fund, is that right?

7 A. It is -- I would not characterize that as
8 additional base, as you did, but it is additional
9 funding based on what the children cost, that's
10 correct.

11 Q. Then, to look at your operational amounts,
12 we want to look at what you have in your local option
13 budget, and we'd want to look at what you get in
14 federal funds?

15 A. There are many funding sources that you need
16 to consider when building your budget.

17 Q. In your view, since you've been at KCK --
18 and how long have you been with KCK?

19 A. 25 years.

20 Q. The funding has never been adequate for KCK,
21 has it?

22 A. We've never been able to meet the needs of
23 all of our children.

24 Q. In order for funding to be adequate, as you
25 view it, you're going to have to meet all the needs

1 of all your children?

2 A. We can't leave any of the children out. The
3 expectation of the Constitution is every child, and
4 that's ours, as well.

5 Q. In order for you to meet adequate funding
6 under your definition, you're going to have to meet
7 every need of every one of your kids; is that what
8 you're saying?

9 A. By every need, we do the best we can to make
10 sure that our children are successful on those
11 standards that our state has said are required --

12 Q. Every kid has to make standard for them to
13 be -- for there to be adequate funding, in your
14 opinion?

15 A. We should always strive for that. Whose
16 child will I leave out?

17 Q. And until that happens, your position is we
18 just need to keep increasing the funding and
19 increasing the funding and keep increasing the
20 funding?

21 A. We're not after just more and more and more
22 money, but we're after the resources that we know
23 work so children can be successful.

24 Q. So you think there is someplace where there
25 is an adequate amount?

1 A. There is likely someplace when you have the
2 resources that you need to meet the needs of your
3 kids.

4 Q. There is some --

5 A. Have we experienced that, yet? No, we
6 haven't.

7 Q. Likely, you think it's existed, we just
8 haven't found it yet?

9 A. I gave you some examples of schools that
10 have things in place that are working. That's the
11 kind of thing we need in every school.

12 Q. In Emerson Elementary, where it's working,
13 let's see, in 2011, on -- at least just looking at
14 the 3rd grade percentage of all students on all
15 assessments, in reading there was, at that building
16 in 2011, let's see 26.3 that were approaching
17 standard, and 5.3 that were academic warning. So
18 around 31 percent of the kids on that 3rd grade at
19 Emerson, the school that seems to be approaching it,
20 they didn't meet standards?

21 A. Well, I don't have access to that data that
22 you're referring to. The data that I talked about
23 earlier is this current year and it was for the
24 school, not grade level.

25 Q. Well, the state assessments results haven't

1 come out for this year, have they?

2 A. Superintendents and schools have access to
3 the preliminary data, which you don't have access to
4 yet, but you will.

5 Q. And I don't have the preliminary data, I
6 guess, yet. It would have been nice to have it and I
7 look forward to receiving it. So that we're on the
8 same page, by your recollection, looking at 3rd grade
9 reading at Emerson in your school district, it won't
10 be 30 percent, it will be 15? 20 --

11 A. No.

12 Q. -- are not meeting standard?

13 A. Without having access to that particular
14 grade level, I can't give you a percentage. What I
15 gave you earlier was the aggregate of the school.

16 Q. It won't be zero?

17 A. No, it won't be zero.

18 Q. That's because no matter how much money you
19 infuse into a system. No matter how hard you work at
20 it, you're not going to close a gap, you're not going
21 to get everybody up to meets standards right away,
22 are you?

23 A. That has to be our goal, because whose child
24 would I say, you're not important, we're not going to
25 keep working for that. Our goal is to make sure

1 every child is able to master those things that our
2 state and our district and the nation, frankly, are
3 saying kids need to do. That's our work --

4 Q. Your goal, when you talk about what is
5 adequate funding and how it's never been adequate
6 funding is to make sure, by way of illustration, at
7 Emerson school, that we have zero kids -- not 20
8 percent or 15 percent or 30, which I guess was last
9 year -- who are below standard?

10 A. Our goal is make sure our children are
11 successful, and what success looks like has been
12 clearly defined by our state.

13 Q. Until we get that goal, as you understand
14 it, and as you said, the State said it exists,
15 funding will never be adequate, and you'll always be
16 back in court asking for more money, won't you?

17 MR. RUPE: Objection.

18 Argumentative.

19 JUDGE THEIS: Overruled.

20 A. What we want to be able to do is access
21 those resources that we know work, and they cost
22 money. It's not unlimited but we need to be able to
23 provide kids intervention, tutoring, extended --

24 Q. If it's not unlimited --

25 MR. RUPE: I'm going to object.

1 He's cutting off her answer. I would ask Counsel to
2 let her answer the question at least.

3 MR. CHALMERS: I will happy to do
4 that, Your Honor, and I apologize. I think that this
5 witness has a tendency to, because she is an
6 advocate, to give speeches, and I've been trying to
7 move back to the question. But when she does that,
8 I'll object and ask that she be restricted to her
9 question, so I don't have to interrupt, if that's
10 acceptable.

11 JUDGE THEIS: All right. She may
12 not like your questions, but she's required to
13 answer, so if you don't like her answers, you don't
14 really don't have a position there.

15 MR. CHALMERS: I think that's fair,
16 too. And I've lost sight of the question.

17 I know what it was.

18 Q. (By Mr. Chalmers) And that is, you indicated
19 in your last answer there is some ending point where
20 enough money is enough, where it's adequate, where
21 it's suitable?

22 A. I believe what I talked about were the kinds
23 of things that we need to be able to provide
24 children. If we had the resources to provide those,
25 then we can be successful with our kids.

1 Q. Is there an ending point where enough is
2 enough?

3 A. I think you're suggesting that what I'm
4 advocating for is unlimited resources, and that
5 misses the point. What I'm advocating for is to
6 implement for children the strategies they need to be
7 successful, and they cost money.

8 Q. You don't want unlimited resources?

9 A. What I want is for our kids to be
10 successful.

11 Q. You can agree that you don't want unlimited
12 resources?

13 A. I want whatever it takes.

14 Q. There is a limit where you don't have to go
15 anything more?

16 A. That limit is based on kids being
17 successful.

18 Q. And you define that on every kid, no matter
19 their circumstances, no matter what conditions, being
20 able to satisfy the meets standards on the Kansas
21 assessment tests?

22 A. Perhaps, Mr. Chalmers, it's not as important
23 what I say as what the law is now requiring. Right
24 now, No Child Left Behind says, 100 percent by 2014.

25 Q. No Child Left Behind sunsets in 2014?

1 A. Right now, it is our guidance --

2 Q. There is a waiver in place, the federal
3 government has already said that it will accept
4 waivers, hasn't it?

5 MR. RUPE: Objection.
6 Mischaracterization. That's not what it is.

7 JUDGE THEIS: First, you ought to
8 ask her if she understands about the No Child Left
9 Behind.

10 MR. CHALMERS: Okay.

11 Q. You have indicated that the No Child Left
12 Behind statute states some sort of standards that are
13 in place, is that right?

14 A. That's correct.

15 Q. And what the No Child Left Behind statute,
16 the federal statute, does is talks about the certain
17 requirements for federal funding for Title I funding
18 and underfunding, isn't it?

19 A. The current law says 100 percent by 2014.

20 Q. And that law put together these goals that
21 we've seen of Exhibit 205, that, based on that law,
22 Kansas came up with how the math assessments would go
23 in time, so that by 2014 everyone would be at 100
24 percent?

25 A. No Child Left Behind set the endpoint and

1 asked states to establish the progress.

2 Q. And that's what this progress is shown, is
3 what the State established to try to comply with No
4 Child Left Behind?

5 A. That's correct.

6 Q. Now, No Child Left Behind talks about
7 federal dollars, doesn't it?

8 A. Talks about federal Title I dollars,
9 specifically, yes.

10 Q. It talks about, if you want to receive
11 federal Title I dollars, then you've got to -- as
12 feds will, there's strings -- you've got to do things
13 to hit this goal in 2014?

14 A. That's their expectation.

15 Q. If you have a kid that is sick and doesn't
16 make it to a Kansas assessment test, one kid in all
17 of Kansas is sick and doesn't make it to an
18 assessment test, you don't have 100 percent meets
19 standard, do you?

20 A. The law requires that you test 95 percent of
21 your children. And so you must test that many kids.
22 So there are children who have catastrophic issues
23 that aren't able to participate in a given year and
24 they're excused from that test.

25 Q. So your thought is, under the federal law --

1 and I don't know I disagree with you -- but your
2 thought is that if you got 5 percent of the kids that
3 are absent for whatever reason, we're okay?

4 A. The requirement is that you test 95 percent
5 of your children, and of those children, by 2014, all
6 of them would be at least proficient -- or basic if
7 you read the language of the other test -- or higher,
8 yeah, that's the expectation.

9 Q. And so it's -- bring it down. Let's say
10 we've got one kid who has horrible, emotional
11 problems who has something that just went on
12 traumatic in their family that day before the test,
13 bright kid. They go in and they don't give their
14 full effort and they fail the test; don't meet
15 standard, do you?

16 A. No. Unfortunately, our children, in life,
17 experience a lot of challenges. That doesn't mean
18 that we say that they cannot be successful. And so
19 there are times when kids don't perform at their best
20 on a given day.

21 Q. No one really imagined that there would ever
22 be 100 percent compliance or 100 percent meets
23 standard by 2014, did they?

24 A. I don't know that I can respond to what
25 people might imagine --

1 Q. It's not possible --

2 A. I do know that's the expectation --

3 Q. -- to have 100 percent meets standards by
4 2014?

5 A. I don't know if it's possible. That's what
6 we've been asked to do and that's what we're working
7 to try to do.

8 Q. The federal government, recently, through
9 the Department of Education, who's tasked the
10 responsibility to administer the No Child Left Behind
11 statute, has indicated that it will grant waivers.
12 You're aware of that, aren't you?

13 A. I am.

14 Q. The State has applied for a waiver. You
15 know that, don't you?

16 A. I do.

17 Q. And it's a given, it's a certainty, that
18 some sort of waiver will be granted to the No Child
19 Left Behind requirements. Do you know that?

20 MR. RUPE: Objection. Calls for
21 speculation.

22 JUDGE THEIS: He asked her if she
23 knew, so she can say yes or no.

24 A. Well, if I may, I'm aware that there's a
25 waiver. I'm also aware it is not a given, because we

1 have the experience with our own waiver that it
2 wasn't a given; half approved, half was not. So
3 nothing is a given.

4 Q. Would the commissioner, the Kansas
5 commissioner for the Department of Education be in a
6 better position to know whether a waiver would be
7 granted, than you?

8 A. My answer was based on my own experience
9 with our own district's waiver. I'm not going to
10 speculate about what the commissioner's experience
11 might be or what she knows.

12 Q. Your experience with a different waiver at a
13 different time, different issues, is what you rely on
14 as to whether or not a waiver will be granted in this
15 instance?

16 A. I think your comment was that a waiver was
17 given, and I was responding to that; waivers are not
18 givens.

19 Q. I don't want to parse words with you. It's
20 certain. It's as certain as it will rain sometime in
21 the next 180 days. We don't know when, but it will
22 happen.

23 MR. RUPE: Now he's arguing with
24 her.

25 JUDGE THEIS: Sustained.

1 MR. RUPE: Argumentative.

2 Q. When the No Child Left Behind statute, if
3 the waiver is granted -- at least assume with me it
4 will be granted -- then the numbers on Exhibit 105
5 for the last couple years will look different, won't
6 they?

7 A. I don't know what they'll look like.

8 Q. Does it make sense to you to decide what is
9 a suitable education and funding for a suitable
10 education on a federal statute that has requirements
11 that are unlikely to be in place over the -- well,
12 before the end of this year?

13 A. As the State has defined suitable, it
14 doesn't talk about No Child Left Behind. It talks
15 about the kinds of skills and knowledge that we, as
16 Kansans, say we want from our children. That's what
17 we follow.

18 The federal guidelines set a performance
19 level for schools, and particularly leverage that
20 through schools that are high poverty, and that's
21 their target. But they don't talk about,
22 necessarily, what it is kids need to know and be able
23 to do. They just say, have your kids on that
24 performance measure that your state chooses to be
25 this level of success.

1 Q. Actually, what the state government does is
2 has a series of statutes that talk about
3 accreditation, is that right?

4 A. They have a series of statutes --

5 Q. And then they have, within those statutes, a
6 series of regulations that talk about accreditation,
7 don't they?

8 A. They do.

9 Q. It's within those regulations that they talk
10 about the performance standards that's part of the
11 QPA that's currently in place, and the performance
12 standards, in part, talk about what performance are
13 on some Kansas assessment tests, is that right?

14 A. We talked about qualify -- in the QPA
15 process yesterday, performance and quality
16 indicators.

17 Q. And they have, within those assessment
18 standards -- and you talked about those yesterday --
19 the accredited schools. Let's talk about those.
20 That's part of a statute which is a blow-up here;
21 would be Exhibit 39. Says, every accredited high
22 school in the State of Kansas shall also teach the
23 subjects in the areas of instruction necessary to
24 meet the graduation requirements adopted by the State
25 Board of Education by 2005.

1 So you got to teach something in order to be
2 able to meet the graduation requirements, as the
3 statute provides, right?

4 A. That's what it says.

5 Q. It says, in addition to the subjects that
6 are set out in these other statutes, every accredited
7 school shall teach the subjects in the areas of
8 instruction adopted by the State Board of Education
9 as of January 1, 2005.

10 So there are certain things that are set out
11 in these regulations. And then it says, the subjects
12 in areas for instructions shall be designated by the
13 State Board of Education to achieve the following
14 goals established by the Legislature to follow to --
15 well, to allow for -- I'm reading this sideways -- to
16 allow for the -- and then it has the list, is that
17 right?

18 So you have to teach the subjects in the
19 areas of instructions necessary in order to -- excuse
20 me, teach the subjects and areas of instructions
21 shall be designed to be able to meet those goals,
22 that's right, right?

23 A. That's what it says.

24 Q. Okay. And then it has what have been
25 referred to as the Rose Factors, and we get into

1 what's talked about. Nothing in this statute talks
2 about how you will meet the requirements of the No
3 Child Left Behind, nor does anything in this statute
4 talk about specific performance levels on Kansas
5 tests, does it?

6 A. Not here.

7 Q. When you look at -- and I don't know whether
8 Mr. Rupe had it blown up or not, when you look at the
9 regulations for accreditation -- Exhibit 40?

10 MR. CHALMERS: His exhibit.

11 MR. RUPE: Are you showing her 40?

12 MR. CHALMERS: I'm looking for it,
13 if that's what it is. Is that the regulation?

14 MR. RUPE: This is on compulsory
15 school attendance.

16 MR. CHALMERS: No, that's not what
17 I want. Tell you what, I'll come back to that
18 because we're close to a break and I want to move
19 on.

20 Your Honor, what is your preference
21 as to when we do break?

22 JUDGE THEIS: Whatever. We're
23 going to be gone for probably hour and 15 minutes
24 whenever we do. It's whenever it's convenient.

25 MR. CHALMERS: We're trying to find

1 a document. Maybe this is an appropriate time --
2 it's high noon -- to break rather than have you sit
3 around.

4 JUDGE THEIS: 1:15. Be in recess.

5 (A recess was taken.)

6 JUDGE THEIS: Be seated. Thank
7 you.

8 Q. (By Mr. Chalmers) I'd like to hand the
9 witness Exhibit 1121 and 1122.

10 THE WITNESS: Thank you.

11 MS. TIBBETS: Mm-hmm.

12 Q. (By Mr. Chalmers) Doctor, I think that maybe
13 you visited with Mr. Rupe about this yesterday, but
14 can you recognize Exhibit 1121 is a copy of a fact
15 sheet dealing with quality performance accreditation,
16 QPA?

17 A. Yes.

18 Q. And before the lunch break, we were
19 talking -- or started talking a little bit about the
20 QPA. And the QPA is related to the accreditation
21 process in our state, is that right?

22 A. That's right.

23 Q. And I don't know that it's clear in your
24 testimony, but just to be certain, how a student does
25 or how a district does, or a school does, on the

1 standardized tests is one of many factors that the
2 State looks into as to whether you are accredited and
3 maintain your accreditation status, isn't that right?

4 A. That's correct.

5 Q. And so if you meant to imply -- and
6 obviously you didn't -- that just success on that
7 test alone is what the State defines as
8 accreditation, then that would be wrong?

9 A. Right, I did not mean to define it as a
10 single point.

11 Q. Now, looking at Exhibit 1121, it talks about
12 the performance criteria, and it summarizes that, and
13 there are four. There's student performance,
14 participation rate, attendance rate, and graduation
15 rate, is that correct?

16 A. That's correct.

17 Q. And under student performance, it talks
18 about the percentage of students must meet or exceed
19 the standard on reading, mathematics, science, social
20 studies, and writing, state assessments or
21 demonstrating increased overall student achievement
22 using the expected gains formula. So it's one of the
23 two under that test, isn't that right?

24 A. Yes.

25 Q. And if we go to -- you don't have it before

1 you -- but Plaintiffs' Exhibit 54, for reference, is
2 the quality performance manual, it talks about a safe
3 harbor. And it's that safe harbor that defines
4 whether or not you're making sufficient improvement
5 for those standards, isn't that correct?

6 A. That's correct.

7 Q. And safe harbor applies to a student if a
8 percentage of students who are not proficient on the
9 state measurements increased by at least 10 percent
10 from the previous year's result. Safe harbor applies
11 if there's 95 percent or more participation on a
12 test, the school as an attendance rate of 90 percent
13 or more, and the school had a graduation rate of 75
14 percent or improved over the previous year.

15 So that's what we're talking about as safe
16 harbor. Does that sound right?

17 A. That's sounds right.

18 Q. I've got the document in front of me, but
19 that sounds right?

20 A. Yes.

21 Q. Now, the QPA requirements and the statutory
22 requirements that you and Mr. Rupe went through and
23 we talked about briefly before the break, they call
24 out, in some instances, what classes need to be
25 taught, is that correct?

1 A. Specific classes that need to be taught, it
2 does. It talks about that and the QPA document that
3 you have in front of you.

4 Q. And they also provide a standard from which
5 local districts are required to have curriculum to
6 meet that standard?

7 A. Yes.

8 Q. And there are a certain number of hours that
9 kids have to have, days that they need to attend
10 school?

11 A. Yes.

12 Q. And then you need to have teachers that are
13 qualified as the State requires it under the quality
14 criteria, is that correct?

15 A. That's correct.

16 Q. Now, your district provides the classes and
17 the curriculum that are necessary to satisfy the QPA?

18 A. Yes, we do.

19 Q. Your district provides the teachers that are
20 licensed as are required under the QPA?

21 A. Yes.

22 Q. And your district, each one of the schools,
23 at least to date, are accredited by the State, is
24 that correct?

25 A. We have been given notice of one school that

1 will not be, but that notice has not been formalized.

2 Q. What school is that?

3 A. Douglass Elementary.

4 Q. So you've got one school that was probably
5 conditionally accredited?

6 A. That's right.

7 Q. And it's now on improvement. It's a Title I
8 school?

9 A. It's a Title I school.

10 Q. So what it's looking forward to, I guess, if
11 that's the correct way to put it, is it's going to
12 have the same sort of intervention that the other
13 elementary school you talked about received, that is,
14 you're probably going to replace the principal, maybe
15 some staff, and start over the process in terms of
16 getting it accredited, is that correct?

17 A. We'll engage the process and determine what
18 Douglass needs, but it will likely have some of those
19 pieces in place.

20 Q. In fact, that's already been going on at
21 Douglass, hasn't it?

22 A. No.

23 Q. It's not a Title I school?

24 A. It is a Title I school.

25 Q. Does it get Title I funding?

1 A. It does.

2 Q. So it's had federal funding to do that, but
3 those funds have not been expended in the same way
4 that they were in the other school -- what's that
5 other school's name?

6 A. Emerson.

7 Q. Emerson, they've not been expended the same
8 way?

9 A. No, haven't had the same resources. It's
10 different kinds of Title money.

11 Q. Are they both Title I money?

12 A. One is called School Improvement Grant that
13 Title I schools are eligible for. The other one is
14 Title I funds, comes from the same pot, but not the
15 same way of obtaining them.

16 Q. Now, when the money comes to your district
17 from the State, the general funds, or when the money
18 you collect as part of your LOB moneys, then it
19 becomes the responsibilities of the school district
20 through its board and its administrators to decide
21 how the money is to be allocated among the schools,
22 is that correct?

23 A. That's correct.

24 Q. So that is kind of a local decision that
25 your district makes as to what schools get what

1 money, is that right?

2 A. Well, we don't have just unlimited ability
3 to make that decision or local control. We have to
4 follow the guidelines provided or the regulations.

5 Q. And I appreciate that. The guidelines
6 you're talking about and the regulations, those talk
7 about moneys that may have to go to -- if you've got
8 weighted kids, that may have to be spent on certain
9 at-risk kids or certain kids that fall in the
10 weighted categories, is that correct?

11 A. In addition, the Title money has
12 requirements we must follow.

13 Q. Sure. So if you're a Title I school, if
14 you're the Dodge Elementary, and you're getting money
15 from the federal government under Title I, that money
16 needs to be spent at your school?

17 A. That's correct.

18 Q. Now, still, that leaves your district a
19 great deal of latitude to decide how to spend the
20 money, school to school, doesn't it?

21 A. Yes, we have latitude, decision-making power
22 on how that works.

23 Q. Your district has a great deal of control on
24 the specific curriculum and strategies that they use
25 to teach the curriculum, doesn't it?

1 A. As long as the curriculum is aligned with
2 the standards, yes.

3 Q. And strategies used to teach the curriculum,
4 that's a local decision, is it not?

5 A. It is.

6 Q. One of the decisions that your district has
7 made is -- and maybe I'm wrong on this -- I thought
8 you said, special and additional resources were
9 allocated to the Sumner Academy?

10 A. I don't believe I said special or
11 additional. They have a different pupil/teacher
12 ratio; I mentioned that.

13 Q. Are they getting more money at Sumner
14 Academy?

15 A. In essence, they are in this way: They have
16 fewer children with the teachers assigned to that
17 building.

18 Q. So a decision has been made that we will, by
19 percentage, allow more of our resources to Sumner
20 Academy, those kids that have to test in and prove
21 that they're worthy to go to that school?

22 A. That would be a reasonable assumption.

23 Q. Before I leave accreditation too quickly,
24 you talked yesterday about the Common Core Standards.
25 Were you at KCK when the last change in standards

1 took place, which I guess were implemented in 2003?

2 A. Yes.

3 Q. And you understand that every so often, in
4 fact statutorily every seven years, there has to be a
5 revisiting of those standards and looking them to see
6 if they're still suitable, don't you?

7 A. Yes.

8 Q. The Common Core Standards we've talked
9 about, that's what's going on now, today, to try to
10 revisit those standards in this state, isn't it?

11 A. Yes.

12 Q. Now, in terms of when those will be ready
13 for the purpose of testing kids, it won't be any
14 earlier than 2015, will it?

15 A. The assessment, we're told, will be ready
16 2014/'15 school year.

17 Q. But it won't be this next year?

18 A. For the assessment. The standards are
19 already available and in place in many of the content
20 areas.

21 Q. When testing, and it's part of whether we're
22 talking about No Child Left Behind or whether we're
23 talking about testing as it relates to Kansas
24 assessments, there are testing accommodations that
25 are made in some circumstances for students, aren't

1 there?

2 A. Yes.

3 Q. Special ed, English as a second language,
4 they can, under some circumstances, have
5 modifications in their tests?

6 A. Yes.

7 Q. What is KAMM?

8 A. Stands for the Kansas Assessment of Multiple
9 Measures, and it is available for some special
10 education students. Would you like me to go
11 further?

12 Q. No, I think that's helpful. Because there's
13 a recognition that, for some kids, it's not
14 appropriate to have them take that same test as all
15 the other kids, so you can make certain adjustments,
16 is that right?

17 A. That's correct.

18 Q. Cut scores. Let's talk about those. Have
19 you ever had heard the phrase -- probably have --
20 graded on a curve?

21 A. Certainly.

22 Q. When you talk about a cut score, and
23 Mr. Rupe was talking about those yesterday, I think
24 it was the proficient standard was -- was it started
25 at 65? Or was it 60? Or 50? Do you remember what

1 it was?

2 A. It changes for every grade level.

3 Q. It was somewhere in the 60s, is that right?

4 A. To be considered proficient.

5 Q. Okay.

6 MR. RUPE: You want to use this?

7 MR. CHALMERS: Mr. Rupe, thank you.

8 Q. Exhibit 76 might be, as to reading
9 assessment cut scores, and I think it's mathematic --
10 or general mathematic or cut scores, and it has the
11 cut scores for the different ages, as you pointed out
12 where the meeting standards, cut scores start in the
13 60s, and I think the highest one is in the 70s, and I
14 think there's one in the 50s, is that right?

15 A. Yes.

16 Q. Did you have any involvement in the
17 preparation of the Kansas assessment test?

18 A. Clarify for me what you mean by preparation.

19 Q. Back between 2003 and 2005, the Kansas
20 assessment test was created to test the standards,
21 the ones that we're now using that we've been talking
22 about for the last couple of days. Were you involved
23 in the creation of those tests?

24 A. No.

25 Q. Do you know if they were peer reviewed?

1 A. I believe they were. We had staff that
2 would have been involved in that process.

3 Q. Do you know what outside agencies outside of
4 Kansas would have peer reviewed those standards?

5 A. No, I do not.

6 Q. Do you know if they're approved by the
7 federal government?

8 A. The standards or the assessment?

9 Q. The assessment test.

10 A. As part of the State's overall plan they
11 were approved.

12 Q. Do you know if the federal government would
13 have reviewed the methodology for the testing to
14 approve the appropriateness of the assessment tests?

15 A. I'm not aware of their process.

16 Q. Do you know if there were outside
17 consultants, particularly at KU, that are involved in
18 the science of putting together these tests, that
19 were asked to look at these tests and asked to give
20 their approval?

21 A. Yes.

22 Q. Now, someone made the decision that 50 was
23 the appropriate cut score for high school mathematics
24 and -- or 50 percent, and you're not, in any fashion,
25 criticizing that decision of that cut score, are you?

1 A. No.

2 Q. You were asked about No Child Left Behind,
3 on whether you can opt out, dealing with a specific
4 exhibit, it was Exhibit 72,

5 MR. CHALMERS: And I'm sorry, Gaye,
6 do we have Exhibit 72?

7 MS. TIBBETS: 1072?

8 MR. CHALMERS: 72.

9 MS. TIBBETS: Plaintiffs'?

10 MR. CHALMERS: I'm going to hand
11 you my copy of Plaintiffs' Exhibit 72.

12 MR. RUPE: She has it.

13 MR. CHALMERS: Oh, she does? Thank
14 you.

15 Q. (By Mr. Chalmers) This is a one-page
16 document that is entitled, No Child Left Behind Act
17 of 2001, is that correct?

18 A. Yes.

19 Q. Now, yesterday I think you were asked
20 whether or not this document described whether you
21 can opt out of No Child Left Behind or not. It may
22 have been that you had understood that you were
23 talking about the full law, but this document itself
24 really doesn't talk about an opting out or not opting
25 out, does it?

1 A. No, it does not.

2 Q. If we wanted to know how the No Child Left
3 Behind statute works when it sunsets, if it sunsets,
4 what the implications are to a state that does not
5 abide by that, we'd want to look through the entire
6 law, wouldn't we?

7 A. You would not find it on this sheet.

8 Q. We'd want to look at the entire set of
9 statutes that would call that out, I presume? That
10 would be a reasonable way to do it?

11 A. Yes.

12 Q. You talked about sanctions under the No
13 Child Left Behind. And do you know, today, whether
14 or not the sanctions that you indicated, which
15 theoretically could involve a school being closed,
16 whether those sanctions would be implied given that
17 the statute is going to sunset in 2014?

18 A. We -- I have not been given any direction
19 that they would not apply.

20 Q. One of the things that happens if you are a
21 school, under the No Child Left Behind mechanisms
22 that the State have agreed to, is if you are a school
23 that needs improvement, that you can be eligible for
24 Title I money, is that correct?

25 A. Yes, if you have a number of children in

1 poverty eligible.

2 Q. And in your district, as a practical matter,
3 is there any school that wouldn't be entitled to
4 Title I money based on just that, poverty, or be
5 disqualified?

6 A. All of our schools qualify.

7 Q. Under Title I school improvement, it
8 requires an annual review of the status of the school
9 using defined benchmarks in order to ensure that the
10 school is making adequate progress towards achieving
11 the long-term proficiency goal, is that correct?

12 A. Yes.

13 Q. And the resources to do that are provided by
14 the federal government, and they are to be targeted
15 to specific proven investments in Title I schools and
16 districts that face severe academic challenges, is
17 that true?

18 A. We are not limited to those resources, but
19 yes, we apply those resources.

20 Q. Title I schools identified for school
21 improvement, corrective action, or re-structuring can
22 receive additional funding administered by the Kansas
23 Department of Education that is funded from the
24 federal government, is that right?

25 A. Yes.

1 Q. Now, your district -- see if we have --

2 MR. CHALMERS: 1058 and 1059.

3 MS. TIBBETS: 57 and 58 -- or 58

4 and 59?

5 MR. CHALMERS: Yeah.

6 MS. TIBBETS: We do.

7 MR. CHALMERS: Pass those to the

8 witness.

9 MS. TIBBETS: Mm-hmm.

10 THE WITNESS: Thank you.

11 Q. (By Mr. Chalmers) Your district, in 1059, is

12 shown to have received -- and in the first -- it

13 would be in the Title I allocation. So if you move

14 back from the front it's about -- one, two, three,

15 four, five, six -- seven pages in -- sorry, six pages

16 in. It shows that you received, if you found it,

17 what, \$11,606,137 in Title I allocations for the year

18 2012, is that correct?

19 A. Yes, it is.

20 Q. And the previous year, you received a little

21 bit more than that, about 112, or almost 113,000, but

22 you still received about \$11.7 million, is that

23 correct?

24 A. That's correct.

25 Q. Looking at Exhibit 58, we turn to the last

1 page of that exhibit, it shows that your district --
2 well, this year, is expected to receive about \$11.5
3 million in Title I money, is that correct?

4 A. Yes, it is.

5 Q. Now, the Title I money then, or the Title I
6 money is available to be used in the fashion that it
7 was used in the Dodge school, is that correct -- I
8 mean the Emerson school, is that correct?

9 A. It's a different pot of money, but yes,
10 these funds are available to use in our Title I
11 schools.

12 Q. There is Title II money that has been
13 provided to your school district. What is Title II
14 money?

15 A. It's for professional development.

16 Q. And your district, according to
17 Exhibit 1059, received in 2012 approximately \$1.5
18 million for professional development from the federal
19 government, is that correct?

20 A. Yes.

21 Q. And the preceding year, you received
22 approximately \$1.8 million in federal moneys, is that
23 correct?

24 A. Yes, it is.

25 Q. What is Title III? What are Title III

1 allocations?

2 A. Title III money is used to supplement our
3 bilingual program.

4 Q. According to Exhibit 1059, in this year, you
5 received from the federal government -- this is shown
6 on the third to last page -- a total of, including
7 the immigration aid, about \$670,000 under Title III?

8 A. Yes.

9 Q. Is that correct?

10 A. Yes.

11 Q. I want to talk to you about Emerson school
12 just briefly, so I understand. The improvements that
13 you saw in the Emerson school, they started, what,
14 immediately after these federal moneys and programs
15 were put in place?

16 A. We saw improvement after the first year.

17 Q. So they would have been first implemented
18 what year?

19 A. The 2010/'11 school year.

20 Q. And so the test results and improvements,
21 would we have seen those in the '10/'11 year, or
22 would that have been in the '11/'12 year?

23 A. Both years.

24 Q. So actually, immediately, you saw that
25 improvement in the '10/'11 year, right?

1 A. We don't see the same level, but we saw
2 improvement, yes.

3 Q. Within that school, the fashion in which the
4 improvement is observed changes a little bit, grade
5 to grade, doesn't it, as far as looking at the
6 assessment tests?

7 A. If I understand your question correctly,
8 you're asking me if each grade level has a different
9 level --

10 Q. It's a bad question. If what I were to do
11 was to look at and plot out how that school did, when
12 you look at the grade levels as opposed to as an
13 average, that graph would look different for
14 different grades, wouldn't it?

15 A. Yes, it would.

16 Q. In fact, if we take the Kansas -- or the
17 Wichita -- if we take the Kansas City, Kansas
18 district as an example, and if we were to map out
19 saying, okay, here's how much on average one year,
20 next year, next year, we would have, kind of, a graph
21 that would show a line that would move along,
22 wouldn't we?

23 A. Yes, each grade level would have performance
24 at different percentages of kids, if that's what you
25 mean.

1 Q. And I think that it may be that there's a
2 similar graph that you were shown at one point, but
3 to illustrate what I'm getting at, I'd have to have
4 another blow-up that I don't have, so I'll pass on
5 that.

6 I think that visually what we're talking
7 about is, if you had a line graph, if it went up a
8 little bit one year, you'd have it would go up; if it
9 was flat, it would be flat; it would go down -- you
10 know what I'm talking about?

11 A. Sure, that's possible.

12 Q. If we were to drill down and look at -- not
13 looking at the state -- or at the district's average
14 but looking at each school within the district, would
15 we expect to see different lines, where it goes up a
16 little bit one year and down a little bit one year,
17 that aren't consistent with the others?

18 A. Let me answer it this way, if I think I
19 understand you correctly, that the line would not be
20 a straight line up. Sure, there would be variation
21 in performance of the students.

22 Q. And that might vary within grade levels.
23 You might have a different looking line or a
24 different looking graph for 3rd grade math than you
25 might have for 5th grade math?

1 A. Yes, likely you would.

2 Q. Let's pull out 1163.

3 THE WITNESS: Thank you.

4 Q. 1163 comes from the website. And you
5 recollect this as being what the Kansas Department of
6 Education has on its website which reflects
7 information about each individual school's -- not
8 each, but in this case several individual schools --
9 about individual school's results on tests over time,
10 is that right?

11 A. Yes, this appears to be various schools in
12 our district.

13 Q. So if we take the first graph on 1163, and
14 so that we look at it, this is for 3rd grade kids for
15 the year '11 -- or excuse me '10/'11, is that right?

16 A. The graph in the middle of the page, yes,
17 3rd grade for the year.

18 Q. For Douglass Elementary?

19 A. For Douglass.

20 Q. If we look at the second page, there's a
21 graph and that would show that in 2006, the bottom
22 number, which is a square with dashes going up, would
23 show that there was a pretty dramatic increase in the
24 percentage of kids that were meeting standard between
25 '06 and '07, and between '06 and '09 -- or '08, is

1 that right?

2 A. Between '06 and '07, and '07 and '08 --

3 Q. -- '08?

4 A. Yes.

5 Q. And then you've got a drop down in 2011?

6 A. Yes.

7 Q. Now, if we go a couple pages, and now we're
8 looking at 4th grade in the same school, reading
9 assessments, and there you have a drop between '06 to
10 '07 in performance on the tests, a jump in '07 to
11 '08, and then a drop in '08 to '09, and then a very
12 gradual increase after that, is that correct?

13 A. Yes.

14 Q. If we go just a couple more pages, again
15 we're at Douglass Elementary, and we're talking about
16 reading assessments. We've got a big jump in '06 to
17 '07, we've got a little bit of rise in '08, and then
18 we've got a lowering, thereafter. But in each one of
19 those graphs, they show a different picture than what
20 the other graph showed, is that right?

21 A. They're not the same, that's right.

22 Q. And I could find a graph -- well, I don't
23 know. If I move back a little bit further and look
24 at reading assessments at Eisenhower Middle School
25 for the 8th grade --

1 MR. RUPE: What page is that?

2 MR. CHALMERS: I wish they were
3 numbered. It's about two, three, four, five, six,
4 seven, eight -- it's about 17 or 18 pages in,
5 Counsel.

6 Q. I don't know if you found it or not. 8th
7 grade, Eisenhower Middle School. I kind of just went
8 there randomly.

9 MR. RUPE: Do you have it?

10 THE WITNESS: I believe I do.

11 MR. RUPE: Okay.

12 Q. That shows not much improvement between
13 '06/'07, and then a drop between '07 and '08, and
14 then improvement up to '10, a little bit of a drop,
15 is that right?

16 A. Yes.

17 Q. Which is, kind of, completely different than
18 what we were looking at when we were talking about
19 some of the earlier ones, isn't it?

20 A. Different picture than Douglass.

21 Q. There's a chart that was shown in opening
22 that eventually we're going to need to mark, I guess;
23 just call it the Kansas City general chart. And I'll
24 move it real fast so it doesn't block, Counsel,
25 but -- that's fine. Thank you.

1 Do you recognize this chart as reflecting
2 those students that passed, if you want to use that
3 term, or at least met standard on the various tests
4 that were available back in 2003 over time, that's
5 '03 to '10/'11, don't you?

6 A. Is your question do I recognize the chart
7 or -- help me with what the question is.

8 Q. Well, what I want you to do -- and maybe you
9 don't, I can tell you what it is -- but you recognize
10 that what the chart does is shows what those students
11 that are meeting standard, what percentages are over
12 time for the various grade levels? It also shows
13 graduation and poverty, but that's what it shows,
14 doesn't it?

15 A. Well, you know, I'm lacking a little
16 information here because I don't know if it shows
17 proficiency. But I do see grade levels by test and I
18 do see scores and years.

19 Q. That's fair. The data is what the data is,
20 but I just want to make sure that I have an
21 understanding of your earlier testimony. I thought I
22 heard you say yesterday that you would expect that if
23 you tasked more resources, gave more money for the
24 strategies you've talked about, that you would expect
25 to see immediate improvement in student performances

1 on these tests. Is that what you said?

2 A. I don't believe I used the word "immediate,"
3 but I would expect to see improvement.

4 Q. And we know from your experience with the
5 school whose name keeps escaping me because I want to
6 call it Dodge --

7 A. Emerson.

8 Q. Emerson, we know it was immediate there?

9 A. Dramatic infusion, yes, within the first
10 year.

11 Q. And is it your testimony, then, that we're
12 not going to see any pattern of improvement by
13 increasing money, that there's going to be
14 improvement, but we don't know whether it's going to
15 be one year or two or three or four?

16 A. It takes time. They're human beings. It
17 takes time.

18 Q. We think it's going to take more time for
19 the money to come in before we see improvement?

20 A. I don't know what the direct correlation
21 will be, because we've never had sufficient resources
22 to know that, but with more resources, we can make
23 improvement.

24 Q. And you've also testified that when you take
25 the money away, that you wouldn't expect to see an

1 immediate dropoff?

2 A. Yes, that's correct.

3 Q. Mr. Rupe has coined the phrase "a lag." Is
4 that something you agree with?

5 A. Yes, I do agree with it.

6 Q. Now, the example you give of lag is
7 professional development. And that's kind of the
8 idea, if you teach a man or woman to fish, then you
9 don't need to feed them. I mean, that's kind of the
10 basic concept, isn't it? Once they know, you don't
11 have to teach them again?

12 A. Yeah, once people have gained knowledge,
13 then they have that moving forward.

14 Q. Well, there are other things, too, like
15 class sizes and tutoring and during-the-school
16 interventions and mentoring, all those things, you
17 don't teach them and take it away, it's either there
18 or not, isn't it?

19 A. It's not really a lack of want, because with
20 reduced funding you can do part of that, but not
21 maybe all of it. So it isn't yes or no in this
22 particular instance.

23 Q. Requires not only infusion of money, but
24 spending the money in the right way to get the
25 results?

1 A. Yes.

2 Q. Now, this chart, I want you to assume with
3 me that these percentages shown down at the bottom,
4 talking about the general test score for Kansas City
5 kids, show an 11 -- or excuse me, a 16.11 percent
6 increase -- I think it's just a matter of math --
7 between '03 and '04, in terms of performance on
8 tests. Can you assume that with me?

9 A. I will assume it with you.

10 Q. The same is true with these other numbers.
11 It looks like between '04 and '05, there's about
12 13.65 percent increase?

13 A. Yes, I see that, yes.

14 Q. And assuming this is correct, there'd be
15 about 8.1 percent decrease from '05 and '06, in the
16 general test scores in the Kansas City area, is that
17 right?

18 A. According to that information.

19 Q. Now, if we accept that there is a lag time
20 when you first start putting more money in, before
21 you get results, we wouldn't expect the lag time to
22 result in a decrease in student performance, would
23 we?

24 A. Is your question, does the lag explain that
25 8 percent loss? Am I hearing you right?

1 Q. I'm just trying to get a handle on -- you
2 talked about a lag time. I thought maybe you said
3 "immediate" yesterday. I'm trying to get a handle
4 what your testimony is. And the way I'm trying to
5 ask it is, if you would expect a decrease, if there
6 had been an infusion of money between '05 and '06, in
7 test scores?

8 A. I would not expect a decrease. Also, I
9 don't think I said "immediate." But I would not
10 expect a decrease. Something else has to explain the
11 results that you have there, and since I'm not sure
12 where all those numbers came from, I can't really
13 explain that.

14 Q. Now, I got to tell you that I created some
15 confusion, and I apologize, and I want to clarify it
16 now, about when the money is infused. And I want to
17 see if this is consistent with your understanding,
18 because I think this is maybe what you said, but I
19 just want to be clear.

20 And what I have is Plaintiffs' Exhibit 4
21 that sets out the basis for each successive year,
22 starting 1992 through 2011/'12, on its first and
23 second page. And it would reflect that in '05/'06 --
24 which I'll tell you, that's how this chart is set
25 up -- let me say that -- make sure it's right, yeah,

1 because the year three, four -- yeah, yup, that's the
2 way it was.

3 So in this year, the base would have gone up
4 from about 360 -- excuse me, 3,863 to the 4,257, that
5 this would have been the first year where there would
6 had been any change in Montoy money, which would have
7 been based on some activity that the Legislature did
8 that the Kansas Supreme Court found was not
9 sufficient. But there was an increase that year. Is
10 that consistent with your understanding, that it was
11 in this year when we started to see some money?

12 A. If that year and that date reflects
13 2005/2006, that would be correct.

14 Q. Then, 2006/'07, that's after the Montoy
15 decision approved the present statute, so that would
16 be really the second year of infusion money, is that
17 correct?

18 A. Yes.

19 Q. Now, I want to talk to you about -- about
20 '09. That would be '08/'09, that would be the first
21 year that, because of budgetary concerns, there was a
22 reduction in the base, is that correct?

23 A. Yes.

24 Q. And in that year, do you have any
25 information that would quarrel with the idea that

1 there was an increase of 5.4 percent in the
2 performance on these tests on these categories shown
3 for Kansas City?

4 A. You're asking me to go on recall without
5 actually having the data in front of me --

6 Q. That's fine.

7 A. -- but it looks reasonable that that could
8 be our results. The bottom line looks consistent
9 with what I remember from our data.

10 Q. The Kansas poverty, and we had talked about
11 that, but it's pretty much the same thing. It has a
12 number of 15.10 percent in that column for the first
13 year where there was a reduction in the base. Do you
14 have any understanding as to or recollection as to
15 why the kids that were in poverty in your district
16 during that year had an increase in performance of
17 their tests on any basis other than just money? In
18 other words, was there something else going on in
19 their lives, some additional training something like
20 that?

21 A. You recall I talked about the fact that most
22 of our kids are at-risk, and so the intensive
23 professional learning that we began, the resources of
24 tutoring, and all of that would have been in place
25 for those students. So that would be my explanation.

1 Q. Then, we've got a couple years where there
2 continues to be an increase as the base goes down,
3 according to these numbers. And that's consistent
4 with your understanding, isn't it? I mean, that the
5 test scores in your district have continued to go up
6 in '08 -- excuse me '09/'10, '10/'11?

7 A. Yes. Yes.

8 Q. And your explanation for that is this lag
9 concept, is that right?

10 A. Well, that would be part of it. And you
11 know, my earlier comment about staff being determined
12 to continue things, despite.

13 Q. Would it have anything to do with the fact
14 that the cuts that were put in place really didn't
15 impact instruction or instructional support?

16 A. That was part of our strategy, was to try to
17 keep them away from the classroom as long as
18 possible.

19 Q. The cuts that you talked about they
20 include -- well, you went through them before, but I
21 was unclear, did you actually cut any transportation
22 in Phase 4 of the cuts of the exhibits you showed?

23 A. We cut the activity busses that would stay
24 for enrichment classes and for those
25 extracurriculars.

1 Q. So when we look at those exhibits again,
2 what we'll see, it shows some numbers for reductions
3 in transportation. And what you did is you cut a
4 portion of those in ...

5 A. And I'd have to look at the document to
6 verify -- we talked about the cuts we made to the
7 eligibility for transportation, extending that to two
8 miles from a mile and a half.

9 Q. You talked about what resources were
10 necessary, or you thought were necessary, to improve
11 performance on these standardized tests. And I wrote
12 down -- I want to make sure I've got a complete list
13 here in the strategies -- tutors, mentors, target
14 instruction, extended summer school, maybe lower
15 class size, is that --

16 A. Professional development.

17 Q. I forgot that.

18 A. Revision of our curriculum, use of -- we
19 call them check points, but they're formative
20 assessments, short tests that inform the teacher
21 about where their kids are and how they're doing.

22 Q. The professional development teachers in
23 your district are like every other teacher, I
24 presume, in that they're required to do some
25 professional development each year to maintain their

1 license, is that correct?

2 A. You're asking me if the teachers follow the
3 requirements for licensure renewal?

4 Q. I'm asking if they're required to follow
5 it.

6 A. Okay. Yes. Yes.

7 Q. And your district provides professional
8 development, is that correct?

9 A. We do.

10 Q. And you've provided professional development
11 free of charge to your teachers for an extended
12 period of time, haven't you?

13 A. We have.

14 Q. That's part of the comparative advantage
15 that you said your teachers have that cause you to be
16 concerned that they're being cherry picked by other
17 districts?

18 A. We invest in our teachers.

19 Q. And you've been doing that before Montoy and
20 continue to do it today, is that right?

21 A. We did it before Montoy, and we were able to
22 infuse additional opportunities for teachers with
23 additional resources. We have since had to cut back,
24 but we're still training other teachers.

25 Q. And the cutbacks you're talking about on the

1 professional development, those have been in paying
2 for going to some third-party or some other location
3 for --

4 A. That would be an example.

5 Q. You continue to maintain the same level of
6 in-house professional development as you did before
7 the 2009/2010 school year, is that correct?

8 A. We are attempting to maintain that. If it's
9 exactly the same level, you know, I would have to,
10 you know, really think about that.

11 Q. Now, we talked about tutors, mentors, target
12 instruction, standard summer school, lower class
13 sizes, professional development, curriculum changes
14 and the check points. Those are all things that,
15 when you're trying to figure out what to call them
16 for an expense basis, would either be instructional
17 or student support expenditures, right?

18 A. Yes.

19 Q. Talk about exhibit -- and may still be up
20 there -- here it is. The profile we talked about,
21 Exhibit 1021?

22 A. Yes, I have it.

23 Q. And if we turn to, in that document, page 3,
24 under the heading four, second paragraph, it reads,
25 "Budget reductions were aimed at areas not related to

1 instruction and student support." Did I read that
2 correctly?

3 A. Yes.

4 Q. Goes on, "However, after several years of
5 delayed building maintenance and equipment purchases
6 due to tightened budgets, it has become necessary to
7 address a variety of postponed building maintenance
8 and equipment needs." Did I read that correctly?

9 A. Yes.

10 Q. A few housekeeping things, I think. NEAP,
11 you talked about that yesterday, about the mapping
12 test, with Mr. Rupe, that NEAP had done with a number
13 of Kansas student assessment tests. Do you remember
14 that testimony?

15 A. Yes.

16 Q. Now, the mapping test is designed to look at
17 how the Kansas assessment measures up to assessments
18 in other states, is that correct?

19 A. That would be my understanding.

20 Q. It's not designed to say, how does Kansas
21 measure up to NEAP, is it?

22 A. It's a comparison of the states.

23 Q. Now, in that comparison, do you have any
24 reason to believe that the Kansas assessment test
25 doesn't do a good job of assessing where students are

1 against the standards that Kansas has put in place?

2 A. If your question is, does the Kansas
3 assessment fairly assess the standards in Kansas, and
4 do I have any information contrary to that?

5 Q. Yes.

6 A. Am I right? Then, yes, it measures what
7 we're asking of students in the standards as they're
8 currently written.

9 Q. We'll have a new assessment test or battery
10 of assessment tests somewhere around 2015, is what
11 you're told?

12 A. Yes.

13 Q. The NEAP test itself, do you know what it's
14 designed to measure?

15 A. It's designed to measure three grade levels
16 and the performance on standards, and to compare that
17 performance from state to state.

18 Q. Well, you used the curve analogy -- because
19 that was real important to me as a student. Do we
20 know, as it relates to NEAP, if it's a relatively
21 rigorous test as opposed to other tests?

22 A. Is the NEAP test relatively rigorous as
23 compared to the Kansas assessment?

24 Q. As opposed to any other standardized test.

25 A. Let me answer it with what I'm aware of.

1 Q. Yeah.

2 A. In Kansas, 78 or so percent of our students
3 are proficient. Those set of proficient students
4 score very well on the NEAP. I'm not sure that
5 addressed what you asked me. But that is something
6 that has been researched, that kids who are
7 proficient in Kansas on the Kansas assessment do well
8 on the NEAP.

9 Q. The Kansas Learning Network, I think you
10 talked about that. That is a network that is
11 sponsored and put in place and operated through the
12 Kansas Department of Education, is that correct?

13 A. That's correct.

14 Q. And what it does in particular, is when
15 you've got a school that is on improvement or a
16 district that's on improvement -- just talked about
17 district. When you got a district that's on
18 improvement, the Kansas Learning Network will come
19 out and assist that district in doing many different
20 things. One of which is to assess what their needs
21 are, is that correct?

22 A. The first thing the network does is provide
23 a needs assessment of your district, looking at
24 several areas.

25 Q. And that's part of the federal funding, is

1 it not, that goes with No Child Left Behind?

2 A. I believe that the state department uses
3 their federal funds for that.

4 Q. And in fact, in 2008, the Kansas Learning
5 Network, it came out and looked at your district and
6 gave its evaluation of your needs, did it not?

7 A. Yes.

8 Q. And the basis of its conclusions in terms of
9 your needs, that then prompted action by your
10 district to try to reach the improvement that is
11 desired by all, is that correct?

12 A. Prompted recommendations that we should look
13 at to help us improve, if that's what you're saying,
14 yes, I agree with that.

15 Q. One of the recommendations was to go to a
16 budgeting process that I think you also ultimately
17 called as zero-based budgeting?

18 A. We call our process zero-based. That did
19 not come from -- that specific strategy did not come
20 from the Kansas Learning Network, however.

21 Q. Do you remember that network having a
22 recommendation saying that it was necessary to start
23 looking at cost, bottom up, along the lines of zero-
24 base? May not have used that language --

25 A. They wouldn't have used that language, but

1 they did have recommendations around our budgeting.

2 Q. Was it after, then, the Kansas Learning
3 Network assessment, that the zero-based budgeting
4 system was put in place? Before it was 2008.

5 A. I'm trying to think about this time line and
6 how it correlated. It may have been the same school
7 year that we initiated that process. I'm not sure,
8 however, we had the Kansas Learning Network final
9 report before we began that.

10 Q. Your chief financial officer has testified
11 that the zero-based budgeting system, which is
12 designed to require people to, at the bottom, present
13 and defend what they want by way of funds, and you
14 build on that and have your budget, she said that,
15 although that's ideal, in the last few years, it
16 hasn't worked out because you had to cut budgets
17 about, I think, ten, or I think you said 20 percent,
18 so what they just look at is the previous year's
19 budget. Is that accurate?

20 A. Is it accurate in the process, or is it
21 accurate that she said that?

22 Q. Well, is it accurate in the process? Is
23 that how it's worked out in the last few years? It's
24 just been the same, old process; we look at what has
25 been budgeted before and then we look at whether we

1 have to -- whether we can deal with the cuts?

2 A. That would be not accurate in terms of how
3 the process should work.

4 Q. But that's how it's worked?

5 A. I don't know that. I don't know that.

6 Q. Once the money is allocated to a particular
7 function within the school, and you've got each
8 building's -- they get a budget, is that right?

9 A. Each building has a budget.

10 Q. Then, you have certain facilities that they
11 might have a budget, and then administration has a
12 budget, so a whole variety of budgets, is that
13 correct, within sub-parts --

14 A. Schools departments in the district all have
15 budgets.

16 Q. And since you've been there, the moneys in
17 those budgets, if they're provided to an individual
18 school or they're provided to an administrative
19 group, that money gets spent, doesn't it?

20 A. Do they use the money that's allocated, yes,
21 they do.

22 Q. And it's spent in part because, you don't
23 spend it, you worry about trying to justify your
24 budget for next year? Has that been your experience?

25 A. Would you re-ask that?

1 Q. The money gets spent in part to assure that
2 next year, when you want money that you believe you
3 need --

4 A. Oh.

5 Q. -- you're not going to be reduced?

6 A. No, I don't believe that to be the case.
7 And I can explain, if you'd like.

8 Q. I want to talk to you about -- see if we
9 can't clarify this -- dropouts and graduation.
10 Graduation looks at how a group of kids that starts a
11 particular school, how they progress and then finish
12 within a certain time frame to graduate. Is that
13 kind of a fair summary?

14 A. With the exception of not how they progress,
15 but did they complete the requirements, yes.

16 Q. Did they complete.

17 A. Mm-hmm.

18 Q. So if I've got 100 students that start at
19 Wyandotte High School, and they start year one, then
20 we look at four years after that, how many have
21 graduated, after we take into account those that may
22 have left and those that may have come in, in their
23 place, I mean, that's the approach, isn't it?

24 A. You're close.

25 Q. Okay.

1 A. It's complicated, but yes, they start with
2 the original cohort of students who come in as 9th
3 graders, and they look, in four years, how many of
4 those are on track and how many of them have
5 completed the graduation requirements and are ready
6 to graduate, and for those who have left, where did
7 they go? Can we count them as being enrolled
8 somewhere else, or for those who have come in, are
9 they completed. But the original cohort that started
10 in the school as 9th graders, that part is accurate.

11 Q. Okay. So you've got that going on. And
12 then you have dropouts, and that's kind of a
13 different issue altogether than graduation, isn't it?

14 A. Yes.

15 Q. Because there, you're looking at what
16 students have left your school without some assurance
17 that they've gone to another school?

18 A. That's one way. There's a second.

19 Q. And the second is?

20 A. That they've officially notified and
21 withdrawn.

22 Q. Okay. That would become the sub-part of no
23 assurance they went to another school?

24 A. It's a formal process.

25 Q. So they can do the formal process and we

1 know that they've dropped out, or they can just
2 disappear and we don't see them again, and at some
3 point you say, they're a dropout, is that right?

4 A. If we cannot find them and we don't have a
5 call for records, then they become a dropout.

6 Q. We throw up our hands and say, we just don't
7 know whether they're coming back; that's a dropout?

8 A. We don't throw up our hands. And that
9 way --

10 Q. I would --

11 A. -- be unsuccessful in locating them.

12 Q. What I'm unclear on, and maybe you're saying
13 the same thing, is in Exhibit 54, which is the
14 Quality Performance Accreditation Manual, if you
15 don't have that in front of me -- it's the page 42.
16 It's dealing with graduation here. And that's part
17 of the Kansas Administrative Regulation
18 91-31-32(b)(4). This indicates that dropouts are
19 included in calculating graduation rate under the
20 guidance requirement. See what I'm referring to?

21 A. Yes.

22 Q. Now, I don't know if you said any different
23 than that, but if you've got a kid, and they
24 disappear, you don't hear from them, at some point,
25 you think they're a dropout, then they're somebody

1 who isn't a graduate, is that right?

2 A. Yes, but my earlier comment was that we
3 can't assume that if the graduation rate is 60
4 percent, as it is in our district under this formula,
5 that we have 40 percent dropout. That's what I was
6 trying to clarify.

7 Q. I appreciate that. I think maybe it was
8 something that I understood Mr. Rupe to say that I
9 was trying to clarify.

10 Then, if we're looking at dropout rates, now
11 we're really talking about kids. If we presume that
12 they've not found another school and they just didn't
13 bother to tell you, we're really looking at the kids
14 that are lost to the system, is that right?

15 A. They deliberately made a decision that
16 they're going to withdraw and drop from school, or
17 that we have no information about their whereabouts.

18 Q. Unless maybe, of course, they drop back in?

19 A. They could return.

20 Q. Or go to another district and drop in there?

21 A. We would get a call for records, so
22 therefore we would know they were in school and they
23 would not be in the calculation.

24 Q. And the numbers of dropouts, those are the
25 kids that if they don't drop back in, in your

1 district that works out to be, what, around 3 percent
2 or so?

3 A. 3.6, I believe.

4 MR. CHALMERS: I don't have
5 anything else, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. RUPE:

8 Q. Let me start with the cut scores. And
9 explain to the Judges, from Exhibit 76, what these
10 cut scores are. And let's take reading first and the
11 68 to 80.

12 A. Do you mind, while I'm doing that, if I
13 stand up a minute?

14 Q. That's fine.

15 A. All right. 68 to 80, to meet standard, as a
16 reminder from our discussion, that means that the
17 student has to answer correctly 68 of 80 questions on
18 that given assessment.

19 Q. All right. And on math, what is that?

20 A. The math for high school, 50 percent to 67
21 of the questions in order to be considered meeting
22 standard in Kansas.

23 Q. Okay. And Mr. Chalmers asked you a
24 question, and I have it word for word: No one really
25 imagined that there would ever be 100 percent

1 compliance or 100 percent meets standards by 2014,
2 did they?

3 Don't answer that.

4 I want to show you the AYP charts on reading
5 that require 100 percent by 2014. Now, has there
6 been a waiver from NCLB?

7 A. Not granted at this time.

8 Q. So as we stand here today, there is a
9 mountaintop of 100 percent required in 2014, true?

10 A. True.

11 Q. Now, what does that mountaintop mean? Stand
12 on 100 percent -- hold this -- stand on 100 percent,
13 and in light of the cut scores, does 100 percent mean
14 that 100 percent of our kids must at least do half on
15 the math test?

16 A. For high school, to be proficient, 100
17 percent of our kids have to score a 50 percent or 67
18 percent of the questions on the test.

19 Q. The 100 percent isn't everybody getting 100
20 percent, it's half of them getting 50 percent?

21 A. It's 100 percent of the students answering
22 half of the questions correctly, yeah.

23 Q. All right. Thank you. And in reading it's
24 100 percent of the students answering 68 percent the
25 questions?

1 A. Right, that's correct.

2 Q. So is that attainable?

3 A. Hope so. I would hope that we'd be able to
4 get our students in high school to answer half the
5 questions right on a math exam and at least 68 of the
6 questions -- 68 percent reading.

7 Q. Let's go to the publication that no one was
8 disciplined for and apparently no one went to jail
9 over, the Exhibit 1021.

10 MR. RUPE: Would you hand her that
11 again?

12 THE WITNESS: Thank you.

13 Q. And the mission appears to be on page 2,
14 inspiring excellence, every grownup, every child,
15 every day. Are you meeting that standard today with
16 the resources you have?

17 A. No, we're not.

18 Q. And do you see your obligation in the
19 district any different than what the law requires,
20 and that is an obligation to every student?

21 A. The word "each student" in our goal would
22 reflect that we believe in that obligation to every
23 student, to each and every one.

24 Q. And I don't want to mince words here, but it
25 says, "inspiring excellence." It doesn't say

1 "achieving excellence," does it?

2 A. That's what it says.

3 Q. Would it be your desire that you could
4 achieve 100 percent of the kids performing at the 50
5 percent level in math by 2014?

6 A. And much more.

7 Q. In fact, the AYP goals, the NCLB, do not
8 address those Common Core Standards, do they?

9 A. Not at this time.

10 Q. That's something that your district sets in
11 terms of what the district wants to do because it's
12 required by state law, right?

13 A. If your question is, has the district
14 already embraced the Common Core Standards, we're in
15 that process. And next year, our curriculum will be
16 completely aligned to that more rigorous standard.

17 Q. I'm sorry, I'm not talking about Common Core
18 Standards yet. I'm just talking about what the law
19 requires, and that is what we've called the Rose
20 Factors.

21 A. Right. You know, the goal here on this page
22 is -- you could consider it a shorthand of what it
23 says here, college and career readiness, is clearly
24 reflected here in training and preparation for
25 advanced training in either academic or vocational

1 fields so as to enable students to choose and pursue
2 life work intelligently.

3 Q. Then, Mr. Chalmers talked about the weights
4 and the reductions, the cuts. Let me ask you to
5 explain to the Judges -- let's take two districts and
6 look at their weights. And your weighted enrollment
7 is about two times your regular enrollment?

8 A. It is.

9 Q. Okay. Meaning, when you apply the weights,
10 you have twice as many kids for the computing of your
11 state money?

12 A. That's correct.

13 Q. And you have a district, let's say, oh, it's
14 next door to you to the south, that has a majority of
15 advantaged kids who are Caucasian, and let's just
16 assume for our illustration here that they have no
17 weights, all right? If you take a dollar off the
18 base from each of those districts, how does it affect
19 the districts that have the weights?

20 A. I would describe it in this way, and let's
21 use the at-risk weight, one weight on that dollar,
22 what you get for students, they're attached. So if
23 the base aid is reduced a dollar, that weight, or
24 that additional almost 50 cents on the dollar, is
25 also removed.

1 So in essence, because we have so many kids
2 that require so many additional programs, all those
3 additional weights attached to the funding, we lose
4 double, almost double. When the base aid goes down,
5 the weights attached to that money also reduced.

6 Q. So in terms of reductions to the base, that
7 has a multiplying effect when you have money from the
8 State by way of the weights?

9 A. Almost two to one for a district with high
10 numbers of kids with high needs.

11 MR. RUPE: Okay. Now, let's get in
12 front of her what she's been asked about here, which
13 is 54 and 74.

14 Q. So I want Plaintiffs' 54 and Plaintiffs' 74
15 in front of you. Which one do you have in front of
16 you?

17 A. 54.

18 Q. We'll start with that. We talked about this
19 yesterday, but let me call your attention to
20 Plaintiffs' Exhibit 74, page 3?

21 A. Just make sure I'm with you. Exhibit 54?

22 Q. What did I say? 54. Sorry if I said
23 wrong. I apologize.

24 Has the NCLB been adopted as part of the
25 quality performance accreditation by the State Board

1 of Education in Kansas?

2 A. Yes, it has.

3 Q. And is that reflected in the QPA Manual,
4 which is Plaintiffs' Exhibit 54, at page 3?

5 A. Yes, it is.

6 Q. Now let's go to Exhibit 74, which includes
7 the targets that are blown up. Is 74 the Kansas
8 State Board of Education publication, Kansas Adequate
9 Yearly Progress Revised Guidance for 2011/2012?

10 A. Yes, it is.

11 Q. Does it contain in it the targets that we
12 have talked about, that mountaintop that needs to be
13 achieved by 2014?

14 A. It does.

15 Q. For both mathematics and reading?

16 A. Yes.

17 Q. And again, the mountaintop is 100 percent of
18 the kids need to perform at at least the 50 percent
19 level in mathematics and 68 percent level in
20 reading?

21 A. For high school.

22 Q. For high school. Now, when we talk about
23 federal requirements, NCLB is a federal requirement,
24 isn't it?

25 A. It is, yes.

1 Q. Is it a state requirement for you?

2 A. Yes, the State adopted it.

3 Q. How many Title I schools do you have?

4 A. All 50 or 49 of our buildings are eligible.
5 We provide resources based on the formula to all
6 elementary and our middle schools. We use at-risk
7 dollars and other funds for the high schools,
8 although they are eligible.

9 Q. And this probably goes without saying, but
10 the federal dollars are not provided to you by the
11 State of Kansas, are they?

12 A. They are flow-through money, but they are
13 federal dollars, not state dollars.

14 Q. And if it weren't for the money you were
15 receiving from the federal government, in terms of
16 the money the State supplies your district under the
17 formula, where would that leave you?

18 A. We would be in extreme trouble because in
19 the recession, the rescission of the state funding --
20 the only funding we had that we could rely on was
21 that federal dollars. Both the Title I funds and the
22 SIG grant moneys -- which, I have to tell you, is not
23 something that you necessarily want, because that's
24 that lower 5 percent of the state, but it's been very
25 beneficial to our children.

1 Q. And if you turn to your local voters at
2 \$37,000 a year in the poverty area that Kansas City
3 is in, what is the result of asking them to foot the
4 bill from the reductions from the State?

5 A. You know, they would want to, but they
6 frankly can't -- if you think about where they are in
7 their economics -- so they would say no.

8 Q. So let's talk about the zero-base budget for
9 a second. And I have the testimony that Mr. Chalmers
10 paraphrased. And I want to ask you about how the
11 zero-based budget works. Explain that to the
12 Judges.

13 A. The zero-base budget, that whole premise was
14 instead of just assuming that you're going to get the
15 same dollars you had last year, or more or less
16 depending on what the district offers, you have to
17 come to the table with absolutely zero budget
18 promised, allocated, and justify every dollar that
19 you need; talk about why it's necessary, how you're
20 going to use it and, how, bottom line, it's going to
21 impact student achievement. So that's how the zero-
22 base budgeting process works.

23 If I may, the reality in the past several
24 years is that we've had them do that process, and
25 we've had them also come in and say, now that you've

1 told us what you need, cut 10 percent out of that,
2 cut 20.

3 Q. That's the way it has practically worked?

4 A. Yes.

5 Q. And the paraphrase Mr. Chalmers made, let me
6 quote to you and see if you agree with what your
7 business manager testified to at her deposition:
8 However, based on the situation that we are faced
9 with, with the particular continuous reduction of
10 funds, we have had our schools and departments start
11 with past budgets and make a reduction based on 5 to
12 10 percent that we have asked them to do, so we have
13 provided them with a particular format in which to do
14 that.

15 Is that the way it has worked?

16 A. I would agree with that as it was read.

17 Q. Okay. We talked about Emerson and how you
18 were able to acquire a grant. And explain what that
19 grant was that you acquired and how it differs from
20 the ordinary Title I money that was available to your
21 other schools; explain that to the Judges.

22 A. All right. Emerson is eligible for Title I
23 dollars, the regular Title dollars, and they receive
24 that. They became eligible for a grant that's called
25 the School Improvement Grant, that is a federal

1 grant, because of their dramatically low performance
2 as compared to all the other elementary schools in
3 Kansas. Remember, they were at the very bottom of
4 performance. So we applied for that grant and that
5 provided additional federal dollars so we could
6 implement the interventions that we've talked about.

7 Q. This was out of a bucket that wasn't
8 ordinarily available to you, that you applied for
9 special money and were able to turn that school
10 around?

11 A. Yes, and that funding is only available for
12 three years.

13 Q. And does that experience with Emerson teach
14 us anything about what your school district could do
15 if they had the resources available for all the
16 schools?

17 A. It certainly has provided a model that says,
18 when given the resources, because Emerson is made up
19 of the same children that we have in our other
20 districts -- in fact, their English as a second
21 language rate -- I don't have that number in front of
22 me -- is likely to be much higher -- that once given
23 those resources, then we can make a difference with
24 our children. So we are thinking of that model as
25 the model for what needs to be in place in our other

1 elementary schools, particularly those that are
2 struggling.

3 Q. And if you found yourself in a situation
4 where you had the resources where you could comply
5 with Kansas statute that we've called the Rose
6 Factors, and achieved that mountaintop where 100
7 percent achieved 50 percent, would that be --

8 A. That is doable. That is absolutely
9 attainable, absolutely.

10 Q. And would that be suitable?

11 A. It would be suitable, and it would be very
12 exciting because our kids would be prepared for their
13 futures.

14 Q. Would you be back in court again because of
15 that?

16 A. We had those resources and could provide
17 every child a suitable education, we would not be
18 back in court.

19 Q. I think this has been cleared up but I just
20 want to make sure, with regard to the funding and the
21 years, the first year of the Montoy money, as we have
22 called it, was in '05/'06 fiscal year, correct?

23 A. Yes.

24 Q. '06/'07 was the first year of the three-year
25 plan; it was the second year of the Montoy money,

1 correct?

2 A. That's correct.

3 Q. And then in '07 and '08, was the second year
4 of the three-year plan, true?

5 A. That's true.

6 Q. It was in '08/'09 that the money started,
7 but then the cuts began?

8 A. That's true.

9 Q. And cuts occurred in '09/'10, '10/'11,
10 '11/'12, and this year there was a modest increase?

11 A. That's correct.

12 Q. Okay. Now, you were going to talk about
13 Common Core; let's talk about it. In terms of the
14 Common Core seat change, are those standards that
15 you're now implementing more or less rigorous than
16 the Kansas standards?

17 A. They are significantly more rigorous.

18 Q. And with regard to the Common Core
19 Standards, the implementation of those standards, as
20 I understand what you said, starts now, is that
21 correct?

22 A. For our district it has started now. We
23 have those standards in our curriculum, partially,
24 and we will be moving fully to those standards next
25 year in order to prepare our students.

1 Q. And in terms of testing, that starts in
2 2014?

3 A. That's what -- 2014/'15, is what we're told.

4 Q. How much local control does your board have
5 when the resources dwindle?

6 A. We still have the same expectations of
7 meeting the charges that are outlined, offering all
8 those courses, meeting these standards. The board
9 has decision making -- and control over what to
10 eliminate when things are cut, but they cannot move
11 away from what we're supposed to do for children and
12 the standards we're supposed to reach.

13 Q. And you mentioned this phrase, but explain
14 it to the Judges: When your board has a strategy of
15 keeping the cuts away from the classroom, explain
16 what that means.

17 A. Well, it means that we'll first cut support
18 departments, operations and maintenance, those kinds
19 of things that we can do less of and still will be able
20 to provide to a child what they need in the
21 classroom. So the board has worked very hard to do
22 that, although, you can tell by some of the cuts that
23 we've had to make, they impact kids directly, when
24 you have to walk farther to school and you have less
25 resources. But the board attempts to keep the cuts

1 away from the classroom.

2 Q. And has that been completely possible with
3 the cuts?

4 A. Well, when you think about having more
5 children in classrooms, more crowded classrooms and
6 fewer resources, the answer is no.

7 MR. RUPE: That's all I have.

8 Thank you.

9 RE-CROSS-EXAMINATION

10 BY MR. CHALMERS:

11 Q. Very quickly, I just want to clarify one
12 point. The weighting and its impact, I know you
13 don't like the word "weighting," but its impact on a
14 reduction in funding, I think you said it has a
15 multiplying effect, is that correct?

16 A. That's correct, that's what I said.

17 Q. Okay. And so I assume the mathematical
18 standpoint, that if you increase funding, it also has
19 a multiplying effect?

20 A. If you increase funding to the base?

21 Q. Yes.

22 A. It does.

23 Q. So if we're looking at how it impacts the
24 multiplying effect one way or the other and whether
25 that's equitable, the real question is just figuring

1 out what the base should be and not concerning
2 ourselves with, does it impact, when it goes down,
3 the people that have weighting, negatively? Or does
4 it benefit them when it goes up? It's really about
5 just trying to figure out what the proper base is,
6 isn't it?

7 A. That's a piece of it, but that's not the
8 only piece of it. And if you'd like for me to, I can
9 explain that.

10 Q. And the other piece of it, would it have
11 anything to do with those multipliers that we're
12 talking about, or does it go to the justification of
13 weights?

14 A. Well, it's --

15 Q. I guess what I'm curious -- tell me what the
16 other piece is.

17 A. If you look at a district that has no
18 weighted students, students that have these high
19 needs, they lose a dollar. They can adjust to that
20 loss of a dollar. They gain a dollar, they can
21 adjust to that.

22 When you have weights attached, for our
23 district, we lose more than a dollar, almost two
24 dollars. So our losses are significantly more, so it
25 is not equitable in that fashion. Keep in mind that

1 the funding formula was set up so that all children,
2 regardless of where they lived, had access to the
3 same dollars and they had access to dollars that they
4 needed for their own situation.

5 Q. But to use your analysis, if we increase the
6 base by a dollar, then your district ends up getting
7 two dollars as compared to the district who just gets
8 one. And that's no fairer or unfair than the
9 reduction, is it?

10 A. Except for the resources that we receive are
11 tied to what it costs to educate our children.

12 Q. Which gets to, what's the proper base, which
13 is, I think, the point; just trying to sort out what
14 that is, not whether it's cut or increased.

15 A. It's an important discussion.

16 MR. CHALMERS: Thanks.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. When the cuts occurred, did anyone from the
20 State Legislature ask you what it costs to educate
21 your kids?

22 A. No.

23 MR. RUPE: Nothing further.

24 RECROSS-EXAMINATION

25 BY MR. CHALMERS:

1 Q. Well, wait a second. You went and testified
2 to the State Legislature and you told them what it
3 would cost to educate your kids, didn't you?

4 A. That is not what the testimony was about,
5 what does it cost to educate my kid, no.

6 Q. You went and testified before --

7 A. I did.

8 Q. -- the Kansas -- was it the Senate or House
9 or both?

10 A. I've been before both.

11 Q. And your district has a full-time, paid
12 lobbyist that goes and testifies on your behalf and
13 lobbies on your behalf, doesn't it?

14 A. Yes. Yes.

15 Q. And you're saying that you and these
16 lobbyists have kept secret your position on what the
17 costs are?

18 A. That's not what I said. The question was,
19 was I asked what it costs to educate our children. I
20 was not asked that question --

21 Q. You have advocated what you believe it costs
22 to educate the kids to the Legislature, haven't you?

23 A. I have.

24 MR. CHALMERS: Thank you.

25 MR. RUPE: Nothing further.

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EXAMINATION

BY THE PANEL:

JUDGE THEIS: I've got one. I noticed on one of your charts -- you know, we've been talking about at-risk kids and things, where -- the pool of proficiency. But I also noticed that, not significantly, but the exemplary students, where the pool looked smaller?

THE WITNESS: It is.

JUDGE THEIS: So it's an across-the-board effect?

THE WITNESS: Absolutely. It impacts everyone when you don't have resources. We want to get more and more kids to exemplary, and we're having some success there, but it should be a higher number of our children to be ready for their futures. Absolutely.

JUDGE THEIS: So it just hits every segment?

THE WITNESS: It does. You know, we have kids that are living in poverty that can perform exemplary. So there's always an impact because they need more resources to be there.

JUDGE THEIS: All right. And when you implement something you think that works, is that

1 what the teacher proves, is to find things that work
2 that do some good?

3 THE WITNESS: Right. What does the
4 research tell us are the best ways of working with
5 children that have these needs, implement that,
6 adjust it, make sure that we're moving it forward.
7 That's a lot of what our training is about; looking
8 at the data on a weekly basis, how are our kids
9 doing.

10 JUDGE THEIS: So you're applying
11 strategies that have been, quote, tested that show
12 results?

13 THE WITNESS: Yes.

14 JUDGE THEIS: That's what you're
15 saying?

16 THE WITNESS: That's what we mean
17 by research-based, some outside party has vetted the
18 strategy and said that this is the right strategy to
19 use.

20 JUDGE THEIS: It's those programs
21 you say that you don't have the funds to go learn or
22 implement?

23 THE WITNESS: That's correct.
24 That's right.

25 JUDGE THEIS: And you talked about

1 the Emerson school. Do you have a cost per student?

2 THE WITNESS: I don't have that in
3 front of me, but we'd be glad to provide that,
4 including the grant money, I assume you want to know.

5 JUDGE THEIS: Apples-and-oranges-
6 type comparison.

7 THE WITNESS: Be glad to get that
8 for you.

9 JUDGE THEIS: Had some other
10 questions, but they're in my other notebook.

11 JUDGE FLEMING: You asked me if I
12 had any questions, and I said I didn't, but let me
13 see if I understand this cut analysis. This is all
14 hypothetical, so my math is easy for me. Let's
15 assume you have 50,000 students and Johnson County
16 has 50,000 students. Applying the weighting factors,
17 your number doubles to 100, right? Said it was
18 almost two to one?

19 THE WITNESS: Close, right.

20 JUDGE FLEMING: Then I made this
21 up, so assume the base is \$3,100 dollars. So you
22 would receive \$310 million, Johnson County would
23 receive 155 million, and if the Legislature then cut
24 the base by \$100, that would cost Johnson County
25 5 million and cost you ten, right?

1 THE WITNESS: Yes.

2 JUDGE FLEMING: But Mr. Chalmers is
3 right if they increased it 100, you'd benefit twice
4 what Johnson County would, right?

5 THE WITNESS: Well, because our
6 children need more resources. So in terms of the
7 base, we're talking about the operating funds. There
8 are also other funds, too, that we have to look at.

9 JUDGE FLEMING: Take a recess?

10 JUDGE THEIS: You bet. Any
11 questions based on our questions?

12 MR. CHALMERS: No.

13 MR. RUPE: (Shaking head.)

14 JUDGE THEIS: You can step down.

15 Thank you.

16 THE WITNESS: Thank you very much.
17 (Witness excused.)

18 JUDGE THEIS: Start back up 3:15,
19 please.

20 (A recess was taken.)

21 JUDGE THEIS: Be seated. Thank
22 you.

23 Tell us where we're headed,
24 Mr. Rupe, if you would.

25 MR. RUPE: We are right on track.

1 Kelli Mather is our next witness, so we call Kelli
2 Mather.

3 JUDGE THEIS: She is?

4 MR. RUPE: She is the chief
5 financial officer for Kansas City, Kansas School
6 District.

7 KELLI MATHER

8 Called as a witness for the
9 Plaintiff, was duly sworn by the reporter and
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. RUPE:

13 Q. Tell the Judges your name and the city in
14 which you live.

15 A. My name is Kelli Mather and I reside in
16 Kansas City, Kansas.

17 JUDGE BURR: Spell your last name.
18 I'm sure I got it somewhere.

19 THE WITNESS: M-A-T-H-E-R.

20 JUDGE BURR: Okay. Thank you.

21 Q. Talk to us a little bit about, first, your
22 title.

23 A. Okay. My title is the chief financial
24 officer for the school district.

25 Q. And how long have you held that position?

1 A. I've held the position for two years with
2 the Kansas City, Kansas Public Schools.

3 Q. Work backwards and give us a work history
4 for a period of time.

5 A. Well, I've worked within the school district
6 20 years, last January. I spent the majority of that
7 time, approximately 18 years of that time, on the
8 student and family services side of the school
9 system, where I was actually providing prevention
10 services programming, working with family needs and
11 student support needs.

12 For a year after that on the 19th year, I
13 became the executive director of quality control, or
14 actually focused more on making sure that reports,
15 primarily state reports, were submitted in a timely
16 manner. And then I started overseeing the operations
17 of the school district at that time, which included
18 several support departments such as transportation,
19 TIS or the IT department, nutritional services
20 program, physical properties or the shop, things of
21 that nature.

22 Q. So you've been in the KCK USD 500 for 20
23 years?

24 A. 20 years, just over, uh-huh.

25 Q. What is family services? What is that?

1 A. Uh-huh, student and family services is
2 actually the department where any issue that arises
3 with a parent concern or student transfer, they come
4 to that department and we address those issues. We
5 look at student transcripts to see how they're
6 doing. We deal with principal concerns with student
7 and support schools from that perspective, as well.

8 Q. Prior to KCK, where were you employed?

9 A. Prior to the school district, I was actually
10 employed at Baptist Medical Center. I was there for
11 several years in multiple capacities as a therapist
12 and worked with at-risk students and at-risk adults
13 in a chemical dependency and dual diagnosis unit --

14 THE COURT REPORTER: I'm sorry,
15 at-risk adults in?

16 THE WITNESS: Adolescents in a dual
17 diagnosis unit.

18 Q. Tell us a little of your personal history.

19 A. Well, I have two wonderful daughters, both
20 grown, in their 20s, out of the house, and I think
21 that's a good thing. I'm blessed with that and
22 they've turned out well. You know, I enjoy spending
23 time with the kids. I believe that a sense of humor
24 is important, so I do enjoy a sense of humor.

25 I'd be lying if I said I wasn't a little bit

1 nervous to be up here, but I have to tell you, it's
2 kind of an honor to be here, too, and testify on
3 behalf of something that I think is critically
4 important, and that's the foundation for our kids and
5 education.

6 Q. Let's get to that.

7 A. Okay.

8 Q. Explain to the Judges what the cost-based
9 formula is.

10 A. Okay. When you're hearing all of the
11 conversation and discussion around the weights,
12 that's truly, in essence, a cost-base formula. It's
13 looking at the need, based on the school district.
14 So when you look at school systems such as Kansas
15 City, Kansas that have a high number of at-risk
16 students or students who are ELL students or other
17 high-need students, then you have those weighted
18 amounts that you receive.

19 So when you're hearing that, if you get a
20 dollar on the base state aid it actually, in essence,
21 doubles. It doubles based on the needs of the
22 students in that district. The reverse of that would
23 be true when you get a dollar less because the need
24 is not as high in a district that did not have high
25 needs.

1 Q. And is the cost-based or foundation system
2 based on the premise that some kids cost more to
3 educate?

4 A. Yes.

5 Q. Do disadvantaged kids of poverty cost more
6 to educate?

7 A. Yes.

8 Q. What about minority kids?

9 A. Well, we have kids that are raised -- have a
10 higher increase rate as far as, not based on
11 ethnicity, but based on poverty issues, based on
12 language issues.

13 Q. English language learners, do those kids
14 cost more to educate?

15 A. Yes.

16 Q. We heard testimony about a normal kid will
17 come to school exposed to about -- kindergarten
18 exposed to some 30,000 vocabulary words, and some
19 kids arrive in Kansas City, Kansas exposed to only
20 5,000?

21 A. That's correct.

22 Q. And do those kids cost more to educate?

23 A. Absolutely.

24 Q. And when the money gets less, does the cost
25 of that education for those kids get less, too?

1 A. I'm not sure I understand the question.

2 Q. Well, when there's a cut in funding, does
3 the cost of those kids go down?

4 A. Yes, the cost stays the same and actually is
5 there, but we have less funding to be able to fund
6 that.

7 Q. Okay. And in terms of additional resources,
8 are those additional resources needed for kids that
9 cost more?

10 A. The additional resources are needed for
11 those kids that cost more, absolutely.

12 Q. I asked you during the break to get some
13 information on Emerson.

14 A. Mm-hmm.

15 Q. And I want to ask you about Emerson. The
16 grant money that was received at Emerson, divided by
17 the number of pupils at Emerson, is what number?

18 A. Approximately \$6,500 per student, keeping in
19 mind that is a School Improvement Grant fund, so in
20 essence, that's like a windfall of money. It's a
21 one-time grant opportunity that lasts for three
22 years. So that's in addition to the base state aid
23 that we would receive, so \$6,500 on top of the base
24 state aid.

25 Q. All right. Okay, let's look at exhibits, if

1 we could, and I want to get an explanation from you.
2 I want to hand you Exhibit 20, and is the formula.
3 This exhibit shows the formula and the computation of
4 the formula for USD 259, 500, Dodge City 443, and 308
5 Hutchinson, and I want to call your attention to the
6 USD 500 column.

7 A. Mm-hmm.

8 Q. Would you walk the Judges through how the
9 formula treats Kansas City, Kansas, and how the
10 amount of money the State provides Kansas City,
11 Kansas is computed?

12 A. Okay. And the first column -- in the column
13 identified as USD 500, we have the enrollment after
14 the audit, that's number one, with just over 18,000
15 students. Then we've added our at-risk students in
16 there, and they're at .5, so it's 285. Then we go
17 down, we don't have low enrollment in Kansas City,
18 Kansas. We do have a high enrollment weighting that
19 you've heard earlier about, and that's added on at
20 661.4.

21 Q. That is additional kids --

22 A. Uh-huh.

23 Q. -- computed on the weighting --

24 A. Weights, uh-huh.

25 Q. -- factor of high enrollment?

1 A. That's correct, uh-huh. And the same
2 concept for bilingual; following that we add that to
3 it, based on the contact minutes for bilingual.

4 Q. What do you mean based on contact --

5 A. What we have to look at with the bilingual
6 weighting is we will look at the number of students,
7 and then we also do the audible, look at the number
8 of contact minutes that they have, but the 1,426 will
9 reflect the number of students as part of the weight,
10 added weight.

11 Q. Okay?

12 A. Mm-hmm.

13 Q. And then vocational weighting?

14 A. Same concept, with the added students there
15 we add that to it at 346. That's at a .5.

16 Q. And you get there by taking the enrollment
17 times a --

18 A. Formula.

19 Q. -- formula --

20 A. Uh-huh.

21 Q. -- to get this number for the weight?

22 A. Right.

23 Q. Okay. Now, keep going. At-risk?

24 A. At-risk, do the same thing you take the
25 enrollment, you multiply it by the formula and you

1 get the 7,467 for the at-risk weighting.

2 Q. Then you've got high density at-risk
3 weighting what's that?

4 A. High density at-risk weighting is when you
5 have a high number of at-risk students within a
6 certain density area, small density area. So you do
7 the same thing and multiply that by the 18,591 which
8 equals 1,637.

9 Q. Then, there's a non-proficient student
10 weighting. What is that?

11 A. Those are students who are not proficient on
12 the state assessments but do not qualify for free and
13 reduced lunch. So that equates -- and they use this
14 formula for that and that equates to 36.7 percent.

15 Q. That's a fairly small number, so the ones
16 that are non-proficient typically are captured in
17 what category?

18 A. The reason that's a smaller, though, is
19 because not only -- they may not be non-proficient,
20 it's also they are not eligible for the free and
21 reduced lunch number, which we have a significant
22 percentage of free and reduced lunch in our
23 district. So you'll see that number will be a little
24 bit smaller.

25 Q. Then, after non-proficient is new facilities

1 weighting. What's that?

2 A. Any time you have a new facility, an
3 addition, or a new school, it provides additional
4 funds in a formula to begin the operations for that
5 particular addition or site.

6 Q. And the transportation weighting?

7 A. Kids that you get -- again a formula that
8 you put in place typically for students outside the
9 2.5-mile range.

10 Q. Then, virtual student weightings, what is
11 that?

12 A. Well, if we had virtual schools, you could
13 get that. We don't have that so we don't have any
14 weighting there.

15 Q. A virtual school is one -- what is that?

16 A. Well, that would be where a student is not
17 attending the public school but receiving education
18 perhaps via the computer, from home, or from another
19 base outside of the school itself.

20 Q. Okay. Let's move on. Ancillary weighting?

21 A. The ancillary weighting is actually a tax
22 weighting and we are not -- you have to request that
23 weighting, specific weighting from the State, and we
24 are not eligible for that in Kansas City, Kansas, so
25 we don't receive that.

1 Q. All right. And special education weighting,
2 what's that?

3 A. Special education weighting is based on the
4 number of students for special ed, the funding that
5 they receive. And it's a formula base. We plug that
6 in and we receive the 4,211 on that.

7 Q. I think the declining enrollment, you don't
8 have any of that because why?

9 A. Because we don't have declining enrollment
10 right now.

11 Q. Some school districts, say in Western Kansas
12 that may have declining population --

13 A. Right.

14 Q. -- they would receive that declining
15 enrollment weighting because they are getting
16 smaller?

17 A. That's right. There's other options, right.

18 Q. What is KAMS weighting?

19 A. I'm not familiar with the KAMS weightings.
20 Are not eligible for that and haven't been.

21 Q. Cost of living?

22 A. Only a handful of districts are eligible for
23 the cost of living weighting. We are not one of
24 those. Some of the districts south of us receive the
25 cost of living weighting.

1 Q. That would be a weighting the Legislature
2 has added in order to get additional funds if a cost
3 of living in a district is higher than somewhere
4 else?

5 A. That's right.

6 Q. Okay. And that's a zero for you?

7 A. That's a zero for us.

8 Q. All right. Then walk us through line 18.
9 What happens with these additional weights and the
10 base enrollment, the enrollment number?

11 A. You take the base enrollment number and you
12 add all those numbers. They just compute it through
13 the various formulas that we have to figure, but each
14 of those respective weights that we're eligible to
15 receive in a school district, and we come that to
16 final number on that line number 18, which is 35,368.

17 Q. You heard Dr. Lane testify that it was
18 almost a two to one, once you added the weights --

19 A. Right.

20 Q. -- and that would be --

21 A. Just about right.

22 Q. -- about right, 18,591, and 35,368 --

23 A. That's correct.

24 Q. -- .1, is the weighted enrollment?

25 A. That's correct.

1 Q. Then we take the base state aid per pupil?

2 A. Mm-hmm.

3 Q. That's 3,780?

4 A. Correct.

5 Q. Then, what do you do with that base state
6 aid?

7 A. We multiply that by that number. That gives
8 us our general fund amount.

9 Q. That amount is 132,700 --

10 A. 132 million --

11 THE COURT REPORTER: I'm sorry, the
12 record will get messy if you don't go one at a time.

13 A. 132 million -- not thousand -- 704,460.

14 Q. Okay. Let me show it down here then. What
15 is this item, 21, authorized local option budget
16 percentage?

17 A. That's the highest percentage that we are
18 authorized to go out to, is 30 percent without a
19 vote, to our voters, so we can go to 31 percent, but
20 the highest authorized is 30 percent.

21 Q. So the 30 percent is the maximum?

22 A. Correct.

23 Q. And then, the actual LOB percentage actually
24 used, is what?

25 A. Is listed here at 29.8 percent. Probably

1 after the audit and some numbers shook out a little
2 bit with actual numbers, it may have declined
3 slightly. If our enrollment increased, even just a
4 little bit, which it did after the audit by just a
5 few numbers, literally like a couple 100, that
6 overall percentage may have declined slightly, even
7 if with our initial anticipation to use the 30
8 percent max.

9 Q. Help us understand what it means by actual
10 LOB percent actually used.

11 A. In regards to the --

12 Q. What does it mean? It's close to the LOB
13 authorized local option budget percentage, but what
14 does it mean, "actually used"?

15 A. Well, when you compute it back out and you
16 multiply the number to that figure, that's how you
17 come up with your local option budget number, your
18 amount. So you'd have to multiply it by 29.8 percent
19 versus the 30 percent.

20 Q. And then, what do you do to get to item 23?

21 A. Well, we have the 4,433 rule, which is back
22 in '08 and '09, where you actually compute your local
23 option budget. You multiply that by the 4,433 per
24 student to actually compute the local option budget
25 number off of that.

1 Q. All right. And the 4,433 is not what you
2 actually get by way of the base from the State --

3 A. No.

4 Q. -- that is what the statute says you're
5 entitled to?

6 A. That's correct.

7 Q. So you compute your LOB, your local money
8 based on this artificial number that is in the
9 statute of what the State says the base amount should
10 be?

11 A. That's correct. Multiplying that by the
12 actual percentage, the LOB percent, which then
13 results in the legal LOB.

14 Q. Okay. So you're taking 29.8 percent times
15 the base at -- the artificial base at 4,433?

16 A. Yes.

17 Q. And that gives you the \$152 million number?

18 A. Well, it results, ultimately, in the legal
19 local option budget amount.

20 Q. Right?

21 A. Right.

22 Q. Which is what?

23 A. \$45,495,582.

24 Q. Then what do you do to get the legal general
25 fund and the local option budget, you add the two?

1 A. Yes, which would be line 20 and line 24.

2 Q. 20 and 24 --

3 A. Legal --

4 Q. -- are added together and you get the 178
5 million?

6 A. That's correct.

7 Q. Okay. Let's take a look at Exhibit 12, if
8 we could. We'll see this a number of times. What is
9 Exhibit 12?

10 A. This is a Legal Max, what we reference as a
11 Legal Max letter. And it identifies all of the
12 weights that we just referenced, including the
13 enrollment figures, that are computed based off
14 information that the state department sends us. So
15 even after our audit, and then typically about
16 monthly after that, we receive an updated one, a
17 Legal Max letter.

18 Q. And the data listed on Exhibit 12 is for
19 each school district in the state?

20 A. Yes.

21 Q. And in terms of the Legal Max, is that where
22 you would go to compare data from year to year?

23 A. It certainly would. I could look at it.
24 They keep it on the KSDE website from year to year,
25 so I could see the changes in each of the respective

1 categories. I also, myself, tend to keep a
2 spreadsheet, so I'm kind of tracking it that way, as
3 well.

4 Q. And then this particular Exhibit 12, if you
5 look at the Bates number -- and these are in the
6 primer at PRIMER000327, which would be page 9 of the
7 Legal Max for 2012. Is Kansas City, Kansas, USD 500
8 listed?

9 A. Yes, it is.

10 Q. Okay. Let's test your eyesight here and, if
11 we could, explain what Column 1 is?

12 A. Column 1 actually is the full-time
13 equivalent enrollment, excluding the 4-year-old
14 at-risk and the virtual program from '09.

15 Q. Okay?

16 A. '09/'10.

17 Q. All right.

18 A. So it has that number.

19 Q. And so that figure, that 18,450.7, is that
20 number of students?

21 A. That's correct, full-time equivalent,
22 uh-huh.

23 Q. Column 2 is what?

24 A. That would be the same thing but for the
25 '10/'11 school year.

1 Q. Okay. So first year is '09/'10 then
2 '10/'11?

3 A. Correct.

4 Q. What's the third year -- or the third
5 column?

6 A. That would be the same thing and it would be
7 for the from the audit from September of the current
8 year, '11 -- 2011/'12 school year.

9 Q. And that shows that enrollment went down in
10 '10/'11, and then up in '11/'12?

11 A. That's correct.

12 Q. And then it says, declining enrollment
13 provision. What is that?

14 A. Well, you can have -- you have an option of
15 looking at your highest enrollment or you can average
16 the three years. And we tend to look at an average
17 of three years or we can take the highest
18 enrollment. In this particular year, we took the
19 highest enrollment, which was the existing year
20 18,591, I believe it reads.

21 Q. And then for each of the additional
22 columns -- we won't go back through them one at a
23 time -- but those correspond to the weights that we
24 addressed in Exhibit 20, is that correct?

25 A. That's correct.

1 Q. All right. So if we had the Legal Max for
2 the years prior to 2012, we could have a picture of
3 what the financial state aid was from the State of
4 Kansas to USD 500?

5 A. That would be correct.

6 Q. Then let's get a history. Let me hand you
7 16, 15, 14, 13, 9, 10, and 11. Now, just take them
8 one at the time. Exhibit 16 is what?

9 A. Well, it looks like the Legal Max record for
10 all the school districts, looks like 2005.

11 Q. So that's the 2004/2005 school year?

12 A. That would be correct. That reflects the
13 three years.

14 Q. Okay. Then let's go to Exhibit 15, is that
15 for the 2005/2006 Fiscal Year?

16 A. That would be correct.

17 Q. So Plaintiffs' 15 is '05/'06? So let's go
18 to 14, and is that for what year 2006/2007?

19 A. Yes, 2006/2007.

20 Q. Then, Exhibit 13 is for the '07/'08 fiscal
21 year?

22 A. That would be correct.

23 Q. And Exhibit 9 is '08/'09 school year, Legal
24 Max?

25 A. Yes.

1 Q. All right. And then 10 would be for the
2 '09/'10 school year?

3 A. That would be correct.

4 Q. And the last one is 11, which would be for
5 the '10/'11 school year?

6 A. That's correct.

7 Q. Okay. So with those exhibits, we have a
8 Legal Max history back to '04/'05 for the KCK
9 district and all districts in Kansas?

10 A. That's correct.

11 Q. Now, I think we've established this, but let
12 me make sure we're all on track, what was the first
13 year in which there was a reduction in -- and you can
14 use those Legal Maxes to refresh your recollection if
15 you need to, but what was the first year there was a
16 reduction in the base state aid that you received?

17 A. I want to think it's '08/'09.

18 Q. Okay.

19 A. But I can verify that.

20 Q. All right. I don't think you have to. I
21 think we've established that.

22 A. Okay.

23 Q. The first year was '08/'09?

24 A. Mm-hmm.

25 Q. And were there cuts in '09/'10, '10/'11,

1 '11/'12?

2 A. That would be correct.

3 Q. And then you received a bit of an increase
4 in '12/'13?

5 A. Yes.

6 Q. Called it a modest increase?

7 A. Yeah.

8 Q. Take a look at Exhibit 285, if you would.
9 Put that on the back burner for a minute. I've been
10 told I need to look at something else with you.

11 A. Okay.

12 Q. We'll come back to 285 in a minute. I want
13 to hand you 227, 228, 229, and 233. And let's start
14 with 227. What is 227?

15 A. This is a form that's referenced as Form
16 150, and it's an estimated legal maximum form that we
17 utilize in the budget books. My director of finance
18 completes these forms and they are submitted to the
19 State Department of Education there.

20 Q. And I think you were in the courtroom when
21 Dr. Lane was walked through a Form 150?

22 A. Yes, I was.

23 Q. And the purpose of this is what?

24 A. Well, it's to establish a computation of an
25 estimated budget of what we anticipate the budget

1 will be.

2 Q. So when we talk about the weightings and how
3 that worked, this is putting in place the actual
4 computation that shows what money the district is
5 entitled to from the State?

6 A. That's correct and we actually use the Legal
7 Max letters, the actual last one that we received,
8 typically in May of the previous year because that's
9 the most recent data that we have prior to when these
10 have to be submitted. So there is a potential that
11 it could slightly change, but that's the most recent
12 data.

13 Q. So you use, basically, numbers that are a
14 year old for purposes --

15 A. Not quite a year old --

16 Q. Not quite --

17 A. -- but a month or so, yeah.

18 JUDGE THEIS: I didn't know, what
19 month was that done?

20 THE WITNESS: The forms here are
21 submitted to the state department typically by July,
22 sometime in June or July.

23 JUDGE THEIS: For which fiscal
24 year?

25 THE WITNESS: Each year they have

1 to submit the Form 150.

2 Q. (By Mr. Rupe) So when you submit it in July
3 of 2012, what are you doing, for what year?

4 A. If we submit the form in July of '12, it
5 would be for '12/'13.

6 Q. Okay. So the one that is 227 is for
7 '11/'12, and that would have been submitted in when?

8 A. Yeah, it looks like it's dated May of 2011.

9 Q. Okay.

10 A. So it would be for '11/'12; current,
11 existing year.

12 Q. Then what is Exhibit 228?

13 A. That's a Budget at a Glance. For the
14 '11/'12 year that we are required to complete, and
15 also submit, and then we also put it online with our
16 school districts so that folks can access that
17 information.

18 Q. I think this is a series of Budgets at a
19 Glance. It's got 2011, 2010/'11, 2009/'10, and
20 2008/'09 in it, doesn't it?

21 A. I see, actually, a Budget at a Glance, and I
22 see the district profile information which are two
23 different formats. They contain similar information,
24 which is summarized budget information. I'm going
25 back to see. I do see '10/'11, I do see '10/'11.

1 Q. Yeah, at Bates number 378. Then go back to
2 Bates number 183, and I think that is '09/'10?

3 A. Yeah, mm-hmm.

4 Q. Then go to Bates number 171. That is for
5 the year '08/'09?

6 A. Yes, that's correct.

7 Q. So this is the financial history Budget at a
8 Glance for 2008 through -- '08/'09 through '11/'12?

9 A. That's correct.

10 Q. Now take a look at 229, and we've talked
11 about the Legal Max and we've talked about the Budget
12 at a Glance. What is 229?

13 A. Well, this looks like a number of the pages
14 that come out of the financial report that we, again,
15 are required to submit to the state department. So
16 there are multiple forms here that we fill out and it
17 reflects the entire budget -- budgeting process.

18 Q. So Exhibit 229 is the -- it's the real deal,
19 it's the entire budget, not at a glance, and not the
20 Legal Max?

21 A. That's correct.

22 Q. Now, flip to the second page of that. And
23 by the way, this is for Fiscal Year '12, so it would
24 be '11/'12?

25 A. Yes.

1 Q. Flip to the second page of that. It's Bates
2 number 002575, and Exhibit 229. And there's a number
3 there that says, 135,247,367, '10/'11 general fund,
4 final audit Legal Max. What is that number?

5 A. That would have been the number that was
6 taken off from the state department, the Legal Max
7 letter, the final audited number for the general fund
8 amount.

9 Q. Then the next page, or couple pages later,
10 2577, it has the number 132,704,460 do you see that
11 number?

12 A. I do. Is that at the top?

13 Q. Yes.

14 A. The general fund budget, which would be the
15 current budget for '11/'12. The figure we just read
16 was the previous year for '10/'11.

17 Q. So it's down about 2.5 million?

18 A. Yes.

19 Q. Now, let's talk about when the reduction
20 started in '08/'09.

21 A. Okay.

22 Q. And I put up Exhibit 233. You have that in
23 front of you?

24 A. I do.

25 Q. Walk-through, if you would, what the base

1 was for Fiscal Year 2012, and what it'll be for 2013?

2 A. For the current year, it's \$30,780, and with
3 the addition of \$58 per pupil on the base state aid,
4 it's projected to be, for next year, 3,838, \$3,838.

5 Q. In Fiscal Year '04/'05, it was what?

6 A. In '04 it was 3,863, 3,800 --

7 Q. It was the same the following year?

8 A. Yes, it was, that's correct.

9 Q. Which would have been '04/'05?

10 A. Uh-huh.

11 Q. What was it in '05/'06?

12 A. Looks like it was, in '05/'06, thirty -- in
13 '05 it was 3,863, and then it jumped, just at the
14 time of the response to the Montoy case, to 4,257.

15 Q. Then the following year, 4,316?

16 A. That's correct.

17 Q. And after that, 4,374 and 4,400?

18 A. That would be correct.

19 Q. Okay. And then it started to decline?

20 A. That's right.

21 Q. Now go to what was on the back burner, which
22 was 285. Was there a reduction of \$8.7 million in
23 2011?

24 A. Yes, we had to reduce our funding
25 significantly as a reduction -- as a result of a

1 reduction in the base state aid and we made several
2 cuts.

3 Q. Explain that to the Judges.

4 A. The cuts that we made?

5 Q. Yes.

6 A. We made numerous cuts that we were faced
7 with, some difficult decisions. One is that we had
8 to reduce services in an alternative school setting.
9 We used to have a lot more options available for
10 kids; simply could not afford that. Multiple
11 administrative positions have been, frankly,
12 eliminated out of the central office, I think you
13 heard Dr. Lane address before.

14 We tried to keep many of the cuts as we
15 could away from the instruction or directly impacting
16 schools, although everything directly impacts the
17 schools it seems like, and it's getting harder and
18 harder to do that, but there was several -- several
19 positions at the administrative level cut.

20 We asked departments to cut some of those
21 operations departments. Those are the ones --
22 because we didn't want schools to have to adjust
23 their budgets if at all possible, we continued to ask
24 district departments to make cuts in their budget,
25 anywhere from five to 10 percent at a time,

1 annually.

2 Currently now at approximately 25 to 30
3 percent deep in their cuts, and quite frankly are not
4 going to be able to cut too much more without,
5 frankly, not being able to serve the schools and
6 avoid -- the schools, you know, will be interrupted
7 in their ability to deliver instruction.

8 Q. Take a look at Exhibit 258.

9 A. Okay.

10 Q. What is Exhibit 258?

11 A. It's actually a narrative or bulleted point
12 of three consecutive years of cuts that were having
13 to be done as a result of a reduction in the base
14 state aid.

15 Q. I want to put in front of you, as well,
16 Exhibit 257 and identify for the Court what 257 is.

17 A. Exhibit 257 is what we often refer to as a
18 phase plan. It's a planning document that we've used
19 in the school system to work with the board in
20 regards to potential cuts. We want the board to
21 start thinking through options that they may be faced
22 with if base state aid continues to be reduced or
23 other funds are not available to them.

24 Q. In terms of the 2009 and '10 school year,
25 using 258 and 257, describe for the Judges what your

1 cuts were within your district.

2 A. Well, the '09/'10 school year we had
3 significant cuts. Probably the biggest thing that
4 was difficult to avoid in that particular year was
5 the teachers. We had over 130 teaching positions
6 cut. And if you just average that out, including
7 benefits, that's, you know, a significant amount;
8 it's over \$6 million in reductions just with the
9 teacher positions.

10 I started talking to you about the budget
11 reductions. At that point, we had asked our
12 departments to reduce at 20 percent in their budgets
13 that they had originally had in order to fulfill
14 their responsibilities to the schools and they had to
15 basically figure out ways to reduce their budgets
16 overall.

17 Q. Talk to us about the second item here,
18 reduce contingency reserves by \$2 million. Explain
19 what the contingency reserve is and explain what the
20 reduction was?

21 A. We have a contingency reserve, like most
22 school districts do. The legal maximum for the
23 contingency reserve is 10 percent. We do not
24 maintain the 10 percent maximum in our contingency
25 reserve, frankly, because we don't have the money to

1 do that. We've had to reduce or get into our reserve
2 funds in order to avoid making cuts in other places.

3 We are currently at about \$8.5 million and
4 will reduce our contingency reserve another 2 million
5 this year, at the end of this fiscal year, so it will
6 be at \$6.5 million, probably around 5 percent,
7 actually, rather than the 10 percent?

8 Q. How much is in your contingency reserve
9 right now?

10 A. Right now, it's about 8.5 million, and after
11 we make the \$2 million cut at the end of this fiscal
12 year, there's just enough money to cover one payroll,
13 that's it.

14 Q. Well, why would you need any money in your
15 contingency reserve?

16 A. Well, to be fiscally prudent, frankly. I
17 mean, we don't want to run any organization, just
18 like you don't want to run your household into the
19 ground. You have to have funds available for
20 catastrophic events that may occur. You have to have
21 funds to cover payroll if something were to occur
22 with that. Like I said, our contingency reserve
23 right now does not cover or will not cover, at the
24 end of this current year, one month of -- one
25 payroll, not one month, but one payroll, so two

1 weeks.

2 Q. Well, sitting in your desk in the business
3 office, have there been occasions where the state
4 money does not come in on time?

5 A. There has been, on numerous occasions, where
6 it's not come in, in a timely manner and we have to
7 have funds setting there to cover that, including
8 crossing over fiscal years where it comes in, in July
9 for June payment.

10 Q. And does the contingent reserve serve a
11 purpose in those situations?

12 A. It does.

13 Q. Okay. Let's continue on. What does, freeze
14 all non-essential or grant required travel -- what
15 does that mean?

16 A. Well, for three years now or more, three to
17 four years, the board as well as the district has
18 frozen all travel, basically, and not allowed the
19 professional development that is so essentially
20 needed to continue to support the development of our
21 teachers, unless it's a grant required travel;
22 meaning if a school is fortunate enough to have
23 received a grant, and built into that they are
24 required to attend a conference, then we allow that
25 so that they can maintain that fiscal support from

1 the grant.

2 Q. And then it says, elimination or reduction
3 of maintenance contracts that are not required to
4 sustain effective, efficient, safe operation.
5 Explain those cuts.

6 A. Yeah, we really tried to look at a number of
7 things that we were carrying, any kind of contracts
8 that perhaps we could start trying to do in-house,
9 means that we probably don't do them as efficiently
10 as we could with using contracts. We have a number
11 of service contracts, service provider contracts.

12 We reduce or minimize the use of those
13 folks. For example, we have a service contractor for
14 asphaltting. We don't use that person unless it's
15 just essential to do so for safety purposes on one of
16 the driveways in one of the school parking lot areas.

17 Q. We'll hear more about this later, but there
18 was a reduction in supplies and equipment,
19 expenditures across all budgets, explain that to the
20 Judges.

21 A. All schools need supplies, just basic
22 supplies even, paper seems to be one that comes up
23 all the time in our zero-base budgeting process. But
24 just simple things that we sometimes take for
25 granted, supplies such as paper and pens and ink

1 cartridges and printer cartridges and things of that
2 nature were reduced significantly.

3 We had to limit schools on the amount of
4 funds that they could utilize for that, as well as
5 equipment. And that was a difficult decision. We
6 made that decision overtly this year in reducing
7 access to technology. In the 21 century, that was
8 pretty tough to do, when kids are actually -- that's
9 their world, is technology.

10 Q. What about teachers in terms of using their
11 own dollars to go out and buy supplies and equipment,
12 have there been situations where the teachers have
13 had to do that?

14 A. Well, you know, seems to me that teachers do
15 that on numerous occasions because good teachers want
16 to do that, but it seems more teachers are doing
17 that. They're spending more and more of their own
18 money, and I'm hearing that quite frequently from
19 principals and administrators, that their teachers
20 are having to go out and use their own funds to buy
21 the basic supplies to operate a classroom.

22 Q. What --

23 A. And that should not happen.

24 Q. Explain the cut Workers' Compensation. Cut
25 Workers' Compensation, what does that mean?

1 A. We are funded individually. We fund our own
2 Workers' Compensation program, so we have funds set
3 aside. So anytime a worker is hurt on the job, then
4 we have -- we're self-funded, so we have to make sure
5 that we have enough funds in that fund that if
6 something serious, or again, catastrophic occurs, we
7 have enough dollars to cover those expenses.

8 Q. When it says, cut Workers' Compensation, you
9 reduced the fund?

10 A. We've pulled money out of that fund, that
11 would be correct.

12 Q. What was the extent of the reduction in the
13 fund?

14 A. We pulled approximately a million dollars
15 out that one year.

16 Q. Then, a sign-on bonus, it says, eliminate
17 sign-on bonus. What does that mean?

18 A. Well, you know, we were looking for anything
19 and everything. And this was another struggle that
20 we had because recruiting highly-qualified and
21 specialized teachers is an essential part of what we
22 want to do in Kansas City, Kansas School District.
23 And signing bonuses, although were not significant,
24 we couldn't afford to do. We could not provide any
25 kind of bonus to teachers to try to come to Kansas

1 City, Kansas, or even relocate at that point.

2 Q. So when we talk about keeping cuts away from
3 the classroom, this was a cut that directly affected
4 the teachers, or the prospective teachers?

5 A. Mm-hmm.

6 Q. And in terms of recruiting quality teachers,
7 did that elimination of the signing bonuses affect
8 that?

9 A. Well, I think --

10 MR. CHALMERS: Foundation.

11 Your Honor -- I'm sorry. There's lack of foundation
12 for that opinion.

13 Q. (By Mr. Rupe) Do you know whether it did
14 affect it or not?

15 A. Well, I think it certainly impacts when we
16 don't have the opportunity --

17 MR. CHALMERS: I'm sorry, I don't
18 know that there's a ruling on that. Asking whether
19 she knows doesn't allow her to give an answer --
20 foundation for how removal of the signing bonus has
21 had a causative effect on whether or not they've been
22 able to hire teachers. So if there's no survey or
23 any work that she's done, there's just no foundation.

24 JUDGE THEIS: Well, if you've got a
25 sign-on bonus and she's a CFO, I think that whether

1 it was employed was -- you could say whether it was
2 effective or not.

3 MR. RUPE: Okay.

4 JUDGE THEIS: If it's not there, I
5 suppose that speaks for itself.

6 MR. RUPE: Okay.

7 Q. (By Mr. Rupe) What happened with the
8 elimination of the signing bonuses, what effect did
9 it have?

10 A. As I began to say, obviously, when you
11 eliminate the sign -- the bonuses for recruitment,
12 then of course, it affects our ability to reach out
13 for highly-qualified teachers, so it definitely has a
14 negative impact overall in this process. And
15 something that we need to try to re-look at putting
16 in place, and are trying to do so.

17 Q. And then briefly explain what, delay uniform
18 replacement and reduced property and liability
19 insurance costs, mean.

20 A. I'm sorry, which one are you on?

21 Q. Right under -- I'm sorry, there's another
22 one there I want you to explain. What was the
23 reduction in activity bus routes?

24 A. That's when we actually had reduced, and in
25 some cases eliminated the after school activity bus

1 routes. We would send out either one to two busses
2 to all of the various schools, secondary schools
3 primarily, for activities and/or extended day
4 services and kids could get rides home.

5 Q. When you say extended day services, let's
6 take a disadvantaged kid who benefits from extended
7 learning opportunities and maybe part of an after-
8 school program, in that reduction, did those kids
9 have to find their own way home?

10 A. That would be correct, absolutely.

11 Q. Then, let's talk briefly about, delay
12 uniform replacement and reduce property and liability
13 insurance.

14 A. The replacement uniform cycle, we had to
15 delay that process. We had uniforms for athletes,
16 athletic programs. We had uniforms for band and
17 music programs, and in essence, we just stopped the
18 cycle that we had that rotation on. So we have kids
19 still participating in those programs but are
20 utilizing uniforms that are quite old, and in some
21 cases don't even fit. I hate to say that out loud,
22 but they just don't fit them. We had to basically
23 just delay and stop that rotation during that time.

24 Q. What about the property and liability
25 insurance, are you self-insured on property and

1 liability insurance?

2 A. We're not. We just had to be careful about
3 the amount of money that we were going to carry and
4 cover on our property in liability insurance costs
5 so ...

6 Q. And then it says, implement zero-based
7 budgeting. And we've heard much discussion about
8 that.

9 A. Mm-hmm.

10 Q. Explain to the Judges what this zero-based
11 budgeting is.

12 A. Yeah, thank you. I'd like the opportunity
13 to clear that up. And it's been an interesting
14 process for us. A zero-base budgeting process is --
15 helps us with two different categories.

16 First, we have Title I allocation fund that
17 you've heard a great deal about. Schools that are
18 eligible for Title I fund have a certain amount of
19 money that's already allocated to them. We have to
20 give them that amount that's based on the local
21 consolidated plan.

22 So we give them that. They have to share
23 with us how they're going to use those funds, and
24 they outline that. That gives them some
25 accountability and gives them some flexibility --

1 them being the school -- how they want to use their
2 dollars appropriately.

3 Then they have a general fund side. That's
4 a supplement to the general fund. On the general
5 fund, we ask them to come to the table asking for
6 whatever they think they need to operate their
7 school. And many cases, they don't ask for a lot.
8 And what I've come to realize, over the last several
9 years, is that they've just decided that they're
10 going to hear no, so they've stopped asking. They
11 ask for what they believe they can get rather than
12 what they need to actually operate their school.

13 Q. And have you asked them, from time to time,
14 to reduce what they asked for by five to 10 percent?

15 A. I've had to in the past. When we've looked
16 at knowing that we're going to have a reduction in
17 the base state aid per pupil, we know that in
18 advance, so we have to make reductions, so I need
19 them to be thinking about that reduction overall.

20 Some will still come in with an increased
21 amount and still ask for it. Some will come in with
22 a reduction, so we kind of get a little bit of
23 differences across the board, but I have asked for
24 that.

25 If I might add on this, too, just this year,

1 with the zero-base budgeting process, the reason that
2 I truly believe schools are not asking for what they
3 really need to function in the operation of their
4 schools is that -- we had a difference of nearly
5 \$700,000 in requests that we could not fund. It was
6 just not doable for us. And that was, my belief, and
7 I believe strongly, a minimal request, that schools
8 would have come forth with more.

9 Q. So the gap between what was asked by way of
10 the budget, and what you could actually deliver,
11 given the constricted request, was how much?

12 A. At this current year was approximately
13 \$689,000, almost \$700,000.

14 Q. Let's look at 2010, and I'm at 258. Let's
15 look at the 2010/2011 budget. It says, eliminate
16 tuition for teaching fellows. What is that?

17 A. That is the teaching program that Dr. Lane
18 addressed. We've tried to support the development of
19 teachers within our school district, and we had to
20 eliminate that particular program.

21 Q. It says, reduction in tuition to TEC. What
22 is that?

23 A. That's the Technical Education Center,
24 that's what TEC stands for. That's a reduction in
25 tuition that we pay for students to go to vocational

1 education programs.

2 Q. What was the consequence of that?

3 A. Significant. We reduced that approximately
4 quarter of a million dollars, \$250,000 which impacts
5 their ability in tuition to go to receive classes in
6 a vo-tech environment.

7 Q. When you say their ability --

8 A. Students.

9 Q. -- what are you talking about?

10 A. Students.

11 Q. Then, you have reduction in SPED. Does that
12 stand for "special ed"?

13 A. Yes, it does.

14 Q. What was the reduction?

15 A. That was the million dollars that Dr. Lane
16 referenced earlier, too, that we had to ask special
17 education to try to figure out how to re-adjust their
18 services, and they reduced their budget by a million
19 dollars.

20 Q. And then the last one in '10/'11 is, reduced
21 preschool to four days per week to save on
22 transportation. Explain that reduction.

23 A. Yes. On Wednesdays we have a staff
24 development that occurs district wide, and with the
25 preschool, with the little ones, by the time we would

1 get them there on Wednesday and get them back and --
2 because they're a half-day session anyway, Wednesdays
3 was half-day school, they were really going a quarter
4 of a day. So it made more sense to not have them
5 attend on Wednesday, and then we could save a little
6 bit of money in transportation, it wasn't
7 significant, but 140, \$145,000 starts to add up, so
8 we did that.

9 Q. Now, let's go into the current year,
10 2011/2012. You reduced department budgets 5 percent,
11 10 percent, to 30 percent overall. Explain that for
12 the Court.

13 A. Again, that's the various operation
14 departments that I've talked about from nutritional
15 services, from the shop or physical properties, to
16 technology, transportation, where we've asked them to
17 reduce their budgets in this current year the '10 --
18 excuse me, the '11/'12 year by another 5 percent. At
19 this point, it equates to somewhere in between this
20 10 to 30 percent, depending on the department.

21 Q. Alternative school system replaced, explain
22 that cut and amount.

23 A. Well, that's when we -- I talked about
24 earlier, we had our own alternative school program in
25 place. And we are now contracting with an outside

1 entity to reduce costs, and they are providing a
2 reduced and smaller-scale alternative school program
3 for us where we can't even serve middle school
4 students at this point.

5 Q. The alternative school is what?

6 A. The alternative school serves students in
7 several different capacities. At its highest
8 functioning, it would serve kids who potentially were
9 out-of-school suspended. It could serve students who
10 just were not functioning well in the traditional
11 school setting. It also served kids, oftentimes
12 transitioning out of the juvenile detention center.

13 However, now with the reduction with the
14 alternative setting, we don't have those options and
15 we really have minimized kids' opportunities to
16 receive alternative school settings. And tends to be
17 around kids who have been -- to eliminate or be in
18 lieu of suspension.

19 Q. So these were kids that either had
20 difficulty in school, were problem kids in school,
21 fall in the category of at-risk plus troubles, and
22 that program has been outsourced?

23 A. That would be correct.

24 Q. And has it been reduced?

25 A. It's been reduced, as well. We also cannot

1 serve as many students. We're not serving middle
2 school students like we did in the past. So yes, it
3 has been reduced.

4 Q. All right. And then says, superintendent
5 reorganization. Explain what that was.

6 A. You know, seems like we continue to talk
7 about how we do our best to avoid having a direct
8 negative impact on our schools, so we keep making
9 significant cuts at the central office or
10 administrative level to a point that it's becoming
11 detrimental in the operations of a central office.
12 There's been some conversations already shared with
13 you all in regards to significant positions that have
14 been cut where folks now are taking on two and three
15 different job responsibilities that are fairly
16 essential jobs.

17 Give you an example that we had a person
18 that was in charge of overseeing multiple reports,
19 like the civil rights reports, the school audit
20 reports. We had personnel overseeing our federal
21 programs. These people are no longer in existence
22 because of multiple central office cuts.

23 We also eliminated two departments,
24 frankly. One was our department of educational
25 research and assessment down to one person. I

1 believe it had five or six people, at one point, in
2 it, to provide the data we needed to make data-driven
3 decisions, and we had to reduce that to one person.
4 So there's been some significant impacts on those
5 cuts.

6 Q. Does that affect the data that you have
7 available to you, to make the decisions you need to
8 make to run the school districts?

9 A. It can impact the efficiency of getting the
10 data, definitely.

11 Q. In terms of the required reports, how did it
12 come to your attention that the required reports were
13 not getting done?

14 A. Well, the reports have to get done. They
15 have to get done by other people. Sometimes it gets
16 done slower or it comes to my attention because we
17 get late notices that they haven't been submitted.
18 And we're figuring out such and such person did a
19 report that perhaps we weren't aware of, so we're
20 having to re-assign responsibilities. And that's
21 where what's happening is that one person is actually
22 taking on the role of one and a half to two people
23 right now.

24 Q. What's the reduction in 2011/'12 to the
25 contingency reserve?

1 A. That will be what I had alluded to earlier,
2 that the additional \$2 million that we will take off
3 of the contingency reserve again this year.

4 Q. Then there was a reduction in the pilot
5 school support funds --

6 A. Uh-huh.

7 Q. I'm sorry, there was an elimination of the
8 pilot school support funds. Explain that.

9 A. We had set aside funding that was very
10 similar to that of what you'd heard about School
11 Improvement Grant dollars, all of that was a grant.
12 We called it pilot school funds for schools that were
13 on improvement, that were struggling. But we did not
14 have enough funds set aside to assist all of those
15 schools and with the necessary cuts, that was the one
16 area that we had to reduce.

17 Q. And then --

18 A. Frankly, eliminate.

19 Q. You also eliminated the driver's education
20 program?

21 A. We did. We had four driver's ed cars that
22 were in very poor condition. We could not afford to
23 replace them. Driver's ed oftentimes will end up
24 paying for itself as far as fees, can be fee-driven.
25 But you have to have the vehicles in which to have a

1 safe driver's ed program. And this is an area that's
2 kind of sad, too, because many of our students don't
3 have access to receive driver's ed in any other
4 location, so -- but we haven't had it now for two
5 years.

6 Q. As the business manager, can you explain to
7 the Judges what, if any, the increase costs are
8 associated with the size of the classroom? In other
9 words, what does it cost to make a classroom size
10 smaller?

11 A. Well, there's not a definitive number. I
12 think, that, you know, as we try to do a 24 to one
13 pupil/teacher ratio with an elementary school, for
14 example, in reality I think many of those classes --
15 the kids don't come in a nice little package of 24
16 students for each grade level. So oftentimes you'll
17 see 27 or 28 kids in a classroom.

18 So if we end up having to divide the number
19 of, say, 3rd graders that are in that particular
20 school, and we have to add a teacher, now we have an
21 additional cost associated with that teacher, plus
22 benefits, an entry level salary plus benefits. That
23 could vary. I could give you numbers based on that.
24 But that's how you would have to figure it for every
25 grade level.

1 Q. With the reductions that have occurred that
2 you've talked about beginning in -- get my numbers
3 out here -- beginning in '08/'09, has there been a
4 corresponding change this classroom size,
5 teacher/student ratio?

6 A. You know, overall, we've tried very hard to
7 try to keep it down, but realistically it's gone up
8 because we are not able to -- when we cut 130
9 teachers in '09/'10, that impacted multiple schools,
10 and that had to raise the pupil/teacher ratio.
11

12 Q. Are there costs associated with retaining
13 teachers?

14 A. There's always costs associated with
15 retention of teachers and certainly qualified
16 teachers. One is we have to provide quality
17 professional development to retain them. Second, we
18 have to have competitive salaries, frankly, to retain
19 them. And we are struggling to compete with
20 surrounding school districts in the salary category.
21 In the initial starting teacher salary, we're okay.
22 The more trained our teachers are or the higher
23 degree they become, we are no longer competitive with
24 surrounding school districts.

25 Q. Were there reductions, after the cuts began,

1 in professional development?

2 A. We tried to use some of the Title II money
3 for our professional development. And that was
4 specifically around the development of our guaranteed
5 viable curriculum. We did not have any additional
6 funds that we were able to set aside for professional
7 development. And then, of course, we froze all
8 travel for any other types of professional
9 development for staff so it was -- was eliminated or
10 reduced.

11 Q. And we talked about the signing bonuses.
12 Those were eliminated, true?

13 A. Yes.

14 Q. And in terms of new facilities, do you have
15 new facilities within the district?

16 A. Actually, for the first time in some time we
17 have a new preschool that was built a couple years
18 ago. This year, we are building a brand new addition
19 to one of our elementary schools and we will be
20 building two new elementary schools for our students.

21 Q. And are there costs associated with new
22 facilities?

23 A. There are costs associated with new
24 facilities and we are paying cash for the two new --
25 brand new elementary schools. And we have worked

1 very diligently as a school system to save that cash
2 to do that.

3 Q. Explain to the Court how you did that over
4 time.

5 A. Over a period of time we utilized our
6 capital outlay fund, we were able to save that, with
7 the eight mills that we were able to draw. And that
8 takes a number of years, because those dollars are
9 also -- need to be used for repairs. We do have
10 facilities that are 56, 57 years of age or older, so
11 we do have remodeling and repairs that have to be
12 up-kept, as well.

13 But over a period of time, we were able to
14 save money to purchase these facilities. The
15 addition that we're putting on T.A. Edison Elementary
16 School, we were able to access a qualified school
17 construction bond, the last one available in the
18 state. And through the financing of that bond, we
19 actually will pay back less money in the long run
20 than we've actually borrowed to put on the addition,
21 so we were fortunate to get that for the addition --
22 I'm sorry.

23 Q. Finish your thought.

24 A. I was just thinking that our community,
25 being a lower-wealth community, you know, we pay as

1 we go, and that's kind of the mentality of the board,
2 that's the mentality of our community. We don't have
3 a lot of money, and when we do, we build what we can,
4 and that's kind of how we've done the construction
5 projects. And unfortunately, we have not been able
6 to do what our kids deserve, and that's to have
7 equitable facilities like those of the students
8 around them and surrounding districts.

9 Q. Do you have increasing costs that you deal
10 with in terms of implementing the Common Core
11 Standards?

12 A. We have increasing costs when you're looking
13 at the Common Core Standards. I don't deal directly
14 myself with the curriculum side of that.

15 Q. Okay. But in terms of what you see in terms
16 of what the district has to pay to implement Common
17 Core, is there an increase in the cost?

18 A. From my understanding, from the coordinator
19 of curriculum and his request and their zero-base
20 budgeting, there's an increase in cost for the
21 implementation of supplies, materials, professional
22 development, eventually, around the Common Core.

23 Q. Are there increased costs associated with
24 NCLB?

25 A. It would be the same. From my

1 understanding, again, from the curriculum
2 coordinator, that it would be around any materials or
3 supplies that are needed to meet those requirements
4 as well as any professional development, if needed.

5 Q. Are the costs of special education
6 increasing?

7 A. Again, I don't deal directly with special
8 education. We have a coordinator that takes care of
9 that.

10 Q. But in terms of the budget, I want to know
11 from your point of view if there are increased
12 costs.

13 A. Always increased costs especially with
14 special education. The unfortunate part of that is
15 we've had to see a decrease in special education.
16 And we have a special education co-op that services
17 several districts. And the co-op board has had to
18 make tough decisions in decreasing their budget with
19 an increase in demand to provide services to their
20 students.

21 Q. I think I saw that, on the previous exhibit,
22 you actually had a decrease in your contribution to
23 the co-op?

24 A. It's a 6 percent decrease, I believe.

25 Q. And I think if you look at Exhibit 258,

1 that's delineated on that exhibit? Reduced --

2 A. Yes.

3 Q. -- SPED co-op contribution, 6 percent?

4 A. Mm-hmm.

5 Q. Is that correct?

6 A. Yes.

7 Q. Are your health insurance costs going up or
8 down?

9 A. Well, I would like to say they're going
10 down, but, like individually, they're certainly not.
11 They are going up. Tried to negotiate with insurance
12 companies, but it's not to my avail. They've gone up
13 significantly.

14 Q. What about utilities?

15 A. Utilities continue to go up just like at
16 home. We continue to see our electrical costs rising
17 rapidly. We have implemented an energy education
18 program trying to save funds the best we can to
19 reallocate or redirect some of those funds, but we
20 still have increased dollar cost overall.

21 Q. What about property insurance?

22 A. That was my bad news I just received.
23 Frankly, with the property insurance, we were hoping
24 for a low-end increase. We knew we would be getting
25 an increase. And I just got notice that we probably

1 are looking at a much higher increase, probably
2 closer to 200 to \$250,000 overall for the package for
3 property and general liability insurance, so we're
4 definitely seeing increase in our insurance needs,
5 too.

6 Q. In terms of teacher salaries, explain what
7 increases there have been for the teachers in Kansas
8 City, Kansas in the period of time since 2008/'09.

9 A. With the salary increases, I believe they've
10 had 1 percent increase, twice, and there's been
11 absolutely no salary increase for the rest of the
12 staff over the last four years.

13 Q. So the teachers --

14 A. Teachers have received a 1 percent.

15 Q. The 1 percent --

16 A. In two different years.

17 Q. Have you computed what it would cost to
18 catch the teachers up to where they should be in
19 terms of salary?

20 A. Yes, I could give you a rough estimate
21 probably.

22 Q. Okay.

23 A. Over a three-year period, I'm just thinking
24 like a 3 percent cost of living would cost roughly
25 6.5 to \$7 million just for teachers to catch them up,

1 is what I've computed recently.

2 Q. Did you increase your LOB?

3 A. It's that 30 percent; did not increase it to
4 31 percent, if that's what you're asking.

5 Q. There has not been an LOB election to go to
6 31 percent, true?

7 A. That's correct, no.

8 Q. Do you have any information for the Judges
9 on why that has not happened?

10 A. I think in a community of lower wealth --
11 and we've talked about this for -- this afternoon and
12 yesterday -- that there would be some -- that the
13 community would very much want to support education,
14 wants to support education, but would have difficulty
15 paying a higher property tax, frankly. So therefore,
16 the board is cognizant of that and is not, at this
17 point, willing to go out for an election for 31
18 percent.

19 Q. Let's take a look at 257. Do you have 257?

20 A. I do.

21 Q. What is Exhibit 257?

22 A. 257 is the document that we referenced as
23 the phase plan, the planning document that we've
24 utilized with the board of education regarding
25 potential cuts.

1 Q. Does the Phase 1 Plan '09/'10 quantify the
2 cuts that were made that are listed there?

3 A. This was the planning document, this is
4 probably some of the cuts that are on here. I'm
5 having difficulty reading this. I think it says 2.3
6 million. I believe there were probably more cuts
7 than that. If you look at the list that we re -- we
8 looked at prior and discussed, it's a bit longer.

9 Q. Can you give us, beyond the 2.3 number, what
10 the final number for cuts were in '09/'10?

11 A. I don't have that off the top of my head,
12 but I could get that. I'd have to think about.

13 Q. We may come back to that at some point
14 tomorrow.

15 A. Okay.

16 Q. In terms of the Phase 2, that lists, on 257,
17 the cuts for 2010 and 2011?

18 A. I'm comparing it to the bulleted list. I
19 want to make sure that everything's on there. And
20 that looks like it's correct.

21 Q. And that's a 5. -- approximately 5.4 number,
22 5 million --

23 A. Yeah.

24 Q. \$5,398,966. Is that the amount?

25 A. Yes. I'm sorry. Yes.

1 Q. And then 2011, those cuts amounted to
2 \$8,259,793?

3 A. \$8,259,904.

4 Q. Oh, \$904?

5 A. Yeah.

6 Q. Okay. Thank you.

7 A. That's correct.

8 Q. What about this Phase 4, '03 number, what is
9 that?

10 A. The Phase 4 that was on this plan are things
11 that were discussed with the board of education that
12 were potential cuts. But we did not move to those
13 potential cuts, which include things like the
14 transportation, and pushing it out to either two
15 miles or 2.5 miles for students to walk to school.
16 We are still utilizing the 1.5-mile range to pick up
17 secondary kids, and the .8 for elementary. The
18 elimination of the School Resource Officer Program is
19 still in place. We did not do that, but it was up
20 for a conversation, and the furlough days that were
21 discussed earlier.

22 Q. Would it be a fair characterization that
23 those are cuts that are on the table right now?

24 A. Yes.

25 Q. But have not occurred?

1 A. That's true.

2 Q. Turn to 256, please. I'm sorry, I'm not
3 going to go there. That's in evidence. What's next?
4 What is the LOB equalization aid?

5 A. A local option budget equalization aid
6 actually provides, basically, an equal playing field
7 for less-wealthier districts.

8 Q. It's been described as equalization aid that
9 enhances their buying power.

10 A. That would be true. It provides additional
11 spending power for a school's system.

12 Q. And that's state money, state aid, correct?

13 A. Mm-hmm, that would be correct.

14 Q. What did you use that money for?

15 A. Fully funded, we've used it for counselor
16 salaries, librarians, nurses, supplies, technology,
17 anything of that nature.

18 Q. In terms of --

19 A. It has been prorated and not fully funded.

20 Q. That's where I'm going. Explain that to the
21 Judges, please.

22 A. Well, the state aid that we should be
23 receiving is approximately 85.7 percent, fully funded
24 as our state aid, but it's been prorated down from
25 that to 83 percent. So rather than getting 65 cents

1 on every dollar, we're getting 53 cents for every
2 dollar on the state aid, so we're just actually
3 receiving less money. It's not fully -- so we've
4 lost funding.

5 Q. One time was it 100 percent?

6 A. On the state aid?

7 Q. Yes.

8 A. Yeah, could be, yes.

9 Q. All right. And then it was reduced to 85
10 percent?

11 A. 85.7 percent.

12 Q. Now it's where?

13 A. 83 percent.

14 Q. So the equalization aid, does every school
15 district in Kansas receive that?

16 A. No, huh-uh.

17 Q. How does that work?

18 A. You actually have to be a certain poverty
19 level, and I don't have the break-off point or the
20 chart that has -- but so many districts above a
21 certain break-off point actually receive it, and
22 certain districts below that do not.

23 Q. And you receive it?

24 A. We receive it.

25 Q. Kansas City, Kansas does?

1 A. That's --

2 Q. But it has been reduced?

3 A. It's been reduced by approximately \$5.2
4 million.

5 Q. That's what I was going to ask you, to
6 quantify that. And that money was used for what?

7 A. Well, what I was stating was that
8 counselors, nurses, supplies, technology, librarians,
9 things of that nature, we've had to make some
10 reductions in those particular areas as a result of
11 those cuts, as well.

12 Q. Because of the loss of LOB state
13 equalization aid?

14 A. Mm-hmm.

15 Q. Correct?

16 A. Yes.

17 Q. What is capital outlay equalization aid?

18 A. Well, again, it provides kind of an equal
19 playing field, but it's for the support of facilities
20 and providing the repair and remodeling of facilities
21 and equalizes funds to districts that do not
22 receive -- don't receive that money. And no longer
23 do we get it. Nobody gets the equalization for
24 capital outlay.

25 Q. In terms of when that money stopped, when

1 did it stop?

2 A. I believe it was in '09.

3 Q. Okay, for the '09/'10 school year?

4 A. That's correct.

5 Q. And with regard to that capital outlay
6 equalization money in say '09, how much was that to
7 your district?

8 A. That was prior to my time, but I believe it
9 was 2.4 million.

10 Q. Okay. And then in 2010/'11, did you receive
11 it?

12 A. No.

13 Q. In 2011/'12, did you receive it?

14 A. No, we haven't.

15 Q. And do you receive it for '12/'13?

16 A. No.

17 Q. And the effect of not having that money is
18 what?

19 A. Directly impacts our ability to maintain
20 facilities at a level that we need to, repair
21 facilities at the level that we need to, and allow
22 our students to feel like they can be in buildings
23 that are of quality, just as their neighboring peers.

24 Q. Okay. Talk to us about the process that USD
25 500 utilized to decide on what cuts to make. How did

1 that work?

2 A. Well, as we -- you know, we look at what the
3 base state aid -- the base state aid per pupil is
4 going to be. We kind of do our whole budgeting
5 process and we look at what the general fund's going
6 to be. Then, we start out with our zero-base budget
7 process. We have schools and departments, kind of,
8 identify the needs of what they're going to have to
9 have for operation.

10 We take that information to the board of
11 education. We talk about it with them. After we've
12 had conversations with the superintendent and her
13 counsel, then decisions are made with the board on
14 what needs to stay funded, what needs to be reduced
15 potentially, or eliminated, based on the available
16 dollars.

17 Q. Have you determined whether the needs of
18 students requiring special education are being met
19 with the resources that you have?

20 A. I'm not sure I'm the one to actually answer
21 the question. I feel better to have the director of
22 special education address that with the funds that
23 she has available.

24 Q. Does the State of Kansas have a zero-base
25 budget process for schools?

1 A. I'm not familiar with any other district
2 that's using it. It's not to say that they're not.
3 I know that I'm not familiar with any other district
4 that's using it, and I find that it's very effective
5 for us; sometimes a bit frustrating, honestly,
6 because we want it to be the true zero-base budgeting
7 process that it can be. And when I say that, I want
8 principals to come forth with what they really need,
9 and it's hard for them to do that.

10 Q. There was a suggestion and a question by
11 Mr. Chalmers that the zero-base budgeting came about
12 as a result of a recommendation from KLN. Did it?

13 A. You know, I was involved early on with the
14 needs assessment process with the Kansas Learning
15 Network and had nothing -- I had no awareness of that
16 recommendation coming from there. In fact, I thought
17 we were doing zero-base budgeting prior to that needs
18 assessment.

19 Q. Where did the idea for zero-base budgeting
20 in USD 500 come from?

21 A. Actually, my predecessor, who is Dr. Lane,
22 as the assistant superintendent, decided to utilize
23 this process to engage the schools and their
24 budgeting, and to take a closer look at their
25 individual needs per building.

1 Q. Are you aware of situations within the
2 district in which your teachers are going out and
3 getting part-time jobs at other places?

4 A. Teachers do go out and get part-time jobs.

5 Q. Has that increased?

6 A. Seems to increase a lot where they're trying
7 to get additional tutorial jobs, either in the
8 district, typically with SES, or Supplemental
9 Education Service Providers, which are tutoring
10 companies that'll come in. Or they'll go out and get
11 jobs outside of the school district to supplement
12 their income. Oftentimes, and what I hear even more
13 so, is summer jobs to supplement income.

14 Q. In terms of somebody from the human
15 resources -- we're going to have somebody testify
16 from human resources, but have you made any
17 observations with regard to qualified teachers in the
18 district leaving the district for neighboring
19 districts or other jobs?

20 A. I hate to admit, but regularly. Seems like
21 districts come into our school system. We train
22 them, we train them well, and they actually then will
23 leave, and not only a certified teachers, but
24 counselors have done the same that I've known
25 personally and gone to neighboring school districts

1 for one reason and one reason only; and that's for
2 increased salary, more money.

3 MR. RUPE: That's all the questions
4 I have.

5 JUDGE THEIS: Mr. Rupe. Excuse me,
6 Mr. Chalmers. We're not sure what the school -- how
7 the school budgeting works, time-line-wise, you know,
8 whether they're planning for tomorrow, today, or when
9 in the process -- when things need to be submitted or
10 when you need to make a decision concerning a budget.

11 MR. RUPE: Okay. Let me ask her
12 that question.

13 JUDGE THEIS: Okay.

14 Q. (By Mr. Rupe) Why don't you explain that to
15 the Judges, please.

16 A. Okay. I'll do my best to give you an
17 overall time line of the budgeting process. We try
18 to start that process as early as we can, oftentimes
19 not knowing what we're budgeting from. But we since
20 we utilize a zero-base budget process, we will start
21 as early as February in our school district, maybe
22 early March, and start having meetings where I
23 actually will meet with every individual school and
24 every individual department and review their budget
25 with them that they are submitting and presenting,

1 about what their needs are.

2 At that point, all of that money, as I said,
3 is looked at. We are looking at the overall budget
4 with the superintendent's counsel between March and
5 April. We are talking to the board from January to
6 April. We have special board budget meetings with
7 them, so all of this is being shared with them as we
8 go.

9 We then complete the budget forms. That was
10 the whole packet of budget forms that have to be
11 submitted to the state department in July, and the
12 budget actually has to be submitted for board
13 approval in July, and to the county clerk mid August,
14 I believe it's August 15th, for final approval.

15 THE WITNESS: Did that help?

16 JUDGE THEIS: Well, that would be
17 for the fiscal years starting in July?

18 THE WITNESS: Yes, mm-hmm, so we go
19 into August --

20 JUDGE THEIS: Starting, from July
21 of the year you're getting your budget approved, a
22 month earlier than you actually get it to the county
23 clerk?

24 THE WITNESS: That's correct.

25 JUDGE THEIS: And before you know

1 it, the Legislature gives it.

2 THE WITNESS: That's happened, yes,
3 that's why I make -- sometimes it makes it very
4 difficult for the pre-planning, too, because we don't
5 know what's going to happen. And we may have gone
6 through months of planning and making suggestions,
7 and there could be changes, potentially. Or we've
8 submitted the budget, even to the county clerk, and
9 then we've had allotments in the past, and we've had
10 to make changes again and start all over in the
11 process.

12 JUDGE THEIS: You may not know
13 because you weren't there, those years in which they
14 increased the funding, how do you implement that
15 funding?

16 THE WITNESS: Well, the increased
17 funding, typically, that made it a little bit easier
18 because they projected out an increase in the base
19 state aid. So when the cuts occurred and they were
20 unaware -- we became unaware (sic) that the cuts were
21 going to happen mid year, and we were already in the
22 middle of a contract -- in the middle of the school
23 year, or a quarter of the way through a school year,
24 where we had contracts signed with teachers and
25 things of that nature, and we had to figure out how

1 to cut somewhere between 1 and \$2 million out of a
2 budget in the existing year.

3 JUDGE THEIS: Let me --

4 THE WITNESS: That was more than
5 difficult.

6 JUDGE THEIS: The school year runs
7 from September to August -- September to June.

8 THE WITNESS: July 1 to June 30.

9 JUDGE THEIS: Fiscal year.

10 THE WITNESS: Yes.

11 JUDGE THEIS: So when the
12 Legislature cut, you were right at the tail end of
13 one fiscal year, but for the next budget year, how
14 did that work? I mean, that still hadn't been
15 formulated, had it?

16 THE WITNESS: Right, oftentimes we
17 don't have that information.

18 JUDGE THEIS: So you were
19 scrambling?

20 THE WITNESS: Or we formulate a
21 budget and sometimes we have to re-publish it.

22 JUDGE THEIS: If you got money,
23 obviously you -- I assume, by that time you've
24 decided what's going to be taught and where you're
25 teaching it and what's running. If they drop money

1 on you in May, are you capable of using it?

2 THE WITNESS: If they increase the
3 base state aid, you mean?

4 JUDGE THEIS: Yeah, like, in May,
5 they leave -- you know, dump a billion dollars on
6 you, then your school year starts in September and
7 your fiscal year in July.

8 THE WITNESS: Make sure I
9 understand this correctly. If they provide us a lot
10 of money in May, is it to be spent by June 30th at
11 the end of the fiscal year --

12 JUDGE THEIS: No --

13 THE WITNESS: -- and be used
14 through the next school year?

15 JUDGE THEIS: Right.

16 THE WITNESS: Absolutely, it could
17 be utilized.

18 JUDGE THEIS: How would that work?

19 THE WITNESS: Because we would then
20 be able to identify the number of teachers that we
21 needed, we could reduce the class sizes, we could get
22 folks hired. You know, we may get teachers hired a
23 little bit later than we normally would try to do for
24 the beginning of the school year, but we would
25 absolutely try and do that. And the later in the

1 year, more difficult it is to get teachers hired
2 sometimes, but ...

3 JUDGE THEIS: Thank you.

4 MR. RUPE: No further questions.

5 JUDGE THEIS: Questions based on
6 mine, Mr. Rupe?

7 JUDGE BURR: No.

8 JUDGE FLEMING: Call it a night.

9 JUDGE BURR: Do we need to take up
10 the issue on the witnesses?

11 JUDGE THEIS: Maybe. Do we still
12 have the witnesses issue?

13 MR. RUPE: We have witnesses
14 available tomorrow morning. I think the first
15 witness that is the subject of his motion won't come
16 up for some time until later tomorrow. I've been
17 busy today. I haven't had an opportunity to respond
18 to his trial brief, and I'd like to do a little work
19 on that before I argue it. I could argue it tonight,
20 but I would need some time before -- you know, a
21 break or something before we argue it.

22 JUDGE THEIS: Let's just wait. You
23 can step down.

24 Are you going to be very long,
25 Mr. Chalmers?

1 MR. CHALMERS: Longer than eight
2 minutes.

3 JUDGE THEIS: Longer than or not
4 longer than?

5 MR. RUPE: He said, "longer than."

6 MR. CHALMERS: Longer than, I'm
7 afraid.

8 JUDGE THEIS: Okay.

9 JUDGE FLEMING: Nine in the
10 morning.

11 JUDGE THEIS: Yeah. Nine. Okay.

12 MR. RUPE: That's fine. We'll see
13 you at nine.

14 (Thereupon, the proceedings were
15 adjourned to June 6, 2012, at 9:00 a.m.)
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1 CERTIFICATE

2 STATE OF KANSAS)
) ss:
 3 COUNTY OF SHAWNEE)

4
 5 I, Liebe Franges, a Certified Court
 6 Reporter, and the regularly appointed, qualified, and
 7 acting Official Reporter of Division No. 7 of the
 8 Third Judicial District of the State of Kansas, do
 9 hereby certify that as such Official Reporter, I was
 10 present at and reported in Stenotype Shorthand the
 11 above and foregoing proceeding in, Case No.:
 10-C-1569, Gannon, et al, v. The State of Kansas,
 heard on June 5, 2012, before the Honorable Franklin
 R. Theis, Judge of the District Court of Shawnee
 County, Kansas; The Honorable Robert J. Fleming,
 Judge of the District Court of Labette County,
 Kansas; and The Honorable Jack L. Burr, Judge of the
 District Court of Sherman County, Kansas.

12
 13 I further certify that at the request of
 14 Plaintiffs and Defendant, a transcript of my
 15 shorthand notes was typed and that the foregoing
 transcript, consisting of 264 pages, is a true copy
 of said COURT TRIAL.

16 SIGNED, OFFICIALLY SEALED, and delivered this
 31st day of July, 2012.

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 LIEBE FRANGES, C.C.R #1671
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 3)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 6th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

KELLI MATHER

CROSS BY MR. CHALMERS	477
REDIRECT BY MR. RUPE	554
RE CROSS BY MR. CHALMERS	570

RABIHA HATRIDGE

DIRECT BY MR. RUPE	574
CROSS BY MR. CHALMERS	606
REDIRECT BY MR. RUPE	617
BY THE PANEL	618

KIM MORRISSEY

DIRECT BY MR. RUPE	622
CROSS BY MR. CHALMERS	649
REDIRECT BY MR. RUPE	655
BY THE PANEL	657
RE CROSS BY MR. CHALMERS	659

STEPHANIE SORENSON

DIRECT BY MR. RUPE	660
CROSS BY MR. CHALMERS	669
REDIRECT BY MR. RUPE	681
RE CROSS BY MR. CHALMERS	682

EDWIN HUDSON

DIRECT BY MR. RUPE	684
CROSS BY MR. CHALMERS	710
REDIRECT BY MR. RUPE	732

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: Good morning. You
3 can be seated, thank you. We don't mean to be tardy
4 but our clocks have a five-minute delay. Where we
5 going to?

6 MR. RUPE: I think.

7 JUDGE THEIS: Witness we had
8 yesterday.

9 MR. RUPE: Kelli, have a seat up
10 there. I think cross-examination of Kelli Mather.

11 KELLI MATHER, having been
12 previously sworn was examined and testified as
13 follows:

14 CROSS-EXAMINATION

15 BY MR. CHALMERS:

16 Q. Dr. Mather, yesterday you talked about an
17 exhibit which was Plaintiff's Exhibit 20. It's kind
18 of a colorful exhibit. I don't want to go into
19 detail, but it shows the list of how you calculate
20 what the general fund is.

21 A. Uh-huh, that's correct.

22 Q. I just want to be clear, this is talking
23 about operational costs, isn't it?

24 A. Yes, it generates our general fund.

25 Q. It's not talking about all revenue, is it?

1 A. That's correct. It's our general fund and
2 then allows us to generate our local option budget.

3 Q. I have an excerpt for the Wyandotte County,
4 or your school district, on the blow-up that comes
5 from Exhibit 1068. And this would show all sources
6 of revenue. It shows the state aid, the federal aid,
7 and local revenue over the years, as well as the FTE
8 enrollment for your district, is that right?

9 A. That's what the chart shows, yes.

10 Q. So if we're interested in knowing how much
11 money, in total, Wyandotte County spent, we could
12 look at this chart and we would have information
13 about that over the years, is that correct?

14 A. Correct.

15 Q. In the state aid -- or in the enrollment
16 category, these FTE numbers, full-time -- or FTE, we
17 talked about that, briefly, but what is that?

18 A. It's the full-time equivalent student who's
19 enrolled in the school district, not necessarily the
20 head count, but a full-time equivalent student.

21 Q. And we'll talk about this in a little bit
22 more detail, but when you talk about some of these
23 other categories here -- well, and full-time
24 equivalent might mean you could have students come
25 and go during the school year, you could have a

1 variety of difference situations. What you're trying
2 to do is have an apples to apples comparison of the
3 full-time equivalent, is that right?

4 A. That's right, but students leaving off the
5 audit wouldn't matter. It's actually prior to the
6 September 20th, count, so ...

7 Q. If you have a student leave and got a little
8 extra money for it, that's just a plus?

9 A. Actually, or less money, frankly, if they're
10 not there.

11 Q. If they're not there. You've got state aid
12 and local revenue. And actually, if we look at the
13 LOB founding, we're going to find some in the state
14 aid category and some in local revenue?

15 A. You would have the equalization and LOB
16 budget.

17 Q. And you'd also have -- some of the general
18 fund, we're going to find some for your district in
19 the state aid and some for the local revenue?

20 A. And the state aid, mm-hmm.

21 Q. That's because every district is required to
22 have a 20 --

23 A. 20 mills.

24 Q. -- mill levy and that's called a local
25 effort?

1 A. Mm-hmm.

2 Q. That's part of this number that would be
3 reflected on this chart, is that right?

4 A. That's correct.

5 Q. So we understand how that works, if you are
6 a district that raises all the money that you need
7 for your general fund from your 20 mill levy -- I
8 don't know if there is such a district as this --
9 this would be bigger and this category would be
10 smaller?

11 A. Correct.

12 Q. But the money that comes from the general
13 fund under these mill levies, if you are a district
14 that can't raise as much as with 20 mills in your
15 local effort, then that's made up on the state side?

16 A. That's correct, we get additional
17 equalization.

18 Q. The state aid aspect would also include
19 equalization money for bond and interest?

20 A. Yes.

21 Q. It would include, in some past years
22 equalization money for capital outlay?

23 A. Past years, correct.

24 Q. It would include equalization money for the
25 LOB, that is if you -- the LOB now, so that we're

1 clear on that, that's discretionary with the
2 district. They can choose to raise additional funds
3 that are for their foundation obligation under a
4 budget called an LOB, is that right?

5 A. Used to be called a supplemental general
6 fund. Now it's the local option budget. Up to 30
7 percent, that's correct, 31 percent.

8 Q. 30 percent, the district does that at its
9 discretion, you don't need to go to the voters?

10 A. Correct.

11 Q. If you want to get an extra 1 percent, then
12 you have to have an election?

13 A. That's correct.

14 Q. The capital outlay fund, there's a mill levy
15 for that, and a district can collect money; that
16 would be in the local revenue category, as well?

17 A. Yes.

18 Q. The funds, if you get state aid by way of
19 state grant, that's going to be in the state aid
20 category, is that correct?

21 A. Yes.

22 Q. And beyond the general funds, there are
23 state grants that a district can apply for and can
24 receive, is that correct?

25 A. There are state grants, federal grants, but

1 are not continued money or guaranteed money over a
2 period of time.

3 Q. Well, that's the nature of a grant, you come
4 in --

5 A. Right.

6 Q. -- say, got a problem. They say, here's
7 what we give you to fix that problem. That's the
8 idea, isn't it?

9 A. Short-term. Problem is, is you can't depend
10 on it long-term, but that's correct.

11 Q. Ideally, the fund or the grant has the idea
12 that at the end of the grant you have fixed the
13 problem?

14 A. That may be the idea --

15 Q. That's the philosophy --

16 A. Yeah.

17 Q. And then, you've got federal aid, and that
18 comes from a variety of different sources, the
19 different Title programs that I think that we talked
20 about in Dr. Lane's testimony -- you were out here?

21 A. Correct.

22 Q. Federal aid has also included, last few
23 years, some stimulus money, where the idea was the
24 federal government said, look, we understand that
25 states are having problems. What we'll do is give

1 you some federal money to plug in where the state
2 money would have been otherwise?

3 A. That's correct.

4 Q. Is there any other source of -- well, there
5 are also donations that a district can receive that
6 might go to revenue?

7 A. We may get some charities or charity
8 donations. That's rare in our district. We don't
9 have a lot of that.

10 Q. I think that Dr. Lane talked about some sort
11 of program that was used in partnership so you could
12 get your \$16 million new administration building.
13 What was that?

14 A. I'm not sure what you're referencing. We
15 actually had relocation dollars from the unified
16 government because we had to move out after they
17 condemned --

18 THE COURT REPORTER: The what?

19 THE WITNESS: Indian Springs
20 Shopping Mall.

21 Q. The unification money you're talking about,
22 what, local government or, what, county money --

23 A. Yes, relocation dollars from them.

24 Q. That would fit in the local revenue category
25 or do you know?

1 A. I'm not sure.

2 Q. Could be outside that entirely?

3 A. Could be.

4 Q. Now, those are the sources of revenue and
5 the expenditures. I want to talk to you about how
6 the money is spent.

7 JUDGE THEIS: Are those marked at
8 all, Mr. Chalmers?

9 MR. CHALMERS: Your Honor, I think
10 what we agreed to do is mark the blow-ups later on,
11 but that comes from another exhibit. And give me a
12 second, I'll give you the exhibit number. It's
13 Exhibit 1037, Your Honor.

14 JUDGE THEIS: That's the one on the
15 board now?

16 MR. CHALMERS: Yes, sir.

17 JUDGE THEIS: What was the --

18 MR. CHALMERS: That's the blow-up.

19 JUDGE BURR: This is merely a part
20 of 1037 --

21 MR. CHALMERS: It is.

22 JUDGE BURR: -- as I understand it.

23 JUDGE THEIS: First one was the
24 same way?

25 MR. CHALMERS: The first one was a

1 portion of -- and sorry, Your Honor, the exhibit
2 number on it -- just set it down.

3 MR. RUPE: 1016.

4 JUDGE THEIS: 1016.

5 MR. CHALMERS: I think I have
6 1068 --

7 MR. RUPE: Okay.

8 MR. CHALMERS: -- in my notes.

9 MR. RUPE: I didn't hear you.

10 JUDGE THEIS: Thank you.

11 Q. (By Mr. Chalmers) In Exhibit 1037, the first
12 page of it -- here, I can loan you that for a
13 second -- it provides the definitions of these
14 various functions, doesn't it?

15 A. Yes.

16 Q. And those definitions come from the U.S.
17 Census Bureau talking about what moneys, as spent,
18 goes into what categories of items, is that correct?

19 A. Yes.

20 Q. For instance, transportation has its own
21 separate category, and there's a definition in the
22 exhibit that talks about what transportation is.

23 A. Has a number and a definition, that's
24 correct.

25 Q. Now, this particular blow-up is for the

1 State showing the instructional expenses and so
2 forth, but this document would reflect, really, more
3 what the operational costs are more so than -- or
4 operational expenses are more so than the previous
5 document that talked about expenditures and totals,
6 wouldn't it?

7 A. Help me understand your question a little
8 bit more.

9 Q. It's a bad question. The expenditures in
10 total include bond and interest, capital outlay.
11 These listings of operating expenses would not
12 include the mortar, the maintenance, the books, those
13 sorts of the things that are in these other
14 categories, is that right?

15 A. No.

16 Q. Okay.

17 A. From my understanding I'm not sure what's
18 behind each one of those numbers on that, but some of
19 those categories that are listed here do include some
20 of the items you just mentioned, textbooks,
21 materials. Now, capital outlay, KPERS, bond and
22 interest may not be reflected on there, but the
23 majority of other responses are reflected on that.

24 Q. If so, they would fit within the definitions
25 sections we just talked about?

1 A. On this sheet you provided me.

2 Q. Yeah. So if we had books, where would that
3 fit within that category, which does that fit in?

4 A. Most likely it would be under 2200.

5 Q. That's support services and instructional
6 staff?

7 A. Mm-hmm.

8 Q. You should have in front of you --

9 MR. CHALMERS: -- and I think it
10 was provided to Your Honors yesterday --

11 Q. -- Exhibit 1026, the '11/'12 Budget at a
12 Glance. Do you have that?

13 JUDGE FLEMING: It's 1021, isn't
14 it?

15 A. Yes, I do.

16 MR. CHALMERS: Well, I want 1026.

17 JUDGE BURR: 1026 on this.

18 JUDGE FLEMING: Okay, here it is.

19 Q. I want to talk to you about what a Budget at
20 a Glance is first. And am I correct that this is a
21 document that has to be prepared for the State each
22 year after the budget is approved, that is the
23 district budget's approved?

24 A. That's correct.

25 Q. I think yesterday there was some

1 conversation about when that budget is approved, and
2 I want to see if I have that straight. You get
3 information from the Kansas Department of Education
4 that tells you what your likely general fund money
5 will be after the Legislature passed its
6 appropriation act, is that correct?

7 A. That would be correct.

8 Q. That isn't to say there aren't discussions
9 with the department and projections as to how that
10 might play out, but when you first have a solid
11 number, it's after the Legislature appropriates what
12 they're going to allow for general fund and other
13 categories for that year?

14 A. That's when we would have a solid number.

15 Q. So in this year, the solid number would have
16 been at the tail end of May?

17 A. Mm-hmm.

18 Q. And then, after that -- your district would
19 have been working on this before, but after having
20 that solid number, that's when you actually will plug
21 that in and come up with what your proposed budget is
22 to the board to review and pass?

23 A. That's correct. We have done at all that
24 work, as I explained yesterday, months and months --
25 once we have a solidified number, we have to go

1 before the board. It has to have a board hearing.
2 We will do that, typically, in July.

3 Q. So you have, in this instance, in late May,
4 kind of, now we know what numbers will be from the
5 Legislature. That's been a little later sometimes;
6 it's been a little earlier sometimes?

7 A. That's correct.

8 Q. But probably, for practical reasons, it's
9 always before the end of the -- well, it's always at
10 the tail end of the legislative session?

11 A. In my experience.

12 Q. And with that number then, your board will
13 review its budget and approve it, and that is always
14 in July, is that correct?

15 A. We have the board hearing. We have to do
16 that in the July board meeting because we have to
17 submit it to the county clerk in August, so we have
18 to get it before the board.

19 Q. The county clerk needs it because they need
20 to be able to calculate, what the --

21 A. Taxes.

22 Q. -- local tax rates will be in August?

23 A. That would be correct.

24 Q. So if they don't have it before their August
25 numbers or before August, then it affects whether or

1 not they can get the tax rates out -- or taxes out?

2 A. That's correct.

3 Q. The budget, once it's approved, is sent to
4 the State, including this Budget at a Glance, which
5 is the 1026 exhibit we've talked about?

6 A. Correct.

7 Q. And once the budget is in place, the
8 authority for your district to spend more money than
9 the budget, is what?

10 A. I'm not sure I understand the question.

11 Q. Well, if, during the course of a year, there
12 was a windfall and you received additional funds,
13 maybe some benefactor --

14 A. Like from a grant or from an individual?

15 Q. Yes.

16 A. Then the board of education would direct us
17 on how to spend those funds.

18 Q. So there are ways to spend more in that
19 instance, but is there -- if the district -- or I
20 guess it would have to be a special procedure,
21 wouldn't it, that we've never gone through if you
22 received more state funding?

23 A. We've never, unfortunately, received more
24 than state funding. We potentially would have to
25 re-publish the budget. We've had to do that,

1 historically, in the past, if there's been an
2 increase in enrollment that adjusted any of the
3 weighting figures with kids. It's been unfortunate
4 we haven't had that scenario, but that would be
5 the only time that we'd have to do that.

6 Q. The budget process itself in terms of the
7 approval of it -- let's back up for that for just a
8 second. The proposed budget is actually made
9 available for the public's consideration before the
10 vote by the board, isn't it?

11 A. Yes.

12 Q. It has to be within a certain time period
13 anything else?

14 A. Right, and we do that the board meeting
15 previous to the one that the board actually does the
16 hearing.

17 Q. And how much before that board meeting when
18 they will vote on it do you have to provide a copy of
19 this budget for public notification?

20 A. There's a two-week window with the two board
21 meetings. I believe it's a ten-day.

22 Q. And then, at the board meeting, when it's
23 approved, you have -- it's an open board meeting,
24 that is, it's a public meeting, is that correct?

25 A. That would be correct.

1 Q. And people from the community, or for that
2 matter, teachers or administrators, come in and they
3 can provide input to the board on the budget, can
4 they not?

5 A. They can. It's called a budget hearing and
6 they can give input at that point.

7 Q. At the time of the budget hearing, is that
8 when also a decision is made on what the mill levies
9 will be? I guess you don't know the exact mill levy
10 amount, but on what the LOB is, is that right?

11 A. Not the exact amount until the taxes are put
12 in place. So we can do the rough estimates based on
13 the budget, that's what we're trying to do.

14 Q. When the budget is published, at least by
15 that date, the district needs to commit, this is the
16 percentage --

17 A. That's --

18 Q. -- of general fund we want LOB, this is what
19 we want in capital outlay, this is what we want in
20 whatever other local taxes we can levy?

21 A. That would be correct. If we're going to
22 maximize our LOB at 30 percent, we would do that, or
23 eight mills for capital outlay.

24 Q. And again, during that time frame, you'd
25 have ten days or two weeks, as a practical matter,

1 for the public to come in and weigh in on what the
2 increases or decreases might be --

3 A. That would be correct.

4 Q. -- on those mill levies? Now, taking a 30
5 percent of the LOB -- and we'll talk about that in a
6 little bit of detail in a moment -- and trying to
7 figure out how much the mill levy must be for that,
8 who decides what the mill levy needs to be in your
9 district to raise 30 percent of the general fund,
10 which is the LOB budget, assuming that's how much has
11 been requested?

12 A. Well, the director of finance actually works
13 through the figures and then presents with myself and
14 the board what overall the mills, kind of, fall out
15 in each of those particular areas.

16 Q. So you're familiar with approximately how
17 many mills it takes to raise required funds in your
18 district?

19 A. I know how much a mill cost -- how much
20 money a --

21 Q. That's where I was headed. How much does
22 one mill raise in your district, or how much did it
23 raise last year?

24 A. Approximately \$695,000.

25 Q. Now, the mills that we're talking about is

1 property tax, both commercial property and personal
2 property, is that correct?

3 A. That's correct.

4 Q. So as a homeowner, I'm subject to it as well
5 as a business owner, is that right?

6 A. Mm-hmm.

7 Q. There are, under the statutes, certain
8 properties that are excluded from the property tax,
9 is that correct?

10 A. That is correct. And I might also add that
11 we have, probably, the highest county for abatement
12 for property, both commercial and personal property,
13 so, it's difficult.

14 Q. Then, you have an abatement with the first
15 20,000 for a personal residence, is that correct?

16 A. Yes.

17 Q. Do you know how much a one mill increase
18 translates into a pocketbook of an individual
19 homeowner who has a home of, I don't know, whatever
20 category, let's say \$50,000 in assessed value?

21 A. I don't have it off the top of my head. I
22 have calculated that for a board in the past.

23 Q. We can calculate it probably later on here,
24 but what's your best estimate of what it translates
25 into?

1 A. I want to think -- what was the value of the
2 home?

3 Q. Well, I said 50,000. If you calculated it
4 for 100 or 150 --

5 A. I figured it at \$100,000 home, which is a
6 high-value home in our community, I'm going to be
7 speculating here if I guess because I don't know if I
8 recall that, but I want to think it was 24, 25
9 dollars for some reason.

10 Q. That's 24 or 25 dollars for the year?

11 A. Mm-hmm.

12 Q. And I'm sorry, I didn't hear your answer,
13 was it yes?

14 A. Correct.

15 Q. The Exhibit 126, if we turn to page -- the
16 first page is numbered one. That would be the third
17 page in. It shows a table that has the same function
18 descriptions, or many of the same function
19 descriptions as the blow-up that we have in front of
20 you, is that right?

21 A. That would be correct.

22 Q. And so if we want to look at the definitions
23 of these functions, we can look at the sheet that we
24 talked about and it would be the same definitions
25 that applies in this exhibit, is that correct?

1 A. Yes, they should be a same definitions.

2 MR. RUPE: Yikes. Sorry.

3 MR. CHALMERS: I needed some water
4 to knock over there.

5 Q. This document at page 1 focusing just on
6 instructional costs, and so -- and the Court can read
7 it, but it says, 2009/2010 it as an actual number of
8 instructional costs for about \$152 million, is that
9 correct?

10 A. That's correct.

11 Q. Now, there is a state statute, you're aware,
12 that says that the instructional spending is supposed
13 to be, at a district level, 65 percent. Are you
14 aware of that?

15 A. No, I was not aware of that.

16 Q. I won't ask you about it. When you talk
17 about actual, that figure, then, would be based on
18 what was reported in the Budget at a Glance, what
19 actually was spent on instruction for the 2009/2010
20 years, is that correct?

21 A. Yes, the actual cost.

22 Q. As contrasted with the '11/'12, which is the
23 budgeted amount, and that's the amount that was
24 anticipated or was hoped would be spent after the
25 numbers had been provided in appropriation and all

1 the estimates for what would be this years, is that
2 correct?

3 A. That's correct.

4 Q. Now, how is it that these numbers are
5 verified? How does your office or your district make
6 sure that the information that you're publishing and
7 providing the State and the public is accurate?

8 A. Well, in the final column, the '11/'12, is
9 what we put out as projections for our budget that we
10 anticipate spending. Until the end of the fiscal
11 year, we don't know what the actuals are. We go back
12 and the director of finance and her staff go back and
13 they verify that through our system that we utilize
14 to check the actual expenses, and then we publish
15 them in this report.

16 Q. And you talked about expenditures. There
17 are also, in this exhibit, the budget, the Glance,
18 there's other information other than expenditures,
19 and we'll talk about that in a second, but how is
20 that verified, confirmed that it's accurate?

21 A. It's the same thing. We have a system in
22 place with the school district that we track our
23 finances called GEMS, and we verify the revenues and
24 expenditures that way.

25 Q. Now, first page, or page number one of

1 Exhibit 1026, third page in, shows an increase in the
2 money spent on instruction of 2 percent from '09/'10,
3 '10/'11, is that correct?

4 A. I'm sorry, what page did you go to?

5 Q. It's the third page in, but it's numbered
6 one at the bottom. Confusing.

7 A. Okay. And the question was an increase in
8 instruction?

9 Q. Show's a 2 percent increase instruction. Is
10 that how we read this table?

11 A. We're looking at all funds extended?

12 Q. Yes, ma'am.

13 A. On page 3?

14 Q. Third page in, has a one at the bottom?

15 A. 59 percent was expended in '09/'10 and 53
16 percent expended ...

17 Q. But the numbers --

18 A. Of the overall budget.

19 Q. The number in '10/'11, the 155 million is
20 bigger than the 152 million --

21 A. Yeah, 2 percent increase.

22 Q. So about a 2 percent increase?

23 A. Mm-hmm.

24 Q. For this year, we anticipated an increase of
25 13 percent in the instructional budget, did we not?

1 A. That would be the hope.

2 Q. And we increased a -- or anticipated a per
3 pupil amount increase from all funds of 11 percent
4 for this last year, didn't we?

5 A. That would be correct.

6 Q. And we anticipated a per pupil expenditure
7 for all total expenses of one -- or \$17,479, is that
8 how I read -- is that reading the chart correctly?

9 A. That the per pupil expenditure?

10 Q. Yes, ma'am.

11 A. The anticipated amount, yes, that would be
12 correct. Keeping in mind that the per pupil
13 expenditure goes up with funds that are not available
14 the put towards student expenditures. They include
15 the KPERS, bond and interest, capital outlay funds,
16 things of that nature.

17 Q. Yeah. So if we look back here at our
18 different categories, the categories that are
19 highlighted, that wouldn't include the bond and
20 interest, the KPERS, I think -- what else did you
21 talk about that is not something that is --

22 A. Capital outlay funds.

23 Q. Capital outlay, so that's not here. If we
24 just focus on these functions, instruction, support
25 services, operations, and maintenance, and other

1 support services, now we're talking about the guts of
2 what are the operational expenses for the district?

3 A. Basic operations.

4 MR. CHALMERS: Although it has not
5 been marked, Your Honor, it will be marked. We'll
6 get you a number for it, the blow-up.

7 Q. But this takes those cost function funds,
8 the highlighted funds, and shows, per pupil, how they
9 have increased from '05 -- excuse me, '04/'05 through
10 the last data number we had, which is '10/'11, and
11 that would show an increase in those sorts of
12 instructional expenses that we just went through,
13 wouldn't it?

14 A. I would like to have more information behind
15 those numbers. My belief, frankly, the reason that
16 you're seeing an increase on a per pupil expenditure
17 on this chart is capital outlay increase, which we
18 have diligently made efforts to save that money --

19 Q. I'll represent to you and we'll -- the
20 documents if we took these figures that are reported
21 to the State, and just those totals and added those
22 together and then divided it by the number of
23 students, full-time enrollment, I'll represent that's
24 what this number is, and we'll have the documents to
25 confirm that. But what I'm wondering is, you're

1 thinking the number would look something different?

2 A. I do believe, and to me, you're comparing
3 apples to oranges because you're comparing all the
4 entire state numbers and breaking it down to USD
5 500. But I believe in the per pupil expenditures for
6 our district, it's inclusive of those costs that we
7 cannot attribute to student expenditures.

8 Q. In the exhibit that I handed you, if I grab
9 the one that has the page number, it's 1037, so we
10 know what we're talking about, the last several pages
11 of it --

12 MR. CHALMERS: Oh, she has a copy
13 that's great. Thank you.

14 Q. Looks like the last six pages of it are ...

15 MR. CHALMERS: Thanks, Gaye.

16 Q. Are the current operating expenses but for
17 USD 500, your district, is that right?

18 A. These charts indicate USD 500 at the top,
19 that's correct.

20 Q. And I'll represent to you that the numbers
21 we just looked at are taking what has been these
22 highlighted functions, adding them together for those
23 years and then dividing them by the full-time
24 enrollment as reported in your documents.

25 Now, I'm not asking you to verify that, but

1 I'm asking you at a birds-eye view, isn't it true
2 that from 2004/2005 that there's been a steady
3 increase in your district of per pupil operational
4 expenses?

5 A. There has been a -- based on your chart,
6 that would be true.

7 Q. We don't have 2011/'12 here, but looking at
8 the budget we just looked at, the 1026, we would
9 expect that once those final numbers are in, that the
10 cost function per pupil -- that's those operational
11 expenses -- will be higher this year, as well?

12 A. As indicated in my statement prior, not
13 because of funds that we have available for student
14 expenditures. Fact is, is we continue to have less
15 dollars to spend on students.

16 Q. Now, if this represents these categories in
17 your district, as I suggested it does, what is it in
18 these categories that you have less of to spend money
19 on students?

20 A. Help me understand your question just a
21 little bit more.

22 Q. Instructional costs are going up. That went
23 up this last year?

24 A. We're making an effort to move money into
25 instruction.

1 Q. Well, your budget said your instructional
2 costs -- this is in Exhibit 1026 -- were slated to go
3 up 13 percent in year; that's the first item?

4 A. Right, with student and instructional
5 support going down 11 percent to offset some of that.

6 Q. Well, instructional support is about what,
7 one-tenth of the instruction in your district, isn't
8 it? I guess it's little less than one-tenth
9 statewide, but it's going down?

10 A. Right.

11 Q. Then, you've got general administration in
12 here and that would include support services, general
13 administration, that's going up?

14 A. Going down.

15 Q. Your general administration went up -- or
16 was scheduled to go down 3 percent, is that right?

17 A. That's correct.

18 Q. Your school --

19 MR. RUPE: Hang on to that
20 question, because was your question going up
21 3 percent or down 3 percent?

22 THE WITNESS: Going down.

23 MR. CHALMERS: Down 3 percent.

24 MR. RUPE: Okay.

25 MR. CHALMERS: The school

1 administration building, that's scheduled in your
2 budget to go up 24 percent. That would be school
3 administration building, that is statewide, 5.8
4 percent?

5 A. That's correct. Some of those funds are, in
6 fact, improvements for our facilities. They don't go
7 directly to student -- student instructional issues.

8 Q. Maybe I misunderstood, because I thought
9 improvement in facilities -- was your testimony and
10 Dr. Lane's testimony -- was important for the kids'
11 academic achievements?

12 A. Absolutely. I'm just pointing out that
13 that's part of the funds there, as well as the
14 capital improvement, which will come up here
15 momentarily.

16 Q. The operations and maintenance, which is the
17 next category in the Exhibit 1026, it was scheduled
18 to go up 11 percent this last year?

19 A. That's correct.

20 Q. Capital improvements which you show on your
21 list in the exhibit, that's not part of this list, is
22 it?

23 A. That's correct.

24 Q. And I'll represent to you that it's not part
25 of this calculation.

1 A. Okay.

2 Q. What I'm wondering is, is will you concede
3 that from 2005 through 2010 these, what I've phrased
4 as current operating expenses, the highlighted ones,
5 have gone up per pupil in your district?

6 MR. RUPE: I'm sorry, did you
7 answer that?

8 THE WITNESS: I'm sorry. Maybe I
9 missed. Was there a question?

10 MR. CHALMERS: I was wondering
11 whether you would concede it's gone up.

12 A. I don't know that I can see -- based on your
13 chart I can see that it's gone up.

14 Q. Let's look at page -- it's numbered 5 in the
15 Budget at a Glance, and it has a title, Sources of
16 Revenue and Proposed Budgets for 2011/'12. Do you
17 find that?

18 A. I do, yes.

19 Q. There are, in the left column, far left,
20 there's a column under the title "Fund," is that
21 correct?

22 A. Yes, that's correct.

23 Q. Now, the money comes into your district.
24 And then at one point, it's transferred into the
25 different funds, is that correct?

1 A. That's correct.

2 Q. Okay. And these are the funds, then, that
3 are shown on page 5, Exhibit 1026, that money can be
4 transferred into, is that correct?

5 A. That's correct.

6 Q. And this particular part of the Budget at a
7 Glance shows the 2011/2012 amounts budgeted in those
8 different fund areas, is that correct?

9 A. That's correct.

10 Q. Let's focus on the general for a moment.
11 And when we talk about general there, there are two
12 breakdowns, there's 121,804,955, and then there's a
13 10,748,056; those numbers should equal the general
14 budgeted amount, is that correct, less the cash
15 balance?

16 A. Yes.

17 Q. You got to have the cash balance when we
18 started with, and then those two other numbers, is
19 that correct?

20 A. That would be correct.

21 Q. And when we talked about how, as part of the
22 local effort funding the general fund, some with
23 local money, some with state aid, this would show
24 that your state aid was approximately 122 million,
25 and the local effort was somewhere in the

1 neighborhood of about 10.7 million?

2 A. That would be correct.

3 Q. So you're receiving from the general fund
4 your district -- well, more than ten times. What,
5 almost 12 times the amount from the state?

6 A. I haven't done that math, but ...

7 Q. That's how I eyeball it, 12 to one, okay?
8 Now, then there's supplemental general, and that is
9 what I've been referring to as the LOB. Is that the
10 same thing?

11 A. Yes.

12 Q. Now, we've talked about state equalization
13 payments for the LOB. And this shows in this
14 particular line on Exhibit 1026, it shows the state
15 moneys of 24.4 million, and the local moneys of 18.7
16 or 8 million, is that right?

17 A. That's correct.

18 Q. And then, the supplemental general number
19 was about 46 million, is that right?

20 A. That's correct.

21 Q. So the way this works is we look at the
22 beginning of the fiscal year, July 1, 2011, we say
23 what cash do we still have in fund -- or on hand from
24 our LOB. In this case there was 2.34 million dollars
25 cash on hand?

1 A. Right.

2 Q. And we look at how much will come from the
3 local mill levy and that ended up being approximately
4 the 18.7, and how much from the state equalization,
5 and that ended up being approximately 24.4 million?

6 A. We figure out what our local option budget
7 on supplemental general fund will be based on
8 percent, and we used the maximum percentage without
9 going out to an election at 30 percent; that equals
10 just over the \$45 million. And then, at 85.7 percent
11 that it's prorated at, we receive -- supposed to
12 receive the \$24 million from the State. It was then
13 prorated again down to 83 percent, so we did not
14 receive that full amount, once again putting more
15 burden on the local taxpayer.

16 Q. I want to be fair to you. Let's look at
17 page -- let's look at the -- you don't have
18 Exhibit 29 in front of you.

19 MR. CHALMERS: Do we have Exhibit
20 1029?

21 MS. TIBBETS: No.

22 MR. CHALMERS: Thank you.

23 Q. Exhibit 1029 has been discussed. And
24 before -- it's the Form 150. I think it was
25 discussed as one of plaintiff's exhibit numbers the

1 other day and I talked to Dr. Lane about it.

2 A. That would be correct.

3 Q. This is the form that one uses to calculate
4 what the local option budget would be, is that
5 correct?

6 A. That's correct.

7 Q. And after you get down to the bottom of this
8 form, it gives you a number from which the
9 percentage, whether it's 29 or 30 or 40 percent or
10 whatever, couldn't be 40 -- couldn't be higher than
11 31 -- and that's the 151-point -- roughly 7 million
12 dollars at the bottom of the documents, is that
13 correct?

14 A. That's based up to 30 percent and then we
15 multiply the enrollment figures once you add the
16 numbers that are indicated on this particular form,
17 lines 3 through 13, 15, and 18, at the bottom.
18 Multiply that by the 3,443, that's what equals the
19 151 million plus.

20 Q. Yeah, so you have that number and then as
21 the board, they make a decision whether they want to
22 have an LOB at 25 percent or 30 percent or if they
23 want to go to voters and try to go to 31 percent?

24 A. That figure is based off the utilization of
25 that.

1 Q. If we take that number, that 151 number and
2 use the 30 percent figure -- I know you guys didn't
3 end up exactly 30 percent -- that should give you
4 what the local option budget was, right?

5 A. Give us the total dollar amount.

6 Q. That would tell you how much you're going to
7 raise, in theory, from the local option budget?

8 A. That would be correct, and ours was 29.8
9 percent.

10 Q. And then the issue is who ends up funding
11 that number with the equalization amount. And so, if
12 you fund that at -- if you fund it and raise 18,785,
13 and the State raises the 24 million, that's what the
14 split is as it's proposed in the budget, correct?

15 A. That would be correct.

16 Q. And when this budget was prepared, before it
17 was prepared and approved, you were told by the
18 Department of Education that, look, we haven't
19 appropriations to give you 100 percent of the LOB,
20 the LOB equalization act. That doesn't come as a
21 secret to you this last year, was it?

22 A. That it was going to be prorated down to 83
23 percent? No. We knew it was going to be another cut
24 for us.

25 Q. So when the calculation is made here, what

1 happened is, is that the number, the 18.8 million, if
2 you will, on page 5 of Exhibit 1026, that number went
3 up some to make up for the State not fully funding
4 the LOB equalization?

5 A. It would have had to have gone up or we cut,
6 we did not increase that amount you can see but we
7 would have to cut \$5 million in order to --

8 Q. Yeah, and you ended up being at around 29
9 percent, 25.5 or 29.8, what was it?

10 A. 29.8.

11 Q. About 29 percent of your revenue for this
12 year. So I would assume what happened is, is that
13 when you filled out the form, 155, that you just
14 simply raised more in your mill rate to collect more
15 money to make up for the loss of the equalization?

16 A. Actually, what happened is our enrollment
17 went up slightly, which is what kind of shook out
18 that percentage a little bit, not necessarily
19 increasing the local collection.

20 Q. Well, in any event, I guess the point I'm
21 trying to get to is that the number we're looking at
22 on page 5 of Exhibit 1026 shows approximately \$24.4
23 million additional state aid that your district
24 received as part of the LOB that the State -- or that
25 your district had gotten?

1 A. We did not receive the total amount because
2 of the proration. It was not fully funded.

3 Q. Do you know how much you received?

4 A. Approximately 5.2 million less, so I will
5 say 19.1, roughly.

6 Q. Well, the statute provides that you can fund
7 your LOB up to 30 percent of the revenue. Did you in
8 your district then raise the additional mill levies
9 in order to get up to the 30 percent to make up this
10 \$5 million reduction --

11 A. We did not raise additional mills. The mill
12 levy to go up -- the board was not willing to do that
13 at this point. Doesn't feel like our community could
14 actually manage that.

15 Q. Then, you had the ability -- or the board,
16 more accurately, had the ability because there was
17 another 5 million before they got to the 30 percent,
18 they had the ability to raise mill levies to get that
19 additional 5 million but made the election not to?

20 A. Made the decision not to feeling like it was
21 not the responsibility, frankly, of the local
22 taxpayer to pay for that.

23 Q. The \$5 million you talked about, how much
24 additional mill was that again?

25 A. It was about 695,000 per mill, so if we

1 round it up, might be a little easier for the math.

2 Q. Okay.

3 A. 700,000, would have to raise it almost seven
4 mills to get there.

5 Q. You testified yesterday that your district
6 has, at least in the last several years, kind of
7 adopted a pay-as-you-go sort of approach, is that
8 correct?

9 A. Yes, I did testify to that.

10 Q. So that I -- I don't know whether to expand
11 on it or whether just to try to explain it. I think
12 what you're saying, is it correct, is that you look
13 at, as a district, the ability of your economy to be
14 able to support and your taxpayer to be able to
15 support a tax increase, and then you make a judgment
16 on whether it's in the best interest in that
17 community to raise taxes or not?

18 A. That's correct.

19 Q. And at a local level, with the local input
20 from the people who come into your meetings that are
21 conducted on the budget, the decision from your board
22 has been, we think we're as high as we want to go?

23 A. That's correct, keeping in mind the median
24 income for most of our families is \$37,000, that our
25 folks don't live in high-dollar homes, so our mill

1 that is raised at 700,000 per mill is not comparable
2 to a lot of other school districts.

3 Q. The decision that is made on where is -- the
4 stopping point on how much money you'll raise, even
5 with the possibility of raising additional money,
6 that decision would have been made by your board
7 having information about how your students are
8 performing. They know how your kids are getting
9 along on not only the assessment tests, but
10 generally, don't they?

11 A. Absolutely. They're kept informed about
12 that.

13 Q. Part of their responsibility of your
14 administration to keep your board members well-
15 informed on how schools are doing, how they're
16 progressing, is that right?

17 A. That would be correct.

18 Q. It's also made with input from your
19 superintendent and from you and others about what you
20 perceive to be the costs necessary to provide a
21 suitable education, isn't it?

22 A. Yes, and the board takes that responsibility
23 very seriously and they review all of those entities
24 and have significant conversation and discussion
25 about those issues. But again, continue to go back

1 to it's not the local community's responsibility to
2 pay for and fund that suitable education.

3 Q. I understand that that's your position. If
4 you go to page 6 --

5 MR. RUPE: Move to strike the
6 argument. I think that's the law.

7 MR. CHALMERS: It isn't the law,
8 but I understand your position, too.

9 JUDGE THEIS: Let it stand of what
10 it is.

11 Q. (By Mr. Chalmers) Exhibit 1026, page 5, go
12 to the next page, which is page 6, this is, of
13 course, again, the Budget at a Glance and this shows
14 at the top the FTE enrollment from 2007 and then
15 projected into '11/'12, is that correct?

16 A. That's correct.

17 Q. And you indicated that the actual enrollment
18 '11/'12 ended up being a little bit higher than was
19 projected on the '11/'12 budget, is that correct?

20 A. That would be correct.

21 Q. Do you know approximately what the increase
22 was this last year?

23 A. I believe it ended up at 18,590 students,
24 roughly.

25 Q. And so the increase would be?

1 A. 150 --

2 Q. Couple percent maybe?

3 A. 150 kids.

4 Q. One percent? A little less than 1 percent,
5 is that right?

6 A. Potentially, yeah, that would be about
7 right.

8 Q. Before that little deviation, let's go to
9 page 7 of Exhibit 1026, which is the miscellaneous
10 mill rates by fund. This is identifying what it was
11 that you folks adopted for this last year as the mill
12 rates that would be used for taxing your community,
13 is that correct?

14 A. That's correct.

15 Q. Before we talk about those in a little
16 detail, has there been a decision as to what the mill
17 rates would be for next year?

18 A. We have not had a conversation. As far as
19 the total, when talking with the board, their
20 indication is that they want to not raise their mill
21 levy. So most likely the total mills will fall out
22 to be about the same, 60 mills, just over 60 mills.

23 Q. The decision on when the mill will be
24 whatever the mill will be, will be made, that has to
25 be made before the budget is published, so it's going

1 to be made sometime by the end of this month?

2 A. Yes.

3 Q. If we go through real quickly, the seventh
4 page of Exhibit 1026, or the page numbered 7, that
5 shows the 20 mill, which is the local effort we
6 talked about at the top?

7 A. That's correct.

8 Q. It shows the supplemental general, and
9 that's the mill levy rate in your district for LOB,
10 is that right?

11 A. Right, the mills, mm-hmm.

12 Q. There was a decrease in the mill rate in
13 '10/'11 from '09/'10. '09/'10 was about 30; it went
14 down to about 26.5. Is that because for '10/'11 --
15 why is it that, that the mill levy would go down?

16 A. We were bringing it down in order to
17 maintain the same mill levy to the previous year at
18 60.124 mills, so we had to reduce that --

19 Q. How do you bring the supplemental mill levy
20 down if you're trying to get 30 percent of the
21 general revenue which has gone on?

22 A. 30 percent is different than the mills, so
23 mills will shake out based on the percentage, so --

24 Q. How is the mill in '09/'10 higher than
25 '10/'11? In '09/'10, did you have more than 30

1 percent of your LOB?

2 A. No, we've never had more than 30 percent.

3 Q. Do you know why the mill then would have
4 been, oh, about five and a half less this the
5 succeeding year for each year you're trying to levy
6 about the same amount?

7 A. We've levied different tax amounts, if you
8 can see, it changes, that we will increase or
9 decrease just a little bit here and there either in
10 the capital outlay. So in '09/'10, it was reduced to
11 four, but in '10/'11 we pushed it back up to eight,
12 decreasing the mill levy in the supplemental general.

13 Q. And I appreciate that, but to get the 30
14 percent of the LOB, it takes whatever mill levy it
15 takes, right?

16 A. Well, you have 30 percent to figure out what
17 your local operation budget amount of money will be,
18 yes.

19 Q. What you look at is, this is our 30 percent,
20 here's how much we're going to get from the State,
21 here's how much we need to raise, and then it takes
22 whatever the mill levies need is what you need to
23 raise, right?

24 A. Right, based on your --

25 Q. So the calculation of the mill levy for the

1 supplemental general should be a function of how much
2 is it we need to raise?

3 A. Based on assessed valuation of the property.

4 Q. Do you know why you had to raise less in
5 mill levies -- or I'm assuming the mill levy going
6 down in '10/'11, as opposed to '09/'10, meant that
7 you had to raise less money in '10/'11 with the LOB?

8 A. We didn't have to raise less money. We
9 raised the mills in the capital outlay up to eight
10 where it was four the year prior. So we were still
11 collecting the taxes in a different area in the
12 capital outlay.

13 Q. But you can't use capital outlay tax money
14 for --

15 A. But the mills -- if we don't want to over
16 increase overall the mills of 60 mills, which is what
17 we were trying to do, that's what mattered, the 30
18 percent is a separate issue. So that's based on the
19 assessed valuation of the property. And yes, then we
20 collect that based on the number of mills in our
21 community, if it equals \$700,000 per mill, that may
22 fluctuate out a little bit based on how that assessed
23 valuation goes up or down in the community over time.

24 Q. Here's how -- I don't want to be unfair to
25 you on this again because I think there's an

1 explanation for this we're overlooking. The budget
2 in '11/'12 showed that the mill levy was going to be
3 about, a little bit more than 30 to get up to what
4 you decided was the LOB for that year of around 30
5 percent. And the fact that it's 30 is just
6 coincidental?

7 A. That's exactly right.

8 Q. The previous year, '10/'11, actual was
9 24.48. What that would suggest is, is that you did
10 not have an LOB to the full amount, the full 30
11 percent for the '10/'11 year. Is that how it worked
12 out?

13 A. No.

14 Q. So you're able to raise the same amount of
15 money to get to your 30 percent in '10/'11 with 24.5
16 mill as what you were needing to raise in this year
17 where you required 30 mill?

18 A. Yes, and again, looking at the total balance
19 of the total overall mills, just like with the 20
20 mills that we have across for the general fund.

21 Q. Was there a bump in assessed values in
22 '10/'11?

23 A. I don't have the assessed valuation in front
24 of me. I do believe there was a slight increase in
25 the community.

1 Q. Let's talk about a couple of other mill
2 levies. There's the capital outlay mill levy and it
3 is absolutely and completely within the discretion of
4 your board, doesn't need an election to go up to
5 8 mills, is that right?

6 A. That would be correct.

7 Q. And at least for this last year and for
8 '09/'10 it looks like you were targeting about four
9 mills?

10 A. That's correct.

11 Q. Money -- we've talked about these various
12 funds -- that is raised by property taxes for capital
13 outlay cannot be spent for non-capital outlay
14 expenditures, is that correct?

15 A. That's correct.

16 Q. Money that is available through the general
17 fund, whether it's an LOB, whether it is the
18 supplemental general, which I guess would be the LOB,
19 whether it is the general fund, that money can be
20 transferred into the capital outlay silo, the capital
21 outlay fund, can't it?

22 A. Some of that money can be transferred into
23 the capital outlay, yes.

24 Q. And it has been in the past?

25 A. Yes.

1 Q. Now, if we focus on in '09/'10 and '11/'12,
2 in those years there was no capital outlay
3 equalization, is that right?

4 A. That's correct.

5 Q. But there was LOB equalization, wasn't
6 there?

7 A. Yes.

8 Q. So what a district could do is raise their
9 mill levy for LOB, get equalization money, and then
10 transfer some of that money into the capital outlay
11 fund, is that right?

12 A. We could. We could continue to raise the
13 mill levy and have our local taxpayers pay for
14 education and move money into capital outlay. Our
15 board of education has chosen not to do that,
16 continue raising the mills.

17 Q. A few more questions about Exhibit 1026.
18 Let's go to the next to last page. Really not sure
19 what the last page is, but the next to last page.
20 And this is a document that is entitled, Average
21 Salary for Your District, is that right?

22 A. Yes, uh-huh.

23 Q. And the information provided on this table
24 would have been provided by your district to the
25 State when this document, this Budget at a Glance,

1 was published, is that correct?

2 A. That's correct.

3 Q. Actually, they probably received the
4 information independently in other ways, didn't they?

5 A. Who received the information?

6 Q. The State, you probably were reporting this
7 data --

8 A. On this report?

9 Q. Other ways.

10 A. Yeah.

11 Q. As a reality, since 2005, with Montoy
12 there's been a lot more data that has been reported
13 to the State, isn't that correct?

14 A. We have to collect a lot of data, different
15 reports, and submit it to the State, that's correct.

16 Q. The State Department of Education has been
17 interested in knowing the details of your district's
18 and other districts' school finance expenditures,
19 much more since 2005 than they did before, is that
20 right?

21 A. I don't know in regards to prior. I know
22 recently in my experience that we submit a great deal
23 of information to the State.

24 Q. The exhibit page 9 shows this FTE, and
25 that's the full-time enrollment, is that right?

1 A. Full-time equivalent.

2 Q. Full-time equivalent. But now we're talking
3 about full-time equivalent for these categories of
4 your staff, that is the two -- or 500 staff, is that
5 right?

6 A. That's correct.

7 Q. And it shows full-time equivalent teachers,
8 teachers full-time, full-time equivalent it shows for
9 the year '09/'10 the actual number was 4,445 full-
10 time equivalent teachers for your district, is that
11 right?

12 A. Equals the full-time equivalent teachers for
13 '09/'10, 1,445.

14 Q. And it shows the total salary and the
15 average salary that's paid to those teachers as being
16 roughly \$54,000 a year, is that correct?

17 A. That's correct.

18 Q. That doesn't include whatever benefits that
19 may be associated with their salary, but that's what
20 they get in terms of cash that you have to pay each
21 year, is that right?

22 A. That's correct.

23 Q. Then, for the next year actual, that would
24 be '10/'11, the year before last, it shows 1,465
25 full-time teachers and that would be an increase of,

1 what, 20 teachers full-time equivalent from the
2 previous year, is that correct?

3 A. That's how it reads, correct.

4 Q. Then budgeted last year, it shows the same
5 numbers of full-time teachers as was in '10/'11, the
6 previous year?

7 A. That's how it reads, that's correct.

8 Q. And is it your understanding that you used
9 the full budgeted money and hired approximately the
10 same number of teachers this year as you did last
11 year?

12 A. It's my understanding that we have not cut
13 additional teachers this year, so that would be
14 correct.

15 Q. And at least since '09/'10 there have been
16 no cuts in teachers?

17 A. In reading this report that's correct.

18 Q. In talking about cuts, you mentioned that
19 there had been a cut of a bonus program yesterday.

20 A. A signing bonus.

21 Q. A signing bonus. When you were laying
22 teachers off -- I'm not sure when that was, but when
23 you were laying teachers off there wouldn't be a need
24 for signing bonus, would there?

25 A. We still want to try to recruit the best

1 teachers that we have, but we still have to fill
2 classrooms and have teachers in those classrooms. I
3 believe we still need to have a signing bonus.

4 Q. We also have teachers in other districts
5 that were being laid off. I think that's what you
6 hear?

7 A. I don't recall hearing that, but that could
8 be --

9 Q. Maybe not. I mean, do you know if this was
10 a unique deal to your district, that whenever it was
11 that you laid these teachers off --

12 A. I think any school district that's
13 experienced the same kind of cuts may be cutting
14 teachers. I can't speak for them and what their cuts
15 are.

16 Q. If there are teachers available in the
17 market, if you're having to lay teachers off that
18 have been -- that have been teachers that you've
19 given professional development and that you've
20 trained, why wouldn't those be the first teachers you
21 go to rehire?

22 A. If we have the funding, we would rehire
23 them.

24 Q. Why would you need a bonus to rehire a
25 teacher that you already had -- that you'd laid off?

1 A. We had a signing bonus in place to look for
2 specialized teachers, highly-qualified teachers that
3 is outlined by NCLB, the No Child Left Behind
4 requirement, that they have to be highly-qualified in
5 the core subjects.

6 So there's some difficult positions to
7 fill. That's typically what our signing bonus would
8 utilize. Teachers don't usually wait for jobs, so if
9 they're cut from their positions, they're going to go
10 look for another position in any other surrounding
11 district that they can. They may not be available.

12 Q. Let's look to Exhibit 121 -- or 1021, I'm
13 sorry.

14 MR. CHALMERS: Do we have a copy
15 for her?

16 Q. You have a copy up there? That's the
17 profile information '11/'12.

18 MS. TIBBETS: Do you have one up
19 there?

20 THE WITNESS: Well, I don't. I do
21 now. Thank you, sorry.

22 Q. (By Mr. Chalmers) On page 3 of that
23 exhibit -- actually, it's the fourth page in, under
24 number four, second full paragraph, it reads -- and
25 again, this was the profile information from this

1 last year, wasn't it?

2 A. Yes, '11/'12.

3 Q. Did you have any involvement in preparation
4 of this document?

5 A. My director of finance puts this together.

6 Q. It reads, budget reductions were aimed at
7 areas not related to instruction and student support.

8 Do you agree with that statement?

9 A. Yes, the intention is, as much as possible,
10 is to keep the cuts away from students and
11 instruction as much as we can.

12 Q. And if this chart is accurate in terms of
13 the expenditures that go to, and we went through that
14 list, you're pretty successful in keeping those cuts
15 away from those areas, weren't you?

16 A. From instruction. We did have student
17 support service areas that we had to cut. You saw a
18 decrease in those areas. Couldn't keep away cuts in
19 all of the areas, but ...

20 Q. I want to look at Exhibit 1033. 1033 is
21 what is available on the Kansas Department of
22 Education's website as your district's budget for
23 this last year, is that correct?

24 A. That's correct.

25 Q. And I want to go through a little bit of it

1 to explain, and I don't want to spend too much time,
2 if we can avoid it, but there are some codings on the
3 front. There's a zero -- or C-07 federal funds. Do
4 you see what I'm referring to?

5 A. Yes.

6 Q. And that corresponds to code numbers that
7 are found in the exhibit. In fact, if you look at
8 page 18 of the exhibit you find the beginning of the
9 code 07, is that right?

10 A. Let me catch up with you here. Page 18?
11 I'm not seeing -- I see it on page 18. Is
12 that what you said? I'm sorry, some of the --

13 Q. Okay, and so --

14 A. Funds, mm-hmm.

15 Q. And Code 7 discussion continues on from 18
16 to 22. And I mention that only to illustrate that
17 all the detail on federal funds under Code 7 are
18 contained on those various pages we just talked
19 about.

20 A. On page 18, it outlines the federal dollars
21 that we receive, yes.

22 Q. And then, all under the category of Code 7
23 is the detail that applies for the federal dollars
24 portion of your budget?

25 A. It breaks it out, that's correct.

1 Q. The information provided in this budget
2 report, how do you, in your office, verify it?

3 A. In regards to how do we verify that these
4 numbers are correct, is that your question?

5 Q. Yes, ma'am.

6 A. We look at what the allocations are under
7 our federal dollars, and then we place them in
8 certain categories that -- we have to utilize the
9 State numbering system, which is this format, and we
10 just put them in our system, and we verify that they
11 equal what's allocated under those federal funds.

12 Q. And this would show on page 18 at kind of
13 the top level, there would be, in '09/'10, about
14 \$11.7 million in Title I funds, '10/'11 about \$10.4
15 million, and then it was about estimated to be about
16 \$10 million this year?

17 A. That's correct.

18 Q. Did it work out, to your knowledge, to be
19 about \$10 million this year in Title fund money?

20 A. This year it was actually a little more than
21 that. It was more than the 10 million.

22 Q. If we look again on page 10 of 1033, where
23 we've got these different codes, if we're interested
24 in the detail that's behind each one of those
25 categories, we'll just go to those code numbers on

1 the bottom of the exhibit, whether it's Code 11 or 8,
2 or whatever we looked at, I guess it was 8. -- and
3 that would give us the detail, is that right?

4 A. That's correct.

5 Q. Let's go, just for fun, to the supplemental
6 general, which is Code 08, which starts at page 23.

7 Are you there?

8 A. I am. Sorry.

9 Q. And it starts out with the revenue side at
10 the top, and then it has a box that talks about
11 supplemental general expected it tells you where that
12 money is spent, does it not?

13 A. I'm looking at page 23, is that where you're
14 at so I'm on the same page?

15 Q. Yes.

16 A. Looking at the budget, the actual
17 expenditures for the last two years, the budget on
18 the right-hand column.

19 Q. There should be, under the column -- or
20 under the table supplemental general expenditures,
21 shouldn't there be a code showing a transfer, if any
22 of that LOB money was transferred to, say, capital
23 outlay?

24 A. If money was transferred, you would see a
25 transfer.

1 Q. Would that be on page 27 under number -- I
2 don't know if this is true or not -- under the
3 category, property, equipment, and furnishings.
4 There's a 700 there. It's Code Line 775 -- I'm
5 sorry, 780.

6 A. That necessarily wouldn't be a transfer
7 there. We would actually use it. We use capital
8 outlay as an appropriate expenditure for those types
9 of items as well as technology quite a bit.

10 Q. What do I look at real quickly to find the
11 amount that was transferred?

12 A. That's what I'm looking for, the number for
13 you.

14 Q. Don't spend too much time on it. If you
15 don't see it obviously, let's move on.

16 A. I'm not seeing it.

17 Q. Let's talk about capital outlay, that's
18 Code C-016, and I want you to help us understand
19 what's shown on page 45 of the exhibit. Are you
20 there?

21 A. I am.

22 Q. There is a category dealing with capital
23 outlay for '09/'10 that is entitled, 5206, Transfers
24 from General. Do you see what I'm talking about?
25 Down near the bottom, right above --

1 A. Let me find you.

2 Q. -- resources available. Code Line 100.

3 A. I do, mm-hmm.

4 Q. And it shows 8-point -- nearly, what, \$8.1
5 million having been transferred from the general fund
6 into capital outlay, is that correct?

7 A. Back in '09/'10, that would be correct.

8 Q. Special reserve is C 047, and that doesn't
9 have a numbered page, unfortunately; just says C
10 047.

11 A. Page 47.

12 Q. Well, it says Code Number 47 at the bottom.

13 A. Code number?

14 Q. It's past the numbered pages. It's the
15 special reserve fund. What's the special reserve
16 fund?

17 A. Spoke about yesterday. We are self-funded
18 for our Worker's Compensation program and we have to
19 keep funding in there for catastrophic events, if our
20 employees get hurt and we take care of all of that
21 cost.

22 Q. Then there is a contingency reserve found at
23 053. That's a couple pages in. Actually, this one
24 has a numbered page. It's number 80. Do you find
25 it?

1 A. I do.

2 Q. What is the contingency reserve?

3 A. Contingency reserve is where we have funding
4 set aside for, again, catastrophic events that may
5 occur for our school district. I shared with you
6 yesterday that we currently have \$8.5. We would be
7 taking \$2 million out of the contingency reserve at
8 the end of this year, leaving it as approximately
9 \$6.5 million.

10 Q. So if I understand, you have the '11/'12
11 budgeted amount was to be at the 8.5 million, but
12 apparently, actually what you spent, you spent
13 another 2 million from that reserve this year --

14 A. We will. At the end you'll see that
15 decline. It's budgeted at 8.5 because that's what we
16 start the year. We have to reflect that. But at the
17 end of the year when you see the actuals for the next
18 year's report, it will say 6.5.

19 Q. And that 6.5 -- that 2 million that was
20 taken out, then, that we're talking about, that was
21 spent, what, in '11/'12, or is that to be spent in
22 '13?

23 A. It will be spent in '11/'12 to help us from
24 cutting other things.

25 Q. Let me have you take a look at Exhibits 1040

1 and 1043. 1043 is a Fiscal Year 2012, so that would
2 be this year, general state LOB payments. And it
3 shows on the last page where it says, D 0500,
4 Wyandotte, Kansas City, it shows that this year your
5 district received about \$19.5 million in LOB aid from
6 the State. That's that equalization payment, is that
7 correct?

8 A. That's prorated that's exactly the amount I
9 shared with you earlier and indicated we should
10 receive 24 million and we do not.

11 Q. And if we look at the very top on page or on
12 Exhibit 1043, that shows the prorated amount that was
13 paid in LOB statewide, which was in equalization
14 money, which was \$262,095,677, does it not?

15 A. It says, state total, and it gives that
16 figure, that's correct. So I assume that is --

17 Q. You don't have any reason to dispute that,
18 do you?

19 A. No, I assume that's the total for the
20 equalization.

21 Q. Let's look at 1040, and this is a state
22 document. If we look at the last page, where it says
23 D-050 Kansas City, Wyandotte, it shows for the
24 available information the '10/'11 enrollment, full-
25 time enrollment for that year, does it not?

1 A. It does.

2 Q. And then it shows the per pupil expenditures
3 for capital outlay, the per pupil expenditures for
4 bond and interest, and then for all other categories,
5 is that correct?

6 A. Yes, that's correct.

7 Q. And it shows in Kansas City the per pupil
8 expenditures in capital outlay are \$812 per pupil, is
9 that correct?

10 A. 818.

11 Q. 818, thank you.

12 A. That's correct.

13 Q. Which is about -- little bit more around
14 250 -- little less than 250 -- more than the State
15 average which is shown down at the bottom of the
16 document, is that correct?

17 A. That would be correct.

18 Q. It shows the bond and interest at about 517
19 per pupil, which is roughly half -- well, not quite
20 half, 45 percent, perhaps, of the State total, is
21 that correct?

22 A. Yes.

23 Q. It shows all other funds as \$14,218 per
24 pupil, which is about 4,000 -- well, \$3,500 more per
25 pupil than the State average, is that correct?

1 A. That would be true.

2 Q. Now, let's compare that number, because it's
3 been compared with Shawnee Mission District, which is
4 the last item, which is -- or the last district.
5 It's 512 on the page. And that shows the per pupil
6 funds other funds for that district are \$9,766, is
7 that correct?

8 A. That's correct.

9 Q. That's well less than the State average and
10 nearly \$5,000 more than what per pupil your children
11 in Wyandotte County receives in all funds other than
12 per pupil -- all funds other than bond and interest
13 and capital outlay, is that correct?

14 A. That's correct.

15 Q. I want to talk to you about mill levies.
16 And if I could show you -- let's talk about Exhibits
17 1107 and 1104. 1107, if we start with that first,
18 and you go back one, two, three -- looks like about
19 ten pages, you'll find a table that has Kansas City
20 USD 500. That would be your district, is that
21 correct?

22 A. That's my district, that's correct. Let me
23 just find it. Okay, got it.

24 Q. It's four from the back. You got it,
25 great. And this shows a history of what the mill

1 levies have been for the general fund, that's the
2 local effort 20 percent that everybody has to do, for
3 the LOB for capital outlay, for bond and interest,
4 and it also shows an ancillary mill levy. What is
5 that?

6 A. The ancillary mill levy is that appropriated
7 tax levy that we are not eligible for. It's a
8 building tax levy and you have to get state board
9 approval for.

10 Q. And then there's other mill levy, and
11 probably -- what other mill levies are there that
12 your district -- these are levies that your district
13 can issue under law, is that correct?

14 A. Yeah, and it would be probably like our --
15 it would be a KPERS mill levy for us, we'd have our
16 public library mill levy in there, because for our
17 school district we govern the public library, so we
18 have to govern the mill levies on that.

19 Q. Your public library got an award recently,
20 did it not?

21 A. It did get recognized.

22 Q. It's been described as being one of the more
23 superior -- well, if not the most superior public
24 library to any library in the area, including those
25 in the south, Johnson County area, is that right?

1 A. We've done very good with our public
2 libraries. We're proud of that, yeah.

3 Q. Now, the mill levy history then shows what
4 it shows, but so that we know what we're talking
5 about, at the top line where it says, 2012, and it
6 has the supplemental general 30.5, that's what ended
7 up being the mill levy for 2005 for the LOB, is that
8 right?

9 A. That's correct.

10 Q. Let's look at the front page, which is Blue
11 Valley of 1107, and it shows what those mill levies
12 are for that district, does it not?

13 A. It does.

14 Q. And it has the same 20 mills. Its mill levy
15 for its LOB is a little less, is that right?

16 A. It's a little less, yes, that's correct.

17 Q. Bond and interest is a little higher?

18 A. Correct.

19 Q. Let's go to the second page of that exhibit
20 and it shows -- still dealing with Blue Valley, it
21 shows the total mill levy of 56.2 this last year, is
22 that right?

23 A. Yes.

24 Q. And if we went back to your Wichita -- or
25 Kansas City, rather, I should have kept you there,

1 the total mill levy there was 60.27 this last year,
2 is that right?

3 A. Yes.

4 Q. So we got a split of about a little less
5 than three -- little bit less than four mills,
6 rather, is that correct?

7 A. Yes.

8 Q. Between the two?

9 A. That's correct.

10 Q. Let's look at a couple pages in -- well, I
11 don't want to do that. Let's look at the very last
12 couple of pages in the exhibit, and that's the
13 Shawnee Mission 512. And it shows the mill levies in
14 looking to the back end, it shows for that 56.14, for
15 the Shawnee Mission District in terms of what they're
16 levying this last year, is that right?

17 A. For their general -- or for their
18 supplemental?

19 Q. For all mills.

20 A. For all?

21 Q. Yeah.

22 A. 56, mm-hmm.

23 Q. Which works out to be -- I think it works
24 out to be, if I've lost the Kansas City -- two or
25 three mills less than what Kansas City does, is that

1 right?

2 A. That would be correct.

3 Q. That's right, because you were at 60. Now,
4 let's go and look at -- there's a Wichita category,
5 and did you find that for 259.

6 A. I have.

7 Q. And they had the mill levy in total this
8 last year of 57.02, is that correct?

9 A. That's correct.

10 Q. Which would be less than one higher than
11 Blue Valley and a little bit lower -- no, and less
12 than one higher than -- less than one higher than
13 Shawnee Mission, is that right?

14 A. In comparison for the totals, that is
15 correct.

16 Q. For all practical matters the mill levies in
17 Wichita worked out to be the same as it was for Blue
18 Valley and Shawnee Mission, is that right?

19 A. They are close.

20 Q. Let's look at --

21 A. I think there's a difference that needs to
22 be discussed, however, is how much the mill actually
23 earns. So you can have -- we would have to, in our
24 community, have more mills to raise the same amount
25 of money than some of the districts that you're just

1 going through here.

2 Q. That's a good point.

3 A. You don't have to have as high --

4 Q. That's a good point. But you know, if
5 you're a taxpayer and you open up the tax bill from
6 the county, you're interested in what the mill levy
7 is as it affects you, right?

8 A. What it's going to cost me on my property --

9 Q. If you're worried as a taxpayer about that
10 mill levy and you want to know -- and you think it's
11 unfair relative to other communities, you're not
12 interested in how much it can raise or how much it
13 doesn't raise, you're interested in what's the mill
14 levy that's reaching your pocket, right?

15 A. How it's going to impact me as a local
16 taxpayer.

17 Q. So what we want to look at is what the
18 actual mill levies are that being by these different
19 organizations to see how that measures, wouldn't we,
20 in comparison?

21 A. How much they earn or how much they impact
22 their community.

23 Q. How much they impact their taxpayers, if
24 we're looking at taxpayer equity, right?

25 A. Okay.

1 Q. Let's look at Exhibit 1104. This is the
2 2011/2012 mill levies by county, is it not?

3 A. Yes.

4 Q. And my first page starts with the U.S.
5 District 256 for Allen County.

6 A. Okay.

7 Q. Is that where you are?

8 A. Yes, correct.

9 Q. That's because this is organized -- it's
10 alphabetized by county name, is that right?

11 A. It appears that way, yes.

12 Q. Let's look at Cherokee County, which is 499,
13 Galena, okay?

14 A. Uh-huh, correct.

15 Q. There's been discussion that Galena is the
16 poorest by assessed property value school district in
17 the state. And as we read across, the actual levies
18 that it has for its kids -- or its taxpayers, rather,
19 work out to be under U.S. total actual levies, 53.27,
20 is that right?

21 A. Yes.

22 Q. If we work down -- and because Wyandotte is
23 at the bottom of the page, it's District 500, Kansas
24 City, your district. That's on the very last page of
25 the exhibit, do you see that?

1 A. Yes, I do.

2 Q. And it shows your mill levies at the 60.286
3 for this '11/'12 year that was shown on the other
4 exhibit, is that right?

5 A. That's correct.

6 Q. So you folks have a higher mill levy than
7 Galena, which has a less property value than you, is
8 that right?

9 A. That may be. I don't know Galena's property
10 values. Our mill levies are inclusive of our public
11 library, which actually adds 7.8 mills, I believe it
12 is, on top of just our public school mill levies,
13 so ...

14 Q. I think it's 6.98 shown --

15 A. Yes.

16 Q. -- on the bottom page.

17 A. Thank you.

18 Q. And then there's a public library benefits
19 mill levy of one that is shown for additional 7.8, is
20 that correct?

21 A. That's correct, that's the 7.9.

22 Q. The Galena has an additional historical
23 museum mill levy of about 1.001, that's shown on the
24 first page?

25 A. That's correct.

1 Q. Now, I'm going to ask you to do this. I
2 don't want you to waste the panel's time going in too
3 much detail, but I'd ask you to fly spec the last
4 page of the exhibit. And do you see any mill levy
5 that's higher than in the 70s on that page?

6 A. Higher than 70 or in the 70s?

7 Q. In the 70s.

8 A. I do.

9 Q. Where do you see one that's higher than the
10 70s?

11 A. Are we talking about the last page still?

12 Q. Yes.

13 A. In Sumner County.

14 Q. Okay. So that's in the 70s?

15 A. That's in the 70s.

16 Q. I'm asking you 80 or below?

17 A. Okay, or above?

18 MR. RUPE: I think you mean 80 or
19 above.

20 Q. 80 or above, thank you.

21 A. I don't see anything.

22 Q. Okay. And we go the preceding page,
23 anything that's 80 or above?

24 A. No, I don't see anything.

25 Q. Preceding page, anything 80 or above?

1 A. No.

2 Q. Preceding page, anything 80 or above?

3 A. I do not.

4 Q. Preceding page, anything 80 or above?

5 A. Yes, I do, Johnson -- Johnson County.

6 Q. You've got in Johnson County, Gardner is at
7 80.595, is that right?

8 A. 82.5.

9 Q. Thank you. De Soto at 82.558, is that
10 correct?

11 A. That's correct.

12 Q. Incidentally, Blue Valley, which is in
13 Johnson County, the first item on that page, when you
14 include their special assessments and other bond and
15 interest, they're up to 72.828, being a higher mill
16 levy than Kansas City by about 12 mills, is that
17 right?

18 A. That would be correct.

19 Q. And if you look at Olathe, which is in
20 Johnson County, when you include their bond and
21 interest and extra growth in the other categories,
22 they work out to be about 69.9, which is about 9
23 mills higher than Kansas City for this year?

24 A. That's correct.

25 Q. Then on the next page do you see any 80 and

1 higher?

2 A. I do not.

3 Q. Next page, 80 and higher?

4 A. I do not.

5 Q. Now, I know you haven't done the analysis,
6 at least I think you haven't done the analysis, but
7 to look at how these mill levies are distributed to
8 say where the median amount and where the mean is,
9 the average, and kind of how they cluster. But just
10 kind of eyeballing it, there don't appear to be on
11 the top end -- or doesn't appear to be on the top end
12 anybody that's horribly out of line with anybody
13 else, is there?

14 A. I couldn't really attest to that, frankly.
15 Again, I think it's imperative to understand how much
16 each of these mills generate. But as far as the
17 number of actual mills they're levying, it varies
18 anywhere from 35 to 82.

19 Q. Just a couple other exhibits I'd like to
20 visit with you about.

21 JUDGE THEIS: Mr. Chalmers, you
22 going to be too much longer?

23 MR. CHALMERS: I think another ten
24 minutes. Do you want to push on or this is a good
25 time for break because I'm trying to find my exhibit.

1 JUDGE THEIS: I'm ready.

2 Between five and ten after.

3 (A recess was taken.)

4 JUDGE THEIS: Be seated. Thank
5 you.

6 Q. (By Mr. Chalmers) I have a chart that's up
7 on the easel and it shows the cash balances at the
8 end of July 1 for your school district starting '06
9 through 2011. And it shows kind of a general incline
10 in the cash balances that had been retained by your
11 district. And that's a fact, that at the end of each
12 year that the cash balances that you have had have
13 been growing, is that correct?

14 A. That's correct.

15 Q. Let me -- there's a document that I put in
16 front of you. It's 1176, which is entitled, The
17 Kansas State Department of Education's 2010/2011
18 Selected School Statistics by Districts. Can you
19 find that?

20 A. I do.

21 Q. That document shows, at the far left column,
22 the pupil/teacher ratios for the districts throughout
23 the state. Do you see that?

24 A. I do on the far right column, yes.

25 Q. Far right, thank you.

1 JUDGE THEIS: Which document are
2 you looking at?

3 MR. CHALMERS: It's 1176. Did you
4 provide a copy of that up there?

5 JUDGE THEIS: Thank you.

6 Q. I want to talk about what pupil/teacher
7 ratio means. It is my understanding that what you
8 take is the number of teachers, you take the number
9 of full-time equivalent students, and you do a
10 calculation, and you come up with what that ratio
11 would be, which state total would be last page 3 --
12 13.5 teachers per kid. Is that your understanding?

13 A. For the overall numbers, that would be
14 correct. You'd look at your total FTE student, you'd
15 want to divide that by the actual number of teachers
16 that you have hired and in place.

17 Q. If you wanted to know how many -- what the
18 ratio of teachers in the classroom is -- or classroom
19 size to a ratio of students to teachers in the
20 classroom, you'd have to have a little bit different
21 information, wouldn't you?

22 A. You would.

23 Q. This would include special ed teachers and
24 other teachers who don't have a specific classroom in
25 the ratio, is that correct?

1 A. That would be correct, or anybody who falls
2 under the certified status.

3 Q. Unfortunately, I think this is how it's kept
4 by the State, so what I want to look at is
5 Exhibit 176, and the last page has Kansas City. And
6 it shows the number of total certified employees, and
7 that is in your district for this year, or for the
8 year of '10/'11, last reported year, was 1,731.6
9 full-time equivalent certified employees?

10 A. I don't have that exact number, but that
11 sounds close and it is reflected on this sheet as
12 accurate.

13 Q. It shows where you talk about K-12 teachers,
14 now we're talking about teachers, not certified
15 employees, it shows 1,090.8 K-12 teachers, does it
16 not?

17 A. That's correct.

18 Q. And the point, you really don't have a .8
19 person, you're talking about full-time equivalent?

20 A. That's right.

21 Q. Okay. Now, if we compare that to the State
22 total, it's a little higher than the State total of
23 13.5, is that right?

24 A. Yes, that's correct.

25 Q. And that's because you're going to go out to

1 some smaller communities where maybe they only have
2 eight or nine kids for a class and that's going to
3 mean that they require additional staffing?

4 A. That would be true.

5 Q. For that class?

6 A. That would be true. Frankly, I wish we had
7 the 15.8 per teacher in each class, which we do not.

8 Q. Let's look at some other locations. Let's
9 look at Olathe, which would be Johnson County,
10 because I think there's been discussion about it and
11 this is alphabetized by county, so Johnson County is
12 going to be found on the third page. Do you see it?

13 A. I do.

14 Q. And it shows -- and I understand it's the
15 pupil/teacher ratio, but it shows a pupil/teacher
16 ratio of about 16.2?

17 A. It does show that, yes.

18 Q. Blue Valley, that's also a Johnson County
19 that shows a 17.2, does it not?

20 A. Yes, it does.

21 Q. And then Shawnee Mission, we're still
22 talking about Johnson County, that shows a 16.9, is
23 that right?

24 A. Which one, Shawnee Mission?

25 Q. Yes.

1 A. Yes, it does show that.

2 Q. Okay. And I understand that this is
3 pupil/teacher ratio, but it's reasonable to assume
4 that the relationships between Kansas City and the
5 other Johnson County schools, when you get down to
6 class size, teachers in the class would stay about
7 true, that is they have about the same number of
8 additional educators that don't have classrooms, the
9 football players -- not the football coaches, the --
10 I don't know, the band teachers, the music teachers,
11 the -- those sorts of teachers, so that would be
12 about true, don't you think?

13 A. I don't know if they have the same number.
14 That would depend on the population of their
15 respective schools, and schools actually have
16 different numbers of teachers hired, so ...

17 Q. I guess what I'm saying is we don't have the
18 data, but if Kansas City's between 15.5 and 16, and
19 Shawnee Mission is between 16.5 and 17, that when we
20 get down to the classroom, we'd expect the class
21 sizes to be bigger in Shawnee Mission, bigger in Blue
22 Valley, bigger in Olathe than is found in Kansas
23 City?

24 A. Based on your statement and what you have
25 there, but I'm having a difficult time reconciling

1 that, frankly, because we've got districts that
2 you've listed up there with more teachers, so I guess
3 when you look at the more students they have --

4 Q. It's a per pupil --

5 A. -- so, yeah, you're dividing it by the per
6 pupil amount. But like I said, I wish we had the
7 15.8, that would be nice.

8 Q. The decision on what the ratios will be
9 between teachers and pupil and what the ratios will
10 be in the classroom is a pretty big financial
11 decision, isn't it?

12 A. Yes, it is.

13 Q. Because for your district and all other
14 districts, a large percentage of your costs are what
15 you have to pay your teachers, right?

16 A. That would be correct.

17 Q. Both in salaries and benefits?

18 A. Correct.

19 Q. So if a decision is made by Blue Valley or
20 Shawnee Mission to go with a higher pupil/teacher
21 ratio, then that allows them more cash for other
22 purposes, doesn't it?

23 A. Potentially, yes.

24 Q. For instance, to pay their teachers more?

25 A. I don't know how they would choose to use

1 that cash, but they potentially would have more cash.

2 Q. And that strategy, whether you wish to have
3 lower pupil/teacher ratios or pay your teachers more,
4 that strategy is one that a local board makes?

5 A. Board has to look at that. I think that has
6 to go to philosophy and looking at the research of
7 how kids best learn and the type of students that
8 we're serving, so we're serving a much higher risk
9 student.

10 Q. Your district wants to keep the
11 pupil/teacher ratio low?

12 A. That's a decision the board --

13 Q. You say, I'd love to have it between 15.5
14 and 16 in the classroom?

15 A. That's right.

16 Q. Which means your trade-off is you have more
17 teachers, but less money to pay your teachers?

18 A. Yeah, or have more money and have more
19 teachers.

20 MR. CHALMERS: I don't have any
21 other questions at this time. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. Maybe we need to have Mr. Chalmers stand in
25 front of a classroom in each of these districts, and

1 let's do that for a moment. In Kansas City, Kansas
2 school district, as you stand in front of the class
3 and look out over the class, you have a percentage of
4 disadvantaged kids that is about 90 percent, true?

5 A. That's correct.

6 Q. You have English language, English limited
7 learners who are a substantial percentage --

8 A. Yes.

9 Q. -- as you look out over that class, don't
10 you?

11 A. That's correct.

12 Q. And you have a number of minorities as you
13 stand in front of that class, Hispanic, Asian,
14 African American, and others?

15 A. Yes, majority of our population, that's
16 correct.

17 Q. And as you stand in front of the -- and by
18 the way, do those kids cost more to educate?

19 A. Yes, they do, and we talked about that at
20 length yesterday.

21 Q. And you stand in front of a class in Johnson
22 County, and you see a minimal number of disadvantaged
23 kids, a minimal number of English language learners,
24 and a minimal number of minorities, don't you?

25 A. That's correct.

1 Q. And do those kids cost more than the Kansas
2 City, Kansas classroom to educate?

3 A. I believe that those kids cost less than the
4 Kansas City, Kansas students cost to educate, which
5 is why we have the cost basis foundation with the
6 weights, and why Kansas City, Kansas, receives the
7 additional weights to be able to afford to fund and
8 educate the higher risk students.

9 Q. Let's look at the economics of these two
10 locales. You were struggling a number of times in
11 conversation with Mr. Chalmers to talk about how much
12 money a mill raises in each community, and I want to
13 show you an exhibit and ask you about that.

14 A. Okay.

15 Q. And to save time, I'm just going to stand up
16 here with my exhibit and ask you to look at Kansas
17 City, Kansas.

18 JUDGE FLEMING: What number is
19 that?

20 MR. RUPE: I'm sorry, 24.

21 Q. And let's find Wyandotte County. Okay.
22 Does that say what the mill levy is?

23 A. It actually gives you your total assessed
24 valuation, and you can -- you can then calculate what
25 your per mill, one mill would equate to \$695,000.

1 Q. Now, drop down and look at Shawnee Mission.

2 A. Let me find them. These are in different
3 order. Blue Valley. Shawnee Mission, okay.

4 Q. That's the last one?

5 A. Yes, sir.

6 Q. One mill in Kansas City, Kansas, raises what
7 did you say?

8 A. \$695,000, just over.

9 Q. And one mill in Shawnee Mission raises how
10 much?

11 A. Just over \$2.9 million.

12 Q. So we've got a difference of about 300,000
13 to about \$3 million in what a mill raises in those
14 two counties, right?

15 A. That's correct, about \$2.7 million
16 difference.

17 Q. And when you have an income of \$80,000 in
18 the school district and an income of \$37,000 in
19 another school district, which is it easier to get
20 voter approval in order to raise the mill levy?

21 A. Certainly in the wealthy school district,
22 where you have the income at the 80,000 or higher
23 range. Not to say that in the lower wealth
24 neighborhoods, such as ours, our community and our
25 constituents don't want to support education, they

1 simply can't afford to do that.

2 Q. Let's take a look at the comment that
3 Mr. Chalmers said the mill levies across the state
4 were all about the same. I think you identified
5 there's a range of 35 to 80.2?

6 A. That's correct.

7 Q. Let's move on. I think you will agree there
8 is a huge difference in the amount of money that a
9 mill can raise depending on the assessed valuation
10 and the property wealth of a community?

11 A. Yes, just as we spoke about, it's all based
12 on assessed valuation of the property.

13 Q. And he talked about the budget per pupil
14 being more, and I understand there are
15 non-instructional items that are included in his
16 numbers, and you pointed that out. But my question
17 goes to simply, is it a fair statement that the kids
18 that are the disadvantaged kids, the minority kids,
19 the kids with English language limitations, are the
20 most expensive kids to educate?

21 A. They are the most expensive kids.

22 Q. And then I want to get this chart up. And
23 by the way, what additional information did you want
24 on the per pupil teacher ratio in order to make an
25 accurate apples to apples comparison?

1 A. I was trying to figure out the number of
2 actual certified teachers and how the division was
3 being made, and frankly, where they got the 15.8.
4 Looking -- standing in front of our classrooms, what
5 you're going to see typically besides the
6 demographics that you pointed out is probably an
7 average of 24 kids to 28 kids per classroom. You'll
8 see some classrooms that are smaller, but that would
9 be atypical.

10 Q. Now, let's use his numbers, regardless of
11 what they include, and just do a little comparison
12 here. And I don't know that this was pointed out,
13 but I want to ask you, is it accurate that 2008, '09,
14 and '10, your enrollment increased in your district?

15 A. It is reflective on that chart. I'm trying
16 to read it from that distance. In the last two years
17 that I've been in this role in the school district,
18 and I've been in the district 20 years, it has
19 increased slightly, yes.

20 Q. And I don't want to misrepresent, so it did
21 drop down about nine students between '09/'10 and
22 '10/'11?

23 A. Stayed steady for us, yes, okay.

24 Q. In terms of '08/'09, it has been an
25 increase, correct?

1 A. That would be correct.

2 Q. So when the enrollment goes up, you've got
3 to have an ability to accommodate those kids,
4 correct?

5 A. We have more needs, more demand, absolutely.

6 Q. We saw on a chart earlier that has been up
7 that the number of immigrant kids and the number of
8 English limited learners has increased in your
9 district, hasn't it?

10 A. Significantly.

11 Q. The new kids coming in are kids not coming
12 from Johnson County, these are kids that have the
13 additional cost that you have to deal with, with an
14 expanding enrollment, true?

15 A. Absolutely, and additional cost not only to
16 educate them, but to accommodate them in classrooms.
17 So cost for furniture, costs for basic things of that
18 nature to make sure that we can provide the space and
19 locale for them.

20 Q. And we know that at some point, based on the
21 Montoy money, there was one year of interim funds,
22 and then a three-year plan that the Legislature cut
23 off and started cuts in '08/'09, true?

24 A. That's correct.

25 Q. Okay. So even using Mr. Chalmers' figures

1 between '08 and '09, when you had about 300 million,
2 you dropped 8.6 million to 10-point -- in 2010/2011,
3 didn't you?

4 A. That's correct.

5 Q. And what has happened in that time frame,
6 when you were cut \$8.6 million, according to
7 Mr. Chalmers' numbers, your demands continued to
8 increase, didn't they?

9 A. That's correct, they do.

10 Q. And your enrollment continued to increase,
11 didn't it?

12 A. Yes, it did.

13 Q. And the kids with special needs coming into
14 the district continued to increase, didn't it?

15 A. They did.

16 Q. Does it feel like you have more money today
17 than in 2008?

18 A. Frankly, we're at the level, even with the
19 slight increase that was discussed yesterday, on a
20 per pupil basis back at funding in '03, so it doesn't
21 feel like we have more money. We've been cut every
22 year that I've been in the role. Like I said, I've
23 in the district for a number of years and we've been
24 faced with making cuts for five, six years, so, no,
25 we do not -- does not feel like we have more money.

1 In actuality, we don't.

2 Q. There's another one I want to show you, and
3 in this terms of expenditures, even if you use
4 Mr. Chalmers' numbers, and we'll talk about this in a
5 minute, between --

6 MR. RUPE: This is all the
7 technology you'll get from me --

8 Q. -- between 2009 and '10 -- I'm sorry, 2008
9 and '09, and 2009 and '10, and '10 and '11, you
10 experienced a cut, didn't you?

11 A. Yes, we did.

12 Q. \$500 per pupil, based on his numbers?

13 A. Correct.

14 Q. And 500 times 18,500 kids is?

15 A. A lot of money to us.

16 Q. All right. Turn to 1068, please, which you
17 have up there. I just want to talk to you about that
18 for just a minute. Mr. Chalmers broke down these
19 numbers as expenditures per pupil.

20 A. Exhibit 1068? 1078.

21 Q. This is actually on 1068, which is the basic
22 data, and then the amount per pupil. And what I want
23 to know from you is when you were shown that number,
24 you wanted to explain how that number does not
25 include certain -- or does include certain items that

1 in looking at instruction should not be included, and
2 I want you to explain that.

3 A. If we're talking about -- I know we have a
4 significant increase. That's our capital outlay
5 funds. That is why we continue to show increase in
6 our per pupil expenditure amount. But as I had
7 talked about yesterday, that we have diligently -- we
8 being the board of education -- made every effort to
9 save money so that we could focus on putting money
10 back into our facility so that all of our kids had a
11 right to be in quality facilities, and then go ahead
12 and build these two elementary schools that we're
13 doing. That's significant. If we pull that money
14 out alone, that makes a big difference.

15 Q. Okay. I just was advised my arithmetic may
16 be terrible. The difference in per pupil spending
17 between '08/'09 and 2010/'11 is more than \$500. It's
18 about \$712, if you do the arithmetic.

19 A. Okay, that looks like it's about right.

20 Q. There was a discussion of four mills up to
21 eight mills?

22 A. Yes.

23 Q. And you're at four mills, and the law says
24 total of eight mills?

25 A. That's correct.

1 Q. Now, what is that? Is that the capital
2 outlay mill levy?

3 A. It's the capital outlay mill levy that we
4 can go up to eight.

5 Q. Mr. Chalmers said that that amount was
6 equalized, but when did the equalization of that
7 money stop?

8 A. I believe it was in '09.

9 Q. Okay. And by the way, equalization money
10 would be state aid money paid to the district to
11 boost their buying power to give them equity with
12 other districts, and that aid stopped in '09?

13 A. That's correct.

14 Q. So in terms of the four mills going to eight
15 mills, that would be a raise of four mills in your
16 district without equalization for that expenditure?

17 A. That's correct.

18 Q. And he indicated that you could do that
19 without an election, but the fact is that you have to
20 publish notice of it and it's subject to protest,
21 right?

22 A. We can increase that capital outlay mills up
23 to eight mills. It's not the percentage. If we go
24 to the 31 percent, we have to provide notice for
25 that. But the eight mills we can go up to, we're

1 trying to not increase our mill levy and put that tax
2 burden on our local taxpayers going to over the 60
3 mills, basically, that we've been at in the last two
4 years.

5 Q. Do you know, has anyone ever protested a
6 raise in the capital outlay mill levy?

7 A. Not since I've been in this role.

8 Q. Do you know what the mechanism is with
9 regard to if somebody protested?

10 A. They could come before the board and make
11 that protest.

12 Q. Let me ask you to explain to the Judges
13 something that you said with regard to not going to
14 the voters to get the 31 percent increase in the LOB,
15 and not going to the voters to increase the mill
16 levy, you said, it is not -- the board does not see
17 it as their responsibility. What did you mean by
18 that?

19 A. What I meant by that, when I said that the
20 board does not see it as their responsibility, being
21 the local taxpayers' responsibility, to have to fund
22 for a suitable education, that we have to continue to
23 ask our local taxpayers to pay for the education of
24 our students, that they believe it's the State's
25 responsibility.

1 Q. You've spent down, if I understand it, \$2
2 million of your contingency reserve?

3 A. This year we will spend down, yes, two
4 million, to 6.5 million.

5 Q. And this Workers' Comp fund is a statutory
6 required reserve?

7 A. Well, we're self-funded, so we keep that
8 reserve in place so that we can self-fund our
9 Workers' Compensation.

10 Q. Is it regulated by anybody?

11 A. We keep track of that and submit that on our
12 budgetary reports to the State.

13 Q. You talked about the signing bonus, and I
14 want to make sure we're all on track in terms of how
15 many teachers a year you lost or lose. And we'll get
16 more information today on this from somebody else,
17 but this year it's anticipated you're going to lose
18 198 teachers?

19 A. I don't have that exact figure. I do know
20 historically we've lost anywhere from 200 to 250
21 teachers per year, so it would not surprise me to
22 have that be at around that figure.

23 Q. And so you have attrition, and we've talked
24 about this during the course of the trial, some of
25 the teachers just leave to go to other districts

1 nearby?

2 A. That would be correct.

3 Q. And some teachers just leave their jobs to
4 go somewhere else to work, right?

5 A. That's true.

6 Q. And with regard to those teachers, is a
7 signing bonus effective in getting them back to the
8 district?

9 A. It's not the intent with a signing bonus.
10 It's really more of a recruiting tool. It's trying
11 to get focus to come into the district to teach in
12 particular classrooms, or like I said, specialized
13 areas that are difficult-to-recruit areas, special
14 education teachers, things of that nature.

15 JUDGE THEIS: Mr. Rupe, could you
16 ask, what's a signing bonus entail? I mean, does it
17 plant you there for a couple years, or what's the ...

18 MR. RUPE: Good question. I don't
19 know.

20 Q. Do you know the answer to that, with a
21 signing bonus, what is entailed in that, does it --

22 A. How it's been used in the past, typically
23 it's fairly small. It could be a dollar amount
24 that's provided to an individual teacher, \$1,000,
25 \$2,000 to come and work with KCK. It's a one-time

1 payment, so ...

2 Q. Is it tied to longevity? In other words, to
3 get the bonus, you've got to stay so many years, do
4 you know that?

5 A. I don't know that.

6 Q. We'll have a witness that addresses that.

7 By the way, if you had not had the \$2
8 million in the contingency reserve, where would you
9 have gotten it?

10 A. It's a great question, that's why we have to
11 keep a contingency reserve. I'm not sure. The board
12 would have to be examining every inch of budget we
13 have, probably have to go and look at our Workers'
14 Compensation fund, which is concerning because again
15 we're self-funded there. And it concerns me with the
16 contingency reserve. I feel like we've been
17 conservative with our funds in the school district
18 almost to our own detriment with that contingency
19 reserve.

20 Q. I think I'm about done, but I want to ask
21 you about something Mr. Chalmers asked you about.
22 The amount of paperwork and information you have had
23 to supply to the State Board of Education and the
24 Kansas State Department of Education, and in terms of
25 what I think you said when Mr. Chalmers asked you,

1 you indicated that you had to give them a substantial
2 amount of information and they drilled down on your
3 information and sometimes requested more information?

4 A. That's true. You know, we're certainly okay
5 with that accountability, just a lot of information
6 that we have to report from not only a human
7 resources perspective but from our financial reports
8 that are given, from Title funding that we have to
9 provide reports for that online regularly, so there's
10 a number of reports.

11 Q. Okay. And I want to focus on three years.
12 I want to focus on 2010/'11, '11/'12, and '12/'13 for
13 a moment and ask you the following question: Are you
14 aware that for the Fiscal Year '10/'11, the State
15 Board of Education recommended an increase in public
16 education funding of \$281,780,223; in '11/'12,
17 471,761,017 in new funding; and '12/'13, an increase
18 of -- in '12/'13 a substantial increase in funding to
19 at least the State statutory levels, are you aware of
20 that?

21 A. I am in reviewing these documents, yes.

22 Q. And I'm presuming that's based on the
23 information that you and other school districts
24 provided them?

25 A. It's the only assumption that I can make is

1 they're utilizing the information that we provide so
2 they can determine what they believe the school
3 districts need to make their recommendation.

4 Q. And what you provide them is information on
5 what it costs you with these high-cost kids to
6 educate them to a suitable level, is that correct?

7 A. That's correct.

8 Q. What did the Kansas legislature do in those
9 three years?

10 A. They didn't fund public education at any of
11 those levels.

12 MR. RUPE: No other questions.

13 A. Actually cut it.

14 RECROSS-EXAMINATION

15 BY MR. CHALMERS:

16 Q. You also presume that the Kansas Department
17 of Education would relay the information that they
18 received and the data to the Legislature for it to
19 make an informed judgment on what they think is best
20 in this state under these difficult economic times,
21 wouldn't you?

22 A. Yes, I would assume so.

23 Q. Now, I just want to clarify a couple
24 things. The mill rate increases, capital outlay, as
25 you sit here today, you've got your district, the

1 right to raise your mill rate up to 8 percent --

2 A. Eight mills.

3 Q. Eight mills and have done so and there
4 hasn't been any protest election and there wasn't any
5 required election?

6 A. To my knowledge, we have not had any
7 protest.

8 Q. There's been no election and you've done it,
9 you raised it up?

10 A. Absolutely.

11 Q. And you talked about bonuses, and I guess
12 maybe we ought to get that in the record, about how
13 much money are we talking about in terms of the cut
14 in bonuses?

15 A. The last cut, my recollection, is a fairly
16 insignificant amount of money. It was a total of
17 \$50,000 set in the overall budget.

18 Q. And the most cut for the bonuses was?

19 A. That was the total amount --

20 Q. That was it --

21 A. -- that was available, yeah.

22 Q. Let's leave that alone then. I want to talk
23 to you about State responsibilities for a moment and
24 how your district sees that. Your district has no
25 taxing authority unless the State issues a law that

1 gives your district a taxing authority, you
2 understand that?

3 A. Mm-hmm, yes.

4 Q. And the Constitution says that the State
5 shall make provision for finance. It doesn't say
6 that state aid will be paid in lieu of local aid,
7 does it?

8 MR. RUPE: Let me repeat an
9 objection I've heard in this courtroom. I object on
10 the grounds it's a legal argument, and we'll have
11 plenty of opportunity to make that both in writing
12 and orally to the Court.

13 JUDGE THEIS: You didn't object to
14 his, but that doesn't give you the okay, so I'll
15 sustain that.

16 MR. CHALMERS: I appreciate that,
17 Your Honor. I'm just trying to understand her
18 testimony on the subject, and I can rephrase it, I
19 think.

20 JUDGE THEIS: Okay.

21 Q. (By Mr. Chalmers) And that is, when you say
22 it's the State's responsibility, and that's what your
23 district believes, which is why it decided not to
24 raise its taxes, it overlooks, doesn't it, the fact
25 that the Kansas Constitution says that the State

1 shall make provision for finance, but does not say
2 that it is the State that must pay the money?

3 A. The reason that -- from what I'm testifying
4 to in regards to two issues, one, is that the Board
5 of Education is saying that not only can our
6 community not afford to do it, that's one part of it,
7 but it truly believes that it does indicate that it's
8 the State's responsibility to fund for a suitable
9 education --

10 Q. And back --

11 A. -- and not the local taxpayers'
12 responsibility.

13 Q. And back in 1964, '65 -- the date escapes me
14 when the Constitution was amended and granted -- or
15 created -- the current provisions that bring us here
16 this month, the funding, then, is it your knowledge,
17 was all through local property taxes?

18 A. I don't know back in --

19 Q. All right.

20 A. Yeah.

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

23 MR. RUPE: Nothing further.

24 JUDGE THEIS: You can step down.

25 Thank you.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 MR. RUPE: Rabiha Hatridge.

4 JUDGE THEIS: We'll go to probably
5 12:10, 12:30, someplace in there.

6 MR. RUPE: That's fine.

7 RABIHA HATRIDGE

8 Called as a witness for the
9 Plaintiffs, was duly sworn by the reporter and
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. RUPE:

13 Q. Good morning.

14 A. Morning.

15 Q. Tell the Judges your name and where you
16 live.

17 A. My name is Rabiha Hatridge, and I live in
18 Derby, Kansas.

19 Q. And talk to us a little bit about your
20 employment, where do you work?

21 A. Currently, I work in USD 259, Wichita Public
22 Schools and East High School.

23 Q. And that would be Wichita?

24 A. Yes.

25 Q. So you're you live in Derby and you teach in

1 Wichita?

2 A. Yes.

3 Q. Tell us a little bit about your personal
4 background.

5 A. Okay. I'm actually a product of the Wichita
6 Public Schools. I was raised in Wichita and actually
7 attended East High School. And I'm teaching there
8 now, so kind of paying my debt for what was given to
9 me. And I have two sons, a 3-year-old and a 7-year-
10 old. My 7-year-old currently attends school in
11 Derby.

12 Q. And with regard to your educational
13 background, tell us what that is, please.

14 A. I have a Bachelor's in Elementary
15 Education. That's where I started my career. And
16 ESL as an endorsement. And I also have my library
17 media certification. And two years ago got my
18 language arts certification in -- for high school
19 secondary, and I have my Master's in School
20 Leadership.

21 Q. Okay. And you have a classroom at East High
22 in Wichita. Give the Judges a sense of who's in your
23 classroom.

24 A. I currently teach Tier III students in
25 reading. So these would be students who are

1 predominately freshmen that come in to us with about
2 a 2nd to 4th grade reading level. And I serve them
3 twice a day, so they see me for what we call a block,
4 so about 90 minutes each day of intensive reading
5 support.

6 Q. How old are these kids?

7 A. Most of them are freshmen, so they're about
8 14. I do have some sophomores just based on -- some
9 of them -- some of the sophomores are placed because
10 of special needs. Some are placed because they did
11 not succeed in their English course, their core
12 course, and their testing showed that reading was the
13 culprit, so some of my students are that. I have
14 about -- probably about 30 percent of my students
15 have special needs and are placed there based on
16 skill level, as well.

17 Q. Okay, when you say -- but hang on. You said
18 these kids are 14, 15 years old coming in as freshmen
19 and they read at the 2nd to 4th grade level?

20 A. That's correct. So we -- we've currently
21 adopted, in the last two years ironically, our state
22 has asked us to look at the multi-tiered system of
23 support, which is called MTSS, which allows us to use
24 data to look at kids that are coming to us and who
25 are currently with us. And look at three different

1 data points on their reading skill level and properly
2 place them in homogenous groups so we can offer
3 intensive support where necessary. And these
4 students, under that program, under MTSS, qualify for
5 Tier II, meaning that in addition to their core
6 classes, they need a minimum of 90 minutes in
7 addition per day for reading. So that's how they're
8 placed there, because of their low reading skills.

9 Q. Okay. Now, let's go back to standing in
10 front of your class and describe it for us. You say
11 you have 30 percent of your -- how many kids in your
12 class?

13 A. I will -- I will start the year with about
14 20 in each class and I will end the year with about
15 14.

16 Q. Okay.

17 A. That's been our trend the last two years.

18 Q. So you're standing in front of these 20
19 kids. You say 30 percent have special needs.
20 Describe for the Judges what those -- who falls in
21 that category.

22 A. Okay. So my students with special needs are
23 students who could be considered what we call
24 interrelated, meaning that they have processing
25 learning disabilities. So many of them have

1 processing issues, which puts them in danger of
2 reading below grade level.

3 Q. So when you say 30 percent have special
4 needs, and my terminology may be wrong, but are these
5 special ed kids?

6 A. Yes.

7 Q. Okay. So 30 percent special ed, how many
8 at-risk kids in this classroom of 20?

9 A. 90 percent of my kids are at-risk.

10 Q. What about English limited learners?

11 A. We also serve -- our ESOL department also
12 has adopted this curriculum for intensive reading
13 support. So the majority of our ESOL students are
14 able to be supported within our ESOL department
15 instead of our language arts department, so I have
16 about two in each class of ESOL.

17 Q. Tell the Judges what ESOL means.

18 A. English -- okay, it's like English learners
19 of a second language. So like they're -- I'm trying
20 to remember the exact acronym. I'm sorry.

21 Q. Don't worry about it.

22 A. Wait. That was on my practices. Give me a
23 minute. English speakers of other languages. Thank
24 you.

25 Q. English speakers of other languages. We've

1 got all kinds of help around here.

2 A. Yeah. So I've got two in each class that
3 qualify for that. And then they're placed there
4 based on a minute. It's kind of a minutes game.
5 They have to have a certain amount of time in ESOL
6 support classes and then a certain amount of time
7 that they're in regular ed classes.

8 Q. Minority kids?

9 A. I was trying to figure that out. I think I
10 have about 75 percent minority Hispanic and --
11 Hispanic and African American. And of that group of
12 the majority, I have -- I only had a couple of Asian
13 students the last two years.

14 Q. Okay. And in terms of what you want to
15 accomplish during the course of the year with this
16 classroom that we've just described, what is it you
17 want to accomplish teaching your class?

18 A. I want to teach them to read. So they come
19 in so far behind that we're kind of out of time by
20 the time they get to me, because their textbooks and
21 their core classes are about the 10th grade reading
22 level or above. So we're not just talking about
23 reading skill issues, we're talking about the ability
24 to get them to graduation, to pass their core classes
25 and get to graduation.

1 So we have a sense of urgency when they get
2 to us at Tier III at that level. And so my goal with
3 the curriculum, and what the curriculum professes and
4 has been pretty successful, is trying to get them
5 three grade levels in one year so that by the end of
6 their sophomore year, the majority of them are 8th or
7 9th grade reading level and can access their text.

8 Q. Give me your title again. What's your
9 title?

10 A. Teacher.

11 Q. Okay, teacher.

12 A. Sorry. Oh, Tier III.

13 Q. And the name of your classroom?

14 A. It's Tier III -- it's Tier III literacy.

15 Q. What is the Tier III literacy?

16 A. So in MTSS, there's a 80-20-10 model. So at
17 your top tier would be -- ideally you would want only
18 about 10 percent of your population in that tier
19 where they need intensive support. And then your
20 other 20 percent or so might be in the middle needing
21 what would be called Tier II, and we have students at
22 that level, too. Many of my students move into
23 Tier II their sophomore year, meaning that they're
24 only three to five grade levels behind as opposed to
25 when they come to me, maybe up to seven or eight

1 grade levels behind. And then your Tier 1 would be
2 your kids who qualify for core classes. So they can
3 go into any core class theoretically without reading
4 support and should be able to have success.

5 Q. Okay. And when you say core class, what do
6 you mean?

7 A. Core classes would be English, science, math
8 and social studies.

9 Q. Is this Common Core standards lingo?

10 A. Yes. Well, it's -- we've had the -- core
11 classes is a lingo -- high school lingo. We kind of
12 separate our conversation when we talk about core
13 versus electives.

14 Q. All right. You used a phrase before
15 "intervention." Do you consider yourself an
16 intervention teacher?

17 A. Absolutely.

18 Q. Explain to the Judges what that means.

19 A. So an intervention teacher would be someone
20 who has to have specialized training to provide
21 intensive support, whether that be in math or
22 reading. My training has been in reading. And in
23 intensive, an intervention teacher also should
24 have -- I mean, ideally with MTSS, you are serving a
25 smaller amount of the population but because of the

1 intensive support in Tier III, MTSS recommends that
2 you have four to five students in that course with
3 that curriculum. So you're basically -- you're on
4 it -- on each of them as much as possible, progress
5 monitoring as much as possible. And our Tier II
6 teachers are also intervention teachers. They
7 provide reading support for one hour a day for their
8 students instead of two.

9 Q. And now what was the four to five students
10 you mentioned?

11 A. So for -- we kind of, of course, we sit in
12 our trainings. We go to training once a month as a
13 team, a leadership team and intervention team for
14 MTSS to learn about it to find out how we need to be
15 collecting data, how we need to be reviewing data and
16 how we need to be delivering instruction. And the
17 State has recommended through MTSS that we should
18 have four to five students when they're in that Tier
19 III per teacher, so that my instruction would go to
20 four or five students when they're with me.

21 And then when they get into Tier II level,
22 they're still recommending four to five but they've
23 increased. They said, you know, up to ten in that
24 group. And then when they're in core, it can be
25 whatever the State cap is for students in a

1 classroom.

2 Q. And what's the reason you have 20 kids?

3 A. We -- actually, we're doing really well. We
4 are implementing, to the best that we can right now,
5 we -- our school, you know, above the other high
6 schools has implemented, as best we can. But we just
7 can't afford the allocation to have -- I mean, I
8 have -- we have 80 Tier III kids coming in next year
9 that we know about as freshmen, and there are two of
10 us that will be teaching them. And if you think
11 about the numbers, 80 divided by 5, that's 15
12 teachers. There's just no way at our high school
13 that we can -- we could provide that kind of
14 allocation to reading intervention right now.

15 Q. So the reason you don't have the smaller
16 classroom that MTSS dictates is because you don't
17 have enough teachers?

18 A. Right.

19 Q. Is MTSS a required strategy?

20 A. This is a -- the State -- our state board
21 has adopted this statewide, so it's not something
22 that solely in our district that we're doing. It's
23 something that everybody is asked to look at. So
24 yeah, it is required. And when we go up for our
25 accreditation in two years, not next year, the year

1 after, we'll be held to -- we'll be asked to be held
2 to that program on how we're doing with that and how
3 we've implemented, and we'll have to show evidence
4 that we're growing these kids.

5 Q. When you say "growing these kids," you mean
6 moving them?

7 A. Moving them through the tiers. You cannot
8 have a stagnant -- the failure of MTSS would be that
9 my Tier III student would go through junior and
10 senior year and not have moved out of that
11 intervention level. They need to move out of that.
12 They can't be stagnant in a level. We have to get to
13 them and move them through the tiers and ultimately,
14 you know, the goal being that they could go into the
15 core without support.

16 Q. Okay. Tell the Judges what MTSS is,
17 please.

18 A. It's the multi-tiered system of support.
19 It's both behavioral and academic. So it's reading
20 and math, and like I say, we kind of look at that
21 pyramid as intensive support, moderate support core.
22 Every student gets the core. So every student is
23 getting their language arts class or their math class
24 that they should be getting, but then the tier tells
25 us which classes they need extra support in and to

1 what level. And that's what MTSS does.

2 And you have to provide data, an assessment,
3 progress monitoring that shows that that student is
4 moving through, that is growing and moving through
5 the tiers. So we have some multiple data points that
6 we're using, not from one single source but multiple
7 sources to see are these kids moving and are we
8 implementing our curriculum with fidelity.

9 Q. Does this MTSS impose any obligation on you
10 as a teacher?

11 A. Can you clarify that?

12 Q. Yeah. In terms of what are you required to
13 do as part of MTSS?

14 A. I'm to move my kids. My students, they have
15 to move. They're -- they -- it's, you know, these
16 would be the kids that we, you know, might be calling
17 unreachable but they're very reachable. It's just
18 that we have to give them the time and the resources
19 that they need. So I've been given the resources and
20 we're giving them the time in intensive support.

21 So if my students don't grow at least 110
22 Lexile points in a year with this program, that's --
23 that's not good. I mean, they have to grow because
24 they -- if they don't, they can't access the
25 knowledge that they need to be able to pass their

1 core classes and graduate.

2 Q. Let me ask you whether you have the
3 resources to do what you are required to do?

4 A. So resource wise, my principal is very
5 generous. I don't know and I don't want to know how
6 he does his accounting. But he -- you know, our
7 leadership team decided that this is something we
8 have to do. When we -- once we looked at the data
9 and our trend data and found these kids, we realized
10 that we have an obligation and a responsibility to
11 bring them up, no matter what it takes.

12 So the resource cost for these students for
13 the program that we're doing is -- each book that
14 they go through, the consumable books that they go
15 through is about \$55 per student, and that's in Tier
16 III and Tier II in that program. And so it ends up
17 we have about 200 kids total in Tier III and Tier II,
18 so whatever the math is, and that's per book. So my
19 kids move through a book in a semester, so \$55 per
20 student per semester.

21 Also, for each of these classrooms, we have
22 a SMART Board or a document camera, one or the other,
23 the technology to be able to administer the
24 curriculum in the way that they recommend that we do
25 it with any fidelity. And so that's an extra

1 resource cost, and we try to keep up with that. But
2 usually when we add an intervention teacher, they
3 wait -- may wait a year before they get that
4 technology because it's expensive to have a SMART
5 Board in your classroom.

6 And we all kind of joke around with our kids
7 and we're like, tap lightly because we can't replace
8 these. I mean, they need to last. And so, you know,
9 it's an intensive program. And training of teachers
10 and supporting of teachers, and my principal has also
11 allocated funds for us to meet as intervention
12 teachers outside the school day to be able to compare
13 data to talk about the movement of students so --
14 that he has bought in that has helped.

15 Q. Is there -- so you have all the resources
16 you need to do what you need to do?

17 A. Now I do.

18 Q. Okay. In terms of the resources that might
19 have affected those six kids, what happened to those?

20 A. So this is where academically, you know, I
21 can support our kids with the resources I'm given.
22 But this is where the whole child comes in the
23 picture with our students who are Tier III, because
24 they're -- in not all cases, but in the majority of
25 my students' cases, they're not just there because of

1 academic reasons. There are many social issues that
2 they face. Sometimes, you know, a lot of them are in
3 foster care, in and out of the children's home, in
4 and out of JDF, which is our juvenile detention
5 facility.

6 And so I rely very heavily as a Tier III
7 teacher on our counseling staff to be able to send
8 them an email, and that same day have whatever the
9 issue is be addressed. And we were -- we cut a
10 counselor this year, which is heartbreaking to me
11 because as much as we need to be supporting their
12 academic skills, we need to support this other side,
13 the social skills.

14 Some of these kids have trauma. And, you
15 know, we have a therapist that's on site part-time
16 that can support them, too. But when I lose a kid --
17 the best way to lose a kid is to lose them to Tier
18 II, because then I know they're moving. The worst
19 way to lose a kid is truancy, you know, when you just
20 don't know where they are. You're trying to follow
21 up and I can't do that on my own, not at the level
22 that I have -- with the kids that I have and so many
23 issues that I have with some kids.

24 The support needed too when they come out of
25 JDF, that's kind of -- there's not really a

1 transition. So it's like, boom, you've done your
2 time, now you're in the classroom back to society.
3 And, you know -- again, you know, being able to email
4 our counselors right away, being in constant
5 communication with them about students who are going
6 through that.

7 There was a student, just to kind of give
8 you an idea of an example of where some of the
9 communication breakdown goes, what happens when we
10 lose counselors is in -- last year we -- they were
11 really good about communicating to me, okay, we
12 have -- you're going to have a student who's coming
13 out of the children's home or is currently living in
14 the children's home, just make me aware of kind of
15 their situation so I'm sensitive to that.

16 This year I had a student who was pulled out
17 of a classroom and taken to the children's home and I
18 didn't even know that that had occurred. And when
19 she came back to me in three days, you know, she was
20 literally -- she walked into my classroom and she's a
21 pretty strong kid, you know, and I was trying to sign
22 her up for assessments which, of course, she could
23 care less about at this point. And just the tears
24 were just rolling down her face. So it's the time
25 that it takes and the energy that it takes for me to

1 get to what is the issue.

2 So, you know, I pulled her out and said,
3 Hey, what's going on? You know, what support can we
4 give you? That communication breakdown is already
5 occurring where, you know, this kid really should
6 have been in a counselor's office before she came
7 back to the classroom so that she could help -- she
8 could be helped through some of those issues and
9 resolving some of those issues so she could function
10 in the classroom as best as possible. So that's
11 where I'm starting to see it and it's a little
12 frustrating to me because I don't want to be by
13 myself.

14 Q. In terms of the kinds of information you
15 need about these four or five kids that leave, is
16 there any resource that is committed currently or has
17 been committed in the past to locate those kids when
18 they disappear?

19 A. So we had a -- in the past we've had a
20 truancy -- not a truancy officer but a clerk that was
21 in charge of truancy. That was her whole job all
22 day. And so when a student was absent multiple days
23 unexcused, maybe two even unexcused, and not just the
24 phone call went to the parents but sometimes our SRO
25 would go to the home. You know, there would be

1 follow-up on that.

2 Now that job has been passed to another
3 clerk who has other jobs as well. So her ability to
4 follow up and get those kids reported in a timely
5 manner so that someone is literally knocking on the
6 door, it just -- it can't happen to the level it was.

7 Q. And look at the MTSS and what is required in
8 terms of MTSS. It's multi-tiered so that includes
9 academics, it includes social, it includes other
10 factors, right?

11 A. Absolutely.

12 MR. CHALMERS: I would prefer that
13 the witness testify as opposed to counsel, and I
14 object as to leading.

15 MR. RUPE: All right.

16 Q. (By Mr. Rupe) Tell the Judges what is
17 included in MTSS.

18 A. Okay. So you have your academic side and
19 this year is our first year. We've done our two
20 years of academic learning about MTSS, how to track
21 data on academics and place kids appropriately.
22 We're beginning what's called the behavior cohort,
23 which is the second side of the tier to some of
24 support, which is looking at those social issues. So
25 you would tier those students just like you tier them

1 academically, you tier them separately behaviorally.

2 So you could have a student who's in core in
3 academics Tier 1, but maybe a Tier II, Tier III
4 behavior. So they needed -- they need different
5 types of support in the classroom and outside the
6 classroom to make sure that they're playing school
7 and that we're helping them do that.

8 Q. Okay, let's look at the total picture then
9 of everything that is required under MTSS. Do you
10 have the resources for that entire product you need
11 to deliver?

12 A. No. There should be -- there would be ten
13 of me at minimum in my school supporting the academic
14 side, and there would be a counselor for each tier at
15 minimum so that behavior plans and things could be
16 managed and tracked the way they should be under
17 MTSS.

18 Q. And those kids slipping through the cracks,
19 the four, five, six kids that disappear, do those
20 kids have anybody that tracks and follows up and gets
21 them back to where they need to be --

22 A. No.

23 Q. -- in order to get through high school?

24 A. And that's the tragedy. No.

25 Q. This is -- this is probably -- well, I'm not

1 going to comment. I'm just going to ask you. What
2 do you get by way of supplies?

3 A. My students are -- they're awesome. They
4 just -- they struggle a bit at playing school well,
5 so I go through 15 to 30 pencils a day just to --
6 I -- that's my biggest -- my kids do not -- no matter
7 what it takes, my husband and I talk about tithing to
8 the classroom, because I'm not going to send a kid to
9 the office or hound a kid about a pencil or a piece
10 of paper. To me that's just ridiculous.

11 So I provide whatever they need. That's
12 pencil, paper outside the curriculum. My principal,
13 after I pulled on his heart strings a little bit and
14 some extra influences, has been very supportive,
15 because next year he asked us how many pencils we
16 needed in Tier III reading. And we gave him about --
17 we try to estimate on a daily, and we're like, could
18 you go about 2,000. And he's like, 1,500, so it kind
19 of became like a car dealership.

20 But he's providing some of our pencils.
21 Those pencils will get me through probably -- I'm
22 hoping the first 39 weeks. And then the last nine
23 weeks I'll probably be doing on my own. There's no
24 pencil left behind in my classroom. If there's one
25 on the floor, it's picked up. If there's one in the

1 hallway, it's picked up. And I know that sounds
2 silly, but I sharpen pencils and they're in a basket
3 and my kids know when they come in that that's not a
4 conversation we're going to have. You know where to
5 take care of it; get it.

6 Paper, my principal has invested in --
7 because we were going through so much paper that was
8 in addition to the consumables, invested in
9 composition notebooks for us for next year. So that
10 will help tremendously, because they'll just each
11 have their own composition notebook that has notebook
12 paper in it ready to go.

13 But I also -- I mean, and it's by choice, I
14 invest a lot in my students. I called to try and see
15 if I could get RIF, which is a Rotary funded program,
16 Reading is Fun, that they do in our elementary
17 schools to come and work with us in high schools, and
18 nobody wants to do that for high school kids. So my
19 husband and I bought books for my students this year
20 just because they're worth it so they could have a
21 book of their own. When we're reading a novel, it's
22 theirs. And my principal has helped us too with
23 reading a lot to try to get, you know, some reading
24 and books at their Lexile level. It's kind of tricky
25 because you can't just buy any book that's a good

1 book for young adults. You have to look at the
2 Lexiles and make sure it's a match for your kids
3 instructionally so that they can read it.

4 Q. You said that this was by choice. If you
5 weren't paying for these items, where would the money
6 come from?

7 A. The teacher would have to choose to do that.

8 Q. You mean the money just wouldn't be there?

9 A. No, it just wouldn't be there. And there
10 are some classrooms where it's just not.

11 Q. In terms of what you need to do to
12 accomplish what you are charged with responsibility
13 of doing, does what you have spent of your own money
14 contribute to that?

15 A. Absolutely. And I also bribe them often
16 and, you know, with snacks and pizza parties and
17 Sundays.

18 Q. Where does the money for that come from?

19 A. My pocket.

20 Q. In terms of, I think you talked to me about
21 a pantry that you have?

22 A. Our counselor, our freshmen counselor
23 recognized a need, so it's one of the social side
24 things that she's trying to do. A couple of years
25 ago a lot of our students were going to the nurse to

1 get crackers because they knew that she kept saltines
2 and crackers. And so she kind of appealed to the
3 counseling staff, and our freshmen counselors set up
4 what's called our food pantry. It's our East High
5 food pantry. The cafeteria has loaned her some space
6 in their cabinets, and the teachers and staff can
7 donate food.

8 And then you can also submit names so when
9 you have a student who you know is hungry, you can
10 submit their name and she'll call them out and she'll
11 send them home with, you know, Pop Tarts or some
12 things like that to try and get them through.

13 Q. Where does the money for that come from?

14 A. Out of teachers' pockets.

15 Q. Has there been any effort by the school to
16 supply the money for that?

17 A. It's kind of tricky because I don't know
18 school funding very well. I know they can't spend
19 money -- certain money on food like the way that
20 they're allowed. I don't know how it works. They're
21 not allowed to necessarily provide snacks.

22 Q. Okay, so that money comes from the teachers?

23 A. Yes.

24 Q. Compare, if you would -- how long have you
25 been in the classroom at East High?

1 A. This is my -- this will be my third year in
2 the classroom. I was formerly their librarian. That
3 position was eliminated.

4 Q. Okay.

5 A. But I was not --

6 Q. So they moved you from librarian job to
7 the --

8 A. Yeah. Actually, I went from library to
9 learning coach. It's kind of, you know, learning my
10 worth. But I went from librarian to learning coach
11 then to the classroom.

12 Q. Did they eliminate learning coaches?

13 A. Both positions were eliminated.

14 Q. Let's talk about that for a minute because
15 explain what a learning coach is to the Judges.

16 A. As a learning coach, my job was teacher
17 training. So all the inservice days and monthly
18 professional developments, classroom coaching that
19 was provided -- that was the service that I was to
20 provide for teachers. And I planned with my
21 principal and leadership team, but then kind of did
22 all the footwork for getting those inservices ready
23 to go and following up with teachers with
24 implementation of the strategies, were they
25 implementing the strategies, how well were they

1 implementing them, forming those relationships so we
2 could have an open dialogue.

3 And then I would also be a liaison from our
4 building to our district so that we weren't
5 isolated. So as a district had initiatives and goals
6 that they were trying to put out, they would train us
7 coaches in those and then we would come to our
8 buildings and train our staff.

9 Q. That position was eliminated?

10 A. Yes.

11 Q. So three years ago you started as the
12 intervention teacher?

13 A. Mm-hmm.

14 Q. Okay. Let me ask you if you have an
15 understanding as part of teaching intervention of the
16 term scaffolding?

17 A. Yes.

18 Q. Explain to the Judges what that is.

19 A. So scaffolding is, you know, kind of part of
20 Vygotsky's theory. But you have this zone of
21 proximal development, which is the sweet zone as we
22 call it in education. So this is a zone where my
23 kids can get the optimal learning. So it needs to be
24 just above what they already know. So when I am
25 scaffolding in reading, I need to know what they're

1 instructional level is so that, you know, there's the
2 independent level. I know that level in reading,
3 what can they read on their own and how fast and how
4 well do they comprehend it.

5 But then I have to know what the
6 instructional level is so that I'm teaching at that
7 instructional level and constantly scaffolding so
8 that -- their independent level and then their
9 instructional level is what I teach at. Does that
10 make sense? And so then they move -- that zone
11 proximal development continues to move and then I
12 continue to ratchet my strategies in teaching to move
13 the zone and scaffold it. And so like our reading
14 curriculum does that that we have.

15 Other things that I guess you might call
16 scaffold, scaffolding kids, when you look at
17 engagement of students and what keeps them coming to
18 school on that social side, why do they keep coming
19 to school? Many of our students come for the
20 electives. You know, they may not be the best at
21 academics, but they come for -- to be in a sport or
22 to be in an elective class like band or orchestra.
23 So you also have some scaffolding that goes on in
24 that side.

25 What's difficult with our reading

1 intervention is we do pull them from an elective to
2 be able to given them intensive reading support. So
3 it's important that we get that scaffolding done and
4 get them through that so that they can get into an
5 elective and get some of those courses too.

6 Q. We'll hear testimony later about this, but
7 in terms of extra-curricular activities such as band,
8 orchestra, music, there have been some reductions.
9 Are you aware of those?

10 A. Yes.

11 Q. Hang on. And I want you to explain what
12 your awareness is and how it has impacted what you do
13 with scaffolding and the kids.

14 A. Okay. Another aspect of my job is AVID. So
15 I wear multiple hats and AVID is another program. We
16 have this program that meets our kids at the Tier III
17 level that struggle, but AVID is for the middle kid.
18 And not just middle academically but middle all
19 around. Maybe they're first generation that might be
20 considering college and things like that.

21 And one of our -- I mean, I can give you an
22 example. One of our AVID students is first chair as
23 a flute player and she is considered at-risk; she's
24 high poverty. And we helped her get her flute, buy
25 her flute. But she started her flute lessons when

1 she was in elementary school. She's taken no private
2 lessons, which is pretty phenomenal for a student to
3 get to first chair without any private lessons. So
4 she started in elementary school, went through middle
5 school and then her -- now her sophomore -- this last
6 year was her sophomore year and she made first chair
7 as the flute player.

8 She's the student that I think of when I
9 think of what happened last year, which is they cut
10 band in our elementary schools. And I think about
11 her because she -- I just wonder would she have been
12 able to even be in band. You know, those skills
13 ratchet up just like academic skills, you know.
14 You're always moving that zone and so I just don't
15 know if she would have taken flute, have been at the
16 level that she's been at by sophomore year without
17 private lessons. And I know she wouldn't have had
18 access to private lessons.

19 Q. In terms of life experiences like field
20 trips, athletics, band, orchestra, libraries,
21 counseling, do those positively affect scaffolding?

22 A. Yes. And we have Aces in the Community
23 every year, which is a project through our -- each
24 student has an advocacy teacher and advocacy time.
25 And that Ace time is a community service. It's a

1 me. I apologize for interrupting. There was an
2 order in place, case management order, that set the
3 deadline for identification of witnesses who would
4 provide opinion testimony. And that was back, as I
5 remember, November of last year is when that's
6 supposed to be disclosed. And a number of witnesses
7 were disclosed who were going to provide expert
8 testimony. And I want to take their deposition and
9 ultimately was allowed to do so, even though it was
10 an objection by plaintiff's counsel because of the
11 number of them. This witness was not one of them.

12 And she's testified to things that
13 are probably opinion oriented but are kind of the
14 gray area between fact and opinion. This is clearly
15 an opinion testimony. She wasn't disclosed. I
16 didn't have the opportunity to take her deposition
17 and learn what it would be. I didn't have the
18 opportunity to really effectively cross-examine that
19 opinion, depending on whether it was something I
20 would want to cross-examine, and I don't have the
21 opportunity to properly meet that testimony. At this
22 junction I'm sure it's not proper to have her testify
23 to that opinion and I object.

24 MR. RUPE: I probably should have
25 finished the sentence and said in your classroom. I

1 want to know what the consequences are to the kids
2 she's charged with the responsibility of in the MTSS
3 Tier III setup.

4 JUDGE THEIS: How it affects her
5 area of expertise, I think that's reasonable.

6 MR. RUPE: Okay.

7 Q. (By Mr. Rupe) Now answer the question with
8 regard to what you do in your classroom.

9 A. So how?

10 Q. What are the consequences of this limited
11 resources?

12 A. So directly academically if my students
13 don't make the progress they're supposed to make. So
14 if I -- without support in that classroom or extra
15 personnel to help me get that down to the
16 differentiation level that it needs to be to, I do
17 have -- unfortunately, I have six kids this year who
18 showed little to no growth, even implementing the
19 curriculum. So that's a direct academic
20 consequence. They showed no compensation growth,
21 little to no fluency growth and little to no phonemic
22 awareness growth.

23 MR. RUPE: That's all I have.

24 MR. CHALMERS: Looking at this
25 clock and trying to understand, do we want to stop

1 now for lunch?

2 MR. RUPE: No. I'm sorry. I was
3 done with my examination.

4 JUDGE BURR: Yeah.

5 MR. CHALMERS: I may have some
6 questions.

7 JUDGE THEIS: Depends on how many,
8 Mr. Chalmers.

9 MR. CHALMERS: I really don't know
10 that there will be that many.

11 JUDGE THEIS: What do you think?

12 MR. CHALMERS: I thought we were
13 stopping at 12:15.

14 MR. RUPE: To 12:30, he said.

15 MR. CHALMERS: Oh, 12:30, okay.

16 JUDGE BURR: I did say 12:15 or
17 12:30. If you've got a few questions, you might as
18 well go ahead. I don't care.

19 JUDGE THEIS: You got a lot of
20 questions, then yes.

21 MR. CHALMERS: Sometimes I don't
22 know. I'll tell you, I would have fewer if I do it
23 after lunch.

24 JUDGE BURR: Well, if he's making
25 that offer, I don't know.

1 JUDGE THEIS: Why don't you roll
2 with it a minute here and see. I'm sure she wants to
3 get back to Wichita.

4 JUDGE BURR: I'm sure.

5 CROSS-EXAMINATION

6 BY MR. CHALMERS:

7 Q. I'm from Wichita and so I want to talk to
8 you a little bit about Wichita High School, Wichita
9 East. It is a high school that's located pretty much
10 in the center part of the town now, isn't it?

11 A. Yes.

12 Q. And when it started, it was on the far east
13 side of town, but it is where it is now. And it has
14 a variety of different curriculums. It offers
15 curriculums for advanced placement, career and
16 technical education, for executive high school
17 interns, for ESOL, for gifted education. And has
18 special education, as well as the AVID that you
19 mentioned, is that right?

20 A. That's correct.

21 Q. And the one I didn't mention was the
22 international baccalaureate diploma program. What is
23 that program?

24 A. So IB is kind of a -- it's somewhat a school
25 within a school. I don't know if that's a good

1 definition. It would be students actually have to
2 apply to the program, interview for the program.
3 They have to be accepted into the program and they
4 start in what's called pre-IB, which would be
5 preparatory classes for IB classes. It's an
6 international program. So their freshman and
7 sophomore year they're in pre-IB class that prepare
8 them for what would be their junior and senior year
9 the real thing, IB classes. And then their junior
10 and senior year, they're eligible to take IB exams.

11 So when they take those exams, it's they're
12 competing -- I guess I don't know if competing is the
13 right word. They're measured against other
14 international schools that have -- around the world
15 that have the IB program. And then if they succeed
16 at those exams, they graduate with an IB diploma, an
17 inter baccalaureate diploma.

18 Q. And I think they're competing where there's
19 scores like this in another 197 countries?

20 A. I'm not for sure.

21 Q. And it is recognized, this program is
22 recognized as one of the most rigorous college
23 preparatory curriculum available, I guess we could
24 say in the world, is that right?

25 A. I think. It seems difficult even for me.

1 Q. So you've got part of the school is for this
2 IB program kind of within the school and you've got
3 the AVID program, which is the Advanced Via
4 Individual Determination program. What is that?

5 A. So Advanced, or AVID, Via Individual
6 Determination, a student would qualify to be in this
7 program. Not -- they would not be considered
8 necessarily -- they can't qualify just because
9 they're at-risk. They have to have a -- you look at
10 GPA. So they need to have a 2.0 or above in their --
11 kind of the sweet zone, 2.0 to 3.0. GPA is what we
12 look at. Also we look at what opportunities this
13 student maybe has had or hasn't had.

14 These are kids that we try to push through
15 support that would not originally have maybe taken
16 honors or AP classes. With support we try to push
17 them and get them to take those honors and AP classes
18 knowing that when we do that, we're preparing them
19 better for college so that they can be successful in
20 college.

21 And then also part of that program is we do
22 trips to colleges so they can visualize the college,
23 see a college in the area. Talk to them about what
24 they need to do to -- like their junior-senior year,
25 they practice writing out applications for college,

1 writing essays for college, getting them ready so
2 that their mind is on, I can do this, I can go to
3 college.

4 Q. And the kids that are part of that program
5 are often from what, low income minority families?

6 A. Often happens.

7 Q. Typically they're being the first kid that
8 might have taken college.

9 A. Yeah. Often that's what happens, yeah.

10 Q. The curriculum is based on, if you agree
11 with this, that the curriculum under the AVID program
12 is based on rigorous standards developed by middle
13 and senior high school teachers in collaboration with
14 college professors, and used in the AVID elective
15 classes and where -- well, at your particular school?

16 A. Yeah. The AVID is -- AVID is a curriculum
17 in and of itself, so they're strategies like Cornell
18 notes. We call them WICR strategies for writing,
19 reading, collaboration. There are tutorials that are
20 embedded in elective class where we have college
21 students that come and tutor students in small groups
22 on questions that they have in their core classes.
23 So, yeah, it kind of -- it kind of does all those
24 things is the hope.

25 Q. And WICR is W-I-C-R?

1 A. Uh-huh.

2 Q. And that's a method that stands for Writing
3 Inquire Collaboration and Reading, so it's an
4 acronym.

5 A. That's correct.

6 Q. Then you have within that student body a
7 pretty diverse group. There are about -- at your
8 school about 12 percent Asian, 18 percent African
9 American, 29 percent Hispanic, 1 percent American
10 Indians, 7 percent multi-racial and about 33 percent
11 White and other. Does that sound about right?

12 A. Yeah.

13 Q. I know you didn't see the numbers. I'm
14 reading.

15 A. Just from looking at an AVID class, that
16 sounds about right.

17 Q. And about 64 percent of the kids at that
18 school qualify for free or reduced lunches?

19 A. That sounds about right.

20 Q. You testified that you, in terms of where
21 you fit at this high school, are focused on -- you're
22 an intervener I think you said?

23 A. Intervention.

24 Q. Intervention. And you started your
25 intervention at that position about three years ago?

1 A. Two.

2 Q. Two years ago?

3 A. Started training for it three years ago.

4 Q. That would have been what year?

5 A. This is 212.

6 Q. I always have to think. It's 2012.

7 A. So last year would have been my first year
8 with the class in intervention, two classes in
9 intervention.

10 Q. So it would be --

11 A. '10/'11.

12 Q. '10/'11 and 2011/'12.

13 A. Mm-hmm. And that was the inception of the
14 program. That was from the beginning.

15 Q. Before this program -- well, I was going to
16 ask you whether you were replacing or a new teacher
17 because that was when the program was instituted at
18 East, is that right?

19 A. That's correct.

20 Q. Now, when the program was instituted at
21 East, it was intended to track or look at or to use
22 in part the multi-tiered system of support, is that
23 correct?

24 A. That's correct.

25 Q. And the multi-tiered system of support is

1 something that has been sponsored and supported by
2 the Kansas Department of Education, is that right?

3 A. To my knowledge, yes.

4 Q. And that system has certain recommendations
5 in terms of how it should be implemented and what the
6 procedure should be, is that right?

7 A. To my understanding, yes.

8 Q. That multi-system -- well, it's a -- the --
9 I forget the acronym for that.

10 A. MTSS.

11 Q. Thank you. The MTSS is, in fact, a system,
12 is it not?

13 A. Yes, it is a system.

14 Q. It is not a curriculum by itself, is it?

15 A. No. You have to pick the curriculum.

16 Q. And it is not -- if you look at the current
17 standards, you're familiar with the QPA, are you
18 not?

19 A. Mm-hmm.

20 Q. That is outside of the QPA, isn't it?

21 A. I'm not sure how it's going to play out.
22 This will be our first time going through the
23 process. In two years, not this year but the next
24 year, where I don't know how MTSS will fit into it,
25 honestly.

1 Q. Exactly. Right now we're transitioning from
2 the -- you all have more acronyms.

3 A. I know.

4 Q. From the QPA to the Common Core system,
5 aren't we?

6 A. Yes, sir.

7 Q. And so sometime when it's fully implemented
8 hopefully by around 2015, we'll have an answer of
9 where the multi-tier system fits, is that correct?

10 A. That's correct.

11 Q. And the multi-tier system has worked well
12 for you and your students?

13 A. Yes.

14 Q. And you have indicated that there -- I think
15 I wrote in the notes that you have started with at
16 least the couple years you've been doing it how many
17 kids?

18 A. Last year -- this is. I'm not sure. This
19 coming year I know we have about 80 enrolled to go
20 into Tier III. Our Tier II, which also uses the
21 intervention curriculum but at a different level, if
22 you add those students, and I think we have about 200
23 going into next year. Last year we had -- we
24 actually hopefully -- well, we had four -- when I
25 started we had four classes of Tier III and we went

1 down to two or to three classes this year starting
2 the year. So it's from about 100 kids in Tier III to
3 about 80 is what we've -- this previous year and the
4 coming year will be.

5 Q. And I appreciate that answer because I think
6 it did answer the question I asked, but not the one I
7 intended to ask, which was that you personally had a
8 certain number of kids that you started with and then
9 you had a number of kids that you ended with.

10 A. Right.

11 Q. What was the number that you this last year
12 started with?

13 A. Last year or this past year I started with
14 in my classes about 44 on my own, but there was
15 another Tier III teacher. And then I ended this year
16 with 30.

17 Q. When you say you ended this year with 30,
18 does that mean some of the kids were moved from Tier
19 III up to --

20 A. Yeah. Those are -- yeah. And those are the
21 good -- that was the good thing is we're positioned
22 at semester to be able to move kids up. Part of the
23 MTSS's process is you have to have parallel
24 scheduling so that when they test out of a level,
25 they can be moved. There's no, we're going to make

1 you wait until the end of the year to get through the
2 intervention. So we moved kids at semester and were
3 able to go through from our three classes that we
4 started at to two classes in the spring.

5 Q. Based on your experience in your classroom,
6 how is this new system that was implemented in 2011
7 working out?

8 A. From my experience from the kids that I see
9 and the growth that I see, it's probably the best
10 thing we could have done.

11 Q. Lastly, you talked about counselors in the
12 context of some of the issues that these kids have
13 that were brought into your classroom. You described
14 them as frequently from being from broken homes
15 maybe, not even having any parents, coming out of the
16 juvenile detention system. Do you find it
17 heartbreaking the condition that some of these kids
18 are in?

19 A. I -- what I try to tell my students and
20 teach them is that we all have a story. So whatever
21 that adversity is, we try to see what that -- address
22 that adversity, find the strength in that adversity
23 and come out on the other side of it as a better
24 person. So I don't -- I try really hard not to feel
25 sorry for them, because I think that that is

1 debilitating. So I don't know if -- I don't know if
2 heartbreaking is the right word. I think that
3 they've given me wisdom and humbled me, because what
4 my perspective of what I thought might be bad has
5 changed in the last two years.

6 Q. These kids that you've had that are in this
7 category that come from some foster homes, they come
8 from some -- I think they're actually in children's
9 homes, so I'm assuming they're in the custody of SRS?

10 A. Some of them, yes.

11 Q. And what you're talking about with those
12 kids are what resources our community should bring
13 and who should bring those resources to assist those
14 kids, whether it's SRS, whether it should be the
15 schools, combination of something like that when
16 you're talking about additional counselors, aren't
17 you?

18 A. Yeah. I'm talking about, like our
19 counselors have -- one of the positions -- one of the
20 counselors on their list of to do things is to be a
21 liaison between the children's home and the school so
22 that they are in charge of enrolling those kids and
23 know about those kids and communicate about those
24 kids. So it kind of is -- it becomes part of the --
25 I don't know how to explain it very well, but it

1 becomes part of the school system in that they --
2 they know the kid's story a little bit before they
3 get there and hopefully we know.

4 MR. CHALMERS: I don't have any
5 other questions.

6 MR. RUPE: Real quick.

7 REDIRECT EXAMINATION

8 BY MR. RUPE:

9 Q. The counseling part of this, the social part
10 of this is required under MTSS, isn't it?

11 A. Yes. It is required. It's part -- it's not
12 considered something that's separate. The piece
13 works with the academics, so the -- I guess the
14 philosophy behind MTSS is that you address the whole
15 child, not just the academics. Because to deny that
16 these other things have an impact on academics is --
17 well, we know that that doesn't work so ...

18 Q. And I know you don't leave pencils behind,
19 but in terms of what you've accomplished this year
20 with your kids, given the resources you've been
21 given, did you leave some behind?

22 A. I did.

23 MR. RUPE: No other questions.

24 JUDGE BURR: Can I ask -- I'm
25 sorry. Go ahead.

1 MR. CHALMERS: No. I was going to
2 say I don't have any more questions.

3 EXAMINATION

4 BY THE PANEL:

5 JUDGE BURR: This has nothing to do
6 with what we're doing here, but I've got to ask it
7 anyway. Do you know an area of Wichita known as
8 Plainview?

9 THE WITNESS: Yes.

10 JUDGE BURR: Do those kids go to
11 East?

12 THE WITNESS: Some of them, yes.
13 Jardine feeds into East.

14 JUDGE BURR: I had to ask that.
15 I'm an old Plainview. I wanted to know.

16 JUDGE THEIS: One more briefly.
17 What's a SMART Board?

18 THE WITNESS: Oh, it's so smart.

19 JUDGE THEIS: We may need one.

20 THE WITNESS: Yeah. It's an
21 interactive board. So I guess I would say it brings
22 the worksheet to life so kids can go up and move
23 things, manipulate things. You can make cards. They
24 can flip them. Like make flashcards on them, move
25 information on it, but they can also write on it and

1 erase on it.

2 So it's really -- for me it's an
3 engagement tool more than anything because they get
4 so tired sometimes of looking at those consumables,
5 it's a way for me to give them something different in
6 a different format and use some different strategies
7 that are more kinesthetic with them to get them
8 engaged in their reading skills.

9 JUDGE THEIS: It's kind of computer
10 generated?

11 THE WITNESS: Yeah. And it has --
12 you have to have a projector and a computer and then
13 you're set.

14 MR. RUPE: It's not an elected
15 position.

16 JUDGE THEIS: Thank you very much.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 JUDGE THEIS: Is 2:00 good?

20 MR. RUPE: That's fine.

21 MR. CHALMERS: Yes, sir.

22 (A recess was taken.)

23 JUDGE THEIS: Be seated. Thank
24 you.

25 We're probably going to stop at

1 5:00 today because the court reporter has
2 commitments.

3 MR. RUPE: We will. And,
4 Your Honor, in terms of -- I've given opposing
5 counsel the schedule. We're going to call first Kim
6 Morrissey, then Stephanie Sorenson, Ed Hudson, if we
7 have time yet today Shelly Beech and then Mary
8 Stewart. Mary Stewart is one of those that is
9 subject to the motion. I doubt we get to her today.
10 Probably be tomorrow morning.

11 JUDGE THEIS: Okay.

12 MR. RUPE: And I've invited
13 Mr. Chalmers to talk to her. She's sitting back in
14 the waiting room. And she'll be available afterwards
15 if he wants to visit with her, but we can take that
16 up tomorrow morning.

17 JUDGE FLEMING: You said you were
18 going to respond to this motion. Have you done
19 that?

20 MR. RUPE: Do you want me to do it
21 in writing?

22 JUDGE BURR: I don't care.

23 JUDGE THEIS: Doesn't make a
24 difference.

25 MR. RUPE: We can put something in

1 writing and get it filed tonight.

2 JUDGE FLEMING: It's not necessary.

3 JUDGE BURR: I thought you had
4 indicated that too, but I don't care if you do. I
5 mean, if you want to respond orally it's fine with
6 me.

7 MR. RUPE: You want me to do -- why
8 don't I file something so you have it and then in the
9 morning we can take up the motion. Does that make
10 sense?

11 JUDGE FLEMING: Sure.

12 JUDGE THEIS: At some point in the
13 morning. Mr. Unpopular.

14 JUDGE FLEMING: I guess that means
15 you're going to do it.

16 MR. RUPE: That's why I said I
17 don't mind doing it.

18 JUDGE THEIS: In ten words or less.

19 JUDGE BURR: Remember, I said I
20 didn't need it.

21 MR. RUPE: Kim, you want to take
22 the stand, please.

23 Plaintiffs call Kim Morrissey.

24 KIM MORRISSEY

25 Called as a witness for the

1 Plaintiffs, was duly sworn by the reporter and
2 testified under oath as follows:

3 THE WITNESS: May I ask a question
4 already? Is there a way to lower the chair?

5 MR. RUPE: I don't think so.

6 THE WITNESS: Oh, wait. I found
7 it. Now my feet touch.

8 DIRECT EXAMINATION

9 BY MR. RUPE:

10 Q. Tell us your name and where you live.

11 A. My name is Kim Morrissey and I live in
12 Wichita, Kansas.

13 Q. What is your current job title?

14 A. I currently teach physical education in a
15 school that services pre-kindergarten through 5th
16 grade.

17 Q. What school is that?

18 A. Dodge Literacy Magnet.

19 Q. Is it within the city of Wichita? Where is
20 it located?

21 A. We're located on the west side of the city
22 to the west of Midtown. We border between -- it's
23 just best to say it's west because the city has grown
24 so much. We're not the farthest west but we're not
25 in the Midtown as well.

1 Q. There's a -- there's a street known as West
2 Street that runs north and south on what used to be
3 the west edge of town.

4 A. Correct.

5 Q. And now is a little bit more central.
6 You're --

7 A. We're west of West Street.

8 Q. Okay. We'll come back to the demographics
9 of that school and your classroom in just a minute,
10 but I want to ask you a little bit about your
11 educational background.

12 A. All right.

13 Q. Tell us where you graduated from school,
14 where you got your teaching certificate from, your
15 educational background.

16 A. Okay. I started at Kansas State University
17 in interior design. Decided that I wasn't so good at
18 that. Moved back home and went to Wichita State
19 where I graduated with my Bachelor's in Physical
20 Education. Taught for a few years and then I went
21 back to school for my master's. And my master's is
22 in sports administration.

23 JUDGE BURR: Excellent choice of
24 schools, by the way.

25 Q. (By Mr. Rupe) In terms of your work history,

1 what has your work history been before Dodge?

2 A. I've done a little bit of everything. I've
3 taught middle school. I started -- my first teaching
4 job was in a Catholic school so I taught K-8. Then I
5 went to the public schools and have been there. I've
6 coached at the high school level and taught
7 predominantly elementary. I also teach at Wichita
8 State University. I'm an adjunct lecturer. I teach
9 health and physical education methods to education
10 majors.

11 Q. Now, give us a little brief personal
12 history, if you would.

13 A. Well, personal I have two granddaughters,
14 four dogs, two cats. And I spend a great deal of
15 time -- I spend a great deal of time taking care of
16 children, everybody else's children. I will get
17 through this.

18 Q. Let me ask you about, you recently -- didn't
19 you receive an award of some type? Talk to us about
20 the award.

21 A. Give me a moment. Last year I was one of
22 eight finalists for the Kansas Teacher of The Year
23 Award. I get a little emotional about it because
24 usually that goes to classroom teachers. And as a
25 physical education teacher, it was a huge honor. And

1 part of that was because I think I spend a great deal
2 of time trying to make sure that kids learn about
3 being active and healthy.

4 And we won -- my school also received the
5 one and only recognition for -- it's called the STARS
6 award. It's nationally recognized through the NASPE
7 Program, which is kind of a governing body over
8 physical education. But my school was awarded that
9 because of its excellent physical education program.

10 Q. And what was the year the STAR Award was
11 received by Dodge?

12 A. 2009.

13 Q. Okay. And your nomination as teacher of the
14 year was what year?

15 A. 2010 through the 2011 year.

16 Q. Okay.

17 A. And I'm currently -- I'm currently involved
18 in NEA Foundation as a fellow -- it's part of a
19 fellowship. I'm going to have the opportunity to
20 travel to China in a week and a half as part of the
21 Foundation's educational tour so that I can learn
22 about other countries and their education system and
23 how they work and how it -- how we compare.

24 Q. And NEA would be the teachers' organization?

25 A. Correct.

1 Q. Now, let's focus on Dodge Literacy Magnet
2 School.

3 A. All right.

4 Q. And explain to the Judges what the
5 demographics of that school are.

6 A. This year currently we had 467 students that
7 encompassed the pre-K through 5th grade. Next year
8 we're looking at an increase of over 125 students.
9 We vary between -- in the last three years that I can
10 recall, our free and reduced population ranges in the
11 80 percent; 82 to 84 this year. It was 84, 86 in the
12 previous years. So we ranged in the upper 80s
13 usually on our percentages.

14 Our students come from relatively -- it's a
15 magnet so we can draw students from all over the
16 city, but it's a neighborhood magnet school. So
17 although we can draw those students, we have to take
18 the students in our neighborhood first, and then we
19 can fill the other slots, I guess is what they call
20 them, with children from other parts of the city.

21 Q. What are the at-risk numbers, if you can
22 give us an idea of at-risk kids at Dodge Elementary?

23 A. In the sense of special ed or as in poverty
24 level?

25 Q. Poverty.

1 A. It's -- this year was 82 percent.

2 Q. Okay. So free and reduced and at-risk
3 equate the same?

4 A. Mm-hmm.

5 Q. And then special ed?

6 A. I do not know the percentage of special ed
7 students. I know that we have two separate
8 classrooms that are dedicated. One is for our
9 kindergarten through 2nd grade students and the other
10 is for 3rd through 5th.

11 Q. And what about minorities?

12 A. We're predominantly white. We have one
13 Asian student. That's not true. We have four Asian
14 students. I can't tell you the specific percentage
15 of African American students and we probably -- I
16 want to say 20 percent are Hispanic. It may be
17 higher.

18 Q. And your ELL population, English limited
19 language?

20 A. It's very limited.

21 Q. Very small?

22 A. At my school.

23 Q. Okay. Let's if we could, explain what you
24 do at the school.

25 A. I wear a lot of hats to school. I'm the --

1 there are two physical education teachers. I am the
2 full-time physical education teacher and then we have
3 a second one that's at our school as well. We
4 have -- I also am part of the leadership team that
5 helps make decisions for our school and our
6 population. I am codirector of our latchkey.

7 Q. What's latchkey?

8 A. Latchkey is before and after-school program
9 for kids whose parents work. We open at 6:30 in the
10 morning and we close at six o'clock at night. So the
11 kids come to us before school for childcare and after
12 school.

13 Q. What are your -- what's your agenda when you
14 start teaching in, say, the most recent school year
15 on what you want to accomplish with the kids that are
16 in your class?

17 A. And because I'm a special, it's a little
18 different, but my job is to help support the
19 classroom teachers. I have a set of standards and
20 benchmarks that I must follow to teach my children,
21 things that they're expected to learn just like
22 they're expected to learn in language arts or math or
23 writing, science.

24 But in addition to my standards that I must
25 follow and make sure that my kids get, I have to

1 support the classroom teachers. What they're
2 teaching when they're teaching math, those skills
3 that they're teaching in that class for that day or
4 that week, I need to find a way to help support what
5 they're doing because those children are not
6 encapsulated in their classroom.

7 They leave their classroom to have that
8 opportunity to learn other things but we still have
9 to -- the whole school is trying to get the child at
10 a level, at a proficient level. And it's not just
11 classroom teacher's job to do that. It takes all of
12 us. It goes back to the, it takes a village to raise
13 a child, and that's what the school setting is
14 supposed to be. It takes a lot of people to help a
15 child reach their full potential.

16 So in addition to my normal duties, my
17 physical education skills that I want them to learn,
18 I have to also give them other things. I have to
19 give them, if they're learning about time, I have to
20 help find ways to integrate time into my lessons as
21 well to help them so that they gain a better
22 knowledge and how it works in the real world.

23 Q. I want to ask you about something you said.
24 You said you had certain benchmarks that you had to
25 do.

1 A. Mm-hmm.

2 Q. Or were required to do. Explain or give us
3 an example of what you're talking about.

4 A. Well, I have actually six standards that I
5 have to teach the children. And the first one has to
6 do with their motor skills. They need to be
7 proficient at things like throwing and catching and
8 hopping and skipping, the basic motor skills.

9 Research also talks about how children
10 develop. And children who -- in my class one of the
11 things I say to my education majors is I can tell a
12 student who's going to struggle in reading by asking
13 them to skip, because it's a patterning skill. And
14 if they have trouble with skipping, basic motor
15 skills, they will have trouble in reading. So those
16 are the things that we do.

17 It also -- research is also showing that
18 kids who have activity breaks do better academically,
19 so we want to provide that. So that's part of one of
20 the other things that I do is that I offer -- I help
21 my teachers learn how to use activity in their
22 classrooms to help their children succeed in learning
23 their basic skills.

24 But beyond motor skills I have to teach them
25 how to understand about rules and strategies. I have

1 to teach them how -- one of our standards is about
2 social skills and how to work cooperatively with
3 other children and how to play fair. We have fitness
4 standards and then just learning to move for
5 enjoyment and being active outside of the classroom,
6 outside of my classroom, outside of their school
7 day.

8 And those are the things that we -- it all
9 intertwines in the sense that they really need to be
10 educated all the way around. It's not just one
11 component. It's not just reading. It's not just
12 writing. It's not just math. It takes all the
13 different pieces, the arts, the physical activity, as
14 well as their classroom opportunities.

15 Q. And I asked you about exhibit -- I'm going
16 to ask you about this Exhibit Plaintiff's 39, and it
17 has a list of things that Kansas law requires. I
18 refer to them as the Rose Factors for reasons of a
19 court case. But in terms of these factors,
20 development of sufficient oral and written
21 communication; acquisition of sufficient knowledge of
22 economic, social and political systems which enable
23 students to understand the issues; development of
24 students' mental and physical wellness; development
25 of knowledge of the fine arts to enable the students

1 to appreciate the cultural and historical heritage of
2 others; training and preparation for advanced
3 training, either academic or vocational, and it goes
4 on, and then sufficient levels of academic or
5 vocational skills to enable students to compete
6 favorably in academics and the job market. And then
7 finally the needs of students requiring special
8 education services.

9 In terms of those factors, would you agree
10 that that is part of your agenda when you go to work
11 and teach at Dodge?

12 A. Oh, absolutely. Number three, I think, was
13 the physical well-being, the social aspect. The
14 written and oral communication, I actually give
15 tests. Some of my students don't think it's a great
16 idea, but I ask them to give me back information and
17 they have to do it in a written format, as well as
18 being able to tell me. So those are all things that
19 are important. And again, it goes back to we all do
20 it together.

21 Q. In terms of the standards you described that
22 were part of what you do, teaching motor skills,
23 activities, discipline, social skills, fitness, so
24 forth, you said those were required. Who requires
25 those of you?

1 A. My curriculum directors. I should say
2 director. It's actually two people in one position,
3 but we have -- the State has -- there are no mandates
4 for physical education and the guidelines that are
5 given to me from my -- the people above me, so to
6 speak, are because we are trying to attain a level of
7 competency and we want our children to succeed so we
8 have adopted those. But they are not required in the
9 sense that the district says we have to, but it's
10 good practice. But our district has adopted those
11 standards from the State and from our national
12 organization.

13 Q. Okay. And in terms of whether the State
14 requires development of students' mental and physical
15 wellness, is that something that comes from the
16 State, from your director or who does it come from to
17 your knowledge?

18 MR. CHALMERS: Again, this is a
19 witness that has not been identified as providing
20 expert testimony. It is calling for an opinion and I
21 think it's also calling for a legal opinion. And it
22 has not been disclosed. I think it's also improper
23 subject matter for opinion testimony, so I object.

24 MR. RUPE: I'm not asking her
25 opinion. I'm asking her knowledge and whether or not

1 she knows whether that requirement comes from her
2 supervisor or from the Board of Education or from the
3 state Board or from the Legislature.

4 MR. CHALMERS: 6254 is our statute
5 that defines what is opinion testimony. It's special
6 skill or knowledge and this is not knowledge
7 possessed by everybody. We're asking opinion
8 testimony and it hasn't been disclosed as it was
9 required under the case management order. And I
10 haven't had an opportunity to pursue this
11 investigation in a deposition. It's also not proper
12 subject if it's getting into what her knowledge is as
13 to the law. I think that's where this panel and how
14 these regulations work and not for this witness.

15 JUDGE THEIS: I understood the
16 question to ask if she understood the parameters of
17 her job.

18 MR. RUPE: That's what I was
19 asking.

20 JUDGE THEIS: Overruled.

21 THE WITNESS: Will you re-ask the
22 question, please?

23 Q. (By Mr. Rupe) I'll try to do it without --
24 I'll try to do it.

25 In terms of the question I wanted to know

1 is, the notion of teaching physical wellness, do you
2 know whether that comes from your supervisor, does it
3 come from the State Board of Education, does it come
4 from the 259 Board of Education, or does it come from
5 state law?

6 MR. CHALMERS: Again, that's not
7 asking the parameters of her job, which I don't have
8 a problem with. That's trying to get into what is a
9 legal definition and what may be required by the
10 State, which may turn on or maybe inform this Court
11 as to what is a suitable education. That's not been
12 properly disclosed, and it's a legal opinion and I
13 object.

14 JUDGE THEIS: I know that you
15 disagree, but it's overruled, and she's -- I mean, if
16 she's doing her job she has to know what sources
17 she's operating under, whether by name or
18 practicality.

19 A. I know that my job and what I'm supposed to
20 do comes directly from my curriculum director and
21 my -- I'm presuming that that comes from my
22 superintendent, which comes down from the Kansas
23 Department of Education and ultimately from the
24 Legislature.

25 Q. (By Mr. Rupe) All right. Then let's focus

1 on in terms of what your -- you've described for us
2 what you attempt to do with your kids. I want to ask
3 you if there's been a period of time in the last few
4 years in which there have been some reductions in
5 resources?

6 A. Absolutely.

7 Q. Hang on. Let me get the question so you can
8 give an answer.

9 A. I'm ready.

10 Q. Explain to the Judges what reduction in
11 resources you're aware of.

12 A. Okay.

13 Q. And I'm talking your school.

14 A. My school, absolutely. First, let me go
15 back and just revisit something. In my school we've
16 had several things change because of reduction, but
17 one that affects me most importantly is the fact that
18 in the past we had a position in our district for a
19 curriculum director. For two of them, one for high
20 school and one for elementary. Last year they
21 reduced that to one position. So now we still have a
22 person who works with our high school or middle
23 school and high school physical education teachers
24 but -- and one that works with the elementary but
25 they're half-time now as opposed to full.

1 And to put that in perspective, there are 68
2 elementary schools and there are eight or nine, I
3 can't remember for sure, high schools and I don't
4 have no idea how many middle schools there are, a
5 lot. So that's a lot of people to take care of.
6 We've lost professional development time. We used to
7 be able to work together and collaborate on a regular
8 basis on inservice days with those directors and now
9 that's gone away.

10 In my school we have -- we -- and it was
11 spoken to earlier, but we lost our band program for
12 our 5th graders. Last year we lost our orchestra.
13 Orchestra started in 4th and 5th grade and then they
14 left it one year at 5th grade and now it's gone
15 completely. So our students who might have an
16 interest either had to go outside or they just didn't
17 begin band and orchestra. We have lost a few paras.
18 We've --

19 Q. When you say paras, let's make sure we know
20 what that is.

21 A. Paras are help in the classroom for students
22 who are at-risk who need extra help. Sometimes their
23 job is sitting next to a student and helping them
24 focus and stay with the classroom instruction.

25 Q. Para-professional?

1 A. Yes, para-professional.

2 Q. Okay.

3 A. We have lost learning coaches. We had a
4 math learning coach and a reading learning coach.
5 Now we don't have any.

6 Q. Let me stop you there because I want to
7 understand what a learning coach in math, and then
8 another learning coach in reading are. What are
9 those positions?

10 A. Their job was to help teachers to give them
11 strategies and to basically give them professional
12 development in order to help their students succeed
13 in that particular curriculum content.

14 Q. So as a coach, they were coaching the
15 teachers on how to teach?

16 A. Correct. And I spoke out of turn. We still
17 have a learning coach but she is split between two
18 schools.

19 Q. So you went from a learning coach at your
20 school in math and one in reading to a half-time
21 learning coach?

22 A. That's true.

23 Q. All right. Continue.

24 A. We have class sizes -- we had four 5th grade
25 classrooms, now we have three. Our 5th grade classes

1 consisted of 27 and 28 children. And as a physical
2 education teacher, that means that I have usually
3 double classes in my gym. Now, there are two
4 teachers, but it's also about that many children
5 being taught at the same time.

6 Q. How many kids in your classroom?

7 A. I teach double classes pretty much all day
8 and so they range between 42 up to 50 plus.

9 Q. Any other resource?

10 A. We have lost our nurse. We've lost part of
11 that. You know, we had a full-time nurse, now she's
12 eight-tenth. We've lost some of our special
13 services. Our child study team, it looks different.
14 That's the psychologist, the social worker, the
15 speech therapist, the nurse. There may be others.
16 They're in a whole different area. But we have lost
17 the amount of time that they spend in our building.

18 We have to make choices what you keep and
19 what you don't keep and what's more important in the
20 sense of, do you keep a full-time counselor on staff
21 and not have a full-time nurse or a full-time
22 something else? So every year it looks a little
23 different because we have to make the decisions based
24 on our student population what we're going to keep
25 and what -- what we can't keep because of financial

1 issues.

2 Q. And in terms of the demands that you deal
3 with, do you deal with anything along the lines of
4 Common Core standards or AYP and assessments or
5 special education?

6 A. I do not, but I support what they're doing
7 in that classroom and so I am still responsible for
8 understanding Common Core MTSS. I will go back to my
9 statement that I said before, it's not just the
10 classroom teacher -- the classroom teacher's job to
11 help a child succeed; it takes all of us. So
12 although I'm not directly -- I don't directly provide
13 that instruction for them, I am part of that support
14 system so that they -- what I do is I provide the
15 opportunity for kids to want to be in school.
16 Because for most people, most kids, physical
17 education is that, yes, we get to go to PE moment.
18 Not all of them but most of them.

19 And so for some of them, knowing that that's
20 their PE day, they will be in school, which seems
21 kind of silly but it's really important. Just like
22 some of the other things, that ones that really excel
23 in music, they know that Monday is their music day,
24 they're going to be in school and they're going to be
25 eager to -- so that they can go to those specials, I

1 guess.

2 Q. In terms of what training you've received on
3 Common Core standards, what training have you
4 received?

5 A. At this point for Common Core I have not
6 received any specific training. It's -- we're just
7 making -- we're basically in the MTSS model and
8 they're just starting to make the switch on how we're
9 going to provide those services so I cannot say that
10 I'm trained.

11 Q. When was the last time you had a salary
12 increase?

13 A. I have not seen a salary increase in four
14 years. I have -- my peers that have received their
15 master's degree within the last four years in my
16 district, our salaries and our tracks have been
17 frozen. Longevity has been frozen. So those people
18 who four years ago that just received their master's
19 degrees did not get to see the benefits of their
20 labors. And for four years we haven't seen an
21 increase at all, and I don't think we'll see one this
22 year.

23 Q. What has been the -- what's been the impact
24 of these cuts and resources you've described on what
25 you try to do that you described for us earlier?

1 A. Well, one of the things that I think that
2 has impacted me personally but also for our school,
3 in the past years when money, you know, I wouldn't
4 say it was flowing, but it certainly wasn't at the
5 state it is right now, I would have a \$300 budget or
6 a \$400 budget. This year my budget for almost 500
7 kids, we started the year with 487, was \$150.

8 I don't know if you realize how much
9 basketballs cost, but just a mediocre basketball is
10 \$16. Now if I -- my job is to try to make sure that
11 every kid has an opportunity to grow physically and I
12 can't do it with six basketballs. I need a set of
13 basketballs, or I need a set of jump ropes. And so
14 in order to get what I need for my students, this
15 past year I had four different grants that I wrote
16 and received so that my students would get the things
17 that they need.

18 I also do an after -- I shouldn't say an
19 after-school program, but I send home an equipment
20 bag with my students on the weekend so that they can
21 play and be physically active, not only themselves
22 but with their family. And that equipment has to
23 constantly be restocked because for whatever reasons,
24 you know, the soccer ball got kicked over in the
25 neighbor's yard and the dog ate it and those things.

1 But those are the kinds of things that I
2 can't provide on my \$150 budget. I can barely
3 provide the equipment that we need to have in our
4 classroom. So with that being said, the four grants
5 were to supplement just what I do.

6 The other part of that is professional
7 development, the opportunity to go to conventions or
8 to workshops are not there. I can go. I have to
9 take personal leave. I have to pay for it out of my
10 own pocket. And again, it goes back to I need to
11 grow as a teacher in order to provide my students the
12 very best, but I don't have those opportunities. I
13 shouldn't say I don't have them. I have the
14 opportunities. It's just that the money -- in the
15 past, our school was able to pay for like the
16 convention fee or to provide the substitute for me to
17 be gone. That doesn't happen anymore.

18 So those are just a few examples of what --
19 how it's affected my school. Our tutoring program,
20 as we get ready for state assessments, we've had a
21 tutoring program in the past. Any child who wanted
22 to stay now we have to look at the most at-risk
23 children and service them as opposed to a lot more
24 because there's no funding to support that.

25 Q. By that you mean the tutoring program?

1 A. Exactly. It's an after school tutoring
2 program that helps kids -- give them that little
3 extra to help them get through the testing process.
4 I'm sure there's a million other things. Those are
5 just some of the ones that the pieces that ...

6 Q. Do you spend your own money to go to
7 professional development?

8 A. I do.

9 Q. Are there some teachers that can't afford to
10 do that?

11 A. Absolutely. There are a lot of teachers who
12 can't. It's not fair. You know, I think about the
13 teacher who's just starting out, who has -- who
14 should be able to have the opportunity to go and gain
15 more information. And, quite honestly, we should all
16 be able to have those opportunities. And I'm not
17 saying that the school should pay for it all, but at
18 the same point, if it will help one or two or ten or
19 100 children, we should have those opportunities. So
20 I'm very fortunate that some of those things I can
21 afford to do. But I've also been teaching for 30
22 years. I make more than the teacher who has only
23 been teaching five years who could use just the same
24 information as I could use, but they don't have the
25 means to do that.

1 Q. Do you find yourself purchasing supplies for
2 the school?

3 A. I do.

4 Q. Are you given a budget or how does that
5 work?

6 A. I have a budget of \$150. But again, it
7 doesn't go very far. For instance, Angry Birds, the
8 game Angry Birds, kids love it. I'm always looking
9 for new ways to engage students. At Christmastime,
10 after Christmas one of local stores has all their
11 Angry Birds stuffed animals on sale and the brain was
12 clicking. I had the perfect game I was going to use
13 those for, but I'm out of budget money. So I still
14 bought the plush animals, the little Angry Bird
15 animals because I wanted my kids to have them.

16 And simple things like I provide kids socks
17 and shoes. We have the shoe store in the gym. When
18 they come in and they're wearing flip flops, which
19 are dangerous, go to the shoe store. So I have
20 tennis shoes and socks. You know, it doesn't seem
21 like much, but I'm making sure that those kids have
22 what they need.

23 Whenever there's a sale at the store I will
24 pick things up and hand it off to another classroom.
25 The classrooms all the time are sending out emails,

1 anybody have any tissues. I buy -- the tissues we
2 use in the gym, I buy the tissues every year because
3 there aren't -- it's just not there, the money's not
4 there. And tissues doesn't seem like a very big
5 thing, but if you have to deal with snotty-nosed
6 children, you want tissues.

7 Q. And was there a time where the Dodge school
8 ran out of money for toilet paper?

9 A. Yes. A couple of years ago it was one of
10 those conversations we had in passing with the
11 custodian and she said, we don't have enough toilet
12 tissue to get through the school year. And I don't
13 know where we're going to get it.

14 Q. Why didn't you -- did you ask the parents to
15 send toilet paper?

16 A. We did not ask the parents to send toilet
17 paper. I don't know where the toilet paper came
18 from, but it's a constant sense of feeling like we're
19 robbing Peter to pay Paul. The anxiety that it
20 causes, toilet paper should not be an issue in a
21 school; just shouldn't. Neither should pencils,
22 neither should paper, neither should shoes. Our kids
23 come to school without their coats because they don't
24 have them.

25 Those are all things that cause children to

1 be anxious. But the other part is as a teacher we
2 want the optimum situation for our kids to learn in
3 and they can't learn if they aren't getting their
4 basic needs met at home. You know, we're feeding
5 them. We have to make sure that they come to school
6 and they're getting breakfasts or something to eat.
7 We have -- the woman before me talked about the food
8 pantry. We have a food pantry as well. Parents come
9 to our school and we have a closet full of clothes.
10 It's just like my shoe store.

11 Q. Who funds the shoes and the pantry and the
12 clothes? Where does that come from?

13 A. The pantry is part of the communities and
14 schools, but that comes from donations from outside
15 of the school. The shoes for my shoe store come from
16 garage sales, you know, from my own grandchildren's
17 feet when they outgrow them, I put them in the shoe
18 store. But those are the kinds of things that
19 there -- it's various places, but it's usually the
20 classroom teacher. I can't tell you how many of my
21 peers within my own school have paid for kids to do
22 different things. When we wanted to -- we never
23 leave a child behind because they can't afford
24 something, so we have to give something else up
25 somewhere.

1 And, you know, there are schools that can do
2 fund raisers but we don't have that option. Our kids
3 just don't have that kind of money, so we have to
4 find it somewhere else. And a lot of times it comes
5 out of the teachers' own pockets. If they know that
6 they have a student who needs a pair of gloves or
7 they need a coat, they will do that to make sure that
8 their kids have their needs met so that when they
9 come to school, they can learn.

10 And then while they're in school, they have
11 what they need, whether it's paper, crayons,
12 markers. And you know, there's something about
13 children, they eat crayons and pencils. Some really
14 do but at the same point, it's a consumable. It just
15 doesn't grow on trees.

16 Q. Let me ask you this question and this will
17 be my final area of inquiry. In terms of these
18 resources that you've described and what the cuts
19 have been, has that affected how you and what you
20 accomplish by way of what you want to accomplish with
21 your kids?

22 A. Yes, it does. And here's what it does: It
23 makes my job harder because I don't have those
24 resources to do as much as I would like to do. Do I
25 still accomplish what I want to do? Not all the

1 time.

2 MR. RUPE: I think we're done.

3 CROSS-EXAMINATION

4 BY MR. CHALMERS:

5 Q. Congratulations on the NEA -- or excuse me,
6 on the Teacher of the Year.

7 A. Thank you.

8 Q. I think I had a -- actually my high school
9 friend was a Teacher of the Year and I think he went
10 to China as part of that program. Is that what
11 you're --

12 A. What was your friend's name? Maybe I --

13 Q. Marilyn Cooper. It would have been years
14 ago.

15 A. (Shaking head.)

16 Q. You are at Dodge Middle School?

17 A. Elementary.

18 Q. Elementary. I'm sorry. And you talked a
19 little bit about that school. That school, that
20 building made its AYPs last year and the year before?

21 A. Yes.

22 Q. You don't have the benefit of it. I have
23 the screen in front of me, but by way of
24 illustration, in 5th grade math, 5th grade reading,
25 actually the scores have increased the last couple of

1 years.

2 A. Yes, they have.

3 Q. I take it you're proud of that, as you
4 should be.

5 A. We are.

6 Q. You indicated that there would be two -- or,
7 excuse me, that you'll have an additional twenty --
8 125 kids next year. Is that part of the
9 reorganization that's going on in Wichita at the
10 different schools?

11 A. They closed a school near us and we will get
12 those students.

13 Q. I think I remember seeing that there are two
14 new elementary schools that opened what, this week?
15 Maybe I misread the article.

16 A. Well, I don't read the paper very often.
17 Ortiz and then there's a K-8 school that's opening as
18 well. So there's two -- one elementary and one K-8
19 school.

20 Q. And there was a bond issue now a few years
21 ago and that's produced a substantial amount of new
22 construction of the Wichita school district, is that
23 right?

24 A. That would be correct.

25 Q. As part of that we've got certain schools

1 that are being retired and kids are being tunneled
2 into these new schools. And I take it that shift has
3 left your school with another 125 for next year?

4 A. It has.

5 Q. You indicated that you have lost an
6 inservice day or had recently or days, and I'm not
7 sure I follow that.

8 A. Let me explain. The district has inservice
9 days and during those inservice days, we were allowed
10 to be with our curriculum directors for gaining of
11 new knowledge. We don't have that opportunity to do
12 that. We still have the inservice days but our time
13 is spent in our school or with the district and what
14 they have decided that we would gather as new
15 knowledge.

16 Q. So you're saying within the school as
17 opposed to going out and receiving some of the
18 professional developments you talked about on the
19 trips and so forth, unless you do it out of your own
20 pocket now?

21 A. Correct.

22 Q. The NEA, you're involved with that how?

23 A. I happen to be the building representative
24 at my school.

25 Q. That's the union for the teachers and some

1 other staff in our district, is that right? Is
2 NEA -- wait, now is that --

3 A. It's UTW in Wichita. It's United Teachers
4 of Wichita, but it's affiliated with NEA and AFT.

5 Q. What is the dispute that's going on now
6 between the district and the NEA as to inservice
7 days?

8 A. I can't speak to that.

9 Q. The grants that you -- that you applied for,
10 what were the sources of those grants? Is that state
11 money?

12 A. Part of it was state and part of it was --
13 three of the grants came from the Kansas Department
14 of Education and one came from Fuel Up to Play 60
15 with the NFL and the Midwest Dairy Council.

16 Q. You had a private source and then three of
17 them came through the state?

18 A. Yes.

19 Q. The tutoring programs that you talked about
20 that have been narrowed down to those kids that were
21 at-risk, when did that take place, that reduction?

22 A. It has -- it has -- this year we saw the --
23 the worst of the changes where we just took the --
24 kind of the Tier III children. Last year we -- we
25 did not have as many children in the tutoring program

1 because we couldn't, again, fund as many tutors. But
2 this year it was just the bare minimums.

3 Q. So we've had reductions in the tutoring in
4 previous years, but this year more so?

5 A. Mm-hmm.

6 Q. Is that right?

7 A. To my knowledge, yes.

8 Q. When did the reductions begin?

9 A. I would say in the last two years that I
10 know of.

11 Q. Okay. So they would have started before
12 these last two years of improved AYP testing?

13 A. Would you say that again, please.

14 Q. That's fine. That's probably
15 argumentative.

16 Just a last question more for my own
17 personal sake I suppose. I've got a -- my grandson
18 starts kindergarten next year. What is he supposed
19 to bring with him? He doesn't bring any shoes. He
20 doesn't bring any -- that can't be correct. I mean,
21 what you're saying is there's a group of kids who
22 have parents who aren't maybe doing their job and
23 that your school has stepped up and has filled in for
24 the parents?

25 A. What I am saying is that my students come

1 from homes where their parents are doing the best
2 that they can do, and sometimes that's just the bare
3 minimums.

4 Q. Sending their kids to school without shoes?

5 A. They have shoes.

6 Q. The kids didn't.

7 A. Well, some of them don't, but the problem is
8 that they're wearing flip flops and flip flops in
9 physical education is very dangerous. Flip flops on
10 the playground is very dangerous and so I provide
11 those tennis shoes and the socks so that they will be
12 safe.

13 Q. You go beyond what's required as part of
14 your job position to help these kids that's --

15 A. That would be --

16 Q. -- part of your administration?

17 A. That would be correct.

18 Q. And many teachers, frankly, do the same?

19 A. Absolutely.

20 Q. I thank you for doing that.

21 Beyond that I have just one other area of
22 questions, I think. Do you know what the cash
23 reserves have been in the district, whether they have
24 increased each year for the last several years?

25 A. I have no idea.

1 Q. Do you know if your district has fully
2 funded its local option budget where it can raise as
3 much local money as it can?

4 MR. RUPE: Objection, outside the
5 scope and --

6 A. That's --

7 MR. RUPE: Hang on.

8 JUDGE THEIS: Yeah. It's beyond
9 what he asked.

10 MR. CHALMERS: All right. I don't
11 have anything further. Thank you.

12 Oh, no, I do. I do. I'm sorry,
13 there's one last. It's right here.

14 JUDGE THEIS: Do that there.

15 Q. (By Mr. Chalmers) You can sit down. It's
16 going to take a little while.

17 PE classes, is that something that is part
18 of the curriculum under the QPA, if you know?

19 A. I don't know if it's part of the QPA. I
20 have no idea.

21 MR. CHALMERS: Then I don't have
22 anything else, as it turns out. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. RUPE:

25 Q. We talked about -- or you talked about to

1 Mr. Chalmers that the notion of shoes being part
2 of -- the origin of that supply being your good
3 heart, and I want to ask you about MTSS. Does MTSS
4 require just academics?

5 A. Oh, absolutely not.

6 Q. And does MTSS require some of that social
7 support that kids who are at-risk whose parents send
8 them to school in the middle of winter in flip flops,
9 what does it say to those situations?

10 A. Well, MTSS has the -- as we heard earlier,
11 has the academic component and behavior component and
12 they're all interrelated. They have to work
13 together. And those kids who are coming in their
14 flip flops in the winter or the kids who are coming
15 without what they need are at a disadvantage. And as
16 they -- we have to make sure that we are meeting the
17 behavior and the social piece because those affect
18 the academic piece. It's a circular motion.

19 We need the visual of the MTSS model so that
20 you can see that it's circular as well as the pyramid
21 within it, so that you can see how one relates to the
22 other. And I'm a very basic person. But it's very
23 circular and it has to all go together in order to
24 help those children be successful.

25 Q. And meeting those basic needs that include

1 academics and social and, as you have explained,
2 that's not because of Kim Morrissey's good heart,
3 that's required of it?

4 A. Absolutely.

5 Q. And can you do it with the resources you
6 have?

7 A. I cannot do it.

8 MR. RUPE: That's all I have.

9 MR. CHALMERS: I don't have
10 anything further, Your Honors.

11 JUDGE THEIS: You can step down.

12 Thank you.

13 EXAMINATION

14 BY THE PANEL:

15 JUDGE BURR: I have something
16 that's been bothering me that I've been thinking
17 about. It may be insignificant, but at one time, and
18 I may use the wrong terminology, you have to be
19 certified or licensed, or what's the term as a
20 teacher I mean?

21 THE WITNESS: Of physical education
22 or?

23 JUDGE BURR: Well, just to teach in
24 the State of Kansas, don't you have to have a
25 certificate or whatever?

1 THE WITNESS: Yes.

2 JUDGE BURR: There's a certain
3 requirement every three years or five years, or used
4 to be, for continuing education.

5 THE WITNESS: Exactly. We have --
6 a beginning teacher has three years and then they get
7 their license. And then after that, it's every five
8 years. And during that course of five years, we must
9 get at least eight hours of course work or you can
10 use -- there's a point system. And forgive me, I
11 don't know the whole part of that, but I can use
12 points and I can use college credits. But I still
13 have to get eight hours of college credit or the
14 equivalent.

15 JUDGE BURR: I think at one time
16 and, I don't know, this is what I'm asking. At one
17 time I think many school districts provided help in
18 doing that and maybe they all didn't. I don't know.
19 That's what I'm asking.

20 THE WITNESS: No. I've been in the
21 Wichita district now 20 -- over 20 years and there
22 has been no -- no additional financial help to get
23 those hours whatsoever.

24 JUDGE BURR: All right.

25 MR. CHALMERS: Briefly, if I could

1 follow up on that, Your Honor. I just want to be
2 clear.

3 RECROSS-EXAMINATION

4 BY MR. CHALMERS:

5 Q. But there are inservice days where time is
6 allowed for you to go get the professional
7 development?

8 A. Let me clarify. The professional day or the
9 professional days or professional development is
10 driven by the district, and it is not -- that
11 development is not -- does not -- I don't know, for
12 lack of better words, marry up with the licensure
13 process.

14 Q. Oh, I see. We're talking about two
15 different things.

16 A. Exactly.

17 Q. There is available and there continues to be
18 available, although it's not perhaps what you want,
19 which is a seminar out of state, there is
20 professional development provided by the district at
21 the district's cost?

22 A. Correct.

23 Q. The licensing that you're required to have
24 and maintain requires you to make certain -- you have
25 to increase your education or you have to have a

1 certain level of professional development and you say
2 that's a little bit different?

3 A. Correct.

4 Q. And that's part of the cost of being a
5 teacher, to keep your license?

6 A. That's correct.

7 MR. CHALMERS: All right. Thank
8 you.

9 MR. RUPE: No other questions.
10 Thank you.

11 JUDGE THEIS: Thank you.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MR. RUPE: Stephanie Sorenson.

15 STEPHANIE SORENSON

16 Called as a witness for the
17 Plaintiffs, was duly sworn by the reporter and
18 testified under oath as follows:

19 DIRECT EXAMINATION

20 BY MR. RUPE:

21 Q. Tell us your name and the city in which you
22 live.

23 A. My name is Stephanie Sorenson and I live in
24 Kansas City, Kansas.

25 Q. And what is your employment?

1 A. I teach 2nd grade at Stony Point South
2 Elementary.

3 Q. In Kansas City, Kansas?

4 A. In Kansas City, Kansas. Sorry.

5 Q. Okay. Let's get a little information on
6 you. What's your educational background?

7 A. I actually graduated from the Kansas City,
8 Kansas school district. I received my Bachelor's in
9 Education from Pittsburgh State University and I
10 received my Master's in Education and Leadership from
11 Pittsburgh State University.

12 Q. And your work history has been what?

13 A. When I began teaching, I taught three years
14 in Kansas City, Missouri school district and I've
15 taught 11 years in the Kansas City, Kansas school
16 district.

17 Q. So you've taught 2nd grade that entire 11
18 years?

19 A. No. When I first started at Stony Point
20 South, I taught 1st grade and we used to loop, and I
21 would stay with that same class and teach them 2nd
22 grade. And then I've taught 2nd that looped with
23 them to 3rd grade, also. But the majority of my
24 years in KCK have been with 2nd grade.

25 Q. Tell us a little personal information about

1 you.

2 A. I am a mother of two children and been
3 married 11 years. Most of my time is spent running
4 my children around.

5 Q. The children that you have, are they in
6 school?

7 A. Yes.

8 Q. Where?

9 A. At Piper.

10 Q. And where is Piper?

11 A. Piper school district is in Wyandotte
12 County. I'm kind of the outskirts, I guess, of
13 Wyandotte County, west of KCK.

14 Q. Where the new soccer field, racetrack and --

15 A. Yes.

16 Q. -- legends, that area, is that where Piper
17 is?

18 A. Yes.

19 Q. That's the Piper district. Okay.

20 Let me talk about your -- about last year in
21 school. I want to just ask you to describe for the
22 Judges what it was that you wanted to accomplish as a
23 2nd grade teacher at Stony Brook in your classroom
24 last year.

25 A. Well, I have the Common Core standards when

1 the kids -- for each subject that have to be covered
2 and taught. I also look over -- so all of those need
3 to be taught and mastered by the end of 2nd grade so
4 that they're ready for 3rd grade. I also -- our
5 school keeps track of each child and their test
6 scores and their reading scores, so I look over those
7 so I know how much work has to be done for each child
8 to make sure that they're all ready for 3rd grade.
9 Because some of them come in just a little bit below
10 and some are high and so you just have to know what
11 to do for each child.

12 Q. Okay. Give me an idea of what your
13 classroom by way of demographics looks like. So last
14 year when you were standing in front of your
15 classroom, describe the kids for us.

16 A. I usually run between 20 and 22 students. I
17 have five ESL students. I think I had four African
18 American students and the rest were White Caucasian.

19 Q. What about at-risk kids?

20 A. Probably 95 percent.

21 Q. 95 percent at-risk. Special ed kids?

22 A. I had one student identified and I had four
23 students that I had put in -- into the student
24 improvement process.

25 Q. What does that mean?

1 A. It's where if I notice that -- I think that
2 maybe we should -- maybe they need some help beyond
3 what I can provide in the classroom, I fill out
4 paperwork and give it to -- we have a school
5 improvement team and we meet together with the
6 parents and decide what to do next. And after two or
7 three meetings, we decide together what else can be
8 done to try to improve that student academically.
9 And if we still aren't seeing the improvement we
10 need, we will decide as a team to test that child to
11 see if he or she qualifies for special ed services.

12 Q. Okay. Let's go to resources in the last
13 three years. Have there been any decrease in the
14 resources that you have at your school?

15 A. Yes.

16 Q. Describe for the Judges what those are.

17 A. We lost a call teacher, which those are the
18 teachers that they're reading specialists and can
19 provide one-on-one reading instruction for the
20 students. We had a full-time nurse. Her hours were
21 reduced. We lost some PE, music, art time for the --
22 some of teachers had to go to part-time. There
23 wasn't money for tutoring so tutoring had to be cut.
24 The class -- sometimes we don't have -- if there's
25 not enough money for teachers, if we lose a teacher,

1 the numbers in certain grades become greater.

2 Oh, field trips, there isn't any money for
3 field trips. Teachers have to go on their own to
4 find funding for that. Technology, sometimes we're
5 hurt in the area of technology when technology isn't
6 updated because there isn't money for that.

7 Q. Are there particular strategies working with
8 the kids that you have in your classroom that are
9 at-risk or ESL or minority that work for you to move
10 them along and up in terms of student performance?

11 A. Yes.

12 Q. Describe those for the Judges, please.

13 A. Well, we teach -- as there's only three of
14 us in my grade, but we teach reading in small groups
15 based on each child's needs to give more concentrated
16 instruction. In math, once I teach the whole lesson,
17 I teach them in smaller groups or one-on-one,
18 whenever possible, to provide the instruction that
19 they might need. Our district has -- well, kind of
20 depends.

21 My school, on Wednesday since the children
22 have half days, we don't have any specials that day,
23 PE or music, and there is a time set aside in our
24 school strictly for Tier I, Tier II instruction. And
25 the students are grouped according to whatever needs

1 they might need in math or reading or whatever the
2 teachers decide it is. And we do special instruction
3 according to their needs and the special teacher --
4 the kids don't have specials those days because the
5 special teachers are utilized in the classrooms
6 during that time.

7 Q. What is your parent cooperation in your
8 classroom?

9 A. It depends. It varies each year. There are
10 parents who are -- I had maybe three parents that
11 would try to come up and run parties. Really, that's
12 all they kind of do. They didn't really come up and
13 volunteer for anything. But for the most part, the
14 majority of my parents come to conferences and are
15 usually cooperative and they do what they can.
16 They're not always available.

17 Q. What do you mean by that?

18 A. Well, several of them -- I've got one mom
19 who works two jobs. She can't come to school. I
20 have to talk to her on the phone. Some -- some of my
21 ESL parents, they only speak Spanish, so I have to
22 find the time that there's a translator available.
23 That's not always -- that doesn't always work.

24 Some of them -- several of them their phones
25 change throughout the year and they don't always

1 update the phone numbers, so I don't always have a
2 way to get ahold of them. A lot of them don't have
3 computers at home so I can't email them, so I have to
4 find ways to contact parents.

5 Q. Would you compare your classroom to your
6 daughter's classroom at Piper?

7 A. Yes. My daughter is in a brand new school
8 building. I believe it's two years old. They
9 have -- all their technology is updated. Every room
10 has a SMART Board. The teachers communicate with
11 parents through email often. We usually get our
12 letters through email. Everything is -- they have
13 several -- I don't -- they have a lot of things that
14 like my school doesn't, like the SMART Boards and
15 just because they have more money than we do.

16 Q. What about the parent involvement at your
17 school, at your daughter's school?

18 A. I would say my daughter's -- I would say
19 it's close to 98 to 100 percent. You can't find a
20 place to park in the parking lot whenever there's a
21 school function.

22 Q. In terms of -- let's go back to your school
23 where you teach 2nd grade. Have these resources
24 affected what you have tried to do in the classroom,
25 these cuts that you've described, has that affected

1 what you've tried to do in terms of what you teach?

2 A. Yes.

3 Q. Explain that to the Judges.

4 A. Well, like I said, there's sometimes our
5 technology is behind because of that. So the kids --
6 some of the classrooms have iPods that they're doing
7 things on that were received through a grant. But
8 one teacher has a SMART Board. But for the most part
9 we -- sometimes our curriculum might be a little
10 out-dated.

11 We -- the classroom numbers are higher. In
12 order to go on a field trip, you have to -- I have
13 written grants to receive money, but there's no money
14 for the buses so the parents always have to pay for
15 that. Same thing as the woman who was speaking
16 earlier, their supplies, the children don't always
17 have the supplies, school supplies that they need.
18 So I just find ways to work around that to provide
19 the kids the education they deserve.

20 Q. And as a result of these resource
21 reductions, have you not been able to accomplish what
22 you wanted to accomplish with some of the kids?

23 A. As a teacher, I hate to say yes to that, but
24 yes, sometimes it's hard to accomplish the goals that
25 you want to as a teacher because of lack of

1 resources.

2 Q. By the way, does Piper pay its teachers more
3 than Kansas City, Kansas for 2nd grade teachers?

4 A. I don't know for -- I know for myself going
5 in with my years and experience, yes.

6 Q. So as a teacher with 11 years' experience,
7 you can receive more money with that experience at
8 Piper?

9 A. In my master's degree, yes.

10 Q. And how do you know that?

11 A. How do I know that?

12 Q. Yeah.

13 A. When I was hired and I looked at their pay
14 scale.

15 Q. Where are you going to teach next year?

16 A. Piper Elementary.

17 MR. RUPE: No other questions.

18 MR. CHALMERS: There's the sticky
19 note. I suppose that's probably yours, Alan.

20 MR. RUPE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. CHALMERS:

23 Q. Talking about Stony Brook for a moment, it
24 is Stony Brook South Elementary? There's a south and
25 a north?

1 A. Yeah. There's Stony Point North and Stony
2 Point South.

3 Q. That has about 384 kids is what the
4 enrollment is?

5 A. 365.

6 Q. I was looking at the report card from
7 '10/'11 and so it looks like the numbers went down
8 this last year a little bit?

9 A. Yes.

10 Q. Assuming that's right. Okay.

11 On the report card for '10/'11, which would
12 be the last report card, you know what I'm talking
13 about, the state report card. You've seen those?

14 A. Yeah. I've seen it, yes.

15 Q. It shows as ELL students, which I think is
16 the same as ESL students, in math and in reading an
17 N/A, not applicable. And I think what that means is
18 that because if you have a number of less than ten,
19 we can't report it because it might -- the score
20 results might be able to identify what kid it is.
21 But I'm trying to get an understanding. In your
22 school as you remember it, did you say there were any
23 ELL students, English as a --

24 A. Yeah. We have 16 percent.

25 Q. 16 percent. Do you have an explanation as

1 to why they wouldn't have shown up on the Stony Point
2 South report card for '10/'11?

3 A. To be honest, I'm not real sure about that.
4 I know there are -- the ESL teachers -- are you
5 familiar with the KELPA test that the ESL students
6 are given?

7 Q. Don't assume that I'm familiar with
8 everything.

9 A. Okay. I know that not all of the ESL
10 students -- it depends on -- they're rated. I
11 believe it's a 1 through 4, depending on what type of
12 services they receive for ESL. So I'm not sure about
13 that, but I'm -- I'm not sure why exactly they all
14 don't take it, but I think it has something to do
15 with that. They do have their own ESL test I know
16 they do take at the end of the year. They're each
17 administered individually.

18 Q. I'm sorry.

19 A. To be honest with you, I'm not sure I can
20 answer that correctly.

21 Q. So if we're trying to talk about what ELL
22 student is to decide what has been determined to be
23 kind of a special category of kids that needs extra
24 care or help, we'd probably want to look at the
25 definition of what that is, right?

1 A. Yes.

2 Q. By contrast, if you've got a student whose
3 parents maybe speak -- are Vietnamese, speak
4 Vietnamese dialect and the kid, however, has been in
5 the United States and has been speaking English from
6 word one, that might be someone who's with English as
7 a second language but for them it's a primary
8 language, right?

9 A. For the ELL student?

10 Q. Not for the ELL student. We're talking
11 about the ESL student.

12 A. They're kind of grouped the same. Am I --
13 ESL and ELL. English as a second language, English
14 language learner. The students that I have that I
15 have interaction with that are ELL are all Hispanic,
16 so I can't really answer some of those for the
17 other. Sorry.

18 Q. Within your school there are, I think you
19 said special education kids you felt. Would that be
20 the same as students with disabilities?

21 A. Well, it depends. It depends on if you have
22 an IEP, if the student has an IEP.

23 Q. So when we were talking about -- you were
24 talking with Mr. Rupe about strategies you might use,
25 you were talking about special ed, you were talking

1 about ESL, and those may be different categories than
2 a child who's -- has a special -- a student with
3 disabilities --

4 A. Yes.

5 Q. -- who has a special plan under the federal
6 government for improvement or a kid that is in ELL,
7 English as a second language?

8 A. Yes. Just because they're ESL doesn't mean
9 that they have a -- and when you --

10 Q. So that --

11 A. Sorry. You're speaking of physical
12 disability or are you speaking if they have a
13 learning disability?

14 Q. It's students with disabilities is how they
15 define it in the AYP is what I'm using it as.

16 A. Okay. Well, for us that would probably be
17 students with learning disabilities.

18 Q. Yeah. I think so.

19 Now -- and because the report card, and the
20 last report card I have, which was then 2010/2011,
21 that would show that the ELL -- or excuse me, that
22 there were no students with disabilities. No, it
23 doesn't show that. It shows it's not applicable, so
24 it would be ten or less. And so what I'm trying to
25 get a handle on is whether that's different than your

1 observation, or would you have to know exactly what
2 students with disability means to be able to make an
3 observation on that?

4 A. No. You want me -- I'm sorry. Could you
5 rephrase the question? You want me to say why
6 they're not recorded on that paper?

7 Q. Well, it says not applicable for students
8 with disabilities in terms of the categories in terms
9 of the numbers of kids, which I think means it's ten
10 or less so you can't report it. Is there some other
11 explanation that you have?

12 A. Are you looking for -- are you -- is that
13 for state? I'm kind of confused on this.

14 Q. That's all right. I'm asking you something
15 that's --

16 A. Because the students who are -- if it's
17 identified in their IEP by TSS state testing, they
18 take a different test. Do you want me to look at it?

19 Q. No. I think what I want to do is talk to
20 you a little bit more about Stony Point South
21 Elementary. And, incidentally, the test scores we're
22 talking about, we don't test 2nd graders, so the
23 first test would be 3rd grade, right?

24 A. That's correct.

25 Q. Stony Brook South Elementary School has a

1 website, does it not?

2 A. Yes. I'm not sure it's up-to-date.

3 Q. Well, it has a website and on the website it
4 mentions some things that I want to visit with you
5 about. It talks about a BackSnack program through
6 Harvesters Community Foods. Is that up-to-date?

7 A. Yes.

8 Q. Do they still have that? And that's where
9 food is provided in backpacks for Stony Point
10 students as kind of a community outreach program, is
11 that right?

12 A. Yes. Some of the students take a backpack
13 full of food home for the weekend so they have
14 something to eat.

15 Q. And it references in health a Ms. Faison,
16 and I don't know if I'm pronouncing that correct.

17 A. Yeah. Ms. Faison.

18 Q. As a PE teacher?

19 A. Yes.

20 Q. And she still there as of this last year?

21 A. Yes.

22 Q. It says that she was essential in getting
23 the PE for Life started at Stony Brook South.

24 Several times a week students are invited to
25 participate in activities to keep them active. The

1 activities were including, but not limited to Wii
2 games, biking, dance, dance revolution, treadmills,
3 etc. So the 4th grade students participated in the
4 first tee program that culminated in a trip to the
5 junior golf course and all students participated in
6 jump rope for heart and field day. Was this all last
7 year?

8 A. Most of them, yes.

9 Q. Now, you told me that the parental
10 involvement at Stony Brook South isn't what it is at
11 your children's -- is it daughter's or?

12 A. My daughter, yes.

13 Q. Your daughter, at your daughter's school?

14 A. Yes.

15 Q. But parents are encouraged by Stony Brook
16 South to be involved through the Back to School
17 Night, family nights, PTA events and other events
18 sponsored by the school, isn't that true?

19 A. Yes.

20 Q. There's a student improvement team at Stony
21 Brook and that team regularly meets to discuss
22 academics and behavioral needs of students and make
23 recommendations for classroom interventions to assist
24 in student growth. Isn't that what happened this
25 last year?

1 A. Yes, we have ...

2 Q. There's a family advocate system. What is
3 that?

4 A. Family advocacy?

5 Q. Yes.

6 A. That's through the district. It's each
7 school has one -- family advocacy is -- at the
8 elementary school level, I'm the family advocate for
9 my students and in lieu of conference days, we have
10 family advocate days -- advocacy days, where the
11 parents come in and speak with the teacher, but it's
12 kind of just decided in the school how that is run.
13 We send out -- it's more instead of focusing solely
14 on academics, trying to create a relationship between
15 the parents and the school. We send out a survey and
16 ask parents and students to answer the same questions
17 about expectations of the school, the teacher, how
18 they feel about school, things they like and dislike
19 and then we discuss that along with academics at the
20 conference time.

21 Q. And at your school, Stony Brook South, there
22 was an arts exploration that included student art
23 appreciation and was supported by each grade level
24 performed in the musical program, several grade
25 levels took visits to Nelson Atkins Art Museum. The

1 Lyric Opera and Kansas Cultural History Program made
2 visits to Stony Brook South, the music teacher
3 created an after school drumming club for selected
4 4th and 5th students and the club performed during
5 the 4th and 5th grade music programs. Those programs
6 took place this last year, is that right?

7 A. Yes. And can I comment on those?

8 Q. Sure.

9 A. The -- like the after school drumming
10 program, that was done, she wasn't paid for that.
11 That was her own volunteered time and she had the
12 money donated to pay for the drums. And also the
13 field trips you spoke of, those were also the
14 teachers had to find sources outside of the school to
15 pay for those.

16 Q. They get private contributions?

17 A. Yes. And we have done that each year.

18 Q. So if you were in Piper where maybe the
19 parents would have the resources where they would pay
20 for that, in Stony Brook you look to maybe another
21 contributor to come up with those funds?

22 A. My daughter, when she was in 2nd grade, yes,
23 she went on the same field trip and I paid for hers.

24 Q. There is a star base, which are 5th grade
25 students participate in a five-day seminar spread out

1 over five weeks where they learn scientific concepts
2 having to do with flight through cooperative learning
3 activities, and this ended in shooting off a rocket
4 built by the students. Did that happen this past
5 year?

6 A. Yes. They do that every year.

7 Q. Now, I think you mentioned this, there
8 are -- at least this last year when you were there,
9 there were weekly staff development sessions. That's
10 that Wednesday afternoon?

11 A. Yes.

12 Q. And those sessions are used to improve --
13 well, they're driven by the goals outlined in the
14 district school and school improvement plan, is that
15 right?

16 A. Yes.

17 Q. The focus on -- is on developing the
18 knowledge and experience of the staff to improve
19 instruction, increase student achievement. And that
20 was going on this last year?

21 A. Yes. I do that every Wednesday.

22 Q. And the website concludes that the 3rd, 4th,
23 5th grade students met their mark for AYP.
24 Additionally, the 3rd grade math students met the
25 standard of excellence based on criteria established

1 by the State of Kansas. Is that consistent with your
2 recollection for this last year round?

3 A. Yes.

4 Q. What is the standard of excellence?

5 A. For our district, to be honest, since I
6 don't give the test, I don't always --

7 Q. That's fair.

8 A. I know -- I know --

9 Q. I don't want you to guess if you don't
10 know. That's fine.

11 A. Okay.

12 Q. Back to -- now, I understand you're going to
13 Piper, is that right?

14 A. Yes.

15 Q. Next year. That's where your daughter goes
16 to school?

17 A. And my son will start, yes.

18 Q. And your son will start there and you live
19 over closer to the Piper school that your kids will
20 be attending, is that right?

21 A. Yes.

22 Q. I don't want to pry too much. There's
23 probably a lot of different reasons for teacher/staff
24 going from one district to another. But the primary
25 reason, would you share that with us if you're

1 willing to?

2 A. My primary reason is actually I had a hard
3 time these past couple of weeks leaving KCK, but my
4 primary reason has nothing actually to do with Kansas
5 City, Kansas district. It's more personal. With my
6 children, the cost of childcare was just becoming too
7 much. And I don't have to pay -- I don't have to
8 have any child care provided if I become a teacher
9 out there. And also their calendar -- their school
10 calendar does not match KCK's and so I was starting
11 school before they were. And their spring break was
12 different than mine and I was having to pay for
13 childcare.

14 MR. CHALMERS: Appreciate it.

15 REDIRECT EXAMINATION

16 BY MR. RUPE:

17 Q. And I asked you about that and you
18 indicated -- let me ask you, if KCK school where you
19 are had the resources and the classroom and the
20 parental involvement that Piper does, would you stay
21 at KCK and bring your kids there?

22 A. Yes.

23 Q. Is it hard for you to leave KCK?

24 A. Yes. It was an emotional last two days.
25 Yeah, it's hard.

1 Q. Are you certified in ESL?

2 A. Yes.

3 Q. How did you get certified in ESL?

4 A. The school district was offering a program
5 through K. State where we could -- the teachers
6 were -- could take classes to become certified. And
7 I think I took two classes. And then there was for
8 the program I had to be cut because there wasn't
9 enough money anymore. But the school district paid
10 for us to take the test to become certified. And so
11 I took the classes they offered and then the district
12 also provided study sessions to prepare us to take
13 the test. And so I took the test and became
14 certified.

15 Q. So whoever replaces you at your grade school
16 in Kansas City, Kansas next year, if they want to
17 become ESL certified the district does not pay for
18 that?

19 A. No.

20 MR. RUPE: No other questions.

21 RECROSS-EXAMINATION

22 BY MR. CHALMERS:

23 Q. That's assuming, I guess, whoever replaces
24 you isn't already ESL certified, I guess?

25 A. Actually, our school is going to lose a

1 teacher and because I'm leaving, no one has to be
2 cut.

3 Q. There's a silver lining everywhere. But
4 talking about study sessions that were provided, is
5 that part of the professional development that KCK
6 provides?

7 A. During our Wednesdays?

8 Q. During Wednesdays or otherwise?

9 A. No. That was done after school at the --
10 that was an operational thing that they provided, the
11 district office.

12 Q. The professional development that you
13 received at KCK, has it been an ongoing benefit to
14 you as a teacher since you've been there?

15 A. Yes, very much.

16 MR. CHALMERS: Thank you.

17 MR. RUPE: Nothing further. Thank
18 you.

19 JUDGE THEIS: Thank you. You can
20 step down.

21 (Witness excused.)

22 JUDGE THEIS: Come back about
23 quarter 'til, little after.

24 MR. RUPE: That's fine.

25 (A recess was taken.)

1 MR. RUPE: Next witness is Ed
2 Hudson.

3 EDWIN HUDSON

4 Called as a witness for the
5 Plaintiffs, was duly sworn by the reporter and
6 testified under oath as follows:

7 DIRECT EXAMINATION

8 BY MR. RUPE:

9 Q. Please state your name and where you live.

10 A. My name is Edwin Hudson, and I live in Lee's
11 Summit, Missouri.

12 Q. Mr. Hudson, would you give us your job
13 title?

14 A. I am the chief of human resource officer for
15 Kansas City, Kansas public schools.

16 Q. And describe what the position of chief of
17 human resources is.

18 A. I oversee many of the human relations-type
19 things, some of which is talent acquisition, core
20 relations, those types of matters, anything that
21 deals with our certified and classified staff.

22 Q. And when you say certified and classified,
23 give us examples of certified and examples of
24 classified.

25 A. Classified would be support-type people,

1 nutritional services, bus drivers, some
2 administrators who work, such as myself. I'm a
3 classified employee. A certified employee would be
4 our teachers, our counselors, those who are
5 interacting with the student and have been certified
6 and/or licensed by the State of Kansas.

7 Q. In terms of your background, let's talk a
8 little bit about that. What's your educational
9 background?

10 A. I have a Bachelor's Degree in Science, a BS
11 degree.

12 Q. And where did you graduate from?

13 A. Park University.

14 Q. And give us a little bit of your work
15 history, please.

16 A. I have 20 years in human resource. Most of
17 that is in the private sector. 13 years of that was
18 at Xerox, and then I was at Time Warner for the
19 regional vice president of human resource. I moved
20 back to Kansas and I joined the team, Kansas City,
21 Kansas public schools, as their chief human resource
22 officer.

23 Q. Give us a little personal information about
24 you.

25 A. Well, I've been married 31 years and I'm a

1 third-year theological student.

2 Q. Where do you study theology?

3 A. Well, I'm going to a couple of classes right
4 now. But Calvary College right now is where I'm
5 attending in my spare time online.

6 Q. Let's talk a little bit about your
7 involvement in what we've been talking some about in
8 the courtroom, and that is, when did Kansas City,
9 Kansas school district first begin to see reductions
10 in the state money in the base?

11 A. That, to my knowledge, would have been in
12 the '09/'10 school year I believe it is.

13 Q. Okay. And the -- I think this is all pretty
14 well known, but I want to make sure that I have the
15 time frame with the human resource person on the
16 cuts. When did you start with the Kansas City,
17 Kansas school district?

18 A. I've been with the district just over a year
19 now.

20 Q. So you came in, in the -- right in the
21 '10/'11 school year?

22 A. When those cuts were implemented. That's
23 correct. Yes, sir.

24 Q. In terms of your involvement then, you start
25 in '10/'11 --

1 A. Yes, sir.

2 Q. -- dealing with reductions in State money?

3 A. That's correct, yes.

4 Q. And are you able to quantify what the
5 reduction was that you first had to deal with?

6 A. Well, of the 170 reductions in force, which
7 is not something that's easy to do, and I always say
8 if you get good at laying people off, it's time to
9 go, it was a difficult time, difficult choices to
10 make. But of the 170, 130 of them were teachers, and
11 that was a very hard thing to do.

12 Q. When did you make those cuts?

13 A. Those cuts were made in the '09/'10 school
14 year.

15 Q. And quantify again for us the number of
16 teachers.

17 A. 130.

18 Q. And how was this decision made on what
19 positions, teacher positions to reduce?

20 A. I wasn't on the formula piece of that. I
21 was on the implementation on the tail end of that, so
22 I wasn't --

23 Q. So you're the one that had to do it.

24 A. I was a part of that, yes, sir.

25 Q. And those are certified positions. What

1 were the reductions in classified?

2 A. Some of the reductions in classified as an
3 example would have been four positions in HR, some
4 positions in finance, some of the positions in our
5 statisticians department, some of those positions
6 that were supportive in nature but very critical to
7 the function.

8 Q. When you say the function, what do you mean?

9 A. Teachers, sorting teachers. For example,
10 take our analysis department, we like to make good
11 decisions based on facts and that staff was cut
12 basically down to a department of one. We have our
13 personal development team that tracks licensures,
14 certifications, when someone is coming due in terms
15 of their renewals. That department was cut down from
16 a department of about five or six down to one. So it
17 just made it tougher for us to stay on top of things
18 to include teacher certification.

19 Q. In terms of what one person was able to do
20 when a department of five or six used to do it, were
21 there any drops in the process?

22 A. It's ironic, we're still finding out today
23 some things that fell by the wayside. And frankly,
24 we find out about those things when it's a problem.
25 We realize that it hasn't been done or maintained

1 over the months and years, and then we find ourselves
2 scurrying to go back and create information.

3 Frankly, that's why some of the information
4 is not current. I've heard counsel reference some of
5 the various websites and I've heard them reference to
6 some of the numbers that have been inconsistent, and
7 I would say to some extent perhaps that's even some
8 of our fault because we just don't have the staff to
9 do some of those things.

10 Q. What about in your human resource
11 department, were there reductions?

12 A. Yes, sir, there was. We had one leadership
13 position and three additional support people.

14 Q. Eliminated?

15 A. Eliminated, that's correct.

16 Q. Compare the human resource -- do you have a
17 program that you use that tracks the employees and
18 benefits and human resources?

19 A. We have an HRIS system. And after I joined
20 the district I spent -- well, I hit the ground
21 running. But inside of that in the spare time, I try
22 to do an analysis of things, kind of a needs
23 assessment where we were as I had done in years prior
24 in other assignments. And one of the things that I
25 found out very quickly is that our HRIS system, it

1 was really broken and it required a lot of manual
2 intervention.

3 For an example, if we were to hire someone
4 we would hire them and have them fill out an
5 application and then they would -- we would take that
6 information and put it in our applicant tracking
7 system. If they were hired, we would take that
8 information, manually download it and manually upload
9 it back into our HRIS system. And it would go to
10 various different arteries. But the system wasn't
11 fully integrated and we needed a lot of manual
12 intervention to shore things up so we wouldn't drop
13 the ball. So that's an example of when you say
14 systems to track, yes, we have it but it's -- it's
15 broken. I would say it's broken.

16 Q. And did the district have the resources to
17 provide you either a more efficient system or a
18 replacement system?

19 A. They do not. And we, in fact, have a system
20 that's been -- we've been using -- we purchased the
21 system in 1999. And it's my understanding when the
22 system was purchased, it was already a dated system
23 when we purchased it. And that's the system we've
24 been operating with since then.

25 Q. Okay. Were there salary freezes?

1 A. Yes, sir, there were.

2 Q. Explain those to the Judges, please.

3 A. Our classified staff has not received a
4 salary increase for some time, several years, four,
5 five, six years now. Our certified staff or teachers
6 and our principals and assistant principals, they
7 have not received step increases. We've tried to
8 find some money to do something for our teachers.
9 For an example, last year they were given a
10 1 percent -- actually, it was less than, less than a
11 1 percent increase but they were not moved along in
12 the steps.

13 And the same thing would have applied to the
14 principal. They didn't receive anything, but this
15 year we're going to try to give them a little bit,
16 but again, it's not a step movement. So we've not
17 had step movements for certified personnel for some
18 years, and we have barely been able to eke out some
19 sort of incentive over the past three years.

20 Q. Was there a position in the Kansas City,
21 Kansas school district along the lines of a school
22 resource officer?

23 A. Yes, sir.

24 Q. Were any of those positions eliminated?

25 A. I believe so, but I don't have that

1 information in front of me. But I believe we had SRO
2 officers who were eliminated.

3 Q. And explain what an SRO officer is.

4 A. An SRO officer is someone that's kind of
5 like a security guard. It's someone we put in the
6 schools, not necessarily to -- we want the students
7 to be safe from external elements and internal
8 elements, and the SRO officer is someone that helps
9 facilitate that objective.

10 Q. What about counselors, were there reductions
11 in counselors?

12 A. Yes, sir, there were.

13 Q. What were the reductions?

14 A. I don't have the exact number of counselors
15 that was reduced, but I do know we had some. For
16 example, last year we closed Fairfax. And with
17 Fairfax, we had a counselor position that was
18 eliminated, totally eliminated, among other positions
19 as well.

20 Q. Librarians?

21 A. Yes. We not only have reduced, I shouldn't
22 say eliminate librarians, we have reduced their hours
23 of work. So they're not even full-time. And many of
24 them aren't even assigned a particular school. Some
25 of them may have two schools, three schools that they

1 have to service, so they'll rotate between schools.

2 Q. And you talked about the reduction in
3 administrators. What about educational aides, the
4 paraprofessionals.

5 A. Yes. The paraprofessionals, we have reduced
6 them. In addition to reducing the paraprofessionals,
7 we've reduced their hours. And a paraprofessional is
8 very critical. We have a very high SPED population
9 and they're very critical in the success of those
10 SPED students.

11 Q. SPED being special education?

12 A. That's correct, yes.

13 Q. Social workers, any reductions among social
14 workers?

15 A. Yes, we did. Yes.

16 Q. Explain what those reductions were.

17 A. Social workers, let's talk about Fairfax,
18 again, it was an alternative school and a social
19 worker may have been someone to help the school -- or
20 help the student, pardon me, with some of those needs
21 that outside of the classroom that were impacting the
22 inside of the classroom, such as not having the
23 appropriate clothing. Certainly we would have the
24 resources or point them to the appropriate resources
25 through these type of individuals.

1 Q. What about school nurses?

2 A. Yes. We eliminated some school nurses as
3 well.

4 Q. Did you consolidate nursing
5 responsibilities?

6 A. We did consolidate some of the nursing
7 responsibilities. We have nurses who unfortunately
8 have to travel between schools.

9 Q. And did you have a -- is there -- in Kansas
10 City, Kansas, is there a high proportion of students
11 who are parents, in other words, kids for lack of a
12 better description, who are still in the public
13 schools who themselves have children?

14 A. Yes, sir. Many of our employees, not only
15 do they have their children attending the school
16 district, they themselves are a product of the Kansas
17 City, Kansas school district. So it's kind of like
18 the second, third, fourth generation of students.

19 Q. And are there programs that are set up for
20 teen parents by way of having parent educators in the
21 Kansas City, Kansas school district?

22 A. I'm not familiar with that program.

23 Q. Okay. Let me move on to another area.

24 A. Okay.

25 Q. In terms of any early childhood development

1 teachers or tutors, were there any reductions in
2 those programs?

3 A. Yes. In fact, we had a school that was
4 eliminated. I believe it was Lamb, the Early
5 Childhood Center that was just totally eliminated and
6 those teachers along with it, some of which were
7 transferred when we could. Others -- other resources
8 we had to let go.

9 Q. What about tutors?

10 A. Same thing, yes, sir.

11 Q. Can you quantify the -- was any tutoring
12 money left or how was it handled?

13 A. I can't get into the finances of that.

14 Q. But in terms of the number of tutors that
15 were reduced, can you give us the number?

16 A. I don't have that in front of me, sir.

17 Q. All right. What was the selection process,
18 if you know, on the tutors? Were you part of that
19 process?

20 A. I was not a part of that process.

21 Q. Who stayed and who went?

22 A. No, I was not.

23 Q. We talked about salary freezes, and there
24 were salary freezes, is that right?

25 A. Yes, sir, that's correct.

1 Q. Can you quantify that cost to Kansas City,
2 Kansas, in other words, if you were to bring the
3 teachers back to where they were, the certified
4 personnel back to where they were or should have been
5 with normal increases, what would be the cost of
6 that?

7 A. In terms of the lost ground with them not
8 receiving any step movements, and in some years no
9 increase and in other years increases less than
10 1 percent, to make that up would cost \$7.2 million or
11 more just for the teachers.

12 Q. Have you computed that cost for the other
13 personnel?

14 A. Oh, that would be enormous, because again,
15 principals and classified folks have not had an
16 increase at all for four or five years, so that would
17 be a very large amount and I have not calculated
18 that.

19 Q. Do you have any involvement in recruiting
20 teachers to the district?

21 A. Yes, sir. I have quite a bit of
22 involvement. In fact, this year I became very
23 involved. Unfortunately, we lost ten math teachers
24 this year. We have anticipated a loss. As of last
25 week it was 169 and that number has already changed

1 significantly. I do anticipate that number to get as
2 high as what it was last year, which was 235.

3 But right now we have 169 known losses for
4 the next year. And, unfortunately, ten of those were
5 math teachers, which is a specialty teacher for us.
6 So I personally got involved trying to save all ten
7 of those math teachers and also a physics teacher, so
8 that's 11 math and physics teachers.

9 Q. What is the difference between -- or what is
10 the term "qualified teacher" and what is the term
11 "specialized teacher"?

12 A. I'm going to say that there are three
13 categories of specialized teachers if I can, please.
14 First, I'm going to say that we have a very
15 interesting dynamic with 59 different languages. We
16 have a very high poverty level, with 87 percent free
17 and reduced. And then also in addition to that, many
18 of our families are one-person families, either
19 mother or father.

20 So to have that kind of environment and
21 someone to come to teach in that environment, that
22 requires a special person. Everyone who's come out
23 of college, sometimes when you hear about the urban
24 school district, they have to shutter at it. So you
25 have to sell them. It requires a special and unique

1 person to come and to work for us. So we're
2 specialized in that sense, and that's with all of our
3 teachers.

4 We're also specialized in a sense, I would
5 define specialize in the sense that we have some of
6 those positions that are just absolutely hard to
7 find. That would be a SPED teacher. That would be a
8 math teacher, sciences and even teachers with ELL
9 certifications. Those are specialty teachers for us.

10 Q. Okay. What's a qualified teacher?

11 A. A qualified teacher is basically a teacher
12 who meets the standards that are set forth by the
13 State of Kansas.

14 Q. And have you lost specialized teachers in
15 the last two years?

16 A. Yes, sir, we have.

17 Q. And have you tracked where those teachers
18 have gone?

19 A. We have tracked not only just the
20 specialized teachers, we have tried to track all of
21 our teachers, and a good percentage of them are going
22 to other schools, educational institutions. Yes,
23 that's correct.

24 Q. Have you had any teachers that mid-contract
25 year decide to leave?

1 A. This year ending was the highest years --
2 the highest year of teachers to break their
3 contract. They were in breach. We had 30 teachers
4 to break their contract.

5 Q. When a teacher breaks a contract, under the
6 teacher contract is there a liquidated damages
7 provision that they have to pay?

8 A. Whenever you break your contract, you have
9 to pay a \$1,000 liquidated damage to get out of
10 that. If you do not pay the \$1,000 liquidated
11 damage, then we have the right to go to the State of
12 Kansas to seek out their remedies, and it's a
13 process. But you're subject to lose your teaching
14 license in the State of Kansas for the remainder of
15 that said year.

16 Q. And are there any situations of which you're
17 aware in which some other school district paid a
18 bonus that was equivalent to the liquidated damages
19 provision and teachers moved away from the district?

20 A. And then some. The \$1,000 -- there is one
21 incident that I know of where a teacher left and went
22 to a more fluent school just south of us, who not
23 only paid the \$1,000 liquidated damages, but another
24 \$20,000 of the education that we had invested in that
25 person to pick up his ELL certification and so

1 forth. So that's \$21,000 that this person came in
2 and gave us a check and went to a school just south
3 of us.

4 Now, what portion of the \$21,000 did Olathe
5 pay, I'm not certain. But he did indicate that --
6 Olathe, this gentleman, this teacher who was a math
7 teacher, indicated that --

8 MR. CHALMERS: I hate to interrupt,
9 but I think we need to be careful to talk about what
10 we know and what's hearsay, and I think we're now
11 talking about what a witness out of court is saying
12 offered for the truth to the matter asserted. So I
13 ask that he restrict his answer to what he knows as
14 opposed to what he's been told.

15 MR. RIGHT: I think he's answered
16 the question. I think we can move on.

17 JUDGE THEIS: Okay. Yeah. Maybe
18 he wants to be generic.

19 Q. (By Mr. Rupe) With regard to the teachers
20 that you've lost, have you done any -- well, let me
21 ask you this. With regard to teachers in the Kansas
22 City, Kansas school district that have what you call
23 urban experience, are those teachers leaving your
24 district?

25 A. Yes, they are.

1 Q. And why is that?

2 A. With all of the pressures on a school
3 district such as a Kansas City, Kansas school
4 district, it's tough for us to retain our teachers.
5 But it's also tough for us to retain some of our
6 students and some of our families. The demographics
7 is changing and some of those students are moving to
8 more affluent school districts.

9 And some of these school districts have
10 realized that they need the expertise of a teacher
11 who has urban experience. So we're losing many of
12 those teachers who have urban experience to some of
13 those school districts.

14 Q. What about the salary comparison, looking at
15 what Kansas City, Kansas pays its teachers and
16 neighboring districts pay their teachers, is there a
17 differential?

18 A. There is a differential, yes, sir.

19 Q. How much is it? Give us an example.

20 A. For example, I'd indicated to you that I
21 personally got involved trying to save these ten math
22 teachers and the one physics teacher. Many of them
23 were leaving because of high pay, higher
24 opportunities, an opportunity to get paid a little
25 more money. And we're talking about anywhere from

1 4,0000 to \$10,000 more.

2 But it's not just the salary that was
3 better. It's the working conditions that was better,
4 and they felt that they could work a little
5 differently and not so hard. And they felt they can
6 educate the kid and not have to worry about some of
7 the other problems that you have with the urban
8 school district. So many of them were looking for a
9 better teaching environment, if you will, to teach
10 in.

11 MR. CHALMERS: Just to make the
12 record, I think I have to move to strike the answer.
13 It's all based on hearsay. The question asked that
14 would not have prompted hearsay but it was all
15 offered, and I think the witness ought to be told
16 that it's important to talk about what he knows as
17 opposed to what he has been told by a third party who
18 isn't going to be cross-examined.

19 MR. RUPE: Now, I'm going to, if I
20 may, respond. It is not hearsay when he describes
21 what he does and what his knowledge is. He can
22 testify to what he knows by reason of what he has
23 done as the human resource director in sorting out
24 where people have gone.

25 JUDGE THEIS: I think that's

1 probably a subject for cross-examination. I don't
2 think it's a question of admissibility.

3 MR. CHALMERS: I'll do it on cross-
4 examination.

5 MR. RUPE: All right.

6 Q. (By Mr. Rupe) So a four to \$10,000
7 differential?

8 A. Yes. And the reason again, I was involved
9 personally with trying to recruit these ten -- retain
10 these ten math teachers and the one physics teacher.
11 Personally, I took that over from our talent
12 acquisition manager because this is a critical
13 specialized position, and I wanted to save them. So
14 I know I was willing to match some of the offers that
15 they were receiving and I wanted to know what it
16 would take for me to match. And the range that I
17 found out that I was working with was anywhere from
18 \$4,000 to \$10,000 more just on the salary piece of
19 it.

20 Q. And in terms of math, for example, and the
21 requirements, as you described them, the demands,
22 there are demands on a school district in terms of
23 achievement levels by reason of federal and state law
24 that the district has to attain, right?

25 A. That's correct. And that goes back to the

1 specialty, the first specialized teacher that I said
2 we need at the Kansas City, Kansas public school
3 district. Again, we have a population that is
4 impoverished. And many of our folks again, free and
5 reduced being 87 percent, plus there's only one
6 person in the family.

7 So they're already starting behind. So many
8 of our teachers have to bring them up to a point to
9 just get them on the level that they can even compete
10 with the curriculum that's assigned to their
11 particular classroom. So it's like working double
12 duty. You're teaching twice, three times as hard.

13 Q. Let me hand you some exhibits. First, I
14 want to hand you Plaintiff's 259 and this is actually
15 in evidence. Plaintiff's 259, explain what this is
16 to the Court.

17 A. This is a document that I had my staff put
18 together. Once we exceeded the amount of individuals
19 who were in breach, teachers who were the breach of
20 their contract, once we exceeded the year-over-year
21 amounts, I wanted to know if this year was going to
22 be an anomaly. So I started tracking it. And
23 unbeknownst to me I had no idea that we would have 30
24 teachers, whereas years past just the year before, we
25 only had three teachers who were in breach, and now

1 we have 30.

2 So this is the document of tracking those
3 teachers. We also track the school that they were
4 at, at the date they resigned, the liquidated damages
5 and the fact if they paid it or if it's outstanding
6 or if we waived it.

7 Now, we have seven of the 30 that we
8 waived. Seven of the 30 left because of personal
9 reasons, such as I have a health problems or my
10 husband is moving to California. Those things that
11 were kind of beyond their control, we waived those
12 and that was seven. And then another there are seven
13 who have not paid their money, and the rest of them
14 have paid their liquidated damages. But many of
15 these were protested so we had to seek other measures
16 to try to get that money from them as we are with the
17 seven who have not paid.

18 Q. Let's go to 260 then, which is in evidence.
19 What is that, please, Exhibit 260?

20 A. This is a form that again, once we started
21 to see these numbers grow, this is the same form, we
22 just started tracking more things. For an example,
23 this one here, we started to attach the reason for
24 which they were leaving and then we kind of detailed
25 that out. We have two columns kind of -- we may have

1 put it in a category such as family issues. And then
2 we made -- the next category may have had some
3 definition to the family reason. So this is a more
4 complete tracking document than the one just
5 discussed.

6 Q. When a teacher leaves -- and are these
7 teachers that left mid-year? Is that what these two
8 exhibits were?

9 A. Any point after they signed the contract,
10 they left. So it may have been mid-year. And
11 that's -- that's a good point, because after you're
12 out recruiting teachers, this is after the recruiting
13 season has ended, that makes it even harder to find a
14 teacher. And particularly if it's a specialized
15 teacher.

16 The recruiting season is over, all the
17 teachers have signed contracts, all of them have been
18 assigned to schools in various school districts. And
19 now, boom, the contract that they're in breach of
20 that, we're outside of the recruiting season and I've
21 got to go find a teacher. And in some cases, many
22 cases, a specialized teacher, it's like finding
23 someone under a rock. It's very difficult.

24 Q. All right. Then in terms of vacancy, vacant
25 positions, let me hand you 262. And what is 262?

1 A. 262 is another report that we've manually
2 put together. Again, to go back to your point about
3 our systems, these documents are manually put
4 together and we manually track them. This is not as
5 a result of some output because of some automation.
6 So this is really requiring people to track this
7 information.

8 So for an example, I may have to go to one
9 system to get their starting date. I may have to go
10 to another system to get their school assignment. I
11 may have to go to another system to get the subject
12 in which they teach. So the systems are totally
13 broken in terms of it being fully integrated. And I
14 know that some of my colleagues shudder to hear me
15 say that. And, frankly, it sounds bad saying it, but
16 that is the state of our condition.

17 Q. And 262 is a list of vacant positions?

18 A. Yes, sir, it is. It's a list of classified
19 and certified vacant positions.

20 Q. The total number is what, 24?

21 A. At this particular time, which was 9/19, we
22 had 16 certified positions open and we had 24
23 classified positions open.

24 Q. What is it now?

25 A. Well, we're anticipating 169 who have

1 already given their resignation, and that was as of
2 last week. So with the positions that I've been
3 notified, we're right at about 175, 180 positions
4 that are open.

5 Q. And, I mean, wouldn't these vacancies be
6 good positions just to eliminate because of cuts?

7 A. We're already thin and these are positions
8 that we need desperately and we have to find somebody
9 to fill these positions. We have classrooms that are
10 empty. It's not an option.

11 Q. When you mean empty, you mean without a
12 teacher?

13 A. Without a teacher.

14 Q. How many in the last -- or since you've come
15 to work in the district, how many schools have been
16 closed?

17 A. Last year we closed Fairfax, which is an
18 alternative school. The year prior to that I believe
19 it was Central Elementary was closed, and the year
20 prior to that it was our early childhood center was
21 closed, Lamb, Lamb Academy Childhood Center.

22 Q. And has the enrollment in the district gone
23 up?

24 A. Student enrollment is on the incline.

25 Q. And when it's on the incline, do you have

1 additional challenges by way of needing to fill
2 positions?

3 A. Yes, sir, that's correct. Not just because
4 of -- not just because of the incline or the
5 increased number, but the type of increase that we're
6 having. Our ELL population is really growing and we
7 have approximately 7,000 ELL students in our
8 district. That number is growing, so it's not just a
9 regular teacher, the need that's growing. In many
10 cases it is a regular teacher with ELL certification
11 or it's a teacher with SPED certification, so the
12 demand across the board is growing.

13 Q. Is the Hispanic population growing?

14 A. Yes, sir, it is.

15 Q. Is the at-risk population growing?

16 A. It is, yes.

17 Q. And does that cause there to be special need
18 for specialized teachers?

19 A. Yes, it does.

20 Q. You cut 130 positions and you have 100-plus
21 vacancies. Explain how they coexist.

22 A. Well, we cut 170 positions, 130 of which
23 were teachers, to clarify that.

24 Q. And with the 100 vacancies, are those
25 positions that because of state, federal requirements

1 you cannot cut?

2 A. The positions that are open, I'm not making
3 reference to the 170 positions; that's different.
4 The positions -- the 169 that I had open that's on
5 the report are people who are leaving classrooms this
6 year going into the new year. So these are positions
7 that I have to find. This is over and above the 170
8 that we had lost.

9 Q. And that's my question. The reason you have
10 to find them is because they're needed in order to
11 provide education to the kids?

12 A. That's correct, yes, sir.

13 Q. So they're things like math teachers and
14 reading teachers and so forth?

15 A. Yes, that's correct.

16 MR. RUPE: That's all the questions
17 I have.

18 CROSS-EXAMINATION

19 BY MR. CHALMERS:

20 Q. You indicated without being specific that
21 your department has found errors in some of the data
22 that has been collected and reported to the state, is
23 that right.

24 A. What I am saying is that I know that we have
25 to manually get the information out of the various

1 systems. And whenever you have to manually calculate
2 things, it's subject to human error, which the
3 propensity to have human error is much higher than
4 getting something out of a system automatically.

5 Q. Maybe you're saying something different
6 because you're not saying you found errors, you
7 suspect errors.

8 A. No. I'm saying that I have on occasion
9 because of manual intervention -- I'm not saying that
10 I've suspected this. This is my world and this is
11 some of my experience that I'm referring to since
12 I've been in the Kansas City, Kansas public schools.

13 Q. So you found errors in the data that was
14 reported to the State?

15 A. No. You said reported to the State; I did
16 not. I'm saying that there have been discrepancies
17 in the data because of the way in which that data was
18 collected.

19 Q. Exhibit 1026 is the '11/'12 Budget At A
20 Glance. That has data in it, some of which is data
21 about the number of teachers, about certified staff,
22 licensed personnel and administrators, and then
23 salary information. It's all reported to the State.
24 You found errors in that material?

25 A. I didn't put that together, so I can't speak

1 to that, sir.

2 Q. In this document 1026, it shows from 2009 to
3 2010 an increase in full-time teachers in your
4 district of 20. You don't dispute that number, do
5 you?

6 A. I need to get the report to see what you're
7 referring to, sir.

8 Q. Fine. It's Exhibit 1026. It's the next to
9 last page, sir.

10 A. Page 9?

11 Q. Yes.

12 A. Okay. What's the question, please.

13 Q. It shows full-time equivalent teachers for
14 '09/'10, actual numbers to 1,445 as compared to the
15 next year, actual numbers 1,465, which is an
16 additional 20 full-time teachers. You don't dispute
17 that the number went up from '09/'10 to '10/'11, do
18 you?

19 A. I can't really speak to that and if you'd
20 like, I can offer you an explanation as to why I
21 can't if you'd like me to.

22 Q. You can tell me why you can't. That's
23 fine.

24 A. It's been my experience when we're
25 completing some of the reports as required by the

1 state and federal government, when they call a
2 teacher a teacher, sometimes a teacher isn't a
3 teacher. Sometimes they're asking for all certified
4 personnel. Sometimes they're asking for teachers by
5 subject. So I can't -- I don't know enough about
6 this information, this particular report that you're
7 referring to answer your question. I just don't
8 know. I don't have a key. I don't have something
9 here that gives me the definitions of what this is,
10 so I can't tell you that.

11 Q. This says teachers full-time, you don't know
12 what the means?

13 A. I can tell you what I have in the district
14 now, but I can't tell you how this report was put
15 together.

16 Q. The previous report for this year is not an
17 exhibit. Can be I suppose. But it shows that for
18 the year '08/'09 that there was -- in full-time
19 teachers there was a number of 1,527. If my math is
20 right, that's 85 teachers more than in '09/'10. Do
21 you have a reason to dispute that the reduction
22 between '08/'09 and '09/'10 was, in fact, 85
23 teachers?

24 A. I think the difference in the count, the
25 number, teachers come and go all the time as

1 evidenced with the 30 teachers who broke contract.
2 So if I give you a snapshot of the teacher count
3 today, it's going to be very different than what it
4 would be tomorrow. And I would suspect the reason
5 why you have the difference in these two numbers is
6 because some positions were filled.

7 Q. This is full-time equivalent teachers actual
8 for the year, that's what it's reported.

9 A. That is actual head count.

10 Q. That is a historic number according to the
11 document in Exhibit 1026. It's not an interim
12 number. You wouldn't interpret it that way when it's
13 reported to the State, would you?

14 A. If you ask me what my teacher count is
15 today, it could be maybe 25 less than what it is next
16 month. So again, what I might report to you today to
17 KSDE, it's very different than what I might report to
18 you next month. What's missing here to fill the gaps
19 could be, how many vacancies do you have. So if you
20 include the vacancies plus this number, this number
21 may -- you may not have a discrepancy is what I'm
22 trying to say.

23 Q. The number in Exhibit 1026 that shows 1,465
24 for the '11/'12 contract year, that's the contracted
25 number. It's not an actual number. So that's the

1 one where maybe we need to worry about vacancies or
2 not vacancies, right?

3 MR. RUPE: Well, I'm going to
4 object. He's asking him about a report he didn't
5 prepare. So he's really calling for speculation and
6 I think he indicated he doesn't prepare that report.

7 MR. CHALMERS: Is your objection
8 speculation?

9 MR. RUPE: That's one of them.

10 MR. CHALMERS: I'm trying to figure
11 out whether I respond. It may be speculation. I
12 think there's lack of foundation, but I believe he's
13 testified to all this on direct, so that's what I'm
14 trying to follow up on.

15 MR. RUPE: He testified to his
16 numbers on direct based on his information.

17 JUDGE THEIS: He said he doesn't --
18 he didn't know who had prepared that report. If you
19 can ask him if he's familiar with the terminology, I
20 suppose.

21 MR. CHALMERS: That's all right.
22 Thank you, Your Honor. I'll move on. I think the
23 document speaks for itself.

24 Q. (By Mr. Chalmers) You've been in your
25 position since 2010, is that right?

1 A. I've been in my position now for just over
2 12 months, a year.

3 Q. So if I back up, here we are on June of
4 2012, that would be June of 2011?

5 A. I came in 2011, that is correct, which was
6 the 2010/'11 school year, that's correct.

7 Q. So you would have been at the very tail end
8 of the '10/'11 school year?

9 A. That's correct.

10 Q. Any information you have about cuts had to
11 be from what was provided to you, not from your own
12 experience, is that correct?

13 A. No, sir, that's incorrect.

14 Q. It's a bad question. Any information that
15 you have about cuts before you took the position
16 would have to be from what you had been told, not
17 from what you actually experienced or witnessed?

18 A. That would be true of anything that took
19 place before I joined the team, sir, that's correct.

20 Q. Let's talk about your exhibits. There's an
21 Exhibit 259 and -- there's another one that went with
22 it and I hope you have it up there.

23 MR. RUPE: 260.

24 MR. CHALMERS: 260. Thank you.

25 Q. (By Mr. Chalmers) And if I understood

1 correctly, 259 is kind of the beginning of 260, is
2 that right?

3 A. That's correct.

4 Q. And you have had someone on your staff
5 include the reason that people left or detailed
6 reason for leaving in this exhibit, is that correct?

7 A. Yes, that's correct.

8 Q. And the difference that I could find between
9 2009, because it goes over to the second page.

10 A. Mm-hmm.

11 Q. And 2000 -- or 260 -- aren't very many but
12 there's a difference in total. One shows 28, one
13 shows 26. Is that because two less people decided to
14 leave?

15 A. Two more people decided to leave.

16 Q. Right. So 225 is the later prepared
17 document. That's the one that shows the 25 and I
18 think you had indicated that the later prepared
19 document --

20 MR. RUPE: You said 225. I think
21 you meant 259.

22 MR. CHALMERS: 259. Thank you.

23 Q. (By Mr. Chalmers) -- the later prepared
24 document was the one that was 260. But so that we're
25 clear on that, there's a date actually showing the

1 updated date on the second page of 259 showing
2 December 20, 2011.

3 A. Which exhibit are you talking about?

4 Q. That's 259.

5 A. Okay. What's the question? You're
6 confusing me.

7 Q. Well, I'm confused and that's why probably
8 I'm confusing you and I apologize. I had thought I
9 understood you to say that 260 was an update of 259,
10 but looking at the two, it's the opposite way around,
11 isn't it?

12 A. This report is the same report. It was
13 revised at some point to include two columns more of
14 information. That is so that we could get a better
15 read on why individuals were leaving so we can start
16 tracking our exits.

17 Q. Which is the document that was the original
18 document and which is the revised document?

19 A. The Exhibit 259 has the original format.
20 The Exhibit 260 has the revised format with two
21 additional columns, one column titled Reason for
22 Leaving and the other one Detailed Reasons for
23 Leaving.

24 Q. And that's what I wanted to clear up,
25 because I think Exhibit 260, the second page says

1 updated 11/30/2011, do you see that?

2 A. Yes, I do.

3 Q. Exhibit 259, if you turn it over, the second
4 page has updated 12/20/2011, is that right?

5 A. 260 has an update of 11/30/11. 259 has an
6 update of 12/20/11 and there's an update even yet.

7 Q. And then the next page on Exhibit 259, maybe
8 you overlooked, has the reason for leaving and
9 detailed reasons for leaving?

10 A. Mm-hmm.

11 Q. So you now see that 259 is a document that
12 was at least the most recent revision that has been
13 provided here this afternoon?

14 A. Okay.

15 Q. Well, I'm asking you because I think maybe
16 you said something different and I'm trying to
17 clarify that.

18 A. Let me clarify, because I'm getting more
19 confused trying to track you, sir. So if I can
20 clarify this, please.

21 At one point we changed the format of this
22 report that's titled Liquidated Damages. And at that
23 point we added columns to the report to track reasons
24 for leaving and detailed reasons for leaving. Now,
25 if both of these have the some format, this is the

1 revised format if both of them include that column.

2 Q. And they both have those columns so they're
3 both revised?

4 A. This is the revised format. The only
5 difference between this one then is the effective
6 date and the number of people. One shows 28 and one
7 shows 26.

8 Q. And let's show then and talk about 259,
9 which I think we've now established is the most
10 current of at least the ones that you've presented
11 through your counsel.

12 And the reasons for leaving that are
13 detailed in this, they include no reason given, moved
14 out of state, other employment due to money, don't
15 know where she went, wife left him, followed her to
16 Texas, other employment due to money, and that talks
17 about going to Shawnee or KCMO school district, could
18 not confirm, family issue childcare. There's one
19 that says adoption Dr. Lane approved. I don't know
20 that I want to get into that but it was approved.

21 There's one that says wife suffered stroke
22 and in coma and has brain damage. Another one is
23 wanted to be with family during family's illness.
24 Another was stalking victim, needed to move. Then
25 there's a gifted teacher in other program, other

1 employment due to money, and there's a not provided.
2 An illness or ill stressed due to being in the
3 classroom, family issue. And there's a medical
4 retire. Then there's stay at home with second
5 child. Then there's childcare.

6 Then there's classroom management, could not
7 get students under control, medical retired, other
8 money due to -- other employment due to money, would
9 not say where she was going, personal, moving in with
10 friend in Blue Springs, other employment due to
11 money, don't know where she went, medical or
12 delivered premature twins, staying home to care for
13 them. Resigned in lieu of termination. Resigned in
14 lieu of termination. Birth of premature twins.

15 Then there's other employment due to money.
16 Took a position at the KC Missouri school district,
17 other position due to money, took a position with
18 Olathe, then there's a personal reason approved by
19 you. Then there's other employment, took money with
20 Kaufman, and then there's medical. Are those the
21 reasons that were provided?

22 A. Those were the reasons that was provided at
23 that time by these individuals. Yes, that's correct.

24 Q. You have a number here -- well, I don't
25 know. You gave testimony. I don't know if it's

1 somewhere in these charts or not, that if you've done
2 some figuring and if there had been no salary freezes
3 and if there was no stop on movements on steps, that
4 there would have been an additional 7.2 million in
5 expense to your district. Is that what you testified
6 to?

7 A. What was asked of me was what would it have
8 taken to catch them up is what I believe the way the
9 question was phrased to me, to which my answer was
10 approximately \$7.2 million.

11 Q. And to catch up, I'm not sure what that
12 means. What does that mean?

13 A. You'd have to ask the person who asked the
14 question, sir.

15 Q. Well, when you calculated to see what it
16 cost to catch them up how, did you understand catch
17 up?

18 A. Looking at the time they have not had the
19 step increase, if we go back and if we were to make
20 up for that step increase, that's what it would cost
21 us figuring that we gave them a certain percent of
22 increase as we had in the past.

23 Q. So that includes not only moving them up the
24 steps, but then giving these teachers a step increase
25 as you say we have in the past. When in the past

1 have you been involved with the district when they've
2 given an increase in percentage salary?

3 A. Based on the employee records, I can go back
4 and tell you when the last time employees received an
5 increase. And I have that information not here with
6 me on the stand. But I can tell you going back the
7 last two or three years, teachers have not had the
8 step increase. And in fact, let's see here. I have
9 that information but I do not know that last year the
10 records reflect they received just less than a
11 1 percent increase, not a step movement, just an
12 increase.

13 Q. I'm not unsympathetic to teachers. Don't
14 misunderstand this line of questioning. But you know
15 that there are industries in which employees have had
16 to take cuts in salary, don't you?

17 A. I'm absolutely aware of that.

18 Q. You are aware there are industries where
19 employees have had to be laid off, is that right?

20 A. I'm aware, yes.

21 Q. And you're in Kansas City, Kansas, so you
22 may not be familiar -- as familiar with the Wichita
23 economy as I am, but we've got a major aircraft
24 manufacturer that just went into bankruptcy and
25 they're cutting employees. That would be an example

1 of people who have lost their jobs in this economy,
2 wouldn't it?

3 A. I feel badly about those individuals, but I
4 also feel badly about the individuals who are already
5 below the market compared to their competitors and
6 not able to get increases.

7 Q. You indicated that there, at least on the
8 basis of recent trends, are a higher number of
9 at-risk kids and ESL kids coming to your district, is
10 that right?

11 A. Yes, sir, that's correct.

12 Q. And do you understand the weighting system
13 that would then require the state to provide more
14 money as a result of this higher population of
15 at-risk and EL -- or ELS kids?

16 A. I know that to be the case but that's not my
17 expertise. I rely on my colleagues to provide me
18 that information.

19 Q. Lastly, you talk about 169 positions in
20 addition to the 28 that are shown on this 1220
21 Exhibit 259 that will have to be filled. That's
22 about average, isn't it, every year?

23 A. No, sir, it's not.

24 Q. Well, there was a time Dr. Lane said where
25 every year it was about 200 and 250 teachers that had

1 to be replaced. Were you aware of that?

2 A. I am aware of that.

3 Q. More recently, it hasn't been as many, is
4 that right?

5 A. Last year I can tell you that there were 235
6 teachers we had to replace. The year prior to that I
7 can tell you that it was 191.

8 Q. So the year prior to last year would have
9 been '10/'11, and this year would be '11/'12, so that
10 I understand what you're talking about, isn't it?

11 A. This year ending is '10/'11 and there was
12 235. The year that we're going to be looking at,
13 which is year '12/'13, we're going into the year with
14 169 so far, and it's not even -- we're not even at
15 the point of starting the school.

16 Q. And that's the point, isn't it, that after
17 the contract ends with a teacher, it is common that
18 some teachers will move on and will have to be
19 replaced? They are -- they retire, they get sick,
20 they find another job, any of the variety of
21 different reasons, some of which were on that
22 exhibit, and you have to replace them, right?

23 A. We do, but I don't show that the number is
24 -- as you are suggesting, sir, I don't show that --
25 this amount, 235, is a spike in my research. This is

1 not a normal occurrence year over year as you're
2 suggesting.

3 Q. And I maybe have confused what we were
4 talking about, but your experience is based on the
5 upcoming year, last year -- this year, I guess --
6 well, this school year is over, isn't it?

7 A. It is. Well, we're concluding the year,
8 yes, that's correct.

9 Q. Can we call last year the '11/'12 year?

10 A. That's correct, yes.

11 Q. And then the '10/'11 year when you first
12 came to the program?

13 A. Yes.

14 Q. And what you saw is between the '10/'11
15 program and the '11/'12 program, a spike in the
16 number of teachers you had to replace?

17 A. You're suggesting that I only have knowledge
18 just to those two years, but I'm going to tell you
19 I've bidden for a system where we can integrate
20 things and be a little bit better in terms of our
21 HRIS system. And in doing so I've used the records
22 and I've gone back to 2007, and I can tell you what
23 the trend is. And thereby I can tell you that our
24 losing 235 teachers in the '11/'12 year is not a
25 normal year-over-year occurrence.

1 Q. Don't mean to suggest it was. It's a spike
2 in your experience, right?

3 A. Yes.

4 Q. And those teachers were replaced?

5 A. We did not, unfortunately, replace every one
6 of those teachers. The majority of which we did,
7 yes.

8 Q. Majority, meaning almost all?

9 A. But we didn't necessarily replace them with
10 teachers. For example, we have substitutes. Some of
11 those substitutes may have been retired teachers. So
12 we may have to put a full-time substitute in one of
13 those positions to get them filled. So even though
14 we put stopgap measures in, that doesn't mean that we
15 replaced all or found teachers for all of those
16 positions.

17 Q. You found teachers to stand up in front of
18 the classes to be able to instruct the kids on those
19 subjects that are required by the state in the year
20 '11/'12, did you not?

21 A. I'm going to say no.

22 Q. What teachers -- give me one example, what
23 class were you unable to have a teacher where kids
24 went uninstructed?

25 A. I didn't say that.

1 Q. What class, what school was there where a
2 teacher was not located to instruct the kids on the
3 subjects mandated by QEP -- or QPA?

4 A. We have some classes where we had to put in
5 full-time substitute teachers to fill the gap. One
6 of those schools, as an example, is Northwest where
7 we never found, for an example, a Spanish teacher.
8 We never found one.

9 Q. So I understand, you draw a distinction
10 between a substitute teacher and a non-substitute
11 teacher. I'll give you that. But I want you to tell
12 me if there wasn't an instructor, substitute teacher,
13 full-time teacher, however you want to describe it,
14 with the credentials required by the state who was
15 not available to teach some kids -- no, who did not
16 teach some of the kids in your district last year.

17 A. Sir, a person who we may have put in the
18 classroom such as a full-time substitute teacher does
19 not have the same certification and credentials as
20 say a regular teacher. So we may have put someone in
21 the classroom who was qualified by the state, but may
22 have been less qualified to teach the subject,
23 whereby the student was not allowed or afforded the
24 same instruction that they would have received had
25 someone been certified to teach the subject.

1 Q. And I certainly appreciate that
2 explanation. Can you agree with me then with that
3 explanation, that every kid in your district this
4 last year had a teacher who was licensed and
5 qualified by the state?

6 A. A teacher? The answer to that question is
7 no. Did they have someone in there, a teacher who
8 was certified to teach that subject?

9 Q. Now, you parsed that meaning it has to be --

10 A. I'm not parsing any words, sir. Sir, I'm
11 not parsing words. For a student that is getting
12 instruction by a substitute, that experience is very
13 different than a student that's getting instruction
14 from someone who's certified to teach that class.
15 That's a very different experience.

16 Q. I understand that's your position, and I
17 appreciate that position.

18 A. Mm-hmm.

19 Q. I don't quarrel with that position for the
20 purposes of my question. All I'm trying to get at is
21 for you to agree if it's the fact. And if not, tell
22 me where it isn't true that there was always a
23 licensed teacher as required by the state teaching
24 kids in your district last year. There were no kids
25 that were sitting in a classroom and there's no

1 licensed teacher providing instruction. That just
2 didn't happen, did it?

3 A. This year ending, the '11/'12 school year,
4 there was some classes that ended the year without a
5 teacher who was certified to teach that subject.

6 Q. This next year when you go to replace these
7 teachers that are leaving, now 190 -- or 169, if it
8 stays that, that will be what, nearly 100 less than
9 what you had to replace last year, right?

10 A. No, not necessarily.

11 Q. Well, you're assuming the number is going to
12 go up.

13 A. If it's tradition -- if it is as it has
14 been, the number will go up.

15 Q. And that's why if it stays at the 169, which
16 is what you know now, then it will be about 100 less
17 than the previous year?

18 A. The previous year was 235.

19 Q. I'm sorry. I wrote --

20 A. 235, and we have 169 as of a year ago and
21 the number still will go up, sir.

22 Q. I was looking at the two -- at the exhibit
23 number. The difference would be not 100 difference,
24 it would be 80 about, 75 to 80?

25 JUDGE THEIS: 66.

1 JUDGE FLEMING: 66.

2 Q. (By Mr. Chalmers) 66 going to Shawnee
3 Mission West.

4 A. That was as of last week, sir. That
5 number's already changed.

6 Q. Now, you expect that to go up and you have
7 no reason to expect that you won't have the same or
8 similar experience that your district has had based
9 on your research and based on your experience, and
10 that is we'll find a teacher, a licensed teacher,
11 maybe not the best teacher, maybe not the most
12 qualified teacher, but we'll find a teacher who we'll
13 be able to put in our classrooms and teach the core
14 classes that the state requires that has the license
15 required by the state?

16 MR. RUPE: Objection, calls for
17 speculation. He's asking next year.

18 MR. CHALMERS: I think that he's
19 had the experience of replacing, I think he ought to
20 be able to offer an opinion on that. If it's
21 speculation, I'll withdraw it.

22 JUDGE THEIS: It's a little fortune
23 telling. I don't know.

24 Q. (By Mr. Chalmers) If we agree we don't know
25 what's going to happen next year, I'll live with

1 that. You just don't know then what's going to
2 happen next year in terms of whether you will be able
3 to replace those positions or not?

4 A. I can tell you that we have, sir, 169
5 positions open and we're challenged to find those
6 positions. We're trying very hard. We hope we can
7 get them filled.

8 Q. It would be speculation for you to say that
9 you will not be able to get them filled?

10 A. We're trying to get them filled.

11 Q. You're not going to answer the question?

12 A. I can't tell you the future, sir.

13 MR. CHALMERS: That is all right.

14 Thank you.

15 REDIRECT EXAMINATION

16 BY MR. RUPE:

17 Q. In terms of Exhibits 259 and 260, so I'm
18 understanding, those are teachers who broke contract?

19 A. Yes, sir, they were in breach.

20 Q. All right. And I think Mr. Chalmers went
21 through this, but the reasons were other money, other
22 money -- or more money, sorry, and then due to money
23 went to work at Shawnee Mission or KCMO, other
24 employment due to money, ill and stress due to being
25 in the classroom, classroom management, could not get

1 students under control, money, due to money, money,
2 took a position in KCMO, money, took a position with
3 Olathe school district. That's about nine of the 24
4 positions on Exhibit 259, right?

5 A. As it was with the ten teachers that I tried
6 to save, as it was with nine of the ten teachers and
7 the one physics. And of the 169, I can tell you of
8 the 169 --

9 MR. CHALMERS: Now I think we're
10 getting into the --

11 MR. RUPE: Well, go ahead. Tell me
12 about it.

13 JUDGE FLEMING: Just a second.
14 There's an objection.

15 MR. CHALMERS: I think we're
16 getting into hearsay problems. I also worry about --
17 well, it's another issue as to whether or not federal
18 law would allow this. But it's hearsay for him to
19 communicate what these people allegedly said to him.
20 There's no record and that's offered for the truth.

21 JUDGE THEIS: Hearsay depends on
22 the credibility of the spokesman here. If that is
23 the reason they told him, whether it is true or false
24 is indifferent. That's the reason they told him and
25 that's all he's saying is that the reason they told

1 him. So the question is whether he's telling the
2 truth, not whether they were.

3 MR. CHALMERS: I agree, and I don't
4 question the veracity of what he believes. What I
5 question is if he's offering it as the truth as to
6 why they went. So if they said, I left because of
7 more money, and if that's what it's being offered
8 for, which is the only reason it would be relevant,
9 then that's why it's hearsay, Your Honor.

10 JUDGE THEIS: We can decide that to
11 be the lie in vogue, to tell him that they were
12 leaving for more money. He can say what he
13 understood them to say.

14 MR. CHALMERS: In which case I
15 think I'm going to object as to relevance as to what
16 they told him if it's not offered to prove it's a
17 matter of truth to the matter asserted.

18 JUDGE THEIS: It's offered to prove
19 that was the reason given. That's what it's offered
20 to prove.

21 Q. (By Mr. Rupe) Tell us what -- of the 100
22 and how many, 60?

23 A. Of the 169, every -- every position I've had
24 in the 20 years I've been in HR, we've always tracked
25 the reasons why people leave. We call them exits.

1 Of the exit information we have received from the 169
2 that are departing, 28 percent of them did not give
3 us a reason. 13 percent of them said I'm going to
4 other educational institutions. Some of them even
5 identified the ones that they're going to.

6 36 percent of them told us personal reasons,
7 such as my husband's moving down south, or my mother
8 is seriously ill, you know, those types of things.
9 And 23 percent of them retired. That's based on the
10 exit information that we were able to get of the 169
11 people who were leaving for the new year.

12 Q. And those 169 are not in the list of people
13 who broke contract?

14 A. This list is a list of those who were in
15 breach from the last year.

16 Q. Okay.

17 A. That last list says 20 and the updated list
18 says 30.

19 MR. RUPE: No other questions.

20 MR. CHALMERS: Nothing more,
21 Your Honor.

22 JUDGE THEIS: You can step down,
23 sir. Thank you.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 JUDGE THEIS: Trying to figure out
2 scheduling tomorrow. We'll start at 9:00 Friday. We
3 might -- we've got two roadies here so we'll get them
4 on the road so they can get home.

5 MR. RUPE: My sincerest hope is I
6 think you got kind of an idea of our witnesses and
7 who's coming. We're a little bit behind in terms of
8 our schedule to get our case in, but I'm real
9 optimistic we get caught up tomorrow.

10 JUDGE THEIS: One other matter, so
11 we're -- we might leave as early as 3:00 on Friday
12 afternoon.

13 MR. RUPE: Okay.

14 JUDGE THEIS: KTWU may want to do a
15 little TV on this. They may be doing a program. I
16 think we emailed you earlier on that. They asked
17 Cindy whether they could put a mic on the witness, so
18 you might ask the witness if they would have
19 objection to that.

20 MR. RUPE: Okay.

21 JUDGE THEIS: The wireless mic or
22 something in case they decide. What their program
23 is, I don't have any clue. But they haven't been
24 here yet so I don't know what their mention to that
25 is. You might mention it to your witnesses so if

1 anyone objects to it.

2 MR. RUPE: A mic, I don't think
3 they will.

4 JUDGE THEIS: We won't be forcing
5 it on them.

6 MR. RUPE: Thank you.

7 JUDGE THEIS: Have a good evening.

8 (Thereupon, the proceedings were
9 adjourned to June 7, 2012, at 9:00 a.m.)

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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 6, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 264 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 4)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 7th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

1		
2		
3	VALDENIA WINN	
4	DIRECT BY MR. RUPE	742
5	CROSS BY MR. CHALMERS	756
6	REDIRECT BY MR. RUPE	774
7		
8	SHELLY BEECH	
9	DIRECT BY MR. RUPE	779
10	CROSS BY MR. CHALMERS	796
11	REDIRECT BY MR. RUPE	814
12	BY THE PANEL	818
13	REDIRECT BY MR. RUPE	820
14		
15	TERI FULTON	
16	DIRECT BY MR. RUPE	822
17	CROSS BY MR. CHALMERS	849
18	REDIRECT BY MR. RUPE	868
19	BY THE PANEL	869
20		
21	MARY STEWERT	
22	DIRECT BY MR. RUPE	890
23	CROSS BY MR. CHALMERS	923
24	REDIRECT BY MR. RUPE	959
25	RE-CROSS BY MR. CHALMERS	963
	REDIRECT BY MR. RUPE	964
	BY THE PANEL	965
	REDIRECT BY MR. RUPE	968
	MARK TALLMAN	
	DIRECT BY MR. RUPE	971

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

P R O C E E D I N G S

1
2 MR. RUPE: Your Honors, the order
3 this morning will be Valdenia Winn, Shelly Beech,
4 Mary Stewart, Teri Fulton, Jim Hays, and Mark
5 Tallman. And the one -- the only one of those that
6 is the subject to -- of a motion would be Stewart.
7 And depending on the timing, I could invert Stewart
8 and Fulton so that we don't get to Stewart until
9 maybe after a break or this afternoon.

10 JUDGE THEIS: Okay.

11 MR. RUPE: We have a brief that
12 we're in the process of. I think it's been filed and
13 I think we're getting copies for each of the Judges.

14 JUDGE FLEMING: Did you file it?

15 JUDGE THEIS: Did you file
16 something?

17 MR. RUPE: I didn't file a motion.
18 There's a trial brief in which I set out the issue
19 and I anticipated what I would do to object, so there
20 is no --

21 JUDGE FLEMING: Okay.

22 JUDGE THEIS: Okay.

23 JUDGE BURR: Sure.

24 MR. RUPE: We responded to that
25 portion of his trial brief just for purposes of this

1 witness. So with that, Your Honors, our first
2 witness would be Valdenia Winn.

3 VALDENIA WINN,

4 Called as a witness for the
5 Plaintiffs, was duly sworn by the reporter and
6 testified under oath as follows:

7 DIRECT EXAMINATION

8 BY MR. RUPE:

9 Q. Good morning.

10 A. Good morning.

11 Q. Tell us your name and where you live, the
12 city in which you live.

13 A. My name is Valdenia Winn. I live at 1044
14 Washington Boulevard, Kansas City, Kansas.

15 Q. What is your employment, please?

16 A. I'm a professor of American history, black
17 history at Kansas City, Kansas Community College and
18 a State Representative, 34th District Kansas City,
19 Kansas.

20 Q. I'd like to get a little information about
21 your educational background. Would you tell the
22 Court what your educational background is?

23 A. Sure. Be happy to. Graduated from
24 Washington High School, which is in Kansas City,
25 Kansas School District. Went to the Kansas City,

1 Kansas Community College and received an Associate of
2 Arts degree from there. Then proceeded to University
3 of Kansas, graduated with a Bachelor of Science in
4 Education. Then got a Master's in History and a
5 Ph.D. in History from the University of Kansas.

6 Q. In terms of employment that you have, when
7 did you start with Kansas City, Kansas Community
8 College?

9 A. Started teaching at Kansas City, Kansas
10 Community College in 1972.

11 Q. And when did you start in the Legislature?

12 A. Started in the Legislature, first elected in
13 2000, so that meant first term was 2001.

14 Q. So you've been in the Legislature
15 continuously since 2001?

16 A. Correct.

17 Q. In the Legislature, what is your committee
18 appointment? What are your committee appointments?

19 A. Throughout that 12 years, I've been on the
20 House Education Committee. I was a member of the
21 House Select Committee on School Finance. I am --
22 was ranking member of the House Education Committee
23 from about 2006 to 2010; from 2010 to 2012, House
24 Education Budget and ranking member there. And then
25 other committees in the past, Economic Development,

1 and Health and Human Services.

2 Q. Okay. And then in terms of your faculty
3 position, describe your familiarity with the kids
4 coming into community college.

5 A. Okay. This year I have had the privilege to
6 have my 40th year teaching so, of course, the
7 dynamics over 40 years have changed. But in the last
8 five years, I've seen where I have more -- and it may
9 be economic turndown or whatever, but more
10 traditional 18-year-olds. And so at the same time,
11 the last five years during the summer, I grade AP,
12 advance placement, history exams. So I've been using
13 the college board grading standards. I've
14 incorporated them and expanded them into my grading.

15 So what I feel very comfortable in saying is
16 that, based on my 40 years experience and in changing
17 and developing and probably making my classes more
18 intense to bring them up-to-date, the --

19 MR. CHALMERS: I wonder if I could
20 interrupt. I apologize. I think where the
21 Representative is headed is expressing an opinion.
22 And we had a scheduling order that required
23 identification of experts and those who would provide
24 opinions, according to the statute that was amended
25 that had required, not only disclosure of opinions

1 for retained experts, but for people who would
2 express opinions otherwise, and representatives was
3 not on that list.

4 So of course, as I think I
5 mentioned yesterday, I made a decision as to who I
6 would depose based on the information I was provided,
7 and this is a witness I didn't depose.

8 So I don't have any problem and I'm
9 happy the Representative is here to talk about,
10 factually, what she's seen, but I thought the answer
11 was headed toward an opinion. And I would ask that
12 she not be able to step over into areas that would be
13 prohibited because she was not properly disclosed as
14 opinion testimony.

15 MR. RUPE: She's going to give
16 observation. She's not giving an opinion.

17 JUDGE FLEMING: What's the
18 difference?

19 MR. RUPE: I'm sorry?

20 JUDGE FLEMING: What's the
21 difference between an observation and an opinion?

22 MR. RUPE: With regard to what she
23 observes in a kid, she's not going to express an
24 opinion as to what caused the kid to be that way.
25 The difference is causation.

1 And I think what Counsel wants --
2 what Counsel anticipates is her giving an opinion
3 with regard to some sort of causation. If anything,
4 I'll reign in the responsiveness of that question
5 because I haven't actually posed the question to her
6 that she's now answering, and that's probably my
7 fault.

8 But if I could ask her what her
9 observations are of kids in the classroom who come
10 out of Kansas City, Kansas public schools, I think it
11 would be helpful information for the Court. It's not
12 an expert opinion. It's a teacher's opinion based on
13 what she observes in the classroom.

14 JUDGE THEIS: I certainly think we
15 ought to hear the question before we rule on the
16 objection.

17 MR. RUPE: Okay.

18 Q. (By Mr. Rupe) With regard to the last five
19 years where you've seen more frequent 18-year-olds,
20 an increase in traditional college kids coming into
21 the community college, tell me what your observations
22 are, as an instructor with 40 years experience. What
23 are your observations concerning the college
24 readiness of the kids coming to you from the Kansas
25 City, Kansas public schools?

1 MR. CHALMERS: Same objection. I
2 think that's still calls for opinion, calling for
3 observations based on her special knowledge or
4 skill. I think the question actually says, 40 years
5 of experience, and hasn't been properly disclosed.

6 JUDGE THEIS: Well, you've got a
7 teacher talking about her students. And she's going
8 to talk about what areas they're not good in, which
9 implies that whatever the college standards are, is
10 one thing, and then, what she observes is another.
11 To me, that's an observation if it's phrased that
12 way.

13 Do you have any problem with that,
14 Bob?

15 JUDGE BURR: I don't.

16 JUDGE THEIS: Everything is fine if
17 it's a partial opinion.

18 JUDGE FLEMING: It's a fine line.

19 JUDGE THEIS: Personally, I think
20 it's admissible if you ask it right.

21 MR. RUPE: Would you answer --
22 should I proceed? Okay. Thank you.

23 Q. Please answer the question. Do you remember
24 it?

25 A. I remember the question. I'll just say

1 using college AP standard grade rubrics, I find that
2 perhaps a third of my students, with writing and
3 written communication skills, technology skills, come
4 in below average. And their final grade reflects
5 either their ability to improve on those skills or
6 not.

7 Q. Do you furnish supplies through a community
8 center to Kansas City, Kansas public school kids?

9 A. In my spare time, I volunteer at the
10 community center that serves at-risk kids. And as
11 part of my tutorial obligation, I also help their
12 grandparents or their parents purchase school
13 uniforms and school supplies at the first of the
14 year. I ran this from about 2006 to 2010.

15 And what I found on the list that certain
16 grade levels, 3rd and 5th, at specific three or four
17 schools that were in the neighborhood, the
18 required -- well, not required, the request for the
19 parents to supply included three or four reams of
20 copy paper, two or three packages of notebook paper,
21 tissues. And I was helping families that had at
22 least three to five kids in each class.

23 So I was paying \$200, perhaps, per family
24 just to try to supplement them in meeting the
25 suggested requirements to help bring supplies to

1 school the first day.

2 Q. Have you noticed any change -- how long have
3 you been doing that?

4 A. I did it for five years.

5 Q. And what were the five years?

6 A. About 2005-2010.

7 Q. In that time frame, 2005 to 2010, did you
8 notice any change in what supplies the school was
9 requesting that the kids bring?

10 A. No. It was a 3rd five-year -- 3rd grade,
11 5th grade at certain schools. And these kids -- if
12 one kid went to 5th grade, the younger kid then came
13 to 3rd grade. So they were essentially the same
14 supplies.

15 Q. What kind of supplies were you furnishing?

16 A. Notebook paper, copy paper, tissue paper,
17 pencils, erasers, markers.

18 Q. Was the copy paper for the kids?

19 A. I don't know what it was used for. I just
20 know when you get a list of requested supplies for
21 3rd graders attending XYZ school, the list said,
22 three reams of this, five reams of that.

23 Q. So the list that came from the elementary
24 school was requesting that students bring three reams
25 of paper and classroom-type supplies?

1 A. Correct; Purell, even.

2 Q. That happened from 2005 to 2010?

3 A. Yes, for me.

4 Q. Let's switch gears and talk a little bit
5 about your role in the Legislature, and I want to
6 focus on your Education Committee Experience. We
7 know from this case that there was a period of time
8 in which the Legislature increased the funding in
9 Fiscal Year '06, and then increased the funding in a
10 three-year plan that started in '07, '08, and
11 continued through part of '09. My question to you
12 was, were you on education committees during that
13 period of time in the House?

14 A. Yes.

15 Q. I want you to talk to us a little bit about
16 what your committee considered as it looked at those
17 increases.

18 MR. CHALMERS: I think that the
19 case law says that legislative history is what's of
20 record and what's in writing. And it's been marked
21 as exhibits in this case. And that legislative
22 history is not created by having an individual in the
23 Legislature coming in testifying as to what their
24 thought processes were or what was considered or what
25 was evaluated.

1 So I think the way the question the
2 was phrased, I have to object. It is my thought that
3 it is appropriate to talk about what information was
4 before the committee, if that's -- but I don't think
5 that's what the question was. I think they're asking
6 beyond that into what maybe was considered by the
7 representatives as part of the committee.

8 MR. RUPE: I'm --

9 MR. CHALMERS: That wouldn't be
10 proper testimony and it wouldn't be admissible as to
11 legislative history, if that's what we're trying to
12 get.

13 MR. RUPE: I'm not sure where we
14 have a difference here. What I want to elicit from
15 her is what her committee looked at in terms of those
16 increases. We know the increases happened. So the
17 question is, what did your committee consider, and
18 what did the Legislature, that you were a member of,
19 consider. I think Counsel will be arguing at some
20 point that the -- that the Montoy Supreme Court
21 indicated that you need to look at actual costs as
22 part of any assessment of suitability and the
23 financing of suitability.

24 And so to the extent the
25 Legislature looked at actual costs from any studies,

1 I think that is important information for the Court.
2 By the same token, if the Legislature didn't, I think
3 that is important information that this Court needs
4 to hear.

5 JUDGE THEIS: What's your year?
6 What's the year?

7 MR. RUPE: I'm asking when she was
8 on the committees and we're starting with the
9 increase in -- the first year of increase, 2006, and
10 then I'm going to ask her about the funding to
11 current. And -- hang on -- and what the
12 Legislature's -- what facts the Legislature
13 considered in those increases from her point of view
14 on the House committees.

15 JUDGE THEIS: Well, didn't the
16 Legislature just respond to Montoy?

17 MR. RUPE: I think what the
18 Legislature did --

19 JUDGE THEIS: And the Supreme Court
20 tell them to pony up X.

21 MR. RUPE: I think what they -- the
22 question is, did they consider the actual costs. And
23 that's the information I want to elicit from this
24 witness.

25 MR. CHALMERS: It's the "consider"

1 part that's the problem. If what we want to do is
2 talk about what were the facts, what was the
3 information made available, what was available to the
4 representatives, that's fine. But to have one member
5 of the Legislature come in and say, this is what we
6 considered, that raises a question of another
7 representative saying, well, this is what I
8 considered, and this is what I considered. And that
9 gets us down a path we don't want to go. And I think
10 case law says that's not proper testimony as to
11 legislative history.

12 JUDGE THEIS: I agree.

13 MR. RUPE: Legislators have
14 testified in these cases throughout and --

15 MR. CHALMERS: The last time you --
16 the last case, because I looked back at the
17 transcript last night when you raised the same line
18 of questions, Judge Bullock sustained the objection
19 and said you can't get into it.

20 MR. RUPE: I would challenge the
21 record on that, Counsel.

22 MR. CHALMERS: Transcript --

23 JUDGE THEIS: Legislative -- what
24 the Legislature does speaks for itself, and then you
25 ascertain by legislative history and things of that

1 matter. In other words, I don't think an individual
2 of the Legislature can say what the Legislature did
3 or why.

4 MR. RUPE: In terms of what they
5 had --

6 JUDGE THEIS: They could, as he
7 indicated, testify as to what materials they had in
8 front of them. But as to what they necessarily did
9 with it, I think you'd be a nickel too far.

10 MR. RUPE: Okay. Let me back up
11 and try to land short of a nickel, because I think
12 what I want to ask her is what did the Legislature --
13 based on your guidance, what did the Legislature in
14 those years have in front of it that it looked at
15 before it took any action.

16 JUDGE THEIS: I think that's good.
17 Don't you, Bob?

18 JUDGE FLEMING: Mm-hmm.

19 Q. (By Mr. Rupe) Let me back up and ask the
20 question again. And the question is, in the years
21 when the funding increased -- so we're in Fiscal Year
22 '06, '07, '08 and '09 -- what did the Legislature,
23 including your committees, have by way of studies or
24 information that it had at the time those increases
25 occurred?

1 A. We always refer to the Legislative Post
2 Audit that established the cost of inputs and
3 outcomes, and many times refer to the Augenblick &
4 Myers cost study analysis.

5 Q. We've pulled them out. They're exhibits in
6 this case, but I won't go to the trouble of doing
7 that. You had in front of you in the Legislature in
8 those years, the Legislative Post Audit report and
9 the report by Augenblick & Myers?

10 A. Correct.

11 Q. Now, same question with regard to starting
12 in Fiscal Year '09, '10, '11, '12, and current?

13 A. In '09, most of the conversation dealing
14 with school funding was to the Appropriations
15 Committee. So practically no money-related
16 discussions, merely policy discussions came before
17 the Education Committee. Then, I'm on Education
18 Budget from '10 to '12, and once again, those issues
19 were related to policy primarily, subsequently
20 bringing in financial, but most of those going to the
21 Appropriations Committee.

22 Q. During that period of time I just indicated
23 the period of cuts, did you have anything before you
24 that examined the cost of providing outcome?

25 A. No.

1 MR. RUPE: No further questions.

2 CROSS EXAMINATION

3 BY MR. CHALMERS:

4 Q. Try to keep this short and simple. And I'm
5 going to show you some documents and ask if these
6 were before you during the legislative periods that
7 led up to the last appropriations and decisions on
8 school finance.

9 MR. CHALMERS: Gaye, would you hand
10 the witness exhibits 1017, 1016 and 1166.

11 Q. (By Mr. Chalmers) 1017 is the Kansas
12 Legislature briefing book for 2012, is that correct?

13 A. Correct.

14 Q. And so this is the book that's made
15 available to each member of the House and Senate
16 prior to their ultimate approval of any
17 appropriations for, in this instance, the '12/'13
18 year?

19 A. It's delivered to our offices, yes.

20 Q. And it has information in it in particular
21 that shows page 5 of the exhibit, how the state
22 general funds are -- were divided in the previous
23 fiscal year showing the various agencies that
24 received those funds, is that correct?

25 A. Yes.

1 Q. And it would show that in the previous year
2 there was \$5.6266 billion for -- in total of which
3 more than half, chart shows whatever it shows, went
4 to education, is that correct?

5 A. Correct.

6 Q. The document also has on the next page
7 information that is provided to the legislators that
8 includes the estimated resources that you would have
9 for revenue for the upcoming year, is that right?

10 A. Correct.

11 Q. And there's a lot more information on that
12 that's provided and available to legislators on
13 resources. But this in particular, this particular
14 briefing book would kind of give you a bird's eye
15 view of what money was available.

16 A. Correct.

17 Q. Then, let me ask you about Exhibit 1016.
18 And 1016 is the Kansas Legislator Briefing Book for
19 this last year 2012, is that correct?

20 A. Correct.

21 Q. And that briefing book sets out a discussion
22 of how the Kansas School District Finance and Quality
23 Performance Act works for computing essentially the
24 operational costs of the schools, is that correct?

25 A. Correct.

1 Q. And it talks about the weightings that are
2 in place and how the act works so that a legislature
3 has that available when they ultimately make their
4 decision on what is an appropriate appropriation for
5 the year for education, is that right?

6 A. Correct.

7 Q. On the 7th page -- excuse me, the 8th page,
8 there is a listing of what the base state aid per
9 pupil history has been from '05 to '06 to '10 --
10 excuse me, 2011, '12. Do you see that?

11 A. Yes.

12 Q. And that information then is available to
13 legislators when they decide on what's an appropriate
14 appropriation, is that correct?

15 A. As I said, this is delivered to our offices,
16 yes.

17 Q. One of the things it talks about next is
18 fund flexibility. Did the fund flexibility issue
19 that's described here -- is that something that came
20 into one of the committees that you were a member of?

21 A. Yes.

22 Q. And let me talk to you about exhibits --
23 looks you gave us more things to look at, which would
24 be Exhibits 1090, 1091, 1084, 1986, 1087, and 1088.
25 Oh, and 1085. I'll get these this in order for you

1 so it'll be easier.

2 I don't know where it is in the stack, but
3 if you could locate Exhibit 1090 -- hopefully it's at
4 the top or very close to the top -- this is a letter
5 that's in evidence from the Former Speaker Michael
6 O'Neal to the Reviser of Statutes, Director of the
7 Kansas Legislative Research Department, and the
8 Deputy Commissioner of Education. And it is a joint
9 request to seek information about what he describes
10 as unencumbered carryover balances being administered
11 by USDs statewide. Is that something that came
12 across your -- any of your committees?

13 A. Could you tell me when it was introduced and
14 what committee it was introduced to?

15 Q. Well, this would have been a general letter
16 that Mr. -- or that Speaker O'Neal sent on March 31,
17 2010, and then ultimately, of course, it worked
18 through --

19 A. Right.

20 Q. -- and became law, but I didn't know if you
21 remember it being before any of your committees?

22 A. Usually, if there's a header that says --
23 introducing a specific committee with reference to a
24 specific bill. I know of the conversation, of
25 course, because of the bill that we're talking about,

1 flexibility of funds. But right offhand, I don't
2 know if it was introduced into a committee. If you
3 could tell me date and time ...

4 Q. Well, let's see if we can look at a couple
5 of others, maybe it will help. Exhibit 1091, which
6 should have been the next in the stack, is a response
7 from the Revisors of Statutes to the former speaker
8 concerning the availability of unencumbered school
9 district moneys and expressing the Revisor of the
10 Statute's conclusions in response to speaker's
11 inquiry, is that something that you remember coming
12 before any of your committees?

13 A. I don't remember seeing this document.
14 Again, if you could -- usually, we have an agenda
15 that identifies what's presented, and so --

16 Q. There was testimony --

17 MR. RUPE: Well, I think he's
18 cutting off the witness' answer.

19 Q. Didn't mean to. I thought you were
20 completed. Go ahead.

21 A. If you could provide me the agenda, then I
22 could tell you for sure that it was in the committee.

23 Q. There is an agenda that shows that Speaker
24 O'Neal testified before the House Education Committee
25 after the April 20, 2010 letter concerning

1 flexibility of spending and unencumbered school
2 district moneys. I don't know if that refreshes your
3 recollection or not.

4 A. I remember him appearing. I don't remember
5 him adding other than his testimony.

6 Q. Let's talk about Exhibit 1084, then, if you
7 don't mind. 1084 is a memo from Dale Dennis to
8 Speaker O'Neal, dated March 18, 2011, concerning cash
9 balances and which purports to show -- well, it shows
10 whatever it shows. Is this something that came
11 across your committee?

12 A. Correct.

13 Q. It did?

14 A. Well, this type of document regularly comes
15 through the committees.

16 Q. Do you remember in particular seeing this as
17 part of your committee hearings?

18 A. I don't remember this exact date, but I do
19 remember these types of printouts. These are
20 regular.

21 Q. And this one in particular, it says, "As
22 requested, we have also provided the weighted total
23 cash balance per pupil as well as the effect on
24 school districts if the base state aid per pupil is
25 reduced." Is this information that would have come

1 across your desk?

2 A. Correct, and committee.

3 Q. Yeah. Now, Column 2, if you look at the
4 second page thereafter, the spreadsheet then shows
5 the July 1, 2010 cash balances. And then there's
6 information about the BSAPP reductions and what
7 that -- how that would impact individual districts,
8 is that correct?

9 A. Correct.

10 Q. And regularly, when your committee was
11 looking at or performing its duties, you would have
12 information available to you then like this that
13 includes the differences depending on what the BSAPP
14 would be to a particular school district?

15 MR. RUPE: I'm going to object. He
16 has now moved from what is in front of you to looking
17 at and reviewing. That's a compound question. But
18 to the extent he opens the door on what was
19 considered, I mean, I'm prepared to enter a
20 stipulation right now that the Legislature did not
21 consider any of this in the cuts.

22 But in terms of what he's agreeable
23 to, he's going to try to keep out any evidence of
24 whether the Legislature considered it, and then he's
25 going to be arguing to you in light of the Montoy

1 decision that it was in front of them so the
2 Legislature is justified in the action they took.

3 If we're going to ask this witness
4 and get meaningful testimony from the witness on what
5 the Legislature did, which I think is extremely
6 important to what the Legislature considered, then
7 I'll withdraw my objection to this question because
8 that opens the door and I intend to cross-examine her
9 on what was considered.

10 So my objection goes to the form of
11 the question, and it is a statement that I think he's
12 moved into an area that he previously objected to
13 that we should not go.

14 MR. CHALMERS: I'm not, I'm afraid,
15 remembering precisely what I asked. So what I would
16 prefer to do is withdraw the question and ask it in a
17 way that is intended to simply show what was part of
18 the legislative history available to her committee,
19 and I think that will probably avoid the concern that
20 Mr. Rupe has.

21 JUDGE THEIS: I think that he can
22 ask what information was given or available. I think
23 that's reasonable.

24 Q. (By Mr. Chalmers) So I'd like to ask you a
25 different question and that has to do with again,

1 Exhibit 1084 and the schedule that's attached to it.
2 Is this information that was available to you in the
3 committees that you were a member of during
4 legislative session -- I guess it was March 2011
5 would have been this last legislative session; is
6 that correct?

7 A. Yes.

8 Q. And is it correct that it's something that
9 you had -- that the committee had available to it?

10 A. I could say without a doubt, if you had the
11 committee hearing date, that this was a document that
12 was presented.

13 Q. Would you look at Exhibit 1086 for a moment,
14 please. And it's a September 13, '11 letter from
15 Dale -- or memo from Dale Dennis to Sharon Wenger.
16 Is this something that you remember seeing in any of
17 the committees that you were a member?

18 A. I don't know.

19 Q. Okay. Exhibit 1087 then, if you would turn
20 to that, this is entitled, the Second Conference
21 Committee Report Brief for House Substitute for
22 Substitute for Senate Bill Number 111, As Agreed on
23 May 12, 2011. This would have been a document that
24 would have been available to every member of the
25 House, is that correct?

1 A. That's correct.

2 Q. And it would have been available in
3 particular to the members of your committee, is that
4 correct?

5 A. No. This does not come through committee.

6 Q. So this is just general information you
7 would receive as a representative with all
8 representatives?

9 A. You would have to go to the document room to
10 get this.

11 Q. Exhibits 1088, 1089, and 1085 --

12 MS. TIBBETS: Here's 1089, and
13 there's 1085 right there.

14 Q. -- are a series of spreadsheets that relate
15 to cash balances in part. Do you remember seeing any
16 of these documents either as a committee member or as
17 a member of the House?

18 A. They're in the format that we usually get.
19 I don't see the headers and I don't see -- usually,
20 we have who it's requested by. So I'd have to have
21 dates to know exactly that they were in the
22 committee.

23 Q. Fair enough. And Exhibit 1085 in
24 particular --

25 A. Mm-hmm.

1 Q. -- is this information that was available to
2 you as a representative in the House this last
3 session?

4 A. I don't think this was distributed to all
5 representatives of the House, and I would venture to
6 say this was maybe only Appropriations Committee.

7 Q. I'm going to switch gears with you and ask
8 you about one last document, and that's Exhibit
9 1166. We have copies here.

10 MS. TIBBETS: They already have
11 them.

12 MR. CHALMERS: Everybody has it,
13 good -- apparently, me.

14 Q. 1166 is a PowerPoint that's dated February
15 2, 2012 and it's titled, House Education Committee.
16 Is this a PowerPoint then that you would have --
17 would have seen as part of a presentation at the
18 House Education Committee during some of your
19 hearings?

20 A. It's in the right format. Usually, it has,
21 on that same cover sheet, who it's presented by and
22 the agency that prepared it.

23 Q. Sure. If you look at very last page.

24 A. Is it there?

25 Q. Page 57 shows the state -- Kansas State

1 Department of Education, is the particular
2 PowerPoint. And you do remember representatives of
3 the State Department of Education appearing before
4 the House Education Committee and providing
5 information and testimony, is that correct?

6 A. Correct, on a regular basis.

7 Q. This indicates on the second page of the
8 document -- it's got Kansas by the numbers, and
9 spells out informations about the number of students,
10 districts, schools, licensed educators, and
11 non-licensed personnel. So that's information that
12 was provided to the committee, is that correct?

13 A. Correct.

14 Q. By the numbers section then also has
15 information about children transported to school,
16 breakfast, meals and lunches served daily on page 3
17 of this exhibit, is that correct?

18 A. Correct.

19 Q. And then, there's information about
20 population trends that are provided on the next page,
21 is that correct?

22 A. Correct.

23 Q. And this is only some of the information
24 that was provided to your committee about these
25 subjects. I mean, there was other information on how

1 the schools are made up, populations, trends from
2 other witnesses and presenters, is that correct?

3 A. I assume.

4 Q. The next page, which has a five under it,
5 shows money, district revenue between '09/'10 and it
6 shows how education has been funded from what sources
7 for the last -- well, for that previous year. You
8 understand that?

9 A. Correct.

10 Q. And then there's a discussion as to how do
11 we measure progress. And a presentation was made, as
12 to how the Kansas kids were getting along, in your
13 committees, is that right?

14 A. Okay.

15 Q. This particular PowerPoint, do you remember
16 who the presenter was? Was it Commissioner DeBacker?

17 A. I don't know. Committee hearing would tell
18 you whether -- who did it.

19 Q. But there was information about how Kansas
20 kids were doing on Kansas assessments. There was
21 information for the various grades. And on page 17,
22 there's information about the Kansas reading gap in
23 terms of how scores had progressed between the paid
24 lunch, reduced lunch, and free lunch, and that
25 information was provided to your committee?

1 A. Correct.

2 Q. Likewise, there was information on the next
3 page about the reading gap by ethnicity for whites,
4 Hispanics and African Americans, and that information
5 was provided to your committee?

6 A. Yes.

7 Q. The same information about performance
8 levels was provided for math, and in particular at
9 page 2005, there's information about the Kansas math
10 gap between the paid lunch, reduced lunch, and free
11 lunch?

12 A. On what page?

13 Q. On page 25.

14 A. Correct.

15 Q. And that information would have been before
16 your committee. Would this PowerPoint have been
17 shared to other members of the House or with other
18 members of the House?

19 A. Who what do you mean?

20 Q. This particular PowerPoint was made to the
21 House Education Committee, and I know it has
22 certainly responsibilities. What I'm wondering is if
23 it was also available to a member in the House who's
24 not on that House Education Committee?

25 A. Probably not formally because it was not

1 content of that committee.

2 Q. Then there's information about the math gap
3 by ethnicity on page 26, showing over time how the
4 gap has -- I'm not going to represent -- but what it
5 shows?

6 A. Correct.

7 Q. Then, the next page, 27, and the page 28,
8 those talk about how Kansas kids have performed on
9 national tests in compared to the nation. And that
10 information was provided to your committee, is that
11 correct?

12 A. Correct.

13 Q. Pages 29 and 30 provide information about
14 the national assessment of educational process, that
15 is the NEAP, and how Kansas kids have performed on
16 that as compared to the nation is shown on page 30 of
17 the exhibit, is that correct?

18 A. Correct.

19 Q. Now, the exhibit's in evidence, and I'm not
20 going to go through each page, but there were
21 discussions before your board about what's -- the
22 work ahead, things that are needed to be considered
23 and are being considered in Kansas education, both as
24 part of this presentation and other presentations, is
25 that correct?

1 A. If it's in here, it was in this presentation
2 for sure.

3 Q. There were discussions before your committee
4 about transitioning to Common Core Standards in math,
5 English, language arts. What I mean by that is,
6 there was testimony provided either in writing or
7 verbally.

8 A. I remember conversation. I would have to
9 see the testimony that there was an explanation as to
10 how they were transitioned to this.

11 Q. There was also information provided about
12 the upcoming new accreditation system for the Kansas
13 schools that was provided to your committee?

14 A. That's what it says, yes.

15 Q. And there was also conversation about the
16 Elementary and Secondary Education Act, that is the
17 federal ESEA, and the flexibility waiver that Kansas,
18 at that time, was preparing to present?

19 A. I'm sure they mentioned it, yes.

20 Q. And you talked about the Augenblick & Myers
21 study and about the LPA study. Was there also a
22 request for an update of the LPA study that you
23 remember coming --

24 A. No.

25 Q. -- before you at some point? You have no

1 memory of a request for update or information
2 provided on an update? And what I mean by that is,
3 not a new study, but rather where the LPA would take
4 its original numbers and project what the costs would
5 be into all the way through 2014?

6 A. I don't remember seeing any documentation of
7 that.

8 Q. You talked with Mr. Rupe about kids that are
9 now coming into your community college. And you say
10 that you're seeing more that are the traditional
11 18-year-olds.

12 A. Correct.

13 Q. And I guess what I would take from that --
14 but I want to clarify -- what you'd been seeing
15 before were maybe people that were coming back to
16 college, is that the students that were coming into
17 your classes?

18 A. Correct. Over 40 years, yes.

19 Q. And in teaching these kids that were coming
20 in, these 18-year-olds, some of them were from KCK;
21 I'm presuming some of them were from other feeder
22 districts or other schools?

23 A. We have a majority of KCK.

24 Q. And you talked about the college grading
25 system you've used, and you said you used the

1 advanced placement history. I didn't understand what
2 you meant.

3 A. I used to, in summer, grade advanced
4 placement history exams. Those are exams that high
5 school students take for college credit. It's a
6 standard, college-based, college-level standard for
7 college-level work.

8 Q. Do you have, among your students that are
9 coming to KCK, then, some kids that are still in high
10 school that are seeking college credits?

11 A. We have dualing roles, yes.

12 Q. And the kids in recent years that you have
13 seen coming in, the last five years, I think you
14 said -- well, I don't want to put words in your mouth
15 that aren't right, because I'm not sure that's what
16 you said. Has it been just this last year, or has it
17 been the last five years that you've --

18 A. I said I've seen trends of getting more
19 traditional 18-year-olds, and in the last about five
20 years.

21 Q. Last five years. And in the last five years
22 these kids that have come to you that have been --
23 not the people that have been out working and coming
24 back to college --

25 A. Correct.

1 Q. -- but the kids that are just starting out
2 into college, their performance has been -- well,
3 unsatisfactory on the AP test scores?

4 A. No. I used the AP grading rubric to grade
5 my classes and the course work, college-level course
6 work. And I'm saying, based on that rubric, which is
7 standardized college-level work, their performance,
8 perhaps a third coming in, but at the final grade, is
9 not passing.

10 MR. CHALMERS: All right. Thank
11 you.

12 REDIRECT EXAMINATION

13 BY MR. RUPE:

14 Q. With regard to this 2010 information that
15 Counsel asked you if it was available to the
16 Legislature, is there a difference between what is
17 available by way of this information that you've
18 identified and what the committee actually uses in
19 making decisions?

20 A. There's a mountain of data available, and
21 any legislator can contact any agency and get any
22 information. But what comes before the committee is
23 in an organized fashion, that unless it's subject to
24 the committee chair's agenda, that's the only thing
25 that we consider, unless -- unless you have an

1 amendment or something, and you can request
2 additional information, yes.

3 Q. At the time of the cuts, what information
4 was relied on by the Legislature in making the cuts?

5 MR. CHALMERS: I think that's
6 getting back to the area that I objected to before.

7 JUDGE THEIS: Sustained.

8 MR. RUPE: I'd like TO argue this
9 if I could, Your Honor. I'd like to present my point
10 of view.

11 JUDGE THEIS: You want to appeal?

12 MR. RUPE: No. I'd just like to
13 ask the Court to look at the Montoy decision, because
14 what the Montoy decision did was look at evidence as
15 to what the Legislature considered by way of actual
16 costs.

17 JUDGE THEIS: You can bring the
18 horse to water, but you can't make him drink. The
19 question is whether the water was there.

20 MR. RUPE: The question, with
21 regard to "consider" needs to have some -- I mean,
22 the committee information, and it's on his exhibits,
23 are not to be used to determine legislative intent.
24 I mean, that's stuff from the legislative research.
25 There's footnotes that says it's not to be used to

1 determine legislative intent.

2 For us to decide as a three-judge
3 panel what the Legislature considered, I have to be
4 able to ask the question, what did you consider. And
5 that's the point I'd like to make in order to
6 proceed.

7 JUDGE THEIS: Well, you're asking
8 one legislator, and there's what, 165?

9 MR. RUPE: That's true, Your Honor.

10 JUDGE THEIS: Call the other 164?

11 MR. RUPE: Legislators testified in
12 the last trial and we identified legislators as
13 witnesses. And we have legislators as witnesses who
14 are prepared to testify. I would like to do a
15 proffer of her testimony, if the Court continues its
16 ruling, because I think the evidence is pretty clear
17 that they didn't consider the actual costs that were
18 involved when they made the cuts.

19 JUDGE THEIS: Well, if you'll
20 excuse us, we'll turn our backs and have a huddle.

21 MR. RUPE: Okay.

22 (An off-the-record discussion was
23 had by the Panel out of the hearing of counsel and
24 the court reporter.)

25 JUDGE THEIS: It's our position

1 that we're sticking.

2 MR. RUPE: May I make my proffer?

3 JUDGE THEIS: Go ahead for the
4 record.

5 Q. (By Mr. Rupe) With regard to -- and
6 I'll -- with regard to -- the Court has instructed
7 me not to ask what the Legislature considered, but I
8 want to get what information you have concerning
9 that. When the cuts were made, what information was
10 considered by the Legislature in making those cuts?

11 A. To the best of my knowledge in decision
12 making was amount of money that they were going to
13 spend on schools and that was it. We did not look
14 at any cost analysis. We did not look at cost of
15 delivery. We did not look at the data that we
16 looked prior to, to analyze what it would honestly
17 cost to provide education to however many students
18 in Kansas.

19 Q. With regard to the interest in the
20 Legislature, they were looking at simply the factor
21 of cutting money?

22 A. Correct. We always use the term home --
23 hold harmless.

24 JUDGE FLEMING: Home what?

25 THE WITNESS: Hold harmless.

1 A. If we just gave you what we gave you last
2 year, then you would be okay.

3 Q. And with regard to the courts, did you make
4 any observation in terms of the cuts on what the
5 Legislature was doing with regard to the courts?

6 A. I think we were clearly not meeting the
7 demand and the level that the courts had, that we
8 had laid out in three years. We were aware of that.

9 MR. RUPE: That's all my
10 questions.

11 MR. CHALMERS: I don't have
12 anything.

13 JUDGE THEIS: Step down. Thank
14 you.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 MR. RUPE: Your Honor, we do have
18 a supplemental brief that we have on file on this
19 very issue.

20 MS. GARNER: We don't have it on
21 file.

22 MR. RUPE: We don't have it on
23 file? Okay.

24 I'd like to -- we've got a brief
25 prepared. I'd like to submit it on this issue

1 because I think it's very important.

2 JUDGE THEIS: Have we seen it
3 before?

4 MR. RUPE: No. We're going to file
5 it right now.

6 JUDGE THEIS: Okay.

7 MR. RUPE: Shelly Beech, please.

8 SHELLY BEECH,
9 Called as a witness for the
10 Plaintiffs, was duly sworn by the reporter and
11 testified under oath as follows:

12 DIRECT EXAMINATION

13 BY MR. RUPE:

14 Q. Tell the Judges your name and the city in
15 which you live.

16 A. My name is Shelly Beech, and I live in
17 Lenexa, Kansas.

18 Q. With regard to your position, what is your
19 job title?

20 A. I'm a principal at West Middle School in the
21 Kansas City, Kansas School District.

22 Q. And let's get a sense of what your
23 educational background is, please.

24 A. Okay. I have a Bachelor's from Emporia
25 State in Secondary Education, and I have my Master's

1 Degree from Emporia State University in Educational
2 Administration.

3 Q. With regard to your work history, what has
4 been your work history in education?

5 A. I have been in education for 26 years, all
6 of them in the Kansas City, Kansas School District.
7 I taught for seven years at a middle school, and then
8 moved into administration and spent 12 years as an
9 assistant principal, and the last seven years as a
10 principal.

11 Q. And in terms of the seven years that you
12 spent as principal, give me the bookends on what was
13 the first year, and we know what today is.

14 A. The 2005/2006 school year was my first year
15 I believe.

16 Q. Tell us a little bit about your personnel
17 background.

18 A. I'm the mother of a 12-year-old, and that
19 keeps me pretty busy.

20 Q. Let's go back and talk about the West Middle
21 School. Give us an idea of what the demographics of
22 the West Middle School are.

23 A. It's a school of 380 students. 50 percent
24 of those students are African American, 30 percent
25 are Hispanic, which 28 percent of those are ELL

1 students. About 12 percent are white and the
2 remaining are Asian and multi-racial. My free and
3 reduced rate is 88 percent of my students who were on
4 free and reduced lunch. I have a special ed
5 population that makes up 26 percent of my student
6 population.

7 Q. Give us a definition of special education.

8 A. Those are students who have been identified
9 and have IEP plans as mandated.

10 Q. And I know you've been in the courtroom so
11 you're familiar with this question, but in terms of
12 what you want for your kids as the principal at West
13 Middle School last year, define what you wanted to
14 accomplish with all those kids in last school year.

15 A. I want all my students to be prepared. I
16 want them to be career- and college-ready. Also, we
17 look at, are they proficient in reading and math and
18 science. And those are areas that we look at very
19 closely to determine whether we're meeting their
20 needs and preparing them for careers and college.

21 Q. One of the factors that we have identified
22 in this courtroom that is required is what I call the
23 Rose Factors, and that would include training or
24 preparation for advanced training in either academic
25 or vocational fields so as to enable students to

1 choose and pursue the work intelligently.

2 Is that part of what your agenda was in
3 terms of what you wanted to accomplish with your
4 kids?

5 A. Yes, it was.

6 Q. What about these other factors: Oral and
7 written communication; acquisition of sufficient
8 knowledge of economic social and political systems;
9 development of student mental and physical wellness;
10 development of knowledge of the arts; development of
11 sufficient levels of academic or vocational skills;
12 and the needs of the students requiring special ed,
13 would that all be part of what you tried to
14 accomplish?

15 A. Yes. All of those were part of a curriculum
16 or a building-wide system for support for students.

17 Q. During your tenure, '05/'06, to current, was
18 there a time when you received cuts in your budget or
19 what you could spend at your building?

20 A. Yes, there was.

21 Q. We've talked a little bit about the
22 statewide money. And let me get a reference point on
23 where West Middle School was in relationship to the
24 statewide money. We have your first year, which
25 would have been '05/'06, '06/'07, '08/'09. When is

1 your -- when did you start experiencing cuts?

2 A. I believe it was in 2008 and 2009.

3 Q. All right. And can you tell me -- can you
4 quantify for us what the first round of cuts
5 involved?

6 A. The first round of cuts involved cutting my
7 general fund budget 20 percent. The largest cuts
8 came from the budget in which we get our staffing,
9 and during that time, I have lost five teaching
10 positions.

11 Q. How many total teachers did you have?

12 A. Counting -- 28 at that time, I believe, 29.
13 I'm not certain of that number.

14 Q. Did the student enrollment drop at West?

15 A. No.

16 Q. Then with regard to the cut of five
17 teachers, how did that work with regard to the
18 classrooms?

19 A. Well, it made the class sizes larger. It
20 put teachers in positions of teaching areas that were
21 not their expertise. When I cut a science position
22 and a reading position, there were individuals who
23 were teaching those subject areas that really were
24 not the considered highly-qualified.

25 Q. What does highly-qualified mean?

1 A. Highly-qualified means that they have the
2 experience and the certification as outlined by the
3 State that they are qualified to teach that subject
4 area. They are certified but that's not a highly-
5 qualified area for them.

6 Q. With the 20 percent cut in general fund in
7 your budget, did you experience any other cuts
8 besides the five teachers?

9 A. In that, I had -- because I wanted to try TO
10 save some teaching positions, I did have a
11 librarian -- I cut a librarian position and kept my
12 library aide. And then also I cut a secretarial
13 position. That was all done to try to maintain a
14 lower class size.

15 Q. And in terms of other cuts, what other cuts
16 did you make?

17 A. Well, some significant cuts in staff
18 development funds. We had always been a school who
19 were right on the front struggling with struggling
20 readers. And in the first couple of years we had a
21 principal who worked with a consultant to help us
22 improve our skills, as a staff, in reading. When
23 these initial cuts came down, we were no longer able
24 to have that consultant work with us within the
25 building.

1 Q. In terms of things like supplies, were there
2 cuts?

3 A. (Nodding.)

4 Q. Explain those to the Judges, please.

5 A. Yeah. That comes out of our general fund
6 budget. That was the 20 percent and that includes
7 field trips, that includes all classroom supplies,
8 instructional supplies, office supplies. At one
9 point before the cuts, I was able to say to my
10 teachers, you have -- at one point it was 150, then I
11 dropped it to \$100 per year, for you to use in your
12 classroom.

13 When the cuts came, we no longer -- I could
14 no longer do that. Everything that they wanted to
15 purchase through school funds we had to scrutinize
16 very carefully. One of the biggest things that we
17 deal with is paper. I think I heard that earlier. I
18 have to limit the amount of paper that I give my
19 teachers at a time.

20 So with that came other things. We were
21 spending a large amount of money for teacher printers
22 and printer cartridges. We did away with those and
23 we now have network printers so that when a teacher
24 prints something off, they have to go down the hall
25 to get those things that they printed out. That was

1 cost cutting, because of, those printers actually
2 print out more copies.

3 Q. Are there strategies -- I'm sorry, any other
4 cuts?

5 A. I mentioned the field trips and those
6 opportunities -- a lot of our students, many of them
7 don't have the opportunity to experience those
8 cultural things and the arts and those kinds of
9 things. We always had been able to send kids to
10 those. We were no longer able to do that unless we
11 did fundraisers. And what we had resorted to was
12 selling candy after school. And we would raise money
13 for buses to go and then asked for donations if the
14 actual event cost something.

15 Q. Were there field trips that were planned
16 that were not taken because of the cuts?

17 A. No, I don't believe so.

18 Q. In terms of the financing of those field
19 trips, it came from selling candy after school?

20 A. Partly, yes.

21 Q. All right. Now let's turn to the question
22 of what strategies you have found in your experience
23 work to move those kids that are non-proficient into
24 the proficient area?

25 A. One of the things we've worked on really for

1 the past -- well, since I've been at West, is getting
2 students into smaller groups. We know that when kids
3 can get more direct instruction and we really hone in
4 on what they're lacking, and we try to work with kids
5 based on what their needs are. So the small group
6 instruction has had a large -- has a large impact on
7 student learning. Also, enrichment classes, if we
8 can offer those through electives, we try to do
9 that. But in order to do that, we have to cut in the
10 general core classes in order to have teachers to
11 teach those, which results in class sizes being
12 bigger in the regular classroom.

13 Q. What about, did you have paraprofessionals
14 that were cut?

15 A. I had one cut but then was added back in
16 when my special ed population went up so ...

17 Q. Okay. Because you got more special ed
18 money?

19 A. Yes. I was -- special ed makes the
20 allocations for staff, that department does that.

21 Q. And in terms of the para, the para came back
22 in through the special ed department?

23 A. Yes.

24 Q. I see. In terms of the band or orchestra,
25 any changes in that?

1 A. No. But I did have cuts in other elective
2 areas. We were able to keep band and orchestra. I
3 had to cut an art position. I cut a family consumer
4 science position, and I had my first -- after my
5 first year, had to cut a Spanish position and I've
6 never been able to add that one back in.

7 Q. Why is that?

8 A. Because I didn't have the allocations for
9 teachers to do that.

10 Q. From your observation what was the impact of
11 these cuts in the classroom?

12 A. There's a lot of anxiety. Teachers have a
13 lot of anxiety of having large class sizes. When
14 they come in first, in August, that's the first thing
15 they look at. So I had anxious teachers. I had
16 parents who were concerned. Of course they had heard
17 about budget cuts, but they were concerned about the
18 class size. I got that question quite often from
19 parents and also other patrons. The class size was
20 the biggest impact.

21 And also the professional development, not
22 having -- we've long been not able to travel to
23 conferences and get that professional development.
24 But we no longer were able to really bring it into
25 the building to support our teachers in what they

1 needed to do for kids.

2 Q. And I didn't -- we didn't talk about that,
3 but is professional development a strategy that works
4 in terms of teaching teachers to move those kids from
5 non-proficient to proficient?

6 A. Yes. When you're working with a large group
7 of at-risk students, there are strategies that you
8 have to use that are beneficial to those students,
9 because many times they may be two, three, four, five
10 grade levels behind. So I think in most general
11 teaching education, we don't learn how to always
12 reach those types of kids. So there are specific
13 strategies and experts that know how to meet the
14 needs of those kids, and that was something that we
15 had to do as a staff in order to raise our level of
16 achievement.

17 Q. Did you limit the printer cartridges?

18 A. Yes.

19 Q. How did you do that?

20 A. They averaged using three to four a year. I
21 cut it to one.

22 Q. If you were to, given the size of -- how
23 many students in West?

24 A. About 370 to 380. It varies.

25 Q. If you were to reduce the teacher/student

1 ratio, what would be the number of teachers you would
2 have to add?

3 A. I would say anywhere from three to five.

4 Q. And so I'm on track, it sounds like from
5 what you were trying to do, even with the cuts you
6 had, with the class size you were trying to keep, the
7 class size as small as you could?

8 A. Yes, that's correct.

9 Q. And is that because that's one of those
10 strategies that you have recognized help kids that
11 are at-risk move into the more proficient area?

12 A. Yes. Anytime the class sizes can be small,
13 it allows for more individualized attention to those
14 students.

15 Q. And is that the same with your other sub
16 groups, the minorities and the ELL kids?

17 A. Yes, that's correct.

18 Q. When was the last time the teachers in your
19 building received a raise?

20 A. I believe last year they received a
21 1 percent or little less.

22 Q. And before that dating back to when the cuts
23 began, had they received a raise?

24 A. No, they had not.

25 Q. So in the period of time you've been there

1 after the cuts, they received one raise of less than
2 1 percent?

3 A. Correct.

4 Q. In terms of the testimony of Mr. Hudson
5 yesterday about attrition of teachers, are any of
6 those in -- any of those teachers that have left
7 broken their contract in your building?

8 A. They have left. They have not specifically
9 broken their contract because they did resign before
10 the deadline.

11 Q. And do you know if any of those teachers
12 went to other districts?

13 A. I lost four teachers this year to other
14 districts.

15 Q. To which districts?

16 A. One to Blue Valley, two to Olathe, and one
17 to Shawnee Mission.

18 Q. Do you know how the salary in your building
19 compares to middle schools in Blue Valley, Olathe or
20 Shawnee Mission?

21 A. I don't have that specific information. I
22 only know what those leaving told me.

23 Q. Okay. And was money a reason?

24 A. That was part of the reason, yes.

25 Q. In every situation?

1 A. Yes.

2 Q. In terms of some things that we've heard in
3 this courtroom, is your building in the process of
4 implementing Common Core Standards?

5 A. Yes, we are.

6 Q. Explain to the Judges what is involved in
7 that.

8 A. For the past two years our district has
9 moved from just focusing on the state standards to
10 really looking at what we call our KCK standards.
11 And those standards were integrating both the state
12 standards and the ACT EXPLORE standards. And in
13 doing that, that's -- we're phasing out the state
14 assessment and moving more into the explore and also
15 looking at the MAP assessment, which is Measurement
16 of Academic Progress.

17 Q. And what are you doing by way of
18 transitioning the teachers in the seat change to
19 Common Core Standards?

20 A. This year we'll change all of reading and
21 all of math. Reading, language arts, and math we'll
22 change to the Common Core Standards. So we have a
23 very structured pacing guide where each quarter, the
24 teachers know exactly what standards are to be taught
25 and they are teaching those standards.

1 And then we are doing assessments, both
2 formative and summative assessments, to check their
3 progress on those. So this upcoming year is really
4 the first year that we fully implemented -- will
5 fully implement the Common Core Standards in reading
6 and math.

7 Q. And has this involved professional
8 development?

9 A. No. It needs to, but we have not done that.

10 Q. Why?

11 A. We don't have the money. We have tried to
12 make ourselves aware and learn through webinars that
13 come into us from various places, reading books,
14 those kinds of things. But to really have true staff
15 development, we have to learn it first ourselves.

16 Q. Has anybody come to you with -- I'm sorry.
17 Let me ask you the question this way. You're aware
18 of No Child Left Behind and the AYP targets?

19 A. Yes.

20 Q. Has anyone come to you and said, hey, this
21 is meaningless stuff. There's going to be a waiver
22 and we don't have to comply to it?

23 A. Yes. Not that we don't have to comply, but
24 that the test is not as meaningful. It really does
25 not prepare our kids or give us a good indication if

1 our kids are prepared for college and careers.

2 Q. So that is why the district went to the ACT?

3 A. That's correct.

4 Q. With regard to that college readiness, has
5 anyone said to you that you don't have to comply with
6 those targets?

7 A. No.

8 Q. In terms of demands on your teachers with
9 regard to the assessments and the ACT, have those
10 demands increased?

11 A. Yes, they have.

12 Q. Have the performance levels the kids are
13 expected to perform to ratcheted up over time?

14 A. Yes, they are.

15 Q. And has it ratcheted up at the same time the
16 funding has diminished?

17 A. Yes.

18 Q. What about special ed situation; in terms of
19 special ed demands, have your special ed kids
20 increased in number?

21 A. Yes, they have. In the past two years I
22 believe it's gone from 21 percent to 26 percent.
23 West Middle School's always had a high population of
24 special ed students.

25 And part of the reason for that or the

1 biggest reason is we have every spectrum in special
2 education. We have anywhere from our life skills,
3 where those are kids who function very low,
4 cognitively, that are in one classroom all day with
5 one teacher; to learning disabilities, emotionally
6 disturbed, mentally retarded, or intellectual
7 disability students as they're identified now.

8 We do have three gifted students, but our
9 building often is a place where students who are
10 maybe not being successful in another building are
11 sometimes placed with certain special ed needs.

12 Q. And in terms of the funding for special
13 education, has it kept up with the increase?

14 A. No.

15 Q. Has that had an effect on the special
16 education kids?

17 A. I believe it has. I have teachers who have
18 case loads, meaning that they have -- are responsible
19 for IEPs of -- it ranges from 17 to 20. That's a
20 large amount. Ideally, we would be around 10 to 12
21 if we were really were honing in on the special needs
22 of those students. Class sizes in special ed are
23 really higher than what you would like for them to
24 be.

25 But I also will say that many of my special

1 ed students are out in collaborative classrooms so
2 that they are being exposed more to the regular
3 curriculum, and then that's where the
4 paraprofessional support comes in.

5 Q. So it sounds like you're doing the best you
6 can with what you've got?

7 A. Yes.

8 Q. Well, let's go to what you wanted to do with
9 the kids by way of those factors that I listed for
10 you and ask you if after the cuts, you were able to
11 do that with the diminished resources that you have?

12 A. I don't feel we are able to do that without
13 being able to reduce class size and increase the
14 number of teachers that we have. Also, the
15 professional development, and as continually learning
16 how to meet the needs of our students who have very
17 high needs.

18 MR. RUPE: No other questions.

19 CROSS EXAMINATION

20 BY MR. CHALMERS:

21 Q. The grades in the middle school that you're
22 the principal at are what grade levels?

23 A. Grades 6, 7 and 8.

24 Q. And the ACT tests that are now in part being
25 used by your district, are those tests applicable to

1 your kids?

2 A. They are. When we talk about the ACT, there
3 is the EXPLORE test that is a part of that ACT test.
4 So the 8th graders in my building all take the
5 EXPLORE test and that --

6 Q. And -- I'm sorry.

7 A. That's their high-stakes assessment.

8 Q. This last reported year, because the test
9 results aren't out yet, aren't final for '11/'12,
10 would have been in '10/'11, that would have been --
11 those tests would have been the Kansas State
12 assessment?

13 A. Yes, it would.

14 Q. So when we look at the results for the test
15 this year, is there a different test then that would
16 be considered for your kids?

17 A. The EXPLORE test will be considered for our
18 8th graders. Our district had originally applied for
19 the waiver to have the MAP tests be our high-stakes
20 assessment but that waiver was denied. And so with
21 the 6th and 7th graders, that will be the Kansas
22 assessment test.

23 Q. So we'll have 6th and 7th Kansas assessment
24 test, and then the ACT EXPLORE test for 8th grade
25 kids, is what we'll look at next year?

1 A. Correct.

2 Q. I want to talk to you about your school for
3 a moment. It's located at what, 2600 North 44th
4 Street in KCK?

5 A. That's correct.

6 Q. How many kids, you had 378 kids, I think you
7 said?

8 A. Between 370 to 380, yes.

9 Q. And how many teachers?

10 A. 26, 27. That includes special ed allocation
11 and ELL.

12 Q. I'd written down 29, but you think it's 26
13 or 27?

14 A. I believe that was prior to the cuts that I
15 was asked.

16 Q. Okay.

17 A. Asked about it.

18 Q. Now, in 2002, voters approved a what, \$120
19 million bond issue in your community, and that
20 allowed air conditioner units and improvement of
21 technologies and other upgrades to the schools and
22 public libraries. And your school, in particular,
23 was on Phase 2, so was that completed before you
24 arrived at the school?

25 A. Yes, it was.

1 Q. Because that was in the summer of 2002 and
2 you arrived around 2005, is that correct?

3 A. Correct.

4 Q. When was it that you -- where were you the
5 assistant principal before you moved over to the
6 middle school, the West Middle School?

7 A. I was at Central Middle School in the KCK
8 district.

9 Q. And you were there the full 12 years as an
10 assistant?

11 A. 12 years as an assistant and seven as a
12 teacher.

13 Q. The West Middle School offers a curriculum
14 to its students that provides all the -- makes
15 available to all their students all the classes that
16 are required by your district, is that right?

17 A. That's correct.

18 Q. And all the classes that are required by the
19 State, is that correct?

20 A. That's correct.

21 Q. And it is an accredited school by the State?

22 A. It is.

23 Q. Does it have other accreditations?

24 A. No, not that I know of.

25 Q. There is a website for your school, and do

1 you have any involvement in preparation of that
2 website?

3 A. Yes.

4 Q. It indicates that your school provides
5 extended learning opportunities, that is it's an
6 alternative school program. It has existed for
7 students who had difficulty functioning in regular
8 school settings because of behavior, and there are
9 extended learning opportunities for those kids. Is
10 that still true?

11 A. It's not still -- it's not.

12 Q. When was your website last updated?

13 A. 2009, 2010.

14 Q. The website indicates that your school
15 provides for a strong relationship with family
16 members, has a family advocate class, and that that
17 was incorporated in 2007/2008. Is that still there?

18 A. Yes, it is.

19 Q. The Kauffman Foundation Program was designed
20 for students through their middle and high school
21 years to help them get into -- or be better prepared
22 for college. That's still available in your school,
23 isn't it?

24 A. That's only available for those students who
25 were selected by The Kauffman Foundation. We have

1 about 17 students who are in that program. Recently
2 though, in talking with Kauffman, that program has,
3 at least for now, been discontinued. And they --
4 normally what they do in the spring is they select
5 another group of students that will be in a cohort
6 that goes with them through middle school, high
7 school, and college, and they are no longer doing
8 that, at least for this time.

9 Q. What exactly is the Kauffman Foundation?

10 A. Kauffman Foundation is a -- Ewing Kauffman.
11 It's a foundation that was set up to help students
12 who are at-risk and high-need to support them through
13 their middle school and high school years, and then
14 pay for their college education. There are
15 requirements that they have to meet. Particularly
16 how it affects my students in my building, they are
17 bussed every day, two days a week, to go for tutoring
18 with the Kauffman Foundation.

19 Q. Does your school still have the behavior
20 intervention support team?

21 A. Yes, it does.

22 Q. And that's a program that's designed to help
23 students learn to make better choices for their
24 behavior?

25 A. It's a building-wide behavior management

1 program that we've incorporated. It helps students
2 learn to manage their behavior and change their
3 behavior, but it also helps teachers in knowing how
4 to help kids manage their behavior and how to deal
5 with some of the target behaviors that you see very
6 often in at-risk students.

7 Q. Do you still use the Compass Learning?

8 A. Yes.

9 Q. What is the Compass Learning?

10 A. The Compass Learning is a computerized
11 program that we have put into place to help -- our
12 goal has always been to have smaller groups for
13 instruction. And in doing that, if you have a
14 teacher in the classroom, you have to have kids doing
15 other things while a teacher may be engaged in a
16 small group. And so the Compass Learning is a
17 computerized program that interfaces with the NWEA
18 MAP, so it sets learning paths for our students based
19 on the level that they score on that test.

20 Q. Do you still have the connected math
21 curriculum?

22 A. No.

23 Q. When was that discontinued?

24 A. That was -- it's still a small part of the
25 KCK standards, but it really does not fit with our

1 college-ready standards.

2 Q. So you have another curriculum in its place,
3 and what is that?

4 A. It's the KCK standards.

5 Q. And the KCK standards were implemented,
6 when? First implemented.

7 A. Two years ago, which would have been the
8 2010/2011 school year.

9 Q. And what professional development were
10 you -- teachers in your school provided to comply
11 with the KCK standards?

12 A. We worked with a company called Evans Newton
13 and they worked with teachers throughout the year to
14 help them learn the standards, how to deconstruct
15 standards, then how to deliver the instruction.

16 Q. The KCK standards were changed, and at the
17 same time there was this request for a waiver that I
18 think we talked about briefly, is that right?

19 A. That occurred this year.

20 Q. And the argument that was advanced was that
21 the KCK standards were more rigorous and were better
22 than the standards that were in place that were
23 attached to the AYP, the previous standards --
24 actually it would be the QPA standards that were
25 required by the State, is that correct?

1 A. They're more rigorous? Can you repeat that
2 first part?

3 Q. It was a long question.

4 A. Yeah.

5 Q. The standards that were subject to the
6 waiver, they were advocated as being more rigorous
7 than the standards that were in place for your kids?

8 A. Correct.

9 Q. The standards that were in place for your
10 kids were those that were part of the QPA, which were
11 the Kansas assessment's tied, to some degree, to the
12 No Child Left Behind, is that right?

13 A. It was the Kansas -- the standards for
14 Kansas assessment test, yes.

15 Q. And the argument was made that KCK is
16 looking forward, that we want to prepare our kids for
17 college and career better, so we want to have these
18 higher, more rigorous standards, is that correct?

19 A. That's correct.

20 Q. And now there's Common Core Standards that
21 the State then subsequently adopted. The argument
22 has been made that the KCK standards are in alignment
23 with the Common Core Standards, is that right?

24 A. I don't think that's totally correct.

25 Q. In what respect is that not correct?

1 A. Our standards, as the KCK standards are as
2 from this past year, those were partly state
3 standards and partly those from the EXPLORE. What we
4 will be changing to is coming up in the next year
5 where we will be using strictly the Common Core,
6 which is becoming part of the state assessment, and
7 then continue to look at the ACT EXPLORE standards.

8 Q. So you continue to use the ACT EXPLORE,
9 which is part of the KCK standards?

10 A. Yes.

11 Q. I heard you, I think, suggest that the
12 Common Core Standards, much like the standards that
13 your district first adopted in 2010, are expected to
14 be more rigorous than the present standards?

15 A. That's correct.

16 Q. You talked about professional development.
17 What exactly do you mean by professional
18 development? Please define that.

19 A. In relationship to the standards, or just in
20 general?

21 Q. Well, you indicated that you had had
22 available to you certain webinars, and I think I know
23 what that means. What is a webinar? Let's start
24 there.

25 A. Webinar is computerized, where you sit and

1 listen to information being presented.

2 Q. And in this instance the webinar information
3 provided on the Common Core Standards was provided
4 through the department -- Kansas Department of
5 Education?

6 A. Some come there; some come from different
7 resources, experts. I often get those in my email
8 that are sent to me.

9 Q. And you distinguish that between
10 professional development, but I would have thought
11 that would have been part of the professional
12 development, so that's why I was asking the
13 question.

14 A. That's what I have done. My teachers have
15 had no professional development really on Common Core
16 Standards. That is a plan for this coming year.
17 Professional development could be a variety of
18 different things.

19 What we have done in my building is when we
20 have had a consultant come in, as I mentioned
21 earlier, for -- it was a Literacy First consultant
22 who was working with us in order to better serve our
23 students who are struggling readers. They were
24 actually brought into the building. They worked --
25 it was usually two to three times a year. They would

1 visit classrooms. They would meet with teachers
2 during professional learning time, which is a daily
3 occurrence of that day. They would meet with that
4 consultant and learn different strategies to
5 implement in the classroom.

6 Q. The consultant that came in you talked
7 about, that was part of -- well, that was funded in
8 part by Title I dollars, is that right?

9 A. Partly, yes.

10 Q. And you indicate -- well, get to that in a
11 second.

12 You were talking about your teacher
13 population and I think you indicated that there were
14 some of your kids -- or some of your teachers that
15 were not highly-qualified as it's defined by the
16 statute and regulations.

17 A. At one point when I made cuts, I had to move
18 a teacher who was a social studies -- actually, two
19 social studies teachers into being a science teacher
20 at different grade levels. And when I cut a reading
21 teacher, I had teachers who were qualified to teach
22 reading, however, their classes were up to between 25
23 and 30.

24 Q. And the cuts that you talked about, the
25 reading teachers and the science teachers, when were

1 those -- those were this last year or?

2 A. No. They were back, I believe, 2008,
3 2009 --

4 Q. 2008 and '09?

5 A. Yeah.

6 Q. I see. And the report card for your
7 building for this -- the last published one, which is
8 for 2010/'11 reflects that as to core content
9 classes -- what is a core content class?

10 A. That would be math, reading, language arts,
11 science, and social studies.

12 Q. It reflects that they were all taught, 100
13 percent were taught by highly-qualified teachers. So
14 I assume that you were able to get a highly-qualified
15 teacher at least for this last year to replace those
16 classes you cut?

17 A. Yeah. All of my staff were highly-
18 qualified.

19 Q. If you had 26 to 27 teachers with
20 approximately 378 kids, and I know that number may be
21 a little different because the report card gives that
22 number but could have vacillated up or down a little,
23 that would give you approximately, according to
24 Gaye's calculator, about 14 or 15 kids per teacher
25 ratio. That doesn't work out to how it is in the

1 classroom, does it?

2 A. No, it does not.

3 Q. But if we're trying to compare apples to
4 oranges -- or apples to apples, if you want to know
5 what the pupil/teacher ratio is for your school to
6 say a school in Olathe, we could at least look at the
7 pupil/teacher ratio, and that would give us a rough
8 idea of what the classrooms look like?

9 A. I think it would be a rough idea, yes.

10 Q. and one other point before I get to that.
11 This last year I guess you had a bump up in the
12 number of special education kids that you have at
13 your school, is that correct?

14 A. That's correct.

15 Q. And that means, of course, because of the
16 weighting and appropriations, you get a bump up in
17 the money that follows the special ed kids, is that
18 right?

19 A. That's correct.

20 Q. Your position is that that bump up wasn't
21 sufficient given what you want to do with those kids?

22 A. That's correct.

23 Q. Now, this last year, the reported last year
24 that is the 2010/2011, your school did not make AYP,
25 is that right?

1 A. That's correct.

2 Q. And AYP is the term that's used in
3 connection with No Child Left Behind?

4 A. Correct.

5 Q. And it didn't make AYP because of test
6 scores on the reading test, is that correct?

7 A. That's correct.

8 Q. It made AYP as it related to the math
9 assessment tests, is that correct?

10 A. That's correct.

11 Q. The reading test scores that -- you didn't
12 make those this last year because you didn't make the
13 same improvements this last year as you had in
14 previous years, at the last year, the last reported
15 year, is that correct?

16 A. There's a certain percentage that you have
17 to gain every year to be considered proficient and we
18 did not meet that.

19 Q. Before, in 2009/2010, your school did make
20 AYP because --

21 A. Correct.

22 Q. On both. But if we looked at the reading
23 scores, it would show that they would be less than
24 what AYP benchmark would be for those -- really all
25 those -- well, for that previous year 2009, and

1 frankly, all the way back to 2006, isn't that right?

2 A. That they were lower than what they were
3 supposed to be?

4 Q. Well, mine is a bad question again. I
5 apologize.

6 By way of illustration, the 2009/'10 year,
7 the reading assessment score average for your
8 building was 75.3 percent of the kids met standard,
9 but the AYP goal was 83.6?

10 A. That's correct.

11 Q. And if I work back the previous years, in
12 each year you were under what was the benchmark for
13 the AYP?

14 A. Actually my school has not been on
15 improvement. There's what's called safe harbor.

16 Q. That's where I was going.

17 A. Okay. When you reach a certain percentage
18 or you've made a certain percent gain, and I think
19 it's 6 percent -- I don't have that right in front of
20 me, but if you make that particular gain and through
21 all the formulas that the State use, if you've met
22 that, then you are not considered to be on
23 improvement for either reading or math.

24 Q. And this last year, however, unfortunately
25 for last reported year, you didn't make the level of

1 improvement that you had before, so you weren't able
2 to take advantage of the safe harbor on the reading?

3 A. That's correct. We actually went down in
4 reading.

5 Q. And as you point out, your school is not on
6 improvement, because to be on improvement you'd have
7 to, for a certain number of years fail to make AYP?

8 A. For two years, if you don't make it in one
9 of the subject areas, then you're considered on
10 improvement. And even though the results are
11 preliminary, I'm certain my building will now be on
12 improvement for reading.

13 Q. The reading test scores now will be for the
14 6th and 7th kids?

15 A. That's correct.

16 Q. Now, talking about these tests, the AYP test
17 for a moment, on your website there is a statement
18 that reads -- talking about the building report card
19 and the AYP it says:

20 This building report card is a brief summary
21 of how your school and students are performing and
22 the impact of your local school improvement plan.
23 However, it should not be used as a single source to
24 judge students or school accomplishments.

25 No single report can tell the whole story of

1 a district or school's education program. This
2 report card does not provide information about
3 curriculum, teaching methods, special programs, and
4 the climate of your school, or the performance of the
5 individual teachers or administrators.

6 In addition, this report card is not a way
7 of rating or ranking schools because of the district,
8 community, and student characteristics. Direct
9 comparison between schools or districts are invalid.
10 Rank order school districts or schools is a clear
11 misuse of information, rather the information should
12 be used to assess local strengths -- and assess local
13 strengths and weaknesses based on past performance,
14 and to plan program improvements.

15 Is that a statement with which you agree?

16 A. Honestly, I didn't know that statement was
17 there.

18 Q. Do you agree with it?

19 A. Yes, part of it.

20 Q. And the statement, I'll tell you, is on
21 every building report card and on the district's
22 building report card. So would that imply that -- as
23 you hadn't seen it, that this is something the
24 district has put on its report card?

25 A. Yes, I'm sure it has.

1 MR. CHALMERS: I don't have any
2 other questions. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. RUPE:

5 Q. Well, if I understand what your testimony
6 is, for what year were you not on improvement because
7 of reading? Last year?

8 A. Last year was the first year that we did not
9 make it in reading. And so over a period of two
10 years, if you don't make it for the second year, then
11 you go on improvement for that subject.

12 Q. We have kind of a couple of different years
13 going on here in terms of fiscal year and school
14 year, but what school year did you not make reading
15 improvement?

16 A. Last year the, 2010/2011.

17 Q. Okay.

18 A. And then the preliminary results have that
19 we did not make it this year.

20 Q. When you say the preliminary results, the
21 testing scores are coming out in a preliminary
22 fashion and then will be finalized?

23 A. That's correct.

24 Q. You have seen the preliminary numbers?

25 A. I have.

1 Q. And for '11/'12, you will continue to be on
2 improvement in reading?

3 A. This will be our first year going onto
4 improvement, because it's the second year.

5 Q. All right. So you go on improvement in
6 '11/'12 because of the '10/'11 and '11/'12 test
7 results?

8 A. That's correct.

9 Q. And review?

10 A. Correct.

11 Q. Well, let's assess the weakness here.
12 What's the reason that those scores have not
13 improved?

14 A. We kind of have the saying that we've moved
15 the kids we can move easily. If you look at the
16 district's improvement over the past few years,
17 you'll see that improvement. There are a group of
18 kids who are difficult to move.

19 In the situation, at least in my building
20 for reading, it is those kids who come to us
21 significantly below grade level, which would be if
22 they came in as a 6th grader, they may be reading at
23 the 2nd and 3rd grade level. And somewhere between
24 6th grade and 8th grade, our goal is to get them up
25 to grade level. That's not happening.

1 We don't have the manpower to give the kids
2 the attention that they need, nor do we have the --
3 really, the professional learning that we need to
4 have to do it. Middle school is typically not
5 teachers who know how to teach reading. That's
6 usually in the elementary school. But that doesn't
7 change the fact that we have kids who come to us who
8 are not reading.

9 And so when they can't read, it makes it
10 difficult in math, it makes it difficult in social
11 studies and science. Those textbooks for social
12 studies and science are anywhere from 8th to 10th
13 grade level, and it makes it very difficult for them.

14 Q. In terms of those things that I identified
15 in your answer, manpower, professional development,
16 textbooks, let me ask this question: If you had
17 additional resources for those strategies, would it
18 make a difference in the proficiency scores?

19 A. Yes, I believe it would.

20 Q. Okay. We talked about average class size
21 and student pupil -- or student pupil --
22 student/teacher ratio. Explain how you compute that
23 in your building, if you know.

24 A. Well, when I'm given an allotted amount of
25 teachers, the district will tell me that based on

1 what my projected enrollment is for my general
2 population, I believe it's 25 to 1. That doesn't
3 take into account the special ed student, it doesn't
4 take into account the ELL students, the staffing for
5 that. So when we have those students, we need
6 additional support for those students. And that
7 needs to come in the form of teachers and
8 professional learning.

9 Q. Okay. You talked about the more rigorous
10 standards of KCK as opposed to Common Core or NCLB.
11 And I want to ask you about that testimony, because I
12 don't want somebody to argue that the KCK standards
13 are so high that it is extremely costly. Let me ask
14 you the question this way: --

15 MR. CHALMERS: I wonder if it would
16 be better if Counsel does ask questions as opposed to
17 explaining what his questions are.

18 MR. RUPE: I wanted everybody to
19 know where I was going.

20 JUDGE THEIS: I about hit my
21 threshold here of a couple hours so ...

22 MR. RUPE: Okay. I'm real close to
23 being done.

24 JUDGE THEIS: Okay.

25 Q. In terms of these factors I call the Rose

1 Factors on Exhibit 39 that we went through, do the KCK
2 standards align with those?

3 A. I believe they do.

4 Q. Are they more rigorous than these?

5 A. No.

6 Q. Just so the record is clear, when I say these,
7 I was looking at Exhibit 39.

8 A. Yes.

9 Q. Wasn't I?

10 A. Yes.

11 Q. All right.

12 One last question: Why hasn't the web page
13 been updated since '09/'10?

14 A. Principal neglect.

15 Q. Does it have anything to do with resources?

16 A. No.

17 MR. RUPE: No other questions.

18 THE WITNESS: I wish I could tell you
19 it did, but ...

20 MR. CHALMERS: Just strike that answer
21 and question.

22 MR. RUPE: No further questions.

23 MR. CHALMERS: I don't have anything
24 else.

25 EXAMINATION

1 BY THE PANEL:

2 JUDGE THEIS: I've got one although
3 I'm reluctant to ask. If you talk about you're
4 dealing with people who are now in the 6th, 7th, and
5 8th grades that have 2nd grade or lower reading
6 standards, 2nd or 3rd grade --

7 THE WITNESS: Yes.

8 JUDGE THEIS: -- why the delay in
9 intervention?

10 THE WITNESS: I'm not sure I can
11 answer that question.

12 JUDGE THEIS: Okay.

13 THE WITNESS: I think with our
14 change in our district to going to the more rigorous
15 standards and putting a focus on preschool and full-
16 day kindergarten, that that has helped.

17 But a majority of the students who
18 are struggling are special education students, and
19 there's -- there's a significant delay, I think,
20 because we just don't know everything we need to know
21 about how to serve those kids. I think systems -- I
22 mean, I think programs are put into place in their
23 IEPs, but because that growth is so slow, we don't
24 often see it.

25 JUDGE THEIS: So it's special ed

1 and not at-risk, generally?

2 THE WITNESS: Well, at-risk is
3 really -- all the special ed students usually are
4 considered at-risk.

5 JUDGE THEIS: I know. But it's a
6 broader category.

7 THE WITNESS: Right.

8 JUDGE THEIS: This is the narrower
9 category.

10 THE WITNESS: Yeah. 88 percent of
11 my kids in my building are considered on free and
12 reduced lunch, but it's not all special ed students.

13 JUDGE THEIS: I don't have any
14 further questions.

15 MR. RUPE: If I could ask a follow-
16 up question.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. When you say that you -- and I forget your
20 exact words, that you need to spend some time with
21 those kids and you don't know how to do it, is that
22 associated with professional development?

23 A. Yes.

24 Q. And is -- the professional development that
25 you explained was a diminished resource, would that

1 assist you in doing what you need to do?

2 A. Yes, it would. I also think that if we
3 were able to have reading specialists at the middle
4 school level for those students who come to us that
5 aren't on grade level, a reading and language arts
6 teacher is -- it's not learning to read, it's
7 reading to learn. And so they aren't actually
8 teaching kids how to read, and that's intervention
9 that needs to be put into place for those students
10 to achieve.

11 Q. And you don't have those --

12 A. No.

13 Q. -- qualified folks because of resources?

14 A. Correct.

15 JUDGE THEIS: We'll take 15 and
16 then come back and go to about 12:15, 12:30.

17 (Witness excused.)

18 (A recess was taken.)

19 JUDGE THEIS: Be seated. Thank
20 you.

21 MR. RUPE: I think I indicated
22 that Mary Stewart would be next, but I talked to
23 opposing counsel over the break, and what we thought
24 we'd do is move Mary Stewart to this afternoon and
25 go ahead and get Ms. Fulton on and off, if that

1 works with the Panel.

2 JUDGE THEIS: Okay.

3 MR. RUPE: Next witness is Teri
4 Fulton.

5 TERI FULTON,

6 Called as a witness for the
7 Plaintiffs, was duly sworn by the reporter and
8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Tell us your name and the city in which you
12 live.

13 A. My name is Teri Fulton and I live in
14 Westwood, Kansas.

15 Q. What is your job title, Ms. Fulton?

16 A. I'm a 4th grade teacher at Whittier
17 Elementary.

18 Q. Whittier is where?

19 A. At 10th Street in Kansas City, Kansas.

20 Q. So you're a 4th grade teacher in the Kansas
21 City, Kansas School District?

22 A. That's right.

23 Q. Let me find out a little bit about your
24 educational background. Discuss with the Judges what
25 that background is, please.

1 A. I was raised on Long Island, so I have an
2 East Coast education, but I chose to go to North
3 Western for college and graduated from Principia
4 College in Illinois with a Master's -- with a
5 Bachelor's Degree in Fine Arts. Subsequent to that,
6 I joined the Kansas City Teaching Fellows program and
7 I received a Master's in Education from Pittsburgh
8 State.

9 Q. When did you begin teaching?

10 A. I was a paraprofessional in the Shawnee
11 Mission District for two years, and it was 11 years
12 ago that I began teaching in Kansas City, Kansas as a
13 certified teacher.

14 Q. Give us a little personal information about
15 you.

16 A. I have lived and I grew up on Long Island.
17 I have lived in Kansas City and South Carolina and
18 Illinois. I raised three children who've gone to
19 various schools. The youngest two went through the
20 Shawnee Mission District. I've been married for 33
21 years to the same man. That's about it.

22 Q. Congratulations.

23 A. Thank you.

24 Q. Let's talk a little bit about Whittier, if
25 we could.

1 A. Mm-hmm.

2 Q. Would you give us the demographics of the
3 Whittier grade school, elementary school?

4 A. There are over 600 students and I can speak
5 specifically to my classroom demographics. Is that
6 all right?

7 Q. I'm sorry. Please do.

8 A. I have 14 Hispanic students, four Caucasian,
9 two African American, and one Asian, and that was
10 this last school year, with a little ebbing and
11 flowing. Some came and went.

12 Q. And in terms of the Whittier School, is it
13 fair to say that the kids you start the year with are
14 not the kids you end the year with?

15 A. That's very fair to say. We always have a
16 lot of movement in our classrooms. I had one student
17 this year who came and left three times.

18 Q. All right. So left and came back?

19 A. Came back to my classroom.

20 Q. Okay.

21 A. Three different times.

22 Q. Is that a consistent pattern at Whittier?

23 A. Yes. We have a lot of mobility as students
24 move from school to school.

25 Q. Let me understand the demographics as far as

1 the free and reduced lunch. How many of your kids
2 are free and reduced?

3 A. All of my students are free and reduced
4 lunch.

5 Q. So they would all be considered in the
6 at-risk category?

7 A. Yes.

8 Q. And in terms of special education kids, do
9 you have special education kids?

10 A. I do. I'm an inclusion classroom and I
11 had -- nine of my 21 students had IEPs.

12 Q. So those nine students with individual plan
13 are special ed kids?

14 A. That's correct.

15 Q. Of those nine, are there any gifted?

16 A. No.

17 Q. So these would be nine students that would
18 fall in the traditional special education category?

19 A. Yes.

20 Q. Let's take a step back and look at last year
21 in your classroom at the beginning of the year and at
22 the end of the year, what was it that you wanted to
23 accomplish for your kids?

24 A. I wanted every child to move. It would
25 ideally be that every child would be on grade level,

1 but that's not a reality. So I step back and looked
2 at where they were academically and use something
3 called a zone of proximal development to figure,
4 where could we move them on that continuum; how far
5 could we push them, stretch them; how many grade
6 levels could we move them, both in reading and in
7 math. Progress is always where we're focused.

8 Q. Okay. So let me sort out and make sure I
9 understand what you just said. When you said I
10 wanted every child to move, you meant I want every
11 child to improve?

12 A. Improve and make progress, yes.

13 Q. And by making progress, you're talking about
14 the progress from perhaps non-proficient to
15 proficient?

16 A. That's ideal, yes.

17 Q. Or at least some progress toward proficient?

18 A. Exactly. If they were on the
19 non-proficient, I would like to see them approaching
20 standard or meeting standard.

21 Q. All right. Were you in the courtroom when
22 Ms. Beech testified this morning?

23 A. Yes.

24 Q. I want to show you the same list from
25 Exhibit 39 that I showed her and ask if those factors

1 that I read off to her this morning -- and you can
2 look through those -- if those factors fit in to what
3 you want to accomplish with your kids in your
4 classroom?

5 A. Yes. Academic, not vocational fields.

6 Q. So in terms of the academic standards or
7 statements in this Exhibit 39, that's what you want
8 to accomplish?

9 A. That's correct, yes.

10 Q. What about just the development of mental
11 and physical wellness, is that part of it?

12 A. Yes, very much so.

13 Q. Why are you not looking at the vocational
14 angle on that?

15 A. My expectations for my students would be
16 that they would all be -- well, if vocational was the
17 very highest that they could do, then I would want
18 them to be the successful in that. I just want them
19 to work to their highest capacity.

20 Q. Sounds like with your class, you want them
21 to improve from where they are?

22 A. Mm-hmm.

23 Q. The answer is yes?

24 A. Yes.

25 Q. Talk to us about the state assessments. Is

1 your class required to take state assessments?

2 A. Yes.

3 Q. And are there, if you know, any
4 repercussions for not participating in those
5 assessments?

6 A. Repercussions, we have to -- we have to
7 participate.

8 Q. Great. Then, do you know, do you have any
9 requirements by reason of NCLB?

10 A. Yes. The Kansas State assessment I believe
11 was our -- we had to take that this year in addition
12 to the MAP assessment.

13 Q. Okay. And did -- has your building or your
14 classroom been on improvement?

15 A. Our building was on improvement and we were
16 actually re-structured, I believe, three years ago.

17 Q. And when you say re-structured, what does
18 that mean?

19 A. All of the teachers that were currently
20 teaching had to go through interviews to be rehired,
21 and we received a new leadership team: A new
22 principal, assistant principal, and instructional
23 coaches.

24 Q. And is that as a result of being on
25 improvement for a number of years?

1 A. Yes. I believe that we were on improvement
2 for two years and then failed to make the expected
3 growth.

4 Q. And since the re-structuring, what has the
5 history of the building been?

6 A. I believe it is that we made improvement the
7 first two years after re-structuring but this last
8 year, we only had preliminary results, but I don't
9 believe we made it.

10 Q. So for this year you're going to be back on
11 the list to get on improvement?

12 A. Yes. Well, it has to be two years.

13 Q. Yeah. I understand that. But you're --

14 A. Yes. I believe so. We had preliminary
15 results.

16 Q. And you've seen those results?

17 A. Mm-hmm.

18 Q. So as a result of preliminary results, your
19 belief is you're going to be back in the first year,
20 where if you repeat the performance or don't improve,
21 you'll be on improvement again?

22 A. That's my understanding.

23 Q. Okay. One of the things I haven't been very
24 good at is giving the Judges a concept of what it's
25 like to stand in front of your classroom. And just

1 describe what happens on a daily basis in your
2 classroom with 100 percent at-risk kids.

3 A. Well, I get to school about 7:15 and start
4 preparing for the day. The children arrive for
5 breakfast at 8:30 and then they're in the classroom
6 at about ten 'til 9:00. All of them, I would say
7 with the exception of maybe two, eat breakfast at
8 school, so their day begins kind of early. We move
9 through the day very quickly. It's very structured.
10 There is little room for anything but academics.

11 We do have recess, lunch, and specials every
12 day. We divide up for reading. We have an hour and
13 a half block of reading, an hour of which is divided
14 into small groups. As I've heard said earlier, we
15 believe those children who are at-risk work best when
16 they are taught in the smallest groups possible. I
17 have -- because I have such a high group of SPED
18 students, I have a para for 15 minutes -- excuse me,
19 50 minutes for math, for our math block, and then
20 about 30 minutes of extra support during the day.
21 That usually comes during science or writing.

22 But speaking to the classroom, these
23 children come really eager to learn. And so the day
24 that's long and filled with academics is really
25 stimulating for them. These are active, inquisitive

1 children, nine and ten years old.

2 Q. Any behavioral problems you deal with during
3 the course of day?

4 A. Oh, yes. I'm -- although I seem like a
5 kindly person, I'm a pretty strong disciplinarian,
6 and we take care of those things early in the year.
7 We build a community and the children sometimes
8 actually step in to take care of some of behavior
9 problems by saying to a student something like,
10 you're taking my learning away. And these are all
11 parts of the day and parts of what have to be built
12 into this learning atmosphere that the children love.

13 If there are severe behavior problems, we
14 can get intervention from the assistant principal and
15 principal who respond very quickly. But I really --
16 we take care of those pretty quickly in the year.

17 Q. Give us an idea of the severe behavioral
18 problems you've had to deal with in your classroom.

19 A. I had a child who was on the autism spectrum
20 and he would throw desks and chairs. He also, at
21 times, said and did very inappropriate things. I'm
22 trying to think. There are children who are defiant
23 who very much get in your face and who will say
24 things that are very inappropriate. There has to be
25 a very consistent behavior management plan and high

1 expectations. And usually, I find that eventually
2 the children will fall into line with that.

3 There are different levels of behavior
4 management. We use a little clip system, three
5 strikes, you're out basically, and you lose
6 privileges. But we also have those children who
7 don't get three strikes earn privileges.

8 So we have them -- multi-layered systems.
9 We have a school-wide behavior system, as well, that
10 encourages the Whittier Way, which is be respectful,
11 be a learner, and be in control, and the children
12 earn Bulldog Bucks for that. So we have several
13 layers of behavior management.

14 Q. The occasion you're with these kids in the
15 classroom starts at 8:50, until when?

16 A. Until 4:00.

17 Q. And of that time you are with them, you have
18 a para for 50 minutes and 30 minutes?

19 A. 50 and 30 and then as we divide up for
20 reading, the children with IEPs will be getting extra
21 help.

22 Q. And where does that extra help come from?

23 A. From our special ed department. We also,
24 this year, have had four reading specialists. Next
25 year, we were told at the end of the year that three

1 positions have been cut, so we will only have one
2 reading specialist.

3 Q. And what is a reading specialist?

4 A. A reading specialist is someone who has been
5 trained in decoding, basically, how do you say and
6 call words. And then, they also work on
7 comprehension with children who have extra needs.
8 They do regular reading, as well as interventions.

9 Q. So in terms of strategies that work to do
10 what you want to do in the classroom, which is to
11 improve those kids, are there strategies that you
12 have found prove successful in doing that?

13 A. Definitely the more that we can do
14 individualized instruction, the better it is for
15 these children. We do a lot of conferencing one-on-
16 one with reading, math, writing, almost everything,
17 which involves having children work independently in
18 small groups on meaningful projects while you
19 conference with students individually.

20 Because when you work with them
21 individually, you can really assess what they need
22 and try to move them forward. You can unearth any
23 misconceptions that might be lost in a group
24 situation. So the more one-on-one we can get, the
25 better we are able to move them forward.

1 Q. Would you agree that if you can't get
2 one-on-one, reducing the size of the learning group
3 has a impact?

4 A. Yes, definitely.

5 Q. In terms of these reading specialists, did
6 they serve a purpose in your efforts to try to
7 improve the kids?

8 A. Oh, definitely. They lowered our ratio.
9 They all took reading groups during our reading
10 block. So next year, I'm just thinking ahead, that
11 means our groups will be larger.

12 Q. And with regard to the paras, did those
13 paras help reduce the ratio?

14 A. Yes. They also took reading groups.

15 Q. What is your para situation in the last
16 three years?

17 A. We have one para for special education, and
18 that's the para that usually works in my classroom.
19 We have an ELL, or English language learner, ESL para
20 as well, but that person doesn't come into my
21 classroom. So basically, for the 4th grade, there
22 are two paras.

23 Q. How many 4th grade classes?

24 A. Five 4th grade classes with between 102 to
25 108 students total.

1 Q. So the para that is special ed, is that para
2 shared with the other classrooms?

3 A. With one other classroom that also has
4 special ed students.

5 Q. So of those four -- did you say four
6 classrooms?

7 A. Five.

8 Q. Five classrooms, two of them have SPED kids?

9 A. Yes.

10 Q. And the para splits their time between those
11 two classes?

12 A. Yes. And that's also a para that's for 4th
13 grade and 3rd grade, as well.

14 Q. So the para splits time between two classes
15 and then two other grades?

16 A. One other grade, as well as ours, yes.

17 Q. What about the ELL para? Do you have any
18 time from that para?

19 A. No, I don't.

20 Q. I know that the State requires some
21 intervention from time to time. MTSS, are you
22 familiar with that?

23 A. No.

24 Q. Okay. In terms of intervention strategies
25 that you have utilized, describe those for me.

1 A. I don't think I'm understanding your
2 question.

3 Q. You would not be the first one.

4 A. We --

5 Q. Let me ask you -- let me try to ask you the
6 question rather than me trying to suggest something.
7 In terms of those strategies that work to do what you
8 want to do, and that is to improve the kids --

9 A. Mm-hmm.

10 Q. -- talk to me about whether there are any
11 other strategies that you use other than the one-on-
12 one or the reduction of the ratio.

13 A. There are many strategies that you would use
14 just in the regular classroom. I'm assuming that's
15 what you mean, proximity to the students, moving
16 through the classroom, rephrasing, restating things
17 in multiple ways, creating charts with students about
18 things that we have taught that they have been
19 involved with, posting those charts, moving children,
20 accelerating children, remediating them, scaffolding
21 them so that they can move onto the next level of
22 concept acquisition.

23 Q. Let's talk about the last one, scaffolding.
24 Explain that to us.

25 A. With a majority of English language

1 learners, they often don't have the background
2 knowledge. Or perhaps they have the background
3 knowledge of a concept that you're teaching, but they
4 don't have the language to express that knowledge.
5 And so you're building words, letting them know how
6 to express their thinking, and you are also building
7 conversation, the ability to express those.

8 So there's a lot of what we call oracy
9 involved, where you are giving sentence stems or
10 sentence starters to children and having them express
11 their thinking. I often want to unzip their heads.
12 I said if I could unzip and see what was in there, it
13 would be easy to help you. You need to express your
14 thinking in words.

15 And this is a point where children who are
16 not language rich -- and I don't think that any of
17 our children who come from poverty are language
18 rich -- you need to surround them with words and
19 explicitly teach them how to express that thinking.

20 Q. And when you say, not language rich, let me
21 ask you about something we've heard in this
22 courtroom, but kids from poverty come to school with
23 a word vocabulary exposed to say 5,000 words, and
24 non-at-risk kids come with as many as 30-or-more-
25 thousand words. Has that been your experience?

1 A. Very much so.

2 Q. And I want to build on that for a second in
3 terms of the scaffolding. Things like field trips
4 and experiences that you can supervise outside the
5 classroom, does that expose them to the kind of
6 language that helps them become more language rich?

7 A. Yes. And we don't have money for field
8 trips. And I feel that it's so important to take
9 children out into the community so that they can
10 build these experiences that they may not have had at
11 an art museum, at the Shawnee Indian Mission, at a
12 movie that's educationally appropriate.

13 All of these things are building the kind of
14 background knowledge that they need to attach their
15 learning to. So I write a lot of grants. And then
16 we talk about how we are going to express our
17 feelings and learning around those experiences.

18 Q. Is what you're trying to accomplish what
19 we've identified as acquisition of sufficient
20 knowledge of economic, social and political systems,
21 which enable students to understand the issues that
22 affect their community, state, and nation?

23 A. Yes.

24 Q. Have you had to deal with crack kids in your
25 class?

1 A. I've had to deal with children who have some
2 special needs. I'm not sure. I couldn't say
3 definitely.

4 Q. Do you have a budget for supplies?

5 A. We get \$100 a year for supplies.

6 Q. And explain, is that budget sufficient to
7 buy the supplies you need to accomplish what you want
8 to do in the classroom?

9 A. No. In fact, my husband made me keep all my
10 receipts this year for tax purposes. And I wasn't
11 very good at it, but I did keep \$320 of my own
12 expenses for materials that I thought were necessary
13 for the classroom.

14 Q. And tell me what those materials were.

15 A. At the beginning of year, I always buy
16 enough notebooks, pencils, pens, erasers, Kleenex,
17 folders so that every child has a set. Some children
18 come with supplies, some children don't come with
19 supplies. And that would include markers, scissors,
20 glue, hand sanitizer. And then also some science
21 supplies, too. We have a good science curriculum but
22 there are times when teachers need to supply tinfoil,
23 plastic wrap, dead flowers.

24 Q. Okay. What is your responsibility -- do you
25 have a responsibility during the lunch hour when

1 these kids eat lunch?

2 A. I don't. But we are on the third floor, so
3 by the time I get the children to lunch and then get
4 back up to the third floor and eat, it's probably --
5 we get about 20 minutes for lunch. And one of those
6 days I have a group that stays in with me for lunch,
7 and these are the children that need to be
8 accelerated. Because we talk a lot about remediation
9 but there are those children who are ready for more.
10 And that's a perfect time that we read a book
11 together, we discuss projects, they pick out things
12 that they want to do independently.

13 Q. In the area of supplies, do you ask the
14 parents or does your building ask the parents of kids
15 in the Whittier Elementary to make contributions of
16 supplies?

17 A. We send a supply list at the end of the year
18 with their report card for things that they need to
19 bring for the following year. And most of the
20 children who do bring things, they have been supplied
21 by community groups.

22 Q. All right. And do the supplies include
23 things beyond what the individual child would need?
24 For example, we've heard testimony about copying
25 paper.

1 A. When she said that, I realized exactly the
2 reason for that is because we do run out of it
3 occasionally. We do not ask our students to bring
4 that at this point, but there's been talk about
5 putting it on the list if we need it.

6 Q. Is something like 24, \$25 a year affordable
7 to the parents of Whittier kids?

8 MR. CHALMERS: That's going to call
9 for speculation and lack of foundation, and certainly
10 opinion, and that's outside the -- that's not been
11 identified in that topic.

12 MR. RUPE: My question is, is it
13 doable.

14 JUDGE THEIS: What other people are
15 capable of doing?

16 MR. RUPE: Yes. Based on the
17 parents of the Whittier kids that she's described as
18 at-risk.

19 JUDGE THEIS: Well, I would assume
20 proof would be in the pudding when they didn't bring
21 it. But I think she can comment on ability.

22 MR. RUPE: That's her knowledge, if
23 she has it.

24 Q. Go ahead.

25 A. I can speak to asking parents to provide

1 money for field trips, and the only time this year
2 that we did ask for money was for \$5 at the beginning
3 of the year and \$3 at the end of the year, and I
4 would say half of my students provided that money.

5 Q. Okay. And did that request go to the
6 parents?

7 A. Yes.

8 Q. When was the last time you had a raise?

9 A. I was thinking about that. I think it was
10 two years ago and it was minuscule. I can't even --
11 I think it was about \$500.

12 Q. Okay, I think the -- well, that's fine. Let
13 me move on.

14 Is there money -- well, let's go at it this
15 way. Do you recall an occasion when budgets started
16 to be cut in the Whittier school?

17 A. As a 4th grade teacher, we don't deal that
18 much with how much money is available and how it's
19 spent, but I do see positions being cut. We had,
20 four years ago when I started at Whittier, a full-
21 time social worker.

22 And at this point in time, we have a woman
23 who comes once a week for just a few hours to deal
24 with children and their needs. We have a part-time
25 speech therapist and usually children -- well, if you

1 have speech services, you have an IEP. We used to
2 have one appointed full-time speech therapist. We
3 have a part-time psychologist who does the testing.
4 So I've seen the availability of services slip.

5 Q. All right. And in terms of the slipping of
6 services, what has that done with regard to what you
7 try to do in your classroom?

8 A. That definitely puts more burden back on
9 classroom teacher, too. If you see that there's a
10 need and there's no place to go to fulfill that need,
11 especially with children who are that age, you
12 fulfill the need. If it's a clothing need, a food
13 need, you talk to the school nurse, you certainly
14 call social services if it's extreme, but you make
15 sure that those needs are being met.

16 Q. Give us an idea of the non-academic type of
17 needs that may have been handled by the social worker
18 in the past that are passed along to the classroom
19 teacher.

20 A. I've had, at different times, children
21 who've had extreme circumstances -- at night their
22 lights are cut off, they have no water, there's
23 perhaps a parent who may have been arrested on a
24 previous night -- and they come to school in
25 distress. And a social worker would definitely have

1 pulled them aside, talked with them, perhaps made
2 sure -- and not perhaps, definitely made sure that if
3 there was social services available, that the family
4 was helped.

5 I know that in the past, the social worker
6 that we did have would take parents to job
7 interviews, do all sorts of things, make sure that
8 children had clothing, warm clothing for winter,
9 shoes that fit, many, many things.

10 Q. And in terms of your experience, does the
11 support services that you described assist in moving
12 that kid on the improvement track from non-proficient
13 to proficient?

14 A. Well, if you're hungry, you don't learn very
15 well. So -- or if you're afraid or anxious for who's
16 going to pick you up after school, yeah, it does
17 interfere with your learning. So I think when needs
18 are being met and you have your basic needs of food,
19 shelter, it certainly makes learning a lot easier.

20 Q. Have you had occasions where you had to
21 supply food to kids?

22 A. Very often. I usually keep breakfast bars,
23 sometimes fruit, for children who maybe miss
24 breakfast at school and don't have it at home.

25 Q. Are there -- how do you pay for that?

1 A. Personally.

2 Q. What about professional development, is that
3 a strategy that you would identify in learning ways
4 to move kids up the improvement scale?

5 A. Anytime you are adding more information to
6 your ability to teach or to meet the needs of
7 different kinds of learners, it definitely -- and if
8 you see -- if you are instructed professionally in a
9 strategy, you take that strategy back into the
10 classroom, put it into use, and then you see children
11 actually using that strategy, then you feel as if you
12 are using it in the best possible way and it's moving
13 the children forward.

14 It's been -- when I first came to our
15 district 11 years ago, we did travel to professional
16 development. We went to conferences. We would
17 travel in the area to national speakers who would
18 come and speak about literacy. I'm thinking
19 specifically of Lucy Calkins, who's a well-known
20 educator. We have not done that -- I can't really
21 remember. Anytime that I would go to a conference at
22 this point, I would go so on my own.

23 Q. And in terms of professional development
24 travel, do you know when that was curtailed?

25 A. It was probably the second or third year

1 that I was in the district, but we haven't done it
2 for a while.

3 Q. In terms of having national speakers in to
4 the district, when was that curtailed, if you know?

5 A. We always have a convocation, which is at
6 the beginning of the year, when we're all kind of
7 geared up, and we used to have national speakers for
8 those. I would say within probably the last three
9 years we have not. We have had district people
10 addressing us.

11 Q. So in the last three years, the professional
12 development you get comes from within the Kansas
13 City, Kansas School District?

14 A. Yes.

15 Q. And I assume what works for kids learning
16 works for teachers learning, and that is the notion
17 of scaffolding, and if you're exposed to more, you
18 learn more.

19 A. I agree.

20 Q. Have you noticed, as the class size becomes
21 larger, that there are paraprofessionals, or this
22 reading specialist, or teachers that spend more time
23 in what I would call crowd control?

24 A. That certainly can happen.

25 Q. And explain that to us.

1 A. If a teacher -- let me back up a little
2 bit. A lot of our staff -- I'm a senior member of
3 our staff with 11 years of service. Most of our
4 staff at Whittier Elementary has had five years or
5 less of experience. And I think as you're in the
6 classroom, you develop ways to have behavior
7 management and have it work.

8 So I think a lot of us are on a professional
9 continuum where we are adding a lot to our tool kit,
10 if you will. I think that every time someone moves
11 into the school from the outside, you have to get
12 them acclimated to the culture of your classroom and
13 the culture of your school. And that does take time,
14 takes energy, and takes -- it takes teaching a child,
15 and these children are from five to 11 years old.

16 Q. So let's go back to your classroom and what
17 you were trying to accomplish for the year. Given
18 the resources that you have, describe for the Judges
19 whether you're able to do that with all your kids.

20 A. I would like to say yes, but it has not --
21 it's been increasingly more challenging as the years
22 go on because there is less flexible time, I would
23 say, for people to maybe come in and lower those
24 numbers of teacher/student, the ratio. Is that ...

25 Q. I think you've answered the question. It

1 sounds like you're doing the best you can with what
2 you have?

3 A. Right.

4 Q. But it sounds like you're not accomplishing
5 what you want to accomplish?

6 MR. CHALMERS: I think she should
7 be asked questions other than leading, particularly
8 on this topic, and I object.

9 JUDGE THEIS: Sustained.

10 Q. (By Mr. Rupe) What would you say the
11 percentage is of kids that you are not reaching,
12 currently?

13 A. By not reaching, children who are not making
14 progress?

15 Q. Right.

16 A. There was actually only one student in my
17 class who did not make any progress this year,
18 according to test data. All the children moved on
19 the continuum, but about 25 percent of the class is
20 not where they should be. They are not on grade --
21 or satisfactory, according to Kansas assessment.

22 Q. What about your assessment?

23 A. I would like them all to be 100 percent.

24 MR. RUPE: No other questions.

25 MR. CHALMERS: I don't know that

1 I'll be long, but it will probably be more than four
2 minutes.

3 JUDGE THEIS: We'll go to about
4 12:30, so that's fine.

5 MR. CHALMERS: Okay. Great.

6 CROSS-EXAMINATION

7 BY MR. CHALMERS:

8 Q. I want to talk to you about Whittier.
9 You've been there how many years now?

10 A. Whittier?

11 Q. Whittier.

12 A. Four years.

13 Q. Four years. Before there, you were still in
14 the district?

15 A. I was at New Chelsea Elementary at 25th and
16 Wood.

17 Q. And you transferred to Whittier at the time
18 it was in the re-structuring?

19 A. I knew that they had not made adequate
20 yearly progress, but I had gotten my ELL endorsement
21 and wanted to make a move.

22 Q. In your district, do teachers have
23 discretion on the move, or they have to get
24 permission from administration?

25 A. No. You apply for a transfer if there are

1 positions available, and then you go through the
2 human resources department, and you're interviewed.
3 And then you are either offered a position or not.

4 Q. If the administration had wanted you at
5 Whittier and away from New Chelsea, did they have the
6 ability to just up and move you?

7 A. No. I don't think so.

8 Q. So you got to Whittier when the
9 reconstruction, the reorganization of that school
10 started or were you the year before that?

11 A. I was the year before that. My second year
12 is when we were re-structured.

13 Q. To get to the re-structure, how long had
14 Whittier been on improvement?

15 A. Two years.

16 Q. And before it was two years on improvement,
17 it would have been two years of not meeting AYP --

18 A. Consecutive.

19 Q. -- to get on -- consecutive years to get on
20 the improvement, right?

21 A. That's right.

22 Q. So when you got there, there would be at
23 least three years of that school not making AYP?

24 A. One year.

25 Q. Well --

1 A. And then --

2 Q. Okay. Go ahead.

3 A. As I understand it, they may have not made
4 it in previous years, but they perhaps had made safe
5 harbor one of those years, and then again, didn't
6 make it the next. But when I got to Whittier, it had
7 not made the scores that it needed to for one year.
8 So that next year, my first year there was crucial.

9 Q. And it didn't make it that year either?

10 A. No.

11 MR. CHALMERS: Well, we're at a
12 little loss as to -- I thought we had a chart that
13 kind of showed the time line here if I can borrow
14 that.

15 MR. RUPE: You want this one?

16 MR. CHALMERS: This one works
17 fine. All kind of the same.

18 Q. (By Mr. Chalmers) You would have come to
19 Whittier in 2009?

20 A. I've been there four years so ...

21 Q. Well, I'm trying here. I'll show this to
22 you, the cheat sheet because that I was trying to
23 do.

24 A. I believe it was 2008/'09, and '09/'10.

25 Q. So this is '08/'09.

1 A. Mm-hmm.

2 Q. Is when you came?

3 A. I believe so.

4 Q. And then the previous year, which would have
5 been '07/'08 would have been the year when Whittier,
6 before you got there was -- had not made AYP?

7 A. That's right.

8 Q. So this little red line here, just by way of
9 reference, these years '07/'08, '08/'09, were the two
10 years where Whittier did not make AYP that led to its
11 reorganization?

12 A. Structure.

13 Q. Re-structuring?

14 A. Yes.

15 Q. And when the re-structuring took place, did
16 they remove the principal?

17 A. We got a new principal, yes.

18 Q. And then all staff had to re-apply?

19 A. Yes.

20 Q. And did that result in a change in staff?

21 A. There were two staff members who were
22 reassigned.

23 Q. And was there any additional staffing with
24 the re-structuring?

25 A. I don't remember specifically.

1 Q. As part of the re-structuring other than the
2 new principal and apparently changing a couple of
3 folks, was there any other activity to try to change
4 Whittier's outputs?

5 A. There was a state coach that came in
6 regularly, and she did not actually teach but she
7 monitored what was happening. She was in and out of
8 classrooms on a regular basis.

9 Q. And anything else that you remember?

10 A. No.

11 Q. The student ratios that first year after
12 re-structuring, are they pretty much what the student
13 ratios are presently? I'm talking about the
14 student/teacher ratios.

15 A. Probably pretty much.

16 Q. You are teaching in a classroom now that has
17 about 21 kids, is that right?

18 A. Yes.

19 Q. And was it true when you got there, that
20 that's been about your experience, 20, 21 kids or so?

21 A. Goes from 18 to 22.

22 Q. You've got nine children who are in your
23 class that have IEPs. And they're in your classroom
24 part of the time, I think you said?

25 A. No, they're -- well, we all change for

1 reading groups, but they are my full-time students.
2 We don't have pull-out services, per se.

3 Q. And the reason they might be in your
4 classroom as opposed to another is because you have
5 the certification for -- or do you have the special
6 certification?

7 A. No, I don't.

8 Q. Your certification is English as a second
9 language, is that right?

10 A. Well, I'm a certified teacher. That's an --
11 ELL is an endorsement.

12 Q. And that's where I was screwed up. And you
13 got -- that ELL endorsement is such that you probably
14 have a higher concentration of English as a second
15 language in your class, is that right?

16 A. Well, I have 14 in my class.

17 Q. The school that we're talking about, just so
18 we have a little background on it, it's located at
19 295 South -- well, you tell me the street number,
20 rather than me guessing and you telling me if I'm
21 right.

22 A. South 10th Street.

23 Q. South 10th Street. And it has, or has had
24 in the past, about 588 children, is that correct?

25 A. I believe it's higher now.

1 Q. What is it now?

2 A. Over 600.

3 Q. And I was looking at the on-line report card
4 that's the last reported data, and it shows that 11.7
5 percent of the kids are students with disabilities.
6 Is that consistent with what your memory is from the
7 year proceeding this year?

8 A. I don't know the demographics of the whole
9 school.

10 Q. And does it follow that you don't know the
11 demographics of the whole school this last year, as
12 well?

13 A. As far as the special education students?

14 Q. Yes.

15 A. Yes.

16 Q. So we ought to probably use the last
17 published number we have, and it's probably somewhere
18 between, if this correct, 11.7, it's probably still
19 in that range, don't you think, this year?

20 A. I hesitate to say that because --

21 Q. If you don't know, that's fine.

22 In any event, you indicated that your
23 mission at the beginning of class at the beginning of
24 the year is you want to get the kids to have -- you
25 want them to work to their highest capacity, is that

1 right?

2 A. That's right.

3 Q. Recognizing that kids have different levels
4 of capacity.

5 A. That's right.

6 Q. Recognizing that kids come from different
7 types of families, and therefore have different
8 challenges.

9 A. Mm-hmm.

10 Q. Is that correct?

11 A. Yes.

12 Q. Now, I'm not saying that because they come
13 from a different type of family, that they don't have
14 a capacity to perform at whatever level. I mean,
15 after all, President Obama, I think, probably was an
16 at-risk child at one point. Is that your
17 understanding?

18 MR. RUPE: I'm going to object to
19 the relevance of that.

20 MR. CHALMERS: I'll withdraw it if
21 it's a big deal.

22 Q. In any event, talking about these AYP tests,
23 they're just one way to measure whether kids are
24 reaching their highest capacity, aren't they?

25 A. Yes.

1 Q. Your district made the decision to start
2 focusing on this ACT test, and has that had any
3 impact on how you teach your children?

4 A. In some cases, we are teaching them more
5 information. But basically, the standards are the
6 same, perhaps more information. And it actually
7 turns into a very good thing for students who are
8 needing more.

9 Q. As these AYP tests approach, what do you do
10 for your kids to prepare them for those tests?

11 A. From the very beginning of the school year
12 the most important thing that we focus on is teaching
13 the children to think, teaching them to make
14 reasonable choices, to use what they know and make
15 good choices, whether it's math or reading.

16 Do I teach specific things? I explicitly
17 teach everything that's going to be covered in our
18 standards, try to make sure that that happens. But
19 basically, wanting children to be good thinkers and
20 being able to synthesize information, I think, that's
21 probably the biggest goal.

22 Q. As the test approaches, do you teach your
23 kids any test taking skills?

24 A. Yes.

25 Q. Is there any kind of pretest, additional

1 work done to get your kids ready for the AYP testing?

2 A. Those are multiple choice tests and I have
3 been taught that good pedagogy is to test children in
4 a way that -- to teach children in a way that they
5 will be tested. In other words, not to test them
6 over something that they have not been exposed or to
7 a format that they're not familiar with.

8 So I do something called question of the
9 day, which is in multiple choice format, that they do
10 when they come in, in the morning. And we talk about
11 good test taking strategies.

12 Q. Is this done immediately before the test or
13 all throughout or combination?

14 A. From day one.

15 Q. Day one. Are there, to your knowledge,
16 teachers in your school that will, right before the
17 test, try to focus their kids with maybe some
18 instruction on test taking strategies and skills?

19 A. I can't really speak to what happens in
20 other classrooms, but we're -- we pledged, after
21 re-structuring, to teach the curriculum with
22 integrity and fidelity. And I think that most of us
23 have been very true to that.

24 Q. I may be misunderstood. Learning test
25 taking skills, I had not -- I did not mean to imply

1 there was something inappropriate about that. Is
2 that inappropriate?

3 A. What?

4 Q. Is it a lack of integrity to teach test
5 taking skills?

6 A. No. To teach test taking skills as a part
7 of your regular curriculum is probably pretty smart.

8 Q. And so if you had understood my question to
9 imply something different, that's not what I'm trying
10 to get at.

11 A. Okay.

12 Q. What I'm trying to understand is as the date
13 comes up for the test, whether as part of preparing
14 your kids, that's maybe where there's a higher focus
15 on test taking skills, whether that's part of your
16 curriculum.

17 A. I'm thinking of myself personally. I do
18 review to make sure that we have covered everything
19 that will be covered. But most of that is already
20 posted in the room from having done so all along.

21 Q. This last year, when the assessment tests
22 were taken -- they were moved back and taken a couple
23 weeks later, is that right?

24 A. There is a window for the test. We took it
25 within the window, so I don't think that we -- this

1 was changed.

2 Q. And you've seen some preliminary results
3 from the tests. Who showed you those?

4 A. We get them from our administration.

5 Q. Now, I think there'll be testimony that the
6 preliminary results probably ought not be relied upon
7 because they're not complete. Was it explained to
8 you that these were preliminary reports that may not
9 be complete?

10 A. Yes.

11 Q. And therefore, may not be reliable?

12 A. I'm not sure that I understand reliable.

13 Q. That's fine. The year before this last
14 year, your school made AYP, is that correct?

15 A. I believe so.

16 Q. And was this the first year that it made AYP
17 since the re-structuring?

18 A. It was the second year.

19 Q. Second year. So if we go back to Mr. Rupe's
20 chart so we can cheat on our dates here -- I guess I
21 shouldn't say that with a teacher.

22 This year would be the -- well, the last
23 year, I guess, would be the '10/'11 year. So this
24 would be the one year that you made AYP, right?

25 A. Mm-hmm.

1 Q. And we all understand you mean yes, but you
2 have to say it for the record.

3 A. Yes.

4 Q. And then the first year that you made AYP at
5 you school would have been the '10/'11 year, is that
6 right -- or the '09/'10 year?

7 A. '09/'10, yes.

8 Q. Thank you. You indicated that one of things
9 that you have done is have written grants. You write
10 grants. What do you mean?

11 A. I write requests for grants. Grants are
12 moneys that are available, for instance, the Kansas
13 City -- or the Kansas Environmental Agency has
14 grants. If you are doing something involved with
15 environmental issues, you can apply to them for
16 money. Kansas City Star has a grant.

17 Q. Are any of the grants that you've applied
18 for to governments?

19 A. Yes. I did apply to the Kansas
20 Environmental Agency.

21 Q. I guess that would be one, wouldn't it?

22 A. Yes.

23 Q. I was thinking in terms of educational-
24 related departments.

25 A. Personally, every year, every summer except

1 for this, I have written governmental grants for
2 personal development and received them with the
3 National Endowment for the Humanities.

4 Q. What is a personal grant for professional
5 development?

6 A. Well, I would -- I learned -- for instance,
7 I applied and went to Winter Park, Florida for a week
8 to study about Zora Neale Hurston and her effect
9 on -- or her impact upon African American literature
10 and folk ways. So that was through the National
11 Endowment for the Humanities.

12 Last year I went to Minnesota and learned
13 about mining.

14 Q. How are you aware of the availability of
15 these grants?

16 A. Search the internet.

17 Q. Is that information that your fellow
18 teachers also will try to resource and take advantage
19 of?

20 A. I share with them.

21 Q. I had understood that one of the things that
22 was taught, and you were talking about budget cuts
23 the last few years, was psychologists. And is that
24 from your school?

25 A. Our district.

1 Q. I see. The district psychologist. You
2 didn't have a psychologist for just your school?

3 A. No.

4 Q. And those responsibilities that the
5 psychologist had, how were those picked up after the
6 cut?

7 A. And this is my understanding, they do the
8 testing that allows a student to be designated as a
9 SPED student. So as their case load allows, they do
10 this testing which goes over several days. So the
11 fewer psychologists who are available, the farther
12 back the case load goes.

13 Q. Okay. And again, I misunderstood. So
14 there's still psychologists with the district?

15 A. Mm-hmm.

16 Q. There just aren't as many?

17 A. That's what I see.

18 Q. There wasn't a psychologist in your
19 building?

20 A. There was a full-time. She was there and
21 she did the testing, and I believe she serviced other
22 schools, but she was housed in our building.

23 Q. So now there's another psychologist that
24 will come to your building periodically --

25 A. Right.

1 Q. -- but maybe not as frequently?

2 A. Correct, yes.

3 Q. The ACT, we talked about that just a few
4 minutes ago. Testing approaches that your districts
5 have taken, there's been some testimony that there's
6 been some additional professional development because
7 of that change to that standard. Did you receive any
8 additional professional development for the purposes
9 of the ACT testing?

10 A. We received information in the form of check
11 points, and so we had the standards that would be
12 tested explained to us in our professional
13 development time.

14 Q. What is your professional development time?

15 A. Every Wednesday we have early release from
16 2:30 to 4:00, where we meet as a -- the teachers meet
17 for professional development.

18 Q. And that's true, to your knowledge, of all
19 schools in the district?

20 A. At least on the elementary level.

21 Q. And that professional development that you
22 received as it related to the ACT approach or
23 curriculum, that would have been from district
24 people?

25 A. From in-house.

1 Q. In-house.

2 A. Our instructional coaches.

3 Q. When did the Wednesday afternoon
4 professional development begin?

5 A. It's been there since I started with the
6 district for 11 years.

7 Q. The professional development has changed, I
8 think you said, somewhat in recent years. And the
9 change has been that you don't have the ability to be
10 compensated for -- through the district, for
11 traveling to get some professional development,
12 that's one change. And then you haven't observed
13 people from outside the district coming in and
14 getting professional development. Is that the
15 summary of what the change has been?

16 A. We were never compensated. They would -- I
17 mean, compensation to me means that we paid for it
18 and then they would pay us back. They either
19 provided professional development elsewhere, but yes.

20 Q. It was free to you before?

21 A. Correct.

22 Q. No longer so. If you choose to obtain
23 professional development now outside of your district
24 as a teacher, you've either got to pay for it out of
25 your own pocket or find someone that will provide it

1 through a grant.

2 A. Yes.

3 Q. Teachers are licensed?

4 A. Yes.

5 Q. And they have different types of licenses,
6 don't they? Or well, no. Let me strike that.

7 I want to ask you, what's the distinction,
8 if you could explain to these Judges, between a
9 highly-qualified teacher and a qualified teacher?

10 A. Highly-qualified, as I understand, is
11 someone who has a specialty in -- you know, I really
12 probably shouldn't speak to that because I'm not
13 sure.

14 Q. Let me ask you this: Are you a highly-
15 qualified teacher?

16 A. I guess not.

17 Q. I bet you are. Well, you'd have to check
18 with how those are defined. But you're licensed?

19 A. I'm licensed. It's not on my license as
20 highly-qualified, so I don't know how you get it
21 there.

22 Q. In order to keep your license, are you
23 required to -- as part of this State's requirements,
24 to have some continuing education?

25 A. Yes.

1 Q. What is that requirement?

2 A. We get professional development points for
3 our professional development hours. And you have to
4 have so many of those in order to -- or so many
5 certified classes. You have to go up -- for
6 instance, I have a Master's plus 60, so I have taken
7 60 additional hours and that will go towards my
8 license.

9 Q. The professional development points, do you
10 get those for the Wednesday afternoon?

11 A. Yes.

12 Q. Okay. If a teacher were so inclined to try
13 the get all their professional development points
14 through the points, can they do that just through the
15 Wednesday afternoon PT, PD?

16 A. I don't know.

17 Q. What's the average age of the kids in your
18 class?

19 A. Nine and ten.

20 Q. And there's been some testimony that kids
21 are arriving at middle schools with language
22 skills -- excuse me, with reading skills of a 2nd
23 grader or 3rd grader. How does a -- at least as it
24 relates to your experience at your school, how does
25 one of your students, if it's happened, move onto the

1 next grade if they have a reading skill of 2nd grader
2 or a 3rd grader?

3 A. I do know that a lot of the students, we
4 have a high mobility rate in our district. So it
5 would not be unusual for a student to come to the
6 middle school having never been in our district
7 before. We get a lot of transfers into our
8 elementary school, and I'm -- I can -- I believe that
9 that's the case also with our middle school and our
10 high schools. Especially being so close to Missouri
11 there's a lot of movement.

12 I don't know how they can get to middle
13 school reading at a 2nd grade level.

14 MR. CHALMERS: Thank you. I don't
15 have anything else.

16 MR. RUPE: Just may I ask one
17 question?

18 JUDGE THEIS: I want to just ask
19 one short one.

20 MR. RUPE: Okay.

21 JUDGE THEIS: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. When the special education testing is
25 delayed because there are fewer counselors or

1 psychologists, does that, in turn, delay the
2 interventions that are needed?

3 A. It means that they are not identified. Do they
4 still get services? Yes, they do. Because if you would
5 not service -- not -- not service -- that doesn't sound
6 good -- you would -- if you know that a child is on that
7 road to being identified, you would have identified
8 already the special needs that they have, and you would
9 be meeting those needs as best you can. The services,
10 they still get services. Are they as concentrated or as
11 targeted? No.

12 Q. So they may get services, but they're not the
13 services that they particularly need and they've been
14 identified earlier?

15 A. That's correct.

16 MR. RUPE: Thank you.

17 THE WITNESS: Mm-hmm.

18 EXAMINATION

19 BY THE PANEL:

20 JUDGE THEIS: Do you have a profile of
21 the kids that come into your class? I mean, do you have
22 a little background snippet on each one of them?

23 THE WITNESS: I have test scores.

24 JUDGE THEIS: That's it?

25 THE WITNESS: And then whatever

1 anecdotal information I might get from their previous
2 teachers. I make home visits sometimes.

3 JUDGE THEIS: When they first come
4 in, it's just whatever the last teacher told you
5 about them and what the test scores say?

6 THE WITNESS: That's correct.

7 JUDGE THEIS: Of course, obviously
8 looking at us, it's been a while since we've been in
9 the 4th grade, even though I still remember my 4th
10 grade teacher.

11 THE WITNESS: Good. I'm glad to
12 hear that.

13 JUDGE THEIS: Mr. Williams. He's
14 the big, tall, redheaded guy.

15 I don't know what a 4th grade class
16 entails now. You know, I can remember my grade
17 school teachers, but I can't -- seems to me we're
18 always busy doing something all through elementary
19 school; I mean, sitting at desks, doing stuff. And I
20 mean, I went to Arkansas City, Kansas, which was
21 14,000 people, for example, and there was a mixed
22 group of people.

23 And I'm sure some people had money,
24 some didn't. It was multi-racial. You know, when
25 you're that age, you don't see the problem sideways,

1 but I don't remember any special anything for
2 people.

3 So I don't know even how your class
4 operates now. I mean, do you give a grade -- do you
5 tell them they're going to do something and they go
6 work on it in a book and you cruise around the room?
7 You know, I don't even know how it works.

8 THE WITNESS: How it works, it's
9 interesting. You should come some time.

10 JUDGE THEIS: You know, that would
11 be -- this is one of those things a picture or a
12 video or either would be worth a 1,000 words, you
13 know, but this is June and we're not going to invoke
14 school and I don't think this is going to last into
15 the fall. But I just have no concept of what goes on
16 in the 4th grade class. And I don't want to keep
17 people who were obviously starving to death.

18 THE WITNESS: A quick snippet?

19 JUDGE THEIS: Sure.

20 THE WITNESS: We do explicit
21 instruction, which is whole group. And then we have
22 gradual release. We teach: I teach, you watch; I
23 teach, you do; you do, I watch; and then, you do
24 independently. So when you explicitly teach that
25 skill or ask them to do a task, then you send them to

1 work on it independently.

2 At that time I would circulate
3 through the room. There might be different centers
4 set up where they would work. Sometimes during math
5 we have whole group and they are actively engaged by
6 using white boards to put their answers on and
7 holding them up, or they are -- I try to get them up
8 and moving as much as possible in an organized
9 fashion.

10 So we do cooperative learning
11 strategies a lot. They would, for instance, go to
12 the back of the room, get a question, go back to
13 their desk, work out the answer, come to me, we would
14 have a discussion about it, whether it was right or
15 wrong. If it was wrong they would go re-do it with a
16 little guidance. If it was right, they would put it
17 back on the table and get another one.

18 So everyone is moving and actively
19 engaged. We don't do so much of sitting at the desk
20 working on worksheets. That's not proved to be the
21 most beneficial way to teach.

22 JUDGE THEIS: And the kids are
23 grouped, not according to ability -- but just how do
24 you decide who goes with what?

25 THE WITNESS: I have them grouped

1 in pods of four with multiple abilities, sometimes
2 high, medium, and then low, so they work together
3 often as a group of four, so they're working
4 cooperatively.

5 Sometimes I have them also
6 identified with dots on their desks. So I might say
7 all red dots come and work in this group, green dots
8 in that group, and those sometimes are ability
9 groups. So I might take a small group to work with
10 me, or if there's a para, a small group would go to
11 them. Some children would work on the computers when
12 they're working.

13 JUDGE THEIS: And then, if someone
14 needs more attention, how does that work?

15 THE WITNESS: They can signal that
16 they don't understand. But mostly, if you're
17 circulating through the room, you're taking note of
18 who needs what, and you can do -- sometimes just a
19 quick check-in for understanding can set them on a
20 different course.

21 JUDGE THEIS: But they're all
22 given -- regardless of ability, they're given the
23 same task?

24 THE WITNESS: Sometimes they're
25 given the same skill, but different levels of tasks.

1 For my SPED students, when we're doing double by
2 double digit multiplication, I might be giving them
3 single by single, but they're working on the concept
4 of multiplication. And that's one of the reasons we
5 want to keep those children in the classroom, is that
6 the skill is the same, the level is different.

7 JUDGE THEIS: And by special ed, do
8 you mean -- I'm not exactly sure what you mean.
9 Who's included in that group?

10 THE WITNESS: Those children who
11 are identified with IEPs. So they have --

12 JUDGE THEIS: Which, what
13 qualifications would be, generally?

14 THE WITNESS: Substantially below
15 grade level.

16 JUDGE THEIS: Mentally?

17 THE WITNESS: Ability, mentally.

18 JUDGE THEIS: Not physically,
19 necessarily?

20 THE WITNESS: Not physically,
21 although a physical disability could allow them to
22 have an IEP.

23 JUDGE THEIS: Thank you.

24 THE WITNESS: You're welcome.

25 MR. RUPE: Nothing.

1 JUDGE THEIS: Anything

2 Mr. Chalmers?

3 MR. CHALMERS: Nothing.

4 JUDGE THEIS: Thank you.

5 (Witness excused.)

6 JUDGE BURR: Judge, do you have
7 grandkids?

8 JUDGE THEIS: Do I?

9 JUDGE BURR: Yeah.

10 JUDGE THEIS: Not yet.

11 JUDGE BURR: I'll loan you some.

12 MR. RUPE: I bet we could pull a
13 classroom.

14 JUDGE THEIS: How about 2:00, is
15 that good?

16 MR. RUPE: 2:00 is fine. Thank
17 you.

18 (A recess was taken.)

19 JUDGE THEIS: You can be seated.

20 Thank you.

21 MR. RUPE: Our next witness would
22 be Mary Stewart, who's the principal at Wyandotte
23 High School in Kansas City, Kansas. She's one of
24 the witnesses that opposing counsel has objected to
25 because of the disclosure. I think we've both

1 briefed that. I don't know if you want to hear oral
2 argument from us.

3 JUDGE THEIS: Just a brief word
4 maybe.

5 MR. RUPE: With regard to Mary
6 Stewart, she's a principal. We disclosed principals
7 by category. We outlined what the categories were
8 way back when. She was identified in the list on
9 May 17th. We had three lists that we filed on
10 February 24th, April 27th, and May 17th. None of the
11 principals that we have listed were deposed by
12 opposing counsel, and we identified all the
13 principals as having the same categories of testimony
14 and that's set out in the brief.

15 A little information about what's
16 happened in the last few days, this is a long trial.
17 We have a motion for sanctions and expert testimony
18 exclusions against the defendant here. It's not
19 unusual that the Court says you can depose somebody
20 during the course of the trial and we're going to
21 have some down days, and maybe that's a possibility
22 here.

23 I have had Mary Stewart in the
24 courtroom the last three days. I've indicated to
25 Counsel that he can talk to her, and he's had the

1 opportunity to visit with her. I don't know whether
2 he has or not, but she's here and available to
3 testify today. I would incorporate all my arguments
4 in the brief in here, as well.

5 JUDGE THEIS: Mr. Chalmers.

6 MR. CHALMERS: The law, I think, on
7 the topic is set out, actually, in the Plaintiffs'
8 brief on when it's appropriate to -- to when a party
9 is not appropriately listed and/or disclosed, on
10 whether it's appropriate for the Court to exclude
11 their testimony in part.

12 And the threshold question, or one
13 question is, were they properly disclosed. Then, the
14 second question with that problem is, if they were
15 properly disclosed, was there testimony included by
16 way of supplement in answers to interrogatories that
17 were asked. Either is independent.

18 There's a corollary point, and that
19 gets to were they identified as an individual who
20 would provide opinion testimony. And that's a
21 separate point. But on the two points, were they
22 identified, is there under the standards, there are
23 four factors you look at.

24 One is prejudice, opportunity to
25 cure, whether it makes -- require the trial or

1 inconvenience how things go during the course of the
2 trial, and whether there's any willful conduct or
3 misconduct to disclose. Those are the factors.

4 On the second test, which is, did
5 they respond to it in supplement to interrogatory,
6 that's statutory and it's a little bit different
7 standard. But what it turns on there is that the
8 statute says they will not be called unless it can be
9 shown that it would be, well, harmless to allow
10 them. In other words, if I were to have known of the
11 existence of their testimony and known what they were
12 going to say beforehand, then the fact that there
13 wasn't supplement to the interrogatory would be moot
14 without the statute.

15 There are one, two, three, four,
16 five, six, seven, eight people who are listed who
17 were not identified. Ms. Stewart is one. I regret
18 that she's been here the last three days. It would
19 have been better to take this up earlier, I think,
20 but Plaintiffs' counsel wanted the opportunity to
21 brief it.

22 It is hard for me, on the first
23 point, to tell you -- well, as to whether they were
24 listed, I think the Counsel indicated that they were
25 listed in some generic listing. I have the generic

1 listings on the February -- or witness and exhibit
2 list -- that is the one that would have been
3 timely -- and there are any teachers of any
4 individual plaintiffs; I don't think there's any
5 suggestion that these are in that category. Any
6 witnesses required for impeachment or rebuttal, which
7 is immature at this point; any witnesses testifying
8 for the defendant or appearing on the defendants
9 list, and there were.

10 Witnesses necessary for foundation
11 and/or business records custodian; they're not being
12 offered for that. Witness who gave a deposition.
13 Witnesses identified as relevant prior to close of
14 discovery; and they don't fit that background. Any
15 witnesses identified as relevant after close of
16 discovery whose availability or relevance could not
17 have previously been discovered before the close of
18 discovery; and there's no allegation to that fact.

19 So assuming those generic listings
20 are sufficient, and they're not, it gets down to, is
21 there prejudice?

22 JUDGE FLEMING: Is there what?
23 Prejudice?

24 MR. CHALMERS: I think prejudice.
25 And I tell you, I don't know what precisely what

1 they're going to say. I think it's been asserted by
2 the Plaintiffs that these people were generically --
3 or that their testimony was disclosed in some fashion
4 in the listings that happened at the time of
5 pretrial. That's maybe true as to some, but I don't
6 think it's true as to most of them.

7 And where we do have listings, by
8 way of illustration, the listing for Rochelle
9 Chronister, Ms. Chronister has knowledge concerning
10 the education received by the students in the State
11 of Kansas. Ms. Chronister has knowledge concerning
12 the methods used to finance education in the State of
13 Kansas. Ms. Chronister has knowledge concerning the
14 underfunding of education in the State of Kansas.
15 Ms. Chronister also has knowledge concerning some of
16 the allegations contained in Plaintiffs' amended
17 petition, which tells us nothing.

18 The point is I don't know whether
19 it would be prejudiced or not because I don't know
20 what they're going to say. I won't know if I'm
21 prejudiced until I hear from them. I don't know for
22 sure that we're not into the second issue, which is
23 something that was supposed to be disclosed in
24 responses to interrogatories, because I don't know
25 precisely what they're going to say.

1 I think that if we do anything on
2 this ruling, we should get some more meaningful
3 description of what they're going to talk about. If
4 it's the same thing that we've heard, if it's like
5 the last few teachers or administrators, it seems
6 awfully human. And there's not point to even get
7 into this issue. There's no point to put them on.

8 If it's something unique, something
9 crucially important to the Plaintiffs' case, sounds
10 to me like I've probably be prejudiced by the
11 listing. And so that's why I have to object at this
12 point on those bases.

13 Now, not so quick. There are a few
14 people that fit in slightly different categories, and
15 I want to talk about them real quickly. There's
16 Senator Anthony Hensley, who has been listed. And I
17 think it's been represented that there was a generic
18 listing of representatives that might give testimony
19 as legislature. That's not the case.

20 MR. RUPE: If I said it
21 incorrectly, I'm wrong, but he was listed on April
22 27th, along with Hund, Chronister, Dick.

23 MR. CHALMERS: Don't disagree with
24 that. That's April 27th.

25 MR. RUPE: It was his listing that

1 was generic that he listed, and I put also
2 Defendant's witnesses. So those witnesses were
3 listed generically by him in his preliminary. I
4 didn't realize we were going to be talking about all
5 other witnesses. But in the initial listing he made,
6 he referred to all legislators, or he may call
7 legislators who will testify. That was in his
8 preliminary list. In preliminary list, I said
9 anybody that he might call.

10 And then on the 27th, I identified
11 specifically who the legislators were. That was
12 April 27th.

13 With regard to the principals that
14 we've talked about, those principals were not
15 disclosed in the initial generic list. You read it.
16 They were listed. There were principals listed in
17 April the 17th -- I'm sorry, April 27th list, and the
18 principals were described in April 27th list, and
19 then this witness has specifically identified Mary
20 Stewart on May 17th.

21 Every day since May 17th, Counsel
22 hasn't called me and responded, even when I said he
23 could talk to her about wanting to talk to her. She
24 will testify pretty much along the same lines as what
25 the other principals have testified to. One of the

1 plaintiffs is in her high school and she is going to
2 testify as to the standards and kind of along the
3 lines of what you've heard before with regard to
4 other witnesses, but with particular reference to
5 Wyandotte High School.

6 MR. CHALMERS: If I could complete
7 my comments, and I don't want to go on too much
8 longer, but I was going to say, as to legislators, it
9 sounds like his position is because he said that he
10 will list any witness testifying for the Defendant or
11 appearing for the Defendant witness list, and we had
12 a generic listing saying maybe some legislators that
13 he's listed.

14 If that's the list, then he's
15 listed Rochelle Chronister and he has listed Anthony
16 Hensley, who's a senator, and I wouldn't have a basis
17 for objection other than their testimony goes to
18 matters that went to the interrogatories. I don't
19 think that satisfies it but, that would be true and I
20 wanted to point that out.

21 If we focus on Mary Stewart just
22 for a moment, her name appears for the first time, as
23 I recall -- I don't think it's in the -- it might be
24 in the pretrial order that was circulated after the
25 pretrial conference, but I had thought that her name

1 first appeared when I got a list.

2 But what I hear is that she's going
3 to come on and do more of the same thing, in which
4 case, I don't know that I can tell you I'm
5 prejudiced, but I can tell you it's cumulative.
6 We've heard enough. We should be able to move
7 along.

8 We have set aside the month of
9 June, and I don't know if it's been shared with you,
10 but I have a trial calendar that Counselor that has
11 provided that allows the State some time for its
12 experts on the 20th and 21st. That really doesn't
13 leave us until the end of the month that we would
14 have any testimony that we want to have.

15 I'm concerned that when we get
16 behind pace, that I'll not have time to put on my
17 case during the time limits involved. And so I think
18 that maybe at this point, it's appropriate to look at
19 whether we should put the breaks on some of the
20 cumulative testimony.

21 As to the previous testimony that
22 we've heard from some of these witnesses, that is the
23 effects of cuts, that sort of stuff, that was a topic
24 of the interrogatories. They were required to
25 identify those people who has personal knowledge on

1 that.

2 Now, would I have deposed them?
3 Quite possibly not. But I can tell you I would have
4 investigated it, I would have looked into it, and I
5 would be a lot better prepared than I am now learning
6 for the first time what it is.

7 Is it fair for him to say that I
8 should know what she has to say now, and be prepared
9 for it when he tells me, you can visit with her at
10 the end of the day during the course of the trial. I
11 have to admit to you, I don't operate that way. I've
12 got things I have to do in the evening to prepare for
13 the next day, and I don't have time, nor is it
14 appropriate to ask me to prepare for witnesses, in
15 particular, another eight witnesses that I would
16 learn during the course of trial.

17 So I stand on the objection. If
18 you got any questions, I think that for Ms. Stewart,
19 she is inappropriate because she's cumulative and/or
20 she would be a witness that wasn't properly
21 disclosed, and I'm prejudiced, but it's really not
22 that important. And she's inappropriate at least on
23 those areas of opinion, which I think are the
24 subjects that he wants to try to use.

25 MR. RUPE: My remark would be that

1 it hasn't been just during the course of the trial.
2 We indicated that she would be a witness on May
3 17th. And I appreciate that Mr. Chalmers, like me,
4 has things that we need to do. But we do have other
5 lawyers on the team and so does he. There are two
6 others in the courtroom. And Ms. Stewart, to my
7 knowledge, has not been approached about what she's
8 going to say.

9 I'm representing to the Court that
10 what she's going to say is along the lines of what
11 the others have said. I don't think it's cumulative
12 because it explains what the situation is at
13 Wyandotte High School. And I know from the Court's
14 questions today that I could be doing a better job
15 with these witnesses having them explain the
16 challenges they face as the result of these resource
17 cuts. And I think Mary Stewart is good person to
18 explain that.

19 So I don't know that I have much
20 more to say. If we are arguing about the other
21 witnesses, the other witnesses were disclosed April
22 27th, and he's had equally sufficient time to do
23 that. The pretrial order says 30 days before trial,
24 and they were disclosed 38 days before trial. So I
25 don't think I have anything more to add at this

1 point.

2 MR. CHALMERS: I don't know where
3 the pretrial order says 30 days before trial. We had
4 a case management order that said when you had --

5 MR. RUPE: I'm sorry. It was the
6 case management order.

7 MR. CHALMERS: That didn't say 30
8 days before trial.

9 MR. RUPE: I'm sorry. But he's
10 right. I did -- it's not in the case management
11 order, it's not in the pretrial conference. It's in
12 the statute that says 30 days before trial.

13 JUDGE THEIS: Well, it's been nice
14 to see you, but we're going to take a slight break.

15 (A recess was taken.)

16 JUDGE THEIS: Be seated. Thank
17 you. Try to keep it short of aerobics, I think.

18 JUDGE FLEMING: I got nominated to
19 tell you what I think we're going to do. We're going
20 to allow you to call Ms. Stewart. We're going to
21 suggest that for her and for all of your witnesses
22 that you kind of proffer, in a sentence or two, what
23 points you're trying to make through that witness.

24 MR. RUPE: Okay.

25 JUDGE FLEMING: Secondly, if we

1 feel that her testimony or any witness' testimony is
2 becoming cumulative, we'll cut you off and --

3 MR. RUPE: Fair enough.

4 JUDGE FLEMING: -- Mr. Chalmers, if
5 you feel you're prejudiced because of something the
6 witness has said that you were unprepared for, we'll
7 entertain an objection.

8 MR. CHALMERS: Thank you, Your
9 Honor. Fair enough.

10 MR. RUPE: Your Honors, she has
11 been in the courtroom, so I will ask for her
12 background. I'll ask her to identify, without going
13 through them each one, the Rose Factors. I will ask
14 her about state assessments and what she tries to
15 accomplish in the courtroom -- in the classroom. I
16 will ask her about the demographics of the Wyandotte
17 High School.

18 I will ask her to describe the
19 cuts, and then what that has done in her school where
20 she's principal. I will ask her to describe -- I
21 said the demographics, but also the challenges that
22 exist in that high school. And then I will talk to
23 her about the increasing demands, by reason things
24 we've covered in the education of the kids at
25 Wyandotte High School, and then ask her about the

1 achievement gap.

2 She does have one of the plaintiffs
3 in her high school, so I'll ask her if these issues
4 apply to that plaintiff. She had a teacher break
5 contract and is going to Blue Valley for \$14,000 more
6 next year, and I think that's important on the equity
7 issues. And then, I'd like for her to explain how it
8 is that kids can go to middle school and still have
9 the 2nd or 3rd grade reading level.

10 JUDGE THEIS: One suggestion here.
11 For those people that are licensed, and most people
12 that have been in school service for period of
13 time -- I'd be absolutely shocked if they didn't know
14 the standards were that applied to the profession,
15 including the state laws and the duties attested and
16 the performance levels -- so stand up and ask her if
17 she's familiar with, quote, the Rose Factors or that
18 statute, to me, would be -- I'm presuming that's
19 true. And Mr. Chalmers may, on cross-exam, find out
20 it's not, but that would be a revelation, I think.
21 So I don't know if we need all that.

22 MR. RUPE: Great, I'll --

23 JUDGE THEIS: Whether you've seen
24 it before, because I know -- pretty satisfied the
25 presumption is she's going to say, yes, certainly.

1 MR. RUPE: Okay. I will step over
2 that given the Court's remarks.

3 JUDGE THEIS: Okay.

4 MARY STEWERT

5 Called as a witness for the
6 Plaintiffs, was duly sworn by the reporter and
7 testified under oath as follows:

8 DIRECT EXAMINATION

9 BY MR. RUPE:

10 Q. Tell the Judges your name and where you
11 live.

12 A. My name is Mary Stewart, and I live in
13 Kansas City, Missouri.

14 Q. And what is your employment?

15 A. I work for the Kansas City, Kansas public
16 schools and a high school principal at Wyandotte High
17 School.

18 Q. With regard to your job as principal, how
19 long have you been at that job as principal?

20 A. I've been principal since the 2007/2008
21 school year.

22 Q. And prior to the 2007/2008, where were you?

23 A. My entire career has been with the Kansas
24 City, Kansas public schools. I believe it was
25 January of '83 that I started with Kansas City,

1 Kansas public schools. I've been a math teacher.
2 I've been an assistant principal. I've been in the
3 role of an acting principal.

4 I've been in the role of a curriculum
5 specialist at the district level. I've been in the
6 role of a change agent, as a school improvement
7 facilitator, an instructional coach of teachers, and
8 then now as principal of Wyandotte High School.

9 Q. Immediately before you were principal at
10 Wyandotte, what was your job?

11 A. My title was instructional coach, and I
12 worked in partnership with the principal since 1997
13 at Wyandotte High School, as far as trying to best
14 meet the needs of our students and help with the
15 instructional practices.

16 Q. Explain to the Judges what the duties of an
17 instructional coach is.

18 A. An instructional coach works with helping
19 teachers grow in their profession, grow with
20 techniques and strategies to better meet the needs of
21 our students. Help us learn how to analyze data and
22 understand what the needs of our kids are, and then
23 to meet those needs.

24 Q. Give us a little bit of your personal
25 background.

1 A. I grew up here in Topeka. Tomorrow I will
2 be married 28 years. I have two children and love
3 being a mom, and grandmother now.

4 Q. All right. Let's focus on the -- I'll skip
5 over the Rose Factors and the assessments and
6 requirements and move to the demographics. I want
7 you to give the Judges an understanding of the
8 demographics of Wyandotte High School and of the
9 student population.

10 A. Okay. Wyandotte High School is a very, very
11 unique school. Very blessed to get to have the
12 opportunity to work there every day. It was built in
13 the mid '30s. It's a WPA project building, so
14 it's -- and it's 75 years old now, the building in
15 itself.

16 So we bring a lot of history to our
17 students, but our students bring a lot back to us,
18 because we have 1,220-some-odd students. We have the
19 largest high school in Kansas City, Kansas. If
20 there's one that can be described as being in the
21 urban core, it's Wyandotte High School.

22 We have a very changing, diverse group of
23 students. Just about 47 percent of our students are
24 Hispanic, about 35 percent are African American,
25 about 10 percent are Asian, and about 7 percent are

1 Caucasian.

2 We have 95 percent of our students qualify
3 for free or reduced lunch. We have now a very
4 growing ESL population, English as a second language,
5 and those students are about 40 percent of our
6 population now. We have about 14, 15 percent of our
7 students receive special education services, and they
8 are mainly students with learning disabilities.

9 We have about 8 percent of our students who
10 are considered migrant by the State of Kansas. We
11 have students who range in age, because of those
12 different groupings, I guess, that they qualify for.
13 They range in age from 14 to 21. And we are expected
14 to reach the same standards for all students.

15 We have students who, a year ago, lived in
16 refugee camps in Nepal and Burma and Thailand and
17 places like that. The majority of the our students
18 have parents who did not attend any kind of education
19 after high school. We have a lot of students who
20 are, for the first time, aspiring to attend college,
21 the first ones in their family. They don't have
22 siblings that have gone on to college.

23 We have honor roll students, too. We have
24 Kansas scholars. We have students who receive
25 national scholarships, but it's unique in that those

1 students, many times, their parents are incarcerated
2 or are confined to a home because of mental illness
3 or different issues like that. We have over 25
4 different languages that are spoken within the halls
5 of Wyandotte High School.

6 I would say our students are pretty
7 unhealthy. I know Wyandotte County is considered one
8 of the unhealthiest communities in the state and we
9 believe our students -- that's important piece that
10 we have to look at because we have a lot of
11 malnourished students. We have found that less than
12 15 percent of our students eat breakfast in the
13 morning.

14 We have students who are homeless, and we
15 have a lot of other students who don't have one
16 residence they call their home. They go from couch
17 to couch or friend to friend on different evenings.

18 We have students who are parents and we have
19 students who parent their siblings. We have students
20 whose parents have been deported and they've been
21 left behind because they are citizens. We have
22 students who then are left to raise their children --
23 or their brothers and sisters as if they're their
24 children.

25 We have students involved in the court

1 system. We have students involved in truancy who
2 don't come to school on a regular basis. The
3 majority of our students are bussed. They don't have
4 their own transportation or they walk. So our
5 parking lots during the day maybe have a dozen cars
6 in it that aren't teachers' cars because our students
7 don't have access to their own.

8 So that, kind of, describes us.

9 JUDGE THEIS: Mr. Rupe, KTW is
10 here, and they're filming from over there. So if she
11 talked to you, she'd probably be camera-better.

12 MR. RUPE: Okay.

13 THE WITNESS: Turn my back on them.

14 Q. You said you've been the acting principal
15 before. This is a chance to be an acting principal
16 again, so if you would kind of turn toward the
17 camera.

18 A. Okay. Can I go back and forth? I like to
19 talk to people.

20 Q. Thank you for that description. What I'd
21 like for you to do is give the Judges a sense of any
22 challenges you have by reason of having substantial
23 number of at-risk kids, and give the Judges an idea
24 of the kind of the day-to-day problems that you may
25 have to address?

1 A. Okay. One of the things that we have done
2 at Wyandotte is structure ourself in a small learning
3 community because we believe that it's very important
4 that we personalize the learning environment, and
5 that it's really important that we know the students
6 as students and not just the shuffling in and out of
7 classroom.

8 The first thing we do every morning is we
9 try to triage our students, because we know they're
10 coming in from more of a chaotic lifestyle.
11 Sometimes maybe they didn't even sleep last night.
12 So we have quite a greeting session in the morning,
13 whether the jazz music is playing first thing -- and
14 we're trying to open our students up to learning.

15 Because we know that if they come in
16 stressed and they come in with the environment that
17 they've just left home from, a lot of times they are
18 not open -- up to learning. And we are expecting
19 them -- their first class starts at 7:25 every
20 morning. So by 9:00, they've already finished one or
21 two classes, and if we haven't done something to
22 triage that first thing, then likelihood of them
23 being successful in the first class is not very
24 high.

25 So one of the things we do is we try to

1 personalize. And we try to place our resources and
2 our teachers, and we just all circle around the
3 students to understand -- to create the positive
4 environment for them. And it does tie into their
5 achievement in the classroom. It's really important
6 with our students.

7 Not all of them understand something that I
8 think that's fundamental when I grew up, and that is
9 the ability to dream. It sounds simple, but a lot of
10 our students, whether they are in a refugee camp or
11 they've been in cycle of poverty, they live by
12 day-to-day. They don't understand that you can kind
13 of have a dream, and then you go, set a plan, and go
14 for those dreams.

15 In fact, just before coming here on Monday,
16 I had a young man from Burma who -- he's achieving
17 highly in math, got very ACT score in math. And I
18 took him over the local college to try to get him
19 some help with his language because he's farther
20 behind in his language development.

21 And he says, I don't have money for it. And
22 I said, that's okay, right now we're dreaming. And
23 then, once we dream, then we'll figure out where
24 we're going to get the money for it. And he said,
25 no, you can't -- you have money first, then dreams.

1 And that's kind of the idea of a lot of our
2 students. They believe they have to have the money
3 first, and then they can start developing. Well, we
4 know these are going to be the students in Kansas --
5 the future. They're going to be employees and
6 they're going to be the employers.

7 And so it's really important that we get
8 them to the point where they are growing into a
9 lifestyle that's out of that poverty. We've got a
10 lot of things to do to change their mindset. So we
11 get them to dream. Then we get them to action plan
12 around those dreams.

13 Sometimes their issues, behaviorally, they
14 don't get focused because this is not very meaningful
15 for them. Take a math class or a social studies
16 class or a science class; doesn't mean a lot to them
17 with some of the things going on. But if you can
18 attach it to something later on in their life and
19 something they're shooting for in life, then maybe
20 they can persevere through the math class or a
21 science class that they didn't find so interesting at
22 first.

23 So we spend a lot of time on that and try to
24 help them work through the idea of setting a goal,
25 going for that goal. And when it's really tough

1 instead of acting out in class, first of all, the
2 teacher hopefully will have a relationship with them
3 and know their story a little bit more.

4 But then there's a bigger picture that we're
5 shooting for. And that bigger picture is a quality
6 of life they want. And we've got to get them to
7 break that cycle of poverty, or we're going to have
8 now, just like their parents have been adjudicated,
9 or their parents have been incarcerated, we're going
10 to have that with them over and over again.

11 Q. In terms of special education population, I
12 don't know if you gave --

13 A. Yes. 14, 15 percent.

14 Q. Okay.

15 A. And they're mainly learning disability.

16 Q. Did you say mainly learning disability?

17 A. Mainly. Yeah. Not 100 percent of that, but
18 mainly.

19 Q. Explain to the Judges what a learning
20 disability is.

21 A. Learning disability, there's something that
22 is not processing the learning process with them.
23 It's not that they're not intellectual enough or
24 intelligent enough, it's that they're not able to
25 process the information coming in.

1 Now, you can sit and have conversations with
2 them and possibly think, wow, they are really on the
3 ball. But then, when they go to try to learn
4 something academic, they're not processing it in the
5 same way.

6 And so there are specific modifications that
7 can be made that help them. I've heard him use the
8 term scaffold. That allows us to scaffold the
9 learning so that it helps them make some connections,
10 gives them some additional time that they might need,
11 maybe some additional explanation, some additional
12 one-on-one work, some specific strategies that will
13 help them learn that content.

14 Q. Given your student population and what you
15 need to do in terms of the requirements of state law
16 and state assessments and state standards and so
17 forth, are there particular strategies that you have
18 found useful in your building to reach those kids to
19 move them up from non-proficient to proficient?

20 A. It's an ongoing process of figuring it out,
21 but we bank a lot on the -- one key piece is we
22 believe in the personalized learning. We believe
23 that we have to know our kids so that they can break
24 down the walls, actually learn with us and not get
25 defensive about the learning process. Because a lot

1 of times, our students have a lot of learning gaps,
2 and they have to be able to face those.

3 And to tell someone in high school that they
4 read like an elementary student, you know, they could
5 maybe not be very happy with that and act out and
6 want to respond negatively toward you. So what we
7 try to do is help our students understand, this is
8 for them, and these are some issues that we've got to
9 work with. And that personalized learning, there's a
10 trust that's developed. And they trust us and we
11 trust them and we stay with them over time. Then
12 they understand that this is for their future and for
13 something bigger. So that's one. We also --

14 Q. Let me ask you a couple of questions about
15 what you just said. When you say we have to break
16 down the walls, what do you mean?

17 A. A lot of students -- I can think of an
18 example of a young lady who did not read very well.
19 In fact, I think she read maybe on a 2nd grade level
20 we had several years ago. And we were doing -- we
21 oftentimes do focus groups with our students to try
22 to figure out, and we say, how to crack the code with
23 them, how to help them out.

24 And we had a focus group with the students.
25 And one young man was saying, you know, we need to do

1 something about discipline in the school because kids
2 act out and I'm trying to learn and, you know, all of
3 this. And this young lady stood up, her name was
4 *Nicky (phonetic). *Nicky stood up and said, do you
5 know what it feels like when you're this age and you
6 can't read? Do you know what that feels like? If I
7 don't act out and bring the attention off of that,
8 I've got to face that with all my peers, and that's
9 not okay.

10 And she went on. I can't even come close to
11 articulate as well as she did her passion around
12 that. But it really opened our ears and helped us
13 understand that there are a lot of things, that the
14 students have built up lots of walls up around them.
15 And we're not going to get in those walls until we
16 develop a trust with them and we get honest about the
17 work with them. And then we start working on helping
18 them have a better quality of life than what they
19 have right now.

20 Q. And the other question I had on something
21 you said, you've just used again, and help us
22 understand what you mean, when you say a kid will act
23 out, what does that mean?

24 A. It could mean anything. It could be a
25 teacher walks over to them and is trying to calm them

1 down or tell them to be quiet, and the way the
2 teacher stood reminds them of a parent that abused
3 them. And so the kid might, you know, wail off and
4 try to hit the teacher.

5 It could be just the kid's going to fall
6 asleep, the student's going to fall asleep in class,
7 because acting out like that is not engaging in the
8 work. It could be a fight between some students. It
9 could be their own anger totally displaced, but this
10 is the safe place to displace that anger or to show
11 that anger because there's people around here that
12 are not going to shoot them back or something like
13 that.

14 Our kids have just been through so much
15 trauma. A lot of it is like going through post-
16 traumatic stress of some kind. Trauma is a real
17 issues, whether it's neglect, whether it's abuse,
18 whether it's violence that they've watched.

19 They've watched family members die. They've
20 watched their neighbor's house getting shot up. I
21 mean, that's just very common for them. And so we
22 have to make sure we try to help them from acting out
23 in that way, whatever the human response is that
24 they're coming out with.

25 Q. And the acting out is repeating those

1 behaviors inside the safe environment of a school?

2 A. Right.

3 Q. But nonetheless, disruptive behaviors?

4 A. Right. It disrupts what is the
5 stereotypical learning environment of the classroom.
6 And any time there's chaos when you're learning, it
7 pulls your attention off, and a distraction is there.

8 Q. What is your knowledge of -- I think we've
9 seen an exhibit here that we're all on track with,
10 and that is that there were cuts that occurred
11 beginning in 2008/2009, and then '09/'10, '11/'12,
12 and then a modest increase this past year. I want to
13 focus on getting a handle on Wyandotte High School
14 and the first round of cuts. What was your job in
15 '08/'09?

16 A. Principal.

17 Q. Okay. Can you describe for the Judges what
18 the first round of cuts involved?

19 A. Well, it was very difficult, first of all.
20 The first round of cuts, the goal was that we tried
21 to keep the direct contact with our students as
22 unchanged as possible. So that the teacher and the
23 student in the classroom -- we try our best to keep
24 the class size what it was. We weren't totally
25 successful, but we tried because we wanted the front

1 line with the kids to have the least impact.

2 Unfortunately, that meant we had to lose a
3 -- well, over the time we lost two counselors, and
4 our kids needs counseling. We lost a social worker
5 from that. We lost a PE teacher, and that may seem
6 less important to some, but our students do need that
7 healthy lifestyle and the physical aspect of things.
8 And sometimes they just need to get out of sitting
9 down in a classroom and they need exercise.

10 We lost a social studies teacher because
11 that was not -- that was an area we chose to cut
12 because they did not -- it was not one of the high-
13 stakes tested areas on the state assessment, not that
14 it wasn't important.

15 We lost some of our flexible reading
16 support, and by that we had two teachers that we used
17 on a regular basis and we termed them swing
18 teachers. That means nothing to you because it
19 doesn't mean anything to most people. What those
20 teachers did is they constantly worked and they swung
21 around the school with teachers, trying to find out
22 what students needed some direct support right away.

23 So, for example, in math, we had a math
24 swing teacher. That math teacher, she would -- or he
25 would stop and visit with the math teachers and he'd

1 get his case load for the day and he'd pull the
2 students out. Sometimes he'd work with them on
3 math. Sometimes he'd work with them on test taking
4 skills. Sometimes he'd work with them on the whole
5 psychology of learning, that idea of really opening
6 up and giving it a try.

7 I don't know how many adults have said to me
8 over the years that they weren't good in math, or
9 math wasn't their thing, or my parents didn't do
10 math, or I'm not a math person. And that's really
11 just a mindset that has to get broken down, because
12 we all can do math. But once kids hear that long
13 enough, they start believing it, too.

14 So we were dispelling that myth, and helping
15 students understand that, yes, you can do it. It
16 takes hard work. It takes breaking things down. It
17 takes some practice, but you can do this. So we had
18 a teacher in math and in reading who'd go around and
19 they'd work individually with groups of students on
20 an ongoing basis. We had to get rid of that when the
21 cuts came through.

22 We also spent a lot of time with students
23 after school with tutor programs. We'd get as
24 creative as possible, creating these programs for
25 students to come in. We'd call them things like

1 fitness center, the academic fitness center so that
2 they would get more academically fit. And they were
3 buying into that.

4 A lot of things we do are psychologically
5 based. You know, it's just getting them to buy into
6 it. We had to get rid of that because there wasn't
7 funding to pay the teachers to work after school to
8 do that.

9 So those are some of the things that I
10 recall right off the top.

11 Q. In terms of maybe some other items that we
12 need to cover, when was the last time you received a
13 raise?

14 A. I don't remember. I can't answer that.

15 Q. In terms of the teachers' raises in your
16 building, can you tell us when the last time that
17 happened?

18 A. I can only tell you what I've heard here. I
19 don't follow it that close.

20 Q. Okay. Let's move on. We've heard it here,
21 so let's talk about something else.

22 Were there any extracurricular activities
23 that were cut in the process?

24 A. We believe very strongly, and I think a lot
25 of people -- we believe that there's another part of

1 the education besides just the academics and that's
2 the extracurricular. And I know most of my teachers
3 and myself, we've all been -- developed who we are
4 because of the sports we were involved in or the band
5 program or all of that. And so we know that that's
6 an important piece of helping our students learn.

7 We had to, right off the bat, just start
8 cutting -- because transportation is such a critical
9 piece of our budget, we could no longer do any
10 out-of-town tournaments or anything like that.

11 So basically, we play all of our athletic
12 events right within the Kansas City, Kansas -- maybe
13 we'll go out outside -- but the Kansas City metro
14 area. Until, that is, the State Activities
15 Association added Atchison to our athletic league.
16 And now we have to expend more resources to travel to
17 Atchison, also.

18 Every once in a while, Leavenworth is
19 looking for a game to pick up, so we play them, but
20 that's as far -- we used to go to a tournament in
21 basketball. We used to go to travel to Topeka, play
22 Highland Park, Topeka West, some of those schools
23 here more often. We just cannot do that.

24 We were fortunate, our district did purchase
25 some band -- so, like, our wrestling team, which is a

1 smaller team, or a debate team -- we can limit the
2 number of students who can go on a debate tournament,
3 and the sponsor has to drive the van. So then we
4 don't have to pay for the van because it's owned by
5 our -- our teacher is actually doing the driving.
6 That's just part what of they do as sponsorship for
7 it.

8 So we've tried to get creative with all of
9 that, but we've really limited the opportunities for
10 our students. And I have a real bias in that it's
11 also limited opportunities for other students in the
12 state. Because I get the honor of being with these
13 kids every day, and I know the power inside of them.
14 And I think if other people could see some f that,
15 then they would understand a lot of things.

16 And unfortunately now, they don't get in
17 competition or just in debates or student council,
18 they don't get to interact with each other in the
19 same way anymore because we can't get them there, and
20 our students don't have the transportation any other
21 way.

22 Q. Maybe I'm reading too much into what you've
23 said, but I don't think so. Do you attach a value to
24 that ability to travel and meet with other kids
25 outside the Kansas City, Kansas city limits?

1 A. Very definitely. We believe that leadership
2 is taught and learned. Believe that students being
3 able to be strong citizens is taught and learned and
4 you do that by interacting and having your world open
5 up a little bit, interacting with other people not
6 just in your little world. And there's a lot of our
7 students who have not traveled outside of the
8 boundaries of Wyandotte High School, and they're --
9 like I said, some of them 20 years old.

10 Q. And when you talk about breaking out of the
11 cycle of poverty, is the exposure to other areas and
12 things like debate and athletics to other
13 communities, is that a value in breaking that cycle?

14 A. It's critical. I can give you an example of
15 a young man this year who fortunately just received a
16 wonderful scholarship. But he said -- he was a
17 debater and he was on the track team but his
18 parents -- his mom was incarcerated. His dad and
19 stepmom have many other children and very high
20 poverty.

21 But this kid has a lot of energy. And he
22 wanted to go down to Morehouse down in Atlanta.
23 That's where he wanted to go to school. It's a
24 historical black college and he had seen it on the
25 internet and thought it was really great place to

1 go. And he got his ACT scores so that he could go.

2 And so one day I was talking to him and I
3 said, have you ever been there? He's like, no, I saw
4 it on the internet. And I said, yeah, you've got to
5 walk on that campus. You get all the way down to
6 Atlanta and all of a sudden you're like, whoa, what
7 is this thing? You're going to be running right back
8 here. You've got to get there. He's like, there's
9 no way I can get there.

10 So he and a teacher devised a plan, went to
11 our board of education and asked permission, not for
12 money, but just permission to miss school for a day
13 and a weekend to travel down to Morehouse and see
14 it. The young man has received full scholarship to
15 Morehouse, been accepted, and is on his way down
16 there for his college.

17 But he had to get out of Kansas City, Kansas
18 to see that. He couldn't do it by just looking on
19 the internet and dream about it. There has to be
20 actions around that, and that's what we have to work
21 with our kids on.

22 Q. Let's talk about a couple of other types of
23 cuts that I'm going to ask you about. Were there
24 cuts in the administrative office or in
25 administration at Wyandotte High School?

1 A. Yes. I cut an administrative position, but
2 you bring up an issue that is really important. A
3 lot of cuts were made at our district administrative
4 office, and that really impacts -- I don't know if
5 people realize how much that impacts a high school.

6 Because our -- our district office is now
7 what I call a bare bones skeleton. There might be
8 one person in this department or one person in that
9 department. And I like to think we're the best high
10 school around, but they don't -- I mean, there are
11 others that they have to take care of. And all my
12 needs can't be met just right when I need them met if
13 there's only one person in the department.

14 As well as people's jobs were eliminated.
15 There's a lot of things that go on that a person does
16 that aren't in a job description that we relied on.
17 Some reports that had to be put together for the
18 State, statistics, data, all of that would be done
19 for us. And then once the cuts hit, these people
20 were gone from the positions.

21 And all of sudden, I'm getting notes that I
22 haven't turned in a report. And I'm like, oh, wait a
23 minute, where is that person who gave me all that
24 data and did that report for me? Nobody even knew
25 that that report was done for us at the high school

1 level.

2 So there was a lot of missing pieces around
3 the puzzle. Not that there aren't great people at
4 the school central office who are working as hard as
5 they can, but there's only a few of them now. And
6 all the people that used to be there had jobs that
7 were very critical to helping us grow. So we just
8 have to attend to a lot more details of things
9 besides just teaching kids now, and making sure the
10 classrooms are good.

11 Q. Can you give us an example of some of those
12 missing pieces that you talked about?

13 A. Our HR department is pretty bare bones right
14 now. I mean, there are very few people and they do
15 all of the background checks, they do all of the
16 processing of the applications, and then they send to
17 me the list of people who that are cleared for me to
18 interview. Those are important steps. They're very
19 time-consuming steps. There are very few people who
20 do that now.

21 So now, I'm waiting on people to fill my
22 what they call my dashboard of possible applicants
23 and all I can do is wait. Because I don't want to
24 hire someone in who's going to end up causing me more
25 grief than -- and they have to be qualified. I want

1 to make sure their background is checked out. So I
2 have to wait on that. So there's some missing pieces
3 there.

4 The state principal's report that has to go
5 in all the time, where we have to identify our number
6 of suspensions and, you know, all the data from the
7 school year -- there were people who, not just would
8 give us that information, but would kind of check
9 that the data is real data, because data is only as
10 good as if it's clean and as the data that's
11 entered.

12 And if there's clerical errors in there,
13 there was somebody who would kind of check that out.
14 And if numbers were a little -- looking kind of
15 funny, they would ask questions and say, is this
16 correct, is this what happened, and usually find
17 major errors that way. There isn't anyone like that
18 now. And so, a lot of our data, we are pulling that
19 all together by ourselves and hoping that it's about
20 as accurate as we can get.

21 Q. Just out of curiosity, what time do you get
22 to school?

23 A. My alarm clock goes off at 3:30. I do my
24 emails first thing in the morning and then I'm at
25 school between 6:00 and 6:15.

1 Q. What time do you go home?

2 A. Usually -- now, that's barring all the
3 school activities, usually administrative team is
4 there until about 6:00 working through whatever the
5 next steps are. And then, the evening, you know, you
6 have football and your basketball and that's another
7 thing. It's really important -- our kids don't have
8 parents who come to their games. We might have two
9 or three parents.

10 I laugh. We had -- we were called -- in
11 Kansas City, one of the TV stations does cool
12 schools, and they have schools vote on their team,
13 which is going to be the team that's represented.
14 And they give you a little check, and Len Dawson
15 comes out and hands it to you, and you're pretty
16 proud to be there.

17 And they had -- we won the cool schools, not
18 this past year, the year before. And Len Dawson came
19 out and had the check. And he's ready to do the
20 check presentation and it was 10 'til 7:00 and there
21 was no one in the stands. The band was coming in,
22 but the game started at 7:00.

23 And he said, where is everybody? And I
24 said, this is it. And he said, where are the fans?
25 Where's the -- where's the parents? And I said, this

1 is it. We -- if the teachers aren't there, we
2 probably won't have a lot of adults there for a kid.

3 And it's not that their parents don't care.
4 That's really important. They are working other
5 jobs. They have other kids that they're taking care
6 of. They have lots going on at home. They do care.

7 And the young man that I told you about
8 who's heading down to Atlanta, his parents, his whole
9 family came to my office and they said thank you for
10 helping change our family, we know that this would
11 not have been possible without the schools. You have
12 to understand, you aren't just impacting our son,
13 you're impacting the entire family. And it's -- I
14 mean, they were all in tears. They knew that they'd
15 messed up.

16 The thing is that our kids never asked to be
17 born into poverty. They are there because of their
18 circumstances. Now, we don't feel sorry for the
19 situation. We've just got to figure out how to
20 knuckle down and help them through it so that they
21 don't have to also be living that lifestyle.

22 Q. Let me ask you about supplies for a minute.
23 Do you develop a budget for your teachers, or how
24 does that -- explain to the Judges how that works at
25 Wyandotte High.

1 A. I do. I try to give them about \$50 a year.
2 Sometimes I can do it each semester. It just kind of
3 depends where the resources are. Our teachers have
4 gotten really, really good at -- there's -- what's it
5 called? There's a non-for-profit out there that they
6 can -- they can write in a grant and possibly
7 somebody will meet that grant. They find those
8 little grants on the websites. They try everything.

9 So the sad piece of the puzzle is our
10 teachers really know that everybody's trying. They
11 aren't angry about it. They know that -- so they try
12 to get things themselves. Not all of them can.
13 Many -- they're young and they can't just keep
14 putting out and putting out and putting out.

15 But what happens is, all their energy and
16 life, it starts to get almost extinguished. They
17 kind of get to the point of saying things like, well,
18 we can't do this; it would be great if we could do
19 this, but we can't do it. We don't have the money
20 for it.

21 And just like the Peter, the young man I
22 took over to the college earlier this week, the
23 teachers almost get that same message going: Well,
24 we've got to have money before we can do it. And so
25 their excitement, innovation, everything going for

1 creating the best opportunity for the kids starts to
2 get stifled.

3 And that's -- as an administrative team, we
4 work really hard to push innovation and to say, get
5 the energy flowing. Because we know if we have
6 energized teachers out there, we are going to have
7 energized kids, and we're going to have energized
8 learning going on.

9 But it's that a cycle of poverty, and it
10 carries over into our teachers when they -- I use the
11 extinguished a lot. Their flames get extinguished.
12 Their excitement gets extinguished.

13 They want do it. They want to dream. They
14 want to have this neat opportunity for their kids,
15 but they know that, you know, Ms. Stewart's doing
16 everything she can, so let's not bother her for it.
17 Let's just not do it; let's do this. It might be
18 easier to do it this way.

19 So that's very frustrating.

20 Q. We've heard some testimony and let me ask
21 you this question. We've heard testimony that there
22 are kids in middle school that test at the 3rd, 4th
23 grade level. And I think you were in the courtroom
24 when we heard that testimony. And the question I
25 have that has been asked is, how does that happen?

1 How do you have kids in your or high school, or do
2 you have kids in your high school that test at a
3 lower reading level than middle school?

4 A. Yes, we do.

5 Q. How does that happen?

6 A. If I knew it all the way, then we wouldn't
7 have it anymore. But we get better and better at it
8 by listening to the kids and like *Nicky said, and I
9 shared this story earlier, she's built up walls. She
10 has built up walls from a very young age. Sometimes
11 she wouldn't go to school. She would become the
12 really happy girl who, you know, maybe people
13 didn't -- almost got overlooked because she was so
14 quiet and everything was going fine, so maybe her
15 needs didn't get met. Or then she maybe went through
16 a period and acted up so she got kicked out of
17 school. And if she got put out of school, then she
18 didn't have to show that she didn't know how to
19 read.

20 There are gaps in time when our students are
21 actually in attendance sometimes. There's mobility.
22 I don't have exact numbers, but we probably have 250,
23 300 students who leave within a school year and
24 another 250 students who come in during a school
25 year. Our numbers always stay right about 1,200, but

1 it's in the same 1,200 students all the time.

2 Q. And so these kids coming in may have a
3 reading level substantially below --

4 A. Right.

5 Q. -- grade, and why don't you just flunk them
6 out or throw them out?

7 A. Well, first of all, that's not our job,
8 because our goal is to help every student. If we
9 flunk them out, where will they go? I mean,
10 honestly, our goal is to help every student hit the
11 standards and be prepared. Remember that dream.
12 They've got a life moving on, and we could throw them
13 away but they still have a life going on. We've got
14 to do what we can. We've got a community we're
15 building.

16 Q. We know what you want to accomplish. We
17 know that you know what the requirements are for
18 providing a suitable education. What I want to know
19 is have the cuts affected the ability in Wyandotte
20 High School to do that?

21 A. Yes, without a doubt. There's not enough.

22 Q. Explain your answer to the Court, please.

23 A. Kind of look like we do -- I hope you can
24 hear from some of the descriptions that we are really
25 about family and taking care of our kids. I mean our

1 Wyandotte family.

2 And it's almost like, with all due respect,
3 the three of you were my kids, and one of you was a
4 high-flyer on the honor roll, doing everything well,
5 one of you is having language development issues, one
6 of you is having decoding issues and not processing
7 things in the brain. Well, as your mom, I would make
8 sure you get what you need because I don't want any
9 of you guys to not have a great life; you're my
10 kids.

11 But let's say the resources get smaller and
12 smaller, then maybe I can't get you the extra help
13 you need or the extra training. So then, only one of
14 you are going to get to go to college, and only one
15 of you are going to get to have that life and have
16 that family, and, you know, have that -- everything
17 that a mom dreams for you to have.

18 The rest of you are going to be -- the other
19 two of you are going to be struggling, for the rest
20 of your life, struggling. Still maybe not able to
21 read, still maybe struggling with the language, and
22 just kind of moving on. And that's not okay, but
23 that's unfortunately what we have to deal with.

24 And right now, I only have a group of my
25 students who are going to go off to college and I

1 feel like are ready. The other -- and maybe
2 two-thirds right now isn't a bad number to be
3 thinking about as realistic, they still have work
4 that has to get done, but I wasn't able to get the
5 resources to them to get that done. Now, will they
6 get those resources from here on out? I don't know.

7 Q. Well, in terms of counselors and social
8 workers and PE teachers and social studies and
9 flexible reading support and math and reading
10 tutoring teachers and things like extracurricular
11 activities, are those tools helpful to reach those
12 kids to move them from non-proficient to proficient?

13 A. Definitely.

14 Q. And do you have the resources to do that?

15 A. No.

16 Q. In terms of the plaintiffs in this lawsuit,
17 you have at least one plaintiff in your school?

18 A. Not that -- that was the first I'd heard
19 about it when you said that.

20 Q. Well, you do.

21 A. Okay.

22 Q. And is what you've testified to
23 representative of the situation in the entire
24 Wyandotte High School?

25 A. It's every student.

1 MR. RUPE: That's all I have.
2 Thank you.

3 CROSS-EXAMINATION

4 BY MR. CHALMERS:

5 Q. I was a little confused by your last
6 answer.

7 By the way, happy anniversary.

8 A. Thank you. It's tomorrow.

9 Q. Well, early happy anniversary.

10 A. Thanks.

11 Q. I was confused about your last answer. You
12 say it's every student.

13 A. Mm-hmm.

14 Q. There are students that have done very well
15 at your high school, haven't they?

16 A. Yeah, definitely.

17 Q. And not knowing which is the plaintiff here,
18 you don't know if that's one of the students that's
19 doing very well, or it's one of the students that
20 have all the challenges that poverty brings with
21 them?

22 A. All of our students have challenges. Like I
23 said, we're 95 percent students qualifying for free
24 and reduced lunch, but we don't even have one student
25 who doesn't have the challenges of -- that circles

1 poverty.

2 Q. I guess by definition, if it's 95 percent,
3 there are 5 percent that aren't in poverty?

4 A. Right. But they're impacted on a daily
5 basis.

6 Q. And there are students that do well at your
7 school, even though they are impacted on a daily
8 basis?

9 A. They had better be. That's our job.

10 Q. In fact, your graduating class in 2011
11 earned \$2 million in college scholarship money,
12 didn't they?

13 A. I can tell you better news.

14 Q. More this year?

15 A. Over 4 million this year.

16 Q. The graduating class of 2011, which is the
17 last data I had, obtained 637 college credits before
18 graduating from high school.

19 A. And this year it was 900.

20 Q. And 87 percent were eligible in the class of
21 2011 to receive federal moneys from F-A-F-S-A --
22 FAFSA, I think is how that's pronounced --
23 competition.

24 A. FAFSA.

25 Q. What is the FAFSA competition?

1 A. FAFSA is the federal -- the free financial
2 aid through the federal government that all students
3 going to college are encouraged to complete, and that
4 doesn't -- that helps the government to provide some
5 grant money for them. And the good news is that our
6 students are applying for those now. Previously,
7 they didn't even know how to navigate through to fill
8 out the paperwork for it.

9 And the reason that is so important is the
10 data shows and the research shows that if students
11 don't fill out their FAFSA paperwork, then they are
12 most likely not to go on to college because they
13 don't have the resources to do it. So just
14 completing that is critical.

15 Q. When was it that they were first starting to
16 complete these forms up to the level of about 87
17 percent?

18 A. Not this year, last year.

19 Q. Last year being 2010/2011?

20 A. 2010/2011 school year. And again, that
21 is -- one of the many things we do is we reach out to
22 partners and try to figure out how we're going to
23 work together to make this happen. And we have
24 partnerships with groups who come in and try to help
25 us help our students, even help our parents get their

1 taxes done.

2 Q. For instance, the students had the
3 opportunity that year to participate with the
4 quarterly Dreams to Reality luncheon, in which they
5 had lunch and networked with local business
6 professionals in career fields that are interesting
7 to them?

8 A. Again, what we do is we try to reach out to
9 our community a lot. And about four years ago --
10 there is a group in the Kansas City area called
11 Leadership 2000. And it is up and coming leaders in
12 the community. And they came and did a visit to
13 Wyandotte High School and saw first-hand the kind of
14 situations our kids were dealing with. And they
15 said, how can we help. We want to help. We don't
16 have a lot to offer, but how can we help.

17 And so through some problem solving with
18 them -- and it happened to be someone from Hallmark,
19 an executive at Hallmark -- we came up with this idea
20 of a Dreams to Reality luncheon. Like I said, we
21 want our kids to dream and then we want them to turn
22 that dream into reality.

23 So what we do is, it's really not a major
24 cost, but we -- the leaders in the Kansas City,
25 Kansas -- or Kansas City metropolitan area volunteer

1 to come in and have lunch. And we do, like, a
2 networking lunch. One of our small learning
3 communities is a hospitality community, so as part of
4 their class assignment, they cater and prepare the
5 lunch for the executives.

6 And then students sign up to actually attend
7 the lunch and network during it for an hour with
8 professionals to learn about what are the
9 possibilities out there, and how do we get past all
10 the limitations that we put in our world and start
11 dreaming for a future.

12 Q. I think 14 students from that global
13 technologies and engineering and small learning
14 community attended a leadership development
15 conference at the National Robotics competition in
16 St. Louis in the year 2011, is that right?

17 A. That's right. And they went back again with
18 a larger group this year. And that's sponsored by
19 Robotics First, another partnership that we reach out
20 to.

21 Q. The Wyandotte High School was awarded
22 \$10,000 Facilities Enrichment Grant from the Pipe
23 Fitters Local Union 533, and the 610 Sports Radio, to
24 purchase technology and equipment for classroom use
25 at least in 2010/'11, is that right --

1 A. Again, a teacher was listening to the radio
2 on the way to work one morning and they had a
3 Facilities Enrichment Grant that 610 Radio was
4 offering, and you had to write in why your school
5 deserved it. One of our art teachers wrote in that
6 she doesn't have enough equipment for students to
7 even be able to enter a photography class, that they
8 have cameras, they have to share a camera.

9 And so wrote in the needs that she sees as
10 the classroom teacher, and Pipe Fitters deemed that
11 application as the one deserving to receive the
12 \$10,000. So that allowed us to get the cameras and
13 some of that technology for the students to use in
14 the visual arts community.

15 Q. Now, all students are issued Apple MacBook
16 computers to support their learning, is that correct?

17 A. That's correct.

18 Q. How long has that been in place?

19 A. That started -- our first roll-out was
20 2007. That's a district-wide initiative, and that's
21 an important work of re-allocating our resources.
22 Because we used to have computer labs that kids would
23 go to and, you know, take either -- maybe their
24 science class went there to do some research, or
25 they'd have a typing class in the computer lab.

1 That's pretty common.

2 And what we did, instead of purchasing
3 additional computers to upkeep -- upgrade those labs,
4 then, we've done a lease with Apple and actually
5 every student is able to have a MacBook Air 24/7. So
6 that means at the beginning of the year, like a
7 textbook, their MacBook is checked out to them and
8 then they have access to a world much bigger than
9 just Kansas City, Kansas to do their studying and
10 networking and reaching out to other people.

11 Q. And this would be what, the 13th year --
12 well, this year, this MacBook -- the Apple MacBook
13 approach, that continued on into this year, and it
14 will next year, will it not?

15 A. We hope so.

16 Q. It certainly did this last year.

17 A. I cannot see ever going back, but I'm not
18 totally in charge of those purse strings.

19 Q. This is what, the 14th year that the
20 Wyandotte High School has been structured in small
21 learning community approach to high school focused on
22 personally learning the kids, is that right?

23 A. That's right. I think I described that.

24 Q. And that continues on?

25 A. Yes, because we believe that personalization

1 is so important.

2 Q. The KU Medical Center partnered with
3 Wyandotte High School to provide job shadowing
4 opportunities and summer interns for students and
5 staff, at least in the '10/'11 year. Was that true
6 as well this last year?

7 A. Yes. And we even extended that this year.
8 And it sounds like a lot of things are going on, so
9 you can see how much work our teachers are going
10 out -- and we're spending a lot of time with industry
11 and professionals in the community saying, hey, we
12 don't have the resources for our kids, what can we
13 do?

14 We have now, because one of our big issues
15 with our students is they do not have healthcare.
16 They don't have a healthcare provider. As I said
17 earlier, they're very unhealthy. So we extended our
18 partnership and our work with KU Med Center and we
19 opened, for lack of a better term, a free clinic once
20 a week. Doctors from KU Med Center come over,
21 medical students come over, and it helps -- our
22 students have not had healthcare because of
23 transportation and because of insurance, they don't
24 have insurance.

25 Now they're able to at least -- especially

1 our students with major medical issues have a medical
2 professional who touches base with them possibly once
3 a week to help with that. All they have to do is
4 register in and their parents have to register in.

5 So we take our partnerships to every level
6 we can think of and open our doors as much as we can
7 think.

8 Q. The Center Corporation --

9 A. Cerner.

10 Q. Cerner, I'm sorry. C-E-R-N-E-R Cerner
11 Corporation supported learning at Wyandotte by
12 providing intern opportunities and on-site
13 educational programs for students in health career
14 areas, is that right?

15 A. That's right. Mm-hmm.

16 Q. They continue to do this?

17 A. They continue to do that, and hopefully they
18 will be -- we're working right now with them to try
19 to tie into our -- the clinic is called the BullDoc,
20 and it's based after free clinics that they have at
21 the KU, outside KU Med Center.

22 And our goal is that our students will have
23 medical records that will have -- electronic medical
24 records they'll be able to take with them after they
25 graduate, so it's to continue. Our goal is never

1 just to try to give them a quick fix while they are
2 with us, but something they take with them after high
3 school and can change the way of life that they're
4 dealing with.

5 Q. Your students participated in Reality U,
6 which is a simulation of budgeting and spending
7 skills, based on student research and career choices,
8 in 2011/'12. Did they do that again this last year?

9 A. Yeah. That's a part of our curriculum and
10 is done throughout the district that allows students
11 to take their grade point average, basically, and
12 that aligns with the type of job that they would
13 receive. And then go through an actual simulation of
14 getting a car, getting an apartment, all the things
15 with professionals there to help them understand how,
16 oh, that money's not going to go very far.

17 So again, another example of where we're
18 trying to help our students get to a different level;
19 break that cycle of poverty and get to a different
20 level of life.

21 Q. Your students from the hospitality small
22 learning community received national certification
23 from the American Hotel and Lodging Association in
24 2010/2011, is that correct?

25 A. That's correct. And again, that's through a

1 partnership with the Kansas City, Kansas Community
2 College. We try as much as possible -- another piece
3 of our students -- of our role with our students is
4 that we have to help them believe that they can be
5 college ready. It's not just academically or a test
6 score that's going to tell the story, because when
7 they get into an environment with students who
8 aren't -- don't look like them, don't have the same
9 background as them, they have to have the confidence
10 to be able to sit there and hold their own.

11 And one of the ways that we have approached
12 it is try to get them as many early college
13 opportunities as possible, so that they can say,
14 look, I've already earned college scholarship. It's
15 not just that I'm okay and they gave me this diploma
16 that says I'm prepared for it. I've done it, and so
17 get out of my way, world, I'm coming through. It's
18 basically the mindset we want them to have.

19 So sometimes it's a college class like a
20 calculus or a composition class. Other times it's a
21 special certification program that will lead them
22 through the technical program or an advanced license.

23 Q. What is the Wyandotte High School business
24 academy?

25 A. That's one of our smaller learning

1 communities.

2 Q. And what you have is a series of communities
3 that give them the specific interests that they will
4 be more involved in, in addition to their core class?

5 A. Every student is -- every student and
6 every -- every student and every teacher is part of a
7 small learning community, and there are seven of them
8 at Wyandotte. They enroll in the community like in
9 most school -- or in non-small learning community
10 high schools, students enroll in classes. Our
11 students enroll in a community, and then they stay
12 with that same eight to ten teachers, and that same
13 175, 200 students, for their entire high school
14 career. So that really can break down those walls
15 of -- that they've placed around them that get in the
16 way for learning.

17 And they have an opportunity, then, to grow
18 and develop. And those teachers take on those
19 students as their own. And they find opportunities
20 for them and they look elsewhere and they develop the
21 partnerships. And you just keep giving lots of
22 examples of the extra work that they put in to create
23 unique opportunities for our kids so they realize
24 that there are opportunities for them in life.

25 Q. In fact, the Wyandotte High School business

1 academy in 2011/'12 received awards in the Youth
2 Entrepreneurs Kansas small business plan, is that
3 right?

4 A. That's right.

5 Q. You're proud of your school?

6 A. I am.

7 Q. That's clear through your testimony. And
8 I've listed from your website many of your school's
9 accomplishments, but not nearly all of them, have I?

10 A. No, or challenges.

11 Q. Or challenges. Your high school is an
12 accredited school, is that correct?

13 A. That's correct.

14 Q. Accredited by the State of Kansas. Is it
15 fully accredited?

16 A. When I was looking at that a minute ago, it
17 said, accredited on improvement.

18 Q. And it's on improvement because of --

19 A. I believe it was math scores.

20 Q. -- has to do with math scores?

21 A. Yes. And it was, you know -- I was looking
22 at that data, because I hadn't looked at it for a
23 while, when you were asking another principal. And
24 you can really see it was 2008/'09, I believe, that
25 we really took the dive, and that's when all those

1 extra teachers of support disappeared. And the extra
2 tutoring after school disappeared. And I hadn't
3 realized it was so blatantly obvious through the test
4 scores.

5 Q. Well, the test scores that you looked at for
6 math assessments showed that in the year 2011/'12,
7 that at the peak of the spending, which would have
8 been, I guess, in the 2008 year, the '07/'08 year, it
9 would have been --

10 A. The peak of the -- the cuts were peak of the
11 spending.

12 Q. Well, 2009/'10 according to Mr. Rupe's chart
13 here, indicates that the cuts started in that year.

14 A. Yes.

15 MR. RUPE: I'm going to object to
16 that, Counsel. That doesn't show that at all. It
17 shows they started the year before.

18 MR. CHALMERS: I thought it
19 showed the first year of cuts. I see that now
20 '08/'09. Thank you, Counsel.

21 Q. And the records I have -- well, now, this is
22 for African American kids. Well, I guess I'm not
23 prepared to talk to you about the specific numbers
24 overall other than in connection with African
25 American kids, but let's do that.

1 The numbers for African American kids for
2 the year 2008 -- that would be the '07/'08 year --
3 showed that on that year, 39.8 percent of the
4 students met standard. And then the next year, which
5 would be '08/'09, which would have been the first
6 year of cuts, as Mr. Rupe points out, actually, there
7 was an increase where the cut -- or the testing went
8 up to 43.8 who met the standard.

9 A. If I'm not mistaken, from what I remember
10 looking at that, that 2008/'09 was -- the end of that
11 year is when I started -- when I had the heavy cuts.
12 And it was the end of that year when the scores were
13 the highest -- or that went up, as you said. And
14 then, it was the following year after the cuts that,
15 as you look at the list, it says, no, didn't do well,
16 didn't do well, didn't do well.

17 Q. Well, I think that's your recollection. I'm
18 not sure that that's what it reflects as to African
19 American kids. But the documents will show whatever
20 they show; we'll agree on that?

21 A. We'll agree on that.

22 Q. And we were talking about accreditation for
23 the moment before we got off on AYP. Your high
24 school provides all of the classes that the State
25 requires for accreditation, is that correct?

1 A. Mm-hmm.

2 Q. You're nodding your head, but you can't do
3 that. You have to --

4 A. Yes. I'm sorry. Yes.

5 Q. Appreciate it.

6 A. I apologize.

7 Q. That's okay. We all knew. We just have to
8 have a record.

9 Your high school also provides the
10 curriculum that the State requires.

11 A. Our district does, yes.

12 Q. Well, and your high school abides by the
13 district what the State requires?

14 A. Yes.

15 Q. And with the exception of the math issue,
16 your high school meets all other requirements to be
17 an accredited school in the state, isn't that true?

18 A. Yes.

19 Q. Now, talking about on improvement, yours is
20 a school that is a Title I school on improvement as
21 of '10/'11. Did that then produce additional federal
22 funds to you?

23 A. We are -- we qualify for it to be a Title I
24 school. We do not receive the Title I funding. Our
25 district uses those more efficiently at the district

1 level, and they'd have to explain that to you.

2 Q. Your district makes a decision on how the
3 money that is received by the district is
4 allocated --

5 A. That's correct.

6 Q. -- building-to-building. That's a fancy way
7 to say school-to-school?

8 A. Yes.

9 Q. And that's part of the local school board
10 and administration's decision?

11 A. Mm-hmm.

12 Q. Is that right?

13 A. To the best of my knowledge.

14 Q. And so they're not unfamiliar with the
15 problems that you've articulated with cuts, though,
16 are they?

17 A. No.

18 Q. You let them know --

19 A. Yes, we all work very closely together. And
20 there is the at-risks funds that we -- exactly how
21 much comes in each year, I never really know but ...

22 Q. I was going to get to that. You talked
23 about migrant kids that you have. There's actually
24 special funding through the federal government that's
25 supplied for migrant kids, is that correct?

1 A. There is some kind of funding.

2 Q. You get some funds but you can't say whether
3 it's the state or federal, but I'll represent to you
4 it's federal.

5 A. Okay.

6 Q. There are additional moneys that are
7 provided under the weighting system?

8 A. Mm-hmm.

9 Q. And I think you've been here during part of
10 the -- probably longer than you anticipated of this
11 trial, and you either knew or learned about the
12 weights that include additional money for kids in
13 poverty, additional money for kids with special
14 needs, additional money for English as a second
15 language, additional money for kids that aren't
16 proficient; you heard all that. And your school
17 would qualify to receive, if the district allocates
18 it to you, additional funds above the base amounts,
19 is that right?

20 A. To the best of my knowledge, yes --

21 Q. And does receive those additional moneys you
22 know.

23 A. I don't know to what level you're referring
24 to but, yes, we do receive additional.

25 Q. Your tests, now, that your kids took this

1 year, that was the ACT test, is that right?

2 A. Yes, it was.

3 Q. Instead of the Kansas assessment test?

4 A. Yes.

5 Q. And before the ACT test was administered,
6 what efforts did your school go to, to prepare your
7 kids for the ACT as opposed to the Kansas assessment
8 test?

9 A. We look at ACT development and college
10 readiness development as a four-year continuum. And
11 so we start with thinking of our 9th graders coming
12 in. And honestly, they have taken an EXPLORE test --
13 I think one of the other principals mentioned it --
14 in the 8th grade. So we begin by looking at those
15 results and trying to dig into those results with the
16 students to make them aware. There's a lot of
17 students who don't know what their results are or
18 know why it's important.

19 So we have to spend a lot of time explaining
20 why that's important, helping them understand what
21 they mean, find the areas that they are strong in,
22 find the areas that they're weak in, and help them
23 develop a plan. Because it really -- they're high
24 school students now, so they need -- you know, we're
25 trying to empower them to have the plan in their

1 hands -- develop a plan what they're going to do so
2 that they can take the PLAN test their sophomore year
3 and have a stronger performance. And so we work with
4 them all year.

5 We have a system called the family advocacy
6 system. This is one more thing we ask our teachers
7 to do. And that is every student -- besides being in
8 a small learning community, every student has --
9 yeah, every student has an adult advocate in our
10 building. And what that looks like, some of us, when
11 we were in high school had an advisor, or maybe in
12 middle school had an advisor, and this is very
13 similar to that, but different.

14 Every adult has 15 to 20 students that they
15 stay with over their four years. And their goal is
16 that they are parenting, they're mentoring, they're
17 advocating for, they're checking grades on a regular
18 basis, doing all the things mom and dad maybe in my
19 house did, but they don't have that same family
20 structure that's supporting that. And so what we're
21 doing is we're helping them stay on course and move
22 through that.

23 They stay with that advocate for their four
24 years of high school. The family advocate then does
25 one more and that -- well, maybe a lot, but another

1 thing they do is they reach down to the family,
2 because we know we have to educate the family and
3 help them understand. We're not just trying to do it
4 all by ourselves.

5 But it's not just going to happen just
6 because we yell louder if the parents do this. So we
7 have to bring them in, develop relationships with the
8 parents in the family, too, and help them understand
9 how they can be a part of this with their child. So
10 that's the freshman year.

11 And then, with our sophomores, they take the
12 PLAN test, which is another the pre-ACT. It's the
13 next in the journey of the ACT test. And we do the
14 same thing. Once they take the test, we look at
15 their scores. We help them identify their strengths,
16 their weaknesses, what does this mean, what's their
17 next step on the journey, what was their dream job or
18 dream goal they wanted to go for after high school.

19 Where were they going to extend their study,
20 and start to get some more definition around that
21 with them, revise their action plan that they've
22 already spent a year working on. And then, bring the
23 family in, you know, tell mom and dad, now, this is
24 something that's going on.

25 One of the big pieces, as you mentioned, the

1 FAFSA. Making sure that parents even understand
2 that's an important job they have to, that they have
3 to -- especially when their child is a senior, they'd
4 better have their taxes done early in February
5 because then that has to go to the FAFSA and get
6 pulled from the IRS.

7 So there's a lot of pieces of that puzzle
8 that we do as parents with our kids that because our
9 students at Wyandotte, their parents have never
10 navigated through the college system. They don't
11 even realize the pieces of the puzzle, so we begin,
12 when they come to us, educating them off all those
13 pieces that are so critical to help their student be
14 able to leave high school and move on to be college
15 ready, which is part of our responsibilities.

16 Junior year, they work more focused on,
17 okay, when is the ACT test day. We're on the last
18 leg of it. How do we need to get most ready for the
19 game, basically, as far as there might be a practice
20 test in there that the advocate gives; more building
21 up the psyche of the students that they want to do
22 well because this score will help them get this
23 scholarship, which will help them get to this dream
24 that they're going for. Once they give that, then we
25 look at, how did the testing go? Where were your

1 strengths? Where were your weaknesses?

2 Just Monday I was with students and their
3 advocates and they were looking at some of their
4 scores. And they -- sometimes it was academic
5 knowledge. Sometimes a student just didn't
6 understand this test. It's a 35-minute, timed
7 reading test, they didn't realize that's all they had
8 was 35 minutes. So, you know, understanding the game
9 of the test, so to speak, that's a piece that the
10 advocate works with.

11 And our advocates do this. There's no pay
12 for them. Monday, when they were up at school,
13 there's no pay for them. It's summertime. They
14 should be on summer vacation, but there's a big test
15 Saturday, and some of these students are taking it
16 again. And their advocates wanted to make sure that
17 they were as ready as possible once we got those
18 first scores back.

19 Then, senior year, around the ACT, now
20 it's -- we're down to the end. And it's time to look
21 at what those scores were, what our plans were. Do
22 we have our admission done? Do we have our vitae for
23 college done? All the pieces of the puzzle that mom
24 and dad might have done for us, and now, what we're
25 doing is, we're educating the parents and we're

1 educating the kids on what they need to do.

2 Q. Thank you for that explanation. When was it
3 that the ACT curriculum was put into place at your
4 building?

5 A. There isn't an ACT curriculum.

6 Q. Mine is a mistake probably, but I understood
7 that there was a change in curriculum that led to
8 using the ACT as the measurement as opposed to the
9 Kansas assessment.

10 A. I think what you're referring to is there's
11 a change -- you're talking about the ACT standards.
12 The ACT standards are at a different level than the
13 Kansas standards.

14 Q. And I assume that there was a change in
15 curriculum to try to align itself with the ACT
16 standards?

17 A. There -- we're shooting for the standards,
18 yes. So that means that we're -- we have to build up
19 the rigor in the classroom, which is a lot of
20 professional development work and a lot of practice
21 change for our teachers to do to bring our kids up.

22 Q. Maybe I've been under a misunderstanding.
23 There's no change in curriculum, just a change in
24 what will ultimately be the test then?

25 A. No.

1 Q. What's the change?

2 A. Standards guide the curriculum. The
3 curriculum is what you're going to implement in order
4 to get to your standards, your end results. Your
5 standards are your end results that we're wanting to
6 get our students to, our outcomes.

7 Q. And there's not change in your curriculum to
8 the new standards?

9 A. Say that again?

10 Q. There's no change in your curriculum --

11 A. Yes. There has to be change because the
12 standards change.

13 Q. When was the change in the standards in
14 curriculum then?

15 A. That's a process that's been going on the
16 last couple of years, last year.

17 Q. I'm sure this has been worked out and I just
18 want to know, more so for my curiosity, but I guess I
19 can make a record of it: The ACT is a private
20 organization company, is that right?

21 A. I don't know.

22 Q. Well --

23 A. It's put together by the college board and
24 it's recognized by the universities across the
25 country.

1 Q. The Kansas assessment test is provided at
2 the State's expense to the kids that take the test?

3 A. Okay.

4 Q. It's your experience that the ACT will
5 charge a fee for kids who want to take that exam,
6 won't it?

7 A. I can't answer that. I don't work directly
8 with ACT.

9 Q. Do you know who's paying for the ACT test
10 that's now being taken as opposed to the previously
11 provided --

12 A. I don't know that. I'm sorry.

13 Q. Under the ACT procedures and federal law,
14 concerning privacy of children's educational records,
15 the ACT test results are only available to the extent
16 that a child says, I release this to be viewed. Do
17 you know what efforts have been made to assure that
18 the children will say, oh, yeah, you can look at
19 those test scores?

20 A. No. All I know is I get every student's ACT
21 test whenever they take it.

22 Q. And if --

23 A. That was before this year. That's always.
24 So I always see them.

25 Q. If a sufficient number of children, now that

1 all kids are taking the ACT, were to elect not to
2 provide your district with that information, wouldn't
3 that provide problems for, at least under the current
4 No Child Left Behind, because you have to have a
5 certain participation rate?

6 A. That's a lot of assumptions. I don't know a
7 lot of information that -- I'm not connected with --

8 Q. You haven't worked that through. Somebody
9 else probably, you think, has thought about that, but
10 it hasn't been you?

11 A. I'm sure. I'm sure. It was not a quick
12 decision and just, let's throw something in. It was
13 the best thing for kids.

14 Q. You talk about cuts and I don't have, I
15 think, a whole lot to talk about that with you on,
16 but I just want to get your explanation of a couple
17 of things. I'm going to show you a blow-up. And
18 this shows the expenditures in KCK from the data that
19 was available per kid in those areas that were
20 operational costs; that is not buildings, not
21 maintenance, not repairs.

22 And it would show that the amounts, although
23 they're down from '08/'09, have remained fairly
24 stable. Has that been your experience in your high
25 school?

1 A. You want to explain what that chart is one
2 more time?

3 Q. Sure. This shows the per person -- or per
4 pupil expenditures of your district. So for every
5 kid for 2010/2011, \$10,510 were spent on
6 instructional matters, not on paying off bond and
7 interest, not paying for capital improvements,
8 capital outlay.

9 And I'm wondering, has it been in your
10 building, your budget, your experience that your per
11 pupil expenditures since about '09 -- '08/'09 have
12 remained relatively stable?

13 MR. RUPE: I'm going to object to
14 the question. It lacks foundation and I think
15 Counsel's representation as to the content of that
16 number is a mischaracterization.

17 JUDGE THEIS: I think he just asked
18 if they've been fairly stable and that's what his
19 ending question was, wasn't it?

20 MR. CHALMERS: I can correct it.
21 The foundation for this though is the exhibits, and
22 they will show this is accurate --

23 JUDGE THEIS: Assuming it was true.

24 Q. (By Mr. Chalmers) Yeah, assuming it's true,
25 what I need to know is about your experience, and

1 that is, whether or not your experience has been that
2 on '08/'09 and on, that the per pupil expenses have
3 been relatively stable in your facility?

4 A. Remember, I said earlier that our district
5 did a really good job of trying to keep everything --
6 all the financial issues away from our students
7 feeling that impact by skeleting (sic) our district
8 office and things like that. So we haven't felt that
9 deep cut, but we felt it by the issues of, you know,
10 not having the supports for our adults, not having
11 the needs and having to have more demands put on us
12 in the school.

13 Q. And I appreciate that answer. I don't know
14 if that was precisely the question I asked. You, in
15 your building, prepare a budget ever year, is that
16 right?

17 A. Yes.

18 Q. And you submit that budget, kind of, up the
19 chain, and you're told how much you'll get, is that
20 correct?

21 A. Yes.

22 Q. Has there ever been a year, since you've
23 been a principal, where you have spent less than what
24 you have received on your budget?

25 A. Spent less? No.

1 Q. You always spend down to whatever you're
2 given, right?

3 A. Yes, sir. And we are on the zero-base
4 budget.

5 Q. Yes. And now my question is whether based
6 on your experience with your budgeting process, have
7 the per pupil expenditures on those things that reach
8 the classroom, have they remained pretty stable over
9 the last three, four years?

10 A. Not the staffing.

11 Q. Staffing's been down slightly?

12 A. Yes.

13 Q. And would we expect, then, to see if we had
14 a chart like the one that I've shown you for your
15 whole district, that there would be a dip in your
16 school in one year or two after the '07/'08 year?

17 A. Yes.

18 Q. And the decision that there should be a dip
19 in your instructional expenditures, that would be
20 made by administration and by your school board?

21 A. Yes.

22 Q. One of the things that you had mentioned
23 that I think I understand but I want to clear up, you
24 said that there was a -- that tutoring programs were
25 cut, is that right?

1 A. We had -- yes. We chose to do that.

2 Q. To be fair, however, the Wednesday tutoring,
3 Wednesday afternoon tutoring between 12:25 to 3 p.m.
4 remains at your high school, but it's now put on by
5 what, community volunteers?

6 A. Right. We do not pay anybody to do that.
7 It's not after school, and it's on Wednesday
8 afternoon when the teachers are in staff development.

9 Q. Yes.

10 A. So there aren't teachers down there. We
11 sometimes use student leaders as tutors, National
12 Honor Society members, or athletes as tutors. So
13 it's not quite the quality as having a certified
14 teacher do it, but at least it's a place for students
15 to go and study.

16 Q. The vans that you say were purchased that
17 are now being used for some of your athletic
18 programs, when did the district purchase those vans,
19 do you know?

20 A. I don't know. I honestly don't remember
21 when it was.

22 Q. Last couple of years?

23 A. I honestly don't remember. I'm sorry.

24 Q. You were talking about, I think, the
25 challenges you're confronted with kids reaching your

1 high school that are not in some skill level, whether
2 it's math, science, reading at grade level.

3 A. Mm-hmm.

4 Q. And I think you indicated that in some
5 instances, that's explained by mobility. What do you
6 mean by mobility?

7 A. Students are not in the Kansas City, Kansas
8 School District their entire life.

9 Q. So you have --

10 A. Or, you know, we have students in foster
11 care, you have students who are moving around the
12 state, you have students coming in, like I said, from
13 other countries.

14 Q. So you've got a child that comes in from
15 Kansas City, Missouri, that may be behind, and now
16 it's your responsibility to try to bring them up to
17 speed?

18 A. It's a possibility, yes.

19 Q. Now, are there children, and that's what I
20 was kind of interested, that where the explanation is
21 not mobility, where they were in your system --

22 A. Yes.

23 Q. -- and worked their way to high school but
24 are behind?

25 A. Mm-hmm.

1 Q. How does that happen?

2 A. Again, it's all sorts of reasons when
3 students are -- their lifestyle is not stable. They
4 may have had family crisis and tragedy and been out
5 of school for a while. They may have illness
6 themselves. They are not a healthy individual.
7 Their lifestyle could not be warned of that.

8 They could have put so much resistance up
9 around them that the teachers, no matter how much
10 intervention was tried, they tried not to let them
11 into it. There could be all sorts of reasons, and
12 every student has a different story. There isn't one
13 box you can fit them in.

14 Q. I'm not trying to be quarrelsome here or
15 critical, because I'm not, but why aren't they just
16 held back if they're not ready to go to the next
17 grade?

18 A. I don't know that that's a promising
19 practice in education, is just to hold students
20 back. And once they've hit 15, they come up to the
21 high school no matter what, so that's an age
22 promotion situation.

23 There's so much more to a student's
24 development, and there is so much out there to talk
25 about what happens to a student if they spend -- if

1 they're two or three years behind their age group,
2 it's not usually a positive impact on the student
3 learning.

4 Q. When you have a school that has poverty
5 levels, you have their many sad stories that serve as
6 a challenge to educators to try to overcome social
7 economic issues, is that right?

8 A. I guess if you're going to call them sad.
9 The kids are dealt the hand that they're dealt, and
10 we don't have anything that we can do about what was
11 handed to them. Now, what our job is, is to knuckle
12 down and help them create that future for
13 themselves. That's our goal.

14 Q. You don't say quit because of that. I
15 understand that.

16 A. Right.

17 Q. But it is sad that they are confronted with
18 the social and economic issues they're confronted
19 with.

20 A. If you're asking me if it's fair, it's not
21 fair. But life isn't fair. And this is the hand
22 they've been dealt, and so now we've got to do
23 something about it.

24 Q. Lastly, a survey was done in the spring of
25 2011, of the students at Wyandotte County, and there

1 were responses of 295 students. I can't if it was a
2 representative or not because I didn't do the
3 survey. But it is --

4 A. Back up one more time and say that again.

5 Q. I can't say it was --

6 A. 295 students?

7 Q. 295 students responded to the survey.

8 A. Okay.

9 Q. I can't say that that's a statistically
10 representative number because --

11 A. Right.

12 Q. -- I didn't do the survey. But what it
13 says, it asked about teacher support. And for the
14 year ending -- well, do you remember this survey? Do
15 you know whether it was taken at the end of the 2011
16 year?

17 A. I don't know what it is.

18 Q. It's on your website.

19 A. Can I see it?

20 Q. Sure.

21 A. Thank you. Okay, yes. This is our DERA
22 department, our research department does a survey
23 every spring.

24 Q. Okay. So that would have been the spring of
25 2011?

1 A. Yes.

2 Q. Let me grab that back from you, if you don't
3 mind.

4 A. If you ask me anything, I need to look at it
5 again.

6 Q. Well, the survey results show or ask
7 whether -- the student's view on teacher support,
8 student engagement, school climate, school safety and
9 parental support, and I just want to focus on the
10 first four, I think. It looks like approximately 95
11 percent of your students had a very positive view or
12 at least a moderate view, moderate or positive for
13 teacher support. And that's what -- do you remember
14 that from the survey or these surveys?

15 A. If that's what it shows you there. I'm not
16 going to quote an amount.

17 Q. Well, it also says, student engagement. It
18 says, again -- well, this is 94 percent have either a
19 moderate or very positive view of student
20 engagement. They have, looks like, about 82 percent,
21 a moderate or very positive view of school climate.
22 It looks like 80 percent have a moderate or positive
23 view of school safety.

24 A. Okay.

25 Q. Is it your experience that your students

1 have a positive view or at least a neutral view of
2 those categories on these surveys?

3 A. I think that's fair to say. That's our
4 goal. But we also know we have to up the rigor so
5 that the academic -- once we have the positive
6 environment now, the rigor has to increase so that we
7 can get them to achieving at the level that the rest
8 of the world can see the positive in them.

9 Q. And you're pleased with the teacher support
10 that your students are receiving, the school climate,
11 the school safety and the student engagement, is that
12 right?

13 A. I am -- I don't know if pleased is the right
14 word. I'm not satisfied. It's not where we --

15 Q. You aren't satisfied unless it's 100
16 percent. I understand that but --

17 A. We still have work to do.

18 Q. But you're doing a good job.

19 A. We are working hard.

20 MR. CHALMERS: Thank you. I have
21 nothing further.

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. Do you have the resources to do that
25 currently?

1 A. I think you've heard me say several times
2 our teachers are doing more and more and more. My
3 biggest concern is that word I think I used earlier,
4 "extinguish." I don't want them to extinguish on me
5 here. And I find every way to help them feel
6 positive about what they're doing, but there's going
7 to be times that they just are tired and can't do
8 anymore. And that's where -- that's the part that's
9 hurting right now.

10 Q. And in terms of the survey Mr. Chalmers
11 indicated, and your proficiency scores, would your
12 proficiency scores indicate that you're having 100
13 percent success?

14 A. No. And that's what frustrates teachers.

15 Q. Would your scores, your assessment scores
16 indicate that you're leaving some kids behind?

17 A. Definitely.

18 Q. And I have happened to access the --
19 actually somebody sitting next to me happened to
20 access the Department of Ed grade card. And to
21 refresh your recollection, is your recollection that
22 in '08/'09 on math, all students performed at 56
23 percent, and then that dive you talked about, really
24 took a dive, occurred in '09/'10 when it dropped to
25 48 percent?

1 A. (Nodding.)

2 Q. Is that the dive you were talking about?

3 A. That's -- that's the dive.

4 Q. And in math, free and reduced lunch, in
5 '08/'09 was 54 percent and dropped to 48 percent the
6 next year, right?

7 A. Mm-hmm. Yes. And the African American
8 group, I believe, took a deeper fall.

9 Q. Okay. Now, if you hadn't reduced
10 counselors, social workers, PE teachers, social
11 studies, the flexible reading support, the math and
12 reading touring teachers, the tutoring, in your
13 opinion, would that have made a difference on those
14 scores?

15 MR. CHALMERS: Speculation.

16 JUDGE THEIS: Overruled.

17 THE WITNESS: I can answer?

18 JUDGE FLEMING: You may answer.

19 THE WITNESS: Okay. Thanks.

20 A. Yes, I think it would have made a
21 difference.

22 Q. (By Mr. Rupe) Why?

23 A. Because we were showing steady incline with
24 those supports there.

25 Q. And if you had had the same amount of money

1 after '08/'09, would you have made those cuts?

2 A. No. Those decisions were very difficult to
3 make when they went through. Our goal was not to get
4 bigger class sizes.

5 Q. Did the class sizes, in spite of your goal,
6 get larger?

7 A. They've gotten bigger.

8 Q. Is FAFSA a needs-driven financial support?

9 A. Based on needs, students receive different
10 amounts of money. But everybody should fill out the
11 FAFSA. It doesn't matter whether it's a student
12 who's wealthy or a student who's poverty.

13 Q. Now, is that grant money or is that loan
14 money?

15 A. There is both that comes back to you from
16 the federal government in your report.

17 Q. And I see this chart that we see from time
18 to time on all the sources of money that are
19 available to schools as part of funding. It sounds
20 like your district, we have to add some teachers'
21 names to that and maybe some of your business
22 partners' names to that because they supply some of
23 the funding, right?

24 A. Very definitely. And I just --

25 Q. You can call that what you will, but have

1 you ever sat down to quantify how much time of
2 administration and teachers is required to go out
3 and -- is beg a good word, for those additional
4 funds?

5 A. We try to build positive relationships.

6 Q. To build those positive relationships, have
7 you quantified how much time that takes?

8 A. No, I haven't. I don't want it -- but I see
9 the tiredness on people's faces. And I see when
10 summertime is getting close, they're like, oh, good,
11 I just need a break. I don't need to keep asking for
12 more. And that makes me know that it's pretty
13 extreme.

14 MR. RUPE: That's all the questions
15 I have.

16 RECROSS-EXAMINATION

17 BY MR. CHALMERS:

18 Q. Just so that I know, and we can pull up the
19 records later to be able to ensure, the math
20 assessment results for your district that you
21 remember seeing the dip in, for what grade would that
22 be?

23 A. You may not realize this but at the high
24 school, the state assessment is only measured based
25 on after the 11th grade year. It's only measured in

1 one group.

2 Q. My understanding was that it could be
3 measured at the election of the district at any one
4 of the grade levels, but in your district it's the
5 11th grade, is that right?

6 A. The 11th grade cohort.

7 Q. And the math scores that you looked at when
8 you checked, are those what we find on the website?

9 A. Yes.

10 Q. And I don't have any --

11 A. And specifically, I was looking at
12 whether -- there's a report that says, did you make
13 AYP. And we like to see, yes. But that year of
14 '08/'09 said, no, no, no, no, no, all the way down.

15 MR. CHALMERS: I don't have
16 anything further. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. Did you just misspeak? Was it '08/'09 or
20 '09/'10?

21 A. I thought I said '08/'09, but we'll have to
22 look at the report.

23 Q. Let me go back to my refreshing your
24 recollection. All students in math '08/'09 was 56
25 percent, '09/'10 --

1 A. '09/'10.

2 Q. -- it dropped down to 48 percent.

3 A. Thank you. Yes, sir.

4 Q. Does that refresh your recollection?

5 A. Yes. Thank you.

6 MR. RUPE: No other questions.

7 EXAMINATION

8 BY THE PANEL:

9 JUDGE THEIS: Sometimes when we give
10 up things you -- there's an improvement, for example, if
11 you go to jail, you can't smoke.

12 THE WITNESS: I understand.

13 JUDGE THEIS: Did you experience any
14 of this from the cuts you received?

15 THE WITNESS: If there is any
16 improvement that I can say is, it pulled us together;
17 kind of like a family when they go through crisis,
18 sometimes you become closer because you know you have to
19 pull together in order to get done what you need to get
20 done. So I think maybe our staff have pulled closer
21 together. I'm just worried how long that can handle
22 before they kind of die out on me.

23 JUDGE THEIS: Learn to live with --
24 you find anything you can live without?

25 THE WITNESS: That's a good question.

1 I think we thought we could live without it. For
2 maybe a year or two we thought, oh, okay, we really
3 need all this, and then after -- after another year
4 or so, we're like, oh, God, we needed this. This is
5 what -- the reason we did it.

6 You know, when I talked about that
7 skeleton at the central office, that piece of it,
8 there's a lot of the why we do things that we keep in
9 our head; we don't write down and we don't tell
10 people all the whys. And I think it's those whys --
11 we think we can live without something. And then,
12 all off a sudden it smacks us in the face, and we
13 realize, oh, we didn't realize we need we needed that
14 because of. So all those whys are so important and
15 we've lost some of those.

16 So I think it's going to be a while
17 before we realize how much we needed some of the
18 things that we let go, and we thought maybe we could
19 even live without.

20 JUDGE THEIS: What do you think of
21 the philosophy of somebody if they never do -- never
22 asking anybody to do anything for you, you can do for
23 yourself?

24 THE WITNESS: I think that we have
25 to figure out how to work always together. I don't

1 think we enable people to need us. I don't think
2 that we -- we -- people have to be taught
3 constantly. And I think that's an important part of
4 our role, is people have to learn to do it. But they
5 just don't know how all the time, and so we have to
6 teach them how and empower them so that they then can
7 carry that forward, and not enable them to need us
8 all the time.

9 JUDGE THEIS: This is a little
10 different. Is your philosophy either in government
11 or personally that you never ask anybody to do
12 something that you could do for yourself?

13 THE WITNESS: I don't know.

14 JUDGE THEIS: Do you get your own
15 coffee in the morning?

16 THE WITNESS: Yeah, I do get my own
17 coffee in the morning, but my husband makes it the
18 night before. That's why we've been married for 28
19 years.

20 JUDGE THEIS: That's the way it
21 works in my house.

22 MR. RUPE: Can I do a follow-up
23 question?

24 JUDGE THEIS: I've reached my
25 two-hour threshold.

1 REDIRECT EXAMINATION

2 BY MR. RUPE:

3 Q. Can I follow up with, one, you talked about
4 teachers dying out or giving up. Did you lose a
5 teacher who indicated they were going to Blue Valley
6 within the last few weeks for \$14,000 more money?

7 A. Yes, I did.

8 Q. And the teacher taught what course?

9 A. Biology.

10 MR. RUPE: I don't have anything
11 else.12 MR. CHALMERS: I don't have
13 anything else.14 JUDGE THEIS: Thank you,
15 Ms. Stewart. You can step down.

16 (Witness excused.)

17 JUDGE THEIS: What do you have
18 next?19 MR. RUPE: Mark Tallman is going
20 to be next.

21 JUDGE THEIS: For about how long?

22 MR. RUPE: I think Mark Tallman is
23 going to be -- and he'll probably run until -- I'll
24 be done with him probably 30 to 45 minutes.

25 Mark does have -- his daughter's

1 getting married on Saturday, so I told him I'd try to
2 get him on and off today or first thing in the
3 morning.

4 JUDGE THEIS: We'll just take about
5 ten minutes here, 15. No later than 20 after for
6 sure and come back and do what we can to try to
7 finish, so do your best. Thank you.

8 (A recess was taken.)

9 MR. RUPE: May it please the Court,
10 I have an inquiry to make that may move things along.

11 JUDGE THEIS: Okay.

12 MR. RUPE: We have a witness, Jim
13 Hayes, that we have designated, and he will be
14 available tomorrow morning after the conclusion of
15 Mark Tallman. His primary purpose, kind of along the
16 lines of telling what they're going to say before
17 they do it, his primary purpose would be to explain
18 the formula and the weights and how the formula works
19 in terms of computing general fund and so forth.

20 It would be purely explanatory --
21 if that's a word -- explaining the formula. He
22 probably won't give any opinions regarding the
23 formula. That's going to be what we talk to Mark
24 about. But in terms of the need for that, if you had
25 questions of him or if you wanted that explanation,

1 we'll put him on. If you don't, I'll cut him loose
2 and we can be back pretty much on schedule.

3 JUDGE THEIS: Just going to repeat
4 the charts that you're going to show?

5 MR. RUPE: Right.

6 JUDGE BURR: Percentages and so
7 forth?

8 MR. RUPE: Yeah.

9 JUDGE BURR: I like that offer.

10 MR. RUPE: Okay. And I take that
11 to mean --

12 JUDGE BURR: I think we're familiar
13 with it at this point, you know.

14 MR. RUPE: Okay. Great.

15 JUDGE THEIS: Unless there's no
16 nuances that we haven't heard about, it's a matter of
17 what it is times what it is.

18 MR. RUPE: He would explain what it
19 is and answer any questions that you might have. And
20 if you're comfortable, you don't need that
21 information, let's excuse him and get to work on
22 Mark.

23 JUDGE BURR: One or the other of
24 you has had that chart that's been exposed to us
25 several times which lists the categories and the

1 percentages and the whole bit, so ...

2 MR. RUPE: Okay.

3 JUDGE THEIS: It's not historical
4 and it doesn't explain why a factor is a factor, I
5 mean, why a certain percentage is a percentage, and
6 he's just going to tell the mechanics?

7 JUDGE BURR: What it is?

8 MR. RUPE: What it is, that was his
9 primary purpose.

10 JUDGE THEIS: I think we can skip
11 him.

12 MR. RUPE: The other information
13 will come from Mark Tallman.

14 JUDGE BURR: We wouldn't want to
15 take his opportunity away from him, but if it's okay
16 with him, it's okay with us.

17 MR. RUPE: Mark Tallman, please.

18 MARK TALLMAN

19 Called as a witness for the
20 Plaintiffs, was duly sworn by the reporter and
21 testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. Tell the Judges your name and the city in
25 which you reside.

1 A. Mark Tallman, Topeka.

2 Q. With regard to your title, what is your
3 title?

4 A. Associate Executive Director for Advocacy
5 for the Kansas Association of School Boards.

6 Q. And how long have you been employed by the
7 Kansas Association of School Boards?

8 A. Since 1990.

9 Q. And in terms of your -- we'll come back to
10 that in little bit, but in terms of your educational
11 background, what is that?

12 A. I graduated from high school from Thomas
13 Moore Prep High School in Hays, and then a degree in
14 English from Fort Hays State University and a
15 Master's of Public Administration from the University
16 of Kansas.

17 Q. And in terms of the Master's in Public
18 Administration, explain what a Master's in Public
19 Administration is.

20 A. Well, it -- at least as I received it
21 through the program at KU, which was primarily
22 targeted to people working in state government, the
23 focus was on the legislative process on public
24 finance, public organizations, and how they operate.

25 Q. And, for example, when you did your master's

1 thesis, what was that on?

2 A. It was on the enactment of the 1992 School
3 District Finance and Quality Performance Act.

4 Q. Now, I want to -- now, let's get some
5 personal information about you. Give the Judges a
6 glimpse of your personal background.

7 A. Well, I guess I would just say that my adult
8 life has been basically working on education issues
9 in the State Legislature as a lobbyist first for
10 university students in the 1980s. Since that time,
11 my work has been around representing school boards,
12 and pretty much in the legislature's -- been my major
13 focus. I also served 11 years as a member of the
14 local board of education. Raised three children, one
15 of whom, as you've heard, is getting married
16 Saturday.

17 Q. All right. Let's drill down a little bit on
18 your exposure to school finance over time. Outline
19 for the Judges what your familiarity has been with
20 school funding in Kansas as part of your employment
21 or education.

22 A. Well, my primary, I think, professional
23 responsibility with KASB is to monitor all
24 legislative and State Board of Education activities
25 around educational policy. Probably the area of the

1 largest interest or major interest of our members is
2 always school finance.

3 And so my job requires me to be in virtually
4 every legislative hearing or meeting to testify on
5 our positions, to evaluate those positions, and
6 inform our members as to public policy, proposals,
7 and changes.

8 And so, in that capacity when the
9 Legislature is in session or any interim meetings or
10 other activities during the year where issues of
11 public policy, finance, and otherwise are being
12 discussed, I'm primarily responsible for either
13 myself or supervising people who monitor that,
14 evaluate that, communicate it to our members. And
15 then, through our decision-making process, we adopt
16 policy positions that I then represent to the
17 Legislature as a lobbyist.

18 Q. So as part of your role with KASB, you
19 monitor legislative activity with regard to school
20 finance?

21 A. Yes.

22 Q. Would you say that's your primary
23 responsibility?

24 A. Well, monitoring legislation and other
25 public policy issues are. I would say, probably

1 school finance I'd say yes, because there is so much
2 interest in that, and that's one of the major things
3 the Legislature looks at. But we also do try to
4 follow other education policy issues like
5 accreditation, school improvement, changes in
6 education policy. Often they're kind of tied
7 together.

8 Q. And talk to us about what the Kansas
9 Association of School Boards is.

10 A. We are a voluntary association of local
11 school boards and certain other local educational
12 entities. Community colleges, for example, or
13 technical colleges can belong, as well as local,
14 interlocal cooperatives, such as service centers or
15 special education cooperatives. But our primary
16 focus is on representing local school boards. Our
17 members are the school boards, not individual school
18 boards -- not individual school board members
19 themselves.

20 Q. Okay. Let's go back and talk about a little
21 bit of the history of school funding in Kansas and go
22 back to the occasion when SDEA stopped and SDFQPA
23 began. Are you with me in time?

24 A. Yes.

25 Q. Time fix that occasion for the Judges,

1 please.

2 A. There was, I believe, several cases,
3 lawsuits brought in around 1991 following certain
4 action or inaction by the Legislature that went
5 before Judge Bullock. And essentially, he issued an
6 opinion in advance of trial. I think he called it
7 the outline how he said he would rule if it came to
8 trial over the loss -- the state of school finance at
9 that time, but gave the Legislature the opportunity
10 to try to make a change.

11 In the 1992 session they did so. And I
12 think it's fair to say it responded to three things.
13 Concerns about the equity in the formula. Tied to
14 that was Kansas was going through a major concern
15 about property tax, and so there was a change in,
16 sort of, how the schools were funded in part to lower
17 property tax. And third, concerns about educational
18 quality.

19 And so certain academic standards and other
20 issues were written into that law, so it both changed
21 the school finance system, and kind of gave us our
22 modern system of evaluating -- trying to evaluate
23 schools on the basis of student performance.

24 Q. And in terms of to whom the duty is owed,
25 was there any change in between SDEA and SDFQPA

1 regarding the duty owed in terms of providing a
2 suitable education?

3 MR. CHALMERS: I think that's
4 calling for a legal conclusion. I'm not sure how
5 this is relevant, but I don't think he should be
6 talking about what duties are imposed under the
7 statutes. That's for the Court, and I object.

8 JUDGE THEIS: He's going to talk
9 about the changes, as I understood, which --

10 MR. RUPE: Right. Changes and
11 their rationale for those changes. And I'm going to
12 ask him if it was a change. It may not have been a
13 change.

14 JUDGE THEIS: Why don't you,
15 please, listen to it, Mr. Chalmers. And then, if
16 it's something that you think's not apropos or
17 proper, you can object to the response. How's that?
18 Or the question.

19 Q. Okay.

20 A. As I remember it, it was Judge Bullock in
21 his preliminary -- I think in the preliminary rules
22 of law he set forth, that he clearly stated that the
23 duty was to the child, not to school districts or
24 taxpayers.

25 MR. CHALMERS: And I do object

1 because I think Judge Bullock said that, and then it
2 worked its way to the United States Supreme Court in
3 the Rodriguez case and San Antonio case where they
4 clarified that there was no such extended duty, and
5 that's never been ruled on in Kansas.

6 So we'd be hearing, the first time,
7 testimony from the witness talking about something
8 that's not resolved in this jurisdiction and that
9 this Court needs to decide.

10 JUDGE THEIS: Well, what Judge
11 Bullock said is what he said. And whether that's
12 right, wrong, or indifferent, I don't know, up to
13 others --

14 MR. RUPE: That's apples and
15 oranges. He's suggesting the Rodriguez case changes
16 the duty under the Kansas Constitution, and it
17 didn't. And we can argue the law on that.

18 MR. CHALMERS: Well, but Judge
19 Bullock ruled based on Equal Protection basis. He
20 wasn't looking, at that point, at the Article 6 of
21 Kansas Constitution.

22 MR. RUPE: Yeah. But the 229 case
23 and the Montoy case adopted Judge Bullock's duty
24 argument as to who the duty -- to whom the duty was
25 owed.

1 MR. CHALMERS: No, they didn't.

2 MR. RUPE: Well, they did.

3 MR. CHALMERS: That's --

4 JUDGE BURR: Something tells me
5 you're going both to tell us that in closing
6 arguments. And in the meantime, let the gentleman
7 testify and go from there.

8 MR. RUPE: Okay. Very good.

9 Q. (By Mr. Rupe) In the context of how SDFQPA
10 came about, explain what the change was and why it
11 happened.

12 A. I think the first fundamental change was
13 that it created a base budget per pupil, so that
14 previously districts, essentially, had authority to
15 set their budget locally as a budget within certain
16 limits, and the State provided dollars to help lower
17 the cost to the local property taxpayer. What the
18 new law did was say that funding would start with a
19 set amount per child, and that that amount would be
20 modified by various weighting factors. So in that
21 sense, I guess it became a more student-centered
22 funding system.

23 Q. Okay. And in terms of the weightings and
24 the explanation of the weightings -- first, let me
25 make sure we provide this information. The Exhibit

1 32, which is in evidence in this case and will be
2 available to the Court, is what?

3 A. That is the paper I wrote for my master's
4 degree in public administration.

5 Q. And that chronicles the 1992 Kansas school
6 finance act and the changes that occurred?

7 A. Yes.

8 Q. And the circumstances in which it occurred?

9 A. Yes.

10 Q. Okay. Now, when you say, base system, is
11 that any different than what some folks call a
12 foundation system?

13 A. I'm not sure I can say what everyone would
14 consider to be a foundation system. It does provide
15 for every child and for every school district a floor
16 of funding. So in that sense, I suppose that would
17 be one definition.

18 Q. Let's talk about the SDFQPA, and I will put
19 before the Court, Exhibit 19 --

20 MR. RUPE: -- which individual of
21 this is in the front of your exhibit notebooks.

22 Q. But is Exhibit 19 a list of the weightings
23 in terms of a general idea of how the formula works?

24 A. Yes.

25 Q. Okay. When the formula was first devised,

1 can you tell us what the weights were in 1992, the
2 first year?

3 A. 1992, and I'm not sure I can remember
4 specifically, the largest weighting at that time was
5 the low enrollment weighting. That was created to
6 avoid having smaller districts which had always had
7 somewhat larger budgets, in general, because of
8 diseconomies of scale -- were sort of protected under
9 the new system.

10 And then, it also had an at-risk weighting,
11 much smaller than we have now, a smaller bilingual
12 weighting, and a vocational weighting, which I think
13 is still the same; maybe the only one that's still
14 the same. And I believe in the initial act in '92, I
15 think those were the only four weightings.

16 Special education we now call a weighting,
17 but that's sort of an accounting issue. Special
18 education has always been funded a little bit
19 differently. We make it a weighting for the purposes
20 of calculating the total budget, so we haven't really
21 changed how we fund special education.

22 Q. Okay --

23 A. Going back into the SDFFA.

24 Q. And the rationale behind low enrollment
25 weighting was what, please?

1 A. Rationale in low enrollment weighting is the
2 idea that as schools get smaller, you have to spread
3 costs, fixed costs over fewer students, so the cost
4 per pupil is higher.

5 Q. So if you can only -- if you can bus three
6 hours a day and only get ten to 15 kids to the
7 classroom, that per pupil cost for that teacher is
8 going to be higher?

9 A. You will have fewer kids to spread the
10 teacher over, fewer kids to spread the principal,
11 superintendent over, and that's why it is a linear
12 formula that basically says, the smaller you get as a
13 school district, the more money you get per child.

14 Q. Let's take another child and explain the
15 rationale that existed for the change in the
16 circumstance which was the at-risk weighting?

17 A. When the '92 law was put into effect, there
18 was a fairly small and, I think, fairly recent
19 program where the Legislature had just put a pool of
20 money available, almost for purposes of just making
21 grants, I think. I'm not even sure it was entitled
22 to every district.

23 I think at that time in the early '90s,
24 there was growing realization that some kids,
25 particularly kids in poverty, have higher costs. And

1 so that for the first time -- and I believe the
2 original weighting was .05 -- was essentially taking
3 the money that had been in that grant program and
4 making it a weight, so it then, in effect, became an
5 entitlement.

6 Q. And I think we're all familiar with that,
7 but the weighting simply adds a weighted factor to
8 the one student in the base state aid and becomes a
9 multiplier that allows more money to get to that
10 school district because of that weight?

11 A. That's correct.

12 Q. Well, let's move forward under SDFQPA from
13 1992, and explain the changes that occurred in the
14 formula.

15 A. Well, I think the most important changes
16 that occurred in the formula through the
17 Legislature's reaction after the Montoy case was to
18 substantially increase the at-risk weighting and the
19 bilingual weighting.

20 Q. Let's talk about that for a minute because
21 the -- did the focus of the Legislature -- in
22 changing the formula following the Montoy decision,
23 did the focus of the Legislature look at actual costs
24 of education, outcomes and -- or inputs and outcomes?

25 MR. CHALMERS: Your Honor, I'm

1 uncomfortable about having a witness testify about
2 the intent of the Legislature. And there was the
3 Montoy decision. We've got the history set out in
4 the Montoy decision, whatever conclusions you wish to
5 draw from that. But I don't think that an individual
6 can come in and say, this is what the Legislature
7 intended.

8 MR. RUPE: He's explaining the
9 rationale for it. He's explaining what --

10 MR. CHALMERS: That's my point,
11 Counsel.

12 MR. RUPE: -- he does. He's
13 identified as an expert, so if it's an opinion, you
14 took his deposition, he's got the opportunity to
15 explain his opinion concerning the changes he's
16 identified for that purpose.

17 MR. CHALMERS: If the opinions are
18 only your question --

19 JUDGE THEIS: Your question kind of
20 asks him what the Legislature did, looked at.

21 MR. RUPE: Right.

22 JUDGE THEIS: Looked at rather than
23 explain the --

24 MR. RUPE: Well, that is --

25 JUDGE THEIS: The reason for the

1 result.

2 MR. RUPE: The question to him is
3 with his background, whether, in his opinion, the
4 Legislature looked at actual cost.

5 JUDGE THEIS: Explain how
6 was at-risk weighting determined. How's that?

7 MR. RUPE: I'll do it that way.

8 Q. (By Mr. Rupe) After Montoy, how was at-risk
9 weighting determined?

10 MR. CHALMERS: Just for the record,
11 I object -- I understand your ruling -- because I
12 think you're now having a witness either testify to
13 the law, which is not helpful and is not a proper
14 subject for expert testimony, or we're having him
15 express testimony as to what the Legislature
16 intended. We have legislative history. We know what
17 happened. It's not proper to have a witness express
18 a view on that, and I object.

19 JUDGE THEIS: I overruled his
20 objection.

21 MR. RUPE: Okay.

22 Can you read my question back?

23 And the judge's comment.

24 (Requested portion of the record
25 was read.)

1 A. After the Montoy decision, if I remember the
2 chronology, the Legislature passed a law directing
3 the Legislative Division of Post Audit to do a cost
4 study of both the cost of both meeting state
5 requirements or inputs, and to achieve the outcomes
6 that the State had set.

7 That study came back and proposed levels for
8 a number of various weightings, including at-risk.
9 The Legislature, I don't believe they adopted exactly
10 what their response was, but it was -- it was fairly
11 close, and apparently close enough for the Court.

12 Q. (By Mr. Rupe) Now, the other weighting that
13 changed following Montoy was what?

14 A. Well, there were -- there were --

15 Q. The other weightings that changed were what?

16 A. There were some weightings that actually had
17 been changed. I don't necessarily remember what
18 order they came in but, for example, the
19 non-proficient weighting was added to give a factor
20 for districts that had very few low-income kids but
21 felt they also had at-risk kids.

22 Q. And let me ask you in terms of the
23 non-proficient weighting, did the -- what was the
24 reason for that additional weighting?

25 MR. CHALMERS: Just -- I wonder if

1 I can just have a running objection --

2 MR. RUPE: That's fine.

3 MR. CHALMERS: -- if that's all
4 right.

5 Q. (By Mr. Rupe) What was the reason for that
6 additional weighting?

7 A. Well, I believe that that weighting was
8 largely in response to concerns that poverty is not
9 the only factor that can make a child at-risk. And
10 so it provided some dollars that would go to
11 districts that was not just based on the number of
12 kids on free and reduced lunch.

13 Q. And in terms of bilingual, the same
14 question, in terms of that weighting following
15 Montoy, what did the Legislature do?

16 A. The bilingual weighting was increased rather
17 significantly. I believe it was doubled.

18 Q. And in terms of the Legislative Post Audit
19 report to the Legislature, did it -- and we can get
20 it out if you want to look at it -- but did it
21 contain information about the cost of educating those
22 ELL kids?

23 A. It did, and it suggested there was a
24 discrepancy between what that study found and what
25 the current weighting was.

1 Q. Did the weighting change as a result?

2 A. The weighting was increased after that.

3 Q. So after Montoy, if I'm understanding your
4 testimony, the Legislature responded with an increase
5 in bilingual, an increase in at-risk, and then the
6 non-proficient weighting, as well?

7 A. Yes.

8 Q. Were there any other changes following
9 Montoy?

10 A. Well, and this is why I'm not -- what I'm
11 trying to remember is, there was a response passed to
12 Montoy in the regular session, and then there was a
13 special session that made a number of other changes.
14 And then the next year -- and I believe that would be
15 2006 -- there were another set of changes.

16 So I'm not entirely sure what happened when,
17 but I believe it was new facilities weighting that
18 was added at that point. The special declining
19 enrollment weighting was added at that point. There
20 were some other weightings that came in at that same
21 time.

22 Q. Okay. In your observation in the
23 Legislature, how many studies have there been that
24 looked to the actual cost either by the Department of
25 Education or by the Legislature?

1 A. Well, there were two independently
2 commissioned studies that the Legislature did. The
3 Augenblick & Myers study, and then -- or the
4 Legislature had done -- and then the Legislative Post
5 Audit study.

6 Q. Okay. And do you have knowledge of whether
7 at some point Dale Dennis did a study?

8 A. Well, the reason I'm hesitating is I imagine
9 that Dale has been asked to do a lot of things and
10 produce a lot of information, and I guess the
11 question was, how do you define a study. I'm talking
12 about the two that were kind of specifically
13 identified and funded separately. There may well
14 have been other things that were informally asked for
15 around particular issues, but I'm not sure I could
16 tell you specifically what they would be.

17 Q. So we familiarize the Court with what
18 resources they have on this topic, let me show you
19 Exhibit 34. What is Exhibit 34, please?

20 A. This appears to be a PowerPoint program that
21 I put together for last December's KASB convention.

22 Q. Turn to page 37 to 41, which is -- it's
23 Bates numbered, but the last two letters (sic) are
24 37.

25 A. I see it.

1 Q. And would you walk us through the slides in
2 your presentation on the history from 37 to 42,
3 please?

4 A. On page 37, I think this slide was designed
5 to help our members understand all the aspects that
6 go into school budgets, not just looking at the base
7 budget per pupil or some of the other add-ons,
8 because there's been a lot of discussion in the
9 Legislature and elsewhere about what is all the money
10 made available.

11 So the first slide tries to simplify it by
12 noting that we would expect districts to spend about
13 \$5.5 billion. And if you divide that by the number
14 of students, that's about \$12,000 per student,
15 reminding them that's obviously considerably more
16 than a \$3,700 base budget per pupil. So what are
17 those other components?

18 And on next page, 38, just to make these
19 very round numbers to help people understand it, out
20 of that 5.5 billion, about 2 billion is what the
21 State provides in the base budget and the enrollment
22 weights. So that's, in effect, what districts
23 receive from the State without any additional local
24 effort for ongoing operating expenses.

25 Then, there's about a billion dollars in

1 what I call targeted state aid, which is money that
2 the Legislature provides through the weighting
3 factors and through special education that have to be
4 used, essentially, for specific purposes. For
5 special education, at-risk, bilingual, districts
6 receive these moneys, but they can't spend them how
7 they want. They really have to spend them to deliver
8 the legally required services.

9 Q. So I'm on track, your targeted state aid
10 would be the money that is associated with the
11 weights you identified?

12 A. The money associated with those weights that
13 bring with them a requirement to provide a service.
14 So, for example, I do not include as targeted
15 weighting low enrollment, or we also have a high
16 enrollment weighting, because those dollars, the
17 district gets them through the formula, but they can
18 really decide how they want to spend it. The
19 targeted weights, you're pretty much obligated to
20 spend it for certain reasons.

21 Q. Continue on with the explanation.

22 A. The next big chunk of money, about a billion
23 dollars, are local option budgets which districts can
24 pretty much spend how they want, at least as far as
25 operations are concerned.

1 And then, the final major category, 1.5
2 billion, are really capital costs, the KPERS pension
3 cost, and then other local revenues, that would be,
4 for example, lunch fees, or fees to ride a bus or to
5 participate in an activity, or for textbooks. Most
6 of those dollars, which are raised locally, also are
7 rather limited for a particular purpose.

8 Q. What do you mean by "limited for a
9 particular purpose"?

10 A. You can charge lunch fees to offset the cost
11 of your lunch. You can't charge lunch fees just to
12 make money and give teachers a raise from it.

13 The student fees, under state law, have to
14 be used for a particular purpose authorized by the
15 Legislature, so they're usually associated with
16 textbooks or towel rental or something like that.
17 Again, you can't use student fees just to supplement
18 the general operation of the district.

19 Q. Why wouldn't KPERS fit into unrestricted
20 state aid or your targeted state aid categories?

21 A. Well, because KPERS is really just an
22 accounting purpose to assign cost to the district.
23 Every year the district calculates what the -- I
24 should back up by explaining, the State Legislature,
25 through appropriation, pays the employer share for

1 local school districts. Unlike cities and counties
2 which have to make their own employer contribution,
3 the State makes an appropriation to pay the State's
4 share of the retirement for school district
5 employees.

6 For budgeting purposes, that amount has to
7 be put in the district budget, but it's simply
8 then -- an electronic transfer is made to every
9 district for that amount, they enter it on their
10 books, and they immediately send it to KPERS. So
11 it's a dollar that's put in their budget to sort of
12 recognize their share of the KPERS cost, but they
13 have no flexibility in spending it. It's a pass-
14 through.

15 Q. You said, I'm sorry, a pass-through?

16 A. A pass-through.

17 Q. Continue with your presentation on the
18 explanation.

19 A. On page 39, I tried to draw just a couple of
20 major trends about what has happened since the law
21 was implemented, noting that total funding over this
22 20-some years has more than doubled, and that's
23 certainly more than the increase in enrollment. But
24 the part of the -- for the base budget has only gone
25 up about 11 percent.

1 Special education, at-risk, and other
2 restricted funds have increased about four times as
3 much. Local option budget funding increased ten
4 times over this period. Federal funding increased
5 three times, and all others increased by about five
6 times.

7 The point of that was simply to indicate
8 that since 1992, our system, from the school
9 perspective, the base budget represents a smaller
10 amount; targeted funding, where the State requires
11 you to do certain things, is a bigger, much bigger
12 part of your budget.

13 Since '92, districts have come to rely more
14 heavily on the local option budget. So to some
15 extent, we reversed, or at least went back to some
16 degree on the original intent of the law, which was
17 to have more state funding as opposed to local
18 funding. And capital costs, bond and interest, those
19 areas have also increased more rapidly than local
20 district general operating funds.

21 Q. The next slide is what?

22 A. On page 40?

23 Q. 40.

24 A. Okay. Page 40 shows the school district
25 operating budgets, which are basically the base

1 budget and weightings and LOB, that as a percent of
2 total Kansas personal income; that's what the blue
3 line represents. And what that is designed to show
4 is that this goes back to 1975. In 1975, Kansans
5 spent about at 3.5 percent of the total personal
6 income in the state on school budget operations.

7 That peaked in the mid '90s as the new law
8 was being implemented, and it has tended to drop down
9 since then. You will see a spike in about 2009.

10 That basically is because school district budgets
11 were already set when, at the beginning of the Great
12 Recession, Kansas personal income dropped. And so
13 mathematically, it kind of jumped up, but then it
14 fell back down.

15 The red line on top of that shows total
16 district expenditures. And I've only been able to
17 find that data back to about 1990, and so that's why
18 it's incomplete. So as you can see, those parts of
19 the budget that are not as flexible, I guess you
20 could say, has taken a bigger share of those budgets,
21 whereas operating budgets have been trending somewhat
22 downward compared to personal income since the --
23 really since the new law was fully implemented.

24 Q. But if I'm tracking with your exhibit here,
25 page 40, the gap is between what the actual operating

1 budgets are, and then the red line would be those --
2 the gap between the blue and the red would be those
3 areas in which there's no flexibility to use the
4 money for operations?

5 A. That's generally true. It would be bond and
6 interest, bond payments, capital outlay, KPERS;
7 federal dollars would also be included in there, and
8 then any other local revenues, local fees, those
9 kinds of things.

10 Q. Why don't you include those on the blue
11 line?

12 A. For one thing, because what I've tried to do
13 is have a consistent definition as far back as
14 possible, and so some of that we don't have good data
15 for, that's number one. Number two, as I indicated,
16 just about everything else in that gap are things
17 that the local school district doesn't have much
18 flexibility for.

19 So local districts, for example, one part of
20 this has been an increase in construction cost;
21 districts building new buildings, issuing new bonds.
22 That portion of their budget has gone up in recent
23 years, but those dollars are not available for
24 ongoing instructional activities.

25 Q. Okay. In terms of the next part of the

1 presentation, page 41, is that where we are? Explain
2 that to us.

3 A. Well, that was, I think, just the summary
4 that I just tried to say before. It's just to note
5 that the major changes, I think, in the formula has
6 been there's a much greater emphasis on directing
7 dollars to particular groups of kids with particular
8 needs. There has been an increased reliance on local
9 funding through the LOB, through capital outlay, and
10 bonding, and other local sources, which, as I
11 indicate, is much more limited in how you use it.

12 We also thought it was interesting that,
13 despite the fact that academic outcome requirements
14 have been going up because of No Child Left Behind,
15 the portion of operating -- the federal side of this
16 has actually stayed relatively small, and the school
17 spending compared to personal income has been level
18 or, if anything, kind of dropping, particularly in
19 the operating side.

20 Q. And while we're at that point in terms of
21 the No Child Left Behind, that would be under the AYP
22 targets? Is that what you're talking about?

23 A. The AYP targets are required by No Child
24 Left Behind.

25 Q. And in terms of other standards that schools

1 are required to meet, would Common Core Standards
2 that are being implemented fall in that category?

3 A. They wouldn't at this point because to this
4 time, the accreditation system -- state law requires
5 the State Board of Education to have an accreditation
6 system based on increases in student performance, and
7 that goes back to 1992.

8 After the federal law was passed, the State
9 Board of Education simply adopted those federal
10 requirements to use as the benchmarks for measuring
11 increases in academic performance. And so now, your
12 accreditation is based on the state department's
13 evaluation of how well you're doing in reaching those
14 targets.

15 Q. When you say the targets, it's the AYP
16 targets?

17 A. Yes, the Adequate Yearly Progress annual
18 targets.

19 Q. And we've seen what those are. There's no
20 reason to repeat that. All right. Continue with
21 your page 42, please.

22 MR. CHALMERS: Just so that I don't
23 get lost, am I supposed to be objecting when he's
24 wrong on the law? I mean, I -- just to preserve it
25 and I think I'm supposed to -- I've preserved my

1 objection, I think. And he'll say what he does, and
2 I'll cross-examine, and eventually you'll look at the
3 law, I think.

4 But if Your Honor left me with the
5 obligation to stand up and say, look, I think he's
6 wrong on this, then I need to do that at this time.

7 JUDGE BURR: I think we just nodded
8 our heads a while ago. Maybe we should protect the
9 record by agreeing that it could be continuing.

10 JUDGE THEIS: Well, yeah, you can
11 have a continuing objection. The point that I wanted
12 to make a while ago is if there's some particular
13 point you think he's way off --

14 MR. CHALMERS: Well, I think he's
15 way off. So my preference would be, Your Honor, I
16 think so as not to --

17 JUDGE THEIS: Statistical
18 statements like he's made, whether it's percentage --

19 MR. CHALMERS: Oh, I can cross-
20 examine on that. My point was he's now giving
21 opinion on what the accreditation requirements are in
22 Kansas that just is wrong and ...

23 MR. RUPE: Are you saying AYP is
24 not part of the Kansas accreditation?

25 MR. CHALMERS: He said, it's all

1 part of it, and that's not quite true, either, too.
2 But the point I guess I need to make, to preserve my
3 record, I'd be happy to just have a continuous
4 objection and we can sort out what the law is later.

5 JUDGE THEIS: We'll wait for your
6 cross.

7 JUDGE BURR: Yeah.

8 MR. RUPE: All right.

9 Q. (By Mr. Rupe) Let's go to the page 42.

10 A. Okay. This document talks about the total
11 increase in school funding, and then it just tries to
12 sort of break that out again. This was designed to
13 try to primarily help our members understand, kind
14 of, the trends in finance.

15 Broadly speaking, a total increase in
16 funding of about \$3 billion. We calculated that
17 keeping up with inflation and teachers' salaries,
18 which increased about 60 percent, would account for
19 about 1.5 billion of that. Another billion was
20 essentially new dollars that were reflected in
21 special education, targeted weightings, and federal
22 aid.

23 So again, of that increase or of that total
24 budget, that's about how much is directed in those
25 areas. And then identified that the remaining \$500

1 million of increase is primarily associated with
2 KPERS and capital costs.

3 Q. Those would be in those non-flexible amounts
4 that you were talking about?

5 A. Yes.

6 Q. You have an explanation on 43 regarding
7 equalization features. Please explain that slide.

8 A. Well, first of all, to note that -- you
9 know, we often have questions about what do we mean
10 by equalization. So this indicates that the first
11 part of the formula is general state aid, which is
12 really, again, your operating budget, where the State
13 either pays for it, or all districts have a uniform
14 20 mill levy. So in a sense you could say that's
15 fully-equalized because everyone has the same local
16 tax effort to get there, or it's funded directly by
17 the State.

18 In addition, there is \$250 million, roughly,
19 and that's going up, of the KPERS payment -- which
20 again, does not require a local tax effort to do it,
21 it's a simply a pass-through from the state -- and
22 roughly \$400 million in federal aid, which comes
23 directly to the State. So there's no disparity in
24 tax effort required to achieve that.

25 On the next page there are really two big

1 issues of the formula where there is some state aid
2 paid but there's still pretty significant differences
3 in the tax effort that would be required to get
4 there. Of that, a little less than a billion dollars
5 in local option budget aid. There is state aid
6 provided for the LOB, but it is not a system which
7 means that you can get the same amount at exactly the
8 same tax effort. The State helps with it, but
9 there's still some disparities that remain and it's
10 not fully funded now. Likewise, their state paid for
11 bond and interest programs, so that lower wealth
12 districts get state aid if they have a bond issue.

13 Finally, we just identify that, sort of,
14 remaining \$450 million that is either capital outlay
15 or other local fees that you might charge, there's no
16 equalization aid provided for that.

17 Q. Okay. When did the capital outlay
18 equalization end?

19 A. I believe it was three years ago.

20 Q. And the capital outlay equalization, what
21 does that mean?

22 A. Well, there is a formula by which lower --
23 lower valuation per pupil districts are entitled to
24 get payment from the State, so that in addition to
25 what you raise locally, you would receive an amount

1 of money from the State to help you with capital
2 outlay costs. Capital outlay costs are pretty much
3 limited to things like building, construction repair,
4 remodeling, equipment, those sorts of costs; again,
5 not general operating expenses.

6 Q. The capital outlay equalization has been
7 described by me as a mechanism to boost the buying
8 power of districts that have low property wealth. Is
9 that accurate?

10 A. I would agree with that. If you're a
11 district that -- and because generally districts --
12 the most I believe you can have is 8 mills. If your
13 8 mills doesn't raise very much per pupil because you
14 don't have much wealth, the program was designed to
15 have the State give you some additional dollars to
16 kind of match that.

17 Q. In terms of page 45 as part of your
18 presentation, explain the district reliance on state
19 aid slide.

20 A. This was really just to remind people that
21 out of the total school funding, that in 1994, under
22 the new law, the State was paying about 56 percent of
23 the total costs. That increased a little bit by 2000
24 because the State had lowered the statewide mill
25 levy, made some other changes.

1 It fell further prior to the Montoy
2 decision. In 2008, that had gone back up to about 58
3 percent. So it was really just, I guess, as much as
4 anything, to help people understand that since the
5 new system has been in place, generally, between 50
6 and 60 percent of total funding, total funding comes
7 from state aid. In terms of operating costs, it's
8 much higher than 50 percent.

9 Q. In terms of the operational side of this,
10 the money you have identified comes through the
11 weights when school districts have special needs that
12 cost them more, true?

13 A. Well, that's the purpose of it. If you have
14 more students or programs that generate weightings,
15 you receive more dollars in your budget.

16 Q. Turn to slide page 46 in your presentation
17 and explain the state general fund in K-12 aid.

18 A. Let me use review this.

19 This was really just designed to show that
20 school funding is really pretty tied to the health of
21 the state general fund. This just shows you from
22 1994 to 2000, when the economy was pretty good and
23 the State was trying to reduce taxes, the state
24 general fund was increasing an average of about 6.7
25 percent per year, and aid to school districts went up

1 about 7.3.

2 Between 2000 and 2004, when the economy was
3 not very good, the general fund really did not change
4 and state aid to school districts didn't change. In
5 implementing the Montoy settlement, Kansas was pretty
6 lucky because revenues again rose pretty
7 substantially, about 10 percent a year, and state aid
8 to school districts went up about that same amount.

9 What we've seen since then is that over that
10 period of time, there's been relatively little change
11 in the state general fund. It's about at the same
12 level that it was at the start of that period. We've
13 kind of recovered from the losses, and state aid to
14 school districts have also been kept really very
15 level, taking all funds into account.

16 Q. And during that period of time, what has
17 been the increase in limited English learners?

18 A. I don't recall specifically. I know the
19 number of kids in those programs have increased.

20 Q. Let me ask you this way: Have the
21 demographics in Kansas schools changed over that
22 period of time?

23 A. Yes, they have.

24 Q. Describe for the Judges how it's changed.

25 A. It strikes me that the increase in the

1 students in bilingual programs has increased from
2 around maybe 4 percent -- 4 to 5 percent to 9
3 percent. The students with free lunch qualification
4 has also increased significantly. And perhaps
5 related to the ELL issue to some point, the Hispanic
6 population of the state has increased, student
7 population.

8 Q. Turn to Exhibit 33. We're going to hand
9 that to you, please. And this is the presentation
10 you made in September of 2011, is that right?

11 A. Yes.

12 Q. Turn to page 119 in that presentation, Bates
13 number EXP TALLMAN 000119. And what is this?

14 A. I think this was just a different kind of
15 graphic way of trying to illustrate those same kinds
16 of changes.

17 Q. Okay. So you don't have to do anything
18 other than identify the slide pages for us and what
19 is shown on those slides?

20 A. Slide -- well, page or slide 120, it shows
21 the -- I'm just trying to look at this -- the total
22 amount of school expenditures in millions of dollars
23 from 1993 to 2012.

24 And this shows the fact that it kind of
25 peaked in 2009; declined a little bit in 2012. If

1 you look down to the bottom blue, the dark blue,
2 that, in effect, shows the base plus weightings -- or
3 I'm sorry, that would show you what the base budget
4 per pupil would be if there were no weightings. In
5 effect, the base just times regular enrollment, which
6 as you can see has not changed very much at all over
7 that time.

8 This, again, was just designed to show that
9 if you look at the red bar, second from the bottom,
10 the increase in the weightings, then the increase in
11 special ed, the increased reliance on the local
12 option budget.

13 Q. Next page, 121.

14 A. This, again, compares that -- sort of a
15 different way of looking at it. The blue bars would
16 be the base state aid per pupil, the red bar shows
17 the base plus the impact of the weightings, and the
18 green bar shows what happens if you add the local
19 option budget.

20 Q. And then the next page shows changes
21 bookending 1998 to 2012?

22 A. Yes. What this shows is that, as a percent
23 of the budgets, the base in 1998 was about -- looks
24 like about 65 percent of operating budgets came from
25 just the base, and that dropped down to a little over

1 40 percent in 2012.

2 And you can also see the decline in the
3 enrollment weightings, whereas special ed, at-risk,
4 and bilingual, and other weights all increased
5 somewhat as a percentage. And the reliance on the
6 local option budget increased rather significantly
7 from about 9 percent to almost 30 percent.

8 Q. It looks like percentage-wise, the biggest
9 increase is in the at-risk and bilingual?

10 A. As a percentage of growth, I think that's
11 true.

12 Q. And is that consistent with what you've said
13 earlier about following Montoy the recognition by --
14 or the change in the formula because of the response
15 to actual cost?

16 A. Well, it reflects the fact that those two
17 weighting factors were significantly increased.

18 Q. That was after Montoy?

19 A. Yes.

20 Q. After the LPA?

21 A. Yes.

22 Q. The next slide is 123.

23 A. This slide was done to show that even with
24 the state equalization aid that is provided, there is
25 still a significant difference in the mill levies you

1 would have to have. I believe this was put together
2 in groups of ten, ten-percentile groupings, and it
3 just shows you that the very lowest-wealth school
4 districts would require over 40 mills to adopt a 31
5 percent LOB, whereas the wealthiest 10 percent would
6 only require about 17 mills to do so.

7 Q. Then, the next section is on the changing
8 student population, and that pretty much depicts what
9 you've already described here?

10 A. Yes.

11 Q. Now, let's move to Exhibit 24, if we could.
12 And explain what 24 is, please.

13 A. Well, this appears to be a printout from the
14 department of education for all districts that shows
15 the differences in assessed valuation per pupil.
16 Doesn't appear to be ranked, so it looks like it's in
17 order of USD number.

18 Q. And tell us, in terms of assessed valuation,
19 how that differs between districts.

20 A. Well, I think you can see that just by going
21 down the far right-hand column, that just in the
22 first three districts listed there's a -- the first
23 one would be \$62,000; the next one, 52; the third
24 district would be almost double or about double the
25 second. If you simply go down this, it just shows

1 that districts have significant differences in their
2 local wealth to try to raise dollars.

3 Q. And in terms of district wealth and raising
4 dollars, that obviously ties into how much money each
5 can raise with one mill?

6 A. Yes.

7 Q. And if we relied on a system that was
8 entirely based on property tax there would be a
9 substantial difference in the ability to raise money
10 among the school districts?

11 A. Yes.

12 Q. Okay, I want to show you Exhibit Number
13 Defendant's Exhibit 1068 --

14 MR. RUPE: And Art, if I could use
15 your easel. Or is that mine?

16 MR. CHALMERS: It's ours but you
17 can use it.

18 MR. RUPE: You're wearing the same
19 suit I had on yesterday.

20 MR. CHALMERS: I know. I was going
21 to wear it yesterday, too.

22 MR. RUPE: Thought maybe you took
23 my easel, too.

24 Judge, do you mind if we keep
25 going?

1 JUDGE THEIS: There has to be an
2 end to it sometime. Get me a reasonable spot. I
3 assume Mr. Chalmers is coming back tomorrow, isn't
4 he?

5 JUDGE FLEMING: Chalmers will be
6 here tomorrow.

7 MR. RUPE: Mr. Chalmers will be.
8 Mr. Tallman needs to be available in the afternoon to
9 be in Kansas City for his daughter's functions.

10 JUDGE THEIS: Okay. But he's --

11 THE WITNESS: I can come in the
12 morning for little while.

13 JUDGE FLEMING: How much longer do
14 you think you'll be?

15 MR. RUPE: I'm going to be a little
16 while longer. If you want to stop now, we can. I
17 could do this and then we could stop.

18 JUDGE THEIS: What's a little
19 while, though?

20 MR. RUPE: Probably 30 minutes. 30
21 minutes total, to finish his direct, is what I'm
22 thinking.

23 JUDGE THEIS: Who did you have
24 first in the morning?

25 MR. RUPE: Him.

1 JUDGE THEIS: So we planned on him
2 coming back in the morning?

3 MR. RUPE: Right. You want to stop
4 now and have him come back?

5 JUDGE THEIS: Why don't we go to
6 5:30 and then stop.

7 MR. RUPE: Okay.

8 Q. (By Mr. Rupe) I want to focus on
9 Defendant's Exhibit 1068, and what I want to direct
10 your attention to is the total expenditures. In
11 terms of the total expenditures, if you were called
12 upon to describe the total expenditures to a school
13 district, what would be the components that you would
14 look to? Federal, state, and local moneys?

15 A. Well, that's certainly one way to categorize
16 them. And I recognize that as the way that you can
17 access information from the State Department of
18 Education.

19 Q. In terms of what you previously described in
20 your presentations in looking at classroom
21 instruction, if you wanted to get numbers that showed
22 what the expenditures were that went to the
23 operations of the classroom, what would you include?

24 A. Well, I would tend to say that the best way
25 to look at general educational operation, and not

1 just instruction, but also support, professional
2 development, all of those categories, probably the
3 best way to look at that is the general fund and
4 local option budget. That's not really reflected
5 When you break out the dollars this way.

6 And just to give you an example of, I think,
7 what's complicated, as I understand this report,
8 this, for example, will show state aid would include
9 the KPERS dollars that I've talked about.

10 So the State has been increasing funding the
11 KPERS to make up for the unfunded liability. So you
12 may look at a district which would show, or you may
13 look at overall totals that would show that state aid
14 went up, or show that perhaps there wasn't very much
15 of a cut, when we've talking about what the cuts have
16 been in the base budget.

17 That may very well be, because in that
18 district, the increase in their KPERS funding was
19 enough to offset the cut in the base budget per
20 pupil. Likewise, you might have a district whose
21 local revenue would take the substantial jump because
22 they had a bond issue come on line, or because they
23 had a major capital outlay expenditure in that year.

24 And, of course, federal aid is even further
25 complicated in -- I think it would be basically in

1 2000 -- probably '10 and '11, if I'm remembering
2 right, because of the federal stimulus, the ARRA
3 dollars, which are federal money, but the State
4 basically just used to help pay for general state
5 aid, at least as I remember it.

6 So this will show that there was a big
7 increase in federal aid, but a large part of that was
8 to help replace State dollars for those years in
9 general state aid and in special education.

10 Q. So in terms of an accurate number of what
11 the cost would be, the amount of expenditures would
12 be for the operation of a classroom, if I'm
13 understanding you, you would subtract out KPERS,
14 local bond and interest, capital, and federal aid?

15 A. I think that's a fair way of looking at what
16 the districts actually have to pay teachers, hire
17 staff, hire support material or, you know, hire
18 support personnel.

19 Q. And I think this does show an increase, but
20 in terms of what we've heard in this courtroom -- I'm
21 sorry, it does show a decrease. But in terms of what
22 we've heard in this courtroom by way of cuts, budget
23 cuts, is it fair to say that money from KPERS, local
24 bond and interest, capital, those restricted federal
25 aid sums could not be accessed to supplant the loss?

1 A. That would be generally true. I think the
2 one thing that you would note is that the portion of
3 federal dollars for things like Title I or special
4 education aid, they're restricted in how districts
5 could use them, but they do go to instructional
6 costs. So that portion of federal aid would probably
7 be fairly characterized as part of the operating
8 budget.

9 But if you set aside the stimulus dollars,
10 my recollection is about half of federal -- half of
11 the dollars that show up as federal aid are student
12 meal support. They're the federal payments, you
13 know, when we talk about free lunch kids, I mean, of
14 course, there is no free lunch. It means the federal
15 government is paying for that.

16 So if you are a district that's had an
17 increase in the number of free lunch eligible kids,
18 you'll be drawing down more federal dollars for that
19 program. And so that part of your budget will go up,
20 but those dollars are not available to help hire a
21 new teacher or teacher aide.

22 Q. It would seem to me if the obligation to
23 fund education was a state obligation, it wouldn't
24 make sense to include the federal money at all, would
25 it?

1 A. Well, I guess I've always felt that if the
2 State is going to include federal dollars when
3 they're going up as part of what the State is doing,
4 then it should be responsible for those dollars if
5 they're cut. So I guess -- I think from our members,
6 we just say, if you're going to count them one way or
7 the other, we ought to be consistent in doing that.

8 Q. And are federal dollars going up or down?

9 A. Well, they have been increasing. I can tell
10 you that -- and I was just on a conference call this
11 week, that the Federal Sequestration Act (sic) -- I
12 think it's called -- that was put in place after the
13 super committee failed, would be targeted, next year,
14 to reduce our Title I money and our special education
15 money by 8 percent each.

16 So while there has been some increases in
17 recent years of federal aid, that could turn around.
18 And we don't know what the federal government will
19 do, but it's certainly possible that that could
20 drop.

21 Q. In terms of the federal Title I dollars, are
22 those restricted at schools so that they can't be
23 used for non-federal programs?

24 A. I would think -- I think that's correct.
25 I'm not an expert on those programs, but most federal

1 money comes with strings, and I'm sure the federal
2 government gives it to districts to use it for the
3 purposes they've set out. Now, a lot of that is
4 supplemental instruction. They pay for people to
5 help give special services to disadvantaged students.

6 MR. RUPE: This is probably a good
7 time to break.

8 JUDGE THEIS: We'll be able to
9 accommodate him fully tomorrow so he can get out of
10 here timely? Mr. Chalmers, do you agree?

11 MR. CHALMERS: I will accommodate
12 him. I think I'll be able to complete it, but I
13 don't know how long direct is going to be. Worse
14 comes to worse, I guess he can come back later. But
15 I think that I'll be done in a timely manner.

16 JUDGE THEIS: What is the plan for
17 tomorrow? We'll leave about 3:00.

18 MR. RUPE: We're going to have Mark
19 Tallman and then Dale Dennis.

20 JUDGE THEIS: You can get Dale
21 Dennis done?

22 MR. RUPE: I don't know if we can
23 but we're going to try.

24 JUDGE FLEMING: You can step down.

25 MR. RUPE: Okay. Thank you.

1 (Thereupon, the proceedings were
2 adjourned to June 8, 2012, at 9:00 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 7, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 281 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 5)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 8th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

1		
2		
3	MARK TALLMAN	
4	DIRECT (CONT.) BY MR. RUPE	1023
5	CROSS BY MR. CHALMERS	1071
6	REDIRECT BY MR. RUPE	1129
7		
8	DALE DENNIS	
9	DIRECT BY MR. RUPE	1138
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: Please be seated.
3 Thank you. Good morning.

4 MR. RUPE: Good morning.

5 JUDGE THEIS: What the Federal
6 Court did, but it's the old adage it's always better
7 to do your business while you're in charge of your
8 business.

9 MR. RUPE: Well, along those lines,
10 Your Honor, I'm going to go with Mark Tallman. We
11 met and we're going to try to eliminate some
12 witnesses that we've got, school witnesses, coming
13 in. And I've been doing this long enough to get the
14 impression that maybe cumulative could be a problem
15 down the road. So I am going to retool some of the
16 individual plaintiff witnesses so that we eliminate
17 some of them.

18 Probably spend a little bit more
19 time with Mark, because I want to get some
20 information from him that I saw that I wanted to
21 cover, all along the lines of what we've been talking
22 about.

23 But we're prepared to proceed this
24 morning with Mark. And I guess what I'm telling you
25 is, don't worry too much about the time. I think

1 we're going to streamline next week some.

2 JUDGE THEIS: Great. Thank you.

3 JUDGE FLEMING: Good.

4 MR. RUPE: Mark, you want to resume
5 the stand?

6 MR. CHALMERS: Is Dale today?

7 MR. RUPE: Dale's going to be here
8 and Mark needs to be gone.

9 MR. CHALMERS: I understand.

10 MR. RUPE: I asked him his drop-
11 dead departure date for his daughter's situation, not
12 situation, marriage, and he needs to be out of here
13 like noon or a little after noon.

14 MR. TALLMAN: (Nodding.)

15 MR. CHALMERS: Okay. Not a
16 problem.

17 MARK TALLMAN, having been
18 previously sworn was examined and testified as
19 follows:

20 DIRECT EXAMINATION (CONT.)

21 BY MR. RUPE:

22 Q. When we were visiting yesterday we were
23 talking about the diagram that shows USD 500's total
24 expenditures. And let me, if I can start, sort of
25 recap what I understood you to say so we're on track.

1 In terms of the total expenditures, in
2 looking at what is delivered as operations to the
3 classroom, you would not include your KPERS,
4 restricted federal funds, capital outlay or capital
5 dollars and food service dollars. Was there anything
6 else that you would not include?

7 A. Well, I clarify. I think that you probably
8 should include those federal dollars which are Title
9 9 and special ed would be the big programs, because
10 those do involve hiring teachers and individuals to
11 work directly with kids.

12 But I would suggest that food service is a
13 cost that isn't really directly related to providing
14 instruction and is basically just an entitlement
15 based on the number of eligible students.

16 Q. And then in terms of the number of budget
17 per pupil or the amount per pupil, this is a chart
18 we've seen, and again this is for Kansas City, but in
19 terms of that number, if you were looking at a way
20 for the Judges to compare apples to apples on per
21 pupil expenditures that were operations that went to
22 the classroom, would you separate out those other
23 funds that you've just mentioned?

24 A. Well, I'm not sure how to answer that,
25 because on this chart I don't know what cost function

1 funds per pupil means. I don't know what's in that
2 number.

3 Q. And do you know when you look at per pupil
4 expenditures, have you seen a number that high?

5 A. Yes, or higher. If you include all dollars,
6 you are going to get -- the statewide average is
7 about 12,000 or more. Being an average you're going
8 to have some districts above that, some districts
9 below that. Kansas City would be likely perhaps more
10 on the high side because of their numbers of
11 weightings because of the kids they serve.

12 Q. The special need kids?

13 A. That's right.

14 Q. So what I'm asking is, give the Judges a
15 sense of what they can look at in order to get a
16 district-to-district comparison of per pupil
17 expenditures, what would be included, in your
18 opinion, to be a fair comparison talking about
19 delivery of services to the classroom by way of
20 operations?

21 A. Well, I would suggest that what you would
22 most want to look at would be the general fund, which
23 is the base plus weightings; the local option budget,
24 and federal. I think it would be fair to include
25 those federal funds which are not food service.

1 And I'm trying to think that would also --
2 you know, there may be some other small amounts of
3 dollars. What I would say is the KPERS dollars,
4 capital outlay, bond and interest, transportation,
5 food service, those areas, while I think in the long
6 term and sometimes in the short term they have an
7 impact on learning, they're mostly -- they're not
8 dollars directly available to hire a teacher, to hire
9 an aide, to put in an after-school tutoring program
10 or something to that effect.

11 So I just think for clarification when we
12 look at the total amount of dollars, it's important
13 to realize some areas have been cut, some areas have
14 been increased. It's just important to understand
15 which area is doing what and the reason for that.

16 Q. Okay.

17 In terms of the -- I don't want to get into
18 a big legal argument, so I'm going to ask you to
19 assume something. Assuming the obligation to
20 suitably fund education is an obligation of the
21 State, in order to examine the state dollars you
22 obviously would subtract out the federal dollars?

23 A. I guess I understand where you're coming
24 from on that. The federal dollars are also something
25 the State doesn't control.

1 Q. All right. And those are controlled by the
2 feds, obviously, and not the State?

3 A. Right, yes.

4 Q. And I guess if you were going to include all
5 dollars, you'd have to include the contributions that
6 the teachers make and parents make and the
7 foundations make and the partners in business that
8 schools have contacted to help them with field trips
9 and so forth if you were going to include all
10 dollars?

11 A. I think that's true. And I would just say
12 that the total expenditures may include some of those
13 dollars, if, for example, a gift is made to the
14 district that goes into their gifts and grants fund.

15 Q. Okay.

16 A. There may be other things that are done in
17 partnership that doesn't ever directly go through the
18 school district budget.

19 Q. What I'd like for us to talk about if we
20 could is how the school funding is according to some
21 people increasing and the operation budgets are
22 declining and we have the scenario in school
23 districts that we heard here that occurred in Kansas
24 City, Kansas, with cuts. That's where I'm going.

25 But before I do that, I want to ask you

1 about whether the situation in Kansas City -- you
2 were here in the courtroom for some of the testimony,
3 weren't you, from the KCK folks?

4 A. The testimony yesterday?

5 Q. Yeah. What I'd like you to explain to the
6 Judges, if you would, is from your perch at the
7 Kansas Association of School Boards, the kinds of
8 cuts that Kansas City, Kansas, is dealing with, are
9 those isolated to Kansas City, Kansas?

10 MR. CHALMERS: I don't think
11 foundation's been laid for this. I object

12 JUDGE THEIS: Better lay a little
13 foundation for that.

14 MR. RUPE: Okay.

15 Q. (By Mr. Rupe) Talk to us about your
16 familiarity with what cuts have been made among your
17 members and how you gained that familiarity.

18 A. Well, we as staff obviously interact with
19 our membership, hear from them as part of the
20 discussion that goes into the position that we take.

21 I guess the other thing I would just say is,
22 by knowing what has happened to state funding you
23 have a good idea what's happening in every district.

24 A large portion of the cuts that have been
25 made at the state level in state aid where there were

1 reductions has gone through the base budget per
2 pupil.

3 When you reduce the base budget per pupil
4 under our system you reduce all the weightings in
5 proportion to that.

6 So essentially every district has had a
7 proportional decrease in all aspects of their
8 budget. Everybody has had the same decrease in their
9 base. Everyone has had the same decrease in their
10 at-risk funding or their bilingual funding, because
11 the weights are simply a percentage of a full-time
12 student.

13 So what that means is that a district that
14 may have a smaller percentage of students on free
15 lunch gets less of that weighting, but they also had
16 a reduction in the pool of dollars available to do
17 those services.

18 Likewise, another district that might have
19 again run a -- have a larger special education
20 population, they would have had that decrease in the
21 base that would go along with that that they'd have
22 to address.

23 So I guess what I'm saying is basically
24 districts around the state have had a largely similar
25 percentage reduction in their budget as a result of

1 how the cuts were adopted.

2 Q. And with regard to your knowledge of those
3 reductions and the cuts is it fair to say you keep
4 track of what the members -- what the consequences of
5 those cuts are to your members, either anecdotally or
6 as part of your responsibility in paying attention to
7 your membership?

8 MR. CHALMERS: The question is
9 compound. If we're trying to lay a foundation, you
10 should probably do one at a time. Object.

11 MR. RUPE: That's what I'm trying
12 to avoid is getting everybody from every school
13 district to get up here to talk about what we heard
14 in Kansas City, Kansas, and trying to give a macro
15 picture.

16 JUDGE THEIS: I think you want to
17 ask anecdotally what he knows.

18 Q. (By Mr. Rupe) How do you learn about the
19 consequences of the cuts?

20 MR. CHALMERS: Just for the record,
21 it's hearsay and I object.

22 THE WITNESS: Well --

23 JUDGE THEIS: Well, he's in charge
24 of the School Board Association, which I assume it's
25 his business to know what the school boards are

1 doing, so I think it's within his area of expertise,
2 put it that way.

3 Q. (By Mr. Rupe) Go ahead.

4 A. I'll give you an example of one of the
5 things we've done. And, frankly, we've worked with
6 information from the State Department of Education on
7 this, but we know that since 2009 total school
8 district positions of all kinds have been reduced by
9 about 2,500 positions. That's a statewide total.

10 And we would have the information on what it
11 means to every individual district. And districts
12 have some ability to make choices on how they would
13 respond to that.

14 But I guess that's an example that indicates
15 that statewide there has been a \$2,500 reduction in
16 teachers, in teacher aides, administrators, bus
17 drivers, school resource officers, all of that is
18 available as public record as to what each district
19 has done.

20 Q. Are you aware of the district school closure
21 plan that the Shawnee Mission School District has
22 adopted and their closing of schools for the first
23 time in a long time in their history?

24 MR. CHALMERS: It's hearsay and I
25 object. I guess if he just asked whether he's aware,

1 that's fine. It's the speech that I have a problem
2 with. Because counsel really knows the circumstances
3 of the closing and is misrepresenting, I think
4 accidentally, perhaps, but I object to the question
5 as it's phrased.

6 Q. (By Mr. Rupe) Let me hand you an affidavit
7 that was prepared by one of the plaintiff parents in
8 a lawsuit, *Petrella v. the State of Kansas*, which was
9 a group of parents suing to try to get additional
10 money for the Shawnee Mission School District.

11 Are you aware of that case?

12 A. Generally.

13 Q. And in that affidavit, to refresh your
14 recollection, there is a reference to a school
15 closure plan involving the Shawnee Mission School
16 District. And my question is, are you aware of that
17 plan?

18 MR. CHALMERS: I object to the
19 procedure here to take an affidavit in another case.
20 Mr. Rupe has intervened and represented testimony
21 that was contrary to the affidavit and asked this
22 witness to try then to refresh his recollection. And
23 it's now kind of an improper way to lay a
24 foundation.

25 Now he's aware I suppose because

1 he's given an affidavit Mr. Rupe contested in another
2 case.

3 MR. RUPE: And nobody contests,
4 including you, Art, that they were closing the
5 schools.

6 MR. CHALMERS: I think closing the
7 school because they were antiquated and outdated.
8 They had the closing plan already set in place. It
9 had nothing to do with the finances.

10 JUDGE THEIS: Well, for an expert,
11 there ought to be some facts in the record that an
12 expert can look at and say -- make an opinion from,
13 and this would be a proper basis for fact.

14 Q. (By Mr. Rupe) Go ahead. Are you aware of
15 that school closure plan?

16 A. I am -- well, I have previously been aware
17 that Shawnee Mission was going through the process of
18 closing schools.

19 Q. And do you know the reason for that
20 closing? Is it related to funding?

21 A. I believe I've heard that discussion.

22 Q. And in terms of the demographics of Shawnee
23 Mission, you talked yesterday about statewide the
24 demographics of free and reduced lunch and ELL kids.
25 And just to refresh our recollection, you indicated

1 yesterday that those are increasing, correct?

2 A. Yes.

3 Q. Is that the situation in the Shawnee Mission
4 School District, that the number of at-risk kids and
5 the number of ELL kids, although smaller than Kansas
6 City, Kansas, are in fact increasing?

7 A. It is my understanding that that is true of
8 the at-risk population. I haven't specifically heard
9 from Shawnee Mission about ELL. I just don't know.

10 Q. So in terms of the -- and I'm putting up
11 here Plaintiffs' Exhibit 107, in terms of the
12 statewide population trend, that free and reduced
13 lunch disadvantaged group, that group of poverty, has
14 increased considerably during the years 2006 to 2011?

15 A. Yes.

16 Q. And your information about the Shawnee
17 Mission School District is that that district, for
18 example, has had a substantial increase?

19 A. Yes.

20 Q. With regard to some of your districts that
21 are members in Western Kansas that have a significant
22 influx of immigrants, are those districts trending
23 the same way, and that is that they're having a large
24 influx of free and reduced lunch and ELL kids?

25 MR. CHALMERS: I think this would

1 move quicker if instead of having leading questions
2 he just asks the witness questions. I think that
3 question is leading. I think the last several
4 questions have been leading that suggest an answer.
5 I object and I ask that counsel ask his questions in
6 a non-leading fashion.

7 JUDGE THEIS: Where is the ELL
8 population increasing?

9 MR. RUPE: Yeah, let's do it that
10 way. Thank you, Your Honor.

11 Q. (By Mr. Rupe) Where is the ELL population
12 increasing?

13 A. Well, it is increasing statewide. It is
14 most pronounced in Southwest Kansas, but I think our
15 research department, Mr. Hayes, who I guess is not
16 going to testify, does a lot of work in this area and
17 actually in many of our larger areas like Latham, for
18 example, have also seen significant increases there.

19 So it is more generalized in certain parts
20 of the state, but I think you could say it is at
21 least to some extent a statewide phenomenon.

22 Q. Has that been a trend that started an
23 increase in 2008 to current?

24 A. Well, as the chart shows, in both of those
25 areas there has been a longer term increase.

1 Certainly the free and reduced lunch population
2 spiked up after 2009, which would be exactly what
3 you'd expect in an economic downturn.

4 Q. And ELL has trended up the same way?

5 A. That's right.

6 Q. Okay. Let's go back to my question then and
7 let me hand you Plaintiffs' Exhibit 328, which is in
8 evidence.

9 MS. GARNER: It's already in front
10 of him.

11 Q. (By Mr. Rupe) It's already up there.

12 And let's pose the question, how can school
13 funding increase if operating budgets are declining?
14 Is that what this article is?

15 A. Yes.

16 Q. What I'd like for you to do is to walk the
17 Court through the answer to that question.

18 A. Well, it is because, as I think this puts
19 together -- and this is a few months old, so I need
20 to familiarize myself with it just a little bit --
21 but I think what it indicates is that over at least
22 the last several years there has been increases in
23 some areas of district budgets going on at the same
24 time that there have been decreases in particularly
25 the base budget area, which affects the operating

1 **side.**

2 Particularly this year that is true of the
3 KPERS increase. And I think what we've indicated
4 here is that this past year KPERS contributions
5 increased by \$155 million from \$409 per pupil to \$748
6 per pupil.

7 Part of that is due to the fact that the
8 Legislature has passed legislation to increase the
9 percentage paid for every employee.

10 This year it was an even larger increase
11 because for budgetary purposes the Legislature
12 shifted, I think what this is showing is \$60 million
13 of payments that would have been made last year for
14 fiscal 2010, were just delayed and paid in 2011 in
15 order to, frankly, keep the state budget in balance.

16 And so that meant that in the current year
17 there was not only a regular increase but an
18 extraordinarily large increase.

19 The point I was trying to make in this
20 document is to simply help people understand that
21 while you can truly say that total spending this year
22 went up and depending on how things come down, it's
23 going to be maybe at an all-time high, almost all of
24 that this year is due to dollars which are passed
25 through budgets, which don't again get spent in any

1 other way, and really is sort of an accounting
2 anomaly.

3 Now, for example, for next year the
4 Legislature approved a \$40 million increase in the
5 base, and I think the KPERS contribution, because
6 they're getting back on track, is going to go down
7 \$40 million.

8 **So I just think we need to be honest and**
9 **say, okay, base aid did go up and just the fact that**
10 **\$40 million came down we shouldn't say, well, that**
11 **means districts didn't get any increase in their**
12 **operating side. I think we just have to be honest**
13 **and look at what is happening in the different parts**
14 **of the budget.**

15 So it's not untrue to say the total amount
16 went up. But I think it's important to understand
17 why one part of the budget went up and how that
18 doesn't have anything to do with offsetting the cuts
19 made on the operating side.

20 Q. And it sounds like what you're saying is
21 that as things go up in terms of the increases, the
22 increases are in areas that don't deliver the dollars
23 to the classroom and operations; is that a fair
24 statement?

25 A. At least in the area of KPERS that's true.

1 That would be, in many districts true, if you see
2 increases in the bond payments. For example, a
3 district that may have a bond issue that they passed
4 and have started making payments on, their budget
5 will go up to reflect that.

6 But that is only over here in this part of
7 the budget. It doesn't help you in terms of
8 offsetting reductions in another side of the budget.

9 Q. And talk to me about your chart at the
10 bottom of 328. It looks like you have made a
11 comparison of the major budget categories as a
12 percent of total spending --

13 A. Yes.

14 Q. -- is that right? And let's just juxtapose
15 2000 and 2012. Now, when it comes to the general
16 fund without special education, in 2000, what was the
17 percentage?

18 A. 62 percent.

19 Q. And what is it in 2012?

20 A. 44.4 percent.

21 Q. So the general spending without special ed
22 has decreased?

23 A. It's decreased as a portion of the budget.

24 Q. As a portion of the budget, yeah, that's
25 what we're talking about.

1 Then local option budgets, now that would be
2 the local raised money?

3 A. Local raised money and state aid, state
4 equalization aid.

5 Q. Equalized to a point?

6 A. Right.

7 Q. That is in 2000 9.2 percent. And what is it
8 in 2012?

9 A. 17.3 percent.

10 Q. So the local option budget, the money that
11 the local taxpayers pay to contribute to their
12 schools has nearly doubled?

13 A. As a share of the budget.

14 Q. As a share of the budget. And then KPERS in
15 2000 was 2.3 and in 2012 as a percentage of budget is
16 what?

17 A. 6 percent.

18 Q. Okay.

19 A. I do -- just to be clear, I should make one
20 other thing, and that is the fact that this document
21 was based on the information we had in November as to
22 what the dollars will be.

23 I believe, and I don't recall specifically,
24 that the Legislature actually made some further
25 shifts in the KPERS amount because of extra dollars

1 that were available and this would not include the
2 fact that the Legislature added supplemental funding
3 to keep the base budget from going down this year.

4 So these numbers may be different when we
5 have the final budget numbers. But we won't have
6 those until next fall, at least I won't have access
7 to them until next fall.

8 And that's one of the difficult things in
9 making comparisons from year to year is there's
10 always a situation of what the Legislature has
11 appropriated, which might change; and what local
12 districts spend, which is not aware in their budgets
13 until the year that you're in and may change by the
14 end of the year depending on decisions they make.

15 Q. And you're explaining the KPERS money, but
16 you heard the testimony in the courtroom yesterday
17 from the principal of Wyandotte High School, Mary
18 Stuart. Could Mary Stuart pick up her phone and call
19 the State of Kansas, the Department of Treasury and
20 say, I'm about to cut a couple of reading teachers,
21 can you send me some KPERS money to pay for it? Is
22 that possible?

23 A. That is not possible.

24 Q. Why is that?

25 A. Well, the KPERS money is appropriated

1 specifically to represent the school district
2 employer share of the required contributions into the
3 state pension system. It is money that is
4 appropriated specifically for that purpose. That's
5 all you could use it for.

6 Q. So if we're looking at what is the
7 obligation to kids in Kansas by way of public
8 education, the KPERS dollars would be restricted?

9 A. Yes, it is restricted.

10 Q. From use directly to the classroom, is that
11 correct?

12 A. Yes.

13 JUDGE THEIS: Can I ask why the
14 numbers aren't available until fall?

15 MR. RUPE: Sure.

16 THE WITNESS: Well, one of the
17 strange things about how school district budgets are
18 adopted is even though the year begins July 1st
19 districts don't actually adopt and certify their
20 budget until the middle of August. And then that
21 goes into the State Department of Education and they
22 check them and correct them, and it is not released
23 as a public document until sometime in the fall.

24 And then there are also audits that
25 go on all during the year. So the actual budgets of

1 the year we're in right now, for example, Fiscal Year
2 '12, won't be available until the end of the year for
3 even a current year.

4 JUDGE THEIS: You're not talking
5 about resources, you're talking about expenditures?

6 THE WITNESS: That would generally
7 be true, unless there's small amounts of dollars that
8 might come in during the year or that would be
9 changed during the year.

10 So, for example, as I said, this
11 year enrollments, both regular and at-risk, were
12 higher than anticipated. And so the Legislature
13 appropriated about \$25 million that will be added to
14 this year's budgets so that the base won't go down.

15 JUDGE THEIS: Principally it would
16 be the LOB. Would that be the floating number?

17 THE WITNESS: Actually, the LOB is
18 probably less subject to change in a way because you
19 have to adopt it and set a mill levy before the
20 beginning of the year, if I'm remembering that
21 correctly.

22 So the LOB would probably not
23 change as much unless there turns out to be a
24 shortfall in the funding available, which could then
25 mean you're not getting as much state aid as you were

1 expecting.

2 Because, for example, right now
3 districts are starting to develop their budgets.
4 They know how much the Legislature has appropriated
5 for all these programs. But how they react, if
6 districts adopt higher local option budgets than we
7 expect, then the amount of money that we think at the
8 moment, I think right now we're estimating that the
9 LOB state aid will be prorated to between 80 and 85
10 percent.

11 But if districts would end up
12 adopting more, which the State won't know until all
13 of them have adopted their budgets, those dollars
14 will have to be spread further, and so districts may
15 end up getting less than they were expecting.

16 Q. (By Mr. Rupe) Okay. Turn to the second page
17 of 328. There's a Bates number, SIGKSB 000338.

18 And there's a sentence in bold there that
19 I'd like you to explain to the Court. And the
20 sentence in bold says, "That would set funding for
21 general education in 2011/2012 at the lowest level
22 since 2006, a 9 percent reduction below 2006."

23 Explain that to the Court.

24 A. That was our attempt to pull out those
25 dollars that are just generally available for

1 educational operations.

2 And I'm going to look at this and make sure
3 I read the whole thing to make sure --

4 Q. By the way --

5 A. -- before I answer that.

6 I think what that's saying is that if you
7 take out those targeted dollars, special ed, at-risk,
8 bilingual, then the dollars available for general
9 operating purposes on a per pupil basis would fall to
10 the lowest level since 2006.

11 Q. And this article, Get the Facts, is from one
12 of your newsletters, but you authored this article,
13 correct?

14 A. Yes.

15 Q. Turn to the last page, the very backside of
16 it, and just walk us through what that last chart is,
17 the Kansas Elementary and Secondary Expenditure Per
18 Pupil 1990 to 2012.

19 A. This chart, the chart on the bottom, goes
20 through and tries to give historic -- a history of
21 what's happened. FTE enrollment is, of course, the
22 full-time equivalent enrollment, so it would not be
23 all kids. It's the full-time equivalent.

24 And then we've tried to take the number from
25 the State Department of Education to have the total

1 dollars per pupil, which as you can see reached under
2 this estimate for this year 12,454.

3 Then the next column is simply the general
4 fund budget per pupil. That is the base in
5 weightings. The next column would be the general
6 fund if you add the local option budget, okay.

7 The next two columns, special ed plus
8 restricted weightings and unrestricted weightings,
9 are subcategories of the other. And we don't have
10 the data back as far. And that's why there's a gray
11 box. So that's just an attempt to break out how much
12 of your budget is dedicated for specific areas and
13 how much of it can you really spend generally as you
14 wish.

15 And then the third from the right side is
16 the federal dollars per pupil. And for this purpose
17 I took out the stimulus money, because those dollars
18 were used by the State to help -- to help pay for the
19 base budget is the easiest way to put it. So I
20 didn't want to double include those. So it seemed to
21 be a more reasonable way to say what districts have
22 to operate by including them as part of general state
23 aid.

24 So the federal money there on a per pupil
25 base is limited to food service, Title 1, special ed,

1 those specific programs.

2 Q. And ARRA money was available and the State
3 used it to the general fund in what years?

4 A. I believe '10 and '11.

5 Q. Okay.

6 A. And so that was used both for the base --
7 frankly, I think it ended up being used for the base
8 budget for LOB aid and for special ed. But it was
9 basically just used to backfill shortfalls. It
10 didn't change the purpose.

11 Then the second-to-the-last column is the
12 KPERS contributions per pupil. And then the final
13 column is basically everything else. But the biggest
14 categories there are capital outlay and bond
15 payments.

16 Q. So in terms of what we've seen by way of,
17 say, global numbers of total expenditures or this all
18 students, all money, all piled on one to get a
19 disaggregated picture so you can compare apples to
20 apples, the last page of 328 is an attempt to do
21 that?

22 **MR. CHALMERS:** I just want to make
23 a record, and I don't know that Counsel intended to
24 do this, he's put up a chart that is not -- this
25 is --

1 MR. RUPE: I'm sorry, that's Kansas
2 City.

3 MR. CHALMERS: These have cost
4 function funds. They're not -- these are just
5 operational expenses. They're not the full number.
6 I don't know if you intended to do that or not. I
7 think your question presumes as much.

8 MR. RUPE: I apologize if that's --
9 I was thinking that was all numbers, but if cost
10 function -- if you're representing that it's just
11 operations numbers in a classroom, I'll set that
12 aside.

13 Q. (By Mr. Rupe) If we want to look at total
14 expenditures then and get those disaggregated, the
15 last page of Exhibit 328 does that, true?

16 A. Yes.

17 Q. Okay. Are schools going to get stimulus
18 money this year?

19 A. No. I believe all the stimulus money has
20 expired. I don't think there was any in the current
21 year. There certainly isn't for next year.

22 Q. Did the Legislature offset the loss of the
23 stimulus money with additional funding?

24 A. The Legislature replaced -- to the best of
25 my recollection, the Legislature replaced the

1 stimulus money in special education in order to keep
2 us at the -- there's a maintenance of effort
3 requirement for the federal level.

4 Q. Okay.

5 A. So the special education dollars from the
6 stimulus I believe would have been replaced. The
7 dollars that were generally used for general state
8 aid or LOB state aid essentially were not replaced.

9 And I don't know. It's complicated
10 accounting, but the major reason that the base budget
11 was reduced again in the current year from last year
12 was not replacing the federal stimulus money for
13 K-12, for those general state aid.

14 Q. Let's talk if we could and I may do a little
15 leading here, but I'm going to try to get through
16 this in a little bit fairly quickly, I want to go
17 through the cuts that have occurred statewide. And
18 let me show you a couple of exhibits. I want to put
19 out Plaintiffs' Exhibit 233.

20 Now, this is Kansas base state aid per
21 pupil. Is it accurate that the cuts began in the end
22 of 2008/2009?

23 A. Yes.

24 Q. And the cuts occurred in '09/'10, '10/'11
25 '11/'12, and then this year there was a bit of an

1 increase?

2 A. I think that's correct.

3 Q. Let me show you another exhibit that may
4 help with that, Exhibit 241 is the -- and I think
5 it's clear, but in 2010, the statute says that the
6 base should be 4,492?

7 A. That's correct.

8 Q. Okay. So the base is set by statute at
9 \$4,492 per pupil?

10 A. Yes.

11 Q. Okay. And what happened was through a
12 series of rescissions and appropriations and
13 allotments, the amount that was funded was reduced
14 to -- by May 13, 2011 to 3,780 per pupil?

15 A. Yes.

16 Q. And then the total amount of these cuts
17 totaled \$511 million per year, is that accurate?

18 A. I hadn't added it up that way, so I'm just
19 looking at how you're doing it. That looks
20 reasonable.

21 Q. And added into that 511 there was a
22 1 percent special education cut, true?

23 A. Yes.

24 Q. And there was another 1 percent special
25 education cut, true?

1 A. Yes.

2 Q. And there was an elimination of the capital
3 outlay equalization, correct?

4 A. Yes.

5 Q. And there was an LOB equalization aid
6 reduction as well?

7 A. I don't believe the LOB equalization was a
8 reduction. That is the difference between the
9 statutory entitlement.

10 Q. Okay. What would you call it if you didn't
11 call it a reduction?

12 A. That would be underfunding the formula.

13 Q. Okay. So rather than a reduction you're
14 more comfortable with the term "underfunding"?

15 A. Well, that amount, 56 million, is what would
16 be necessary to fund LOB state aid at the statutory
17 level, at the 81.2 percent.

18 Q. Okay. And then in terms of the consequences
19 of those cuts, I'm going to put up Exhibit 253, and
20 we'll hear from another witness later about this, but
21 it is -- this is from the Kansas Legislative Research
22 Department. And it chronicles the effect of cuts on
23 school districts in terms of frozen salaries, reduced
24 or eliminated professional development and a whole
25 series of program and staff cuts.

1 Can you explain to the Court generally what
2 the consequences of those budget cuts per pupil were
3 to your membership?

4 MR. CHALMERS: Lack of foundation.
5 If he's talking about the impact on education, he's
6 talking about the reduction of funds. I guess
7 there's some foundation laid for that, but there's no
8 testimony provided other than he's a lobbyist with a
9 degree in I think -- I don't want to misstate it --
10 public administration.

11 I don't think there's been any
12 evidence that he provided a foundation to say what
13 effect it's had on academics.

14 JUDGE THEIS: What was the last
15 part of your --

16 MR. CHALMERS: I'm sorry, I thought
17 you were talking about the budget.

18 My objection is there's been no
19 testimony that he has any expertise, special skill or
20 knowledge concerning the effects of a reduction on
21 the academic achievements of children, if that's what
22 the question is aimed at. And I think it was.

23 MR. RUPE: I'm not going to
24 academic achievement. I'm talking about the cuts.
25 I'm just asking him. He is a lobbyist. He is a --

1 JUDGE THEIS: Let me hear your
2 question again.

3 Q. (By Mr. Rupe) Okay. In terms of what your
4 knowledge is of the cuts among your membership, tell
5 us what you know.

6 A. Well, because what we've been talking about
7 are reductions in the operating funds of districts at
8 the state level, for almost every district the vast
9 majority of those funds go to pay salaries. And so
10 as I said before, one obvious answer is there were
11 reductions in positions in many areas of school
12 district budgets.

13 About the only other thing a district can do
14 to substantially save money is to close buildings,
15 because that allows you to reduce some of those fixed
16 costs. That is the vast majority of what districts
17 would spend money on.

18 So I think the chart that you just showed
19 that pointed out things like what do districts do --
20 they froze salaries, they eliminated positions or
21 held positions open. In some cases they may have
22 closed buildings to save those costs. But that's
23 really what general operating funds are spent on. So
24 if you're going to reduce those dollars, districts
25 don't have any other choice but to make cuts in

1 **people or in the operation of buildings.**

2 I guess a third area would have been in
3 transportation. And I can't point to specific
4 districts. I can tell you there has at least been
5 discussions about what some districts may do is
6 reduce transportation services that they don't --
7 that they don't have to do.

8 You're required to transport children in
9 certain circumstances, you're not in others. Many
10 districts have expanded and bussed more children than
11 they're legally required to do so --

12 Q. Give us an idea, I think I asked you this
13 when we started, but give us an idea of how many
14 school districts KASB has as members.

15 A. Well, the short answer is all but one. I
16 believe we're now at about 285 out of 286.

17 Q. I'm sure we're all curious. Who's the one?

18 A. DeSoto.

19 Q. DeSoto. Let me ask you about how these cuts
20 were accomplished. In terms of the statutory base,
21 it remained throughout the cuts at 4,492?

22 A. Yes.

23 Q. The individual weightings as these cuts
24 occurred, were these individual weightings adjusted?
25 And I want to focus on a couple. Bilingual

1 weighting, were those adjusted as the cuts occurred?

2 A. They weren't adjusted statutorily. I would
3 say they were adjusted only in the sense that when
4 the base amount you receive for each child goes down
5 then the value of that additional .5 percent would
6 also go down.

7 Q. In terms of whether the weightings changed,
8 did they?

9 A. Well, the weighting factors did not change.

10 Q. Then in terms of at-risk weighting, would
11 your answer be the same?

12 A. Yes.

13 Q. That factor that is multiplied times the
14 base state aid to get your general fund number did
15 not change?

16 A. That's right.

17 Q. What about the -- where was the other one I
18 wanted to ask you about -- non-proficient student
19 weighting, was that adjusted?

20 A. I don't believe so.

21 Q. Was there any information that you saw
22 before the Legislature that the cost of providing
23 education to bilingual kids, ELL kids, at-risk kids
24 or those non-proficient kids went down?

25 A. I did not see any information to that

1 effect.

2 Q. I asked you to take a look at, in relation
3 to the cuts, what the losses would be to the general
4 fund and what the increases were. And what I'd like
5 you to do is to tell the Court, based on your
6 expertise -- to describe what that loss has been and
7 then what the increases were.

8 A. Well, based on the budget through 2012,
9 without taking into account any legislative changes
10 this year, my calculation is that the general fund
11 budget with special ed included -- because that's how
12 the general fund is now defined -- since 2009, was
13 reduced by about \$278 million.

14 Q. And explain to the Court how you came up
15 with that number.

16 A. I simply took the total of the general fund
17 budget and special education, I think for the 2012
18 year, using I believe the Legal Max budget and
19 compared that to the number reported from Legislative
20 Research Department, I believe, on what their
21 calculation of the general fund budget would be.

22 So I subtracted the 2012 number from the --
23 from the 2009 budget.

24 Q. And in terms of what the statute says the
25 base is, the formula is not funded to that level? In

1 other words, it's underfunded?

2 A. Well, this simply represents the actual
3 dollar loss year to year. This does not account for
4 the difference between what the statutory amount
5 would be.

6 Q. Okay.

7 A. I don't have that. It would be relatively
8 easy to do.

9 Q. I'm not asking you to quantify it. I'm just
10 indicating that when the statute says 4,492, it's not
11 funded to that level?

12 A. That's correct. It's lower. It's lower,
13 both because the dollars have gone down, and because
14 student enrollment and weighted student enrollment
15 has gone up. It would cost more now to fund even the
16 same level -- if we were trying to fund the same
17 level of base as we did in 2009, it would cost more
18 today because there are more students.

19 Q. Okay. So in terms of the situation that I
20 think you just explained, and I've used this, this is
21 AYP numbers, but in terms of the demands on the
22 school district with the increases that you've talked
23 about and the reduction of the funding, there's a gap
24 between the resources and the demands.

25 That's what you're saying?

1 A. Well, there's a gap -- I will say this, the
2 demands have gone up, the number of students have
3 gone up. The number of specifically identified
4 students have gone up and the resources available
5 have gone down.

6 Q. Okay. Now let's move to what increases
7 there have been. I asked you to recap. I jumped
8 backwards for a second. But let's recap the decrease
9 that's been right at a little below 278 million.

10 A. The local option budgets as they were
11 estimated in the current year.

12 Q. Now you're talking about the increases?

13 A. Yes. Yes.

14 Q. Okay. Thank you.

15 A. So first of all, districts raised their
16 local option budgets by about \$78 million is what was
17 expected this year. So one way I've tried to explain
18 it is the operating budget dollars went down about
19 277, 78 million from the State. Local districts
20 offset that by raising their LOB. Those that could.

21 Now, there are a number of districts that
22 didn't have the ability to increase their LOB
23 percentage at least, so unless they had more students
24 their dollars wouldn't have gone up.

25 So that would be sort of a net cut in the

1 state and local operating budget of about \$200
2 million as a net.

3 Federal aid, according to these figures for
4 this year's budgets, was to go up about \$31 million.

5 I don't have a breakdown between what those
6 categories were. Again, my understanding that about
7 half of food service money is -- or half of federal
8 money is food service. So one might assume that
9 perhaps half of that, but I don't know, was probably
10 associated over this four-year period, three- or
11 four-year period with increased demands on free
12 lunch.

13 The big increase that I calculated between
14 2009 and this year was KPERS, which was an increase
15 of 127 million. That actually, though, as I said,
16 includes some money that was shifted forward that may
17 have been further adjusted by the Legislature and
18 will actually go down next year.

19 And then all other local would have been
20 \$47.3 million.

21 And so the net total increase when I put
22 those together was 283 million.

23 And so that explains how on one hand we've
24 had cuts of 278 million in sort of the general fund
25 side, but the total dollars that are reported are

1 actually slightly higher. That's the reason. Cuts
2 over here, increases on the other side about equaled
3 out.

4 Q. And you were indiscriminate in describing
5 the increases. You included all moneys whether they
6 could be directed to operations in the classroom or
7 not?

8 A. Yes.

9 Q. So if we wanted to look at the money
10 available to direct to the classroom, that operations
11 number, what would we lay aside on the increases?

12 A. Well, I believe for that purpose you should
13 lay aside the KPERS increase. All or most of other
14 local, and the only reason I'm qualifying that is
15 that's absolutely everything else and I suppose you
16 could have some discussion over whether increases in
17 the student activity fee should be considered part of
18 your activities, but that's not very much.

19 And then under the federal side, again, I
20 think you have to discriminate between those programs
21 which are direct student services or academic support
22 and food service, which is not.

23 Q. Okay. Are you familiar with any other cost
24 study in which the Legislature has looked at the
25 actual cost of providing input and outcomes other

1 than Augenblick and Myers and Legislative Post Audit?

2 A. I don't believe so. I guess you'd have to
3 tell me exactly what you mean by a cost study. But I
4 think when people refer to the idea of sort of a
5 full-blown study, those are the only two I'm aware
6 of.

7 Q. What's the 2010 Commission?

8 A. The 2010 Commission was a special committee
9 appointed by the Legislature after the Montoy
10 decision to monitor -- I guess to monitor school
11 funding and improvement I guess is the best way to
12 put it. And so it was primarily composed of
13 non-legislators, although there were several
14 legislators on it.

15 Its name came because it terminated in 2010
16 and it was charged with sort of overseeing and
17 researching and developing recommendations for school
18 finance.

19 I believe part of the reason it was -- I
20 believe there was language in Montoy where the Court
21 suggested that the Legislature should do some sort of
22 ongoing monitoring, but I can't quote that
23 specifically.

24 Q. Did the 2010 Commission report to the
25 Legislature?

1 A. It did.

2 JUDGE THEIS: Excuse me, what was
3 that? Okay.

4 Q. (By Mr. Rupe) Prior to these studies, in the
5 early days of SDF QPA, how was the base budget per
6 pupil arrived at?

7 MR. CHALMERS: Object. Obviously
8 it was arrived at by the Legislature. And he's
9 asking for legislative intent. And case law says a
10 lobbyist in particular is not somebody who can talk
11 about what the legislative history is and legislative
12 intent. So I object to the question.

13 MR. RUPE: I'm asking him -- he
14 observes the Legislature. I'm just asking him to
15 explain how it worked before there were any cost
16 studies.

17 JUDGE THEIS: What was the general
18 framework, is that the question?

19 MR. RUPE: Yes.

20 JUDGE THEIS: Overruled.

21 THE WITNESS:

22 **A. The original law was influenced, I believe,**
23 **to a large extent by sort of the putting into place,**
24 **in the new system, dollars that were generally**
25 **available under the previous system so that low**

1 enrollment weighting was created, so that small
2 districts did not lose money under a flat amount per
3 pupil.

4 MR. CHALMERS: If I might
5 interrupt, this is what I'm getting at, I think the
6 question is, the Court asked it to be rephrased. It
7 resulted in something that's admissible, but now he's
8 talking about why the Legislature did what it did
9 more than a decade after the fact and that's not
10 proper testimony as to legislative intent or to the
11 statute or to legislative anatomy. And so I object.

12 MR. RUPE: This is in evidence, and
13 so I'll just present the evidence to the witness and
14 ask him to comment on what is already in evidence and
15 see if he agrees with it. We can do it that way.

16 MR. CHALMERS: If it's already in
17 evidence maybe we can just move on, because I've got
18 cross-examination and he's got to leave by noon.

19 MR. RUPE: I understand that and
20 I'm winding up and I'm going to get through this and
21 then I'm going to be done. I'm sorry.

22 JUDGE THEIS: Try a new way.

23 MR. RUPE: I apologize for being
24 snippy.

25 Can I get 173 and 174 in front of

1 the witness.

2 Q. (By Mr. Rupe) Turn on 173 to JUD009884.

3 And I will represent to you this is
4 testimony in the 229 case from Senator August
5 Bogina. And he was asked the source of basic state
6 aid per pupil at that time of \$3,600. And the
7 question was, what was the source of that figure in
8 the Legislature? His answer was, "In my opinion it
9 was an auction." I said, "Excuse me?" He said, "An
10 auction."

11 And I said, "Can you explain that, please?"
12 And he said, "Well, there's several numbers. 2900
13 per student, 3,500 per student, 3,300 per student.
14 The proponents of this bill tried to find a number
15 that was acceptable. It had no basis in fact
16 whatsoever and they found \$3,600."

17 Do you agree with that characterization of
18 how the base state aid number was made in the past?

19 MR. CHALMERS: His agreement isn't
20 relevant. It is inadmissible, in any event. And I
21 object to the question.

22 JUDGE THEIS: I've got a problem
23 with that. I don't know what you're reading from.

24 MR. RUPE: It's a transcript of the
25 trial in the 229 case before Judge Luckert, and it's

1 in evidence here.

2 JUDGE THEIS: Without objection?

3 MR. RUPE: Without objection.

4 JUDGE FLEMING: Aren't you asking
5 him to comment on this testimony?

6 MR. RUPE: Okay. I'll do it. I'll
7 back up and not ask him to comment and just continue
8 his explanation as background as to how the base
9 state aid per pupil after the adoption of SDF QPA was
10 arrived at.

11 JUDGE THEIS: A while ago when we
12 were talking about that Shawnee Mission thing with
13 the affidavit it was my intent to say that I didn't
14 think that was a good way to do things. But an
15 affidavit isn't really good evidence. You know, an
16 expert needs some kind of -- if he's making a
17 hypothetical, then there needs to be some concrete
18 evidence in the record which based on the expert's
19 qualifications he's competent to make a comment on.

20 MR. RUPE: The affidavit is not in
21 evidence in this case.

22 JUDGE THEIS: So I didn't -- I
23 meant that I didn't think that was good.

24 MR. RUPE: Okay.

25 JUDGE THEIS: That's kind of the

1 standard I'm rolling with here, so --

2 MR. RUPE: I'll move things along
3 and just ask him what he knows about how it worked at
4 that time.

5 JUDGE THEIS: What he understands.

6 MR. RUPE: Yeah.

7 Q. (By Mr. Rupe) What was your understanding of
8 how it worked in determining the base state aid
9 number after the adoption of SDF QPA before the
10 Montoy decision?

11 MR. CHALMERS: His understanding,
12 his opinion, his view of this, and for that matter
13 what was done now more than ten years ago aren't
14 properly relevant to the issues in this case.
15 Improper foundation. It is asking him to indirectly
16 express an opinion or his judgment on what was
17 legislative intent, and the cases say that's not
18 proper, particularly from a lobbyist.

19 MR. RUPE: Apparently the Judge in
20 the 229 decision did not agree with that, because she
21 allowed the testimony.

22 MR. CHALMERS: Apparently counsel
23 didn't object. I can't tell why.

24 JUDGE THEIS: But the point is
25 experts are like any other witness. They can be

1 right or wrong as rain. So the fact that -- how good
2 his opinion is, is tested by all kinds of factors.
3 So I don't think it goes to whether or not he can
4 state an opinion. He deals with the school board and
5 he's familiar with the history and he can state what
6 his understanding is. He has a right to be wrong.

7 Q. (By Mr. Rupe) Okay. So explain your
8 understanding.

9 A. Are you -- again, so I'm clear, the question
10 is how the Legislature made decisions after the law
11 was enacted?

12 Q. Before the Montoy decision.

13 A. Before.

14 Q. And before the cost studies.

15 A. Well, it was -- it is a combination of
16 whether there is a support in the Legislature to add
17 dollars to education restrained by the dollars
18 available. I mean, that's the balance that every
19 year was the debate.

20 Q. And then in terms of the cuts, I may have
21 asked you this question, but I want to make sure I
22 understand. In terms of the cuts, when they occurred
23 was there any information before the Legislature that
24 the costs of educating those kids, that cost more to
25 educate had gone down?

1 A. Not that I'm aware of.

2 Q. Take a look at Exhibit 192. And this is in
3 evidence. It is a memorandum prepared by you, is
4 that correct?

5 A. Yes.

6 Q. And it was prepared in -- what's the date of
7 it?

8 A. June 4, 2010.

9 Q. That may be 14th.

10 A. I'm sorry, June 14, 2010.

11 Q. I want to ask you about the last sentence of
12 that exhibit, where it says, "Our commitment to
13 education should not be based on what is simply
14 within our means but on what it takes to prevail."
15 What did you mean by that?

16 A. The position I was trying to express of our
17 association is that if we are going to achieve the
18 educational outcomes that I think have been set by
19 the State and embraced by our members, we needed to
20 commit the resources necessary to do so, whether or
21 not it was what happened to be available under our
22 current revenue system.

23 In other words, if it takes more -- in other
24 words, spending on education shouldn't be simply a
25 function of how much we're bringing in. It should be

1 we need to decide what we want to do and how much it
2 will cost and provide those dollars.

3 Q. By the way, do you know if there was
4 projections at some point before the cuts that with
5 the increases that occurred in Montoy or as a result
6 of Montoy or after Montoy that the State would be
7 upside down in its expenditures?

8 A. Well, what I recall is that there were a
9 number of different projections that were made
10 estimating what -- what the future state budget
11 situation would be.

12 I don't recall specifically what all of them
13 said, but I believe there were varying efforts to
14 produce documents that made guesses as to how much
15 revenue the State would have. And if you change your
16 assumptions on what you think will happen in the
17 future, you will get a different answer as to what
18 it -- what the consequences of a budget decision
19 would be.

20 Q. We've got an exhibit that I want to hand you
21 that's been admitted into evidence. It's Plaintiffs'
22 Exhibit 301.

23 And does that show, Exhibit 301, that \$358.7
24 million was projected as the loss back in 2009 unless
25 revenues were increased?

1 A. Yeah, I believe that's correct.

2 Q. And then look at 302. And does that show a
3 projection for at the time of Fiscal Year 2008 or
4 projection for Fiscal Year 2008 to 2012 that there
5 would be a hole of about 855.5 million?

6 A. Yes.

7 Q. And then Exhibit 303, which is in evidence,
8 does it show at the time of the projection in 2000 --
9 right before the 2005 fiscal year that the hole would
10 be 426.6 million?

11 A. I believe so, yes.

12 Q. And do you know what the tax cuts have been
13 during that time frame to current?

14 A. No.

15 Q. Have there been tax cuts?

16 A. Yes, I believe so. There have been -- there
17 were some tax cuts enacted several years ago, and
18 then there was also the indirect effect for state
19 revenues, because since our income tax conforms to
20 the federal level there have been changes made in the
21 federal tax code which have had the effect of
22 reducing Kansas tax revenue.

23 MR. RUPE: That's all I have.

24 Thank you.

25 JUDGE THEIS: Mr. Chalmers, we're

1 going to take our break now. That way you'll have a
2 clean deck.

3 MR. CHALMERS: Super.

4 JUDGE THEIS: About 20 minutes.

5 (A recess was taken.)

6 JUDGE THEIS: Be seated. Thank
7 you.

8 CROSS-EXAMINATION

9 BY MR. CHALMERS:

10 Q. You are employed as a lobbyist for your
11 agency?

12 A. Yes.

13 Q. And in that capacity you have testified
14 frequently in front of various committees at the
15 Kansas Legislature concerning educational matters?

16 A. Yes.

17 Q. Including school finance issues?

18 A. Yes.

19 Q. And the position that you have in your
20 testimony is to act as an advocate for your agency,
21 is that correct?

22 A. Yes.

23 Q. I don't mean to suggest that you get up and
24 misrepresent things, because that would be
25 shortsighted on your part, but you are trying to put

1 forward the information that the Legislature needs to
2 know that is most positive to your client's position,
3 is that correct?

4 A. Yes.

5 Q. And in that connection you have had the
6 opportunity to present and have presented information
7 about what previous cost studies have stated in terms
8 of the cost of educating kids in our state, haven't
9 you?

10 A. I would. I don't remember specifics, but I
11 would assume.

12 Q. Moreover you have in your testimony provided
13 essentially the same sort of information that are in
14 the PowerPoints that Mr. Rupe discussed with you
15 yesterday, is that right?

16 A. As I understand your question, yes, not all
17 of those have been directly shared with legislators,
18 but I'm sure I've used some of the information in
19 testimony.

20 Q. Now, you testified yesterday about AYP and
21 accreditation. Tell me how AYP is related to
22 accreditation in this state as you understand it.

23 A. As I understand it, I guess I'll go back a
24 little bit to the 1992 School Finance and Quality
25 Performance Act. The Legislature directed the State

1 Board of Education to adopt an accreditation system
2 that included a -- or based on a measurable
3 improvement in student performance, or words to that
4 effect.

5 Now, actually, by the time the Legislature
6 did that the state board was already adopting quality
7 performance accreditation.

8 As I understand it, when the No Child Left
9 Behind Act was passed, the State of Kansas if, they
10 were going to take those dollars, had to essentially
11 incorporate the requirements of AYP into our
12 accountability system.

13 They didn't necessarily, as I understand it,
14 have to make it part of accreditation. But our state
15 board made those targets for AYP the performance
16 factor in accreditation.

17 **There is also a what I think they refer to**
18 **as the quality factor, where districts are required**
19 **to -- for example, you have to have properly licensed**
20 **teachers.**

21 So the AYP targets have been incorporated
22 into part of what the board looks at when they do
23 school accreditation.

24 Q. In fact, there are nine factors that the
25 school board looks to on accreditation of a school.

1 Are you aware of that?

2 A. I couldn't tell you what the nine are. As I
3 said, there are those two components, the quality
4 standards and the performance.

5 Q. And there are regulations that set out those
6 factors. Are you aware of that?

7 A. Yes.

8 Q. And those regulations talk about both the
9 quality as you talked about it as well as performance
10 measures, don't they?

11 A. Yes.

12 Q. Only one of the performance measures is
13 essentially meeting the AYP standards. Are you aware
14 of that?

15 A. My understanding is that the other
16 requirement has to do with a minimum graduation
17 threshold.

18 Q. I think there are actually four of those
19 requirements. But you remember there being a minimum
20 graduation requirement as well?

21 A. Graduation rate, yes.

22 Q. Then when an issue or a decision is made on
23 accreditation, the AYP would be a factor, but it
24 would be only one of nine, is that correct?

25 **A. I think that's correct. I don't remember**

1 specifically the process. But yes, there is more
2 than just the AYP standard that is looked at.

3 Q. Then in addition to that under AYP, as well
4 as in our state, there are safe harbor provisions
5 concerning the test scores, is that correct?

6 A. That's correct.

7 Q. And so those safe harbor provisions would be
8 read into the AYP requirement or QPA, is that right?

9 A. Yes.

10 Q. All the acronyms.

11 And in our state you are aware that -- I
12 don't think there's a single school that's not
13 accredited, some are accredited on improvement and
14 there may be some traditional accredited, but there's
15 not a single school in the state that's not
16 accredited; is that your understanding?

17 A. That's my understanding.

18 Q. You were asked yesterday about what happened
19 before and after Montoy that concerned the
20 legislation. I want to see if we can't agree on the
21 list.

22 When we talk about Montoy we've got two
23 triggering points here. We've got when the Kansas
24 Supreme Court found that the then in-place statute
25 was unconstitutional and then we have when the Kansas

1 Supreme Court was looking at what would satisfy them
2 on their order that you should now put a system in
3 place that is constitutional, and there are different
4 Supreme Court decisions on those points; is that
5 right?

6 A. I believe that's correct, yes.

7 Q. And there were different legislative
8 adoptions depending on whether they were responding
9 to the first, whether -- the decision concerning the
10 constitutionality, and then the decision concerning
11 the remedy, aren't there?

12 A. Yes.

13 Q. So I want to talk to you about first
14 responses to the decision where the court found or
15 approved that the then in place system was
16 unconstitutional.

17 When at that time, the 2005 statute, and you
18 probably don't know the statute number itself, was
19 amended, that altered the requirements for, excuse
20 me, for the accreditation slightly, is that correct?

21 A. I honestly don't remember that.

22 Q. There was also a statute that was put in
23 place after the Montoy decision that adopted what
24 Mr. Rupe has described for accreditation as the Rose
25 Factors. Do you remember that?

1 A. Honestly, I don't. I honestly thought that
2 the kind of list of what I guess would be referred to
3 as the Rose Factors had been adopted as part of the
4 QPA law. So I must not be remembering that correctly
5 if there was another set adopted at that time.

6 Q. And QPA law as you're describing it in the
7 accreditation statute, that statute instructs the
8 Kansas Department of Education to use their normal
9 process of creating regulations and issue regulations
10 as to how to implement the accreditation in this
11 state, is that correct?

12 A. That is my understanding, yes.

13 Q. And it was after the Montoy decision that a
14 series of regulations came in place that described
15 what the QPA system was in the state?

16 A. I am not remembering that necessarily that
17 way. I'm trying to search my memory for this. I
18 guess what I don't recall is the chronology of how
19 the state board responded to QPA. I'm sorry, to No
20 Child Left Behind.

21 I guess those would have been coming into
22 effect at the same time. If I remember right, No
23 Child Left Behind was adopted in 2001 or 2002. So
24 the state board was making changes in QPA kind of
25 during that mid part when I guess Montoy was working

1 its way through the courts and the Legislature.

2 And I just apologize. I guess I don't
3 remember specifically. You'd have to refresh me.

4 Q. I think mine was probably a bad question. I
5 think you're right. It was in 2001 that the No Child
6 Left Behind statute was passed or shortly before
7 that. And that in 2001 or 2002, then the state as
8 part of its normal process where it looks at its
9 standards, but also probably in response to federal
10 statute, started looking at what it needed to do with
11 its standards to get them in place.

12 Is that consistent with your memory?

13 A. Yes, that's consistent with my memory.

14 Q. But in terms of when those standards became
15 law for accreditation purposes and were part of the
16 regulations, do you have a memory? I know the
17 results, because I've seen what the book is, but as
18 you've testified, do you have a memory that was after
19 the Montoy decision?

20 A. My memory is that it would be before the
21 Montoy decision. And I guess one of -- well, I guess
22 here's what I think I remember. We started having
23 the full grades 3 through 8 testing, which was one of
24 the changes we had to make. And I believe that began
25 for the 2006 results.

1 Q. Which would have been after Montoy?

2 A. Which would -- but I know it was happening
3 at the same time.

4 Q. The records will show when this is. There's
5 some other changes that took place after Montoy too.
6 And I want to see if you agree to these. And those
7 changes were that there would be -- there was a
8 passage -- there's been the passage -- or there was a
9 statute passed that authorized the study by the
10 Legislative Post Audit to try to look at the cost of
11 education. Do you remember that?

12 A. I do.

13 Q. Now, after the first Montoy, then there was
14 a series of -- there were a series of acts. There
15 was one act in particular that was passed that was
16 presented to the Kansas Supreme Court. And the
17 Kansas Supreme Court said this is not sufficient.

18 Do you remember that?

19 A. That would be my recollection of -- yes,
20 yes.

21 Q. Then there was a bill, I think it was in
22 2006, Senate Bill 549, that was passed that was
23 reviewed by the Montoy court and found at least to be
24 acceptable to lead to dismissal of the case, is that
25 correct?

1 A. It's my understanding, I think that's what
2 we refer to as the three-year plan.

3 Q. During that time period, before I think the
4 final approval, there was a statute passed, KSA
5 46-1226, and it reads in sub-part A, "Any cost study,
6 analysis, audit or other study commissioned or funded
7 by the Legislature and any conclusions or
8 recommendations, therefore, shall not be binding on
9 the Legislature. The Legislature may reject at any
10 time any such analysis, audit or study and any
11 conclusions and recommendations thereto."

12 Do you remember that statute being passed
13 between the Montoy first decision and the last
14 decision?

15 A. It sounds familiar. I haven't reviewed it
16 recently. I assume it was -- yes, that it was part
17 of several things the Legislature did in that area.

18 Q. Now, the Legislature then when it did pass
19 Senate Bill 259, 2006 legislative session, it adopted
20 a formula that altered the components for reaching
21 what the general fund would be; is that right?
22 Changed the weightings?

23 A. I'm not sure I understand your question.
24 The three-year plan that was passed, and I'm not sure
25 if I heard the number correctly, so if we're talking

1 about the bill that was, I guess, ultimately found
2 acceptable by the court.

3 Q. Yes.

4 A. My understanding is, yes, it did change the
5 weighting factors, most notably for at-risk and
6 bilingual is my recollection.

7 Q. And so we're clear on that, there are many
8 different blow-ups and one is probably as good as
9 another, but this one is the first one I grabbed,
10 Exhibit 105, this talks about the base amount and it
11 shows the base amount -- this would be before Montoy,
12 is that correct, 2005?

13 A. Yes.

14 Q. Before Montoy. This base amount would have
15 assumed weightings that were less in their aggregate
16 than the weightings that were put in place with the
17 adoption of the Senate bill we just discussed, is
18 that right?

19 A. Yes.

20 Q. So I don't know that I said that real well,
21 but if you took -- if what a weighting does is it
22 says we will pay per full-time enrollment or full-
23 time equivalent rather, pretend we've got one
24 student, and we're going to take a base amount, this
25 amount for that kid, and we're going to add on to

1 that, the amount that we would add on after the
2 Senate bill in response to the last Montoy is a
3 greater amount than what the weightings provided for
4 before Montoy, is that correct?

5 A. Let me answer to make sure I understand.
6 The weighting factors are greater than they were
7 before Montoy.

8 The reason I'm just trying to be very clear
9 is I don't know in my head whether mathematically the
10 value of the weightings are greater or not right now.

11 Q. So what you would have to do to verify that
12 is to look at what the weightings were before, add
13 them up, say how many additional kids does that
14 create, so maybe you've got two kids then, and now
15 look at the weightings now and see whether or not
16 you've got two or two and a half or one and a half?

17 A. Well, actually, what I meant is to make a --
18 let me make it similar to what I was saying. If a
19 base amount, just to be real simple, is \$1,000 and
20 the weighting is .5, then the value of the weighting
21 would be \$500.

22 If the base would be cut, and it hasn't
23 been, but let's just say that base was cut to \$500,
24 then a .5 weighting would be a smaller amount.

25 That's what I'm trying to clarify out of

1 your question.

2 Q. You're answering a question I didn't intend
3 to ask. What I'm trying to get at is that
4 mathematical formula. If you take the weightings and
5 add them up, that weightings aggregate is more after
6 Montoy than they did before Montoy?

7 A. That would be true of such weightings as
8 at-risk and bilingual. It is not necessarily true of
9 some of the others.

10 Q. But there are others added?

11 A. That's also true, yes.

12 Q. So you take everything that is added,
13 compare it to what it was before and you have more
14 weightings after Montoy?

15 A. There are more weightings and the value of
16 the weightings is bigger.

17 Q. Now, in the formula itself it created two
18 additional weightings that hadn't been pressed for
19 at-risk weightings. It created a high-density
20 at-risk weighting and also a non-proficient at-risk
21 weighting that hadn't been before, is that correct?

22 A. Yes.

23 Q. The LOB cap was changed. It was increased
24 from what, 25 percent to 30, plus the possibility of
25 with an election an additional one up to 31; is that

1 right?

2 A. Yes.

3 Q. But one of the important changes was that by
4 the Senate Bill 259 --

5 MS. TIBBETS: 549.

6 Q. (By Mr. Chalmers) I'm sorry. 549, the LOB,
7 which is sometimes referred to as supplemental state
8 aid, was to be applied to meet the basic essential
9 requirements and became a part of the foundation
10 level of funding; isn't that correct?

11 A. That is what the statute said.

12 Q. And that's what the Supreme Court said. Do
13 you remember that as well?

14 A. Yes.

15 MR. RUPE: Object. I'm going to
16 object. He's suggesting that the Court approved 549
17 in its opinion. And I don't think it did. It just
18 said it wasn't going to give an opinion. And I think
19 we -- that may be an inaccurate statement of law, so
20 I would object.

21 JUDGE THEIS: Do you have a
22 response to that, Mr. Chalmers?

23 MR. CHALMERS: Well, I think I made
24 a similar objection yesterday and I was told to
25 handle it on cross-examination, which is what I'm

1 trying to handle. My preference would be, frankly,
2 to let the law kind of speak for itself, but ...

3 JUDGE THEIS: Yeah, why don't you
4 phrase it then --

5 MR. CHALMERS: Okay.

6 JUDGE THEIS: -- in a question. Is
7 it your understanding, or something that way.

8 MR. CHALMERS: Very good. Very
9 good.

10 Q. (By Mr. Chalmers) Is it your understanding
11 that under the present law the supplemental state aid
12 is to be applied to meet basic educational
13 requirements, essentially making LOB state aid part
14 of the foundation level of funding?

15 A. It is my understanding that that is what the
16 Legislature has directed those dollars to be used for
17 and considered.

18 Q. Now, one of the weightings that remain the
19 same before and after Montoy was the bilingual
20 weighting. It had been .395 both before and after.
21 Is that consistent with your memory?

22 A. Yes, I believe so.

23 Q. And I don't want to belabor this, because
24 I'm sure the Court understands it, but what that
25 means is you have a bilingual child that if it fits

1 that definition, that you would get the base amount
2 for that child and then you would get an additional
3 .395 of the base amount, is that correct?

4 A. I think that's essentially correct. Just to
5 be very clear, and others can correct me if this
6 isn't the major point, bilingual weighting is
7 actually done on the actual head count hours of
8 students enrolled --

9 **Q. I think that's right.**

10 **A. -- but the effect is the same.**

11 **Q. I think that's right. And I think that's**
12 **always been the case.**

13 A. Yes.

14 Q. Special education excess-cost reimbursement,
15 that was put in place after the Montoy decision, is
16 that correct?

17 A. I don't believe so. I don't believe that
18 the Montoy -- that following Montoy I don't think
19 there was any change in how the formula worked. It
20 did put in statute that the State was supposed to pay
21 92 percent of the excess cost calculation.

22 But my recollection is that there wasn't a
23 change in the basic system of special education.

24 Q. You're thinking that was there before as
25 well?

1 A. That's right.

2 Q. There was a cost of living weighting that
3 was included for, if you can qualify it, to allow
4 some additional funding through a levy, a local
5 property tax levy, is that correct?

6 A. That's correct.

7 Q. The at-risk weighting was increased on a
8 graduated basis starting 2006/'07 to about 2.78
9 moving up to about .456 to what its present status is
10 now, is that correct?

11 A. Yes.

12 Q. There was a high-density, at-risk money that
13 was made and that led to an additional weighting, is
14 that correct?

15 A. Yes.

16 Q. Now, in addition to what we've talked about
17 there was a provision made for declining enrollment
18 where funds could be made through an additional tax
19 levy, is that correct?

20 A. Yes.

21 Q. A system was created for the Board of
22 Education to notify and help schools which failed to
23 meet accreditation requirement standards or state
24 curriculum requirements, at least that was passed as
25 part of the legislation. Do you remember that?

1 A. Honestly I do not remember that, so I
2 apologize.

3 Q. There was provision made in the statutes
4 that was new that allowed authority for the state
5 board to provide at-risk programs and assistance to
6 their districts. Do you remember that?

7 A. I don't -- I don't remember that as really a
8 new and separate authority. The -- and perhaps just
9 a point of clarification, the at-risk weightings
10 creates dollars or it identifies the dollars a
11 district will receive based on the number of free
12 lunch kids. But the money has to be used for an
13 approved at-risk plan that the state board approves
14 that meets certain criteria, and it doesn't
15 necessarily go to those same kids.

16 In other words, the fact that you are a free
17 lunch child and you trigger the weighting for the
18 district does not mean you get services.

19 And so I guess my understanding of what you
20 were referring to, and I certainly could be
21 incorrect, is it's just referring to the fact that in
22 order -- in order to spend those dollars that you
23 would receive that are generated by the weighting,
24 you have to spend them as the -- under a program
25 approved by the state board, which sets out what you

1 could use the dollars for and what students will
2 qualify.

3 Q. I understand your confusion from my
4 question. Actually, there were provisions added in
5 the act made that provided authority to the state
6 board on its own part to make available through kind
7 of some -- I don't know whether it be discretionary
8 grants, professional development, other aid, to
9 provide for at-risk programs and assistance and to
10 provide for bilingual educational programs and
11 assistance.

12 Do you remember that sort of additional
13 enabling legislation?

14 A. In all honesty I don't, but it wouldn't
15 surprise me. So I apologize, I don't remember.

16 Q. There was also --

17 JUDGE THEIS: I assume you're going
18 to identify these statutes later?

19 MR. CHALMERS: Yes, Your Honor, but
20 it's all part of the Senate Bill 549.

21 Q. (By Mr. Chalmers) There was also an adoption
22 of a uniform reporting of school district
23 expenditures to the state board, and district
24 budgeting reports were required. That was new,
25 wasn't it?

1 A. I believe there was some language. There
2 had always been requirements on school districts, but
3 I think there was concern on making sure it was more
4 uniform.

5 **Q. And even more so and there's been subsequent**
6 **legislation on that?**

7 A. Yes, yes, sir.

8 Q. There was allowance -- there was statutory
9 allowance to districts to impose a fee for free full-
10 day kindergarten at the time of this act, is that
11 correct?

12 A. I honestly don't remember it as being part
13 of the act, but I do remember the Legislature has
14 given that authority to districts.

15 Q. And there was a permitted transfer of LOB
16 revenue over 25 percent of state financial aid to the
17 capital improvements for capital outlay. In other
18 words, you could use some of your LOB and put it in
19 capital improvements or capital aid after this act,
20 is that right?

21 A. That does sound familiar.

22 Q. You can transfer in, you can't transfer out?

23 A. Yes.

24 Q. Then even after that there had been changes
25 to the funding statutes. The non-proficient student

1 weighting was increased in 2007 to .0465 from
2 .04299. Do you remember that?

3 A. I guess I thought that was probably part of
4 the phase-in. But if it was separate I would
5 certainly not -- I don't recall.

6 I guess my recollection is that
7 non-proficient was part of the 2006 law, but it may
8 have increased in 2007, because several facets of
9 that law were phased in.

10 Q. There was a medium density at-risk weighting
11 that was created in 2008. Do you remember that?

12 A. Yes.

13 Q. Virtual school weighting was created in
14 2008, is that right?

15 A. I don't specifically remember the year, but
16 I know it was created. It had a separate weighting.

17 Q. Special education funding task force was
18 created in 2008. Do you remember that?

19 A. Yes.

20 **Q. There was modifications concerning Medicaid**
21 **reinpaysment (sic) as part of the special ed that was**
22 **passed in I think it was 2008, but it was modified in**
23 **2011. Do you remember that as well?**

24 A. Yes.

25 Q. The districts were authorized to calculate

1 their local option budgets by using the base of
2 \$4,433 a year in 2009, is that correct?

3 A. They were allowed to do that, and that
4 authority continues.

5 Q. There was -- there was some changes to the
6 Kansas Uniform Financial Accounting Reporting Act
7 that required the Board of Education to establish
8 uniform reporting systems, and that was passed in
9 2011; is that right?

10 A. Yes.

11 Q. And then over the last few years starting in
12 2011, there has been legislation that has permitted
13 transfers from fund to fund, so it would kind of
14 capture some fund balances; is that right?

15 A. Yes.

16 Q. The result of these changes, I'm not going
17 to ask you your opinion on that, but one of the major
18 results would include that now LOB is part of the
19 base funding and the weights are higher than what
20 they had been before Montoy, is that correct?

21 MR. RUPE: I'm going to object to
22 the question. It's the state aid portion of LOB that
23 is state money not the entire LOB. It's just a flat
24 mischaracterization.

25 MR. CHALMERS: Maybe you

1 misunderstood my question. I'll be happy to rephrase
2 it.

3 Q. (By Mr. Chalmers) Since Montoy, LOB is part
4 of the foundation funding and the weights that are in
5 place are now numerically higher than what they were
6 before Montoy?

7 A. I would agree with the second part on the
8 weights. Again, I think the first part is that it is
9 the LOB state aid portion that does come from the
10 State that I think the statute says that should be
11 considered part of the foundational aid.

12 Q. The LPA, let's talk about that for a
13 moment. We talked about the study, one of the
14 studies that was passed and then a second study that
15 was passed. And the LPA study was, as you understood
16 it, passed to try to come up with a figure for both
17 what it costs in input and what it costs in output,
18 that is student improvement in our state, is that
19 correct?

20 A. That's my understanding.

21 Q. Now, to define or to decide what moneys are
22 to be considered in what the output would be, the LPA
23 study came up with a list of those things that it
24 would include as expenses of the schools that they
25 tied for whatever reason to student improvement. Do

1 you remember that?

2 A. To a degree, yes.

3 Q. The list is contained in Exhibit 198 at
4 Page C-47. And I'll just ask you whether you
5 remember it. I'm sure if you looked at it, it would
6 have been some long time ago.

7 A. Yes.

8 Q. The list states in 2004, and narrowing what
9 was previous years, that it would look at -- if you
10 want to see, it's C-47, it's going to be towards the
11 very rear. That's not thick enough.

12 MS. GARNER: You said 198?

13 MR. CHALMERS: Maybe I misspoke.
14 It's the LPA study.

15 MS. GARNER: This is the executive
16 summary. This is the summary.

17 MR. CHALMERS: It must be 199 then
18 I think. And I worry that's not thick enough either.

19 MR. RUPE: It's duplexed. It's
20 duplexed.

21 MR. CHALMERS: So are we in 200?
22 Is that where we are? Then if we want to go into --

23 MR. RUPE: No, 199.

24 MR. CHALMERS: All right.

25 JUDGE THEIS: You better name them.

1 MR. CHALMERS: It may be heavier
2 than a half pound, depending on the notebook.

3 Q. (By Mr. Chalmers) It's going to be towards
4 the back, about there. It's in a sub-part. It's
5 C-47.

6 A. Okay.

7 JUDGE THEIS: What exhibit number
8 was that?

9 JUDGE FLEMING: 199.

10 MR. CHALMERS: I think that ended
11 up being 199.

12 MR. RUPE: It's also USD
13 443001864.

14 MS. GARNER: I'll trade him.

15 MR. RUPE: He's found it, I think.

16 THE WITNESS: I found it.

17 Q. (By Mr. Chalmers) It should be Appendix B,
18 expenditures. Do you see what I'm talking about?

19 A. Yes.

20 Q. And I want you to help us translate what
21 some of these mean. And rather than going through
22 the ones in the Column 2000, we can do that, but
23 let's go to the shorter column, 2004, because I think
24 that was kind of going forward stuff. 06, general
25 would be the general fund that we talked about, is

1 that correct?

2 A. Yes.

3 Q. And that general fund is composed of using
4 the formula, applying the weightings and then that's
5 funded by both state and local moneys; is that right?

6 A. Yes.

7 Q. Then the next thing they looked at is
8 federal, and that would be the federal funds that the
9 State receives?

10 A. I assume that's correct. I don't know
11 whether that item includes federal food service for
12 school district budgeting.

13 Q. If we look at how the report or study was
14 ultimately done, they backed out after they did their
15 calculations a certain part of the federal. And
16 maybe they pulled out the state -- or it was I think
17 a \$205 million back-out.

18 But for the purposes of their definitions of
19 the funds, they used the federal money. I think that
20 you have said a couple different things or I heard a
21 couple things, but so we're clear on this, if we've
22 got two glasses of water, one is filled up a little
23 bit and that's federal funds, not food service funds,
24 but funds that go to help kids.

25 A. Yes.

1 Q. That when you get the rest of your money if
2 you're trying to fill up both cups you just don't
3 have to fill up as much if you have the federal funds
4 designated to certain kids, is that right?

5 A. I guess I'll just phrase it by saying I
6 would agree that those federal funds do help in
7 educating the students.

8 Q. In other words, when money comes into school
9 districts, what they have to do is put it into
10 different silos, different funds on how they're going
11 to spend it?

12 A. Yes.

13 Q. And so if they've got one of the silos
14 partially filled with federal funds, that leaves them
15 because of that more money available to fill up the
16 other silos, and that's why if you take the food
17 services out, in your opinion you should consider
18 federal funds as part of the operational expenses?

19 A. Yes.

20 Q. Now, then they have supplemental general and
21 there we're talking about the LOB; is that right?

22 A. Yes.

23 Q. Bilingual, they have that as well?

24 A. Yes.

25 Q. Capital outlays. What is capital outlay?

1 A. Capital outlay I would assume are those
2 dollars which are primarily raised by a local mill
3 levy, but you can transfer other dollars into, as you
4 alluded to, and there was for a period of time a
5 state aid component. Those dollars have to be
6 used, well, for capital costs, essentially for
7 building, for maintenance, remodeling and equipment.

8 Q. And they've got EXT, which I think is
9 extended school programs. I think we know what that
10 is, but tell us real quickly if you can.

11 A. I believe that that would include -- there
12 were -- it's relatively rarely used, but it might be
13 an after-school program or an enrichment program.

14 Q. May be a preschool program?

15 A. Perhaps. I don't know if it would be
16 included in there, but it is essentially some
17 supplemental programs.

18 Q. Professional development, summer school, I'm
19 sure we know what that is. Gifts and grants, what
20 does that mean?

21 A. Gifts and grants I think would be if a
22 district receives money from an outside source,
23 either a local benefactor or in some cases I think
24 other units of government may provide dollars, you're
25 allowed to put that into that fund, whether or not

1 what you can use it for would be determined as to
2 whether there were any conditions on the gift or
3 grant.

4 Q. Number 44 is school retirement. Is that
5 KPERS?

6 A. That would be my understanding.

7 Q. And KPERS doesn't put teachers in a
8 classroom or books in a classroom, but it's a benefit
9 to teachers; isn't it?

10 A. Yes, it is.

11 Q. And presumably it's something that will be a
12 factor in the decision of a teacher as to whether to
13 accept a job in our state or remain in our state?

14 A. Yes.

15 Q. Then there's, I don't know, I think that's
16 contingency reserve. What is the contingency
17 reserve?

18 A. Districts are allowed to transfer money up
19 to a limit set by the State into basically just a
20 reserve fund that they could use for unexpected
21 occurrences.

22 Q. And then --

23 A. Kind of an emergency fund.

24 Q. The next category the study used was text
25 and student materials. And that's --

1 A. Textbook, textbook and other materials.

2 Q. The blow-up we have of all state funds, so
3 that we're clear, this money is everything that is
4 spent during these years. This is everything that is
5 revenue for this year for K through 12, but it
6 includes things beyond the categories we just talked
7 about?

8 A. Okay. I understand that.

9 Q. Obviously it does?

10 A. Right.

11 Q. It doesn't have bond -- this does not have
12 bond and interest. It doesn't have, well, maybe
13 other things too, but that's the only thing that
14 comes to mind right now.

15 A. Right.

16 Q. So you're not suggesting that the moneys
17 spent here are made available, that is the aid and
18 revenue spent is not important to schools, but we're
19 saying that some of the money doesn't work its way
20 into the classroom; is that right?

21 A. Well, I would put it this way. I would say
22 it was not immediately available for direct classroom
23 operations. I think people would agree that the
24 quality of your building may have some impact on the
25 quality of education. But it's not available

1 directly for ongoing operations.

2 Q. Let me show you another blow-up of one of
3 the exhibits that's in evidence. And that's the
4 state total of 2010/2011 current operating expenses.
5 And it takes out transportation. That would have
6 been one of the things that wasn't on the LPA list.

7 A. Yes.

8 Q. It takes out food services. That would
9 include the federal moneys or whatever and that's not
10 on the list.

11 It takes out the community and adult
12 services. I don't really know what that is. It's
13 not on the list. I'm not concerned about it. But it
14 then gives what was actually spent in these other
15 categories that are all the categories found in the
16 LPA study, with the exception of the capital outlay,
17 because I don't think this includes capital outlay.

18 A. I don't believe it does. I think that uses
19 a definition of current operating expenses that would
20 include bond and interest and capital outlay.

21 Q. I'll represent to you that this is a blow-
22 up, where it says cost function funds per pupil.
23 It's those highlighted funds. And this is for Kansas
24 City, it's not across the board. But you've given
25 some general numbers and you've done some general

1 calculations. But if you take these numbers, add
2 them up for each year, divide by the number of
3 pupils, we should be able to calculate the per pupil
4 cost for the operational expenditures and those
5 expenditures that were considered in the LPA study to
6 be directly related to student performance. We
7 should be able to do that, shouldn't we?

8 MR. RUPE: I'm going to object and
9 I don't know that this is an objection, maybe it's a
10 clarification. In your all expenditure number is
11 capital outlay and bond and interest included or
12 not?

13 MR. CHALMERS: It's not. It's
14 these categories right there from this document.

15 Q. (By Mr. Chalmers) And so I don't -- my
16 question is a long one. Let's do it in pieces. We
17 can take those numbers. We can add them up. And we
18 can find the total current expenditures less the --
19 those categories for each year for each district and
20 for the state, can't we?

21 A. I believe we could.

22 Q. We can then take those numbers and we can
23 divide them by what has been reported that year in
24 full-time equivalent enrollment and we'll have the
25 per pupil number for these functions?

1 A. Okay. So I just want to clarify one thing.
2 The chart you're holding up now is based on those --
3 what's on the chart behind it, which would mean it
4 would not include capital outlay? The reason --

5 Q. That's right, it doesn't include.

6 A. So when that says cost function per pupil,
7 that is not the same as what was on the list by LPA.

8 Q. Actually, it's smaller than the LPA, isn't
9 it?

10 A. That's what I want to be clear on, okay,
11 yes.

12 Q. I'm just asking whether we can do it. I'm
13 not asking you to verify the numbers. We've got the
14 numbers. Anybody can do that.

15 A. Sure.

16 Q. But that could be what would happen. And
17 then if we look at the list that LPA looked at when
18 it was coming up with those things that it, through
19 its experts, found were related to student outputs,
20 we could add capital outlay to those numbers?

21 A. Yes.

22 Q. I'm looking to make sure I don't hold you,
23 because I don't want to be responsible.

24 A. Thank you.

25 Q. Equalization aid, I think we need to clarify

1 that. There is equalization aid provided for bond
2 and interest, local taxes through the state?

3 A. Yes.

4 Q. And what that means is if a community wishes
5 to have a capital improvement and they issue their
6 bond to fund that and are going to pay the interest
7 and the principal back over time, that the State will
8 provide aid to those communities who have a lower
9 assessed property value; and therefore, are unable to
10 raise as much in their taxes to repay the bond and
11 interest?

12 A. Yes.

13 Q. And that equalization aid is set at what
14 level, do you remember?

15 A. Well, the formula is that for bonds issued
16 after 1992, the State pays 25 percent of that cost at
17 the median assessed valuation per pupil, I believe.

18 Q. We could look, but that program or that
19 formula has been fully funded, at least through this
20 year?

21 A. Yes, that is a -- that is a, I believe it's
22 either the demand transfer or revenue transfer, which
23 means it's really treated as an entitlement, so the
24 Legislature actually does not really debate every
25 year how much to put into it.

1 Q. Now, I didn't ask you about the amendments
2 to the Capital Outlay Equalization Act, but there
3 were amendments one year that changed it from a
4 demand transfer to a revenue transfer. You remember
5 that, don't you?

6 A. I remember it's gone back and forth. I
7 honestly don't remember what it is right now.

8 Q. There are amendments to the statute, as
9 well. We talked about capital outlay. That actually
10 discontinued capital outlay for some years, is that
11 correct?

12 A. My understanding is --

13 Q. Capital outlay aid.

14 A. Actually, I don't believe the statute was
15 ever amended. It simply isn't being appropriated.
16 Most statutes have a clause that says subject to
17 appropriation this is done, and so the formula is
18 still on the books, but there's no money put into
19 that program to distribute to districts.

20 Q. Is it possible you're mistaken and we should
21 just look at the statute?

22 A. It is always possible I'm mistaken.

23 Q. But back to the bond and interest
24 equalization. That's a full amount. Now, then
25 there's also LOB equalization. And under the formula

1 districts are to be equalized up to the 81.2 percent
2 level, is that right?

3 A. Yes.

4 Q. Which means that we take all these districts
5 and we rank them on their appraised property value
6 and we figure out where the 81.2 percentile is. And
7 those districts above that percentile, they don't get
8 any equalization aid and those underneath get
9 equalization aid depending on where they're situated
10 to bring them up to the 81.2 percentile. That's how
11 the formula works?

12 A. Yes.

13 Q. Now, last year that was not fully funded and
14 so the districts who would be entitled to that
15 equalization aid were getting some percentage of what
16 would have been required to bring them up to the 81.2
17 percentile, is that right?

18 A. Yes.

19 Q. And it was funded last year at what,
20 about -- we don't know exactly how it will work out,
21 but it is estimated somewhere around 85 percent?

22 A. That's my understanding.

23 Q. Let's talk about then there's the capital
24 outlay equalization and I think we talked about that
25 that's not been funded, wasn't funded this last year

1 and won't be funded this year?

2 A. Yes.

3 Q. The equalization on bond and interest is
4 fully funded still?

5 A. Yes.

6 Q. The equalization on the LOB is complicated
7 because you have to try to figure out how to rank
8 those people, but appropriation has been made so that
9 equalization will be paid. And do you know what is
10 anticipated as to what the prorated amount will be?

11 A. Well, all I can say is it was appropriated
12 at the same level as in the current year in terms of
13 dollar amounts. And because the base budget is going
14 to go up, there was some increase in the base budget,
15 that means that it is possible that school districts
16 could spend more now because we're using an
17 artificially inflated base that may not have a big
18 impact. So the odds are it may drop a little bit
19 from 85 percent.

20 Q. So it's probably going to be 85 percent or a
21 little bit less?

22 A. Yes, that would be my assumption.

23 Q. There is also what you described as
24 equalization trying to say how it is that districts
25 are, as far as taxpayers, treated the same, the local

1 effort where each district for the funding of the
2 general fund is required to issue a 20 mill levy; is
3 that right?

4 A. Yes.

5 Q. And the way that works is if I'm a very
6 affluent district with lots of property and I raise
7 20 mill and it fully funds my entitlement to general
8 funds plus, that plus goes to the State?

9 A. Yes.

10 Q. If I'm on the other end of the spectrum,
11 poor district down in southeast Kansas, I think the
12 very corner around Galena is probably the poorest
13 district, what will happen is that that funding, that
14 local effort is still 20 mill, but it's probably not
15 going to be adequate to fund that general fund, so
16 they get the rest of their money through the state?

17 A. Yes.

18 Q. So there's an equalization built into how
19 the general fund is set up in the formula, is that
20 right?

21 A. Yes.

22 Q. I want to talk to you about one other thing
23 and then talk to you about some of your PowerPoints
24 or a couple other small things and then your
25 PowerPoints.

1 In exhibits you were shown, Plaintiffs'
2 Exhibit 328, that's the one where -- I don't know if
3 you have it in front of you still or not.

4 A. I think I gave them back. I'm sorry.

5 Q. That's all right. It's the one that has
6 your table at the end of your How Can School Funding
7 Increase If Operation Budget Decreases?

8 I do have a quick question about that
9 table. You say that you do not include the stimulus
10 money that the federal government provided when you
11 calculated the per pupil amounts that came from the
12 federal dollars.

13 Is that stimulus money then put back into
14 the per pupil of the general fund?

15 A. Yes.

16 Q. And so the reasoning was that there was just
17 a chunk of money. When the state fund went down, the
18 federal government through the stimulus money said,
19 here, states, use this, and Kansas put it into its
20 general fund in its place?

21 A. Yes.

22 Q. You were asked by Mr. Rupe to provide some
23 estimates on losses as a result of cuts. And I was
24 trying to understand what the reductions were from.
25 Maybe rather than me guessing you can just tell me

1 real quickly, what was the number you were using as
2 the high number from which you made your
3 subtractions?

4 A. The high number was the budgeted total
5 general fund in the state plus special education for
6 2012. And then I subtracted that same number for
7 2009. So it was simply trying to capture the
8 decrease in the total dollars the districts were
9 budgeted to spend in that category.

10 Q. So what you were doing is you were comparing
11 what the funding was in 2009 to 2012?

12 A. Yes.

13 Q. I understand. So I don't remember right
14 now, what the base was in 2009.

15 MR. RUPE: I think it's on his --

16 Q. (By Mr. Chalmers) I think Exhibit 105 shows
17 the base in 2009 is 440.

18 A. Yes.

19 Q. And so you took that number plus -- and
20 worked through whatever the weightings were and
21 worked through whatever the student population was at
22 that period of time, which gives the general fund
23 number and just compared it to what we funded in
24 2012?

25 A. Yes.

1 Q. And there has been or have been statements
2 and I think maybe even testimony that the base is set
3 statutorily at \$4,492. Do you remember testifying to
4 that?

5 A. Yes.

6 Q. Now, that's not entirely accurate, in that
7 the statute says the base is that number or whatever
8 it works out based on appropriation by the
9 Legislature that year, isn't that correct?

10 A. I honestly don't remember what the language
11 says, but that's in effect what happens. If money is
12 not adequate to fund the base then the base is
13 automatically lowered down to meet the dollars
14 available.

15 Q. It's almost, I guess, common sense, seems to
16 be that you can't have one Legislature say this is
17 what the base will be in perpetuity; every year
18 appropriations have to be made, every year the
19 Legislature passes on that, is that correct?

20 A. Yes.

21 Q. Now, when an appropriation is made less than
22 the 4,492, it becomes a mathematical issue, doesn't
23 it? You appropriate a certain set of money. And
24 then you have to work back to figure out what the
25 calculated base is from that set of money, is that

1 right?

2 A. Yes.

3 Q. What you are in essence doing is taking the
4 Legal Max, which is that formula that shows the
5 different weights, the anticipated enrollments, and
6 you're working back through that and coming up with,
7 well, this is what the base will be based on the
8 moneys that have been appropriated?

9 A. Yes. Maybe the simpler way to do it is when
10 you know whatever the actual or estimated total
11 weighted enrollment is you divide the dollars
12 available by that amount.

13 Q. It's a little bit more complicated than
14 that, because you've got to work it back through the
15 weightings too, don't you?

16 A. What I was saying is you use the total
17 weighted enrollment.

18 Q. I see what you're saying. That's fine.

19 Now, the weighted enrollment, it changes
20 every year?

21 A. Yes.

22 Q. It changes because you've got more bodies in
23 the classroom, it changes because you've got
24 different demographics, and so that number, that
25 full-time weighted enrollment, will vary depending on

1 what is assumed for any given year or what actually
2 happens; is that right?

3 A. Yes.

4 Q. I know that there's been some suggestion
5 that the dollar figures that would be shown in, for
6 instance, this chart maybe don't account for the
7 end -- the base numbers that are shown in this chart,
8 which is 105, don't account for changes in
9 population, greater Hispanic population, greater
10 numbers of kids, but in fact they would, because when
11 you're calculating it backwards you're looking at the
12 number of kids and the demographics; aren't you?

13 A. All of those changes would be part of what
14 produces the final base.

15 Q. I mean, as a practical matter, part of the
16 reason that this base is going down is because of the
17 increased number of kids, because of the changes in
18 demographics, because the money wouldn't show the
19 same level each year?

20 A. That's right. And in fact, one of the
21 reasons that I prepared the report the way I did was
22 to simply look at the dollar-for-dollar change as
23 well as what the change in the base has been, which
24 reflects those other changes in weightings.

25 Q. One other little cleanup question I think

1 and then I've got closing things to talk to you
2 about. Two other little questions.

3 You talked about the cost to educate a child
4 who has English as a second language and you're aware
5 that the LPA study tried to evaluate that cost?

6 A. As I recall, that was one of the areas that
7 they looked at.

8 Q. They refer to it as bilingual, I think.

9 A. Yes.

10 Q. On 199, Page C-30 -- and you're in kind of a
11 hurry, so I won't ask you necessarily to find it, but
12 if you can, that's great -- what their study
13 concluded is that the bilingual weighting average is
14 about .14, which varies little across districts, as
15 compared to the poverty weighting, which was .65 in
16 rural districts and 1.15 in urban districts.

17 And so what they would have is that there is
18 an increased cost but not nearly as much for poverty
19 to try to educate these kids that are bilingual is
20 what the numbers would show.

21 Now, there's an explanation I want to talk
22 to you about. But were you aware of that, that there
23 was a difference?

24 A. I probably was at one time. To be honest, I
25 haven't reviewed this in a few years, so --

1 Q. I think what they say next is it's possible
2 that the weight for the free lunch share is partially
3 capturing the higher cost associated with bilingual
4 students.

5 Now, when the Legislature with this study
6 then implemented after Montoy the bilingual
7 weighting, they provided it at higher bilingual
8 weighting than the .14. We've talked about that.

9 A. Yes.

10 Q. About approximately three times two and a
11 half times greater, right?

12 A. Yes.

13 Q. And then there is testimony that you
14 provided about projections. Every year the
15 Department of Revenue and others will try to project
16 as part of the appropriation process what the
17 expected revenue of the state is, right?

18 A. Yes.

19 Q. And there is every year varying estimates as
20 to where things will sort out over the course of the
21 year?

22 **A. Well, every year there is an official**
23 **projection done looking at basically the next budget**
24 **year. And then, what tends to happen is when you**
25 **look at the kind of charts that were shown, you then**

1 have to make assumptions if you want to go beyond
2 that year. So I think typically it is assumed that
3 revenues will grow about 4 percent, if I'm
4 understanding.

5 Q. I think Mr. Rupe showed you some of those
6 estimates that had been made in the past and previous
7 years.

8 A. Yes, yes.

9 Q. This year I think that there was more
10 disagreement maybe than others as to what the
11 anticipated revenue is, in part because of the law
12 that has been passed dealing with taxes. I just have
13 a general familiarity with it. But you are aware, is
14 that correct?

15 A. Yes. Again, the only official, official
16 estimate we have is for next year, which is really
17 just when they'll kind of start to phase that in. I
18 think the debate is how to calculate the impact when
19 you go into Fiscal Year '14, '15, '16.

20 Q. Now, there were also -- the previous year
21 there was that estimate and there was probably a
22 slight disagreement among folks as to how much the
23 revenue would be, do you remember that --

24 A. Yes.

25 Q. -- involved in the process?

1 A. Yes.

2 Q. And this last year or this year, I guess, it
3 ended up we had more revenue than was projected by
4 about 2.10 -- no, 210, 215 million; is that right?

5 A. I think over the two years the November --
6 I'm sorry, now you're going to -- I remember very
7 distinctly that one of this year's revenue estimates
8 increased over two years about \$250 million compared
9 to the previous estimate.

10 Q. I was thinking about 215, but it could be.

11 A. Those swings are not uncommon from estimate
12 to estimate.

13 Q. The point is, projections is that, they're
14 just projections?

15 A. Yes.

16 **Q. Let's talk about some other PowerPoint and**
17 **get you out by 12:00. We could show you Exhibit 33,**
18 **34, and 131.**

19 If we look at 33 first, this is one of the
20 exhibits that Mr. Rupe showed you yesterday, and turn
21 to Page 115. I've got a question about that.

22 A. Okay.

23 Q. What this chart shows is the state aid as a
24 percentage of the general funds showing that 2010 was
25 impacted. What does that -- the impact of 2010, what

1 does that mean?

2 A. I was afraid you were going to ask me that
3 and force me to try to remember why this was the
4 case. But what this is, and I want to make sure
5 we're understanding it, this is the share of the
6 state general fund which is going to school district
7 state aid. And so what this really reflects is that
8 1995 was the first year the new law was into effect.
9 And so the state general fund went up and a bigger
10 share of it went there.

11 I believe I made that note in 2010 to
12 explain that there's a bump-up there because the
13 state general fund budget was kind of distorted by
14 the fact that there was stimulus money.

15 And I'm going to tell you very honestly I
16 cannot at the moment remember why that's the case.
17 But I simply know that that was the reason and I
18 wanted to note it, because the state general fund was
19 affected by, gosh, 600, \$700 million in ARRA money,
20 which is not typically there. And all I can remember
21 is that that made the relative share of the budget
22 look a little bit different as a result.

23 Q. And --

24 A. I think I am remembering. Part of the
25 reason is because a big chunk of the stimulus money

1 actually went to the -- for human services for
2 Medicaid. And so that meant that the share of the
3 budget going to Medicaid dropped rather dramatically
4 and the part going to education then kind of took a
5 jump up for that reason.

6 And then by 2012, when that was gone, we
7 kind of returned to a more normal point.

8 Q. Now, state general fund is a term that I
9 became familiar with, probably everybody else knew
10 what it was long before I did, but what was the state
11 general fund?

12 A. The state general fund is the biggest single
13 fund within the total state budget and it is really
14 what the State uses for just, again, general
15 operating purposes.

16 For the most part, most state income taxes
17 and state sales taxes, general state revenues, go
18 into the general fund. And it is used -- maybe the
19 best way to explain it is what it is not. It is not
20 federal money. It is not -- it is not highway fund
21 dollars.

22 It is not tuition collected to state
23 universities, which are considered a state agency.
24 So it is really just a state general purpose
25 checkbook.

1 Q. It is kind of the pie that is used to fund
2 education, the courts, SRS, all the services that the
3 State has as its annual obligations and operations?

4 A. I would say that would be correct.

5 Q. And what this showed is that graphically, as
6 I understand it, that starting around 2000, that more
7 than half of the state pie was going to K-12
8 education?

9 A. Half of the state general fund, which is
10 about half of the total budget.

11 Q. Now, turning to Page 123, and that shows
12 mill levies required to raise to 31 percent LOB. And
13 would this have included -- these numbers have
14 included the, I'll call it the artificial base,
15 that's used to calculate LOB or would it have been
16 the general fund base?

17 A. I think it would have included those. This
18 was an exercise our research department did where we
19 basically just took everybody's local option budget
20 authorization and assumed they were using 31 percent
21 and then just calculated the mill levy that would be
22 necessary to fund that amount.

23 Q. Then you put it in a distribution, putting
24 it by way of rankings, who's in the 90th percentile,
25 the 80th percentile, on down to zero?

1 A. Yes.

2 Q. The 90th percentile, incidentally, if I was
3 to quibble with this, would probably be the high,
4 because those would be the people that are in the top
5 10 percent; is that right?

6 A. Well, I think what this actually represents
7 is the high end are the districts that have the
8 lowest valuation per pupil and, therefore, need the
9 highest, have to have the highest.

10 Q. I'm trying to get how the distribution is.
11 It's not all that important. Where it says median,
12 that's where they all cluster in the middle?

13 A. That would simply be the middle district in
14 terms of wealth per pupil. It would take 22.9 mills
15 for that district to have a 31 percent LOB.

16 Q. One way to look at this would be to take the
17 outliers, that's the high and the low, and cast them
18 out. And what you'd have is about from the 90th
19 percentile to the 10th percentile in variance in mill
20 levies about 16 mills, is that right?

21 A. That would look to be about correct.

22 Q. And as you get towards the middle the
23 variance is even less, is that right?

24 A. It appears to be, yes.

25 Q. This doesn't take into account the

1 equalization money, even though it's not fully
2 funded, does it?

3 A. No, it does.

4 This includes -- that was sort of the point
5 of this, to show that even with equalization there
6 are these differences. It would be much, much
7 greater if you did not include the equalization.

8 Q. I was looking to try the see how it says it
9 includes equalization. Maybe that's just --

10 A. And that may just be we didn't label it as
11 well, because I think we used this in another place
12 where we indicated that this is -- well, I think what
13 it says "districts by percentile at current
14 equalization rate." So this is assuming the amount
15 of money -- this is assuming if you do this at the
16 81.2 percentile.

17 Q. If everybody goes up to the top with
18 equalization, that is what the distribution would be?

19 A. Yes, yes.

20 Q. Now, Page 132 of the exhibit is entitled Key
21 Findings, and then it starts talking about -- it
22 says, "Unlike many Kansas in top ten" -- or think it
23 should be is in top 20 on all measures, is that
24 right?

25 A. This is in PowerPoint speak, so there are

1 words missing I'm afraid.

2 Q. And then what it does, for the next several
3 pages, is goes on to talk about how Kansas has done
4 against the nation on a number of different
5 standards, is that right?

6 A. Yes.

7 Q. Because that's duplicated in some other
8 exhibits and because I want to get you out of here
9 real quick, I'll move on to another exhibit. Let's
10 look at Exhibit 34 for a moment.

11 This is another one of your PowerPoints, is
12 that correct?

13 A. Yes.

14 Q. And if we look at -- actually, this is
15 duplicated as well, but if you look in -- tell me,
16 what was the purpose of this PowerPoint? Maybe you
17 can help me. It's a government relations network
18 meeting.

19 A. This was presented at our annual convention
20 and probably the first areas that you're talking
21 about is really just to try to update our members on
22 how is our system doing.

23 Q. Okay. And I want you to compare that for a
24 second to Exhibit 131.

25 A. Okay.

1 Q. Which is this very attractive green Focus On
2 What We Know About Student Achievement and Student
3 Improvement in Kansas. And I don't want to
4 duplicate. What's in this PowerPoint is pretty much
5 contained in 131?

6 A. Yes.

7 Q. Let's talk about 131 then.

8 131 has some bullet points on the first
9 page, but let's talk about what it is first. What is
10 it?

11 A. This was really just designed to explain to
12 our members and help them discuss with their
13 legislators and patrons and public essentially what
14 is happening to student achievement in Kansas over
15 time, and against, where we could, external
16 benchmarks.

17 Q. And the external benchmarks that your
18 organization looked to, they went out and researched
19 in a variety of different categories where Kansas was
20 against other -- other states; is that right?

21 A. Yes.

22 Q. And the bullet points, the numbers one
23 through ten on the right column of this document, are
24 they a summary then of where Kansas is as the backup
25 information provided in the balance of the exhibit?

1 A. Yes.

2 Q. And this exhibit is used how? How do you
3 use it? I think you said you use it for your
4 members?

5 A. This was kind of prepared to be a public
6 document that either we or our members could share
7 with people who have questions about how well we're
8 doing. I use it in the Legislature and other
9 avenues.

10 Q. That was my next question.

11 A. Yes.

12 Q. This is something you shared with the
13 Legislature?

14 A. I may not have used this document
15 specifically. But as you can see, many of these
16 charts we use in different environments, different
17 ways.

18 Q. Point 1 is Kansas students have improved
19 mastery of basic reading and math on both state and
20 national tests over the past decade. And then you
21 have the documentation of that, that is on the next
22 couple of pages; is that right?

23 A. Yes, yes.

24 Q. You also show it by way of subject groups on
25 Page 3, is that correct?

1 A. Yes.

2 Q. The next pages, "The Kansas students rank
3 among the top for all students and for low income
4 students who traditionally have lower academic
5 performance." And that is I think within the second
6 page in the document we talked about?

7 A. Yes.

8 Q. Third page in rather.

9 Then you say, "Comparing similar systems and
10 students, Kansas public schools do well or better
11 than private schools in Kansas and nationally."

12 And then you have your backup information to
13 establish that. Is that correct?

14 A. Yes.

15 Q. Then it's four, "Kansas has made progress
16 closing the achievement gap among student groups.
17 Program targets for the at-risk kids are working
18 effectively."

19 That's one of the bullet points?

20 A. Yes.

21 Q. Then, "High school completion has been
22 raising for decades and Kansas has improved its high
23 school graduation rate in the past decade."

24 You document that as well.

25 A. Yes.

1 Q. "Schools are preparing more students for
2 college than in the past. Kansas scores on college-
3 bound students rank in the top ten of all states and
4 have improved over the last 15 years."

5 And you show that by referencing ACT scores
6 and other information on Pages 9 and 10 of the
7 exhibit, I believe?

8 A. Yes.

9 Q. It says, "The Kansas adult education
10 attainment has been rising since the 1940s and
11 consistently top the national average."

12 So there you're really talking about kids
13 who maybe left school but have come back and have
14 completed?

15 A. Well, what it's really talking about is just
16 the educational characteristics of the whole
17 population.

18 Q. I think there were some discussions about
19 kids leaving school and there's the material in here,
20 but it is what it is.

21 A. Yes.

22 Q. Then you talk about the economic value of
23 education, which no one disputes. And Number 9 is,
24 "Kansas school districts have produced top ten
25 educational results with per pupil spending near the

1 national average. The State's educational outcomes
2 have increased without spending a larger share of the
3 State's personal income."

4 And you provide the data for that, as well?

5 A. Yes.

6 Q. Lastly, "Kansas has fewer at-risk students
7 than many states, but has more at-risk students than
8 other high-achieving states, and the number of
9 at-risk students is increasing. Point being that
10 when you try to compare us to other states, you need
11 to understand that those that seem to be doing better
12 than us may have a lower population of at-risk
13 students than we do."

14 A. That's correct.

15 Q. This document was published, look at the
16 last page, January 2012. And those were the views
17 that you held on January 2012, is that right?

18 A. Yes.

19 Q. And those are the views that you hold now?

20 A. Yes.

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

23 MR. RUPE: Can you give us a few
24 more minutes so I can do redirect?

25 THE WITNESS: Sure.

1 MR. RUPE: Thank you.

2 Can I get the all expenditure blow-
3 up from you? It's the one that shows cost
4 functions. That's Kansas City.

5 MR. CHALMERS: I think that's all.

6 MR. RUPE: No, you have a blow-up
7 of all expenditures statewide.

8 MR. CHALMERS: I think it's the
9 first one.

10 MR. RUPE: No, it's a bar graph.
11 You gave me a copy of all your blow-ups. There it
12 is.

13 MS. GARNER: You might need this.

14 THE WITNESS: Okay.

15 JUDGE THEIS: Don't get him a
16 speeding ticket.

17 MR. RUPE: He said he has to be in
18 Kansas City by 3:00, so I think he can go another 20
19 minutes.

20 REDIRECT EXAMINATION

21 BY MR. RUPE:

22 Q. I put up, it's not numbered, but it's from
23 Plaintiffs' 69, is that right, the all district
24 expenditure bar graph?

25 JUDGE FLEMING: Plaintiffs' 69 or

1 defense?

2 MR. RUPE: Defense.

3 MS. GARNER: I don't think that's
4 marked as an exhibit anywhere.

5 MR. CHALMERS: I think that's one
6 that we agreed to mark but it hasn't been marked
7 yet. If it were 69, it would be one of yours.

8 MR. RUPE: Let me call it the all
9 district expenditure blow-up that is cost function
10 funds per pupil.

11 Q. (By Mr. Rupe) So as opposed to the USD 500
12 bar graph that we saw, this is for all of Kansas, all
13 right?

14 A. Yes.

15 Q. And I want you to do some arithmetic for the
16 Court. I want you to subtract from 9,565 --

17 A. 9,965.

18 Q. Now, subtract 9,170.

19 A. That is a decrease of 795.

20 Q. I don't think so.

21 A. No?

22 Q. Try it again.

23 JUDGE THEIS: Multiple choice here.

24 A. Give me the numbers again, make sure I enter
25 them correctly.

1 Q. (By Mr. Rupe) 9,565.

2 A. 95, I'm sorry. 9,565.

3 Q. Minus 9,170.

4 A. Minus 9,170.

5 Q. Should be a total of 395.

6 A. Yes.

7 Q. Times 788,306, which I will represent to you
8 is the entire weighted enrollment for the State of
9 Kansas.

10 And what's the number you get?

11 A. An error. Apparently, this calculator is
12 not big enough to do that math.

13 Q. Well, take my word for it, it's
14 3,011,000 --

15 JUDGE THEIS: No. 311,300 --

16 JUDGE FLEMING: No. 311 million --

17 MR. RUPE: Million, 380,000 --

18 THE COURT REPORTER: I'm sorry, can
19 we say that again?

20 MR. RUPE: I went to a plaintiff
21 district, so I've got an excuse.

22 MS. GARNER: Can you give the
23 number one more time? I don't think it's on the
24 record.

25 MR. RUPE: Sure. I'm sorry.

1 311,380,870.

2 Q. (By Mr. Rupe) Does Kansas still have an
3 achievement gap?

4 A. Yes.

5 Q. With regard to that achievement gap, because
6 Kansas does well against other states is that
7 incentive for us to give up on closing the
8 achievement gap?

9 A. We don't think so.

10 Q. The statutory amount that we've talked about
11 on the base is 4,492. Take a look at Plaintiffs'
12 Exhibit 12. I'll just hand it to you to move things
13 along.

14 The base that is funded is 3,780 for Fiscal
15 Year 2012?

16 A. Yes.

17 Q. With regard to the cuts, the cuts were not
18 accomplished by tinkering with the at-risk, bilingual
19 or non-proficient weighting factors, they were
20 accomplished in the appropriations bill, correct?

21 A. Yes, they were accomplished by reducing the
22 amount of general state aid, which has the effect of
23 reducing expenditures throughout the system. All the
24 weightings and the base came down proportionally.

25 Q. And that was in an appropriations bill?

1 A. Yes.

2 Q. Or more accurately an under-appropriations
3 bill, true?

4 A. Well, the appropriations bill did not fund
5 the statutory formula.

6 Q. And with regard to what Mr. Chalmers asked
7 you about, in terms of other state entities, like
8 SRS, the highways, I'm going to leave the courts out
9 of this, but with regard to the other state entities,
10 do you know of any other of those entities listed by
11 Mr. Chalmers that have a constitutional requirement
12 to suitably finance them?

13 A. I'm not aware of that.

14 Q. And there is one for education, isn't there?

15 A. Yes, there is. I am aware of that.

16 Q. Now, Mr. Chalmers represented to you that
17 Montoy approved 549. I want to direct your attention
18 to the Montoy decision on 282 Kansas, Page 9. Start
19 at Page 138 P 3rd 755.

20 MR. CHALMERS: To get this man on
21 the road quicker, I'll correct Mr. Rupe's
22 misunderstanding. What happened is the court
23 dismissed after that bill was adopted. I don't think
24 it has ever said it's constitutional one way or the
25 other.

1 MR. RUPE: Then I would agree and,
2 Counsel, I'll stipulate that the court did not
3 approve Senate Bill 549. What they said is it is new
4 legislation and if challenged, its constitutionality
5 may be litigated in a new action filed in the
6 district court.

7 Q. (By Mr. Rupe) That's what they said, isn't
8 it?

9 A. That's my recollection.

10 Q. With regard to the state aid portion of the
11 LOB, that is what the State has by statute considered
12 to be state money, correct?

13 **MR. CHALMERS: Object to the form.**
14 **Lack of foundation. Calls for legal conclusion.**

15 **JUDGE THEIS: His understanding.**

16 **MR. RUPE: His understanding.**

17 **A. That is my understanding.**

18 Q. (By Mr. Rupe) Is it your understanding that
19 the locally raised LOB money is part of the state
20 money?

21 A. I don't think that's what the statute says.

22 Q. Mr. Chalmers' examples with regard to
23 federal aid on the water glasses, if I understand
24 what you indicated, rather than pour the money into
25 the glass, you just don't put it in and you retain

1 some flexibility, true?

2 A. I'm not sure I understand the question.

3 Q. With regard to the federal aid, there are
4 some places that you put the federal aid into the
5 silo and you can't take it out, right?

6 A. That's true. That's true. Well, what I
7 would say is a lot of federal aid is food service
8 dollars, which I'm not saying are unrelated to
9 education, because I think you heard yesterday,
10 hungry kids don't learn as well, but they can only be
11 used for that purpose. They are not available to be
12 used for general instructional programs.

13 Q. And in terms of sorting out federal dollars
14 that are used for the classrooms, you've indicated
15 what kind of federal dollars should be considered for
16 that purpose?

17 A. I've indicated that I think at a minimum,
18 and this is the bulk of the money, you would include
19 special education, federal aid, Title I state --
20 Title I aid and other programs under the federal
21 Elementary and Secondary Education Act.

22 Q. Now, if you were looking at actual costs of
23 providing an education for those kids that cost more
24 to educate, including English language learners and
25 poverty kids, if you were looking at those actual

1 costs, would you reduce the amount of money available
2 for them as their costs were going up?

3 A. Well, I would not. It would seem to me that
4 if you're going to reduce the cost available it is
5 going to be more difficult to provide the services to
6 help them achieve at high levels.

7 Q. With regard to the return of money on the 20
8 mills, are there any districts today that raise so
9 much money that they have to return money to the
10 state?

11 A. I believe there are several. I know there's
12 at least one, because there is a function in the
13 formula where that is appropriated and distributed.

14 Q. So there may be one?

15 A. There's at least one. I believe there's
16 still several, but there are not very many.

17 Q. We'll ask another witness that question.

18 MR. RUPE: That's all the questions
19 I have.

20 MR. CHALMERS: I've got about a
21 half hour of --

22 THE WITNESS: Have mercy.

23 JUDGE THEIS: You can step down.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 MR. RUPE: I think now if we could,
2 since I told Dale Dennis to be here at 1:00, can we
3 take our lunch break now? Does that work?

4 JUDGE THEIS: Sure. That's still
5 an hour and 15. Good.

6 JUDGE FLEMING: Yeah.

7 MR. RUPE: That's fine.

8 JUDGE THEIS: Try to get started no
9 later than 1:30 for sure.

10 MR. RUPE: Thank you, Your Honor.

11 JUDGE THEIS: Are we going to quit
12 at 3:00 today?

13 MR. RUPE: Yes.

14 JUDGE THEIS: So Dennis would
15 probably be your only witness today?

16 MR. RUPE: We won't get done with
17 him today, but we'll get what we can done by 3:00.

18 JUDGE THEIS: Okay. Sounds good.
19 Thank you.

20 MR. RUPE: I think we're all
21 counting on 3:00, too.

22 (A recess was taken.)

23 MR. RUPE: Plaintiffs call Dale
24 Dennis to the stand.

25 DALE DENNIS,

1 Called as a witness for the
2 Plaintiffs, was duly sworn by the reporter and
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. RUPE:

6 Q. Tell us your name and where you live.

7 A. My name is Dale Dennis and I live in Topeka.

8 Q. Would you -- I want to talk a little about
9 your professional background. And I'd like to start
10 when you started at your current employment. And
11 your current employment is with whom?

12 A. State Department of Education, sir.

13 Q. You are the Deputy Commissioner?

14 A. Yes, sir.

15 Q. When did you start with the Department of
16 Education?

17 A. Fall of 1967.

18 Q. And in terms of when you started, what was
19 your position?

20 A. They called it -- started out as Director of
21 Statistical Services, and shortly thereafter they
22 changed it to State School Finance Administrator and
23 then they changed it later to Deputy Commissioner.

24 Q. If we could, give us an idea of your
25 educational background and your work history that

1 brought you to the Department of Education in 1967.

2 A. I taught school for approximately five
3 years, high school principal for approximately two
4 years.

5 Q. Where did you teach?

6 A. Blue Mound, Kansas.

7 Q. Where were you principal?

8 A. LaCygne, Kansas.

9 Q. Keep going.

10 A. And then I came to the department and I've
11 been there ever since. I have three degrees from
12 Pittsburgh State; BS, MS and EDS.

13 Q. Break down those degrees and what they're
14 in.

15 A. Bachelor's Degree in Business Education,
16 Master's Degree in School Administration, and EDS,
17 and that's centered on school leadership.

18 Q. All right. Now, you've joined the
19 Department of Education in 1967. Walk us forward
20 from '67 and give us your titles.

21 A. Started out as Director of Statistical
22 Services, which really dealt with school finance.
23 And I don't know, six, seven, eight years later they
24 made it State School Finance Administrator. Then a
25 few years later they made me Assistant Commissioner

1 of Education, then Deputy Commissioner of Education.

2 And that all took place between '67 and '86.

3 Q. And then since '86, Deputy Commissioner?

4 A. Yes, sir.

5 Q. Have you from time to time served as acting
6 commissioner?

7 A. I think four occasions, sir.

8 Q. And the most recent was when?

9 A. Probably would have been somewhere around
10 2006 or '07, that's when Dr. Tompkins left.

11 Q. When you started in 1967, there had been a
12 recent passage of a constitutional amendment?

13 A. Yes, sir.

14 Q. Summarize what that constitutional amendment
15 was about.

16 A. The constitutional amendment was centered on
17 making the state board constitutionally elected
18 positions. And also later the court ruled they had
19 authority over accreditation and certification,
20 licensure of teachers. But that was the primary,
21 elected positions rather than the state elected
22 superintendent.

23 Q. In terms of that constitutional amendment
24 was there any provision for how education should be
25 funded?

1 A. The Constitution I believe used the term
2 "suitable financing," as I recall.

3 Q. And let's take a look at Exhibit 5, if we
4 could. In terms of the language you just talked
5 about, would it be Section 6, subparagraph B, "the
6 Legislature shall make suitable provision for finance
7 of the educational interests of the state"?

8 A. That's correct, sir.

9 Q. Now, as the Deputy Commissioner, by whom are
10 you employed?

11 A. I'm employed by the State Department of
12 Education, which is really under the jurisdiction of
13 the State Board of Education. I report directly to
14 the Commissioner and she reports to the State Board.

15 Q. And in terms of the -- your employer would
16 be the State of Kansas?

17 A. Yes, sir.

18 Q. And you report to the Commissioner and then
19 in turn to the Board?

20 A. Yes, sir.

21 Q. And in our Constitution is there provision
22 for local boards of education?

23 A. Yes, sir.

24 Q. Explain that, please.

25 A. The local boards are given in the

1 Constitution specific authority for operating the
2 local districts.

3 **Q. Okay. And in terms of the State Board of**
4 **Education, what is its constitutional authority?**

5 A. I believe the term used in the Constitution
6 is "general supervision." But the local operation is
7 the local boards.

8 Q. All right. Now, tell us in your role as
9 Deputy Commissioner of Education if you have contact
10 from time to time with the school funding mechanism.

11 A. Yeah, one of the responsibilities in our
12 division is the distribution of about all the state
13 aid programs, as well as the distribution of the
14 federal funds.

15 Q. How frequently do you present to groups,
16 we'll identify who those groups are, on matters
17 pertaining to school finance?

18 A. Well, it's about seems like weekly, sir.

19 Q. And the groups you present to are whom?

20 A. Well, we meet once a month on a normal basis
21 with Service Centers, which is a group of
22 superintendents that come together and we go through
23 ITV and there's about six or seven of those we do
24 normally on a monthly basis.

25 Q. When you say superintendents, you mean

1 superintendents in the --

2 A. In the school districts in that area.

3 Q. Okay.

4 A. We do one in Oakley and we do one in
5 Sublette and one in Greenbush and Girard. There's
6 several. Clearwater. And superintendents in that
7 area will come in and we usually have a visit with
8 them about issues that we have concerns about or they
9 have concerns about on a monthly basis.

10 Q. In addition to the superintendents, do you
11 present to other groups as well?

12 A. Yes, sir.

13 Once or twice a year the School Business
14 Officials. We also meet with the annual Convention
15 of School Boards, United School Administrators and
16 other groups that may ask you to appear if possible.

17 Q. And in terms of the State Board of
18 Education, do you visit with them from time to time
19 about school funding issues?

20 A. Yes, sir, we do. I meet with the state
21 board once a month as a general rule. And it depends
22 on what the issues are, like during the session we'll
23 bring them up to date, what's going on.

24 And otherwise, like this month's session is
25 over, we'll give them a summary report and we'll

1 start talking about Fiscal '14 budget.

2 Q. In terms of when you're -- when you are in
3 the office and you're at your desk, are there
4 occasions when school district officials call you
5 from time to time to help sort out issues on school
6 finance?

7 A. Hourly.

8 Q. Okay.

9 A. We usually get a call, sir, between I and a
10 colleague, about every 15 minutes.

11 Q. And these would be questions concerning the
12 operation of the formula or the distribution of
13 money, is that right?

14 A. Why I'm getting less, you know, whatever it
15 happens to be, how do I compute my budget under these
16 circumstances, all kinds of issues related to it.

17 Q. Can you give me a job description for your
18 position?

19 A. Hmm. It consists of the distribution of all
20 state aid. And a lot of that is we compute and
21 distribute. But federal funds is primarily a
22 distribution function. Also, we supervise in my
23 division the Food Nutrition Program, which is our
24 largest federal program. We also have IT, an
25 in-house accounting, auditing of schools.

1 Q. And do you present from time to time to,
2 say, the Governor on issues of school finance?

3 A. Once in a while we'd do that on occasion at
4 his invitation, not very often. We do on occasion on
5 issues that may come up. But normally that's not
6 very frequent. We do much more to the Legislature.

7 Q. And that's where I want to go next. In
8 terms of your experience with the school finance
9 formula, talk to us about the occasions when you talk
10 to the Legislature or legislative committees and
11 identify what the committees are.

12 A. The committees that normally will look and
13 deal with this would be the Senate Education
14 Committee, the House Education Committee and the
15 Legislative Education Planning Committee.

16 We also, sir, had a special committee that
17 was appointed, I think in about 2005 or '6, called
18 the 2010 Commission. Their duty is set out in the
19 statute. And they're supposed to make
20 recommendations on school finance-related issues.
21 And we presented quite a bit to them.

22 They now no longer exist. But we meet the
23 House Senate Education Committee on a weekly basis or
24 a regular basis during the session, usually daily.
25 And we do a lot of printouts on school finance.

1 Somebody wants to do something and you show the
2 effect of it. Doesn't mean you are for or against
3 it, but if you do this, this is what the effect will
4 be as near as where we can compute. We do a lot of
5 that.

6 Q. You do that at the request of the
7 legislative committee?

8 A. Yes, sir.

9 Q. And you have reported over the course of the
10 last few years when it existed to the 2010
11 Commission?

12 A. That is correct, sir.

13 Q. What happened to the 2010 Commission?

14 A. It was set up by statute. Called the 2010
15 Commission, so it disappeared by statute in the end
16 of 2010.

17 Q. Did anything replace it?

18 A. Not to my knowledge.

19 Q. Okay. I want to give the Judges a sense of
20 your knowledge of school finance, and I'm going to
21 ask you a question that I think I've asked you
22 before. But, do you know anybody in the State of
23 Kansas who has more knowledge of how the school
24 finance system works than you?

25 A. I wish you wouldn't ask that. There

1 probably is somebody. And if I say yes (sic), it
2 sounds like I'm egotistical. And I hate to say that.
3 But I'll say it this way, I probably worked at it
4 longer than most anybody else.

5 Q. I appreciate that information.

6 What I'd like to do is have you -- I'm not
7 going to go through all this again, because we've
8 done it once before, but I'd like to show you
9 Plaintiffs' Exhibit 19 and don't go through the
10 entire thing, but give the Judges just an overview of
11 our school finance formula in Kansas.

12 A. The formula was designed with the idea in
13 mind by the majority of the legislators that each
14 student is 1.0 and we'll adjust the enrollment based
15 upon the size of the district and the kind of kids we
16 have.

17 Based on their studies they chose, for
18 example, to provide -- it costs an additional amount
19 for bilingual, so they put a weighting for bilingual
20 and voc ed and at-risk and on down the list.

21 So you adjusted the student enrollment based
22 upon the weighting that the Legislature assigned
23 based on studies and their decision to try to make
24 everybody equal.

25 Q. And the weightings are a multiplier effect

1 on the one student?

2 A. Yes. For example, you may have -- let's
3 take voc ed is an easy one, when they're in a voc ed
4 class, we give an extra .5 weighting. The rest of
5 them are the same except different amounts.

6 Q. So if there's a student out there in the
7 school district that has a voc ed program, that one
8 student really is a 1.5 student?

9 A. Only if they're in the voc ed class all day.

10 Q. Okay.

11 A. And most of them are half a day, so they get
12 an extra .5 for the half a day, so it would be a .25.

13 Q. Let's take one of those that are of interest
14 in the Plaintiffs' district and let's look at
15 at-risk. Explain how that weight works.

16 A. For each student, the Legislature wrestled
17 with this, sir, and they've come to the conclusion
18 that the best measure of at-risk was poverty. So
19 each free lunch student will get an extra weighting.
20 And that weighting I think is .456.

21 So if you have a free lunch student, you get
22 an extra .456.

23 Now, here's what's important. That
24 generates a pot of money, but you spend the money on
25 kids that are at-risk. You have some kids that are

1 maybe poor but they're not at-risk.

2 But you also have kids that are families who
3 are affluent that are at-risk, but you spend the
4 money on the at-risk students, whoever they happen to
5 be. But this determines a pot of money.

6 Q. And we've heard the phrase "free and reduced
7 lunch" in this courtroom. What is that?

8 A. Well, free lunch is based -- and they are
9 both based on your income level of the family, but
10 reduced is involved in this. This is only free.

11 Q. So when we talk about free and reduced
12 lunch, if we disaggregate that and just talk about
13 those kids eligible for free lunch, those would be
14 the at-risk kids?

15 A. That would be the number you use to compute
16 the pot of money.

17 Q. So when the superintendent of Kansas City,
18 Kansas, talks about 80-some percent of their kids are
19 at-risk, that would mean that percentage are entitled
20 to free lunch, is that right?

21 A. That would be correct, that's what at-risk
22 determination is, free lunch.

23 Q. Now, what qualifies for the bilingual
24 weight?

25 A. There's an assessment given for those

1 students, and you have to have a teacher licensed and
2 if that's the case, then there's an additional
3 weighting for that student, and it's like a .395, to
4 help that student overcome their language disability.

5 Q. All right. And in terms of these
6 weightings, when the SDF QPA was first adopted in the
7 early '90s, do you recall what weightings were there?

8 A. How early?

9 Q. Let's say 1992.

10 A. 1992 was the year we got the district court
11 case. And that's the year we got the new formula.
12 And that's when they come up with the new
13 weightings. Prior to that we didn't have the
14 weightings to this degree; some, but not to this
15 degree.

16 Q. When the weightings first appeared, what
17 were the weightings in the early '90s, if you can
18 recall?

19 A. The ones I can recall would be the
20 enrollment weightings.

21 Q. Low enrollment weighting?

22 A. High enrollment -- well, the enrollment
23 weightings, primarily low enrollment.

24 Q. Now, let's talk about after the Montoy
25 decision, were these weightings in response to Montoy

1 or any studies adjusted any how, any way?

2 A. Yes, sir.

3 Q. Explain what the adjustment was.

4 A. They increase the adjustment. And it was
5 primarily centered on the bilingual weighting. It
6 also included special ed, additional funding for
7 that. And it was done over a three-year period.

8 So it wasn't a lot of money at all one
9 time. But they phased in a three-year plan and it
10 was centered on bilingual and special ed.

11 Q. Okay. Was there an adjustment of the
12 weighting for at-risk in that three-year plan?

13 A. Yes, there was.

14 Q. And so I think it goes without saying, but
15 the bilingual, the at-risk and the special ed, did
16 that weighting increase?

17 A. Yes, it did.

18 Q. And what was the reason for the increase?

19 A. The Legislature evidently believed some
20 studies they'd done that there was not sufficient
21 funding made available for bilingual, at-risk and
22 special ed.

23 Q. So the studies they did looked at the costs?

24 A. Yes, sir.

25 Q. All right.

1 A. And that's the two studies the Legislature
2 paid for was the Augenblick and Myers and the
3 Legislative Post Audit.

4 **Q. Okay. Walk us through and let's take the --**
5 **one other I want to ask you about, non-proficient**
6 **student weightings, how did that come about?**

7 A. That came about over a discussion in the
8 Legislature. We are providing money for at-risk
9 kids. But we also have kids who are not meeting the
10 State's assessment requirements that are not on free
11 lunch. So there's a small percentage assigned to
12 non-proficient, but it's students not on free lunch.
13 And it's not a large dollar amount, but it goes to
14 those students and it has to go for at-risk kids that
15 are not meeting the free lunch standard and they get
16 no money there, but they're not meeting the state
17 standards.

18 Q. And so I'm clear then, these additional
19 weightings were instituted by the Legislature after
20 the Montoy decision and after those two studies in
21 recognition of the additional costs of educating
22 those kids?

23 A. In my opinion the answer is --

24 MR. CHALMERS: Let me object. I
25 don't think it's for this witness to talk about what

1 the Legislature's purpose was. And I think we've
2 been through this before. And I object to the way
3 the question's been asked.

4 MR. RUPE: Your Honor, I was asking
5 him for his observation. And I don't think there's
6 anybody that has spent more time with the Legislature
7 on school finance than Dale Dennis.

8 MR. CHALMERS: I believe the case
9 law says that you do not prove up legislative intent
10 by testimony years after the event.

11 And with all due respect to
12 Mr. Dennis, he's not a legislator. You can have a
13 legislator come in and say what it is. That's not
14 how we prove up. You look at the documents, you look
15 at the history, you look at the circumstances.

16 It's not proper to ask this witness
17 to that effect.

18 JUDGE THEIS: I think he can couch
19 his answers without deference to the Legislature and
20 say, I believe, because he has a lot of experience.

21 MR. RUPE: He does.

22 JUDGE THEIS: So if he doesn't
23 tribulate that -- he can say what he thinks without
24 putting a legislative label on it.

25 Q. (By Mr. Rupe) Explain what you understood

1 the base to be.

2 A. The reason I said I believe it is because
3 the Legislature in turn adopted it and increased it.

4 Q. Okay. So they increased it based on the
5 actual costs of those kids?

6 A. That was --

7 MR. CHALMERS: It would be helpful
8 if counsel doesn't go back and continue to ask the
9 same sort of question. He's now asking for what his
10 opinion was what the Legislature did after the
11 direction of Court and asking the witness what the
12 belief is for why it was done.

13 MR. RUPE: I'm sorry, I'm asking
14 for his understanding.

15 JUDGE THEIS: Well, you're couching
16 it again with reference to the Legislature and, you
17 know, I don't think we need to -- we're relying on
18 his experience and not his interpretation. And he
19 can say what he thinks. And whether it's true, false
20 or indifferent, we'll find out later.

21 MR. RUPE: Thank you, Your Honor.

22 Q. (By Mr. Rupe) Tell me what your
23 understanding is.

24 A. Repeat the question again.

25 Q. Is it your understanding that they increased

1 those weights based on actual costs?

2 A. Testimony was presented on that topic. They
3 had studies on that topic and they adopted them.

4 Q. Okay. Now, if we want to know the
5 particularities of the weights, I'm going to put up
6 Exhibit 18. And can you identify the factors on
7 Plaintiffs' Exhibit 18 showing that the bilingual
8 weighting is .395. You indicated vocational
9 weighting at .5. At-risk four-year-olds .5. At-risk
10 .456. I'm not reading all of these. But
11 non-proficient .0465.

12 And bilingual, I said that already.

13 Are those accurate in terms of what the
14 weights are?

15 A. The answer is yes to that question.

16 **Q. Now -- well, I'll leave this up, because**
17 **what I want you to do is walk through -- you know,**
18 **pretend I'm a superintendent calling you asking you**
19 **to compute my money the State gives me. Walk us**
20 **through how you compute that.**

21 A. You get through all the weightings. You
22 multiply it by the base amount per pupil, which this
23 current year is \$3,780. That's your basic general
24 fund budget.

25 Now, in addition to that, and it's just a

1 laundering effect, and that's not a very good term to
2 use here, maybe, but what it boils down to is special
3 ed is laundered through this fund. Right here it
4 is. But it's just a laundering. Whatever this
5 amounts to, it was -- we just compute a weighting and
6 apply it to it.

7 What the legislator was trying to do that
8 did that was trying to raise the general fund
9 budget. But as it launders through it goes straight
10 to special ed.

11 Q. So I'm clear then, the money is a pass-
12 through in the sense that it goes directly to special
13 ed and not to the general fund, but it's used in the
14 general fund for purposes of computing the local
15 option budget?

16 A. That's the way it was set up. It turned out
17 they changed the law after that. But that was the
18 purpose, clearly the purpose. Launder it through the
19 general fund to raise the general fund budget, give
20 more LOB authority, but they later changed that law.

21 But this law still stands, special ed is
22 laundered through 3,780 times the weighted
23 enrollment. You got the weight on special ed in
24 there. That's it.

25 Q. Then once you get -- what is the total

1 number you get then when you do that arithmetic?

2 A. Well, that'll be your, quote, legal general
3 fund budget.

4 Q. All right, now, is that the money I get?

5 A. No. That's the authority you have for the
6 general fund. There's numerous deductions. The
7 Legislature requires every district to levy 20
8 mills. There's other deductions in that. But a
9 little severance tax, a little bit of federal impact
10 aid is deducted. You take those deductions, which
11 we're trying to collect right now, and subtract it
12 from this budget. And the deduction will include the
13 special ed money. So you don't cost the State any
14 money extra. And then what's left over the State
15 pays for.

16 So a district that's poor, 20 mills don't
17 raise much. A district that is affluent, you can
18 have a situation where the 20 mills is more than the
19 budget and they get the honor of sending us the
20 difference to help the poor.

21 Q. That came up this morning and I want to
22 clear that up. Are there any districts today that
23 send money back to the State because they raise more
24 than they need through the 20 mills?

25 A. Yes, sir.

1 Q. And how many are there?

2 A. This year I'm going to guess two to four,
3 but primarily one or two that raise big dollars.

4 Q. Give us a sense of who those are.

5 A. The one that always comes to mind is
6 Burlington.

7 Q. They have the power plant, so they have
8 pretty good property wealth in that community?

9 A. Yes. Another one would probably be
10 Satanta, gas and oil.

11 Q. So that once that's done, what else can a
12 school district do in terms of figuring out what
13 money they get?

14 A. A local board has the authority to adopt a
15 local option budget. And the local option budget
16 because of a provision made a few years ago, they can
17 go up to 30 percent on the board's own motion.

18 It first started out you had to have an
19 election and protest petition. They did away with
20 most of that. You can go to 30 percent on your own.

21 Q. That means as a board we can vote and go 30
22 percent?

23 A. Right.

24 Q. All right.

25 A. If you want more than 30 percent, you can

1 have an election and go to 31, 31 percent.

2 Now it's very important, though, that you
3 understand, I think, that it is not based any more on
4 30 percent of the general fund. It's 30 percent of
5 what -- if the base was at \$4,433.

6 Q. That's the amount set in the statute?

7 A. That's the amount set in the statute, and
8 that's what it was in the beginning of the '08/'09
9 school year was 4,433. At the tail end of the
10 session we cut it to 4,400. It was 4,433 times the
11 adjusted enrollment, which is all weighting, and add
12 special ed to it, and 30 percent of that is what can
13 go in the LOB.

14 Q. So I'm on track, the base state aid per
15 pupil, that is the number 4,492 from which you
16 compute your LOB entitlement?

17 A. No, sir. The LOB entitlement is based on
18 the 4,433.

19 Q. Okay.

20 A. 4,433. Now, if we ever -- if the base ever
21 goes above 4,433, then we'll go to the actual, if we
22 go above that. But right now it's at 4,433.

23 Q. But in terms of money that is accessible to
24 the schools, that is paid to the schools in base
25 state aid, that number is 3,780 because of under

1 appropriation?

2 A. Yes, sir.

3 Q. We hear the term from time to time about an
4 "LOB cap." Is that the 31 percent?

5 A. It's 30 percent unless you have election,
6 it's 31. That's correct, sir.

7 JUDGE THEIS: While we're doing it,
8 he said something about the special ed fund there.
9 4,434, is that the LOB or do you do something with
10 the special ed fund, too?

11 THE WITNESS: You want me to answer
12 it?

13 MR. RUPE: Sure.

14 THE WITNESS: It's 4,433 times the
15 adjusted enrollment, which includes the weightings.

16 JUDGE THEIS: Okay.

17 THE WITNESS: Plus special ed. You
18 get a total dollar amount and then you multiply it by
19 30 percent.

20 It is important, not everybody goes
21 30 percent. That's driven a lot of times by the
22 property taxes, but the local board can say, we're
23 not going to go, we can't afford the property tax.
24 And that's a local decision.

25 Q. (By Mr. Rupe) Maybe it would be helpful if

1 we just took an example here and walk us through,
2 here's Plaintiffs' Exhibit 21, which is in evidence.
3 Walk us through the computation. This is a school
4 district that has 1,187 students, a total weighted
5 enrollment of 2,225.

6 A. We take the 2,225 times the 4,433. Then we
7 add to that the amount of special ed state aid.
8 Right now technically it's '08/'09, but next year it
9 could be '08/'09 or the current year, whichever is
10 higher, which is probably germane. Then you can
11 apply that number to whatever percent the board
12 chooses. They can go up to 30 percent on their own
13 motion.

14 Q. So this percentage is -- 20 percent is
15 statutory required, so it's got to be above 20
16 percent?

17 A. There's no minimum here.

18 Q. No minimum?

19 A. No minimum.

20 Q. So it could be 1 percent?

21 A. That's correct. And we don't have -- we had
22 one district under 10 percent. Everybody's 10
23 percent or more.

24 Q. Up to 31?

25 A. Up to 31. You have to have an election to

1 go above 30.

2 Q. Now I'm on track. Continue walking us
3 through this example.

4 A. Then that gives you the LOB budget when you
5 do that. And the board makes a decision, and what
6 happens in the real world is they'll go through the
7 budget calculations and they'll take a look at it and
8 decide, yes, I want to do it, or no, the property tax
9 is more than I can pay, so I'll lower it. And that's
10 just what they go through every year.

11 Q. So then what I want you to walk through is
12 how does the money flow once it's computed?

13 **A. Okay. After you compute that what happens**
14 **is you have a general fund budget of X number of**
15 **dollars. We will then -- they may be entitled to**
16 **what's called supplemental general state aid.**

17 Q. What's that?

18 A. That's based upon the wealth of the district
19 on assessed valuation. It's tied to the 81st
20 percent -- 81.2 percentile, that assessed valuation.
21 If you drop below that the State will provide you
22 money to help make up for your loss of valuation.
23 And the poorer you are the more you get.

24 Q. We've heard about this in the courtroom
25 here. Is that what is called LOB equalization?

1 A. Yes, sir.

2 Q. Continue on.

3 A. Okay. You get the LOB equalization. Then
4 you estimate your motor vehicle tax and prime -- and
5 then primarily what's left over goes to the property
6 tax. So you've got three main sources; the state
7 aid, the motor vehicle tax and property tax. That's
8 the three prime sources. If the 81st percentile goes
9 up and the State funds it, why, the poor districts
10 get a little more money. If the 81st percentile goes
11 down, then they get a little bit less.

12 Q. So where does the money come from?

13 A. The state aid will be based on an
14 appropriation the Legislature gives us. We'll tell
15 them what we think it's going to cost to fund it.
16 Then they will make the decision whether they choose
17 to fund it or not.

18 Q. If the local money is raised all in the 20
19 percent --

20 A. Mm-hmm.

21 Q. -- the local folks send that excess money to
22 the State?

23 A. On the 20 mills the answer is yes. But on
24 this, the LOB, everything stays local.

25 Q. Okay, that's where I'm going. Where does

1 the -- the money doesn't come from the State, it
2 stays locally?

3 A. That's right. The 20 mills really stays all
4 locally, too. That's a big misnomer. The 20 mills
5 stays locally and we just deduct it in computing
6 state aid.

7 On the LOB, the property tax stays local and
8 the motor vehicle stays local and we'll send them the
9 state aid entitlement, whatever that happens to be,
10 based upon in both cases the State's appropriation.

11 Q. So who signs the check that goes to the
12 local school board for that state money?

13 A. It would be a routine voucher that we'll
14 submit it to the cash reports, state treasurer and
15 then we'll electronically send it to the school
16 districts or the State does.

17 Q. Now, I want to focus on -- can I have that
18 statute?

19 I want to focus on a statute that was quoted
20 in this courtroom, 72-6434, and ask you what this
21 means. And it's Exhibit 1. I don't know, do we have
22 a -- can you give him Exhibit 1, but the print is
23 awfully small on this copy.

24 Look at -- here, I'll just find it for you.
25 It's primer 108. Okay, it's the fine print on that

1 copy.

2 MR. CHALMERS: What's the page
3 number?

4 MR. RUPE: Primer 108.

5 Q. (By Mr. Rupe) Can you read that or do you
6 want me to --

7 A. What part do you want me to read, sir?

8 Q. 72-6434(f).

9 A. Oh, (f).

10 Q. Let me read it to you. Then I'm going to
11 ask you about it.

12 "For the purposes of determining the total
13 amount of state moneys paid to school districts all
14 moneys appropriated as supplemental general state aid
15 shall be deemed to be state moneys for educational
16 and support services for school districts."

17 What does that mean?

18 MR. CHALMERS: It's a statute and
19 it reads for itself. I object to some sort of legal
20 opinion from this --

21 JUDGE THEIS: What does he
22 understand it to mean?

23 MR. RUPE: Yeah.

24 JUDGE THEIS: I think probably the
25 question, I think counsel may have implied that that

1 was the authority exclusively that was relied on and
2 it wasn't, so you can ask your question.

3 **A. In my opinion that would be for the**
4 **operation of the school district. The supplemental**
5 **general fund in essence can be used for the same**
6 **thing the general fund can. I think that's just**
7 **clarification. It can be used for educational and**
8 **support services to the school district.**

9 Q. (By Mr. Rupe) In terms of deeming it state
10 money, what does that mean to you?

11 A. I always thought it was state money to begin
12 with, so I'm not sure what the purpose of that is.
13 It's state money. It'll be deemed to be state
14 money. And the supplemental general fund could be
15 used for operating the schools, and that ought to be
16 covered in the educational and support services of
17 that law.

18 Q. And the supplemental general state aid money
19 that is deemed, is that the state LOB equalization
20 aid we talked about?

21 A. Yes, sir, yes, sir.

22 Q. And is there any statute that you're aware
23 of or any authority that the LOB money other than the
24 supplemental general aid money is state money?

25 A. No, it's state appropriation. It's state

1 money, and I don't have anything else to add to that.

2 Q. And the LOB money that is not state aid
3 money, does it stay locally?

4 A. Yes, sir.

5 Q. And it's part of that money raised by the
6 property tax?

7 A. Property tax --

8 Q. And motor vehicle?

9 A. -- and includes motor vehicle.

10 Q. Okay. Got you.

11 JUDGE THEIS: While we're here and
12 while I can think about it, he said the 20 mills
13 stays local as deducted from the state aid. I'm not
14 sure, deduct from what state aid. And then he talked
15 about the LOB property tax stays local, whether
16 that's a deduction or not, and also the motor vehicle
17 taxes stay local. I'm not sure -- in other words,
18 are they accounted for in some way? I don't
19 understand.

20 Q. (By Mr. Rupe) Explain that to the Judge.

21 A. Judge, we compute the general fund budget
22 and then the 20 mills, the dollars it raises is
23 subtracted from that budget and a few other minor
24 things, and the rest of it the State pays.

25 JUDGE THEIS: They get credit for

1 it without having received it already?

2 THE WITNESS: Yeah.

3 JUDGE THEIS: What about the LOB?

4 THE WITNESS: The LOB, you have a
5 set budget and the State provides X number of
6 dollars. And anything left over beyond that state
7 money, they have to raise locally in the property
8 tax.

9 And what they'll do in the real
10 world, they'll decide on their budget to begin with.
11 They'll compute their state aid if they're going to
12 get any, and then they'll compute their motor vehicle
13 tax, and the rest they'll put on the property tax.
14 And if their board will buy it, they're in business.
15 If the board says no, then they got to go back and
16 cut.

17 JUDGE THEIS: So if it's been a
18 good year in the car business, there's a pot of motor
19 vehicle tax money, that just means that there's less
20 property tax to levy if they want to go a certain
21 way --

22 THE WITNESS: Yeah, the statewide
23 basis, I mentioned this because the motor vehicle tax
24 is probably 5, 6 percent of the total, but it's
25 \$50 million out of 962, so it's significant. But the

1 majority of it is the property tax.

2 Q. (By Mr. Rupe) Okay, let's talk about
3 property tax for a minute.

4 MR. RUPE: Give me 26 and 25.

5 Q. Let's start with Property Tax 101. Explain
6 what a mill is to us.

7 A. One-tenth of a penny, dollar on a thousand,
8 somewhere there. The important thing where a lot of
9 us misunderstand, on the assessed valuation, that's
10 all assessed at a lower rate. Example, homes are not
11 appraised at full market. They're appraised at full
12 market value, but 11.5 percent of that is what goes
13 for assessed valuation.

14 There's a separate system for farmland, but
15 everything is appraised. Then there's an assessed
16 value percentage applied to it. So that's important,
17 I think.

18 Q. To make sure I'm understanding this, so if
19 there is \$100,000, the assessed valuation is going to
20 be what?

21 A. 11,500. Then we apply the mill rate to
22 that.

23 Q. And the mill levy required of every school
24 district is 20 mills?

25 A. In the general fund the answer is yes.

1 Q. And then what authority do the local folks
2 have, the local school board, above the 20 mills?

3 A. In the general fund that's it. In the LOB,
4 then it's 30 or 31 percent and whether or not they
5 want to pay the property tax that goes with it.

6 Q. Okay. And the 31 percent is 31 percent of
7 what?

8 A. That's of that 43 -- 4,433 times the
9 adjusted enrollment, plus special ed times 30 percent
10 or 31.

11 Q. We call that the statutory set amount?

12 A. The statutory set amount is 31 percent,
13 mm-hmm, that's the maximum.

14 Q. So in terms of computing the 20 mills and in
15 terms of what that raises, does that depend on the
16 assessed valuation within a county?

17 A. The assessed valuation within the school
18 district.

19 Q. And we hear the term that -- we hear
20 discussion of a mill and one area doesn't raise what
21 a mill in another area does. Explain how that
22 works.

23 A. Well, comparable size school districts, for
24 example, might be Galena, one mill there might raise
25 18, 19,000, where in Burlington one mill might raise

1 350, 400,000.

2 And the reason I chose those two as
3 examples, sir, is that they are similar size in
4 enrollment.

5 Q. They're also pretty much the bookends on
6 mills, right?

7 A. Yes. There's one higher. Burlington has
8 always run second or third, but we've got one now due
9 to gas and oil that's a little higher.

10 Q. How much is it?

11 A. It's a little over 500,000 assessed
12 valuation per student. That's in Satanta.

13 Q. So depending on where you live and the
14 property -- assessed valuation of the property
15 determines how much that mill raises?

16 A. The answer is yes, that along with the state
17 aid you receive and the amount you decide to levy for
18 the LOB.

19 Q. Understood. Take a look at Exhibit 36.

20 What is 36?

21 A. It looks like a PowerPoint that I may have
22 done in 2011 at the KASB Convention, Kansas
23 Association of School Boards.

24 Q. Okay. Turn to Page 9 of your PowerPoint or
25 there are numbers down in the lower right-hand

1 corner, KSDE 142236.

2 A. Okay, sir.

3 Q. And the slide at the top says Supplemental
4 General State Aid LOB Low Valuation Districts.
5 Explain what that slide shows.

6 A. That slide shows that in 2008/'09 that we
7 funded the statutory amount for supplemental general
8 state aid, LOB. What the formula called for in the
9 law we funded.

10 It shows in '09/'10 we funded 89.5 percent
11 of the formula. '10/'11 we funded 91.7. And this
12 was an estimate for '11/'12. '11/'12 is going to
13 turn out to be 86.1 instead of 85.7.

14 Q. Now, that we're sitting where we are in
15 time, looking back, '11/'12 is going to be 86 point
16 what?

17 A. 86.1, I believe, sir.

18 Q. 86.1?

19 A. Yes, sir.

20 Q. All right.

21 And then walk us through the next slide
22 there, LOB low valuation districts, an example.

23 A. This is a district with low assessed
24 valuation. Your enrollment is about 798 kids.
25 Assessed valuation per pupil is 17,958. And the

1 state aid ratio for this district due to poverty is
2 82.77.

3 Their LOB budget was a million-eight-
4 twelve. Their state aid entitlement would be a
5 million-five.

6 Because of the proration, now the million-
7 five, we're going to prorate it 85.7. That drops the
8 state aid down to \$1,285,000, a difference of
9 \$214,000. So the millage equivalency of that drop in
10 state aid is about 14 mills.

11 Q. Explain how, in the formula, equalization
12 works. Where does the equalization come in?

13 **A. If it's fully -- if it's funded, the**
14 **districts below the 81.2, 81.2 percentile, if you go**
15 **below that, then the state aid makes with me and**
16 **gives you the valuation as if you're 81.2. It makes**
17 **it up.**

18 But when the state aid -- if the state aid
19 prorates, you get a whole different picture.

20 Q. Explain that whole different picture.

21 A. When you prorate to a poor district just
22 like this, then your mill levy is going to go up
23 substantially. Where if you're in the top 19
24 percent, it won't affect it at all.

25 Q. Give us an example of a district in the top

1 19 percent.

2 A. Burlington, Satanta.

3 Q. Now, are there other types of equalization
4 within the school finance scheme?

5 A. Yes, sir.

6 Q. Talk to us about how the bond and interest
7 equalization works.

8 A. Bond and interest in capital outlay are
9 alike in state aid. The median assessed valuation
10 per pupil is given a factor of 25 percent. So if you
11 have an election and the patrons have to vote on it
12 and approve it and you were at the meeting, then we
13 would pay 25 percent of that bond interest payment.
14 It's recomputed each year. And that can change. You
15 happen to hit a gusher it may drop to 20 percent,
16 with me? If you get more wealth -- it goes up and
17 down.

18 Q. It's based on your wealth as to what the
19 equalization is?

20 A. That's correct. It's not paid unless
21 there's -- it's not eligible unless you have a vote
22 of the patrons.

23 Q. And the vote of the patrons would be passing
24 a bond issue?

25 A. Yes, sir. When you issue the bonds, the

1 district's liable. They have the bonds. They notify
2 us. Most bond payments and bond interest payments
3 are paid twice a year. So they'll tell us a month in
4 advance and we'll send the money just before they
5 make their bond payment.

6 Q. You mentioned it was like capital outlay
7 equalization. Explain how that works or how it
8 doesn't work.

9 A. The equalization part is practically the
10 same thing, but the bond and interest to determine
11 what you apply to it, you get your percentage if
12 you're entitled to it. And then that is your mill
13 rate, your capital outlay mill rate, times your
14 assessed valuation, times this percentage.

15 So if you're a median district, take your
16 valuation times the mill rate for capital outlay
17 times 25 percent.

18 Now, if you don't have a capital outlay, you
19 don't get any. If you're affluent, remember, it
20 changes every thousand dollars. It changes in
21 thousand dollar intervals. Both of them do. So if
22 your valuation goes up, your state aid goes down. If
23 your valuation goes down, then your state aid will go
24 up.

25 Q. Has there been capital outlay equalization

1 in the last few years?

2 A. I believe the last year we had capital
3 outlay state aid, sir, was in 2008/'09. We had it
4 from I think '06 through '09, but I don't believe
5 we've had any since.

6 Q. Okay. And we'll get into that later maybe
7 with another witness. But in terms of the
8 capitalization -- capital outlay equalization, it
9 stopped in, I'm sorry, did you say 0 --

10 A. The '08/'09 school year was the last year, I
11 believe, sir.

12 Q. What is the effect on a school district that
13 is entitled to it, what are the effects of the
14 underfunding of LOB equalization?

15 A. The board will have to make a decision: Do
16 I raise my property tax, or do I cut the budget? I
17 mean, that's the choice.

18 Q. There's no other choice?

19 A. There's not many other choices. You compute
20 it. The mill levy is higher than your taxpayers you
21 think can afford, then you have to lower the budget
22 or raise the mill levy. That's your two choices.

23 Q. And in your experience have there been
24 schools that have had to cut their budgets --

25 A. Yes, sir.

1 Q. -- as that equalization is underfunded?

2 A. Yes, sir.

3 Q. I'd like to visit with you a little bit
4 about some legislative action that we've kind of
5 tracked in this court case, and I want to make sure
6 we're all on the same page here. The Legislature
7 began a series of cuts in '08/'09, is that right?

8 A. Yes, sir, that's correct.

9 Q. Okay. And help us understand when in
10 '08/'09 the first cut occurred.

11 A. It would have been late in the fiscal year.
12 I think, don't hold me to this, I think the Senate
13 Bill 23, but they cut 4,433 to 4,400.

14 Q. Okay. Apparently somebody wants me to get
15 another overhead. All right. We'll get this one
16 out.

17 Now, if you would, and I know you've got a
18 PowerPoint on this, too, but indulge us and use this
19 because it's all on one page. Looking at Exhibit
20 241, walk us through the cuts that the Legislature or
21 the governors made starting with that first one you
22 talked about.

23 A. Well, we had a \$33 cut and it was 4,433,
24 went to 4,400.

25 Q. And you said Senate Bill 23?

1 A. That's right. Lucked out, sir.

2 Q. Okay.

3 A. Now, then through that year in '09/'10
4 school year, there was several. We had one cut at
5 \$33, another one at \$87, another one at \$62. And
6 last one was \$206. And that dropped it down to, I
7 think, from 4,400 to like 4,012. I believe that's
8 correct.

9 Q. 4,012.

10 A. Yup. At the tail end of the session a year
11 ago, latter part of June when it went into effect, we
12 cut another \$75 out for the '10/'11 school year. And
13 then for the '11/'12 school year we cut another 157
14 down to 3,780, that's correct.

15 Q. Now, talk to me about the reductions in
16 special ed.

17 A. Okay. There was minor reductions in special
18 ed, but in all honesty, here what happened is the
19 state aid for special ed dropped considerably more
20 than this in the -- let me just look a minute, sir.

21 Q. That's fine.

22 A. What we did we cut it in '09/'10, '10/'11,
23 but what we did, the Legislature did, we got ARRA
24 money, federal money, that just about made it up, but
25 this was the net loss. State aid was cut about \$60

1 million or something like that, but we got 55 million
2 of ARRA money. So that was the net effect of that.
3 And so we had two years of ARRA money, and which now
4 that's gone.

5 Q. And in terms of the federal money available
6 next year is it going to be down?

7 A. Substantially in total.

8 Q. How much?

9 A. Oh, 200 million, because the education jobs
10 money, remember that, remember the President had the
11 education jobs money that we got about 92 million of
12 that, then we had the ARRA money. We had ARRA money,
13 and stabilization money for Title I and special ed
14 and that's gone.

15 Q. So we're going to be down \$200 million the
16 next fiscal year in federal funds?

17 A. We'll be down about that much in the current
18 year, sir.

19 Q. Current year?

20 A. It was '09/'10. '10/'11 is when we got the
21 ARRA money.

22 Q. Then talk to us about the capital outlay
23 equalization not paid. What was that?

24 A. What happened is the first year there was a
25 mix-up on it and they intended to cut that and put it

1 in general state aid and they got confused, so the
2 Legislature, it was done through an executive order,
3 and they cut it. And then the next two years they
4 didn't fund it, since the next, you know, the next
5 two years or three years, whatever it is. '08/'09
6 was the last year.

7 Q. The mix-up in which there was a statute that
8 indicated it would be paid and it is what it is, what
9 year was that?

10 A. I believe that that would have been the
11 '09/'10 school year, sir.

12 Q. And then the LOB equalization aid reduced.
13 Explain that loss.

14 A. Well, on that chart we had here a little bit
15 ago on Exhibit 36 --

16 Q. 36, yeah.

17 A. -- right, I'm not sure what year this is,
18 but the --

19 Q. Here it is.

20 A. -- \$56 million, that's about what it would
21 take to fund it for this year.

22 Q. Okay.

23 A. That's what, about 15 percent, 14, 15
24 percent, relates to.

25 Q. And I think somebody took issue with the

1 term "reduced" and just said it was underfunded.

2 A. Either way, sir, they don't get it, and it
3 wasn't appropriated.

4 JUDGE THEIS: That word "plus" in
5 that graph doesn't really fit in with your graph.

6 MR. RUPE: I'm sorry?

7 JUDGE THEIS: That word "plus"
8 doesn't really -- doesn't fit in with your deal.

9 MR. RUPE: You're right. I guess
10 that should be minus or plus minus.

11 Q. (By Mr. Rupe) Now, from where you sit and
12 you get these calls from school districts, as a
13 result of these cuts were there school districts in
14 the State of Kansas that had to make cuts themselves
15 in programs and services?

16 MR. CHALMERS: Hearsay, Your Honor.

17 MR. RUPE: I'm going to --

18 JUDGE THEIS: Ask him if they're
19 required to report things to his department.

20 MR. RUPE: Well, I'll lay the
21 foundation.

22 Q. (By Mr. Rupe) In terms of cuts in programs
23 and services, do you gain knowledge of those through
24 your position?

25 A. Yes, sir.

1 Q. And explain to the Judges how you gain that
2 knowledge.

3 A. We get a lot of phone calls that say, my
4 budget's been cut. And they will talk about what
5 they have to cut. And in addition to that, and this
6 is frequent when that happens, the other thing we
7 did, with the 2010 Commission, we talked about that
8 earlier a little bit, we did a survey for them that
9 was quite extensive. Some of that may be in their
10 report. And we asked schools about their cuts and so
11 forth.

12 So that's something you could look at if you
13 want to, sir.

14 Q. Let's look at something that is in evidence
15 in this case and ask you if you can identify from the
16 Kansas Legislative Research Department, this
17 document, Exhibit 253. Does that list the cost
18 cutting and efficiency measures accomplished by
19 Kansas schools?

20 A. Not all districts have these, but they'll be
21 here, there and yonder and the answer is yes. And if
22 they were reduced, the board would wrestle with this,
23 they'd get community input, school input, PTA, PTO
24 and so forth, and they then would make a decision
25 what they need to reduce.

1 Q. And we've heard the last couple of days
2 testimony in this courtroom from folks from Kansas
3 City, Kansas, about reductions that affected the
4 classroom. And my question to you is, was that the
5 only place that's happened or was that a statewide
6 phenomenon?

7 MR. CHALMERS: Before he answers, I
8 don't have any problem talking about the survey. I
9 think the survey collected is part of an official
10 record, a business record. But if he's now talking
11 about the phone calls that he's had, talking about
12 people saying they might cut or have cut or those
13 sorts of things, that's hearsay. And I don't think
14 that's proper.

15 So I think the way the question is
16 phrased it's maybe going back to hearsay and I object
17 because of it.

18 JUDGE THEIS: I think you can
19 probably ask it a different way, is it reported or
20 recorded, a public record. This is just all
21 anecdotal.

22 Q. (By Mr. Rupe) Based on the information that
23 you have in your position as Deputy Commissioner can
24 you tell us from your perch whether the cuts were
25 isolated to Kansas City, Kansas, or whether they were

1 wider than that?

2 MR. CHALMERS: That doesn't lay the
3 foundation. I object. That's just saying they're
4 receiving the phone calls or could be. Maybe there
5 is a foundation, but you've not laid it and I still
6 object.

7 Q. (By Mr. Rupe) Explain to the Judges how
8 you're aware of cuts that occur.

9 A. A lot of the meetings we have, this issue
10 will come up. It's not unusual. I asked a group the
11 other day this very question of the larger districts
12 in the state, probably 25 of them, and they are
13 mostly covered here, but no two districts are alike.

14 Q. When you say here, you're referring to 253?

15 A. Yes, sir.

16 Q. And 253 represents cuts that happened
17 statewide?

18 A. Some of these cuts happen statewide. But I
19 want to emphasize not every district made all these
20 cuts. But you can't cut the base in very, very few
21 cases without having to cut something.

22 Q. So in terms of your knowledge of what
23 districts -- let me ask you this, are there any
24 school districts in Kansas that have gone bankrupt?

25 A. Not bankrupt. We got some that's real low

1 on cash.

2 Q. And give us examples of school districts
3 that are low on cash that you've just mentioned.

4 A. The one that comes to mind just had a bond
5 issue recently. They're in pretty good shape on
6 their bonds, pretty good shape in capital outlay, but
7 their operating money is very low. And that's
8 important to bond holders. And they lowered their
9 bond ratings because of their low cash just before
10 they sold the bond. And they were down to under \$10
11 per student.

12 Q. In terms of cash?

13 A. Cash in the operating funds, the answer is
14 yes.

15 Q. Well, give us an idea of what kind of cuts
16 districts have made in Kansas as a result of the cuts
17 in funding.

18 MR. CHALMERS: I don't think the
19 foundation has been laid. Now we've got anecdotal
20 statements at meetings. We've got telephone calls.
21 All of which are hearsay. There's been no survey.
22 There's no business records that might apply and I
23 object. I don't think the foundation has been laid
24 for testimony that he's trying to elicit.

25 MR. RUPE: What I'm holding up is

1 253 and it's in evidence. And he can talk to what
2 his knowledge is as far as what school districts have
3 done.

4 MR. CHALMERS: It doesn't make --

5 JUDGE THEIS: He's saying that's
6 material evidence whether they did, in fact, have
7 cuts and based on what he's going to say he can't
8 cross examine that because he can only say what he's
9 heard, so --

10 MR. RUPE: I guess I'll get people
11 in from all over the state to testify as to what
12 happened. I'm trying to move this along.

13 JUDGE THEIS: I understand him to
14 say there's a uniform reporting, there's school
15 audits. First the question I would ask would be
16 whether or not there's a public record of these cuts
17 anywhere.

18 MR. RUPE: I think there is.

19 JUDGE THEIS: Specifically?

20 Q. (By Mr. Rupe) Is there a public record of
21 these cuts?

22 A. I don't know of any specific document of
23 that nature. I do know there is a specific document
24 on staff cuts.

25 Q. All right. Tell us what staff cuts have

1 been cut statewide.

2 A. In '08/'09 there was 35,438 teachers, and in
3 '11/'12 there was 44,074. So 13 -- 1,400 less.

4 There's in total licensed people, we drop from 42,537
5 plus, to 40,970, which is a little over 1500. And

6 There's similar amounts for non-licensed
7 people. '08/'09, we had 27,871 and now we're down to
8 26,889.

9 Q. And Document 253, Exhibit 253, talks about
10 salaries frozen?

11 A. Some districts froze salaries for as many as
12 three years.

13 Q. And it talks about reduced or eliminated
14 professional development. Explain that to us.

15 MR. CHALMERS: Well, excuse me,
16 again, if a foundation is laid that he's providing on
17 other than his conjecture or on hearsay statements,
18 then I think this is proper.

19 JUDGE THEIS: I assume he's
20 following Mr. Rupe's finger.

21 MR. CHALMERS: I think he's
22 following Mr. Rupe's finger, but I don't know that as
23 the question has been phrased it's asking on the
24 basis of information that was used by this report
25 that he's collected. I don't think the foundation

1 has been laid for that. This is from the Kansas
2 Legislative Research Department. I think Mr. Dennis
3 provided some data on this, I'm not sure, but I don't
4 think that's been laid.

5 And that's my concern, that I think
6 the way Mr. Rupe is asking the question is designed
7 to circumvent the problem he has with hearsay by just
8 showing the gentleman the graph. And I don't think
9 that's appropriate unless he ties it to the graph.

10 JUDGE THEIS: This is the copy of
11 the report that's been admitted into evidence?

12 MR. CHALMERS: Yes.

13 JUDGE THEIS: And isn't that what
14 you are asking your question from?

15 MR. RUPE: Yes. And I'll go back
16 and move my finger to the foundation, if I need to.

17 JUDGE THEIS: Mr. Chalmers in
18 watching your finger -- the court reporter can't take
19 your finger down.

20 MR. RUPE: Okay.

21 Q. (By Mr. Rupe) My finger is pointing at
22 Exhibit 253. And let me hand you what has been
23 marked as 253. That's the entire exhibit. What is
24 the entirety, I've got a blow-up of part of it, but
25 what is Exhibit 253?

1 A. This is the report as a result of a survey
2 that was done, I believe it was done originally for
3 the 2010 Commission, but this report was given to the
4 Legislative Education Planning Committee, so we gave
5 it to both committees, but it was done for the 2010
6 Commission, which was a statutory commission. And
7 then this was also presented to the LEPC, which is
8 the standing committee that makes them there.

9 Q. And with regard to the report, it was a
10 survey of school districts on what the reductions
11 have been or the cuts have been in those districts?

12 A. Yes, sir.

13 Q. And it was prepared as part of your job?

14 A. The committee asked us to do that.

15 Q. And the committee was?

16 A. 2010 Commission.

17 Q. And then you also gave the report to LEPC?

18 A. Yes, sir.

19 Q. And who authored this report?

20 A. Myself and Sharon Winger did it together.
21 She works for the Research Department.

22 Q. Okay.

23 Now let's talk about the cuts. Explain the
24 reduction or elimination of professional development
25 that you surveyed.

1 A. Well, I believe what you're referring to is
2 that professional development state aid ceased at the
3 end of '08/'09 school year. No more state aid for
4 professional development since the '08/'09 school
5 year.

6 Q. All right. Then let's go to reduced and
7 eliminated school resource officers, counselors,
8 librarians, educational aides, administrators,
9 paraprofessionals, social workers, school nurses and
10 parent educators. Where did you get that
11 information?

12 A. That came from the school districts in that
13 survey.

14 Q. What's a school resource officer?

15 A. That is, in essence, a police officer or a
16 sheriff's deputy that's assigned to the school,
17 funded in different ways, but to ensure that all
18 students are safe.

19 Q. Then it talks about programs and program
20 efficiencies that says, "Increased pupil/teacher
21 ratio."

22 Did you get survey results that you
23 tabulated on a statewide basis as to the increase in
24 the size of classrooms or was that individual by
25 school district?

1 A. It was individual by school district, sir.
2 And that data may be available but it was not a part
3 of this survey. That was just one of the items that
4 the school said that they had to do.

5 Q. And then we've got reduced or eliminated
6 early childhood programs. School districts did
7 that?

8 A. That's what they included -- they said in
9 their survey, sir.

10 Q. And what is an early childhood program?

11 A. Most cases students under the age of
12 kindergarten.

13 Q. And we've heard the term "extended learning
14 opportunities." Would early childhood programs be
15 part of extended learning opportunities?

16 A. It could be.

17 Q. Then you've got "reduced alternative school
18 programs." What is that?

19 A. Could be numerous things, but one
20 interpretation or part of it would be before school
21 and after school. Kids may be behind, need help, you
22 have an early school program, an after-school
23 program. And also in some cases there's some
24 programs a school set aside for alternative schools
25 for students that need a low pupil/teacher ratio and

1 need additional help.

2 Q. Then it says, "Reduced or eliminated before
3 school, after school and summer school programs."

4 What was the depth of that?

5 A. That kind of coincides with the alternative
6 school programs in a sense, because before school,
7 after school and summer programs, if it's financed by
8 the district some of those were reduced or
9 eliminated.

10 Q. Then it says, "Reduced or eliminated fine
11 arts, language arts and family and consumer science
12 programs."

13 A. Yes, sir.

14 Q. "Reduced tutoring"?

15 A. Yup.

16 Q. "Reduced instructional time"?

17 A. Yes, sir.

18 Q. "Raised class sizes in some or all
19 subjects," that's the pupil/teacher ratio?

20 A. Yes, sir.

21 Q. Then in terms of operations and maintenance,
22 did school districts defer maintenance, repairs and
23 improvements to buildings and equipment?

24 A. According to the survey the answer is yes.

25 Q. Did they delay purchase of textbooks,

1 supplies and school buses?

2 A. Yes, sir.

3 Q. And did they reduce the maintenance to a
4 minimum within their district?

5 A. In some districts the answer is yes.

6 Q. And did they reduce funding available to
7 purchase necessary school supplies?

8 A. It's in the eyes of the beholder necessary,
9 but they reduced school supplies.

10 Q. So I'm clear, was your survey a statewide
11 survey?

12 A. Yes, sir, all districts.

13 Q. So these cuts were cuts that were made
14 across the state?

15 A. Again, I emphasize, not all of them made all
16 of them, but this survey went to all and that's the
17 results of the survey.

18 Q. Drawing on your experience, Mr. Dennis, do
19 you believe that money spent on education increases
20 student performance?

21 A. There's a quote in a legislative study I
22 think that clarifies that. It was done by the
23 legislative staff at about '06, I believe, sir. And
24 I have no reason to disagree with that, with the
25 legislative staff and that study.

1 Q. And I think that's an exhibit in our case,
2 and let me show you the quote, which is Exhibit 296.
3 And this is from one of your PowerPoints. This is
4 the quote, isn't it?

5 A. Yes, sir.

6 Q. What I want to know is, is that consistent
7 with your experience?

8 A. Yes. I have no reason to disagree with that
9 percentage. It's not that refined, but it does make
10 a difference.

11 Q. When it comes to educational funding, in
12 your opinion when is enough enough? Is this just an
13 unlimited resource issue, that we just keep putting
14 money into education until the cows come home or when
15 is enough enough?

16 MR. CHALMERS: It's either invading
17 the province of the Legislature, which I think is the
18 proper analysis, or it's invading the Courts'
19 province, but it's not the proper subject of
20 testimony from the witness.

21 JUDGE THEIS: We have a liberal
22 province.

23 MR. RUPE: I'd like to hear his
24 answer, Your Honor.

25 JUDGE THEIS: Based on his

1 experience and his position and tenure, I think it's
2 safe to admit it.

3 **A. I believe that when a student graduates from**
4 **high school they should have the skills necessary to**
5 **enter the workforce or attend and participate in**
6 **higher education. I think that's extremely**
7 **important. Because if students are not at that**
8 **level, whatever it is, then the cost to society**
9 **becomes extremely expensive. Dropouts are expensive.**

10 **So my answer would be, I don't have any set**
11 **dollar amount, but I think students should be**
12 **prepared to enter the workforce or higher education**
13 **and have the ability to be successful.**

14 **MR. RUPE:** Your Honor, do you care
15 if we stop for the day?

16 **JUDGE THEIS:** Oh.

17 **MR. RUPE:** Five till 3:00.

18 **JUDGE THEIS:** Let us confer.

19 **JUDGE FLEMING:** It'll be a short
20 conference.

21 **JUDGE BURR:** We won't have to turn
22 our backs.

23 **JUDGE THEIS:** You can step down.
24 We'll see you Monday.

25 **THE WITNESS:** Thank you, sir.

1 (Thereupon, the proceedings were
2 adjourned to June 11, 2012, at 9:30 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 8, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 178 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 6)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 11th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

BRUCE D. BAKER
DIRECT BY MR. RUPE 1200
CROSS BY MR. CHALMERS 1349

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: Morning. Be seated
3 please.

4 MR. RUPE: Good morning. Our first
5 witness is Dr. Bruce Baker.

6 Your Honors, we're going to be
7 working through two documents, primarily; his report,
8 which has been admitted into evidence without
9 objection, which is Exhibit 384, and his supplemental
10 report, I guess it's called a rebuttal report, 383.

11 And I know some of the Court has
12 been looking at exhibits as we go. In his report are
13 some charts and diagrams that we intend to look at,
14 so to the extent you're comfortable looking at his
15 report as we proceed, 384 is the one we're going to
16 start with and spend some time with.

17 BRUCE D. BAKER

18 Called as a witness for the
19 Plaintiff, was duly sworn by the reporter and
20 testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MR. RUPE:

23 Q. Let's get a little background on you,
24 Dr. Baker. State your name and where you currently
25 live, please.

1 A. My name is Bruce Baker, and I currently
2 reside in New Jersey, and am a professor at Rutgers
3 University in New Brunswick.

4 Q. Tell us a little bit about your educational
5 background, if you would, starting with college and
6 working forward.

7 A. I completed an undergraduate degree in 1987
8 at Lafayette College in Easton, Pennsylvania, and
9 that was in biology with a focus on molecular biology
10 and genetics. I then went on to do a Master's Degree
11 in Educational Psychology at the University of
12 Connecticut. And from there went on to complete my
13 Doctorate in Educational Policy, in Educational
14 Leadership and Administration at Teachers College at
15 Columbia University in New York City.

16 Q. After Columbia College where did you go?

17 A. After attending Columbia University, I took
18 a position first as an assistant professor at the
19 University of Kansas in Lawrence, and I was at the
20 University of Kansas for the next 11 years, I
21 believe. I started in 1997, and I completed my time
22 at the University of Kansas in 2008, having the
23 chance to see at least one national championship.

24 Q. With regard to your employment after Kansas,
25 that's when you went to Rutgers?

1 A. Yes, that's correct.

2 Q. And so I'm on track, your Rutgers
3 appointment occurred on what date?

4 A. I began working at Rutgers, I believe, in
5 the fall of 2008.

6 Q. And talk to us a little bit about what your
7 degrees are in, please.

8 A. The undergraduate degree, again, is in
9 biology. The Master's Degree is in Educational
10 Psychology with a focus on education of the gifted
11 and talented and talent development. The Doctoral
12 Degree is in Educational Leadership and
13 Administration with a focus on the study of state
14 school finance systems.

15 Q. Let's get a little personal history out of
16 the way, if we could. I've been asking everybody to
17 talk a little bit about their personal history. Just
18 tell the judges a little something.

19 A. I'm not sure where you want me to go with
20 it. Personal history, I was born and raised in
21 Vermont. I guess that would be part of it.

22 Q. Let me throw one in --

23 A. Yeah.

24 Q. -- your wife and my son were in the same med
25 school class at KU?

1 A. That is correct.

2 Q. And she is a physician and you have two
3 kids?

4 A. That's correct, one eight, and one 11.

5 Q. All right. Now, let's go back to your first
6 exposure -- or your educational exposure to school
7 finance. When did you become interested in school
8 finance?

9 A. I became interested in school finance after
10 taking a course at Teachers College. Before I was
11 admitted to a degree program, I was working in a
12 school in the Bronx where I had tuition support to
13 take a course at Teachers College. And I went
14 looking through their catalog for something I thought
15 might be interesting. And I took a course in school
16 finance. At which point, after the course, the
17 professor for that course started getting me involved
18 in projects related to school finance and encouraged
19 me to apply to the doctoral program.

20 Q. Talk to us a little bit about what your
21 exposure to school finance was through your master's
22 and your doctorate.

23 A. My exposure to school finance was mainly
24 within my doctoral program. I became curious about
25 school finance through a master's program following

1 that, because I studied enrichment programs and went
2 on to become an enrichment program coordinator for a
3 school district in New Hampshire, at which point I
4 learned, mainly through the local donut shop politics
5 of New Hampshire that, you know, what really matters
6 for keeping your programs alive is the availability
7 for funding. And especially for programs like the
8 gifted and talented programs which were constantly on
9 the block in the annual budget meetings. In
10 New Hampshire everything is very much a local
11 determination.

12 So that was in my head when I had gone on to
13 study my doctoral work. And it all started to kind
14 of gel there. There was this academic field of study
15 I could pursue in looking at school funding and what
16 it was able to provide on the ground in school
17 districts.

18 So I did the school finance course at
19 Teachers College, engaged in a number of other
20 research studies along with Craig Richards;
21 eventually wrote a textbook with Craig Richards on
22 school finance policy.

23 Q. Your dissertation was on what, please?

24 A. My dissertation was on forecasting revenues
25 and expenditures in school finance, looking at

1 education expenditures, forecasting with alternative,
2 kind of, non-linear models. It was a classic kind
3 of, eclectic academic study using complicated
4 statistical techniques, in this case, something
5 called neural networks, to forecast education
6 spending.

7 Q. Take a look at Plaintiffs' Exhibit 385, and
8 can you identify that as your CV?

9 A. Yes, this would be my CV as of last
10 December.

11 Q. And in terms of the CV, does it list your
12 research and your publications?

13 A. It lists my research and publications as of
14 last December. There are a few more since then,
15 three or four more since.

16 Q. In terms of -- I guess, it's a 30-page CV I
17 don't want to cover the entire thing, but give us an
18 overview of the types of publications you've had in
19 your career since you obtained your doctorate?

20 A. A significant amount of my work has been on
21 studying state school finance systems, and in
22 particular, studying the extent to which those
23 systems provide appropriate distributions of funding
24 with respect to the different costs of operating
25 quality schooling across settings, and with respect

1 to the different costs of providing differentiated
2 services to students with different needs.

3 So a lot of my work has focused on that, in
4 conjunction with, for that matter, the legal cases
5 surrounding those very issues of equity and
6 adequacy. In particular, I wrote the handbook
7 chapter for the handbook of education finance and
8 policy -- Handbook of Research on Education Finance
9 and Policy (sic) on conceptions of equity and
10 adequacy of education and finance, including a number
11 of empirical articles about state school finance
12 problems.

13 Another branch of my research has focused on
14 teacher and administrator pipelines and labor
15 markets, and how those kind of blend in with these
16 broader school finance and resource issues; to what
17 extent does wage variation affect the competitiveness
18 of recruiting and retaining teachers; what kind of
19 wages do we need to be able to recruit quality
20 teachers into the profession; what are the different
21 characteristics of teachers and how do they
22 distribute themselves across school districts within
23 any given labor market; and what role, for that
24 matter, do principals play in teacher selection and
25 distribution across labor markets.

1 So I kind of linked the school finance
2 policy research with other studies that look at labor
3 market behavior, because when it comes right down to
4 it, running schools is a very labor-intensive -- it's
5 a labor-intensive industry. It's all about being
6 able to pay the wages to recruit and retain good
7 people to get the job done.

8 Q. Well, let's kind of focus in on your
9 litigation experience, because you've talked about
10 being involved in equity and adequacy cases. My
11 first question in that topic would be, what was the
12 first school finance litigation you were involved in?

13 A. The first school finance litigation I was
14 involved in, I guess as a trial, would have been the
15 Montoy case.

16 Q. Montoy v. State of Kansas?

17 A. Yes, that's correct.

18 Q. And you were an expert that testified in
19 that case?

20 A. Yes, I was.

21 Q. And in terms of other states in which you
22 have served as an expert witness -- by the way, you
23 were at the University of Kansas when you testified
24 in the Montoy matter?

25 A. That's correct.

1 Q. And with regard to other states in which you
2 have, let's start with testified concerning school
3 finance, either by way of deposition or by trial,
4 what states are those?

5 A. I testified at trial in Missouri. I believe
6 it was a Committee for Educational Excellence, CEE.
7 I also testified at trial in a state court case in
8 Arizona several years ago. I think that was also
9 around 2006.

10 I testified at trial in what was a hearing
11 about remedies in New Jersey in 2008. And I
12 testified in federal court in the Middle District of
13 Pennsylvania regarding special education funding and
14 how it's handled in Pennsylvania. And did video
15 testimony a week or two ago on the same argument
16 being heard in the Eastern District Court, the
17 federal court, in Pennsylvania.

18 Q. And in terms of the states in which you have
19 consulted in one fashion or another and testified,
20 are there states where you have consulted that you
21 have not testified?

22 A. I've consulted and had my deposition taken
23 in Nebraska. I consulted for the State of Texas
24 during the West Orange-Cove case; did not have my
25 deposition taken nor did I testify.

1 Q. What's the West Orange-Cove case, briefly?

2 A. West Orange-Cove case was a state school
3 funding case that had kind of two sets of arguments
4 going on. One was about whether or not districts, by
5 slowly, kind of, all edging toward their maximum levy
6 under the capped state system in Texas, had been
7 backed into a statewide property tax, which would be
8 unconstitutional under the Texas Constitution. And
9 coupled with that were arguments about the equity and
10 adequacy of the funding system. And I wrote
11 consulting support for the attorney general's office
12 at that time in Texas.

13 Q. And did you testify in Colorado?

14 A. Yes, I did testify in Colorado.

15 Q. In trial?

16 A. Yes, I testified in trial in Colorado.

17 Q. And the style of that case was what, if you
18 remember?

19 A. That case concerned general kind of equity
20 and adequacy issues of the state school finance
21 formula as a whole, and in particular how it affected
22 certain high-need districts serving high-need student
23 populations.

24 Q. And the Colorado testimony was fairly
25 recently?

1 A. That would have been the end of last summer.

2 Q. And now, if we could, I'd like you to
3 explain to the Court if there is a difference in the
4 state constitutions, concerning wording, of what is
5 required by their education articles?

6 A. There certainly is different wording in each
7 state's constitution regarding the Legislature's
8 obligation or not to provide for equitable or
9 adequate financing of school systems. Much of that
10 is, of course, left to, you know, how the judicial
11 branch decides to interpret that constitutional
12 language. But both the language itself and the
13 judicial interpretations of it certainly do vary
14 across states.

15 Q. And in terms of your CV, Exhibit 385, and
16 your publications, with regard to that exhibit, I'm
17 going to move on. But in terms of that exhibit, it
18 summarizes all of your background, including your
19 educational background and your appointments, your
20 honors and your teaching and administrative
21 experience, along with the publications we've
22 discussed, is that accurate?

23 A. That is correct.

24 Q. I'd like to talk to you a little bit about
25 the matter that brings you here. And take a look at

1 Plaintiffs' 384, if you would, and do you recognize
2 that as a copy of your report, is that correct?

3 A. Yes, that's correct.

4 Q. And you were asked in this matter by us to
5 look at the state of school finance in the wake of
6 the Montoy v. State of Kansas decision, correct?

7 A. Yes.

8 Q. And in terms of that, did you review the
9 state of school finance in the State of Kansas since
10 the Montoy decision in July of 2006?

11 A. Yes, I did.

12 Q. All right. Why don't you give the Court an
13 overview, if you would, of what you evaluated. We'll
14 get into the weeds of the evaluation here in a little
15 bit. But I want to have you first introduce the
16 Court to what it is you're going to be talking
17 about.

18 A. Okay. What I evaluated really starts
19 with -- you know, it starts with that jumping off
20 point that there had been -- so this makes it
21 different from something like the Colorado case where
22 I was coming in cold to look at the overall -- look
23 at the overall system and evaluate it to say, you
24 know, is this system -- do I perceive the system to
25 be adequate or equitable or -- you know, either,

1 neither, both.

2 But here, you know, what we had was a series
3 of judicial decisions and remedy plans; ultimately, a
4 remedy plan that was put in place on a three-year
5 phase-in, as I understand it, which was accepted by
6 the Court and became the basis for, kind of,
7 dismissing the case and letting the remedy
8 legislation move forward.

9 So I was in the position of, you know,
10 looking at whether or not that remedy plan was being
11 implemented as planned, whether or not the gaps that
12 had been identified, the failures of the previous
13 formula that had been discussed in the Montoy case,
14 were really being remedied during the period from
15 2006/'07 through 2011/'12. And also, re-visiting
16 some of the questions about the validity of the
17 remedy plan itself in relation to the types of
18 analyses that had been done to back that remedy plan,
19 and the formula that had been developed based on
20 those analyses.

21 I took the time to go back through and ask,
22 not only, you know, was it implemented, but also, you
23 know, how valid was the plan that was to be
24 implemented; were there changes that were made
25 between the original analyses and the adopted formula

1 that I still had concerns about.

2 So I addressed those issues. I addressed
3 some broad contextual issues of where Kansas fits
4 into the national picture based on a national school
5 report card that I prepared that looks at -- you
6 know, how do states deal with the overall level and
7 equitable distribution of funding; how do they
8 compare on an overall level, and which states have
9 systems where there is actually systematically
10 greater support allocated to higher-need districts,
11 and which states actually have systems where there's
12 systematically less support provided to higher-need
13 districts, and which states kind of fall into the
14 middle where it's pretty much flat. So I looked at
15 that, and Kansas had moved from regressive to
16 relatively flat during the first three years of
17 implementing the remedy, but still kind of landed,
18 more or less, in the middle of the pack. That's in
19 Section 2 of my report.

20 I also spent some time discussing certain
21 issues that affect the cost of maintaining or
22 achieving, kind of, sustaining an adequate education
23 finance system over time, and the difficulties of
24 implementing that. And some of the things that
25 affect the ability to sustain an adequate education

1 finance system are things like demographic shift.

2 We can try to estimate what's going to be
3 needed down the line and project it out based on
4 something like inflation indicators, but those
5 indicators don't account for the fact that there
6 might be significant demographic shift, and it costs
7 more to achieve the same outcomes with a student
8 population that comes in with, you know, less -- you
9 know, less background to start learning from day one.
10 So it costs more as demographic shift occurs. And I
11 also talk about how it costs more as labor market
12 changes occur.

13 And you know if we desire higher outcomes,
14 if we start looking to achieve higher outcomes for
15 kids, if we move away from some minimum proficiency
16 level on a test, to thinking about, what do we need
17 to be able to provide these kids to have equitable
18 access to higher education, we start aspiring to
19 higher goals, it also costs more to achieve those
20 higher goals. So I talk about a lot of that in the
21 front end of the report.

22 And then I kind of move into the nuts and
23 bolts of evaluating to what extent was -- even with
24 the planned remedy phased in, and then what are some
25 of the problems with it; what inequities in taxation

1 still exist in the capital outlay funds and the local
2 option budgets; what are some of the features of the
3 funding formula itself that undo the equity that it
4 was intended to improve.

5 It's got, you know, weights for at-risk and
6 for poverty and population density concentration,
7 which makes sense. But it's also got weights for new
8 and ancillary new facilities that drive money
9 dramatically into the lowest-need, highest-wealth
10 districts, and it's got a cost of living adjustment
11 based on housing prices, last I checked, which is a
12 counterbalancing factor. So I did some dissection of
13 what pieces of the formula counterbalance others in
14 ways that ultimately end up, kind of, messing with
15 the teacher labor markets.

16 If we were to get enough money into Kansas
17 City, Kansas, for example, to help them recruit and
18 retain teachers, if we raise them up a bit but then
19 we create mechanisms in the formula that allow Blue
20 Valley, Shawnee Mission, and Olathe, and De Soto to
21 jockey their salaries up, maintaining a similar
22 margin to what they had before, then Kansas City,
23 Kansas is not necessarily better off than it was to
24 begin with.

25 So I talk some about that, and then I go

1 into relating the fact that the districts that still
2 have the funding gaps, the districts that are still
3 most disadvantaged, continue to have systemically
4 lower outcomes. And I talk about -- we kind of boil
5 down to what do the personnel look like in these
6 districts; what are the course offerings they can
7 provide. We have far fewer advanced course
8 offerings, the type of things that are going to help
9 kids get into a competitive college, out of places
10 like Kansas City, Kansas, or even out of smaller,
11 kind of, rural, lower-income districts.

12 Those school districts are targeting their
13 resources into the remedial courses into the special
14 assistance that kids need just to get to the
15 baseline, but as a result, they don't have the
16 resources available to provide advanced and enriched
17 curricular options that actually make a difference
18 when kids want to apply to college.

19 So that's in there, and I also spend some
20 time talking about, what do we know from the research
21 whether school finance reforms matter. And really,
22 the punch line is that where reforms are substantive
23 and sustained, where money is raised and driven into
24 districts with greater needs, and that's sustained
25 over time, we can see sustained, positive effects.

1 But these are the kind of things that take patience;
2 it takes, you know, something that's a substantive
3 change and a sustained change to be able to kind of
4 reach the new equilibrium.

5 It's not that we add a dollar this year and
6 we look at test scores next year. We have to see --
7 there are a lot of studies out there, for example,
8 look at is there a relationship between having a
9 court order on school finance or not and whether test
10 scores went up. And a lot of those studies don't
11 actually ask whether the reform was implemented and
12 sustained. And therefore, they don't find a
13 relationship between the mere presence of a court
14 order and a testing score change.

15 They may test whether there was a one-year
16 infusion of money, but they may not test whether it
17 was sustained. And all that's important to really
18 changing the system down the line. So that's the
19 best I can do at a CliffsNotes version.

20 Q. Okay. Working from the CliffsNotes version,
21 let's start drilling down on some of this. And
22 first, I want to get the time frame of your analysis
23 down. What you looked at was the funding situation
24 in Kansas as the result of Montoy to present?

25 A. In some of my analyses, I'd go from -- you

1 know, I have some graphs like this, where I go from
2 '93 up to here. I didn't have the '13 numbers. But
3 in most of my analyses, I'm looking at these recent
4 years; really from, I guess, the -- right around
5 '06/'07, up to the '11/'12, numbers; mostly '10/'11
6 numbers.

7 Q. So we know, kind of, the context of funding,
8 the first year of the Montoy money was in '05/'06,
9 second year of the Montoy money was the first year of
10 that three-year plan; '07/'08 was the second year of
11 that three-year plan; '08/'09 was the third year of
12 the plan, and toward the end of that year they began
13 the cuts.

14 A. Yes, that's correct. And that actually
15 shows up in our national report card and in the
16 nation stuff I had, where Kansas had been a
17 regressive formula, where systematically higher-need
18 districts had less state and local revenue per pupil,
19 and that flattened out over time from '06/'07 to
20 '07/'08 to '08/'09; the most recent federal data
21 available for that analysis go through '08/'09. So
22 we haven't seen in our national report card, yet,
23 whether that slides back down.

24 Q. But in terms of when the cuts occurred --

25 A. Yup.

1 Q. -- and the context of your evaluation, those
2 are the dates of the funding reductions.

3 All right. Let's get some terms defined in
4 terms of what you have described as inputs and
5 outcomes. Define each of those for the Judges,
6 please.

7 A. Inputs?

8 Q. What's an input?

9 A. Okay. Inputs, we kind of look at it as a,
10 kind of, pipeline beginning -- they're the financial
11 inputs to schooling; just how much money is there to
12 pay for what become kind of the substantive inputs to
13 schooling, which are the people, space, stuff, and
14 time that go into providing schooling, which are also
15 inputs.

16 You have to have financial resources to buy
17 a sufficient quantity to pay the wages for a
18 sufficient quantity of teachers, administrators, and
19 other school staff that are of appropriate quality of
20 appropriate qualifications. So that people piece of
21 the puzzle is a big one.

22 So financial inputs are kind of the initial
23 input to the system, but those financial inputs have
24 to be translated into competitive wages for a
25 sufficient quantity of teachers that have the

1 qualifications to get the job done. The financial
2 inputs have to pay for the material supplies and
3 equipment inputs to schooling, you know, from books
4 to technology to scientific equipment.

5 They have to be able to pay for space within
6 which this stuff goes on, which includes, you know,
7 the utility bills, as well as the maintenance and
8 operations of facilities, keeping the place clean,
9 keeping it well-lit, making it a good learning
10 environment. All of those are inputs. They're all
11 contingent upon having available the financial
12 inputs.

13 The financial inputs get translated to these
14 educational resources, which are used to provide the
15 actual programs and services and that, you know,
16 includes, again, not just paying the teachers and
17 having books around but keeping the temperature
18 right, keeping the lighting okay, making sure kids
19 have food, making sure that there are spaces for kids
20 to engage in physical activity and so on. So those
21 are all inputs to the schooling process.

22 Those are the schooling inputs. Of course,
23 we also have non-schooling inputs, parents, family,
24 community inputs to schooling that are the inputs
25 that are outside of the control of schools, which

1 then affect the inputs that schools have to provide
2 if they're going to try to shoot for common outcomes.

3 Q. In terms of inputs, then, you've described
4 money, people, space, time, and the other items you
5 described. Now let's turn and give us a definition
6 of outcomes. What is an outcome?

7 A. Outcomes are what we expect or, you know,
8 what we actually see and/or what we expect kids who
9 participate in this educational system to get out of
10 it. And a lot of that, we've reverted to measuring
11 as these immediate outcomes in annual test scores,
12 where we try to see if kids -- have they learned
13 enough math, have they learned enough reading?

14 We get a standardized test and we set the
15 standards as to what we expect them to learn, but
16 even then, what we're looking at is what they learned
17 relative to otherwise similar peers. When we set
18 what we call standards, it's still normative; how
19 much did these kids learn; how much does this kid
20 know relative to other kids of the same age on 8th
21 grade algebra.

22 So we have those immediate tested outcomes.
23 But then there are bigger outcomes; whether or not
24 kids have equitable access to college or the labor
25 market. Do these kids coming of KCK, or for that

1 matter, out of Hays or Lakin or places like that, if
2 they so choose, if they want to go to one of the
3 regional colleges or the state flagship, do they have
4 the same access to do so; can they get in; have they
5 had the courses; do they have the preparation in math
6 and language arts and science and everything else to
7 be able to gain access to college in the same way
8 that a kid from Blue Valley or De Soto might.

9 Q. We've had a description of what I call the
10 Rose Factors in KSA 72-1127. You're familiar with
11 the Rose Factors?

12 A. Yes, I am.

13 Q. And looking at, and I think these are darn
14 near word-for-word from the Kentucky decision, but in
15 terms of these Rose Factors, are these considered, in
16 the world of school finance, outcomes?

17 A. You know, some are clearly outcomes, some
18 are kind of phrased as mixes of inputs and outcomes.
19 Subject areas of instruction shall be designed --
20 input -- to achieve the following goals. So you've
21 got an input description in that there clearly is a
22 link between the inputs and outcomes.

23 Q. You know Dale Dennis, don't you?

24 A. Yes.

25 Q. He described a situation where he thought

1 funding would be adequate when every kid graduating
2 from -- or every kid graduating from high school
3 would be equipped to go into the adult world and
4 enter college or enter a vocation. Is that an
5 outcome?

6 A. Being equipped to gain access to higher
7 education or participate in the labor market, kind
8 of, participate in society and the economy as it
9 tends to be phrased, you know, it's pursue life work
10 intelligently, I mean, those are outcomes.

11 Q. And here's where I'm going with this, if we
12 look at outcomes, what's the measuring stick for
13 determining whether we are achieving outcomes that we
14 want to achieve?

15 A. The measuring stick that's most commonly
16 used in this context is student assessment scores,
17 and graduation rates. The trick, and I talk about
18 this in my report a little bit, is that it's
19 important that we spend some time considering whether
20 or not the test scores we're using are predictive of
21 the bigger, important outcomes. You know, does
22 getting a score of proficient or higher on the Kansas
23 state assessment really mean that a kid's ready to
24 succeed in a legitimate, credit-bearing course at
25 K State or KU or Hays or Emporia.

1 For that matter, does it mean they're
2 equipped in mathematical and scientific knowledge to
3 be able to handle the technology that's involved in
4 big farming these days. You know, we need to know --
5 we most often use these short-run measures of student
6 achievement to gauge adequacy, and we accept as a
7 given that which we've called proficient as being
8 sufficient, but we don't always double check whether
9 or not those are actually predictive of kids being,
10 you know, able to succeed in college or able to
11 succeed in the labor market. And I think that that's
12 something that we really need to consider, as well.

13 Q. Let's go back, if we could, now that we
14 understand, hopefully, what inputs and outcomes and
15 the measuring stick for outcomes are, and fit those
16 in -- and this is School Finance 100, or may be
17 preschool finance education for us. How do those fit
18 into the notion of adequacy? What is adequacy?

19 A. Well, I'd have to --

20 MR. CHALMERS: I guess --

21 A. -- defer --

22 MR. CHALMERS: -- just to be clear,
23 I have a running objection, I think, to the opinion
24 testimony from witnesses to adequacy, when I think
25 the test is what a suitable provision to finance,

1 which is the decision this Court makes, not an expert
2 witness. And I don't want to interrupt, but am I
3 clear that I have this running objection as to his
4 testimony of what is adequate?

5 JUDGE THEIS: Well --

6 MR. CHALMERS: I'll be happy to
7 make the objections if otherwise.

8 JUDGE THEIS: With experts, you
9 better be specific -- don't you, Bob?

10 JUDGE FLEMING: What your objection
11 is, that he's --

12 MR. CHALMERS: He's invading the
13 province of the court --

14 JUDGE FLEMING: Invading the
15 province of the Court?

16 MR. CHALMERS: Yeah, testifying to
17 a legal standard, trying to tell you with the legal
18 standard as to what is suitable finance or suitable
19 provision finance, re-casting it as adequate.

20 MR. RUPE: I admit, it is a legal
21 decision on what is adequate and the Court in Montoy
22 has addressed that. And to the extent he wants a --
23 I'll defer to the Court on whether you want him to
24 have a running objection to that. He is qualified as
25 an expert, and experts, all the time, invade the

1 ultimate issue in a case. I mean, that's the reason
2 they're experts. And he is going to offer up his
3 opinion and before he gives you his opinion, we need
4 to know as to what he considered to be adequate.

5 JUDGE THEIS: It's not what we
6 three feel or feel what another three or another
7 seven might think, it's whatever we think has to be
8 based on facts, not personal reflections. So
9 obviously, there has to be something in the record
10 upon which a court can make a judgment.

11 In this case, you provided an
12 expert that has an opinion on education. And whether
13 it's good, bad, or indifferent will be worked out
14 over time, but it's nevertheless the object of a
15 suit, so I don't know any other source of information
16 other than ad hoc opinion from the Court if you don't
17 allow somebody's testimony.

18 So I overrule your objection. And
19 if it's just a general objection to that theory, then
20 running objection's okay. But I think dealing with
21 an expert, if you think that there's not enough facts
22 in the record to testify and things like that, I
23 mean -- if you're just saying the Court should be
24 deprived of professional opinion on what quality
25 education is, then you're overruled.

1 MR. CHALMERS: And I appreciate
2 that. I think I understand your ruling. The
3 objection I made, to be clear, is, I think, discussed
4 in trial brief, that what is suitable provision for
5 finance is a legal issue, in my view, and that
6 experts can testify to ultimate issue, yes, but they
7 can't substitute their judgment as to what is a legal
8 standard, which is what I think the witness is doing
9 when he tries to talk about what's adequacy.

10 So that's the nature of my
11 objection. I understand the Court's ruling. I think
12 that's reserved, that's great, and then I'll make
13 other objections, if appropriate.

14 JUDGE BURR: Hopefully, we're going
15 to feel the same way when it comes to your expert.

16 MR. CHALMERS: Yeah.

17 JUDGE BURR: Assuming he's
18 qualified to -- we'll make a reverse ruling, I
19 assume.

20 Q. (By Mr. Rupe) So now let's go back and look
21 at the concept of adequacy --

22 A. Right.

23 Q. -- in Kansas. Explain to the Court the
24 definition of adequacy.

25 A. Okay. And I think my angle on this is

1 actually somewhat -- there's consistency with the
2 objection and that I do believe that ultimately that
3 the Court's going to have iron this out. But what I
4 look at in the Kansas context is that the Legislature
5 has, under their responsibilities to do so at a
6 couple of points in time, taken on the task of
7 defining what constitutes suitable provision for
8 finance of the educational interests of the state, to
9 try to stay true to the wording -- lucky -- I've been
10 out for four years now, I think I remember it
11 correctly.

12 So the Legislature has taken it on
13 themselves to try to figure out what constitutes
14 suitable provision back in the original Augenblick
15 study, and then the Post Audit study. And then we
16 have the previous judicial orders that make use of
17 that information, and ultimately, a legislative
18 remedy that was determined to be acceptable to the
19 Court.

20 The one concern I would raise about it
21 myself as an expert and drawing on my -- drawing both
22 on my expert background and on data that I provided
23 in my report, is that I am somewhat concerned that
24 the measures of outcome adequacy that were used to
25 define cost adequacy or input adequacy in the Post

1 Audit study and the analyses behind it, may have been
2 too low; that Kansas assessment system sets a testing
3 bar that may not really capture whether or not these
4 kids can gain meaningful access to credit-bearing
5 courses in college, or whether or not they each
6 attend, you know, school districts -- so I, if I
7 were, kind of, opining as to, you know, what are
8 meaningful outcomes, as opposed to simply getting a
9 proficiency score on a test, I'd want to know that we
10 estimated the cost of giving kids meaningful access
11 to higher education or the labor market, and
12 certainly, it's up to the Court to decide whether or
13 not the suitability standard mandates that.

14 But that's what I would suggest, is that we
15 have to, you know, figure out, you know, do these
16 test scores that we've used as the basis for
17 estimating what is adequate or what constitutes
18 suitable provision for finance of the educational
19 interests of state.

20 JUDGE BURR: Excuse me, are you
21 referring to the -- like, the math proficiency, I
22 think we talked about like 50 percent, or some such
23 figure. I don't have it here in front of me right
24 now. That's what your referring to?

25 THE WITNESS: That's part of it.

1 In a testing system there's lots of -- especially
2 when we move testing data to the district level,
3 there's lots of moving pieces. There's, what's the
4 cut score that we've used, so how many do you got to
5 get right to pass. There's the rigor of the items.
6 How hard are the test items.

7 You could, you know, getting a 75
8 on an easy test can be the same as getting a 50 on a
9 hard test, right? So how hard are the test items?
10 Is the kid who gets 50 percent of those test items
11 right capable of making it past remedial algebra in
12 college?

13 Are we really testing -- and if we
14 get 65 percent of our kids to get 50 percent of these
15 things right, does that really mean we've given a
16 reasonable degree of opportunity to kids to gain
17 access to college? So I have some concerns that the
18 gauges -- the kind of short-run gauges we've used to
19 determine the cost of making suitable provision may
20 not be what I would consider high enough to be
21 meaningful. That's obviously for the Court to
22 determine and not me.

23 Q. (By Mr. Rupe) For good reason you're jumping
24 ahead, but I want to draw you back to what you looked
25 at in terms of adequacy. Is it fair to say that you

1 looked at outcomes and inputs as part of your
2 assessment of adequacy in Kansas?

3 A. Absolutely.

4 Q. And in terms of what you determined to be,
5 or what you looked at to decide whether or not Kansas
6 was reaching an adequate level, what did you look at?

7 A. As a baseline, I looked at whether or not
8 the funding through the general fund budgets had been
9 provided to reach the State's own target based on its
10 own specified outcomes from that Post Audit study,
11 and found that they were converging toward that
12 between '07 and '09, and then back slid.

13 So they never achieved the goal they set out
14 to, and back slid from it with respect to -- and
15 that's just accepting the targets they had set forth
16 based on the outcome measures they had used had they
17 gotten the job done. So that's a lot of what the
18 analyses in my report are. And then I go through and
19 look at the continued disparities in the outcomes.

20 Q. Okay. So in terms of what you looked at
21 that constitutes adequacy, you obviously looked at
22 those elements of the Rose Factors that are outputs?

23 A. Some, I guess, but I did not look at them
24 as -- you know, as listed by the Rose Factors
25 themselves.

1 Q. And you looked at assessment?

2 A. I did look at assessment data, yes.

3 Q. And in terms of adequacy, you looked at
4 whether folks were proficient or not as an element of
5 adequacy?

6 A. I looked at variations in -- I didn't look
7 at proficiency rates with respect to any particular
8 adequacy target. I looked at the relationship
9 between the continued funding discrepancies and --
10 with respect to the funding adequacy targets -- and
11 the proficiency rates. I didn't do much analysis of
12 the adequacy of the proficiency rates, although, I
13 did look at how are proficiency rates in Kansas
14 related to the national assessment and how that, kind
15 of, shifts over time.

16 Q. So you looked at adequacy by way of the
17 assessments and by way of comparison with other
18 states?

19 A. I looked at the relationship between the
20 Kansas state assessment proficiency cut scores and
21 the NEAP assessment based on reports that are
22 produced by the National Center For Education
23 statistic, but that wasn't toward necessarily making
24 a determination of adequacy. It was to gain some
25 insights to where we stand on rigor of our

1 assessments in Kansas.

2 For that matter, with respect to some states
3 where they've actually done analyses to see whether
4 or not kids who pass the test are likely to pass
5 first-year courses in math in college, like in New
6 York State, they had done some analyses of that
7 issue.

8 Q. In terms of determining adequacy you also
9 looked at, you said, the LPA targets. Explain that
10 to the Court.

11 A. I did what I think is -- I tried to do a
12 fairly conservative and over-simplified version of
13 taking away the Legislative Post Audit study produced
14 a run in one of its appendices, which they also
15 produced as the spreadsheet at the time, which listed
16 the target funding for each district. And then they
17 produced a separate table, where they said, here's
18 the average increase due to inflation. They also
19 produced a table where they said here would be the
20 average increase for each district to achieve the
21 outcome standards as they go up.

22 What I did is take the '06/'07 targets from
23 the Post Audit study and used only the increase with
24 respect to inflation for each district, which then
25 doesn't even account for the fact that some of these

1 districts saw significant increases in student
2 population needs that would drive more money on the
3 basis of weights.

4 I just looked at, what did the LAP study
5 estimate for '06/'07 and then applied their, just the
6 year-to-year inflation piece to that to say, you
7 know, what does Dodge City -- what would they be
8 expected to meet from '06/'07 to '07/'08 to '08/'09,
9 what would Hutch need, what would all the districts
10 need. So I compared against the LAP targets, and
11 that kind of simplified what I think is a relatively
12 conservative approach, because my argument would be
13 that you actually have to go back and re-estimate the
14 model and get a feel for how the population changes
15 really affect the cost change, how the new standards
16 really affect the cost change over time, because it's
17 my impression that the standards are going up, as
18 well.

19 Q. So in terms of what you looked at by
20 adequacy, you looked at both inputs and outcomes?

21 A. Yes, absolutely.

22 Q. And the notion of including outcomes as part
23 of adequacy came from what source?

24 A. Well, a lot of that goes back to my academic
25 writing, but it also comes, in this case, from my

1 understanding of the previous decisions. There was
2 that point in Montoy where there was discussion as to
3 whether or not -- and this was leading up to the Post
4 Audit study -- there was discussion as to whether or
5 not the Legislature could conduct a study that looked
6 just at the basic inputs to schooling and whether
7 suitable provision meant simply focusing on the basic
8 inputs to schooling to provide this core curriculum,
9 or whether there had to be some measure of outcome.

10 And it's my understanding, and I put the
11 quotes in my report, that when it was put in front of
12 the Court that the Legislature wanted to look only at
13 the inputs to schooling, the Court responded by
14 saying, no, you must also look at the outcomes.

15 And that's what resulted in the two-part
16 Legislative Post Audit study. One part which did
17 look at the inputs, and another part in which the
18 division of Post Audit contracted William Duncombe --
19 I believe he worked with Johnny Yinger, his colleague
20 from Syracuse University on that -- to estimate a
21 model of the costs of achieving what were considered
22 a measure of suitable outcomes.

23 Q. Okay. So if I'm on track with you, when we
24 looked at the notion of adequacy, you looked at the
25 adequacy of the inputs and the outcomes in Kansas to

1 develop your opinion of whether, in the wake of
2 Montoy, we have achieved that?

3 A. That would be a fair characterization.

4 Q. And what I want to know in terms of outputs,
5 you -- well, we've covered that. But here's my
6 question in terms of inputs, you include among your
7 list of inputs money, people, space, time, and you
8 said food. I guess in the Leave It to Beaver era
9 that I was in grade school, if you had a chalkboard
10 and a textbook and you had a teacher in front of the
11 class, you had, pretty much, the inputs of what was
12 needed for an education. How in the world does input
13 include food?

14 A. Okay. The --

15 Q. I'm going, school finance, pre-kindergarten
16 here, so explain that to me.

17 A. What you started with is still the core of
18 it; right, having a sufficiently-qualified human
19 resource able to work with a number of kids that he
20 or she can work with to learn what they've got to
21 learn. And that's where the bulk of the cost is.

22 It also has to go on in a physical space
23 that's decent for that learning. And nowadays, that
24 physical space has to, you know -- probably, you
25 know, include the use of tablet computers, having

1 wireless -- you know, the chalkboards -- I'm thinking
2 you're probably younger than that, but you know,
3 those didn't have to have wireless hook-up. So
4 there's a lot more stuff that's going into the
5 physical space now.

6 For kids to learn the kind of things -- one
7 of the kind of things they have to be able to know to
8 function in a calculus or physics class in a
9 university, but may be also the kind of things they
10 have to know to engage in modern farming where you're
11 dealing with satellite imagery of, you know, crop
12 water content and things like that.

13 So the complexity of what goes into the
14 physical space of a classroom is different than it
15 was. There's no doubt about that. The other thing
16 is that the kids who might be in that classroom come
17 in with widely-varied backgrounds. And they probably
18 did, you know, back then, too. There may have been
19 more community involvement and support and helping
20 out the family a few blocks down who just became
21 unemployed, whereas now we're dealing with bigger
22 issues, larger numbers of families out of work,
23 larger numbers of low-income kids who don't come to
24 school sufficiently fed to be able to concentrate
25 past the first hour or two of schooling.

1 So having decent nutrition, having physical
2 activity all contributes in -- a number of studies on
3 this -- but it all contributes to whether or not kids
4 can succeed. And having kids coming in with mixes of
5 family backgrounds, larger numbers of low-income
6 kids, numbers of kids who -- certainly have a much
7 larger share of kids coming to school in a lot of
8 Kansas towns in places like Garden and Dodge and
9 places like Lexington, Nebraska -- stepping
10 outside -- that have very high percentages of kids
11 that come in who don't speak English, who need some
12 kind of support, some kind of additional personnel
13 available in the school, additional written
14 materials, additional online materials to be able to
15 help them simultaneously acquire English language
16 skills and learn to, you know, develop the English
17 grammar skills and math through word problems written
18 in English.

19 Q. I think we've learned in the course of this
20 trial that ELL kids and kids of poverty cost more to
21 educate. You agree with that?

22 A. Absolutely.

23 Q. And if you look at Exhibit 252, it's an
24 article that's in evidence by Bill Duncombe and John
25 Yinger called, "How Much More Does a Disadvantaged

1 Student Cost"?

2 A. I see that.

3 Q. Does that article track the additional
4 expenditures needed in order to educate those kids
5 that come to public schools behind in terms of what
6 they need to gain to be even with the other kids?

7 A. Yeah, this estimates -- this article, and
8 this is the pre-publication version of the article, I
9 don't think it's much different than the final. But
10 this article estimates the additional costs of
11 achieving common outcomes in school districts as
12 their demography changes in a school district that
13 has zero percent versus 100 percent kids qualified
14 for free or reduced lunch, and a school district that
15 has zero versus 10 versus 20 percent of kids who come
16 to school with limited English language proficiency.

17 Q. Let's go back to my Leave It to Beaver
18 example and see if I'm on track. In terms of what is
19 considered adequacy, you mentioned, for example, a
20 factor of test scores. And if I'm understanding what
21 your explanation of adequacy is, if we are expecting
22 disadvantaged kids who come to our schools without
23 food, clothing, shelter, and they cost more to get to
24 the same starting point as other kids and we're
25 holding them to an expectation in our assessments,

1 those kids, if you consider income and outcomes, are
2 they receiving an adequate education?

3 A. Right now, the outcomes for those kids still
4 remain systematically lower, and the -- even, again,
5 that kind of promised level of remedy wasn't really
6 fulfilled to provide the additional resources. And I
7 think what it comes down to is that, you know, the
8 reason it costs more to achieve common outcomes in --
9 if you take a hypothetical school that has mostly
10 low-income students and large share of limited
11 English proficient students versus a school that does
12 not, the school that has more of those needs, needs
13 more money to be able to provide lower pupil to
14 teacher ratios, smaller class sizes so that the
15 teachers can give the individual attention to the
16 students to help them learn content and language at
17 the same time; or in addition to that having
18 additional specialized staff who are able to teach
19 content and language acquisition at the same time.

20 So they need a larger number of teachers
21 with the same or even richer qualifications to be
22 able to get those kids to common goals. You know,
23 with low-income kids who've spent less time, you
24 know, between birth and three and four years old
25 reading books in the household, they need to be able

1 to leverage the additional funding for rich
2 pre-kindergarten and full-day kindergarten programs
3 to help these kids get what they weren't able to get
4 in the home. And those things cost money.

5 And the real trick is that they have to be
6 able to provide those opportunities to get those kids
7 up to speed while not sacrificing the opportunities
8 those same kids need later on in high school to gain
9 meaningful access to college, that you know, if
10 you're in a very high-need district that has to
11 target all these additional resources to kids who are
12 starting out behind, you still want them to be able,
13 later on, to have access to calculus or French or
14 Spanish or an AP physics class, so that they can --
15 you know, if they're ready and if they so choose, go
16 to the college of their choice.

17 Q. If what I'm hearing you say is, we don't
18 have separate standards for disadvantaged kids or ELL
19 kids, the same standards apply to all kids?

20 A. Yeah, that would be -- that's something I've
21 written about in my, kind of, theoretical work on
22 kind of relating legal causes of action,
23 constitutional standards in school finance, is that
24 we're trying to provide -- you know, not that we have
25 this pure expectation that all kids will achieve

1 exactly the same standards, but we're trying to
2 provide equal opportunity for kids to achieve the
3 given standard, a standard which is common, that
4 kids -- you know, again, whether they're from Dodge
5 or Fowler or KCK or Blue Valley, have equal
6 opportunity to gain access to the labor market, to
7 gain access to the state flagship or the community
8 college, or to, you know -- or for that matter to go
9 to the military.

10 Q. And if your expectation is that, in terms of
11 what we want for our kids -- the notion of ELL
12 learners having a 38.6 percent below standard
13 proficiency in 11th grade math or 40 percent among
14 African Americans, close to 30 percent below standard
15 among Hispanics, what does that indicate to you?

16 A. Well, it shows that we still have gaps. I'm
17 going to pick on you first and say I don't like 3D
18 graphs when there's not a third dimension. My
19 students know it's a pet peeve.

20 But yeah, it shows that there's still gaps.
21 And this would be indicative of a problem that would
22 need to be addressed. And from that graph, we don't
23 know if the problem is tied to insufficient resources
24 or not, but when we start looking at other issues,
25 you know, certainly that's what I addressed in my

1 report.

2 Q. So let's go through your report. I'm
3 looking at 384, and I want to focus on on page 51.1,
4 Evaluating Educational Adequacy in Kansas. I think
5 we have talked about you looked at adequacy and
6 equity. You have defined adequacy in terms of inputs
7 and outcomes, and you've explained why you did that.
8 Now let's have you walk us through your evaluation.

9 A. It's an open-ended question for me. Well,
10 again, what I've laid out here is a -- again, it's my
11 understanding that the Court considers it important,
12 again, for the Court to decide, again -- but the
13 Court considers it -- it considered in the past to be
14 important that we look at the outcomes that kids
15 actually achieve and that the required funding for
16 achieving those outcomes be considered.

17 Another thing that I've brought up in here,
18 in part because the outcomes -- one, the outcomes may
19 not be as high as they need to be to predict
20 meaningful access to college, but the outcomes are
21 also narrow in the Duncombe -- the William Duncombe
22 cost estimates that played into the Post Audit study,
23 he was looking at a combination of reading and math
24 scores and graduation rates.

25 It's conceivable you could estimate -- you

1 could find districts that achieve what we would
2 consider to be adequate reading and math scores and
3 graduation rates that don't provide other important
4 educational inputs for kids to have access to
5 college. So part of what I explain here is that we
6 have to still, kind of, protect against the shaving
7 back of a lot of those other important inputs, you
8 know, advanced and enriched courses, that really
9 level the playing field for access to college and the
10 labor market. So that's what I meant in this section
11 by talking about inputs and outcomes.

12 Q. This section kind of sets out what we talked
13 about in terms of the importance of inputs and
14 outcomes and the assessment of adequacy -- or the
15 evaluation of adequacy?

16 A. Yes, it does.

17 Q. And then walk us through the balancing
18 consideration of outcomes and input.

19 A. Well, I think I actually kind of stepped
20 into that a little bit, in that we could find that
21 there are districts or schools in the mix that
22 achieve minimally-adequate reading and math outcomes
23 and graduation rates while really sacrificing quite
24 substantially the depth and breadth of their
25 curricular offerings in ways that really compromise

1 the overall adequacy of what they have -- of what
2 they provide.

3 So I tried to balance that by looking at the
4 availability of advanced course offerings and
5 participation rates -- I believe I looked at that --
6 in advanced course offerings, and the distribution of
7 staffing to course offerings that might not play
8 directly into the measured scores of graduation
9 rates, that it's more than just about getting -- it
10 would be one thing if we had outcome measures of
11 kids' access to college and labor markets, but the
12 outcome measures we have are test scores and
13 graduation rates.

14 So when we're only estimating a model
15 against that, we also have to look at, have districts
16 achieved these test scores and graduation rates by
17 just getting rid of everything else? We're only
18 measuring test score success in two content areas, at
19 least in the empirical analyses leading up to the LPA
20 report.

21 Q. So we're on track in terms of what is to be
22 accomplished by way of outcomes, if you include, for
23 example, the Rose Factors of training or preparation
24 for advanced training in either academic or
25 vocational fields, test scores may not be the

1 complete outcome you want?

2 A. Right.

3 Q. You've got to go beyond that and look at
4 whether the kids graduating actually are trained as
5 the Rose Factors and state law require?

6 A. Yes. I mean, again it would be useful if we
7 had these measures of how kids actually do down the
8 line in college and in the work force. But you know,
9 what I had available to look at is whether or not
10 their high schools, for example, or the districts
11 provide some of these opportunities that would allow
12 them to gain more meaningful access to college. So I
13 looked at the input side of the equation in that
14 regard.

15 Q. The next section is, outcome standards
16 cannot be taken at face value as suitable. Explain
17 your opinions in that regard.

18 A. What page are we on now?

19 Q. Page 9.

20 A. Page 9. Okay. And this is really what I've
21 been, kind of, talking about all along, that the test
22 scores -- just saying labeling a cut score on a test
23 of a certain number of, you know, mathematical
24 problems, you know, labeling that as proficient and
25 therefore implying it to be, you know, meaningfully

1 proficient, that doesn't necessarily cut it; that we
2 have to look at what proficiency means with respect
3 to at least some external measure, because we
4 could -- you know, we could come up with any batch of
5 items and call it -- you know, and say, kid gets, you
6 know, 50 percent, and we call him proficient, or we
7 call him basic, or we stick some other label on it
8 like, you know, getting a little better, which we
9 tend to do these days.

10 Q. So let's take Plaintiffs' Exhibit 76, which
11 are the cut scores for Kansas, I'll represent to you,
12 in general reading assessment and general math. And
13 we looked at math proficiency. And explain to the
14 judges the answer to this question: Are we doing
15 what you consider to be adequate if we get 100
16 percent of our kids, by 2014, to be able to do 50
17 percent on the math?

18 A. And I think the best answer to that is, we
19 don't know, actually, because much depends on, well,
20 how hard a test is, what does 50 percent really even
21 mean, and can we statistically get 100 percent to
22 this 50 percent. The one gauge that we have for
23 interpreting the proficiency rates of the Kansas
24 assessments is that it's a mapping state standards
25 report from the National Center for Education

1 Statistics, which says that -- and I believe it was
2 intentionally this way -- that proficient on the
3 state assessment was aligned with basic on NEAP in
4 the mapping standards report.

5 Throughout the 2000s, I think from 2003 to
6 '05, to '07, maybe to '09 -- I'd have to check my
7 report -- the standard that counted as proficient in
8 Kansas became associated with a slightly lower
9 standard on the NEAP. So we've not set -- at least
10 by that gauge, we've not set a really highly-rigorous
11 standard for what counts as proficient; we set a
12 relatively modest to low standard that's gotten
13 slightly lower over time.

14 And one thing I point out in my report is
15 that it's lower than the standard used in New York
16 State in the year when New York State did a study to
17 find out that their standard wasn't rigorous enough
18 to mean that kids could actually get beyond remedial
19 math in college. So that by bridging, you know,
20 Kansas cut score to the NEAP and New York's cut score
21 to the NEAP, we see that -- New York conducted a
22 study. Actually, they hired Dan Koretz from Harvard
23 to do an analysis of whether or not kids who got a
24 proficient score on their 8th grade math test were
25 likely to do well enough on their 10th grade math

1 test to get beyond remedial math in college. And
2 they found that the cut scores were just too low or
3 the test was too easy.

4 And the data from that year in New York were
5 still higher than the data for that year, or similar
6 to the data for that year for Kansas. New York's cut
7 scores drifted downward, too -- which is why they did
8 the study -- to the point where they were even lower
9 than Kansas.

10 Q. Let me see if I understand your question --
11 understand your answer to my question.

12 A. Sorry about that.

13 Q. With regard to whether we can say, by 2014,
14 while 50 percent of the kids are doing -- or 100
15 percent of the kids are scoring 50 percent on the
16 math, that answer may not establish that we're at
17 adequacy, because you've got other factors you've got
18 to look at in addition to, you've got to look at
19 where the cut scores are, whether we lowered the
20 river instead of raising the bridge?

21 A. Right.

22 JUDGE THEIS: Can you talk -- with
23 holding up a chart, be helpful to mention that in the
24 record for some context, maybe.

25 MR. RUPE: Thank you, Your Honor.

1 I was holding up Exhibit 76, which shows the Kansas
2 assessment scores for general mathematics, shows the
3 cut scores.

4 Q. Turn to 86, please, Exhibit 86. What is
5 Plaintiffs' Exhibit 86? Is this the mapping study
6 that you referred to?

7 A. Yes, it is. Actually, I would clarify: The
8 New York standard was somewhat lower than the Kansas
9 standard in 2009, 8th grade math.

10 Q. Okay. And look at page 11?

11 A. Yes.

12 Q. What does Figure 3 on -- I'm sorry start
13 with page 10. What does Figure 3 on page 10, and the
14 chart, Figure 2, show relative to Kansas?

15 A. You're looking at Figure 2 on page 10?

16 Q. Yes.

17 A. Figure 2 on page 10 shows that the 4th grade
18 reading standard for Kansas is well below the -- and
19 this is for proficient for reading for Kansas -- is
20 well below the standard for basic which is, you know,
21 lower than the proficient standard for NEAP.

22 Q. And this is for 2009, Kansas is below basic
23 4th grade reading?

24 A. Well, that's not what kids are actually
25 getting, but the rigor of their cut score.

1 Q. Right, in terms of the rigor of the cut
2 score?

3 A. The rigor of the cut score in Kansas is
4 below -- it's in that kind of bottom cluster of
5 states.

6 Q. So what does the chart on page 11 then show
7 with regard to NEAP?

8 A. The chart on page 11 shows that Kansas cut
9 score for proficient is near the NEAP cut score for
10 basic, so it's a little -- the 8th grade reading
11 standard relative to NEAP is somewhat higher than the
12 4th grade reading standard.

13 Q. Explain to the judges what you mean when you
14 say, the cut score is below basic or near basic.

15 A. Right. So this is kind of like, if we're
16 mapping grading systems between the easy and the hard
17 teacher. And we've got two math teachers where one
18 is -- you know, that if you got a C with one, you
19 probably would have been gotten a B with the other.
20 And they've done this by taking school-level data,
21 based on the proficiency rates and done a statistical
22 relationship -- again, Charles Blankenship, one of
23 the authors on this, I believe, does the bridging --
24 where they look at the statistical relationship
25 between school-level percents of kids who get

1 proficient or higher on the state assessment, and
2 match school-level data on how those same kids fair
3 on NEAP testing items.

4 So they can see if -- you know, basically,
5 if the kid who -- if the group of kids who typically
6 got a C on this test, or you know, theoretically like
7 with this teacher, got a B on this.

8 And here, we've got some states -- like, if
9 we look at page 10, the grade 4 reading scores, we
10 look at Massachusetts and Missouri, you know, the kid
11 who got proficient on their state test also was
12 statistically predicted to get proficient on NEAP.
13 So proficient meant roughly proficient on both.

14 But if you go down to where, you know, Texas
15 and Kansas and Virginia and Colorado are, the kid who
16 got proficient on the state's own test wasn't likely
17 to even get basic on the NEAP, and Tennessee being
18 really the huge, kind of -- at least there at the
19 bottom on the 4th grade reading there, well at the
20 bottom on the 8th grade math.

21 And an interesting twist, if we look at the
22 statewide test scores for kids in Tennessee on NEAP,
23 compared to other states, Tennessee has very low
24 average test scores. But if you look at the
25 proficiency rates on their own state tests over these

1 same years, almost all the kids pass.

2 You set a low enough bar or make the items
3 easy enough, and you can converge your way -- and
4 arguably No Child Left Behind kind of encouraged that
5 approach by, you know, saying that states had to find
6 a way to achieve 100 percent proficiency target.

7 Q. In your report, Exhibit 284, on page 20, you
8 say last line, arguably NEAP scores may drift as
9 well, it's all relative, but NEAP is used as the
10 anchor against which the ebb and flow of state
11 assessments can be gauged.

12 Explain what that means to the judges.

13 A. To be able to compare across the states, we
14 have to anchor them. It's really a common -- it's
15 that kind of common measure that we're trying to
16 anchor them to. We can't look at proficiency
17 rates -- when I was teaching at the University of
18 Kansas, and I was teaching at our Edwards campus over
19 in Overland Park, about 50 percent of my students
20 would be from Missouri and 50 percent of my students
21 were administrators from the Kansas side of the
22 line. And when state assessment results were
23 released, they got into these big arguments, that the
24 affluent suburban districts, Park Hill and North KC,
25 you know, would be talking to people from Blue Valley

1 and Olathe.

2 And the proficiency rates in Park Hill and
3 North Kansas City would be about half what the
4 proficiency rates were in Kansas. And there was no
5 real way to compare, well, what would your
6 proficiency rate be in Blue Valley if you were taking
7 the Missouri assessments. We see in here, if you
8 look at those bridge analyses, Missouri assessments
9 are aligned with a much higher standard.

10 Q. So you're looking at the mapping standard in
11 Exhibit 86?

12 A. Yeah, if you look at Exhibit 86, and if you
13 go through that, you see that the Missouri
14 standards -- and this was just, you know, where they
15 chose to set the cut scores to begin with. They
16 didn't realize, I don't think, that they were going
17 to set cut scores and have rigorous testing items
18 where only 25 and 35 percent of the kids would show
19 up at proficient, but that's how it played in
20 Missouri. And in Kansas it was playing out that 65
21 percent were proficient.

22 And the conclusion of my students, of
23 course, was that Kansas kids are a hell of a lot
24 smarter than Missouri kids, which led to some really
25 fun discussions about, you know, what are all these

1 moving parts in the testing systems, and how can we
2 find a way to actually compare them legitimately.
3 And that's what this mapping standards study tries to
4 do. It uses NEAP as kind of the fixed comparison
5 metric to say --

6 JUDGE THEIS: Football and
7 basketball didn't come into that.

8 Q. And so we're on track in your report, page
9 19 through 28, you track this comparison of states
10 and the standards in Kansas with other states in that
11 chapter?

12 A. Yes. Again just to raise the issue of my
13 uneasiness about whether the Kansas standards, which
14 are the data we're using in all of these adequacy
15 analyses, whether those Kansas standards really are
16 high enough to predict meaningful outcomes for kids,
17 like college access, labor market participation.

18 Q. Look at page 21 in your report, the last
19 sentence on that page, you say, if we acknowledge how
20 low Kansas reading standards are at grade 4, and
21 assume they should be higher in order for Kansas
22 children to be on equal footing with their peers in
23 other states, then we must acknowledge that any
24 estimates of cost tied to these low standards are too
25 low?

1 Explain that to the judges.

2 A. That's, really, I think the punch line of
3 what I'm trying to get at here, is that we've -- I'm
4 accepting in many other parts of my report that these
5 cost estimates derived for the Post Audit study, that
6 they're the adequacy target, that that's what we're
7 trying to shoot for across these districts. But
8 those, the models, were estimated to -- you know, to
9 data that used the state testing data as the outcome,
10 and we estimated the cost of getting good enough
11 scores on these tests.

12 If good enough scores on these tests really
13 aren't good enough, then those cost estimates are
14 lower than they should be. But that doesn't mean we
15 know what they should be because we don't have the
16 measure of the outcome standards that are good
17 enough.

18 Q. Back up to page 9, then, and explain to the
19 Court what your conclusions are in that part of your
20 report termed, outcome standards cannot be taken at
21 face value as suitable.

22 A. I think I just kind of said it, actually,
23 that it's -- you know, we need more information about
24 what it really takes to -- you know, this is what
25 we've got, so we've got to use it. We've got the

1 state testing data, we've got models of cost-based on
2 the state testing data.

3 And we do know -- we have predictions of
4 what does it cost to achieve these outcomes given
5 state testing and graduation rate data, and that's
6 the starting point. But we still need to continue
7 the discussion about whether or not the testing data
8 really do predict the, kind of, longer-term, more
9 meaningful outcomes.

10 Q. And Exhibit A in that discussion would be
11 the illustration of Tennessee that you've explained?

12 A. Right, I mean, Tennessee certainly has --
13 you know, if they can hang their hat on their own
14 state tests, in a discussion of what's adequate, then
15 they've got a pretty easy argument to make because
16 the kids pass their own state tests even if they
17 don't do particularly well on NEAP. And it's always
18 easy enough to give an easy enough test.

19 JUDGE THEIS: Mr. Rupe, we're going
20 to break about 11:00, so whatever's good for you.

21 MR. RUPE: Okay.

22 Q. In two or three minutes would you explain
23 the consequences, as you do on page 12 of your
24 report, to these low standards?

25 A. Well, really important issue here, I think,

1 is that when you set a low standard in something like
2 your state testing system, and when you tie your cost
3 estimates to that, we know that there are communities
4 who are -- you know, you set a standard low enough,
5 there are communities, there are groups within the
6 state, who are going to -- they're going to consider
7 that trivial.

8 And it's not -- so they're going the strive
9 for something higher because they know that those
10 longer-term, those bigger outcomes are important and
11 they're going to find a way to support that. In a
12 district like Blue Valley, they're not going to worry
13 so much about passing a test that's considered to be
14 relatively easy. They're going to worry about, you
15 know, learning content and delivering courses that
16 are well above and beyond those tests, and getting
17 kids the first available slots in the more selective
18 colleges and getting as many kids into these state
19 flagships as they can. They're not going to be
20 thinking about these standards.

21 But at the same time, we're setting up a
22 system that focuses only on achieving that lower
23 standard for the kids who are in the communities that
24 are below it. We're not -- we're shooting too low
25 for them, so even if we get them to that standard,

1 and other kids have been striving for something well
2 above and beyond that, they're relative position in
3 life isn't really a whole lot better. They're still
4 as far behind the other kids when it comes to being
5 able to, again, compete with them in the work force
6 or in college.

7 And it's those high-need populations that
8 continue to fall below these low standards who are
9 the only ones who are affected by us really only
10 asking them to get to these low standards. We need
11 to set a high enough standard to meaningfully close
12 the gap between those students, the higher-needs
13 students, and the other students for whom standards
14 like this, for the most part, are trivial.

15 Q. And you characterize -- last area, you
16 characterize an unintended consequence on the last
17 sentence of page 12, as resources are increasingly
18 targeted toward this narrow objective, that is
19 getting the kids that are below proficient --

20 A. Right.

21 Q. -- to that minimal level, resources are
22 often diverted from the curricular opportunities that
23 provide for children exceeding minimum standards to
24 truly be college-ready?

25 A. Right. And the reason it costs more in

1 these higher-needs settings to achieve the minimum
2 standards and provide the meaningful standards is
3 because it has to be a both/and, not an either/or,
4 that these kids need access to the remedial supports,
5 the basics for them may be smaller classes at early
6 grades, earlier childhood interventions, to be able
7 to get to the minimum standards. But we need to be
8 able to do that without sacrificing the other things
9 that they might need later on to actually gain access
10 to the more meaningful higher standards.

11 MR. RUPE: If you want to take your
12 break now, it's probably a good time to do that.

13 JUDGE THEIS: About 15, little
14 over.

15 (A recess was taken.)

16 Q. (By Mr. Rupe) Dr. Baker, I'm going to show
17 you NEAP scores from 2011, Exhibit 122. Even given
18 the issues with the cut scores that you talked about,
19 are Kansas schools -- are all Kansas schools
20 achieving the targets that are required under No
21 Child Left Behind and Kansas assessments?

22 A. To answer that question I'd refer to the
23 state's own data. And certainly, you know, many kids
24 in many districts aren't meeting the standards or we
25 wouldn't have districts under different

1 classifications under No Child Left Behind. And by
2 NEAP scores, we can't do it by the school way in
3 Kansas here, but we do know all children aren't
4 necessarily meeting the basic standard on NEAP, which
5 would be aligned with the proficient standard on the
6 statement assessment.

7 Q. Let me cover some parts of your report, and
8 we do have the advantage of this report being in
9 evidence, so I won't dwell on -- and I'd ask you not
10 to dwell on this. Let's cover it as quickly as we
11 can. I do want to pick up where you have your book
12 turned, I noticed up there, but I want to go back
13 just to have you explain a couple of things along the
14 way. Go to page 13, the dynamics of labor market for
15 quality teachers. Explain that, what your
16 conclusions are.

17 A. What I explained in that section of the
18 report is that we can't -- it really doesn't work
19 well to try to forecast or evaluate education costs
20 in terms of only, like, a consumer price index,
21 because the consumer price index tells us what's the
22 change in unit price for a loaf of bread or gallon of
23 gas from year to year.

24 And the cost of providing schooling over
25 time has a number of factors that are different from

1 just, you know, what's the change in the price of a
2 ream of paper. Big piece of that is what's the
3 change in wage required to recruit and retain
4 teachers of comparable qualifications.

5 If wages on the broader labor market are
6 rising faster than the price of a loaf of bread or
7 gallon of gas, then -- of course gallon of gas just
8 jumps around -- but if the wages on a broader labor
9 market are growing faster than that, the wage to
10 maintain a competitive teacher workforce is going to
11 grow faster than that.

12 And that's what I'm talking about here, is
13 that the quality of teachers in schools in a system
14 in general depends on whether or not teaching as a
15 profession -- you know, how does pay and job security
16 and all of the rest of the compensation package of
17 teaching, how does that compare to other
18 opportunities for college graduates.

19 And if it lags farther and farther behind
20 other opportunities, then you'll get a lower-quality
21 teacher work force down the line. The other thing
22 that matters is the relative teacher wages across
23 districts and schools which affect, then, the
24 distribution of teaching qualifications across
25 schools and districts?

1 Q. And I think this is summarized on page 15,
2 summary of cost drivers, in short, the cost of
3 education rises as a function of at least three major
4 factors. We've talked about changes in incoming
5 student population, changes in the desired outcomes
6 for those students including more rigorous core
7 content area goals or increased breadth of outcome
8 goals, and three, changes in the competitive wage in
9 the desired quality of school personnel.

10 A. Yeah, that's correct. Those are the basket
11 of factors that affect the changes in cost of
12 education over time, having higher standards, having
13 different kids, and having to compete for labor while
14 wages in other professions that college grads might
15 go into go up.

16 Q. Then, we talked about Kansas in the national
17 context, but I want to ask you about 2.1. Explain
18 your conclusions in the section entitled, from
19 regressive to flat funding Kansas school funding
20 report card.

21 A. In a national report card that we put out
22 called, Is School Funding Fair, in the first edition,
23 the federal data were available through '06/'07. And
24 in that edition, Kansas still had a pattern whereby
25 the higher-poverty districts had systematically lower

1 state and local revenue per pupil than lower-poverty
2 districts. It was a regressive funding
3 distribution.

4 That improved slightly when the '07/'08 data
5 became available and somewhat more when the '08/'09
6 data became available, so that Kansas was then flat,
7 though, again, as we explained in that report, flat
8 is not desirable. Flat means that high-poverty
9 districts, on average, have roughly the same nominal
10 funding inputs as lower poverty districts. Again,
11 the reality being that, what they need is not the
12 same, but more to achieve common outcomes.

13 Q. What is the sentence on page 16 where you
14 say, in other words, the money is not gone, it simply
15 hasn't been collected?

16 A. Where are you?

17 Q. Page 16 of your report.

18 A. Page 16.

19 Q. In that same section where it says, in other
20 words, the money is not gone, it simply hasn't been
21 collected.

22 A. On page 16, I believe I'm talking about the
23 effort ratio comparison, which I elaborate on in
24 Section 2.3, that the percent of Kansas gross state
25 product that is spent on K-12 education is -- it

1 actually was relatively average. It moved to
2 somewhat above average by '08/'09, but it's still
3 not -- it's not one of the top few states in its
4 overall educational effort.

5 We talk about, you know, in general
6 nationally, you know, how do these states compare in
7 terms of the amount of money they target to education
8 given their overall, kind of, available resource
9 pool, which we measure not by the amount of tax
10 revenues they choose to raise, but by the fiscal
11 capacity or a gross state product or aggregate income
12 measure.

13 Q. And in terms of educational effort, tell us
14 what you mean by that.

15 A. I discuss that, if we turn to page 28
16 section 2.3, and then we look at Figure 9, actually,
17 which is the next, is page 30. What we did in the
18 funding fairness report is look at total state and
19 local money allocated to K-12 education as a percent
20 of gross state product. Kansas is somewhat above
21 national average on that.

22 If we look at the alternative measure, which
23 is elementary and secondary education, direct
24 expenditures as a percent of personal income, Kansas
25 is relatively average. It tracks more or less with

1 the United States average through the mix of states,
2 that Kansas is putting up a relatively average level
3 of effort, to somewhat above average on other
4 measure, to fund its schools given, you know, two
5 alternative measures of the fiscal capacity of the
6 state, one being gross state product, and this one in
7 the figure being aggregate personal income.

8 Q. Explain your conclusions with regard to 2.4,
9 lagging competitive wages for Kansas teachers.

10 A. In this section, I look at the general issue
11 of how do teacher wages compare to, kind of,
12 non-teaching opportunities at the same kind of age
13 and degree level. First, I draw on a national report
14 that was already out there, which is kind of my usual
15 first look to see where a state lands. Figure 10,
16 page 34, is from a report prepared by the Economic
17 Policy Institute. This is by Sean Corcoran,
18 C-O-R-C-O-R-A-N, and Larry Mishel, and Sylvia
19 Allegretto, they compare the weekly wages of teachers
20 and non-teachers across states and find -- and they
21 do it for a individual with a BA, with an MA, and on
22 average.

23 So this takes care of the whole question of
24 summers off. And what Sean Corcoran and colleagues
25 find here is that Kansas teachers earn a wage that is

1 about 70 percent of the non-teacher wage. And what's
2 important here is that it's in the lower among
3 states, and that teaching, as a result, kind of, on
4 the whole is a less-desirable career option in Kansas
5 than it would, say, be in Wyoming or Rhode Island.

6 Q. This would explain some of the evidence
7 we've heard in this case where teachers -- and will
8 hear in this case, where teachers have left for
9 non-teaching positions that pay more?

10 A. Right. And the more significant piece of
11 that puzzle is that people simply choose not to go
12 into teaching to begin with. There's a lot less of
13 that mobility. Once people have made the commitment
14 into these career choices, there's a lot more sorting
15 earlier in the pipeline. People, for example, taking
16 on more college debt at more expensive or more elite
17 universities deciding it's not worth going into
18 teaching if I'm going to make 30 percent less than I
19 would otherwise make.

20 Q. Talk to us about the changing demography of
21 Kansas, 2.5, what did you look at and what were your
22 conclusions?

23 A. The reason this section is in here is around
24 that question of the cost drivers. There are certain
25 factors that affect the changes in the cost of

1 achieving common outcomes over time. And if you're
2 demography is changing, if you have increased
3 poverty, if you have increased concentrations of kids
4 with limited English language proficiency, then
5 you're going to have increased cost of even trying to
6 hold your own on outcomes.

7 So here what we have is by some census
8 poverty measures in Figure 12, we have what appears
9 to be a subtle, statewide increase in poverty. When
10 we break it out by the metro areas, which we can do
11 with the census data in the American Community
12 Survey, we see that some areas had bigger jumps than
13 others, the Topeka area having a bigger jump, and
14 Kansas City having an increase, over time, more so
15 than Wichita, I guess. So we have some drifting-
16 upward poverty, based on census data, not based on
17 districts' counts of kids who qualify for free and
18 reduced.

19 If we look at the next couple of figures, we
20 see that there are also changes upwardly-drifting
21 percentages of kids who qualify for free or reduced
22 lunch that differ across the district types in
23 Kansas, that in the larger cities and mid-size cities
24 of the state, we have sharper increases in the
25 percent free lunch. We also have it in the towns.

1 Cities here I think count as KCK, Topeka, and
2 Wichita; and in the towns, we're talking about the
3 Garden cities, Dodge cities, Salina, and Emporia-type
4 locations.

5 So we have an increase in percent free
6 lunch. We also have an increase in percent Hispanic
7 enrollment, which is commonly tied -- although, we
8 don't have in this data set a good measure of the
9 percent ELL concentration, although the Hispanic
10 migration tends to be a strong predictor of that, and
11 we have a significant increase.

12 So we have evidence that there are, you
13 know, increases in certain student needs that would
14 affect the costs of even holding your own on
15 outcomes. So even if we kept the outcome targets the
16 same, even if competitive wages stayed the same, we
17 have a different mix of kids coming in; it's going to
18 cost us more to even hold our own on outcomes.

19 Q. I'll show you Plaintiffs' 107 -- I think
20 parrots what your conclusions are -- but it has a
21 line for free and reduced lunch, students with
22 disabilities, and then ELL increasing; this is
23 statewide numbers.

24 A. That would appear to coincide. I'm guessing
25 that's from KSDE enrollment report data.

1 Q. Yes.

2 A. It's the state aggregate figures.

3 Q. So I understand your chart, the free and
4 reduced lunch lines would be for disaggregated by the
5 size of communities?

6 A. It's disaggregated by these locale codes
7 that the National Center for Education Statistics
8 uses, large cities, mid-size cities, small cities.

9 Q. But these are Kansas cities?

10 A. This is data on Kansas, yes.

11 Q. In terms of Hispanic enrollment, is that the
12 next chart?

13 A. Yes, and this is also data from that
14 National Center for Education Statistics, Common
15 Core, but these are data for the State of Kansas for
16 Kansas school districts.

17 Q. And then continue on with what you looked at
18 by way of charts.

19 A. Quick note on the Hispanic enrollment, in
20 those rapidly growing areas we have remote towns
21 and -- we have different categories of remote towns
22 that are in the high-growth, Hispanic population,
23 which is different from the free lunch.

24 Q. Okay.

25 A. Then there's comparisons using the U.S.

1 Census Bureau data, which -- this is from the
2 American Community Survey, and integrated --

3 THE COURT REPORTER: Integrated?

4 A. -- public use -- sorry -- micro data system
5 of the U.S. Census. So we don't have the ability to,
6 kind of, boil this down to school districts. This is
7 based on where families live scattered across the
8 state.

9 Q. And then the final chart is what, in that
10 section under Chapter 2?

11 A. There's a question on the American Community
12 Survey that asks about the level of fluency of
13 English of the respondent. And I try to tease out
14 from that what patterns there were. And these data
15 seemed to just jump around, but I kept them in there
16 anyway. I think it's better to look at English
17 proficiency rates from the school enrollment data
18 like those that you put up on the chart.

19 Q. From your look at the changing demography of
20 Kansas, what was your conclusion?

21 A. Well, certainly in some locations, in the
22 large, mid-size, and smaller cities and towns there's
23 been growth in low-income concentrations and there's
24 certainly been a growth in the Hispanic population --
25 trying to capture things outside of the school

1 enrollment data -- which would be suggestive that
2 Kansas districts are facing some cost pressures of
3 even just holding their own, that they'd have to
4 spend more just to keep achieving the same scores
5 because of the population drift.

6 Q. This is from your report, page 17, and tell
7 me if this accurately summarizes Section 2; you say
8 in your report, that is, even if we assume the
9 outcome standards to be sufficiently rigorous, a
10 highly-suspect assumption, and even if we assume that
11 teacher pay has remained sufficiently competitive,
12 which it has not, the demography of large, high-need
13 school districts has shifted over time such that even
14 maintaining current outcome standards will cost more
15 than previously estimated.

16 Is that a concise statement of your opinion
17 in that regard?

18 A. Yes, it is.

19 Q. Now, let's take a look at Section 3 on page
20 43, the SDFQPA fund gaps and reasonable marks. And
21 explain that chapter and your opinions.

22 A. Well, the first thing I did in that chapter,
23 in Section 3.1, was to take a look at the -- just
24 looking at the base state aid per pupil relative to
25 what had been projected out for the needed base state

1 aid per pupil, and found that -- just going down the
2 bullets here -- had the original base aid per pupil
3 of the 3,600 grown from '92 to 2012 at the average
4 rate of competitive wage growth, which is based on a
5 competitive wage index, cost index, not based on the
6 consumer price index, that base aid per pupil would
7 have been a heck of a lot higher than by 2011 than it
8 ended up being, it would have been 7,820, as opposed
9 to 3,780, which is -- I guess now it's 3,830, which
10 is significantly below what it would have been.

11 And then I started at a couple of different
12 points in Figure 18 and Figure 19, page 47 and 48,
13 just to illustrate what had gone on with the base
14 state aid per pupil, and with respect to the most
15 recent years where the division of Post Audit had
16 projected out what the base should be for 2007, '08,
17 and '09, and its inflation adjustments for '10, '11,
18 and '12.

19 Q. So on page 47 that looks at the base state
20 aid per pupil and a baseline for those years
21 indicated '93 through 2011?

22 A. Yes, and then I basically push restart at a
23 couple points and say, what if we go back to 2001 and
24 extrapolate from there, the base would have grown to
25 5,521 as opposed to being at 3,780. Or if we just

1 extrapolated from 2006, the base would have still
2 risen to 5,131, if growing at the average rate of
3 employment costs, which is somewhat higher than what
4 it was even projected out to be at the 4,904 in the
5 next graph. But yet, it sat at 3,780.

6 It matters that the base lags because the
7 base kind of takes on this multiplicative effect
8 through the whole formula. The base gets multiplied
9 by weights so if your base is too low when you
10 multiply a weight times the base, the additional
11 funding generated by that weight ends up being
12 multiplicatively too low. Low times low is really
13 low, is kind of what it boils down to, so that the
14 base matters. And then I go on to make the
15 comparisons of other funds beyond the base.

16 Q. And the other funds the funding gaps
17 compared to the Montoy remedies, walk us through what
18 you did in your conclusions.

19 A. What I did here, I started by using the
20 division of Post Audit, again, spreadsheet runs of
21 their per pupil costs for each district. And I used
22 just their inflation index to forecast out the
23 next -- '06/'07, '07/'08, '08/'09. I forecast
24 forward using just the inflation index, not
25 accounting for change in demography, not accounting

1 for changes in outcome standards; those original
2 targets.

3 And said, well, how far are the general fund
4 budgets from those targets. I compared against --
5 there are two things I compared against here. One,
6 those LPA targets, and two, those LPA targets were
7 generated partly from a cost model estimated by
8 William Duncombe. And William Duncombe's cost model,
9 he had estimated the cost excluding special
10 education, vocational, and transportation.

11 And what I found was, really through a
12 series of graphs that are really overly academically
13 complicated for making a relatively straight-forward
14 point, is that the high-need districts remain -- what
15 we have actually from 2007/'08 -- '06/'07 to '07/'08
16 to '08/'09, is some convergence of the general fund
17 budgets. Because the goal in the Duncombe cost model
18 was specifically to estimate what would be needed in
19 that obligatory general fund budget for districts to
20 achieve their adequacy standard.

21 That's why, if you go to Appendix F of the
22 Duncombe attachment of that report, he compares his
23 cost targets against the '05/'06 general fund budget,
24 because he's trying to project out, what do that need
25 in general fund to get to the minimum standards. So

1 I compared the general funds, and found that for the
2 first couple years of phasing in the formula
3 adjustments, there was some convergence; there was
4 some gap closure for all districts and for high-
5 poverty districts, getting closer to their targets,
6 but that that goes back to where it was and beyond in
7 the last couple years. And probably the easiest, the
8 most straight-forward picture that is Figure 26 on
9 page 58.

10 Q. What is that figure illustrate?

11 A. In that figure I took what I had previous --
12 I portrayed in the several figures before that it
13 kind of bubbles on a scatter plot. In this figure I
14 just kind of collapse it into a bar graph for 2007 to
15 2011. And I look at high poverty, low poverty, and
16 average districts, difference between general fund
17 budget and the division of Post Audit outcome-based
18 targets.

19 And I find that in 2007, as they start the
20 phase in, the average district is still somewhat
21 under its general fund budget, is still somewhat
22 under its adequacy target -- that's the blue bars.
23 As we move from 2007 to '08 to '09, the average
24 district reaches roughly where it would need to be
25 for it's division of Post Audit funding target.

1 Low-poverty districts actually go beyond
2 where they would need to be for their target, but the
3 high-poverty districts never quite get there. They
4 start out about \$1,200 per pupil -- the low where
5 they would need to be -- and best they get is about
6 \$750 per pupil -- below where they would need to
7 be -- before jumping back up to over \$1,500 per
8 pupil, where they would need to be.

9 So it's kind of an aggregation, a
10 simplification of previous several charts, where
11 those high poverty districts include districts like
12 Kansas City, Kansas, that ends up still, I believe, a
13 few thousand -- two, three, \$4,000 per pupil below
14 its cost target.

15 Q. Okay. And let's take a step back and talk
16 about what the LPA was.

17 A. An important thing to understand about the
18 LPA outcome-based study --

19 Q. Let's go back a step further. The
20 Legislative Post Audit conducted a study --

21 A. Yes.

22 Q. -- at the request of the Kansas legislature
23 to do what?

24 A. They conducted a study. The part of which
25 I'm talking about here was to estimate the costs of

1 achieving specific outcome goals as measured on the
2 state assessments and as measured by other things
3 like graduation rates. So they were charged with
4 estimating the cost and how those costs vary across
5 school districts of achieving certain target levels
6 of outcomes across the different school districts.

7 Q. Okay. So back to the conversation we had
8 earlier about adequacy, the Legislative Post Audit
9 set targets with regard to adequacy?

10 A. Yes, they did. Those targets were tied to
11 either regulatory or statutory requirements that are
12 represented as proficiency rates, that are
13 represented in the graph that you presented earlier.
14 So the Post Audit didn't concoct those targets on
15 their own. They applied the data to what were the
16 standards for proficiency rates under No Child Left
17 Behind.

18 Q. And so we're on track with what the entire
19 cost study analysis was, let me hand you Exhibit 199,
20 and ask if you can identify that as the cost study
21 analysis?

22 A. This would appear to be the Division of Post
23 Audit cost study analysis.

24 Q. And then, at the very back there is an
25 Appendix F, and that is the appendix you mentioned

1 with the information from Bill Duncombe?

2 A. That's correct.

3 Q. And these are Bates numbered, so let me make
4 sure the Duncombe study Appendix F is identified at
5 USD 443 001885, and that's where that Duncombe
6 information begins.

7 So back to your diagram on page 58, the blue
8 bar represents what?

9 A. The blue bar is the gap between -- and it's
10 the average across all districts -- the gap between
11 general fund budgets and their Post Audit funding
12 target.

13 Q. So they created the targets and you went
14 back and looked at the years '07 to '11, and blue
15 represents the gap between the funding targets and
16 the actual funding on a state-wide basis?

17 A. That's the state average.

18 Q. I want to show you something that opposing
19 counsel has shown.

20 MR. RUPE: Could I have the bar
21 graph that shows the statewide information that
22 compares LPA to current?

23 MS. GARNER: I think it's 15 or 28.

24 MR. RUPE: You don't have them
25 numbered, yet, but ...

1 MS. GARNER: It had on the back
2 either 15 or 28.

3 MR. CHALMERS: That had an error on
4 it. It showed --

5 MR. RUPE: I'm sorry.

6 MR. CHALMERS: It shows .88 as
7 opposed to .83, and therefore, actually, was an error
8 in your favor, and we've corrected that, and we have
9 a copy of it, small, upstairs, if you want us to take
10 a break and bring it back at some point for you, but
11 we don't have the blow-up for you because we took it
12 back for the new blow-up to be corrected.

13 MS. GARNER: Was the graph created
14 actually with .88, so it wasn't just an error that
15 said .88 --

16 MR. CHALMERS: No, the graph was
17 created with .88 as opposed to .83.

18 MR. RUPE: Let's work from the one
19 that has disappeared. I have a copy of it and --

20 MR. CHALMERS: Do you want the
21 corrected graph? We can ...

22 MS. TIBBETS: I think I have it.

23 MR. RUPE: Let me just work -- I'm
24 going the talk conceptually about what goes into
25 this --

1 MR. CHALMERS: I'm not sure we
2 have -- that's even the right one. I think we have
3 that one, Alan

4 MR. RUPE: It's the one that
5 says -- do I want the one that says 14 or 15?

6 MS. GARNER: You want the one that
7 says 15.

8 MR. RUPE: 15, what you marked as
9 number 15 on the back that shows with inflation,
10 3 percent inflation factor.

11 MS. GARNER: We are going to want
12 the other one.

13 MS. TIBBETS: I've got the other
14 one.

15 MR. CHALMERS: You have this one?
16 Yeah, I think he's working on another correction on
17 that one, too.

18 MR. RUPE: I would ask that when
19 you number these, you number the -- so we have the
20 originals that you used throughout the trial, that
21 you mark those, and then maybe mark the corrected one
22 as the number plus an A or B.

23 MR. CHALMERS: These were
24 demonstrative exhibits. They were not intended to be
25 put into evidence. You asked that they be marked.

1 We can do that --

2 MR. RUPE: I think they should
3 because we want the record to be complete --

4 MR. CHALMERS: Well, when the
5 evidence comes in, they're going to be different
6 exhibits than that, that will -- in terms of
7 demonstrative exhibits to illustrate different things
8 as we picked up different data and found a few
9 errors. If you want to show demonstrative exhibits
10 that are no longer accurate and going to that
11 explanation, we'll make them available.

12 MR. RUPE: Here's what I want for,
13 for the record, I would like to have, since Counsel
14 has spent a week of trial using those exhibits, for
15 some later court's review, to have those part of the
16 record, because I think that's important.

17 JUDGE THEIS: I think everything we
18 see ought to be marked.

19 MR. CHALMERS: Okay.

20 MR. RUPE: What I'm going to object
21 to is, I don't think this is create exhibits as you
22 go. I agreed to the admission of all the exhibits at
23 the time. I think to the extent he wants to bring up
24 something new that I haven't seen that is a new
25 exhibit based on new data, I'm going to be objecting

1 to that.

2 MR. CHALMERS: You all may want to
3 mark it, but it's going to be a demonstrative aid. I
4 never intended to put it into evidence as an
5 exhibit. The data is in evidence.

6 MR. RUPE: You agreed to it. You
7 didn't hold them back. When we said, let's admit all
8 the exhibits, you said, okay. You didn't say, oh, my
9 demonstratives can't be --

10 MR. CHALMERS: You got through and
11 told me that it should have been .83 instead of .88,
12 I would have said, let's hold that back and get it
13 corrected.

14 JUDGE BURR: As a suggestion, the
15 one that was used earlier with apparently an
16 incorrect .83, or whatever it was, why don't we mark
17 that 15 or 16, whatever it is, A, and a new one, B,
18 and then show it to Mr. Rupe and go from there.

19 MR. CHALMERS: I just don't know
20 that we have -- I mean he has a copy of this --

21 JUDGE BURR: May not have it -- I'm
22 not saying you need it right now, but at some point.

23 MR. CHALMERS: Okay.

24 JUDGE THEIS: It still exists
25 doesn't it? I mean, it was a big, fat board.

1 MR. CHALMERS: Yeah, I think so.

2 JUDGE THEIS: It's not holding up
3 the roof on the chicken house now.

4 MR. CHALMERS: Hope not. We have
5 what it is. The board I think is back in Wichita
6 now, but if we've got to have a board, we'll track it
7 down and account for it.

8 Q. (By Mr. Rupe) All right. I'm going to work
9 from what had a number as number 15 on it, it was a
10 blow-up. I understand that it has been withdrawn and
11 is being re-done, and we're going to get an exhibit
12 sticker on it, ultimately. But I just want to talk
13 to you conceptually about the notion of comparing the
14 LPA foundation level plus supplemental aid inflated,
15 and general fund, LOB, and federal.

16 A. Okay. Now, so I'm going from this chart,
17 whatever this is. It's my understanding that this
18 chart wouldn't be influenced by .83 versus .88, that
19 deals with the --

20 MR. CHALMERS: That's right.

21 A. Right.

22 MS. GARNER: That was a different
23 chart.

24 A. It's a different issue, so this chart's been
25 retracted; doesn't matter. Okay. So what we have is

1 a statewide comparison of whether or not the general
2 fund, plus LOB, plus federal aid is, in the
3 aggregate, similar to, greater than, or less than the
4 aggregate of the amount of money that would need to
5 be put in to fund the division of Post Audit study.

6 Now, to me, that -- well, on one hand, you
7 know, what we see as the cuts come down, is that the
8 general fund, plus LOB, plus federal, drops to
9 below -- and you know, from these bars, it's kind of
10 hard to discern -- but, you know, a sizable chunk
11 below the aggregate of what would be required by the
12 Division of Post Audit study.

13 But what's more important is what this graph
14 actually doesn't show us, because what this graph
15 doesn't show us -- on average there may be enough --
16 it's conceivable that there's enough money in the
17 aggregate in the system, but it strikes me that what
18 this case is about is the rest of them. It's about
19 those cases where the districts don't have what they
20 need to get the job done for the kids that they
21 serve. So I'm not -- you know, I look at this and
22 this -- this tells me about the aggregate amount of
23 money overall and whether or not it's above or below.

24 It also tells me -- the other piece that's
25 really important to me here is that it seems to me

1 that the State's obligation to ensure that all
2 districts have sufficient funds to get the job done,
3 which does not necessarily mean counting on local
4 option budgets to get that job done, else the word
5 option doesn't seem to have much meaning.

6 You know, that's not to suggest the State
7 couldn't find a way to, you know, turn that money
8 into obligatory and guaranteed money, but it seems to
9 me, and this was the basis of the Post Audit study
10 and how the Duncombe estimates were generated, was
11 around the idea of what is the general fund budget,
12 that piece that they're guaranteed, and how does the
13 general fund budget match up with what they need to
14 have.

15 So local option funds would not seem to be
16 relevant for that purpose, nor would it be relevant
17 to consider that the, you know, funds that may or may
18 not be there are there to meet the State's
19 constitutional obligation, that being federal
20 funding. Federal funding, which, you know, for
21 example, we saw a boost in federal funding for a
22 couple years to replace, kind of, state aid that was
23 missing due to, you know, lagging state budgets from
24 income tax and sales tax returns, the fiscal
25 stabilization money.

1 It strikes me that it's not reasonable to
2 assume that it's the federal government's
3 responsibility to make sure that the state meets it's
4 own constitutional obligation. So that's why, at
5 least in my reports, I focused on the general fund
6 budget as, you know, what to compare against the
7 target, that which is guaranteed through the state
8 school finance formula and not the local option or
9 the supplemental.

10 But analytically, this graph doesn't tell us
11 about, you know, which districts remain
12 disadvantaged, because even my own graphs show that
13 some districts don't remain disadvantaged, and on
14 average, by '08/'09, that the formula had converged
15 toward a situation where general fund budgets were
16 converging for low-poverty districts; low-poverty
17 districts having, in many cases, more than what they
18 needed.

19 So this embeds within it a local option
20 budget and additional spending achieved through cost
21 of living adjustments and new and ancillary new
22 facilities adjustments and all of that that are
23 driven predominantly into places like DeSoto, Blue
24 Valley, Olathe, which take them beyond their adequacy
25 targets.

1 Q. Looking at this chart that says, LPA
2 foundation level plus supplemental aid inflated, in
3 green, and in blue, general fund LOB and federal
4 comparison. Do you see 2011 and 2012 on that chart?

5 A. No, I do not.

6 Q. And with regard to the funding for 2011 and
7 2012, that was a year of cuts, wasn't it?

8 A. As I recall, it was.

9 Q. And in terms of this chart, would it be more
10 probative for you if it was disaggregated and showed
11 a high-poverty, low-wealth, increasing ELL,
12 increasing Hispanic, increasing poverty population
13 district in terms of what the LPA target was and what
14 they received?

15 A. To walk through that in two parts, as we
16 move from '10/'11 to '11/'12, we'd see the general
17 fund, plus LOB, plus federal, falling farther behind
18 the LPA targets, on average, statewide. And then if
19 we look at the high-need districts, we'd see it even
20 farther below, because those are the districts that
21 were and had been farther below throughout. So yeah,
22 adding the extra year and breaking it out by the
23 student population needs would be an important way to
24 look at that.

25 Q. And you used a phrase in your report that

1 described a phenomenon where you indicated that the
2 gains in the weights were washed out, in terms of
3 at-risk and ELL and the other factors geared toward
4 urban school districts, if you look on page 60 of
5 your report?

6 A. Yes.

7 Q. That it was, quote, washed out, unquote --
8 or washed away -- sorry -- unquote, by other
9 provisions in the general funding weighting scheme.
10 What would be those washing out weightings that
11 you're talking about?

12 A. And the key here is that because
13 education -- because running schools, running good
14 schools is human resource intensive, and it's about
15 being able to pay those competitive wages, there's
16 always an important, relative component of your
17 funding position, as I talked about before; if we
18 raise Kansas City, Kansas up with some poverty
19 weighting, but we generate a counterbalancing weight
20 for Blue Valley, Shawnee Mission, and Olathe, and
21 De Soto, Kansas City is in no better position to
22 recruit teachers than it was before.

23 The weights that I dissect in here as having
24 those negative effects, one is certainly the cost of
25 living adjustment, which I had written about, even

1 prior to its being adopted, as soon as it was being
2 discussed. The cost of living adjustment favors
3 districts with high-priced houses. And although it's
4 basically permissive of districts to raise their own
5 local funds to spend more to hire teachers, it
6 counterbalances the effect of the poverty weighting
7 for neighboring districts that are trying to recruit
8 on the same labor market.

9 The new and ancillary new facilities weights
10 have been a continued, kind of, thorn in my side in
11 looking at this thing as being strongly
12 counterbalancing, having a much stronger effect over
13 many years and the cost of living adjustment, which
14 districts have only more recently begun to choose to
15 fully maximize, which also indicates that even those
16 more affluent suburban districts are feeling pressure
17 to try to meet, you know, their own demands of their
18 communities to set a high standard that -- as I
19 understand it, districts like Blue Valley and others
20 are now moving to fully maximize their authority
21 under the cost of living adjustment and others.

22 When they do that, that offsets what we do
23 with the weightings for poverty in Kansas City,
24 Kansas, or ELL to Kansas City, Kansas. It serves as
25 counterbalancing and it really just kind of -- that's

1 how we end up in the School Funding Fairness Report,
2 the national report. That's how Kansas, even though
3 its formula has poverty weights and ELL weights, the
4 overall effect is still flat, because it may have
5 weights for the high-need districts, but then it has
6 counterbalancing weights for the low-need districts
7 that really rub out the effects of the weights for
8 the high-need districts.

9 Q. Explain a bit the cost of living weighting.
10 Do all districts have access to that?

11 A. You know, I haven't checked back to see what
12 the current number is. It was 16 or 17 when I was
13 first looking at it, specific districts that were
14 identified as having access to levying the additional
15 funds on the general fund, so it has the ripple
16 effect then on LOB authority, as I would remember it.

17 And in most cases -- and I had actually done
18 academic research with fund maps on this, and most
19 cases, the districts with highest price houses were
20 right next to the very high-need districts, if not
21 surrounding, in a radius, the high-need districts
22 that weren't granted that authority to try to
23 counterbalance and compete with them on wages. Every
24 district around KCK could do it, but not KCK or --

25 Q. According to Exhibit 18, which has been

1 admitted into evidence, would cost of living weight
2 apply to Blue Valley, Olathe, Lawrence, and Shawnee
3 Mission?

4 A. It applies to only those --

5 Q. Yes.

6 A. -- at this point? In terms of eligibility
7 or actual use?

8 Q. Actual use.

9 A. Because originally, as I understood it,
10 there were more that were eligible, but not all used
11 it, nor did all maximize it, and Lawrence being one
12 that didn't maximize it from the outset, but it does
13 now.

14 Q. Let's go back to the LPA study. Are you
15 aware that LPA, quote, found a strong association
16 between the amounts districts spend and outcomes they
17 achieve, unquote?

18 A. Yes, the LPA study, the component that
19 William Duncombe did for the LPA study estimated a
20 model in which he found that the -- he found that the
21 costs of achieving higher outcomes are higher. And
22 he found that relationship through a process of
23 understanding how much more is being spent in certain
24 districts to achieve the outcomes they achieve with
25 corrections for the different factors that affect the

1 cost, the value of the education dollar they're
2 spending, and with corrections for the likelihood
3 that some districts spend less efficiently than
4 others toward achieving outcomes.

5 So he did it within a cost modeling approach
6 to determine what are the costs of achieving a given
7 set of outcomes, what's the underlying relationship
8 between spending and outcomes across districts, and,
9 you know, how is that mediated by factors that might
10 affect the efficiency with which they spend the
11 dollar and factors associated with costs.

12 Q. Let's go back to your report, then. And by
13 the way, what you just said indicates to me you have
14 an opinion concerning achieving higher results and
15 the role of money. Do you?

16 A. Well, it does cost more to achieve higher
17 outcomes. And in addition, we find, when we look at
18 the flip side of that in school finance reforms, that
19 when states implement substantive and sustained
20 school finance reforms and raise the level of funding
21 overall, they tend to raise the level of outcomes.
22 When they change the distribution of funding in a
23 substantive and sustained way, not, you know,
24 one-time shots, and not small infusions, they can
25 change the distribution of outcomes, improve the

1 outcomes in lower-income and higher-need communities,
2 lower-wealth communities.

3 Q. Let's go to page 58 in your report, student
4 need adjustments compared to cost estimates. Tell us
5 what your findings and opinions were in that
6 section.

7 A. Well, one of the things that I did in this
8 section was to -- you know, in Table 3, I had run a
9 model to figure out what's the effective free and
10 reduced lunch weight in Kansas; basically, how much
11 tilt is there; on average, how much more does a
12 district that's 100 percent free and reduced lunch
13 have than a district that's zero percent.

14 We've got weights in the formula, which are
15 suggestive of what that tilt should be, but we've got
16 counterbalancing weights. And what we find is that
17 even the -- when Post Audit put together their
18 report, they actually accepted as a given that they
19 should maintain some of the counterbalancing
20 weights. They put some of that stuff back in there
21 so the weight, based on the Post Audit estimates
22 itself, really ends up being about a 30 percent
23 weight. That a district that's 100 percent free and
24 reduced lunch has about 30.6 percent more higher cost
25 estimate under the Post Audit study, which is

1 actually low compared to the Duncombe estimates that
2 were used as part of the Post Audit study.

3 If we look at the actual general fund budget
4 per pupil, the district that's 100 percent free and
5 reduced lunch, after correcting for variations in
6 regional wages and district size, has about 7.6
7 percent more than a district that's zero percent;
8 there's your counterbalance, that we really, in 2011,
9 have enough counterbalancing factors that we're
10 almost at even between high and low poverty.

11 If we look at general fund plus LOB, the
12 district that's 100 percent free and reduced lunch is
13 expected to only have two and a half percent more
14 than a district that's zero percent. The LOB further
15 counterbalances and makes it flat. Whereas the
16 article that was previously brought up here, How Much
17 More Does a Disadvantaged Student Cost, suggests that
18 the additional cost associated with low income
19 students are around the order of 100 percent.

20 The Post Audit study is being relatively
21 generous to the State here, and saying we're giving
22 them only 30 percent more, but Duncombe's estimates
23 from this report come out to about 100 percent.
24 Duncombe's underlying estimates, in the analyses he
25 did for Kansas, which were used to guide the Post

1 Audit formula, but not fully, Duncombe found that the
2 additional costs, I believe -- I've got a table in
3 here -- were about 70 percent; that if you went from
4 a district with zero percent to 100 percent free and
5 reduced lunch, you'd be at about 70 percent higher
6 per pupil cost. And even the Post Audit adaptation
7 of the Duncombe results, you know, cut that out quite
8 dramatically.

9 Q. Tell us what your conclusions are with
10 regard to LPA outcomes-based, reasonable mark
11 understates actual needs. Explain what you did and
12 what your conclusions are.

13 A. That's basically what I was just outlining,
14 is that the LPA study -- you know, Bill Duncombe came
15 up with estimates of the general fund costs of
16 achieving a given set of measured outcomes. And
17 because of the messiness of the data, he had to
18 exclude special education, vocational, and
19 transportation. It's hard to estimate the outcome
20 measures on state tests for kids with disabilities.
21 It's hard to embed the transportation cost analysis
22 into that model.

23 So he came up with a target estimate of
24 these general fund, excluding special education,
25 vocational, and transportation, costs of achieving

1 these different outcomes. And he found a pretty
2 strong poverty adjustment weight, on the order of 70
3 percent or higher, I believe even higher than -- and
4 I'd have to find the table, but I believe in the
5 order of 100 percent in the highest-need districts.

6 But when the Division of Post Audit took his
7 findings and added back in special education,
8 vocational, and transportation, and when they tried
9 to convert it to, like, a weighting-based funding
10 formula, and put weights in and include the
11 population -- the high-density poverty weight, they
12 made enough subtle changes in converting it to a
13 formula that they significantly reduced the amount of
14 money that would have been driven to districts, for
15 example, like Kansas City, Kansas or Dodge City.

16 In fact, they reduced their targets by 750
17 to \$1,000 per pupil, that the Post Audit estimate
18 versus the original Duncombe estimate -- so you know,
19 that's why I think, you know, in most of these
20 analyses using the Post Audit estimates as the target
21 is very conservative and deferential because even
22 their own estimates weren't really based on every
23 aspect of their own study and they cut back a
24 significant amount of funding to the high-need
25 districts.

1 Q. Talk to me about the section, contributing
2 factors to irrationality. What did you look at and
3 what did you include. That's on page 65 of
4 Exhibit 384.

5 A. Well, that's just where I looked at which
6 weighting factors are most negatively associated with
7 poverty. And that's something I actually just talked
8 to a few minutes ago. Things like the cost of living
9 factor, the ancillary and new facilities -- the
10 ancillary new facilities and new facilities weight,
11 are significantly negatively associated with poverty,
12 which means lower-poverty districts get more of it,
13 which makes it counterbalance the poverty weight.

14 Q. And Exhibit 378 is mentioned in your report,
15 but is Exhibit 378 the Kevin Gotham article, Urban
16 Space, Restrictive Covenants, and Origins of Racial
17 Residential Segregation?

18 A. Yes, it is. And this is about the
19 development of residential -- kind of, residential
20 real estate development and racial restrictions in
21 deeds in the Kansas City metro, really, kind of post
22 war era, all the way through the 1960s, even after it
23 was impermissible to introduce the language into
24 deeds and it was still being done.

25 Q. That's in the chapter -- you referred to it

1 in the chapter, Contributing Factors to
2 Irrationality?

3 A. Yes, I do.

4 Q. Let's move to your conclusions on page 69,
5 still wide of a reasonable mark. And by the way,
6 where did you get the phrase "wide of a reasonable
7 mark"?

8 A. This goes back to my earlier reports from
9 the Montoy case, where we were especially concerned,
10 where I, in my report, was especially concerned with
11 how the weighting scheme of the funding formula was
12 really working to the disadvantage of the high-need
13 districts. And I know the language came from some
14 other, you know, prior unrelated litigation, but I
15 can't remember that source.

16 And at the time, I was doing the analyses
17 for Montoy, we were comparing against the reasonable
18 mark, being the Augenblick study which had come out
19 of the Governor's task force recommendation to a
20 legislative committee. And in that, I found, really,
21 that as much as -- you know, most districts were
22 below their Augenblick cost targets. The high-need
23 districts, because the weighting system was not
24 working appropriately to their advantage, were
25 furthest. They were widest of that first reasonable

1 mark being the Augenblick cost study.

2 So this really just refers to the fact that
3 now the Legislature has offered up another -- an
4 outcome-based cost study where the Augenblick was --
5 it was based on inputs, but with respect to what do
6 we need to achieve those outcomes.

7 So now we have another study and we have
8 remedy legislation designed on that study. And it
9 would appear that these same high-need districts that
10 were wide of the first reasonable mark are now wide
11 of the second reasonable mark, and in the last couple
12 years, getting wider.

13 Q. And on page 71, in discussion of what you
14 call a funding gap, you say, in short, even by
15 conservative estimates, the formula that was wide of
16 a reasonable mark in 2003, was wide of another in
17 2006, still comparably wide of a third reasonable
18 mark by 2011, and even wider in 2012, leading to my
19 conclusion and the title of this report that the
20 Kansas School District Finance Act is wide of any
21 reasonable mark.

22 That's your conclusion?

23 A. Yes, that's my conclusion.

24 Q. Okay. Let's move to the discussion of
25 inequities in the taxation for school funding.

1 Explain what you looked at and what your conclusions
2 were.

3 A. You know, one thing I looked at was the fact
4 that there's becoming an increasing dependence on,
5 essentially, maxxing out local option budgets, which
6 means that which is optional is, over time, becoming
7 more obligatory across districts, but that there
8 remain some disparity. Certainly, when it comes to
9 local option budget, there is a state aid share of
10 the local option budget.

11 And school finance, when we talk about these
12 school finance systems, the state and local money
13 makes up the bulk of the system. And all that local
14 money is really also governed by state policies. So
15 there's this argument that all the money is state
16 money, it's all state-governed money. But that, you
17 know, is different from what is state aid versus
18 local revenue.

19 So there is a state aid share within the
20 local option budget which allows districts to pretend
21 as if they are as wealthy as the 83 percentile
22 districts when raising the 83rd at this point --
23 raising local option budget money so a lower-wealth
24 district gets more state aid toward their LOB.

25 Q. I think it's 81?

1 A. 81?

2 Q. .2.

3 A. Okay, 81.2. I had the 83 stuck in my head
4 from before.

5 Q. Yeah. KSA 72-6433 --

6 MR. RUPE: Hand him Exhibit 1.

7 Q. -- and that's admitted into evidence as the
8 primer. If you look at page 00106, you've got a copy
9 of that statute 72-6433, that's the creation of the
10 local option budget by statute, correct?

11 A. Where am I looking to? Page?

12 Q. 000106.

13 A. 106, okay.

14 Q. 72-6433.

15 A. I believe I'm there, yes.

16 Q. And look at, if you would -- because I want
17 you to explain what your understanding is, at
18 subsection J, where it --

19 MR. RUPE: I'm sorry.

20 MR. CHALMERS: I thought you were
21 done with the question.

22 Q. Where it says, there is hereby established
23 in every district that adopts a local option budget a
24 fund which shall be called the supplemental general
25 fund. Do you see that?

1 A. Yes.

2 Q. The fund shall consist of all amounts
3 deposited therein accredited thereto according to law
4 and then subject to the limitations imposed under
5 paragraph 3, and subsection E of 72-6433, and
6 amendments thereto. Amounts in the supplemental
7 general fund may be expended for any purpose for
8 which expenditures from the general fund are
9 authorized or may be transferred to any program,
10 weighted fund, or categorical fund of a district.

11 What does that mean?

12 MR. CHALMERS: It's a document. It
13 is a statute. It is not for an expert or anyone to
14 interpret. It's for this Court. And I object to the
15 question.

16 MR. RUPE: I'll phrase it like this
17 and see if it's more acceptable.

18 Q. Explain the difference between supplemental
19 general fund and supplemental general state aid.

20 A. The supplemental general fund is going to be
21 the fund that generates its resources from local
22 option taxes and state aid. The supplemental general
23 fund includes both the state-governed, locally-raised
24 revenue, and the state aid share of it.

25 So state aid is aid that's handed out to

1 districts through state general funds or other
2 sources from which state aid comes. So in some
3 districts the supplemental general fund would be
4 generated entirely from local funds, those that are
5 above the guaranteed wealth level. In some
6 districts, the majority of the supplemental general
7 fund would be generated by state aid.

8 So there's kind of just school finance basic
9 lingo -- state aid is the aid that's coming from the
10 state. The local -- the supplemental fund is
11 generated by a combination of local revenues and
12 state aid. And you know, we can have a separate
13 conversation about how local revenues are still
14 governed by the state, which sets the parameters of
15 tax policy around local revenues, but that doesn't
16 make them state aid.

17 Q. What portion is produced by the state as
18 opposed to the local government?

19 A. The state aid is delivered to districts by
20 the state.

21 Q. And supplemental general state aid, is that
22 synonymous with LOB equalization?

23 A. That would be the matching aid provided to
24 districts by the state to bring them to the level of
25 revenue that would have been raised by a district

1 with the 81.2 percentile taxable property wealth.

2 Q. In your analysis, do you consider the local
3 portion of the supplemental general fund to be
4 considered state aid?

5 A. It's not state aid.

6 Q. It's local money?

7 A. It's state-governed local money, but it's
8 not state aid.

9 Q. Okay. Let me look to your section. Are
10 there any problems that the state requires funding by
11 requiring a local option budget under the current
12 formula?

13 MR. CHALMERS: Object to the
14 question as being vague. I don't know if he's asking
15 for some sort of a legal opinion or what he's talking
16 about.

17 MR. RUPE: I'm focusing on equity
18 considerations.

19 Q. If the state says, raise your money for your
20 schools with your local option budget, does that
21 create any disparities?

22 A. Well, it would -- it still leaves -- you
23 know, if the State were to mandate that every
24 district will have this much to operate their schools
25 and to put in place an equitable mechanism for doing

1 so, that's one thing. But to say, it's up to your
2 local community to meet a state constitutional
3 mandate, doesn't seem to make sense, because that
4 leaves in the hands of local communities the option
5 to deprive the kids who live in that community of a
6 state constitutional mandate, which doesn't seem like
7 that should be an option. If it's a requirement,
8 it's a requirement. If it's an option, it's an
9 option.

10 Q. Let's turn to page 75, 3.5. Explain what
11 your conclusions are, what you did with regard to
12 Kansas low standards under state true costs of
13 adequacy.

14 A. This is something I actually think I've
15 talked -- section's a little out of place here, but I
16 think I talked about this more in the earlier
17 sections and certainly have beaten the issue to death
18 here on the stand here today, that Kansas has
19 relatively low assessment standards with respect to
20 national benchmarks.

21 I make some comparisons to Missouri here.
22 I've already talked a little bit about those
23 comparisons. And that may compromise those cost
24 estimates used in determining what's adequate.
25 Remembering, again, the Duncombe cost estimates,

1 especially for high-need districts are higher than
2 what Division of Post Audit generated from them. And
3 then, Division of Post Audit has laid out, you know,
4 these targets against which I found that the general
5 fund budgets remain, you know, sufficiently short in
6 the high-need districts.

7 Q. Let's talk about your section, district
8 funding gaps, accountability, and student outcomes.
9 What did you look at what were your conclusions?

10 A. Basically, what I've looked at here in the
11 first part is that districts that are on corrective
12 action or in need of improvement, the districts -- so
13 this is an association in this analysis, in Table 6
14 and in Table 7 -- the districts on corrective action
15 happen to be the ones that have the biggest funding
16 gaps, the funding gaps that closed a little bit over
17 the period from 2007 to 2009, and then widened to,
18 you know, wider than they were in 2007.

19 So the districts on corrective action are
20 the ones that continue to have and now have the
21 biggest funding gaps they've had in a while with
22 respect to their Post Audit targets, where as the
23 districts that are making AYP really don't face those
24 kind of funding gaps.

25 I, also, then do -- later in this section

1 a -- I do some comparisons in Figure 35 against the
2 graduation rates, which I didn't tie back to the
3 funding issue, but pointed out that districts on
4 corrective action, we already know from the earlier
5 table, are the ones that have the biggest funding
6 gaps, also have the lowest graduation rates.

7 And then in Section 4.2, I kind of layout --
8 statistically more useful, but you know, visually a
9 little bit uglier -- pictures of the relationship
10 between the division of Post Audit funding gaps and
11 different outcome measures, showing in Figure 36 that
12 districts with -- you know, Kansas City, Kansas has
13 about almost a \$4,000 per pupil shortfall between its
14 general fund and its Post Audit funding target.

15 The districts with the larger funding gaps
16 with respect to their target, which is moving farther
17 to the right in the picture, have systematically
18 lower outcomes. Bigger districts shown as bigger
19 circles. They have lower grade 3 reading
20 proficiency. They have lower -- figure 37 -- grade 8
21 reading proficiency. They have lower grade 11
22 reading proficiency. And then, the same applies for
23 math.

24 And in each of these cases, weighted for the
25 student enrollments, those relationships are

1 relatively strong, even measured against the Post
2 Audit funding gaps, which fold back in some of kind
3 of unequalizing provisions.

4 Q. So your conclusion based on the data is
5 what?

6 A. Is that the districts with the bigger gaps
7 in inputs continue to have the bigger gaps in
8 outcomes.

9 Q. And the districts with the bigger gaps in
10 inputs would be what districts?

11 A. Districts, specifically like -- Kansas City,
12 Kansas, is a real stand-out. They would be the
13 districts with the high-need student populations;
14 high concentrations of low-income students, high
15 concentrations of English language learners, and in
16 some cases, districts also having to compete in a
17 high-cost labor market.

18 Q. Then turn to Section 4.3, or page 90, and
19 explain what your findings are.

20 A. What I found here is -- so kind of setting
21 the baseline, the higher-need districts with high
22 funding gaps are systematically lower outcomes. What
23 I found is that from 2006 to 2010, the relationship
24 between poverty and outcomes did get a little better,
25 where the relationship between poverty and outcomes,

1 in the baseline, is -- it's negative, that higher-
2 poverty districts, districts with higher
3 concentrations of kids in poverty, have
4 systematically lower outcomes. They have a negative
5 coefficient, a negative relationship between poverty
6 and outcomes across all districts.

7 It seems to have gotten ever so slightly
8 better for 4th grade math and, you know, maybe 5th
9 grade reading, but from beginning to end, relatively
10 stable for 7th grade math and 8th grade reading. So
11 there's not whole lot of change, but at least on 4th
12 grade math, there appears maybe to be some drift of
13 improvement.

14 Q. And then --

15 A. So it's just that it stayed -- the negative
16 relationship is largely stayed.

17 Q. And then your conclusions in 5.0, high-need
18 districts lack important resources, explain that to
19 us.

20 A. This is the section where I take a look
21 at -- you know, now that we've asked these high-need
22 districts to focus resources on getting kids to the
23 minimum baseline, are they able to provide the other
24 things like, you know, the type of courses that are
25 going to help kids gain meaningful access to college

1 or the workplace.

2 And I find that, you know, AP participation
3 rates remain systematically lower in the high-need
4 districts in Figure 44; that AP math participation in
5 particular is very low in districts with high poverty
6 concentration. And just advanced math course
7 participation, in general, in Figure 46, there are
8 low participation rates in these advanced courses
9 perhaps because these districts haven't been able to
10 fully prepare the kids to get there.

11 And also, in later analyses in this section,
12 I show that there are fewer teachers assigned -- in
13 high-need districts, fewer teachers assigned to be
14 able to teach algebra and trigonometry or advanced
15 algebra or AP calculus. There are two- and three-
16 fold differences in the numbers of advanced math
17 teachers per student in advantaged districted versus
18 disadvantaged districts.

19 Some of this is circular in that, you know,
20 we've got kids who aren't prepared to take these
21 courses and the districts aren't offering these
22 courses, but they can't take them if they're not able
23 to offer them. And they can't provide these courses
24 unless they first have the money to get the kids
25 ready to take these courses from really early on

1 without having to cut those courses to begin with.

2 Q. Looking at page 93 in your report, the
3 paragraph that starts, "in short," does that
4 paragraph and the paragraph that follows that says,
5 further, students attending the highest-need, most
6 under-resourced districts in the state are far more
7 likely to be subjected to novice teachers.

8 Do those two paragraphs summarize your
9 Chapter 5?

10 A. They do. And the one additional piece
11 that's in Chapter 5 that I hadn't touched on in the
12 earlier long answer, is the fact that there are also
13 disparities in teacher qualifications. There are
14 differences in the percent of the teachers who are
15 novice. The likelihood that you have a novice
16 teacher in your high-poverty district with too few
17 resources.

18 Q. We're getting close to the end of your
19 report, but I --

20 MR. RUPE: Do you want to stop now
21 or do you want me to keep going. I've got to cover
22 the rest of his report, do a short piece on his
23 rebuttal report, and then I want to look at a couple
24 more of Mr. Chalmers' charts.

25 JUDGE THEIS: He's going to come

1 back this afternoon anyway?

2 MR. RUPE: Yes.

3 JUDGE THEIS: You want to put it at
4 quarter 'til?

5 MR. RUPE: Do you want me to keep
6 pressing ahead?

7 JUDGE THEIS: We can do another 15
8 minutes, or quit now, whatever you think.

9 MR. RUPE: Let's --

10 JUDGE THEIS: Finish his report.

11 MR. RUPE: Let's press ahead with
12 his report.

13 Q. Talk to us about 5.1, Curricular Depth and
14 Breadth, portion.

15 A. The one I just hit on is the fact that in
16 5.1, I show that students have -- students attending
17 districts with higher concentrations of low-income
18 children have systematically lower participation
19 rates in a variety of advanced placement courses. So
20 I used data from this office of civil rights data
21 collection to show that there's just much lower
22 participation rates in advance placement courses in
23 these high-need, under-resourced districts.

24 I also show, then, by using staffing data on
25 all Kansas districts that the staffing assignments

1 are such that -- like I was just saying a few minutes
2 ago, that you'd have five times as many, you know,
3 algebra, trigonometry teachers per kid in a high-
4 resource, high-outcome district than in a
5 low-resource low-outcome district. You have 2.26
6 times -- this is Table 10 -- two and a quarter times
7 as many algebra one, part two teachers, and about two
8 times as many algebra one teachers.

9 So even at that stage of prepping kids to be
10 able to take advanced math courses, you've got more
11 algebra teachers available, per thousand pupils, in
12 the high-outcome, high-resource districts, than in
13 the low-outcome, low-resource districts.

14 And the same applies across English and
15 science classes and in social studies, that we have
16 these disparities in staffing. And we have these
17 disparities in the arts, too, in concert band,
18 instrumental music appears to be more disparity
19 distributed in most places in my other research than
20 vocal music, and it is here, too. That kids have a
21 greater access to assign teachers in instrumental
22 music in high-resource, high-outcome districts.

23 Q. Then, with regard to your report let's go
24 to, Staffing Depth and Breadth 5.2. What did you
25 look at and what conclusions can you come to?

1 A. I actually just did the staffing depth and
2 breadth but jump off the next one, the novice
3 teachers.

4 Q. Then let's go to the five-point -- the next
5 chapter, five-point --

6 A. Three.

7 Q. -- -three, on page 111, you mentioned this,
8 but talk about novice teachers, what you look at and
9 what you found?

10 A. What I found is that if you're in a
11 low-resource, low-outcome district, a district that
12 is lower-performing and has very low need and cost
13 adjusted resources that each student -- a student is
14 69, about 70 percent more likely to have a novice
15 teacher than if they're in a high-resource, high-
16 outcome district.

17 Q. And then 5.4, teacher salaries?

18 A. Teacher salaries are actually relatively
19 flat across the state, but the average salary
20 statewide in this model, for a teacher with X, Y, and
21 Z qualifications is really not hugely systematically
22 different than if you were in a, you know, lower --
23 if you're in a low-resource, low-outcome district.
24 The point is that they have a much less experienced
25 pool of teachers that are making less and turning

1 over faster.

2 The other point is that they would
3 actually -- if you're in Kansas City, Kansas, you
4 don't just need to be able to pay the same, and in
5 fact they do pay less, as I understand it than Blue
6 Valley or Olathe. But you don't need to just be able
7 to pay the same as Blue Valley or Olathe to recruit a
8 teacher with given qualifications in the KCK, you've
9 got to be able to pay more, which is why we still see
10 the higher novice concentrations.

11 Q. Explain your findings in, School Reforms Do
12 Matter, please.

13 A. In this section, more or less what I do is
14 summarize an article which I wrote with Kevin Welner
15 on the research about the effectiveness of school
16 finance reforms. And what we find --

17 Q. Stop. So we can identify the article, it
18 appears as Plaintiffs' Exhibit 382, is that right?

19 A. Yes.

20 Q. Okay. That's the article you authored with
21 Welner?

22 A. Yes.

23 Q. Okay. Continue on your explanation.

24 A. The punch line of what we find is, on the
25 one hand, what we find is that a lot of studies that

1 purport to come to conclusions about school finance
2 reforms and judicial orders really never study, you
3 know, whether a reform was, you know, fully
4 implemented and sustained and what the results were,
5 if that was the case, or for that matter align well
6 who would be expected to benefit from the reform;
7 where did the money go and who benefited.

8 And what we find by looking then at the more
9 rigorous studies that have a tighter kind of analytic
10 framework is that substantive and sustained state
11 school finance reforms do matter; that if you put the
12 effort into the system and if you put the effort in
13 the right places, you can alter the level or
14 distribution of student outcomes. And there are a
15 handful of studies that seem to validate that, and
16 certainly always more work that could be done in that
17 area.

18 But the focus has to be on that there
19 actually was a substantive, sustained school finance
20 reform and that we're measuring outcomes over a
21 relevant time period and for relevant students to
22 evaluate the effects of those finance reforms.

23 Q. Okay. Let's turn to Chapter 6, if we could.
24 Look at Exhibit 292 on the question of does money
25 matter. What is 292?

1 A. This is a policy brief that I wrote earlier
2 this year summarizing the literature -- the various
3 bodies of literature that attempt to ask this
4 question of whether and how -- might be the more
5 important piece, how money matters in education
6 systems, and whether and how it contributes to
7 student outcomes, and what do we know from the
8 research, and what research has, you know, arguably
9 misinformed the debate, and what better research more
10 appropriately informs the debate.

11 Q. Answer the question for the Court: Does
12 money matter?

13 A. Yes.

14 Q. Explain your conclusions in your article and
15 in your report in the Gannon case.

16 A. And again, it goes back to something I was
17 talking about earlier, in that money -- really the
18 key is that money is a necessary underlying
19 condition; that if you want to be able to do things
20 that matter, if you want to be able to adopt and
21 provide -- you know, adopt strategies, provide
22 programs and services, hire teachers, administrators
23 get a, you know, qualified work force to provide good
24 schooling, it takes money.

25 That's not to say that you could have money

1 and not do those things with it, and in effect, you
2 know, be showing that well money in and of itself may
3 not be the solution, but money is still the
4 prerequisite underlying condition. Those are not
5 inconsistent statements.

6 And here, we talk about, you know, money
7 itself and the research about money itself in
8 relation to student outcomes, which is tricky because
9 money, you know, how the money is used is part of the
10 puzzle. We also talk about stuff that costs money
11 that seems to matter, such as class size reduction,
12 such as teacher quality. Improving the quality of
13 teacher workforce is not a no-cost -- is not a -- you
14 know, is not a finance neutral option.

15 There may be ways, you know, to alter the
16 teacher compensation that improves the quality at no
17 cost. But what we know most about is that wages do
18 affect -- and relative competitive wages affects who
19 goes into teaching. So money matters in that way.
20 And there's a section in here where we talk about the
21 wage literature; talk about teacher wages and teacher
22 quality, as well as talking about class size and the
23 fact that class size has a kind of multiplicative
24 effect.

25 If we reduce teacher's class size, if it's a

1 middle school teacher teaching four or six -- six
2 sections of students, so we reduce their total load,
3 we actually might be able, you know, to keep a
4 teacher at a lower wage than we would have otherwise,
5 if we give them an easier job to do. So all these
6 things play together. And those are ways that money
7 can matter.

8 We also see that -- it's not in here, but
9 it's in my current research now -- the charter school
10 chains that seem to be performing particularly well
11 like the KIPP chains that tend to be spending 30 to
12 50 percent more than district schools in their same
13 area, and they're doing it to provide intensive
14 tutoring and extended day and extended year.

15 They're providing, you know, 30 to 50
16 percent more time for 30 to 50 percent more money.
17 Time costs money and time seems to matter, and
18 therefore, the money matters. I think the key
19 statement is that resources and strategies that cost
20 money matter. Money matters. Money is -- if you
21 don't have it, you can't do these things, but that
22 doesn't mean that if you have it you will do the
23 right things.

24 Q. Your conclusion on page 116 in your report,
25 on balance, these studies show that substantive and

1 sustained state school finance reforms can and do
2 positively affect student outcomes to the extent that
3 the research designed is sufficiently careful at
4 measuring specifically who is expected to benefit and
5 measuring whether and to what extent substantive
6 reforms were actually implemented.

7 Does that summarize your --

8 A. Yes, it does.

9 Q. -- chapter? And if I'm on track, then, in
10 order to move the needle on student performance, on
11 graduation rates, on assessment scores, on those kind
12 of things we consider outcomes, readiness for college
13 and so forth, you are of the opinion that additional
14 resources, as you've explained, can have a positive
15 effect on moving that needle?

16 A. Yes, additional resources can have a
17 positive effect on moving that needle.

18 Q. All right. And if you want higher
19 performance, you need to spend the money to get
20 there?

21 A. You need to -- you probably need to
22 implement strategies that happen to cost more money
23 to get there, which would translate into spending the
24 money to get there.

25 MR. RUPE: All right. I think

1 now's a good time to break.

2 JUDGE THEIS: 2:00 good?

3 MR. RUPE: That's fine.

4 JUDGE THEIS: Okay.

5 MR. RUPE: This doesn't need to be
6 on the record.

7 (An off-the-record discussion was held.)

8 (A recess was taken.)

9 JUDGE THEIS: Please be seated.

10 MR. RUPE: Apologize.

11 JUDGE BURR: That's all right. We
12 were slightly early for a change. I don't know why.

13 Q. (By Mr. Rupe) Let's take a look at -- good
14 afternoon, Dr. Baker?

15 A. Good afternoon.

16 Q. It's time to shift gears, and I want to look
17 at Plaintiffs' Exhibit 383, if I could?

18 A. Yes.

19 Q. And I'd like to walk you through the
20 rebuttal report. And by way of rebuttal, this 383
21 addresses the expert reports of Professor Hanushek,
22 Professor Podgursky, and Art Hall, is that right?

23 A. That's correct.

24 Q. And the way it's set up in 383, is you look
25 at their claims and then you explain what your

1 response is to those claims, is that correct?

2 A. That is correct.

3 Q. Let's do it the way we did your report.

4 Let's start with your analysis of Defendant's Expert
5 Claim Number 1, Kansas is relatively average on
6 spending and above average on outcomes compared to
7 other states. Explain what you did to look at that
8 conclusion and what your opinion is.

9 A. Regarding that conclusion, I just meant it's
10 the logical point that it's really not at issue here
11 whether Kansas is average at spending and average on
12 outcomes, nationally. This isn't about, you know,
13 saying that on -- that the average Kansas child or
14 children in the average Kansas district are doing
15 okay. This case is about the rest of them.

16 This case is about the kids who attend these
17 high-need districts that don't have average outcomes
18 and aren't receiving sufficient funding to achieve
19 average outcomes. So that was one that I addressed
20 kind of on its face in terms of the logic of the
21 argument that it's somehow important that we have
22 average spending and above-average outcomes.

23 Q. And tell me what Figure R-1 is, on page 3.

24 A. Okay. Figure R-1 speaks to Professor
25 Hanushek's -- his first claim was that, well, Kansas

1 already spends more on higher-poverty districts than
2 it does on lower-poverty districts. And I had
3 already been through in my report a little while ago
4 that those spending differences are actually
5 relatively small, and when you correct for other
6 factors, that the spending difference between higher
7 and low-poverty districts is pretty flat.

8 Figure R-1, I believe, is a copy of Eric
9 Hanushek's figure where he tries to argue that Kansas
10 already is allocating more money to higher-poverty
11 districts by looking at per pupil expenditures and
12 free and reduced lunch.

13 And while you might be able to fit a line to
14 that scatter plot that has a slightly upward tilt,
15 it's far from systematic, it's far from predictable,
16 and it's certainly not on the order of the amount of
17 difference that would be needed to provide for equal
18 opportunity for comparable outcomes.

19 Q. Did Hanushek or Podgursky, in their
20 analysis, control for any variables?

21 A. Well, in this analysis, this is just about
22 looking at whether or not the spending is higher or
23 lower in higher- or lower-poverty districts. And no,
24 it doesn't correct for other factors, as I -- it
25 misses two things. One, it doesn't do what I had

1 done in my regression analysis in my report to
2 determine whether spending is higher in higher-
3 poverty districts, after correcting for size and wage
4 differences, which I copied that table into Table R-2
5 in this report on page 6.

6 And he also doesn't address the question of,
7 you know, is it systematically higher and is it
8 higher enough, in that, you know, how does this
9 relate to the amount that would be needed to achieve
10 equal opportunity for these kids as it relates to the
11 Duncombe estimates or the LPA estimates which I
12 copied from my original report and put in here at
13 Figure R2.

14 Q. So if your conclusion is, even though the
15 general fund budget is upward tilting, it falls well
16 short of the Legislature's own estimated targets?

17 A. Right, and it's barely upward tilting as
18 indicated in Table R-2, when we control for other
19 factors. The 100 percent free and reduced lunch
20 district would have on average 7.6 percent higher
21 general fund than the zero percent.

22 Q. By the way, with regard to the LPA study and
23 Duncombe's analysis, did Duncombe control for
24 variables?

25 A. Yeah. I mean, in his analysis, which is

1 toward a different purpose, he's looking at the
2 relationship between outcomes and the cost of
3 achieving outcomes. And in that process, he's
4 accounting for the fact that the cost of achieving
5 those outcomes varies widely across the different
6 settings. In Kansas, we have very high-cost, tiny
7 rural districts.

8 And he's accounting for the different
9 student populations and how that contributes to the
10 cost of outcomes and so on. But that's in a slightly
11 different context that actually relates to
12 Defendant's claim, my next section of the rebuttal.

13 Q. Then let's get there. There exists no
14 systematic relationship between spending and outcomes
15 across Kansas school districts, which is the
16 Defendant's third expert claim you analyze beginning
17 on page 6, correct?

18 A. Yes, both Eric Hanushek and Michael
19 Podgursky make the claim that there exists no
20 systematic leadership between spending and outcomes
21 across Kansas school districts. And they do so by --
22 each of them present a series of scatter plots or
23 graphs of the relationship between differences in
24 spending per pupil and differences in proficiency
25 rate, I believe; so that they each present a series

1 of scatter plots and come to the conclusion from
2 those that none of them shows any relationship where
3 more money is associated with higher outcomes.

4 Q. And again, let's focus on what they did.
5 The analysis they looked at, were there any factors
6 that they controlled for?

7 A. It says in Eric Hanushek's explanation of
8 his graphs, that they are corrected for poverty,
9 though no information is provided as to how he would
10 have done that in a two-variable scatter plot.
11 Michael Podgursky's appeared to not even have done
12 that, but even that would fall well short.

13 You look at those scatter plots, and Kansas
14 districts spend wildly different amounts of money per
15 pupil to educate their kids. And a lot of that is
16 tied up in the fact that we've got so many very small
17 districts that spend a whole lot because they're
18 small, not because they're trying to leverage it for
19 higher outcomes. They're trying to leverage enough
20 money because they're small just to get to the same
21 outcomes, because district size is a major cost
22 factor.

23 Q. So you look at economies and scales, and you
24 look at a district that can bus kids for two, two and
25 a half hours, and still only get 12 kids into a

1 classroom?

2 A. Yeah, you'd have to correct for factors.
3 And the reason they get a scatter in there scatter
4 plots, in particular, if you take 300 points, that a
5 whole bunch of them are little tiny districts that
6 spend very high amounts, and you're representing them
7 as a point the same way you're representing Wichita
8 or Topeka or Kansas City, they scatter all over the
9 place. And we're not going to see in that type of
10 analysis a relationship between that scatter of
11 funding and the assessment score outcomes, unless we,
12 at the very least, include some of factors that
13 explain the scatter of spending differences,
14 economies of scale, variations in competitive labor
15 markets where these districts exist.

16 And the student population characteristics
17 would have to be included in that to correct for all
18 those kind of differences in spending across
19 districts. Otherwise, it's really not -- I mean,
20 those scatter plots don't tell us much of anything.

21 Q. When you say, scatter plots, you're talking
22 about the graphs that show the various bubbles or
23 points?

24 A. The graphs that show, right, the points on a
25 plane where I think it's spending per pupil on the

1 horizontal axis and some outcome measure on the
2 vertical axis. There were many of them, one for
3 each -- like, the reading, grade 4, or math -- in
4 each of their reports.

5 Q. I want to ask you if you agree with
6 something Art Hall said when I took his deposition.
7 I asked the question to him, can you use a regressive
8 analysis in showing the cost of education? And he
9 said, you can do a regressive analysis on anything.

10 Do you agree with that?

11 A. You can run a regression --

12 Q. A regression --

13 A. -- analysis -- you can run a regression
14 analysis between any two or more variables, yes.

15 Q. And when you do a regression analysis,
16 explain to the judges what it means by way of
17 controlling factors.

18 A. Well, I think probably the most straight-
19 forward example is going back to that school size,
20 given how size affects spending, in that you have to
21 statistically correct for, well, does a district
22 with -- if we had ten districts that only had 100
23 kids, do the differences in spending among the
24 districts that only have 100 kids relate to the
25 differences in outcomes among those districts, as

1 opposed to lumping together the districts with 100
2 kids, along with the districts of 2,000 and 20,000
3 kids.

4 Because we know that the districts with 100
5 kids, on a per pupil basis, are spending a lot more
6 on average than the districts with 10,000 or 20,000
7 kids. So we have to include those variables that
8 help us kind of parse the data to compare like with
9 like. Otherwise, we'll get, you know, the cloud of
10 variation that was presented in those scatter plots.

11 Q. If you look at -- I'll just walk up there,
12 if I can get there. If you look at the Duncombe work
13 in the Legislative Post Audit report, which is
14 Exhibit 199, on page 001864, which is at Appendix B,
15 and it's also repeated on page 12 of your rebuttal
16 report, are those the factors that Bill Duncombe
17 controlled for?

18 A. Yeah, and it's in the Duncombe attachment to
19 the Post Audit report, which is Appendix C, page 18
20 of that attachment, and on page 12 of my report are
21 the variables that are in the cost model. In trying
22 to estimate the relationship between the performance
23 measure and spending in his cost model, Duncombe
24 corrects for the differences in the competitive wages
25 of teachers across settings; he corrects for the

1 differences in poverty concentration, in poverty
2 interacted with population density; he corrects for
3 the fact that having more students in bilingual
4 education programs affects your cost; he corrects for
5 the fact that smaller districts have higher costs.

6 In this approach, where you're trying to
7 estimate the cost of outcomes, he corrects for
8 factors that may influence the spending of districts
9 that don't translate directly to differences in
10 outcomes, or inefficiency factors, including, you
11 know, the fact that districts that have more ability
12 to spend more, and to spend more without worrying
13 about what they spend, they're more likely to spend
14 in ways that don't contribute directly to outcome
15 improvement.

16 So he corrects for efficiency differences,
17 for size differences, for student characteristics,
18 and for competitive labor market factors; all things
19 that have to be considered when you're trying to
20 figure out, you know, how does this dollar translate
21 to outcomes in, you know, in Hays versus Kansas City,
22 in Goodland versus Topeka. You can't just compare
23 the dollar one for one.

24 Q. And is controlling for those factors part of
25 a cost function analysis?

1 A. Well, the way it's set up in the Bill
2 Duncombe analysis that I show on page 12, yes, it's
3 in an analysis to predict the cost of achieving a
4 given set of outcomes.

5 Q. Is cost function analysis a type of
6 regression analysis?

7 A. Yes, it is.

8 Q. And in your opinion, based on your work and
9 your review of others' work, is there a systematic
10 relationship between spending and outcomes across
11 Kansas schools?

12 A. The richest analysis that we have of that
13 here is the cost model that does find that correcting
14 for efficiency and cost factors and student
15 characteristics, higher spending is associated with
16 higher outcomes, and therefore, the cost of higher
17 outcomes is higher.

18 Q. And then in other words when it comes to
19 higher outcomes, money makes a difference?

20 A. Yeah, that money is, again, a necessary
21 underlying condition for moving that needle upward.

22 Q. And you arrived at your conclusions and
23 Duncombe arrived at his conclusions by controlling
24 for a number of variables?

25 A. That is correct.

1 Q. And Hanushek and Podgursky controlled for
2 what variables?

3 A. Hanushek suggests that he controlled for
4 poverty, but nothing else. And Podgursky does not
5 suggest that he controlled for anything else.

6 Q. And how frequent can you draw conclusions
7 from a two-dimensional cost function analysis?

8 A. Well, you wouldn't do a two-dimensional cost
9 function analysis, but it's a reasonable exercise to
10 do exploratory when you're kind of exploring the
11 characteristics of data. You would explore those
12 relationships, look at them visually.

13 But you'd be unlikely to draw any
14 conclusions from them, especially if you kind of
15 already have knowledge of the extent to which -- for
16 example, school district size really creates huge
17 differences in spending. You really wouldn't -- you
18 know, I look at those, and I'm like, well, size is
19 clearly an overlooked issue here, so I wouldn't draw
20 any conclusions from it.

21 Q. Okay. Let's go to Defendant's Expert Claim
22 Number 4, Wyoming and New Jersey provide proof of
23 failures of Court ordered school finance reform.
24 Tell us what you looked at and what your conclusions
25 are.

1 A. Well, one, I have a much more extensive
2 discussion of this in that article that I wrote with
3 Kevin Welner on school finance reforms. And some of
4 the important things to look at here and that I
5 relate in my rebuttal report is that Wyoming simply
6 isn't comparable.

7 Wyoming is a state that is, you know, an
8 entire state of Northwest Kansas with a massive
9 mountain range cutting through it. This is a bunch
10 of little, tiny districts, little, tiny schools
11 spread far distances part that have had declining
12 enrollment for decades. And much of their supposed
13 spending per pupil increase is actually as much a
14 function in the reduction in the denominator as it is
15 an increase in the numerator. Pupils went down,
16 spending per pupil goes up, and it looks like they
17 had this massive infusion of funding to their
18 schools.

19 But they're also a whole bunch of tiny
20 schools and districts that, on average, spend a lot
21 per pupil. So it's hard to make comparisons from
22 Wyoming to Kansas in that regard, and I give a visual
23 map of that.

24 The New Jersey one is a little more
25 interesting because New Jersey has actually seen

1 significant gains. And what Eric Hanushek does in
2 his testimony here, and in fact, he, himself, then
3 later refutes in a graph -- that is to say that
4 New Jersey put all this money and got nothing for it,
5 when in fact New Jersey did put money in.

6 In his initial analysis -- he kind of works
7 the time frame -- he says, from 1992 to 2007,
8 New Jersey got nothing for it, but they didn't put
9 the money in until '98 to '03, '05. So you got to
10 match your time frame there.

11 Q. What page in your report are you at with his
12 chart?

13 A. I am at page 19, Figure R-6, where I would
14 argue that what Eric Hanushek has done here is to,
15 you know, craft a graph that makes it look like
16 New Jersey's gains in 4th grade NEAP -- and he did
17 this, then, with each of other NEAP tests, too -- to
18 make it look like, well, New Jersey's above the
19 national average, but it's certainly not growing; by
20 implication, all that money that they put in didn't
21 lead to the expected gains, so money infusions of
22 that sort don't matter, is what he's suggesting here.
23 The problem is that, you know, New Jersey actually
24 did experience substantial gains.

25 Q. And compare page 19, R-6, which is from

1 Professor Hanushek's report in this case, and
2 supplemental information we received later from
3 Dr. Hanushek which is Defendant's Exhibit 1171 and
4 compare those two, please.

5 A. And I found this very interesting, too, that
6 Professor Hanushek later provided this graph that
7 shows the change in inflation adjusted spending per
8 pupil, along the horizontal axis for each state, and
9 its change in NEAP scores, where the red line then
10 represents the average, what would be the expected
11 change in your NEAP scores for a given change in real
12 spending.

13 One thing is, the pattern -- again, he's not
14 chosen to correct for a number of other factors,
15 demographic changes, and you know, the spending
16 differences seen across these states.

17 But curious feature of this is that
18 New Jersey here shows high spending gain. That
19 part's not curious. But what's curious here is
20 Professor Hanushek has produced a graph that also
21 shows that New Jersey got far more than the expected
22 outcome gain for the spending increase that it
23 provided, which seems to directly refute his previous
24 figure.

25 MR. RUPE: If I may approach the

1 bench here, because 11 --

2 Q. It's 1171 or 74?

3 A. It says 1171 here.

4 Q. 1171 is a supplemental report by
5 Dr. Hanushek, and it shows New Jersey actually higher
6 than many, many states in terms of NEAP scores,
7 correct?

8 A. That's the gain over the period over which
9 they had the gain in spending.

10 Q. So that's not just a snapshot. That is a
11 gain over a period of time. And what does that show
12 you?

13 A. Well, what it shows me is that -- I guess,
14 I'm wondering, you know -- I'm wondering what
15 Professor Hanushek has to say about this. He's
16 asserted in his previous graph and in a section of
17 his book with Alfred Lindseth that New Jersey's one
18 of his great kind of case examples of the failures of
19 state school finance reforms, and he's now provided a
20 graph that suggests that New Jersey's gains in NEAP
21 scores are greater than would be expected given the
22 gains in spending.

23 So you know, and I would -- and I've, in my
24 rebuttal to this particular graph, I've also
25 explained that there are many things that are also

1 overlooked in this analysis, but this analysis would
2 certainly refute the previous.

3 Q. Let's go to defendant's Expert Claim Number
4 5, Kansas teacher compensation is either adequate or
5 could be at current spending levels.

6 A. One quick part of this is that Professor
7 Podgursky suggests that Kansas class sizes are
8 smaller than the national average, and if we just
9 move our class size to the national average, we could
10 save enough money to raise teachers' salaries. But
11 Professor Podgursky's analysis ignores the fact that
12 Kansas class sizes are lower than the national
13 average in part because Kansas has a lot more small,
14 rural schools than the average state.

15 So it's not like we really do have the
16 all-out flexibility to recapture all that small class
17 size money that's tied up in tiny schools. So that's
18 kind of a misguided conclusion, I believe, on his
19 part to suggest that we could just take all that
20 class size money, increase class size, and pay more
21 competitive salary.

22 The other assertion that he made was that if
23 districts have enough applicants to fill their
24 positions that that would be indicative that the
25 funding is adequate. He's chosen to set aside

1 entirely the quality of those applicants and whether
2 there are quality disparities in the type of teachers
3 who choose to go to Kansas City, Kansas versus those
4 who go to Blue Valley and Olathe.

5 And I had just responded with doing some
6 mapping of where the college grads go, showing that
7 it's relatively uneven -- for example, in terms of
8 where the KU and K State grads go in the Kansas City
9 metro -- but you know, without much else really to go
10 on, given data to refute his claim at that point.

11 Q. Let's go to the final point, court ordered
12 spending increases would significantly harm the
13 Kansas economy, conclusion by Arthur Hall. Explain
14 to me what your rebuttal of that is, please.

15 A. I think there are two parts to that. One,
16 earlier in my report I showed that Kansas effort
17 towards spending on schools is relatively average,
18 and raising additional funding for schools would not
19 necessarily make Kansas that much less competitive in
20 terms of its tax policy structure for Kansas to put
21 up a higher effort to fund its schools.

22 The second piece of that puzzle is to kind
23 of refute the assumption that the tax policy alone
24 dictates the future economic health of the state, so
25 too does the quality of education system, and all the

1 package of public and services that you -- public
2 services that you provide with your tax dollar. It's
3 business decisions.

4 Economic growth, that's not made entirely on
5 the basis of having the tax advantage. It's equally
6 made on having the quality of services in the area
7 you decide to move your business. Having
8 intellectual capital to tap into to run technical
9 businesses and so on. So those are my, kind of, two
10 quick points in response to Art Hall's testimony.

11 Q. At the time you authored that rebuttal
12 report, had the State of Kansas adopted any
13 significant tax cuts?

14 A. I know that they have recently, but I don't
15 know what they had done at that time. I had been
16 tracking it in terms of their relative effort over
17 time, which was pretty constant.

18 Q. Let's go to Exhibit 381, please.

19 A. Okay.

20 Q. What is 381?

21 A. 381 is my response to the additional Eric
22 Hanushek graph; response to 1171.

23 Q. And that details what your response to that
24 is?

25 A. Yes, it does.

1 Q. Now I want you to take a look at a couple of
2 defendant's charts. Again, they're not marked.

3 MS. GARNER: Yeah, they are.

4 MR. RUPE: They are now?

5 MS. GARNER: They're marked as
6 1212-A is the original and 1212 is the new modified
7 one.

8 Q. I'm going to hand you --

9 MR. RUPE: Do we have copies for
10 him?

11 MS. GARNER: Give him this one and
12 you work from that one.

13 Q. (Mr. Rupe) I'm going to hand you Defendant's
14 1212 and represent to you that it is a replacement,
15 apparently, of what is marked as 1212-A of the
16 Defendant's --

17 MR. RUPE: Am I right counsel?

18 MS. TIBBETS: Yes, sir.

19 MR. RUPE: All right.

20 Q. (By Mr. Rupe) So let's talk about what is
21 represented by this. Explain to the judges what this
22 represents.

23 A. Well, there's a lot of missing information
24 here in terms of how it's derived.

25 Q. Let me give you a little more free reign on

1 this. Explain what it is and what your comment and
2 opinion is concerning it.

3 A. So you know, assuming that this was based on
4 valid data and a representation of what I think, and
5 I'm going to try to characterize what I think it's
6 supposed to represent. It appears to be, you know,
7 an attempt to track whether -- you know, if we go
8 back to that cost function analysis estimated by Bill
9 Duncombe where he's trying -- where they found that
10 there's a relationship where this .83 percent change
11 in input yield to one percent change in output.

12 They're trying to say in this graph, it
13 would appear, that, well, what did we see? When we
14 saw certain percent changes in funding, did we
15 immediately, over the same time frame from '05/'06,
16 '06/'07. Did you immediately see the expected change
17 in outcome based on applying the cost estimate from
18 the Duncombe study.

19 And my general point would be that this kind
20 of -- it tries to reinforce that that kind of
21 misinterpretation of this type of analysis, that when
22 we estimate that there's a certain expected
23 additional cost of achieving a higher outcome, that
24 all of a sudden if we put in 83 cents today, we're
25 going to see a one-point gain tomorrow.

1 And one of things that we find from looking
2 at the research on school finance reforms is kind of
3 a phrase I've reiterated over and over today, is that
4 it's substantive and sustained school finance reform
5 is what leads to the, kind of, shifts in outcomes
6 towards an new equilibrium. It's not that we can
7 measure, well, we added a dollar today, what do we
8 get in points tomorrow.

9 And, you know, that comes down a number of
10 things. You know, the additional dollars you might
11 be adding to create these substantive, long-term
12 changes might be added to reduce class sizes between
13 grades K and 3, to provide better, higher quality
14 preschool programs. Those kids aren't even going to
15 see a state test until three, four, five years down
16 the line. So of course we're not going to see a
17 shift in outcomes from leveraging the money to
18 improve the elementary grades by reducing class size
19 or add early childhood programs.

20 Q. Is the same true of professional
21 development?

22 A. Professional development could be cumulative
23 over time. The bigger long-term issue is
24 competitiveness of wages. That if we are trying to
25 leverage a higher wage to bring in better teachers,

1 we're not going to replace all our teachers at once.
2 This is going to happen over time, and we're going to
3 be trying to retain some of your better teachers.
4 You're not going to see a change in test scores
5 tomorrow.

6 There's some things like professional
7 development where you could invest in changing the
8 behavior of current teachers in, for example,
9 teaching certain algebraic reasoning skills, and
10 might see a quicker return. The other benefit of
11 that is you also might not necessarily see -- you
12 also don't see the loss as soon as the money is
13 gone. It erodes --

14 Q. Those teachers stay there with those
15 strategies until they move onto some other district
16 or some other job?

17 A. Right, I mean, the teacher who gained these
18 skills may stick around for a few years and students
19 may still benefit. But if they're trying to apply
20 those new skills to a classroom of 20 one year, 24
21 the next, and 26 the next, the effect of their
22 professional development may wear off as the money
23 declines and other factors intervene.

24 Q. Does this chart accurately reflect the
25 findings of LPA?

1 A. No. I mean, nor do I think that's really --
2 it seems to be intended to show that -- I guess it
3 does seem to be intended to show that the findings
4 are invalid, but by a method that's, you know, far
5 less valid.

6 Q. By the way, does this show '11/'12?

7 A. No, I don't see '11/'12 on here.

8 Q. And I think the first exhibit, 1212-A,
9 before it was changed it became what you have and
10 that is the .83 percent?

11 A. Right, the one I have in front of me has the
12 right -- that's the coefficient drawn from that
13 statistical model that William Duncombe estimated.

14 Q. In LPA?

15 A. Yes.

16 Q. Let me ask you to identify in, sort of,
17 conclusion what you think the parts of the funding
18 system are that need improvement. Let's go through
19 these one at a time and just tell me yes or no and
20 briefly explain. The base under-funded from the
21 outset?

22 A. Yes, needs improvement.

23 Q. High at-risk under-funded from outset?

24 A. Yes. In particular, there needs to be more
25 targeting of resources to the highest-poverty

1 settings. They never quite got close to where they
2 needed to be.

3 Q. The counter-weighting weights that you've
4 described by way of non-proficiency weighting, by way
5 of high density, by way of expanding size, those
6 items, explain that.

7 A. The new and ancillary new facilities
8 weightings kind of -- these adjustments to the
9 general fund authority, like the cost of living
10 adjustment, that allow, in particular, the affluent
11 suburban districts to offset any funding gains made
12 by the neighboring urban districts. Those certainly
13 need to be addressed --

14 Q. And those counterbalancing weights washout
15 the effectiveness of the at-risk and bilingual
16 weighting?

17 A. Yes.

18 Q. Capital outlay equalized 81.6 percentile?

19 A. If the capital outlay fund, as designed, is
20 still going to be intended to provide support for,
21 kind of, annual cash expense on important curricular
22 equipment and other equipment around the school, then
23 it's certainly important to equity that the districts
24 have comparable tax capacity to invest in equipment,
25 scientific equipment, other equipment around. It

1 could even be, you know, kitchen and food preparation
2 equipment, any number of things.

3 Q. I assume your answer would be the same with
4 regard to the capital outlay equalization that was
5 not paid in 2009 and '10, and then suspended in
6 '10/'11, '11/'12?

7 A. Yeah, I mean, there's a lot that districts
8 can buy with that and it creates significant
9 inequities when it's based on local tax dollars
10 alone.

11 Q. What about LOB equalization prorated back to
12 92 percent and 85 percent of what is due?

13 A. Well, one of my findings was that the
14 current LOB also serves to counterbalance some of the
15 weightings in the general fund budget so that
16 improving the equalization of the LOB by raising
17 the -- raising the equalization level would likely
18 improve that and should be certainly considered.

19 Q. What about the under-appropriation of the
20 formula?

21 A. For a formula to work it has to be funded.

22 Q. What about the shift in funding to local
23 districts through the LOB?

24 A. There are two issues. One, you know, that
25 which is intended to kind of achieve the

1 constitutional obligation has to be guaranteed, not
2 optional. Two, there has to be consideration whether
3 or not the LOB continues to play a counterbalancing
4 effect, allowing those -- kind of, the suburban
5 neighbors to jockey back ahead of their urban,
6 higher-poverty neighbors and put them back at the
7 disadvantage on teacher labor markets.

8 Q. And when local funding, based on the
9 principal, your educational opportunity shouldn't
10 depend on your ZIP code when local funding is
11 responsible for the educational system, does that
12 create inequities?

13 A. To the extent that there are differences in
14 access to local funding, which, of course, in this
15 case there are because there are discrepancies in the
16 tax base and discrepancies, for that matter, in voter
17 support and community support for accessing that tax
18 base.

19 Q. And it ends up more inequitable to those
20 districts that don't have high property wealth?

21 A. Yes.

22 MR. RUPE: No other questions.

23 THE WITNESS: I'd love the
24 opportunity to hit the bathroom really quickly, if I
25 could.

1 MR. CHALMERS: I think he's asking
2 for a break.

3 MR. RUPE: Wants to go to the
4 bathroom.

5 THE WITNESS: If it's about a
6 30-second -- run down the hall and be back.

7 JUDGE THEIS: Don't wear yourself
8 out.

9 (A recess was taken.)

10 CROSS-EXAMINATION

11 BY MR. CHALMERS:

12 Q. Are we ready?

13 A. I am.

14 Q. I want to, kind of, get your take on a few
15 general propositions. First, as you have defined
16 constitutional standard in Kansas, you sometimes have
17 used the phrase, or at least Mr. Rupe used
18 "adequacy." So can we use that as the shorthand for
19 what you think is the constitutional standard in
20 Kansas?

21 A. I guess we'll go question by question on
22 that. I'm not sure I'd want to necessarily
23 substitute the word adequacy for --

24 Q. I don't want you to either. You said that
25 the system in place is unconstitutional. And you've

1 given a great deal of discussion on that. But it
2 starts with a target, say, what is the constitutional
3 basis. And you have, in that context, talked about
4 an adequate level of funding, have you not?

5 A. I have said in here that the State has
6 determined targets and those targets have not been
7 met. I mean, I guess if you can point to me a place
8 in my report where I have made the declaration,
9 myself, that it's unconstitutional -- maybe I've said
10 that. Ultimately, as we discussed earlier, that's a
11 determination for the Court to make. I've used the
12 word "adequate." I said the state hasn't met its own
13 targets, and I said that the targets themselves may
14 not be adequate.

15 Q. Can we agree then that the constitutional
16 standard is the targets that the State set for the
17 purposes of your testimony?

18 A. Not necessarily, no.

19 Q. There we go. Tell me what is the
20 constitutional standard. Tell us all.

21 A. What I've said is that based on the previous
22 litigation, the Division of Post Audit conducted an
23 analysis. The Legislature adopted a formula based on
24 that analysis, and that case was, I believe,
25 dismissed on the basis that that was considered a

1 good faith effort toward meeting the constitutional
2 obligation. That's the Court's determination not
3 mine.

4 So I said I'm going to use that target as
5 one set of estimates of -- of what school districts
6 in Kansas should be receiving. But I've also cast
7 some doubt on whether or not those targets are, in
8 fact, adequate as I would define them, because I've
9 said that the assessment scores used in driving those
10 estimates are based on cut scores that are relatively
11 low with respect to NEAP.

12 And I've said that the State really hasn't
13 ever looked at what it takes to actually achieve true
14 college readiness. So I used those benchmarks
15 because they are what's there, and I believe them to
16 be conservative benchmarks of the State's own
17 determination of its responsibility. And I've
18 suggested that -- but I don't believe those
19 benchmarks are necessarily what they should be. And
20 so that's what I've said.

21 Q. The benchmarks, let's start with those to
22 begin with.

23 A. Okay.

24 Q. You indicated that the Montoy decision
25 adopted the Duncombe report, is that what you've

1 said?

2 A. I didn't say it --

3 Q. You didn't --

4 A. -- on those direct terms at all.

5 Q. Didn't at all --

6 A. No -- well, I didn't --

7 Q. Didn't even approve the Duncombe report.

8 Looked at the LPA and whether or not the LPA's
9 interpretation of how it was going to fund was
10 sufficient?

11 A. Again, my interpretation laid out in the
12 report is that the formula -- so we got to take it a
13 few steps here. The formula adopted by the
14 Legislature that was informed by LPA's use of
15 information to come up with a proposal, where some of
16 the information that informed their proposal came
17 from the Duncombe study -- I mean, it's that formula,
18 the end point of that whole sequence that was at
19 least accepted as a basis for dismissing Montoy.

20 Q. Legislature never adopted the formula.

21 A. There was a formula that was implemented.

22 Q. There was a consultant working with LPA that
23 came up with the formula. That's the Duncombe
24 formula you're talking about, right?

25 A. No. No. LPA did come up with a formula

1 that in part used the Duncombe estimates, I believe
2 it was Scott Frank and his colleagues at LPA, used
3 the Duncombe estimates as parts of what they used to
4 then add in the other pieces, including adding back
5 in some of those unequalizing factors to come up with
6 a formula proposal.

7 Q. Let's be precise --

8 A. I'm trying to.

9 Q. -- if we can. The formula which is a
10 mathematical formula that you described, is that the
11 Duncombe formula?

12 A. No, it is not.

13 Q. All right. So you're talking about what the
14 LPA used when it said, here's how we'll calculate
15 what will be the expenditures in the future, the base
16 plus these weights. Is that the formula you're
17 talking about?

18 A. Right, that's not -- the formula is the
19 actual funding formula. But we can come up with a
20 name that we want to use for that so we're
21 consistent. Let's call it the LPA estimates as
22 opposed to the Duncombe estimates.

23 Q. Let's call it the LPA formula, shall we?

24 A. Let's call it the LPA estimates.

25 Q. All right.

1 A. We could go all day. I don't mean to be a
2 pain --

3 Q. We can because you're not answering the
4 question. Why is it that the formula and estimates
5 is different to you?

6 A. Because what Post Audit was still trying to
7 do is they were trying to move -- the funding formula
8 is whatever is actually adopted as the formula for
9 delivering funds to districts. In effect, LPA was
10 trying to take these statistical estimates generated
11 by Duncombe, and they were trying to move them toward
12 what could be used as a formula by taking the -- by
13 taking, you know, what were these individual
14 district-level predictions of cost, and converting it
15 into a weighting system, and putting in a high-
16 density poverty weight as opposed to using the
17 individual poverty density weights in Duncombe's own
18 estimates.

19 And then they went and looked at the average
20 expenditures in certain categories from prior years
21 to add back in these other areas like transportation,
22 like special education, and vocational. And so they,
23 in effect, built a model for what could be a formula
24 but it's still another set of estimates for what they
25 believe should be the formula.

1 Q. Now, what you have is a description of the
2 State not meeting what LPA dictated. Is this the LPA
3 as implemented, as passed statutory formula, or is it
4 something different?

5 A. I compare the LPA estimates to the formula
6 and say that the formula doesn't meet the LPA
7 estimates. But I also go in and compare the LPA
8 estimates to the original Duncombe estimates to say
9 that even the LPA estimates don't meet the original
10 Duncombe estimates, which by translation would mean
11 that the formula doesn't meet the Duncombe estimates.

12 Q. I've heard different things, and it's
13 probably just me. Which is the standard that you
14 contend the Kansas legislature adopted as its
15 constitutional standard for a suitable education?

16 A. I'm actually not contending that they've
17 adopted a standard. I'm contending that the
18 courts -- in the front end of my report -- that the
19 court said that outcomes must be a part of that
20 standard. And I'm contending that the one piece of
21 evidence on the table regarding the cost of outcomes
22 is this, kind of, sequential, the study that starts
23 with Duncombe estimates, which are used to inform a
24 Post Audit report, and that the Post Audit report
25 estimates then become, you know, one gauge for where,

1 you know, what districts need.

2 So you know, and again, up to the court
3 eventually to decide whether or not that's the
4 constitutional standard.

5 Q. The Duncombe estimates, are those what you
6 contend are the definition by the Legislature as to
7 what is suitable financing in our state?

8 A. Again, I'm not making a contention about --
9 in fact, I'm saying what is suitable is probably
10 something higher than either the Duncombe or the LPA
11 version of the Duncombe, because those rely primarily
12 on test scores with a low proficiency standard.

13 Q. So you have --

14 A. I'm not making a specific intention with
15 regard to your question.

16 Q. You told us, you told Mr. Rupe, what it was
17 the Montoy court held, what standard it applied as a
18 suitable education. Tell us again, what is that
19 standard?

20 A. I said that the Montoy court held that
21 outcomes needed to be a part of that standard, and
22 that in estimating the model as one representation of
23 that, Duncombe and LPA used outcome targets that were
24 already adopted in regulation.

25 Q. And which did they use? Did they use the

1 Duncombe estimates or did they use LPA estimates?

2 A. I'm going to have to ask you to rephrase.
3 Give more precise on that -- which did they use for
4 what?

5 Q. The LPA estimates are different than the
6 Duncombe estimates, aren't they?

7 A. They are lower for higher-poverty districts.

8 Q. And as you've described, what Montoy court
9 looked at to decide what the outcomes were, did they
10 rely on the Duncombe estimates or did they rely on
11 the LPA estimates?

12 A. We have to go back through the process
13 because here my understanding of what went on -- so
14 Duncombe comes up with these estimates. LPA comes up
15 with a variation on these estimates. The Legislature
16 adopts a formula that kind of moves toward the LPA
17 version of the estimates.

18 And as I understand it, the Court does not
19 make any declaration at that point in time that any
20 one of those pieces is the empirical manifestation of
21 constitutionality. In fact, I believe what they did
22 was simply dismiss the case and say that if anyone
23 has future -- and they dismissed it without ruling as
24 to whether or not it was constitutional and that
25 future claims could be brought. Dismissal --

1 Q. Let's look at it from another direction.
2 Which one did the Legislature adopt? You said the
3 State adopted as its standard for what is suitable
4 education, something; what is that?

5 A. I'm going to have to ask you to clarify
6 again.

7 Q. You had testified that the State in the
8 process, the Montoy process, post Montoy adopted
9 something that would be used to measure whether or
10 not there were adequate outcomes. What did they
11 adopt, as you contend?

12 A. Here's the thing, I didn't say that the
13 State -- the Division of Post Audit conducted this
14 report. They are some form of an entity of the
15 State. They were charged through the litigation and,
16 you know, I don't know exactly who issued the
17 charge. I believe it was a legislative --
18 legislation that charged them with doing this study,
19 right?

20 So legislation charged them to do this study
21 and figure out the costs, which includes the original
22 Duncombe estimates and then the, kind of, altered and
23 combined, because the Duncombe estimates only focused
24 on small piece of that puzzle. It included the
25 altered and combined -- you know, all the other

1 additional pieces added back in, and then you already
2 had the Post Audit study.

3 The next step in this process is that, you
4 know, the Legislature, you know, is going to adopt
5 some kind of formula, and it may or may not be
6 sufficiently like, or may or may not move toward what
7 was produced in that study. And that's, you know,
8 what the Court ends up having to figure. You know,
9 okay, here's this set of benchmarks estimated through
10 this study, the study was commissioned by the
11 Legislature during the process of Court oversight.

12 And so here's a set of reasonable marks we
13 have without necessarily saying that these are
14 reasonable marks, we're not saying constitutional
15 marks, but it's some basis for the judicial branch to
16 make that determination, and then the Legislature
17 adopts some reform legislation.

18 And the judicial branch has to figure out,
19 well, is it close enough; is it a good faith effort;
20 is it moving in the right direction. And it's my
21 interpretation that the Court at the time decided
22 that the -- I can't remember what the senate bill
23 name was, and then it was combined with a house bill
24 with a 549, or something to that effect, that was
25 adopted for '05/'06 or '06/'07 to start the ball

1 rolling on reform legislation.

2 But it was my interpretation that the Court
3 viewed that what the Legislature had done would move
4 the actual funding for school districts toward these
5 hypothetical cost estimates produced in the Post
6 Audit study, although the Post Audit study was
7 introduced after the fact and hadn't been vetted.
8 It's coming clearer to my head now that we're going
9 through this. The Post Audit study had not been
10 vetted for fact finding.

11 The only study that was on the record and
12 has been through a trial court was the Augenblick
13 study. So that's one of the reasons why the court
14 couldn't necessarily use those as its official target
15 and have to say that that would have to be brought as
16 a separate case go back through fact finding, which,
17 I guess, is why we're here today.

18 Q. You can't tell us today what it is that the
19 Kansas legislature has adopted as its definition of a
20 constitutionally adequate or constitutionally
21 suitable education, can you?

22 A. What the Kansas legislature has adopted as
23 its own, the last recollection I would have of the
24 Kansas legislature itself addressing language
25 regarding its own constitutional responsibility would

1 be in the charge they wrote for Augenblick study, but
2 that would be a subcommittee of the Legislature.

3 Q. And that charge, by way of statute, the
4 statute's been repealed and another statute's been
5 passed saying that the Legislature does not rely on
6 these studies. You knew that, didn't you?

7 A. I had not seen that.

8 Q. Can you tell us today then what it is the
9 Legislature has -- how the Legislature has defined
10 what is a constitutionally adequate education?

11 MR. RUPE: I just want to remind
12 Counsel of his repeated objection to that question
13 that calls for a legal conclusion. I would re-state
14 his objection at this point, that's what we're here
15 for. It's a court determination.

16 THE WITNESS: And again, I guess I
17 don't know whether --

18 MR. CHALMERS: I think they get to
19 rule.

20 THE WITNESS: Okay. I'll let them
21 rule. I'm sorry about that.

22 MR. RUPE: I assume they're going
23 to let you answer the way -- well ...

24 JUDGE THEIS: Well, you've asked
25 him that several times.

1 MR. CHALMERS: I'm not sure I ever
2 got an answer, but if you're happy --

3 JUDGE THEIS: You're not
4 necessarily supposed to like the answer.

5 MR. CHALMERS: I just want a
6 responsive answer, but I can ask a different way, or
7 go to a different approach.

8 Q. (By Mr. Chalmers) Let's see if I can do
9 this. One child, just one child does not get or does
10 not meet proficiency on an AYP test; no longer a
11 suitable education in the State? No longer
12 adequately funding? Is that your conclusion?

13 A. No, it's not.

14 Q. Two children?

15 A. See, you're failing to make the link between
16 the outcome and the funding.

17 Q. The test then is whether you provide an
18 adequate access to education, not whether or not the
19 kids are succeeding or failing in and of itself?

20 A. Adequate access to opportunity to succeed.

21 Q. The LPA standard, so when we talk about
22 that, you draw a distinction between Duncombe's cost
23 study and what the LPA then concluded in its
24 recommendations to the Legislature?

25 A. To the extent that LPA added -- LPA added in

1 different components, additional components that
2 Duncombe was unable to address in his cost analysis.
3 And therefore, there are differences in the final
4 recommendations versus the original Duncombe model
5 and estimates.

6 Q. There are bigger differences than that,
7 aren't there? For instance the LPA backed out
8 federal moneys from in its calculation and that
9 affected its weightings. You're aware of that,
10 aren't you?

11 A. Yes, LPA backed out the federal money in
12 coming to their determination.

13 Q. That explains, in large part, how it is that
14 LPA's weightings are different than what Duncombe
15 suggests in his?

16 A. Not entirely, no.

17 Q. How different is it?

18 A. Because the federal funding does not --
19 would not come close to creating the same magnitude
20 of difference that there is between the LPA final
21 estimates and the Duncombe cost estimates.

22 Q. How much federal funding was backed out?

23 A. It doesn't matter the total amount backed
24 out. It matters the distribution across higher- and
25 lower-poverty districts, and that tends to create a

1 shift in the slope across districts on the order of
2 10 to 15 percent at the most.

3 And the difference between the weights is
4 the difference between an effective weight in LPA of
5 about 30 percent as I showed in my re-analysis of
6 their estimates, even though their actual weights are
7 higher, and estimated weight of over 70 percent in
8 the Duncombe study.

9 Q. The federal moneys would go to, principally,
10 Title I schools, they would go to the kids that are
11 at-risk, wouldn't they?

12 A. That's true but they don't create that much
13 of a weight. I have it in the School Funding
14 Fairness Report Card across all states where we show
15 the amount -- if you take a system that's flat or
16 regressive, how much additional tilt do you get when
17 you put the federal money back in. And that
18 additional tilt is, in effect, the weight of the
19 federal money. Yes, Title I money would go
20 disproportionately to Kansas City, Kansas, to Topeka,
21 to other high poverty locations like Galena.

22 Q. To Wichita?

23 A. And it would go to Wichita --

24 Q. To Hutchinson?

25 A. Yes.

1 Q. To Dodge --

2 A. The districts that are named plaintiffs,
3 certainly.

4 Q. The federal money that was backed out as
5 part of the LPA study, and we'll talk about that in a
6 little greater detail in a moment, say the magnitude
7 doesn't make any difference?

8 A. It's an important amount of money, but it
9 doesn't offset the entire difference in cost between
10 the original Duncombe estimates and the final Post
11 Audit version?

12 Q. Without knowing the amount of the federal
13 money that was backed out, how are you able to assert
14 that it does not affect the distribution?

15 A. Because I've done that kind of modeling
16 across all states with the federal money many times
17 with many years of data. I know how much it tends to
18 change the tilt.

19 Q. What is the percentage of the federal money,
20 at least back when Montoy started, relative to the
21 general budget?

22 A. The percent of the federal money has ranged
23 anywhere from, like, 7 to 11 percent, and then it
24 goes higher, obviously, in the higher-poverty
25 districts.

1 Q. Do you know what it was in Kansas back then?

2 A. I don't know the exact figure for what it
3 was in Kansas back then.

4 Q. You have defined the constitutional
5 obligation to fund education in this state to not
6 permit reliance on LOB funds, is that right?

7 A. One, I haven't defined the constitutional
8 obligation. So if we can set aside that piece of
9 the -- but I have said on a couple of occasions that
10 those funds that are optional to be raised, should
11 not be considered as the guaranteed funding provided
12 by the state toward meeting the constitutional
13 obligation.

14 So yes, if they're optional, it would seem
15 strange -- that would mean a local community could
16 decide not to raise and spend those funds, and it
17 wouldn't make sense that a local community would have
18 the authority to deprive its children of a state
19 constitutional obligation.

20 Q. You're not taking the position that it's
21 unconstitutional to rely on a local option budget in
22 part of the funding of our Kansas schools?

23 A. It's -- I'm trying to get at the right
24 wording on that one. Can you try to re-word that
25 one, and I'll try to think about the right wording on

1 the response.

2 MR. RUPE: And again, calls for a
3 legal conclusion.

4 JUDGE THEIS: Sustain that. Form
5 of the question.

6 MR. RUPE: I think he can ask him
7 if he's critical of it.

8 MR. CHALMERS: Appreciate the
9 help. I'll ask the questions. That's okay. I think
10 he's sustained the objection. Appreciate it.

11 Q. The LOB money exists; I mean, it was
12 actually raised and it was spent, is that right?

13 A. That's correct.

14 Q. You ignore that in your analysis, don't you?

15 A. I ignore it as part of the -- I don't
16 actually ignore it. I actually address it. I
17 address its effect on erasing some of the
18 distributional effects of the general fund, but I do
19 not consider the LOB money as money that is
20 guaranteed to districts toward achieving whatever
21 would be the constitutional obligation, because it's
22 my understanding that it's not guaranteed to
23 districts that they would have this local option
24 money.

25 Q. The State, by its statutes, authorizes the

1 local school districts with certain taxing power, you
2 understand that?

3 A. Yes, I do.

4 Q. They give to the board of the local
5 districts the absolute right to raise the LOB to 30
6 percent of an adjusted general fund. You understand
7 that, don't you?

8 A. Yes, I do.

9 Q. Doesn't have to be an election. They can do
10 that on their own?

11 A. Who can do that?

12 Q. The local boards.

13 A. Right.

14 Q. Is that right?

15 A. That would be my understanding, but let me
16 point out that what you've got there is the state
17 granting authority to a set of local officials.
18 Let's say you got a district that's 20 percent under
19 what it would be, it's general fund is 20 percent
20 under what it would need to achieve an adequate
21 education.

22 And they have the authority to raise an LOB
23 that would get them there, but the State has set up a
24 system that allows their local board of education to
25 decide, we're not going to do that. Should the State

1 have the authority to let a local entity deprive the
2 students who happen to attend its schools of what is
3 ultimately a state constitutional obligation. That's
4 the position I'm taking on this.

5 Q. You don't think the local school board
6 members, with the input they provide, can sort out
7 whether or not additional funding is necessary?

8 A. To meet a State constitutional obligation?
9 It seems that it's the State's obligation to ensure
10 that --

11 Q. I thought you said you don't have an opinion
12 on whether it was constitutional or not?

13 A. I'm not saying -- I'm saying that if --
14 again, based on whatever the Court determines and/or
15 the Legislature determines is its obligation, it does
16 not -- simply if there exists a state constitutional
17 obligation, if one simply exists, whatever it might
18 be, does it make sense that the Legislature would
19 grant the authority for a local board of education to
20 decide they're just not going to raise that?

21 Q. Do you remember back when they passed the
22 present edition of the Kansas Constitution concerning
23 school education that was back in the mid '60s. Do
24 you remember that?

25 A. I had a great conversation with -- was it

1 Governor Avery, around that time --

2 Q. Yes or no, do you remember?

3 A. I don't remember it personally. I was one,
4 but --

5 Q. Do you remember from your study that, at
6 that point, almost all the education was provided
7 through local finance?

8 A. It was around the same time that they
9 implemented the very first statewide aid program, I
10 believe, also.

11 Q. Do you know that at that time the amount
12 that the local districts could raise was left
13 principally to the discretion of the local districts?

14 A. I understand that -- there were significant
15 variations, which, within a few years' time, led to
16 the first round of litigation over the inequities in
17 funding.

18 Q. Is it your position that when the
19 constitution was first passed, or first amended more
20 accurately, it was intended that it would invalidate
21 and make unconstitutional the present system for
22 school finance?

23 A. It certainly seems that -- you know, would
24 have had to have been a consideration, in that --
25 really, that the major change that occurred in the

1 amendment to the education articles of the Kansas
2 Constitution was a change that created a stronger
3 state governance role that's changed that among other
4 things, as I recall it, and enabled the forced
5 consolidation by creating a power that had, in
6 previous decades, been overturned by the courts.

7 Q. Well, in fact, one of the principal things
8 that happened in those amendments was a restructuring
9 where the local control of curriculum, the local
10 control of how schools are operated is kept at the
11 local level constitutionally provided for, isn't that
12 right?

13 A. That was part of it, right. Local boards of
14 education maintained a certain control over
15 educational programs and services and curriculum.

16 Q. And the language of the constitution,
17 Mr. Rupe's put it into evidence at some point, says
18 nothing about how the funding of the schools will be
19 from state money, does it?

20 A. Except that they chose to also make the
21 shift from what I believe was uniform systems clause
22 language to suitable provision for finance of the
23 educational interests of the State.

24 Q. Now, when you did your analysis and you
25 described there being a gap between the general fund

1 and the LPA funding, you pretend like there wasn't
2 any money coming from local sources, and you pretend
3 like there wasn't any money coming from federal, is
4 that right?

5 A. I'm not pretending. I'm trying to compare
6 what's guaranteed to these districts to what they're
7 supposed to be receiving, and I'm trying to make the
8 appropriate comparison based on the way the Post
9 Audit report was framed, and based on my
10 understanding of what's optional. And federal money
11 is not -- not necessarily sensical.

12 Q. You want this panel to believe, that when
13 you look at how much money Kansas City, Kansas is
14 getting based on the LPA calculation of what's
15 necessary to reach kids to a minimum education in
16 this state, that they don't have adequate money,
17 don't you?

18 A. What I'm trying to say is that the general
19 fund budget formula has not been designed in such a
20 way as to guarantee that Kansas City, Kansas will
21 have sufficient funds to achieve the desired
22 outcomes.

23 Q. So they have had sufficient funds if we
24 consider the local money and the state money, but
25 just there's no guarantee as to what might happen

1 next year?

2 A. You know, I am not necessarily comfortable
3 with the framing that they have had -- that they've
4 had sufficient money.

5 Q. We don't know unless we look at what they
6 received in state, local, and federal, and all other
7 sources, do we?

8 A. But then we actually have to go back and do
9 a thorough re-analysis of cost, embedding all of the
10 additional funds.

11 Q. Which you have not done?

12 A. I have not done a new, updated cost model
13 that bases it on all of those additional funds,
14 remembering the underlying Duncombe cost model pulls
15 out transportation, special education, which special
16 education being a sizable chunk and vocational, which
17 is a much smaller piece. And it goes back to '03/'04
18 data.

19 Q. You're not prepared here this afternoon to
20 testify under oath that the dollars that are
21 available to the school districts through this last
22 year -- so we don't worry about this guarantee aspect
23 because the money's there, it's been had, it's been
24 spent -- you're not prepared to say under oath that
25 those dollars are less than what was required under

1 the LPA study, isn't that correct?

2 A. I am comfortable with the assertion that the
3 dollars guaranteed to them through the formula are
4 not sufficient, which is the assertion I've made and
5 I have to --

6 Q. -- parse words here -- I don't want to --

7 A. You're trying to put words in my mouth.

8 Q. I am. I don't want to know about guaranteed
9 money. I want to talk about the money that was
10 actually spent. Because if it's already spent it's
11 guaranteed, isn't it?

12 A. No, because we're talking, also, about a
13 broader pot of money that has to be -- that is spent
14 on broader things beyond what was estimated in the
15 cost analysis. So we got to get apples next to
16 apples here so --

17 Q. The broader thing you're talking about,
18 principally, is the spending on kids that have
19 additional needs, that might be the kids that are in
20 a poverty setting, is that right?

21 A. Federal money would be targeted to
22 primarily -- you know, the biggest chunk of the
23 federal money is going to be Title I money, which is
24 going --

25 THE COURT REPORTER: I'm sorry I

1 didn't hear the rest of your answer.

2 A. Let's see if I can restate it.

3 Q. The LOB money, in terms of its calculation,
4 will include the weights in the system that allow
5 more money for kids that are in poverty, for kids
6 that are English as a second language, for certain
7 districts based on size and other weights, isn't that
8 right?

9 A. LOB authority, because it's a percentage of
10 general fund authority, does include those weights,
11 the extent to which LOB authority is maximized.

12 Then, yeah, if it's maximized it encompasses that.

13 Q. So the LOB authority and the federal funds
14 do take recognition of providing or making available
15 more funds to those kids that Duncombe calls out as
16 saying you need to have additional funds as part of
17 the weighting, don't they?

18 A. Thing about the LOB authority is it also
19 takes into effect all the counterbalancing weights.
20 They erase a lot of the need-based weights. So LOB
21 authority ends up being more of a break-even. And on
22 average, my analyses show that the LOB use actually
23 reduces the overall relationship between poverty and
24 funding, that if you looked at the general fund, the
25 lowest to highest poverty difference was 7.6 percent,

1 higher poverty having 7.6 percent more.

2 If you look at general fund plus LOB, it
3 came down to 2-point-something percent, meaning that
4 the LOB had a further, kind of, negating effect on
5 the poverty weighting regardless of this possibility
6 that the weightings do affect your full LOB
7 authority.

8 Q. We'll talk about that graph later on. You
9 make another point that's interesting, and that is
10 the washout of the various weightings. That's found
11 where in the Duncombe report, that you don't want to
12 wash that out?

13 A. It's not in the Duncombe report.

14 Q. It's not in the LPA report either, is it?

15 A. Not in the LPA report either.

16 Q. It's not in Duncombe's chapter in which he
17 talks about calculating -- here we go, his Chapter 3,
18 measurement of cost differentials, that he's
19 published describing how his formula works.

20 A. It's there by omission. It's not his
21 formula, but it's there by omission because he's
22 saying that it costs more in settings that have X, Y,
23 and Z pressures, by omission it doesn't cost more in
24 settings that have larger numbers of kids in new
25 facilities or districts with high-priced houses. And

1 in fact, if you dig into the details of that chapter
2 and the literature behind it, you would find a strong
3 case against those counterbalancing factors that they
4 offset, again, the competitive wage variation.

5 Q. Do you know of anything Duncombe has ever
6 written anywhere, anytime, that has talked about this
7 washout thing?

8 A. That's talked about weighting? Yeah,
9 actually --

10 Q. No, no, no. Has talked about the idea of
11 weights should not be applied to make sure that they
12 don't wash each other out?

13 A. Actually, yeah, there's a piece in 2004 --

14 Q. Tell me the name.

15 A. -- that I wrote with him about the
16 effectiveness of state weighting systems and driving
17 money. We don't probably use the phrase "washout."
18 But the whole point of the article is to compare the
19 Kansas and Texas weighting systems to see how the
20 different weighting systems in their parts and in
21 their aggregate do or don't drive more money to
22 higher-need districts --

23 Q. Point me to the name of the specific article
24 so we can get it and look at it.

25 A. Absolutely. It's called, Balancing District

1 and Student Needs -- something to that effect, if we
2 go to my vitae.

3 MR. RUPE: Give him the Exhibit
4 Number, so he ...

5 A. It is Exhibit 385. It is titled, Balancing
6 District Needs and Student Needs, the Role of the
7 Economies of Scale Adjustments in Pupil Need Weights
8 in School Finance Formulas. At the point we were
9 concerned that the oversized small district
10 adjustment, in particular in Kansas, was
11 counterbalancing the need weights in the highest need
12 districts, new and ancillary new facilities had not
13 become a big -- an issue.

14 Q. Let me talk to you --

15 MR. RUPE: What page was that on,
16 I'm sorry?

17 THE WITNESS: That is on page 7 of
18 30. So it's Baker 002972.

19 MR. RUPE: Thank you. Sorry to
20 interrupt, Counsel.

21 Q. (By Mr. Chalmers) Let me talk to you,
22 shifting gears for a second, so you are being paid --
23 you were paid a flat rate of what \$20,000 for your
24 report in this case?

25 A. That's correct.

1 Q. And how much were you paid for your
2 supplemental reports?

3 A. I'm not sure. I'm guessing they have the
4 billing. I don't know if I billed for them or not.
5 I probably did for the rebuttal.

6 Q. Similar amounts?

7 A. Oh, no, maybe a 1,000.

8 Q. And you're being paid for your time here
9 today?

10 A. Yes, I am.

11 Q. And you're being paid what?

12 A. I believe -- I'd have to go back and look at
13 the agreement, but it might have been 2,500 -- I
14 don't know -- for the full trip out.

15 Q. And you testified in this case and a number
16 of other cases, provided reports in other cases?

17 A. In a handful of cases, yes.

18 Q. I think Mr. Rupe went through them. What
19 were there, about a half dozen?

20 A. Maybe about that. I'm not sure.

21 Q. And in those cases you were paid on a
22 similar basis, I'm assuming?

23 A. Yes, in those cases, I was paid usually to
24 produce a report.

25 Q. There is a fellow whose name is James

1 O'Keefe.

2 MR. RUPE: I'd like to be heard
3 before we go into this line of questioning. I'd like
4 to be heard with an objection, Your Honor.

5 MR. CHALMERS: I'd like to finish
6 the question.

7 Q. He is affiliated with an organization or a
8 distributor of project Veritas. I think it has some
9 reputation in terms of, kind of, I'll call it gotcha
10 journalism that was used with ACORN workers a number
11 of years ago. And you were a subject of a Project
12 Veritas operation, is that right?

13 A. Yes, I was the fortunate recipient of a
14 set-up phone call and some emails.

15 Q. And you had conversations with the project
16 Veritas reporter, is that correct?

17 A. Yes, I did. I had what was -- you know,
18 what I thought was a conversation negotiating to
19 discuss the possibility of doing some studies of Ohio
20 teacher labor markets. He started about talking
21 about whether I'd do studies of whether unions are
22 good or bad. I said I don't know how one would even
23 do that study. And we talked about a number of
24 things.

25 MR. RUPE: Well, hang on, because

1 part of my objection is this goes to hearsay, unless
2 you intend to bring Mr. O'Keefe here so I can cross-
3 examine him, we're about to get a whole raff of
4 speculation and slurs that have nothing to do with
5 anything that is admissible.

6 It is all hearsay, Your Honor.
7 He's got it set up where I think he's going to try to
8 play a videotape of O'Keefe or O'Keefe's editor. And
9 this is all collateral issues. It's inadmissible
10 hearsay because I can't cross-examine the person who
11 is saying all these things, whatever they are, about
12 this witness. Number two, I don't see anything by
13 way of video on your exhibit list. And there's more,
14 so I'd object.

15 JUDGE THEIS: Mr. Chalmers.

16 MR. CHALMERS: I'm not sure what
17 he's objected to at this point. I just asked him if
18 he had a conversation with an individual at Project
19 Veritas and --

20 MR. RUPE: And he said, yes, and
21 started to recount the conversation when I jumped up
22 to object.

23 MR. CHALMERS: That's okay. I
24 don't want him -- he tends to add a lot of things.

25 Q. (By Mr. Chalmers) I just need to ask, you

1 had a conversation, is that right?

2 A. Yeah, I had a conversation --

3 JUDGE THEIS: The inquiry is --
4 where are you going? What's the --

5 MR. CHALMERS: Where I'm going is
6 he made certain statements. I think he'll identify
7 those statements. And the statements, I think, are
8 impeachment testimony, and that's what I'll present.

9 MR. RUPE: And it's all
10 irrelevant. Until and unless he can establish some
11 relevance to it, it is nothing more than inadmissible
12 hearsay as to what the other folks say, which I'm
13 going to be forced to go there and elicit hearsay if
14 he gives us part of the story.

15 Number two, I assume he's about to
16 play a video of an interview, and that has not been
17 marked as an exhibit in this case and is not
18 impeachment of anything. What is he impeaching this
19 witness on? What has this witness said that calls
20 for this -- for lack of a better description, garbage
21 journalism splashed before the court. I don't know
22 what he's trying to impeach.

23 MR. CHALMERS: You haven't heard
24 what my questions are either.

25 JUDGE THEIS: By video, are you

1 seeing a one-sided video or of a conversation with
2 your witness?

3 MR. CHALMERS: What I'd be happy to
4 do, Your Honor, what I plan on doing is playing a
5 portion of a video that has a voice of this witness
6 and questions and transcript of what's said, you can
7 compare it, and that's all I want to show.

8 JUDGE FLEMING: If you ask him to
9 make certain admissions that are on the video, do you
10 need to play the video, assuming he answers them the
11 way you recall the hearing?

12 MR. CHALMERS: I think I need to
13 make sure that I get the language correct on the
14 video, but I can do that and then we'll see.

15 MR. RUPE: I still make the
16 objection this is a collateral issue. It is
17 hearsay. I don't have an opportunity to examine
18 O'Keefe. It's, by counsel's own statement parsed.
19 So under 60-422, I'm not going to be able to get the
20 complete picture unless I weighed into hearsay. And
21 I think it's all just absolutely collateral, and like
22 I said, circus journalism that is not relevant here.

23 JUDGE THEIS: If your witness
24 admits things and it's going to be played on a video
25 in which your witness is a part of the thing, it

1 would be -- it would be what it is. The question in
2 my mind is whether that should have been disclosed to
3 you.

4 MR. RUPE: Well, certainly what
5 my -- what Bruce Baker says on the video, because
6 he's subject to cross-examination, is certainly not
7 hearsay. But it's an interview.

8 And so we have somebody
9 representing information on the tape who I cannot
10 cross-examine. And boy, would I love to cross-
11 examine O'Keefe on this deal. O'Keefe himself is
12 under investigation for fraud charges, and there's
13 plenty I can say about him.

14 JUDGE THEIS: I assume your witness
15 is going to say it's either you know what, or it's
16 correct --

17 MR. RUPE: Well --

18 JUDGE THEIS: There's only one
19 person answering the question. Questions don't
20 count, you know.

21 MR. RUPE: When those questions
22 contain information, it does count. It is hearsay.

23 JUDGE THEIS: Not unless it's
24 admitted, then it's just a question.

25 MR. RUPE: I'm not going to argue

1 with you, Your Honor.

2 JUDGE THEIS: Poor John Popkins is
3 deceased or I'd bring him in.

4 MR. CHALMERS: Here's how I propose
5 to proceed. Mr. Rupe is making a lot of objections
6 to questions that haven't been asked. What I propose
7 to do is ask the witness if he made certain
8 statements.

9 MR. RUPE: Did you ever disclose
10 this video to us,

11 MR. CHALMERS: I don't think I have
12 to disclose impeachment evidence, Counsel. That's
13 what the case management order and that's what the
14 pretrial order says --

15 MR. RUPE: Just tell us what you're
16 impeaching.

17 MR. CHALMERS: What I'd like to do
18 is ask some questions. Do you mind?

19 JUDGE THEIS: We'll hear the
20 questions. Let's hear the questions before we see
21 the video.

22 MR. CHALMERS: What I'm trying to
23 do is get to the exact language because I don't want
24 Mr. Rupe to be ...

25 MR. RUPE: For the record, note he

1 didn't finish that sentence as to what he didn't want
2 me to be.

3 MR. CHALMERS: I don't want you to
4 be upset.

5 JUDGE FLEMING: I think you're too
6 late. He already is.

7 MR. CHALMERS: Try not to get him
8 upset.

9 Q. (By Mr. Chalmers) Here's what I want to
10 begin with, the conversation had to do with
11 potentially providing testimony about Ohio. And you
12 indicated that you thought that the fee might be, to
13 give them the report that they wanted, somewhere
14 between 30 and \$50,000, is that right?

15 A. That's incorrect. That's one place where
16 they spliced the video in an awkward way. When we
17 were talking about doing reports related to -- for
18 example -- I was having to give them for examples,
19 because they didn't -- the person calling me
20 didn't -- most of the four examples aren't on the
21 short version of the video. So I had said, for
22 example, I could do a two- to three-page brief
23 regarding whether or not teachers in Ohio are paid a
24 competitive wage.

25 JUDGE FLEMING: Time out. We're

1 going to take a break so you can get your questions
2 from the --

3 JUDGE THEIS: Mr. Chalmers, show
4 Mr. Rupe the video, if you would.

5 MR. CHALMERS: Sure. Do you want
6 to just see the parts I'm going to play, Alan, or the
7 whole thing?

8 MR. RUPE: I want to see the parts
9 you're going to watch.

10 JUDGE THEIS: How long is your
11 video?

12 MR. CHALMERS: About 30 seconds.

13 JUDGE THEIS: 30 seconds. Good.
14 We'll take 20, and come back 15 to 10 'til, somewhere
15 in between. I was hoping for a half-hour series.

16 (A recess was taken.)

17 JUDGE THEIS: Be seated thank you.
18 Where do we stand here.

19 MR. RUPE: I continue my objection
20 on the grounds that it's not relevant, it's not
21 impeachment and all the other grounds that I
22 previously stated.

23 JUDGE THEIS: What's the format,
24 Mr. Rupe, for the interview?

25 MR. RUPE: He's just playing parsed

1 clips of a hour-long conversation that Bruce had with
2 the reporter, and he's playing about 45 seconds worth
3 of those parsed clips.

4 JUDGE THEIS: Is there any question
5 about the authenticity?

6 MR. RUPE: Huge question about the
7 whether the clips have been edited. In other words,
8 there are cuts in the quotes in, as Bruce will
9 probably have to explain, what he said in the entire
10 interview. And that will entail what the interviewer
11 asked, as well, and that's when we get into the
12 hearsay part of this.

13 But I don't see it as impeachment.
14 I don't see it being identified. He's known about
15 Bruce testifying for some time. And if it's not
16 impeachment then it's disclosed here in the middle of
17 trial.

18 JUDGE THEIS: Your turn.

19 MR. CHALMERS: I'm going to ask him
20 questions that are relevant to bias, relevant to how
21 he conducts his studies. And he'll either admit he
22 said it or if he won't. If he doesn't admit he said
23 it, then I plan on playing and asking him to identify
24 a voice as him.

25 JUDGE THEIS: If you viewed the

1 whole video, would that cure the authenticity
2 questions?

3 MR. RUPE: No, because the whole
4 thing was segmented. And under the rule of
5 completeness, we don't see the entire thing. Bruce
6 can explain it in response, which I guess he'll have
7 to do. But again, I don't know what it impeaches.
8 And by the way, Your Honor, the whole video, I'm
9 told, is not available.

10 JUDGE THEIS: Mr. Chalmers, do you
11 anticipate during your questions or whatever that you
12 would ask him a request and his response would be,
13 that's not the complete interview, or that's not what
14 I said?

15 MR. CHALMERS: Well, if he says --
16 I guess I don't know if he'll say, that's not what I
17 said. I mean, I would then ask him to listen to the
18 tape and identify his voice. As to the complete
19 interview, that's something that Mr. Rupe has thrown
20 out that's really not relevant to the questions I'm
21 asking.

22 JUDGE THEIS: Well --

23 MR. CHALMERS: It's based on the
24 discreet answers that he's given and what he
25 volunteered frankly at one point, had nothing to do

1 with the context of the interview. I don't have any
2 problem with seeing the whole tape that I have. But
3 what I was trying to do was avoid what I think is the
4 gotcha journalism and getting to the heart of what's
5 appropriate.

6 JUDGE THEIS: Well, the view here
7 is if there's some question about the video as to its
8 authenticity or it's completeness or whether he's not
9 going to be able to rebut what was said by reference
10 to the rest of the video, or whether it was actually
11 dubbed or something else, then that goes to the very
12 foundation of that video itself, and it can never
13 be -- it can't be challenged because there's been no
14 foundation laid, and we wouldn't be in a position to
15 judge the credibility of the document.

16 And if that's going to be the case,
17 then we're probably not interested because it
18 wouldn't be admissible. But if you want to ask him
19 questions and what he admits, he admits, but what he
20 doesn't, I don't think, absent some way to
21 authenticate the video and its completeness and its
22 accuracy, some way to test that or judge it, I don't
23 think we ought to be hearing it -- in as a rebuttal
24 piece, put it that way.

25 MR. CHALMERS: I appreciate your

1 ruling, Your Honor, and I understand what you're
2 saying. I've been trying to lay foundation is all
3 I'm trying to do at this point. I don't know whether
4 I've laid it or not. I don't know what Mr. Baker
5 will say.

6 JUDGE THEIS: Let's hear what he
7 says.

8 Q. (By Mr. Chalmers) Mr. Baker, before the
9 break we mentioned that you, at some point, were
10 taken out of context in terms of a statement that
11 your fee would be 30 or 50,000. But what you
12 indicated was that, typically, what I like to do is I
13 like to -- we figure out the outline and then we
14 expect what would be found in that outline, but I
15 tend not to want to ink any deal until I've played
16 around with the data enough to know that what -- or
17 that what I'm going to find. Sometime's "that's"
18 cropped because I think that's casual conversation.

19 But that's what you said to him, isn't it?

20 A. Those are pieces snipped together of me
21 explaining to the person. Now, the 30 to 50,000
22 comes from a totally separate part of the
23 conversation. It was interesting, it was a long,
24 kind of, funky conversation with a guy phrasing
25 things back to me in weird ways, trying to get an odd

1 response --

2 Q. I'm trying to focus on --

3 A. Focusing on that part.

4 Q. I just want to know if you made the
5 statement, typically, what I like to do is I like to,
6 kind of, we figure out the outline and what we expect
7 would be found in that outline, but I tend not to
8 want to ink any deal until I've played around with
9 the data enough to know that -- what I'm going to
10 find?

11 A. That was an attempt to re-explain to this
12 person, after a rephrasing back to me, about setting
13 up a deal to write a set of policy briefs around the
14 topic. And I had suggested to him -- and I do use
15 the word "play with data" because that's what -- when
16 we do statistics, we do a lot of playing around with
17 data to see if they, for example, support the
18 contention to be made.

19 You know, clearly I wouldn't be here today
20 to support certain arguments if I hadn't actually
21 looked at the data to see that the data actually do
22 support those arguments. And that is, in fact, what
23 I was explaining to the caller who represented
24 himself that this was a private call from a person
25 from the Ohio Education Union asking me to write

1 reports on their behalf.

2 And certainly I would look at data to figure
3 out if the claim you think you're making is even a
4 valid claim. And if it is -- because these data are
5 readily available -- in fact, the wage data, to which
6 I'm referring there, are actually discussed in this
7 report -- you know, if that was the case, I would
8 consider writing a report for him.

9 I don't know where, you know, some of the
10 language around that came in with the back and forth
11 and this really, kind of, odd conversation. But yes,
12 I would -- I had said it probably in those words. I
13 assume that's the way it plays out on the clip. I
14 don't know if there are breaks in that particular
15 clip. I'd have to go back, you know, myself and
16 figure out, you know, where the breaks are, what
17 doesn't line up with the other pieces but, yeah.

18 Q. You said it?

19 A. I have no problem with that, yeah.

20 Q. And you said, because I'm not going
21 outside -- you know, I'm not going to stretch
22 anything, but I'm also -- also, I'm not going to ink
23 a deal with you and have the risk that I create your
24 nightmare scenario. Did you say that?

25 A. That was in response to him -- that was a

1 re-wording back to him about a supposed nightmare
2 scenario. But what I said to him was that, again, I
3 would look at the data to see if they support what
4 you're arguing, and I'd be willing to write a report
5 for you if it supports you -- but I'm not going to
6 arrange to write this report for you in support of,
7 you know -- in part, so I retain the ability to go
8 and use the data myself.

9 If I write a report and it disagrees with
10 him and he actually paid me for that report, he then
11 has this latitude to bury the finding. But if I look
12 preliminarily at the data and he finds it
13 disagreeable -- so I'm kind of exploring in this
14 conversation with someone who seems rather kind of
15 odd.

16 I'm trying to figure out what he's up to and
17 eventually, in a series of a couple of emails after
18 that, I decide, you know, this is not someone -- by
19 the end of phone conversation, I said, this is not
20 really someone I want to do business with anyway.
21 But you know, I'm not going to try to offend him in
22 the middle of a conversations, so ...

23 Q. Did you say, yeah, no, that's just a better
24 way to work because then, you know, you're just in a
25 better position on the sensibility of the analysis?

1 A. That specifically -- that would be a correct
2 phrase thrown in the context that you're in a better
3 position if we know we are absolutely confident that
4 the data support what it is that you think you want
5 to say. If the most conservative -- and I had, in
6 fact, explained to him that, you know, if they're
7 trying to say that Ohio teachers are not paid
8 competitively with respect to other workers in the
9 state, that has to be -- you know, and if it's coming
10 from them, if their union officials, they have to
11 express the most conservative version of that
12 estimate. They can't stretch. They can't try to do
13 a type of analysis that would exaggerate the
14 underpayment of teachers because certainly as union
15 officials they'd be called on it right away.

16 Q. Did you make the statement that I just read?

17 A. That is a statement that's certainly chopped
18 out of its entire context, but those words probably
19 do come out of my mouth on there.

20 Q. Did you make the statement, yeah, yeah, or
21 we -- and you know, you got to look at any kind of
22 analysis as being kind of modular, that there are a
23 number of different types of questions you can look
24 at and you can pull things in and out of that
25 structure?

1 A. Well, you can decide to ask about teacher
2 wages, and explaining that very, kind of, ambiguous
3 phrasing that I'm using in that clip, you know, you
4 can decide that you want to ask about whether teacher
5 wages are competitive. You can decide that you want
6 to ask whether large urban districts have fewer
7 resources per pupil than other districts in Ohio.
8 The answer to that one is actually -- is no, it would
9 not behoove them to ask that question. And yeah, I
10 was trying to explain there are many questions you
11 can ask.

12 Q. Did you say, I know, say, well, let's look
13 at it instead -- let's look at that instead, let's,
14 you know, figure out exactly, you know, what are the
15 pieces that are going to come together to tell the
16 most compelling story for Ohio?

17 A. Well, what are the questions that could be
18 asked. Again, those are my words. But what are the
19 questions that could be asked that would be of
20 interest to however this person, kind of, framed
21 themselves as a caller.

22 Q. In this case --

23 MR. RUPE: Let me move to strike
24 all of that for all the reasons I stated including
25 there is nothing impeachable in there.

1 JUDGE THEIS: Overruled.

2 Q. (By Mr. Chalmers) In this case you did not
3 do a cost function analysis, did you?

4 A. I didn't do anything -- what, in this
5 particular -- which case are you talking about?

6 Q. In the case that brings us here this
7 afternoon, the Gannon v. the State of Kansas case.

8 A. No, I did not.

9 Q. Nor did you do a production function
10 analysis, did you?

11 A. I did not do an outright production
12 function, though I did do some examples of richer
13 production functions than those provided by Podgursky
14 and Hanushek in my rebuttal to them to show how when
15 you add some relevant variables, it changes the
16 picture.

17 Q. You did not do an analysis of districts that
18 receive too much money to figure out what districts
19 those are?

20 A. No, I did not do an analysis of which
21 districts receive too much money --

22 Q. You assume that they exist, but you haven't
23 tried to figure out the global number in terms of
24 money they received, is that right?

25 A. I did not calculate the total, you know,

1 amount of money going to districts that have more
2 than what would be their Post Audit targets.

3 Q. And you've told me that you have not looked
4 at whether or not the gap has been closed between
5 the -- what the LPA test, or estimate I think was
6 your words, would describe should be the funding
7 level, and what the funding levels actually were with
8 state money, local money, and federal money?

9 A. That is correct, I did not do the comparison
10 in the way that you phrased for the reasons I
11 explained earlier.

12 Q. You did not look at the accreditation
13 requirements in Kansas, did you?

14 A. I did not look at the accreditation
15 requirements.

16 Q. You did not consider the safe harbor
17 provisions in the accreditation requirements
18 concerning testing, did you?

19 A. No, I did not.

20 Q. You did not do an analysis to determine
21 whether or not the QPA the quality -- let's see
22 here --

23 MR. RUPE: Performance.

24 Q. -- performance and achievement is positively
25 or negatively affected by funding increases, did

1 you?

2 A. I did not look specifically at QPA in
3 relation to funding increases.

4 Q. In fact, in the Montoy trial you testified
5 you can't conceive how to statistically test whether
6 QPA positively effects students, didn't you?

7 A. I'd have to hear, you know, again, exactly,
8 probably. You have the quote? Maybe I'd hear what I
9 said.

10 Q. I have the transcript, if you want to. Do
11 you remember saying it one way or the other?

12 A. I can envision having said something to the
13 effect -- can you read that question back to me?

14 Q. You testified you cannot conceive how to
15 statistically test whether QPA positively effects
16 students?

17 A. Right, whether the accountability structure
18 of QPA itself has positive effects on student outcome
19 gains, yeah, it would be very difficult to figure out
20 how to test that, given how many intervening factors
21 there are. So I would still agree with that
22 statement. I'm assuming that's what I meant then.

23 Q. You did not look at individual district
24 outputs in your analysis, did you?

25 A. Individual district outputs?

1 Q. Yes.

2 A. That's in many pages of my analyses.

3 Q. Or individual student outputs?

4 A. I did not look at individual student
5 outputs, no.

6 Q. Did you analyze, in connection with this
7 case, how the individual plaintiff districts are
8 performing as far as their outputs in school?

9 A. They are included in my statewide analyses
10 of district outputs.

11 Q. And maybe you misunderstood the question,
12 but your answer at page 112, line 10, of your
13 deposition in this case was, I didn't look at
14 individual districts, I didn't have the student-level
15 data to look at individual students?

16 A. This is -- okay, you're saying -- I
17 included -- so this is a context thing with the
18 question. I included all district outcomes in
19 several graphs in my report. Now, did I then probe
20 into individual district outcomes, which I believe is
21 the response to the question you're asking there in
22 the deposition? No, I did not look into individual
23 district outcomes, nor did I have available
24 individual student level data to be able to probe
25 into student level outcomes.

1 Q. Well, you looked at data on outputs or
2 outcomes, it was disaggregated and statewide, is that
3 correct?

4 A. It was aggregated to the district level.
5 The output data that I have appear -- one, I have
6 those accountability status charts, which includes
7 outcome information. But then I also have, in
8 Section 4.2 of Exhibit 384, district level outcomes
9 on 3rd grade reading, 11th grade reading, 8th grade
10 reading, so I have aggregated district-level outcome
11 measures, yes.

12 Q. You did not do an intra-district analysis?

13 A. I did not do any within-district analysis.

14 Q. As you didn't look at how one school is
15 doing as opposed to another, for instance, Sumner
16 High School in Wyandotte County versus Wyandotte
17 High?

18 A. No, I did not.

19 Q. You did not parse out why any particular
20 district is failing to meet AYP, did you?

21 A. Why any individual district is failing to
22 meet AYP. I did not explore, you know, for
23 individual districts, what was going on with their
24 AYP status, but I did relate outcomes to funding
25 deficits.

1 Q. When you did your analysis on the districts
2 who either failed to meet AYP for a number of years
3 or a lesser number of years, did you look at what why
4 they were failing to meet AYP?

5 A. What was the basis for the their AYP
6 failure? I did not parse that, no.

7 Q. Did you look at information that shows what
8 cuts have taken place in school services?

9 A. I did not look at cuts to individual
10 district's services.

11 Q. You did not peg Kansas' ability to raise
12 taxes or revenue to particular targeted billions, did
13 you?

14 A. I did not.

15 Q. You didn't estimate the tax increases
16 necessary to generate a billion dollars or so, did
17 you?

18 A. I did not.

19 Q. When your deposition was taken, you did not
20 remember the aggregate amount of the annual K-12
21 spending in Kansas. Do you now know what the
22 aggregate amount is?

23 A. Off the top of my head, no, I actually
24 don't.

25 Q. Do you know the percentage of the Kansas

1 budget that goes to education, that is the state
2 budget, as opposed to other services?

3 A. The percent of the total state general
4 fund -- again, I don't have a number off the top of
5 my head, so rephrasing is ...

6 Q. You have not or had not looked at the size
7 of the Kansas pie, that is, how much money Kansas has
8 to spend, and the probability of cuts if more money
9 has been spent on education, did you?

10 A. I tend to evaluate that in terms of capacity
11 not in terms of the choice to raise the taxes to have
12 a certain size budget, so no, I did not look at
13 that.

14 Q. You had not read the Learning Network
15 analysis for each of the Plaintiffs' districts, have
16 you?

17 A. No, I haven't.

18 Q. You did not study in detail how the Kansas
19 assessment test was developed, have you?

20 A. No, I have not, you know, reviewed materials
21 on the development of Kansas assessments. I've
22 looked at, you know, what validity tests they've run
23 over time.

24 Q. You've not evaluated the contents of the
25 standards that are used on the present Kansas

1 assessment test, have you?

2 A. No, I haven't.

3 Q. Or the alignment of the testing to those
4 standards?

5 A. No, I haven't.

6 Q. Or anything of the things that go into
7 testing the design of a Kansas assessment test?

8 A. Into the design and content and standards
9 setting, no, but I've externally evaluated the
10 relationship of those standards to other
11 assessments.

12 Q. You don't know whether or not the Kansas
13 assessment was peer reviewed or federal reviewed
14 before it was put in place?

15 A. I expect it was -- it was both, but I've not
16 necessarily concerned myself with that for purposes
17 of my analyses.

18 Q. You didn't study to what degree Kansas
19 teachers are moving to one state or another, have
20 you?

21 A. I lacked the data to be able to do that. I
22 would have loved to have done that --

23 Q. You didn't study to what degree the Kansas
24 teachers were going from one district to another in
25 Kansas, did you?

1 A. I lacked the additional data and the time to
2 conduct a teacher mobility analysis, but that is one
3 I would have certainly liked to have done.

4 Q. You also didn't look at or study the degree
5 to which Kansas teachers are leaving the profession,
6 is that correct?

7 A. No, I didn't.

8 Q. You have not looked at the pattern of
9 teacher dismissals or teachers qualifications or
10 experience of those which were cut in the time
11 period?

12 A. No, I haven't.

13 Q. Shown on Mr. Rupe's graph?

14 A. You're saying I have not evaluated the
15 qualifications of teachers who were cut during the
16 time period of staffing reductions due to fiscal
17 cuts?

18 Q. Exhibit 233, Mr. Rupe has shown on a number
19 of occasions, talking about reductions of the base.
20 And you didn't look at, those folks that were cut,
21 what their qualifications or lack of qualifications
22 were?

23 A. No, I did not.

24 Q. Talked about mapping test scores, and I
25 don't think we need to spend a great deal of time on

1 it, but basically, your testimony relies on
2 Plaintiffs' Exhibit 86, which is the mapping of state
3 proficiency standards into the NEAP scales. Is that
4 right?

5 A. Yes, that's correct, I relied on that
6 document.

7 Q. You didn't independently evaluate or map the
8 various assessment scores, did you?

9 A. No, I did not.

10 Q. The strength of your testimony on this point
11 then rises and falls on the strength of this
12 evaluation, is that correct?

13 A. Specifically, my testimony as to how
14 Kansas -- how Kansas standards align with NEAP cut
15 scores is based on the approach that was used in that
16 report for evaluating that alignment.

17 Q. Now, if I wanted to figure out the answer to
18 the question that your former students asked, and
19 that is, how do I compare Kansas kids to Missouri
20 kids, well, one way to do that would be to see how
21 they perform on the same test, wouldn't it?

22 A. That's a subtly different question, though.
23 Their original assertion being based on how they did
24 on their different tests was that the Kansas kids,
25 you know, were much better than Missouri kids. But

1 that's -- you know, the question, Kansas kids could
2 still be better than Missouri kids on the same
3 assessment but not as much better as it would appear
4 when you compare them on different assessments.

5 So yeah, comparing them on the same
6 assessment would answer better how Kansas kids and
7 Missouri kids compare. And I believe Kansas NEAP
8 scores are higher than Missouri NEAP scores. But if
9 you compare them on their state tests, it looks like
10 Missouri kids are way down at the bottom and Kansas
11 kids are way up at the top.

12 Q. You acknowledge that Kansas NEAP scores are
13 higher than Missouri scores?

14 A. As I understand it, yeah --

15 Q. You acknowledge --

16 A. It's a different demography.

17 Q. -- the Kansas test scores are probably in --
18 we saw some exhibits the other day -- in the top ten
19 percent of the country on the NEAP test --

20 A. Some are that high. Others are, kind of,
21 more in the above average category. So some are
22 quite high and others are relatively above-average.
23 Kansas scores are pretty good.

24 Q. If you want to know how somebody's
25 performing on the NEAP test, probably best to go

1 ahead and have them take that test, isn't it?

2 A. That not being the point of what I was
3 looking at in my report, but you could compare the
4 average scores of Kansas kids on NEAP to the average
5 scores of totally different kids in another state on
6 NEAP, and see that there are differences in those
7 average scores. It's a common test. That's the
8 point of the test.

9 Q. What this mapping study attempts to do is
10 describe what the probability is as to how well a
11 Kansas kid will do on a NEAP test as opposed to how
12 well a kid in Missouri will do on the NEAP test?

13 A. It tries to determine -- if you've got a
14 school where 50 percent of the kids are proficient on
15 the state test, what percent of the those same kids
16 do we expect to be proficient on NEAP. It tries to
17 determine which states have, kind of, stronger or
18 weaker proficiency standards with respect to NEAP.

19 So you might see that a school that's got 50
20 percent proficient on their own state assessment in
21 Kansas only has -- that might have, like, 30 percent
22 proficient on NEAP. You might look in Missouri and
23 see that a school as 30 percent proficient on their
24 own scores, also had 30 percent proficient on NEAP,
25 meaning that those two schools on a common assessment

1 are actually the same, but that the relative rigor of
2 the assessments in the two different states makes it
3 look like the Kansas schools are better.

4 Again, it's like, you know, having the
5 teacher --

6 Q. Turns out the Kansas kids are doing better
7 on the tests --

8 A. On average they are, but the state test
9 results don't display that correctly because the
10 Kansas standards are lower with respect to NEAP than
11 the Missouri standards, so yeah --

12 Q. The Kansas scores are higher on the NEAP
13 test?

14 A. On average, yes, the NEAP Kansas scores are
15 higher than the NEAP Missouri scores. We don't have
16 an argument on that point at all.

17 Q. Let me hand you --

18 A. We have an argument on the meaning of it --

19 Q. -- what's been marked as Plaintiffs' Exhibit
20 233, or show it to you. And what this shows, or is
21 purporting to represent is what the base amount is
22 over time starting in '93 through Fiscal Year 2013.
23 And I don't know if that's adjusted for inflation or
24 not, doesn't make importance to me.

25 I want to talk to you about this little

1 section for a moment. This graph -- or excuse me,
2 this chart, Exhibit 233, doesn't really tell us what
3 the amount of spending is by the State, does it?

4 A. No, it tells us what one of the key
5 underlying drivers of the amount of spending is.

6 Q. Now, not talking about federal; not talking
7 about local; just talking about state money through
8 the general fund. The general fund in 2009 Fiscal
9 Year, as opposed to Fiscal Year 2010, we can't tell
10 from this chart whether the general fund went down,
11 went up, can you?

12 A. From '09 to '10, whether in the aggregate,
13 or per pupil, what --

14 Q. In the aggregate?

15 A. No, we can't. That would be harder to tell
16 even in per pupil in that graph, yeah.

17 Q. Here's how the statute works -- I think
18 you'll agree with me -- and that is that there is a
19 base number called out in the statute, and then it
20 says in the statutory language, but the base will be
21 based upon whatever we appropriate. And so if it's
22 appropriated less than what gets to the statutory
23 number, then you work to that base, right?

24 Now, the reason that you could appropriate
25 the same amount or even more -- but if the

1 demographics change, where you've got more kids that
2 are weighted or they change where you got more kids,
3 then you could end up having a different base amount,
4 is that right?

5 A. Okay. I'm going to have to ask you go back
6 through that. But you're saying the base could be
7 downward adjusted because the available --

8 Q. The base is a calculation, if it's not the
9 statutory amount, based on the number of kids --

10 A. Right.

11 Q. -- and based on their demographics?

12 A. Right, and based on the available money to
13 fund those kids, so that if that available money is
14 less than what was originally projected and has to be
15 divided across A, those kids, as actual warm bodies,
16 and those kids weights, the backed-out base, as a
17 result of the under-appropriation, could be lower
18 than the initial nominal base, that's true.

19 Q. Point being that we can't tell from this
20 chart whether or not the demographics, that is more
21 kids, the weightings, which would include the
22 demographics, that is the type of the kids, explains
23 why the base went down or whether it was a reduction
24 in appropriations?

25 A. This chart doesn't include the additional

1 pieces needed to tease out what I think you're trying
2 to phrase there.

3 Q. I have it up here from your report, which is
4 Exhibit 199, I believe. We can double check for the
5 record.

6 MS. GARNER: 199 is the LPA study.

7 Q. I'm sorry, it's 384. And at page 59,
8 there's a reference to an R-squared predictability.
9 What is an R-squared predictability?

10 A. Okay, the R-squared tells us -- so what we
11 have here is these are regression analyses. And in
12 this first column, it's a regression analysis that
13 predicts how the Post Audit estimates would vary
14 across districts, and what are the predictors of the
15 variation in the Post Audit estimates.

16 And if we use a regional wage adjustment
17 factor developed by the National Center for
18 Education --

19 Q. I'm going to interrupt you because I really
20 just want to know what R-squared is. We're going to
21 come back. What does R-squared predictability mean?

22 A. It means what is the percent of the
23 variation in that dependent variable that is
24 explained by these other variables that I've used in
25 the regression model.

1 Q. So if you've got a .71, that would indicate
2 that there is a .29 that's not explained by the
3 regression model?

4 A. Which, in this type of model, that would be
5 a relatively small amount left unexplained.

6 Q. And .5, so we understand what an R is, is
7 half of it is explained, half of it is not?

8 A. Right, and in fact that would be inequitable
9 variation that's simply not explained by the things
10 that should be explaining the variation in spending.
11 So in fact, the remaining --

12 Q. I just want to get a definition of how that
13 works. Now I want to talk to you about the methods
14 that have been used to try to calculate the cost of
15 education, and I want know if you agree with the
16 following statement: "We find a broad consensus
17 among scholars that the cost of achieving any given
18 level of student performance is higher in some
19 districts than in others because of, one, differences
20 in compensation needed to attract school personnel,
21 two, differences in enrollment size, and three,
22 differences in concentration of disadvantaged
23 students or those with special educational needs."

24 "We do not find that consensus, however, on
25 the magnitude of these cost differences or the best

1 methods for estimating them. Indeed, we observe an
2 active literature with many different approaches to
3 estimating costs and a lively debate about the
4 strengths and weaknesses of each approach."

5 Do you agree with that statement?

6 A. I generally agree with that statement, that
7 being from a book chapter written by William Duncombe
8 and John Yinger; very good chapter.

9 Q. In this state, between the Augenblick &
10 Myers and the LPA studies, there were four different
11 attempts to calculate what the cost would be to
12 provide the educational outputs that the studies
13 found were targeted, is that correct?

14 A. There were a number of different estimates
15 provided at different points in time considering
16 different components of the pictures, some being more
17 inclusive than others, so they're not all apples and
18 apples.

19 Q. Augenblick & Myers had two approaches they
20 used?

21 A. Right, they did some successful schools
22 analysis as well as some professional judgment
23 analysis.

24 Q. Then the LPA study, as you point out, has an
25 input as well as an output element to it so it has

1 two different ways of looking at the cost, is that
2 correct?

3 A. Right, but then within the output side, they
4 have the original Duncombe estimates and then they
5 have the Post Audit additions and changes.

6 Q. So we've got four different ways that it was
7 viewed?

8 A. We have a number of different ways that it
9 was viewed, yes.

10 Q. None of them came out to the same number,
11 did they?

12 A. The Augenblick estimates and the Duncombe
13 estimates came out very highly correlated, and I
14 didn't put it in this testimony, but I referred to it
15 before that in terms of which districts had greater
16 needs and which districts had lesser needs and how
17 much more those needs were.

18 Q. We can pull out the documents, but the
19 numbers were different in all four weren't they?

20 A. The numbers were from different time frames
21 and inclusive of different components of budgeting.

22 Q. The professional judgment approach, let's
23 talk about that for a second. Under the professional
24 judgment approach, there are certain panels, or a
25 panel, of what experts in, quote, professionals are

1 brought in. And they're asked their views of what's
2 necessary to reach certain outputs, and then a
3 costing is done on the -- costing out is done of what
4 they find is necessary. That's it in a nutshell,
5 isn't it?

6 A. Yeah, that's -- more or less. They're
7 providing -- these panels are provided -- it's
8 different panels, the way they capture the
9 differences across different school districts is to
10 say, we have a panel of people from very small
11 districts from mid size to large districts who are
12 more -- from higher-need and lower-need districts who
13 may be more or less familiar with the different --
14 and it's back to those resources I talked about
15 earlier, that people, space, stuff, and time it takes
16 to get the job done.

17 And they're also provided the hypothetical
18 targets of what is the job they're supposed to get
19 done, what are the outcomes they are supposed to
20 achieve in these different settings. And they
21 propose a mix of resources. And then the people
22 running the project assigned price figures to those,
23 what are the wages for this number of teachers, and
24 they determine cost from that.

25 Q. They work up a hypothesis based on opinions

1 of these collective professions?

2 A. That's more or less how I would describe it,
3 as I certainly have described it, as they are
4 generating a hypothesis of what is needed to achieve
5 these outcomes under these circumstances with these
6 kids.

7 Q. The approach does not test between resources
8 and outcomes, does it?

9 A. A professional judgment approach doesn't
10 actually attempt to look at the statistical
11 relationship between how much is spent and what is
12 accomplished.

13 Q. In some cases, bias can come out in a
14 professional judgment process, is that right?

15 A. You know, panel members bring into their
16 panels, you know, whatever backgrounds and knowledge
17 of experiences of what needs to go into a school, and
18 whether it works or not, and what we've generally
19 found is that there is limited knowledge of what it
20 would actually take to achieve the desired outcomes
21 in particularly high-poverty settings.

22 Q. One bias may be that if this is the way
23 their district does it and they perceive that as
24 being successful, then that's what they would
25 advocate, even though maybe there's a more efficient

1 way to do the same thing?

2 A. The one thing that we see is among
3 participants in very low-poverty settings, in
4 particular, settings that already far exceed the
5 outcomes they're being asked to achieve, we don't see
6 that they're likely to say that they need less to
7 achieve those outcomes.

8 So if you went into Blue Valley or places
9 like that and asked them what do they need to achieve
10 the minimum outcomes, it's hard for them to think
11 about how they would scale back to the minimum, which
12 is why a cost function study actually brings out a
13 stronger difference between higher- and low-need
14 districts than the professional judgment does.

15 That's why the weights on poverty end up
16 higher in a study that actually models the
17 relationship, than when you ask the representatives
18 of low-need districts what they need.

19 Q. Reliability issues on the professional
20 judgement approach include, can the respondents
21 answer accurately, will they answer accurately, and
22 are those responses influenced by the question order?

23 A. Those would potentially be validity
24 questions. But reliability can be checked by looking
25 at the correlation between the cost estimates

1 produced by a professional judgment analysis and cost
2 estimates produced by alternative approaches, whether
3 or not they did reliably identify which districts
4 need more or which districts need less. And whether
5 it's -- or whether -- you could do a great study with
6 different panels and see if they come to similar
7 conclusions. But we've not been able to get that
8 done.

9 Q. You draw a distinction between reliability
10 and validity?

11 A. Yeah, I mean, if it speaks to the question
12 of whether or not there's any kind of truth,
13 validity, accuracy to their assumption that this
14 model, this approach, or this much money is likely
15 related to these outcomes that's a -- or whether or
16 not they've, you know, espoused how things should be
17 organized based on bad assumptions, those, I think,
18 would speak more to validity than reliability.

19 Whether multiple panels would come to similar
20 conclusions would be -- they could be reliably
21 invalid, but that would still -- that would be the
22 reliability question.

23 Q. You once criticized the Augenblick & Myers
24 study that was done in Kansas, is that correct?

25 A. I used it and took it for what it was. I

1 have criticized certain aspects of the method as a
2 whole in that it does require the additional kind of
3 external validation checks. I've made many comments
4 about PJ and professional judgment in general, and
5 certainly the Augenblick Kansas study.

6 Q. You felt the professional judgment analysis,
7 the relationship to student outcomes was
8 uncomfortably loose?

9 A. That was in -- that's from a paper I wrote
10 with Lori Taylor for the Texas legislature in which
11 we were explaining methods as a whole, where we were
12 trying to explain that when you have these panels
13 convene and say what school districts need to get the
14 job done, it doesn't try like a cost model to
15 establish this statistical link with getting the job
16 done; it's more hypothetical.

17 I described it back then as, you know, it's
18 a loose -- I think I probably used the word
19 "speculation." I've come to use the word
20 "hypothesis" more, since. But yeah, it's a loose
21 assumption that this is what it takes to get to these
22 outcomes, but it is based on the experiences of
23 people who actually work in the field. It's one shot
24 at coming up with a reasonable mark.

25 Q. The folks that are on these panels, they are

1 inevitably -- or invariably include administrators
2 and teachers, do they not?

3 A. Often they do, yes.

4 Q. People with their boots on the ground are
5 included in those groups, is that right?

6 A. Often that's the case, yes.

7 Q. Now, the successful schools approach, the
8 Augenblick & Myers study, incidentally, used, for the
9 record, both a professional judgment and the
10 successful school report approach. I think you've
11 said that?

12 A. Yeah, I think I said that.

13 Q. And the successful school approach is --
14 well, it's useless, isn't it, in your opinion?

15 A. Well, the successful schools approach, a
16 sample characterization is to say it's a -- basically
17 what they do is they take the average spending of
18 districts that meet the certain tested outcomes.
19 It's like a cost function without any of the other
20 variables that are needed to explain, you know, how
21 much more it costs to achieve these outcomes in a
22 higher-need district.

23 Typically when you look for successful -- if
24 you do a successful schools analysis, you look and
25 find all those schools in a state that meet the state

1 standards or some higher standard, and they tend to
2 be the lowest-poverty, highest-performing schools.

3 Sometimes in successful schools analysis
4 they'll parse that and say, well, who are the lowest-
5 spending, highest-performing schools, but that
6 doesn't let you say anything about -- it says, well,
7 what do these schools spend to get this outcome with
8 low-need populations, but it doesn't help us at all
9 figure out what you need to spend in a much higher-
10 need district. So in that sense, it's extremely
11 limited. And I probably have used the word "useless"
12 as an exaggeration of extremely limited.

13 Q. Well, actually, I think the question was,
14 what criticisms do you have of the successful school
15 approach. And your response was, it's useless, is
16 that blunt enough.

17 A. Yeah, as I said, I've probably -- was that
18 from my deposition?

19 Q. Yes.

20 A. I'm not a fan of it because it has severe
21 limitations.

22 Q. Now, statistical study is what is employed
23 when you are talking about a cost study that you
24 talked about a little bit today, is that right?

25 A. Rephrase. You're saying?

1 Q. The cost study using the cost function
2 analysis, that's a statistical study, isn't that
3 correct?

4 A. Yes, that is a form of applied multiple
5 regression analysis to determine the spending
6 associated with achieving certain outcomes.

7 Q. Statistical study is about correlations and
8 regression relationships, it is not the approach used
9 to assess causality, is that correct?

10 A. It is an approach used to study the
11 relationships in existing data. I guess, as far as I
12 can go on that. We can probe the causality or
13 causation, as you wish.

14 Q. Well, it's not an approach used to assess
15 causality. That's your opinion, isn't it?

16 A. Not as broadly phrased as that. Because the
17 issue is, when you find a very strong relationship
18 between A and B, it may still be the case that that
19 relationship is causal. It's not that every -- so I
20 want to make it clear that it's not that every
21 relationship is merely coincidental.

22 When you find strong relationships and you
23 rule out other possible causes, you can still use
24 regression analysis and correlational analysis to
25 come to conclusions that the result is likely causal,

1 but you don't use a regression analysis in isolation
2 in and of itself to make a firm conclusion of
3 causality.

4 Q. In your deposition at page 50, line 3, you
5 stated, "if you're saying statistically it's just
6 about looking at correlation or regression
7 relationship between two measures at the same point
8 in time across districts, that's not the approach you
9 would use to assess causality."

10 You still abide by what you said?

11 A. With the elaboration I've provided here,
12 yes.

13 Q. There's no way, ultimately, to say outright
14 that X causes Y in the statistical terms, isn't that
15 true?

16 A. Solely by -- and you know, in isolation, as
17 I was explaining a few seconds ago, using just the
18 correlation in and of itself as that basis, without
19 considering, you know, other contextual information
20 and so on, it would be a stretch to make the
21 assertion that a correlation in and of itself
22 indicates, not just implicates, but outright
23 indicates causality.

24 Q. I thought you were going a different place
25 in your answer than you did, but we can agree that

1 ultimately there's no outright -- there's no way to
2 ultimately say outright that X causes Y in
3 statistical terms?

4 A. So you got it very broadly phrased, but
5 right, you can't -- even if you've designed a study
6 that's intended to tease out a causal effect in
7 statistical terms, there's never a 100-percent
8 certainty that X has caused Y, even if the most
9 reasonable interpretations of the existing
10 relationship and its strength and its magnitude are
11 that X causes Y.

12 Q. Let's step back for a second.
13 Theoretically, there should be some number for a
14 given school system where you would start seeing
15 improvement in student performance? There ought to
16 be some mathematical number for that, is that right?

17 A. I'm going to have to ask you to clarify or
18 go for more precision on that one.

19 Q. If I'm say, I'm going to fund the Kansas
20 school testimony with one dollar, we could say with
21 some reasonable assurance that that's not going to
22 produce any desired student output, is that right?

23 A. We will have displaced the cost onto the
24 families, right, so we're going to see some outputs,
25 even though we haven't funded -- only among families

1 that can subsidize it on their own. So there's some
2 complex dynamics involved, but I'll roll with you
3 from there.

4 Q. Then, there's, theoretically, a number on
5 the opposite end of the spectrum where, no matter how
6 much more money you give, you don't expect to see any
7 improvement outputs, isn't that correct?

8 A. Theoretically there is a concept of, you
9 know, a notion of diminishing returns. It's not
10 necessarily a notion of disappearing returns. But,
11 you know, if we look at it as a curve, you would
12 level off where the additional gain on certain
13 outputs for dollars later down the line might be
14 smaller than the gain on certain outputs, you know,
15 in the optimal range.

16 Q. There's a basic economic principle of law of
17 diminishing returns --

18 A. Right.

19 Q. -- that speaks in terms of -- well, that
20 says that at some point, more funds, more resources
21 produce less and less of a desired output?

22 A. Not that output goes down, but that the
23 additional gain in output is smaller than the gain in
24 output farther back on the curve.

25 Q. Wouldn't you concede that at least in theory

1 there's some endpoint, that is where there is no
2 improvement in output in any respect by increasing
3 funds?

4 A. Mathematically it's asymptotic, so in theory
5 there was no endpoint, but it gets smaller and
6 smaller and smaller as we go farther and farther out.

7 Q. So mathematically your assumption is that
8 there is always a relationship between a dollar spent
9 and an output received?

10 A. Well, in theory, the marginal gains diminish
11 for the additional dollar, but not necessarily
12 disappear. Again, in theory we're looking at a
13 mathematical function that, you know, starts to level
14 off but again, in theory, never really reaches
15 level. It's just a smaller and smaller gain for each
16 additional dollar spent. How far out you have to go
17 to see that, I'm not sure nor have I seen the
18 experiment that's tried to spend as much as it
19 possibly could on schools and see where they start no
20 longer seeing any benefit.

21 Q. That's the basics, though, of the cost
22 function analysis, that is that there is a causal
23 relationship -- I say, the basics, if there is any
24 validity to it, that's the theory, that there's a
25 causal relationship, statistically, between spending

1 money and outputs, isn't it?

2 A. The assumption of the cost function is that
3 there is -- that it is a tool for generating
4 reasonable estimates of the cost of achieving a given
5 level of outcomes across different settings, and it
6 is knowingly based on, you know, underlying
7 correlational, relational information that these --
8 you know, we look at it like widget producing
9 factories. If you want to know the cost of producing
10 a widget across hundreds of factories that produce
11 widgets, we look at the production technology they
12 use and how much it costs them the produce widgets of
13 comparable quality.

14 And we can fit a model to that and figure
15 out, under these circumstances where the raw
16 materials more accessible or the raw materials are
17 less accessible, where they use this production
18 technology versus that, what are the different costs
19 of producing widgets -- not to compare kids to
20 widgets -- but when we look across schools we're
21 trying to understand the relationships between how
22 much is spent, on what types of kids, in what
23 settings, and what outcomes are achieved with that,
24 so that we can come up with a reasonable estimate of
25 the cost of how much would need to be spent on these

1 types of kids in this setting to achieve these
2 outcomes.

3 Q. As a result, the premise of these cost study
4 regression analysis is that mathematically there is
5 no endpoint, that if you add money, there will always
6 be some improvement in outputs, even though at some
7 juncture, the economies -- or rather the --

8 A. But I think the cost function and its use is
9 predicated on the assumption that extrapolating to
10 those extremes could be inappropriate. It's also
11 actually fit in a log-log format so that it takes
12 account for a diminishing returns relationship for --
13 it's fit as a curve between spending and outcomes.
14 So it's actually fit to accommodate diminishing
15 returns. The functional form of the model accounts
16 for that. When they pull the coefficient from it,
17 it's the .83 times the log of.

18 Q. Point is that for there to be validity to
19 the assumptions that the cost function analysis is an
20 accurate predictor of how much to spend to produce a
21 particular output, you have to assume that there is a
22 causal relationship between spending and outputs,
23 which necessarily means, from a statistical
24 standpoint, that there is no endpoint, that there's
25 always some marginal improvement?

1 A. Diminishing marginal returns suggests the
2 same. And the model is fit based on a functional
3 form that's consistent with that. And again, it's an
4 attempt to discern the different costs of producing
5 those outcomes in different settings with different
6 kids, A way to use regression modeling to understand,
7 you know, how given the current production
8 technologies of schooling, what it takes to get these
9 outcomes.

10 So a strict assumption of causality of the
11 coefficient of itself I don't believe is required,
12 because we're trying to use this to generate, you
13 know, reasonable estimates of how much more is needed
14 here versus there, as opposed to saying, well, we
15 just can't know and guessing at it. It's an approach
16 to generate reasonable estimates, and I think most
17 reasonable people who would use it would use it as
18 such and wouldn't also extrapolate --

19 Q. Let's back off the extreme then and see if
20 you can at least agree that the cost function
21 analysis approach assumes a causal relationship
22 between spending money and outputs?

23 A. It assumes that -- it captures the
24 differences in spending associated with differences
25 in outputs across institutions that are actually

1 producing those outputs with different kids.

2 So it is then the use of that cost function
3 information to inform policy that moves us to the
4 stage of saying, well, you know, this is the best
5 estimate we've got of how much more we need here
6 versus there, or how much in general we need to
7 accomplish these outcomes. It doesn't require a
8 strict assumption of statistical causality to use
9 that as reasonable information to inform policy.

10 Q. The approach will work even if there's no
11 causal relationship between more spending and student
12 outputs, is that your testimony?

13 A. That's not my testimony.

14 Q. There's an assumption in the cost studies
15 that the districts will spend the money at an average
16 level of efficiency, isn't that correct?

17 A. Depending upon how the projections are done,
18 there's an assumption that says this is the -- this
19 is the additional cost of achieving these outcomes if
20 average efficiency is maintained.

21 Q. So that if I have a system in which we
22 follow this approach and fund it to the level the
23 approach would argue for, the money in Kansas would
24 go to school districts, and we assume that they will
25 be efficient in how they spend the money, is that

1 right?

2 A. We don't necessarily assume that. I mean,
3 that's part of the policy development, you know,
4 following -- you know, we say, this is what they
5 likely need to get to these outcomes on an assumption
6 of maintenance of average efficiency.

7 And then the State has at its disposal
8 possible accountability mechanisms that it can attach
9 to the receipt of this additional funding to
10 encourage, if not, you know, pressure -- stick or
11 carrot -- encourage districts to, at the very least,
12 maintain average efficiency with the additional
13 dollars so that outcomes do improve over time.

14 Q. Constitutionally, the local districts have
15 the right to make their judgments on their curriculum
16 to make the judgments on how to spend the money they
17 receive. You understand that don't you?

18 A. But the state board has authority to adopt
19 various standards and regulatory mechanisms that -- I
20 mean, it appears that they have that authority to use
21 in ways that ultimately do restrict those decisions
22 in school districts.

23 Q. They have the right to provide -- they have
24 general supervisory powers?

25 A. Which seems relatively broad.

1 Q. But the money, when it reaches a district in
2 Kansas, it's their choice on which school that goes
3 to, which program to fund, which initiative to put in
4 place?

5 A. That is correct, but ultimately, it being a
6 state obligation to ensure that they can get to the
7 outcomes. The State has the authority when they
8 grant them that money to attempt to ensure that the
9 outcomes are achieved with the money. There's
10 certainly no argument for saying, well, because we
11 think you might use this inefficiently, we're just
12 not going to give it to you.

13 Q. I'm just trying to get a handle on what
14 you're saying. The efficiency, when we talked about
15 that, incidentally, it's an economic term, isn't it?

16 A. That is correct.

17 Q. It doesn't indicate that somebody's awful or
18 bad or wasteful, does it?

19 A. Not necessarily.

20 Q. What it says simply is, is that if you have
21 more than one way to accomplish a task, the most
22 efficient is the least costly?

23 A. Right. You could have five different
24 districts all serving similar kids, all otherwise
25 similar-sized districts, and you might see that they

1 spend very different amounts to get the same
2 outcomes. Assuming all their other factors are equal
3 and there's no cost basis for why they're spending
4 more to get those outcomes, the one that's spending
5 the least to get those outcomes, all else equal, is
6 the one that is most efficiently producing those
7 outcomes.

8 And you know, what it comes down to in this
9 type of analysis is efficiency is all relative. Some
10 districts serving certain types of kids in certain
11 settings are doing things in a way that gets to these
12 outcomes at a lower per pupil expenditure.

13 But the outcome measurement also matters,
14 because if we're only measuring reading and math
15 outcomes and graduation rates as embedded in the
16 Duncombe study, it's also possible that some of that
17 greater efficiency is a function of actually just not
18 doing other things that may be important but don't
19 contribute directly to those outcomes --

20 Q. Can we agree what efficiency means, which is
21 it is the least-costly method to accomplish an
22 output?

23 A. The most efficient district is the district
24 that spends the least to achieve a given output,
25 holding everything else equal.

1 Q. Now, with that agreement, when the cost
2 model is set up, it assumes, for the purposes of
3 calculating what number, what efficiency level?

4 A. I believe it assumed average efficiency, but
5 in some of Bill Duncombe's studies, he's actually
6 made the efficiency requirement more stringent.

7 Q. I think you'll see that it's probably around
8 67 percent or so, so that would be more stringent?

9 A. Right, two-thirds is one of the things he's
10 done in a couple of studies.

11 Q. Meaning that he assumes that the money will
12 be provided and spent by a third of the districts in
13 a less-than-the-optimally-efficient fashion?

14 A. Based on the full distribution where when
15 you get out into those tails, we don't really know --
16 in fact, by taking the two-thirds approach, he's
17 lowered his cost estimates. He said that if you're
18 at the 67 percent efficiency level, this is what it
19 should take. So he's actually, in these estimates,
20 requiring that districts, on average, become
21 substantially more efficient than they've been up to
22 that point.

23 Q. He's asking them to be 67 percent efficient?

24 A. Yes, but when you get further out in the
25 distribution, you're dealing with hypotheticals that

1 may simply be unattainable. Your districts that show
2 up in the scatter at 70 or 80 percent or 90 percent
3 efficient may, in fact, have just attributes about
4 them that make them appear more efficient but weren't
5 captured in the model.

6 In fact, it's a pretty harsh requirement to
7 say that they need to move -- the average district
8 essentially needs to move from average to the top
9 third under these underestimated cost estimates.

10 Q. You have assumed that Blue Valley is an
11 inefficient school district, is that right?

12 A. I don't know that I've assumed that.

13 Q. Well, you've indicated that Blue Valley is
14 paying its teachers more than they should relative to
15 Kansas City, Kansas, haven't you?

16 A. What Blue Valley is doing, again, we're
17 measuring -- that doesn't mean it's inefficient.
18 Blue Valley is trying to raise and spend the money
19 they think they need to achieve the outcomes they
20 desire for their kids, which are something well above
21 and beyond the minimum state testing outcomes.

22 Whether they're doing that inefficiently or not is
23 something I -- you know, I don't have the information
24 to tease out.

25 Q. There are, however, as a part of the LPA

1 study, the Duncombe analysis, this cost function
2 analysis, it is presumed that some money will be
3 spent inefficiently?

4 A. No, it is actually presumed that most
5 districts will become substantively more efficient
6 than they already are.

7 Q. But some will be inefficient?

8 A. That all districts will not achieve what is
9 this hypothetical, kind of, at the edges of the
10 statistical distribution perfect efficiency, because
11 it's an unreasonable statistical assumption.

12 Q. Are you aware of any state that's enacted a
13 school finance system that uses a cost function
14 formula for its financing system?

15 A. If I would start by saying, it's not that
16 Kansas has actually used it as the formula. It
17 informed a report which informed the formula. Other
18 states --

19 Q. Would that be a no?

20 A. Texas conducted an analysis but did not use
21 it to inform the formula. And California has
22 conducted analyses but did not use them to inform
23 their formula.

24 Q. So the answer would be no?

25 A. No, no state has necessarily built a formula

1 on the cost function itself.

2 Q. For the cost function to have internal
3 validity, potential biases have to be addressed in
4 the estimation of the model, is that right?

5 A. Ask you to clarify what you think you mean
6 by that.

7 Q. I'm just trying to repeat -- well, I can do
8 it here. For cost function, improving internal
9 validity involves removing potential biases and the
10 estimates of the cost model. Is that a correct
11 statement?

12 A. You want to test alternative -- you want to
13 test different mixes of variables in the model to see
14 if you're getting systematic over- or under-
15 prediction for different types of districts.

16 Q. Of particular concern in statistical studies
17 of this type are biases caused by omitted variables
18 and simultaneous relationships between independent
19 variables and the dependant variable.

20 A. That's certainly the case that you have
21 variables -- you have a lot of variation in
22 spending -- I'll just go with that, certainly the
23 case. We'll go further with this. It's getting
24 late.

25 Q. For instance, if you're trying to control

1 for -- if you're trying to calculate, rather, a
2 bilingual weighting, you want to try to control for a
3 poverty weighting, is that right?

4 A. You want to try to separate out the effects
5 of English learner concentrations from the effects of
6 low-income concentrations on the cost of improving
7 outcomes. And Bill Duncombe does a few interesting
8 things in that regard in the Post Audit analysis.

9 Q. When we talk about simultaneous
10 relationships, that's an example; there can be a
11 relationship between poverty and between English as
12 the second language?

13 A. That's not an example of what's talked about
14 in there. The simultaneous relationships that are
15 talked about in there are the fact that, on the one
16 hand, higher outcomes weren't higher costs, but on
17 the other hand, higher spending can yield higher
18 outcomes. That's a circular relationship that
19 requires special statistical attention. And that
20 teacher wages, which are one of the predictor
21 variables -- the competitiveness of teacher wages are
22 also associated with the spending measure, which is
23 the dependent measure because the spending measure
24 determines how much can be spent on teacher wages.
25 So those are the circular or simultaneous

1 relationships.

2 Q. Which is maybe a fancy way to say that
3 districts set teachers' wages based on moneys they
4 have available to them, and therefore teachers' wages
5 may be related to the amount of money available to a
6 district.

7 A. Right, which is why, when they estimate this
8 model, they use external factors not subject to that
9 circular relationship to generate predicted values of
10 the competitive wage.

11 Q. Those are called endogenous factors?

12 A. Those are called instruments which help to
13 take care of the problem of endogeneity --

14 Q. Meaning that -- and what is endogeneity?

15 A. Endogeneity is that whole circular thing I
16 was talking about and you explained well with the
17 spending can influence the choice on teacher wage.

18 Q. The instruments they used in this instance
19 were, instead of looking at how the spending I
20 received, how my district did on outputs, I might
21 look at how surrounding districts did?

22 A. They use that as a partial, kind of,
23 prediction basis to look at how the competitive
24 pressures of surrounding districts influence the
25 likelihood of the test score in your district. So

1 it's to correct for the endogeneity bias, and then
2 you run a whole series of statistical tests to see if
3 you've got an instrument that is valid, and they go
4 through those steps.

5 Q. So under this approach, this complex
6 mathematical approach, you don't even look at how the
7 outputs are necessarily in your district from the
8 funding you receive, you got to look at, also, the
9 funding the other districts and how it affected them?

10 A. No. No. What they're doing is the outputs
11 of your district are a -- they're a predictor of the
12 spending variable. But we know that the spending
13 affects the outputs, and you have to find a set of
14 variables that are outside of the control of your own
15 district to generate what's called a first-stage
16 prediction. It's a first step in the model to come
17 up with a predicted value or a -- kind of, a bias-
18 free value of the outputs for your district. This is
19 the worst thing to be talking about at five in the
20 afternoon because it's a complicated process.

21 So one of the variables that they use to
22 help adjust the outputs of your own district is the
23 competitive pressure of the outputs of neighboring
24 districts. It's a predictor in a first-stage model.

25 And then there are formal statistical tests

1 they use to see if they've chosen something that is a
2 valid instrument for that purpose. And it turns out
3 that the average performance of neighboring districts
4 is relevant and is valid for that use based on the
5 preliminary statistical tests they've run.

6 Q. You agree with this statement, the important
7 potential step -- excuse me -- of admitted variables
8 are controls for efficiency while studies have
9 attempted to control for efficiency. If these
10 controls are inadequate the results can be biased.

11 A. What I agree with is the idea of capturing
12 difference in efficiency is it's an omitted variable
13 bias question. You can never get all the variables
14 you need to explain all the variation in the cost of
15 achieving outcomes. There will always be some
16 leftover share of variance that's not explained by --
17 might be explained by something that we haven't
18 measured.

19 Q. Bias we talk about means that the final cost
20 function analysis numbers may be too high or too low?

21 A. Or --

22 Q. If bias is present?

23 A. Typically -- perhaps too high for some
24 districts, too low for other districts. But once a
25 model has been relatively fully-specified, those

1 margins of price should be relatively small and can
2 be checked by a number of other statistical methods.

3 Q. Now, when you take the approach of trying to
4 make sure that you're looking at omitted variables
5 simultaneous relationships, efficiency, that all
6 becomes a pretty complicated series of mathematical
7 calculations, doesn't it?

8 A. It certainly does, but not without
9 theoretical and empirical base.

10 Q. If we want to look to see if the proof is in
11 the pudding, then we've got to start looking at
12 certain reliability criteria, don't we?

13 A. Depends on what you mean by reliability
14 criteria.

15 Q. Well, there are four that are appropriate
16 for assessing cost studies. They're interrater
17 reliability, statistical conclusion validity,
18 construct validity, and predictability, is that
19 correct?

20 A. We may or may not want to use those as a
21 framework for figuring out how to evaluate the
22 results of the cost function, may or may not be
23 relevant.

24 Q. And there's an article that was written by
25 William Duncombe, who's been discussed now on a

1 number of different occasions, in which he responds
2 to criticism of the cost function analysis, dated
3 October 19, 2006. Actually, I think it was published
4 the fall of 2006 in the Journal of Educational
5 Finance. And you referred to that in your
6 deposition --

7 A. Yes.

8 Q. -- as, kind of, the definitive response to
9 those who are critical of the cost function analysis,
10 is that right?

11 A. Not as -- it is one response. He has
12 written subsequent ones, John Yinger separately has
13 written one, and so have I. I think we've moved
14 deeper into some of the same issues that Bill
15 Duncombe raises in that paper.

16 Q. And in that paper, he suggested that the
17 criteria for assessing cost studies, reliability are
18 interrelated -- or interrater reliability,
19 statistical conclusion validity, construct validity,
20 and predictive validity. Is that true?

21 A. That is correct those are his four, kind of,
22 bullet points at the end, some of which I've already
23 talked about. He's talking about in relation to
24 professional judgment studies and cost functions.
25 That's his Journal of Education Finance piece.

1 Q. Journal Of Education Finance, fall 2006 --

2 A. He's talking about cost studies in general.
3 So when he talks interrater reliability, he's talking
4 about the hypothetical experiment --

5 THE COURT REPORTER: I'm sorry.

6 A. When he's talking about interrater
7 reliability, he's talking about the scenario that I
8 mentioned before, where you would have in
9 professional judgment studies, you'd see different
10 teams come to the same answer.

11 Q. It's broader than that, isn't it? If you're
12 trying to attack something using science, and you
13 reach a conclusion -- and I assume statistical
14 modeling is a science, or you put it in that
15 category, don't you?

16 A. It's a method of empirical analysis. We can
17 have a a long debate about science.

18 Q. Well, you're looking for something that can
19 be, on the basis of the same data, repeated, the same
20 results --

21 A. Yes, absolutely.

22 Q. And maybe that's a poor description of
23 interrater reliability, but it would be kind of
24 related?

25 A. That's reliability more generally, in that

1 we can estimate alternative models and see if they
2 come out with relatively similar results. We can
3 estimate models in subsequent years. Again
4 reliability doesn't guarantee validity. They could
5 be reliably wrong.

6 So we also have to ask if these things are
7 predicting the right thing. And we've moved farther
8 on that approach by using predictive validity checks
9 on cost modeling to see, based on data that wasn't
10 used in the model, can we fit a model and then
11 predict the spending of districts that weren't part
12 of the model. You kind of forecast accuracy checks.

13 Q. Well, one criteria for a cost study is
14 reliability, meaning its consistency and
15 repeatability, that's one measure for evaluating the
16 reliability of the cost study, is that correct?

17 A. Consistency of findings would be one framing
18 of reliability.

19 Q. And repeatability?

20 A. Well, to the extent that -- right,
21 repeated -- to the extent it's repeatedly consistent.

22 Q. Interrater reliability could be tested by
23 asking different researchers to estimate cost
24 functions for the same state of the same time period,
25 is that correct?

1 A. Yeah, to the extent that we wanted to
2 interpret -- interrater reliability would typically
3 be something somewhat different, but yet, you might
4 interpret it that way. To call the person doing this
5 statistical model a rater, and see if one rater's
6 model is correlated highly with another.

7 Q. Mr. Duncombe says -- or Professor Duncombe
8 says in this journal article, that given the
9 statistical methodology of cost function, interrater
10 reliability could be tested by asking different
11 researchers --

12 A. Right.

13 Q. -- to estimate cost functions of the same
14 state over the same time period. Do you agree with
15 that?

16 A. Yeah.

17 Q. You have testified that each study has to be
18 placed in context and is scale specific. What does
19 that mean?

20 A. Oh, gosh, I'd have to have the context for
21 that comment to know.

22 Q. Well, you were asked if a study found --
23 whether there was another study anywhere, other than
24 as reported in the Kansas study, where they found
25 nearly a one-to-one relationship between moneys spent

1 and outcomes? And you said, every study is in
2 context and scale specific.

3 A. So yeah, the scale, what I mean by scale
4 there is that the way the outcome measure is scaled
5 and the way the spending measure is scaled, whether
6 we use natural logarithm, whether we generate a 100-
7 or 200-point index of performance, that affects the
8 coefficient of the relationship between spending and
9 outcomes.

10 So the way you set up your statistics will
11 influence how that number looks, but it may not -- it
12 may turn out that the finding, even if the number
13 looks totally different, that the finding when
14 projected across school districts is relatively
15 similar.

16 Q. From Exhibit 199, it's the LPA study,
17 there's some language that's quoted frequently.

18 THE WITNESS: I'd love the
19 opportunity for a 30-second break. Been drinking too
20 much water.

21 MR. CHALMERS: We want to take a
22 break?

23 JUDGE FLEMING: Where are you? How
24 much longer do you have?

25 MR. CHALMERS: A while, probably

1 hour and a half or so.

2 JUDGE FLEMING: I know you want to
3 get him on and off tonight, but I don't want to stay
4 here until six o'clock. I've been up since four, and
5 your witness is taking two pages to give a yes or no
6 answer, so if you want somebody to blame, blame
7 Dr. Baker.

8 MR. RUPE: Well, we're going to be
9 here until the Court -- we'll be here when the Court
10 wants us to, so if you want us here tomorrow morning,
11 we'll be here tomorrow morning.

12 JUDGE THEIS: We don't feel it's
13 practical to finish tonight.

14 MR. RUPE: Okay.

15 JUDGE THEIS: He's going to take
16 another hour half and I assume you have a half hour

17 MR. RUPE: I probably have 15, 20
18 minutes as of right now.

19 JUDGE THEIS: That's two hours,
20 that's seven.

21 THE WITNESS: I can't do this. I
22 really need to be home.

23 MR. RUPE: We're going to have to
24 work around it.

25 JUDGE THEIS: Could you squeeze it

1 down, Mr. Chalmers?

2 MR. CHALMERS: Could I squeeze it
3 down? No --

4 JUDGE THEIS: Statistics are
5 interesting but --

6 MR. CHALMERS: Not really, but I
7 understand. If I could get direct answers, that
8 would help, but I still have to talk about how the
9 LPA study works, and that's kind of an involved
10 discussion. So no, I don't think I can. I'd like
11 to, but I don't think I can. I'm willing to try.

12 JUDGE THEIS: Let's take ten
13 minutes and see what we think.

14 JUDGE FLEMING: All right.

15 JUDGE THEIS: Let's take a
16 ten-minute break and see where we are. Okay?

17 MR. RUPE: All right. Thank you,
18 Your Honor.

19 (A recess was taken.)

20 JUDGE THEIS: Be seated. Thank
21 you.

22 MR. RUPE: My apologies to the
23 Court for all of this. In terms of the schedule,
24 we're prepared to have him on in the morning and can
25 proceed. And we'll go until he gets done. He has

1 later flight options available.

2 THE WITNESS: Not entirely sure
3 about that --

4 JUDGE THEIS: Go up to an hour
5 here, and I don't mean to be critical of counsel, but
6 to ask people a series of what they didn't do, I
7 assume, Mr. Chalmers, you'll have somebody to tell us
8 what he didn't do. To get him nailed down on what he
9 didn't do requires me to remember everything that he
10 didn't do, and I'm only interested in what he did,
11 right or wrong.

12 MR. CHALMERS: I'm past that stage,
13 Your Honor. I appreciate the advice.

14 MR. RUPE: I think we'll try to
15 keep the answers more responsive to the questions
16 without the explanations, and if needed, I'll come
17 back and get those later.

18 JUDGE THEIS: Right, I wouldn't
19 want to take a statistics course over. Anything you
20 can do to trim it down would be appreciated.

21 MR. CHALMERS: I think --

22 JUDGE THEIS: Get back to Rutgers
23 on a timely basis.

24 Q. (By Mr. Chalmers) We have up on the screen
25 an excerpt from Exhibit 199, which has been quoted on

1 a number of different occasions. I'm not going to
2 read it to you again.

3 What does that mean? Are you saying -- I'm
4 in your way -- if it's easier, it's in the LPA study,
5 so I'm page 40.

6 A. Yes, I see the one on the screen. If you
7 get it centered where I can -- are you asking me what
8 does that mean?

9 Q. I'm asking you, where it says that there is
10 a relationship between 1.3 percent increase in
11 spending and a 1 percent interest -- or increase in
12 student -- excuse me -- district performance
13 outcomes, what does that mean?

14 A. It says there's an association of a .83
15 percent difference in spending that is associated
16 with a 1 percent increase in the performance index
17 that Bill Duncombe used in his model.

18 Q. Now, if I wanted to test that, are you
19 telling me I can't look at how much money then is
20 spent if I spend .83 percent more to see whether I
21 have a corresponding increase in outputs?

22 A. It depends on how you would do that. But
23 you can't simply say, if I add 83 cents to the school
24 this year, will I see a 1 percent increase next
25 year. No.

1 Q. That's how this has been understood in
2 Kansas, by adding 83 cents that we're going to have a
3 one-dollar increase -- excuse me, one increase in
4 outputs that would be a mistake?

5 A. That is a misinterpretation.

6 Q. Exhibit 112.

7 MS. TIBBETS: 1212.

8 Q. I'm sorry. 1212 illustrates that it would
9 show that where you had your 1 percent increase or
10 percentage increase in spending, that you'd get the
11 outputs that went with it?

12 A. That is the misinterpretive illustration,
13 yes.

14 Q. Well, it's interpretive -- or it illustrates
15 your point, doesn't it, that you can't say a one --
16 that there's-a --

17 A. No.

18 Q. -- .8-to-one relationship?

19 A. That you can't test that but saying if we
20 add a dollar this year we see the gain over the same
21 time frame.

22 Q. And if we look at 1213, that would again be
23 descriptive how you can't see the gain, dollar -- or
24 the year the money is spent --

25 A. That would be --

1 Q. -- as the same ratio?

2 A. That would be a similarly-inappropriate
3 interpretation.

4 Q. If you want to look at Dodge, it would show
5 the first time there was any increase in spending
6 percentage-wise, there was actually a decrease in the
7 actual outputs. That, again, would illustrate your
8 point that there is not going to be seen,
9 necessarily, this .83 percent increase in spending
10 with a 1 percent increase in output?

11 A. You keep rephrasing my point. My point is
12 that, that is an inappropriate test of what that
13 coefficient means.

14 Q. Well, the coefficient, then, isn't very
15 helpful in telling us, if we look at Exhibit 1214,
16 what we would expect in the real world?

17 A. No, the coefficient tells us what is the
18 likely needed spending if implemented in a
19 substantive and sustained way over time to achieve
20 these higher levels of outcomes. It doesn't tell us,
21 if we add a dollar this year, we'll see this
22 percentage change this year. And that's what these
23 graphs are trying to say, which is a complete
24 misinterpretation of the coefficient.

25 Q. We look at 1216, and that would indicate

1 that when there was a increase in spending, there was
2 a pretty large decrease in outputs, and then kind of
3 an inconsistent pattern thereafter with the
4 reductions in spending, is that right?

5 A. Can you tell me even what outputs we're
6 talking about here? I mean, are we spending on kids
7 in grade K through 3 and not seeing an output yet on
8 tests they haven't taken --

9 Q. How do they define outputs in the LPA?

10 A. It's based on a performance index generated,
11 which includes those grades 3 through 11 tests and
12 the graduation rates. If this is the same measure --

13 Q. There you go.

14 A. -- if they increase the spending on early
15 childhood and lower class size in the early grades,
16 they'd have not even hit the tests by the same year
17 that the spending increased.

18 Q. So this year where we got a decrease --
19 well, let's talk about that for a moment. There's a
20 lag, you say, between these things?

21 A. There may be. There certainly is a lag
22 defect to achieving, kind of, maintaining the new
23 equilibrium of a higher level of outcomes, yes.

24 Q. On the LPA study -- and we'll get to that in
25 a little greater detail in a second -- how many years

1 of data did they look at?

2 A. I can't remember the exact number of years.

3 It was about five or so years --

4 Q. I think it was five.

5 A. -- in the model.

6 Q. Okay. So now if there's a lag effect, we
7 would want to look at, if we're looking at five years
8 of outputs, we'd want to look at some pre-existing
9 time to catch those relationships, wouldn't we?

10 A. They're looking at the levels not the rates
11 of change from year to year. So they're looking at
12 the levels of performance across districts over a
13 five-year period.

14 Q. So at least a five-year period would be fair
15 to look at, if we're looking at charts like this to
16 see where the lag picked up?

17 A. It's still a different analysis. So a five-
18 year period may be better than what you've done here,
19 but it still would not necessarily capture what
20 you're looking for. It would capture a better
21 picture.

22 Q. How many years is this lag?

23 A. Again, it's about achieving a sustained
24 level of funding and seeing how long it takes to get
25 up to speed. But there's at least -- if you're

1 implementing that funding on early childhood and
2 smaller class sizes in lower grades, it's at least
3 three to five years before kids even hit tests. But
4 those kid aren't going to hit high school assessments
5 until much later on.

6 Q. In the LPA study what they did is they came
7 up with a base amount that served as the support --
8 what the funding would be to get a certain required
9 minimum output, is that right?

10 A. That is correct.

11 Q. And they assigned what the funding would be
12 each year to get an output that year, is that right?

13 A. They projected what the funding would be
14 each year to be associated with a certain output in
15 that year.

16 Q. They said, this is how much money you need
17 to spend this year under this model to get this
18 output, didn't they?

19 A. But they do not imply that that's exactly
20 the output attainable with this funding as the
21 funding is phased in. It's assuming if the funding
22 had been there over time.

23 Q. Well, it's not really assuming the funding
24 had been there over time, is it? It's the first year
25 they gave output, and they said, this is how much

1 money you need?

2 A. That's how much is needed to achieve and
3 sustain that outcome in a system that would raise the
4 money to that level. It's not asserting that if you
5 put the money to that level you will immediately see
6 that outcome.

7 Q. So there's going to be a lag but you can't
8 tell us how long?

9 A. No, I can't give you the exact time on the
10 lag --

11 Q. And at the tail end of it, I guess, if we
12 were to cut off all funding -- well, not cut all
13 funding, if we reduced funding to some degree would
14 there be kind of a lag before we saw a dip in the
15 outputs?

16 A. There might also be some lag in the dip in
17 the outputs depending upon where and how those cuts
18 were implemented.

19 Q. You can't tell me how long?

20 A. I can't give you an exact number.

21 Q. So you would not agree that if we're looking
22 at the predictive validity of a cost function
23 analysis, that in terms of its ability to forecast,
24 that it would not be appropriate to use data from one
25 period to use it for a prediction for years that

1 are -- than later in the other sample and compare
2 whether the forecasted values actually met the actual
3 values?

4 A. I wouldn't agree with that statement as
5 phrased.

6 MR. RUPE: Compound objection.

7 MR. CHALMERS: I didn't hear your
8 answer.

9 A. I wouldn't agree with that statement as
10 phrased.

11 Q. A forecast using data for one period and the
12 use of that to predict for years not in sample, and
13 then a forecast, and then compare that forecast to
14 actual values, you don't think that's an accurate
15 predictive validity test?

16 A. Retrospectively you can use that in your
17 data to see that you've got a generalizable model,
18 yes.

19 Q. So right now what we would have is, since
20 the time this model was put in place -- actually, the
21 model was completed, what, in 2005?

22 A. The model uses data up through '03/'04, or
23 something thereabouts.

24 Q. No, but I mean the model -- the work was
25 completed in 2005 --

1 A. '06.

2 Q. '06, okay. And it looks at data before
3 that?

4 A. True.

5 Q. We would have, well, almost seven or eight
6 years of data, then, to compare, to see how
7 predictive it was, isn't that right?

8 A. We could -- we could conceivably do
9 predictive validity checks.

10 Q. And they don't want to hear about what you
11 didn't do, but we can look at Exhibit 1216 and we can
12 kind of eyeball -- and this would suggest that in
13 reality, for whatever reason, the actual change in
14 output does not seem to be associated with a
15 percentage increase in spending -- excuse me, a .8
16 increase in spending with a 1 percent increase in
17 outputs, can we?

18 A. That's the wrong predictive validity check.
19 You're trying to test the one coefficient, the .83 in
20 isolation of everything else, and you're trying to
21 say that it's an immediate and instantaneous change
22 in outcomes, which is, I mean, it's an absurd
23 validity check. You would look at additional years
24 of data to see if the model is able to predict
25 similarly how their spending relates to their

1 outcomes.

2 Q. So we ought to just throw that out. If it's
3 interpreted to mean that there's a relationship of
4 merely one-to-one?

5 A. No, we should throw out your interpretation
6 of it as represented through those graphs.

7 Q. The interreliability we talked about --
8 excuse me, the interrater reliability we talked
9 about, you're familiar with Exhibit 109, are you not,
10 which is an article written by Professor Naymouth
11 (sic).

12 A. Florence Naymoten? However, you say it.

13 Q. From K State University?

14 A. Yes, I've seen that article.

15 Q. And it concludes that there really is not,
16 looking at the data she reviewed, a strong
17 relationship between increases in spending and
18 outputs, is that correct?

19 A. She looked at a time period of increases in
20 spending in Kansas districts and concluded it wasn't
21 associated with gains in outcomes and having
22 innumerous problems with the way she set it up
23 empirically.

24 Q. Your problem was that you thought that she
25 was trying to articulate that there was no effect

1 from the Montoy spending by looking at pre-Montoy
2 money, pre-Montoy years, right?

3 A. That was part of a critique of an earlier
4 version, yes.

5 Q. Well, that was the critique and the only
6 critique you offered in your deposition. Do you have
7 other critiques now?

8 A. Off the top of my head, I can't recall. I'd
9 have to go back through the article.

10 JUDGE THEIS: Does that have an
11 exhibit number?

12 MR. CHALMERS: Exhibit 1009.

13 Q. And in fact, it's looking at data from the
14 time period of, on the second page, 1997 to 2006,
15 which would span the same time and a little bit past
16 what the LPA study and the Duncombe study reviewed,
17 is that right?

18 A. That is -- yeah, her time frame is inclusive
19 of the years of Duncombe's cost analysis.

20 Q. And she did a cost analysis --

21 A. No, she did not.

22 Q. She has her methodology here and her formula
23 upon which she rendered her calculations, is that
24 right?

25 A. She has a formula there. She did not do a

1 cost analysis of any type.

2 Q. Before her report, there was a performance
3 audit, Exhibit 1011, prepared by the Legislative Post
4 Audit Committee. Do you remember seeing that?

5 A. I actually -- this is -- what is this,
6 1990 ...

7 Q. 1991.

8 A. I don't actually recall that one.

9 Q. It references a study that was done in
10 Kansas by a KU professor back during that time frame,
11 do you remember that study?

12 A. No, I don't.

13 Q. And in that study concluding that -- let's
14 see here, I want to make sure that I don't misquote
15 it, but I want to move along. I'm going to risk
16 misquoting it, but it concluded that there is no
17 strong relationship between spending and outputs.

18 MR. RUPE: Objection. Calls for
19 speculation. He's indicated he isn't familiar with
20 that report.

21 MR. CHALMERS: I'll take the time
22 to find it, Counsel. Exhibit's in evidence.

23 MR. RUPE: But I guess my objection
24 goes to you're asking him to comment on a study that
25 he is not familiar with.

1 JUDGE THEIS: I agree,
2 Mr. Chalmers, if he doesn't know about it, he
3 couldn't comment on it.

4 Q. (By Mr. Chalmers) Fact is that the only
5 other Kansas studies that have reviewed the question,
6 whether it's through the performance audit, the KU
7 study or the KSU study have all concluded that
8 there's not any strong correlation between increasing
9 spending and increasing outputs.

10 A. And that fact is wrong because there's at
11 least one study that I cite in my report and cite in
12 the article with Kevin Welner that shows that some of
13 the shift and infusion of funding resulting from the
14 1992 reforms led to increases in graduation rates
15 between -- throughout the later 1990s. And that
16 study was conducted by -- I'm just blanking out on
17 his name right now, so ...

18 Q. Starts with a B and he was out of KU, is
19 that right?

20 A. No, that's not correct. He was -- it was --
21 it's John Deke and it's in the Economics of Education
22 Review in 2003, and Deke concluded using panel models
23 that if bias, or likely bias downward, I have a
24 conservative estimate of the impact of a 20 percent
25 increase in spending on the probability of going to

1 post secondary education, the regression results show
2 that such a spending increase raises that probability
3 by 5 percent.

4 Q. And the professor at K State found in
5 Exhibit 1009 that in contrast to Deke's results, the
6 current analysis finds only weak evidence that recent
7 changes in school funding in Kansas has any role in
8 increasing graduation rates. That was her
9 conclusion, wasn't it?

10 A. She did conclude that.

11 Q. And I think my question maybe was an
12 overstatement, but the Deke results address only
13 graduation rates and do not address student outputs
14 in terms of defining test scores, do they?

15 A. Deke did not look at test scores because the
16 state assessment data were not available during his
17 time frame.

18 Q. So the only information we have in terms of
19 Kansas studies on test scores would be the LPA study,
20 the K State study, and the 1992 review by the
21 Legislative Post Audit?

22 A. And the richer, more comprehensive modeling
23 done in the more recent Duncombe cost analysis.

24 JUDGE THEIS: When you refer to the
25 K State study, what are you referring to?

1 MR. CHALMERS: That's exhibit --

2 MR. RUPE: 1009.

3 MR. CHALMERS: -- 1009, Your Honor.

4 JUDGE THEIS: Okay.

5 Q. I want to talk to you about the LPA study
6 for a moment. What you did was a regression model of
7 the LPA results to the existent general funds to
8 determine the implicit weights, is that right?

9 A. No. I ...

10 Q. What you did was fit a regression model to
11 the LPA results to the existing general funds to
12 determine what you would refer to as the implicit
13 weightings, is that right?

14 A. Right, I separately fit a regression model
15 to the LPA results and to the general fund budgets to
16 figure out what the implicit weighting was for each.

17 Q. Now, when you did this, it would have been
18 necessary for you to, kind of, know what the LPA
19 study showed and how it worked, is that right?

20 A. Absolutely not.

21 Q. I mean, you wanted to know how the LPA came
22 up with its weights, didn't you?

23 A. No, because I was testing after the fact
24 what is the implicit weight, not what the underlying
25 weight that was estimated by Bill Duncombe, which I

1 discuss separately in my report.

2 Q. And the implicit weights, then, that you
3 looked at would not include any funding for federal
4 moneys or any LOB money, you intentionally excluded
5 that?

6 A. That had nothing to do with that analysis.

7 Q. Let's go through that and make sure we're on
8 the same page. That's the LPA cost study analysis.

9 THE COURT REPORTER: What was that
10 exhibit number, Mr. Chalmers? I didn't hear you.

11 MR. CHALMERS: 199.

12 Q. If we look at page 17 for just a moment,
13 page 17 talks about part or a piece of this study,
14 and that was the input-based approach, is that right?

15 A. Yes.

16 Q. And what it did is it looked at the cost,
17 estimated base level cost for regular education as it
18 was -- now we're talking about the number of teachers
19 and --

20 A. Yes.

21 Q. -- number of students -- okay. Then, it
22 reached some general conclusions that are set out on
23 the next page, page 18, in terms of the dollar values
24 that vary depending on class size, is that correct?

25 A. That's correct.

1 Q. Picked a class size of 25 kids, then you
2 would have a lower number than the higher number
3 under this analysis, is that right?

4 A. Correct.

5 Q. Then there was the other piece of the study
6 that I think we've been principally interested in,
7 and that's the output approach. And the outcomes of
8 the outputs we've talked about -- I think we can
9 probably agree, to speed things along -- what we
10 would do is we would take the test scores that were
11 then available, and there were six different tests,
12 three for reading, three for math, and then we would
13 take the graduation rate. We would average them each
14 giving them the same value and that would be an index
15 for the outcomes, is that right?

16 A. They used those scores and grad rates to
17 create a combined index.

18 Q. What the attempt was, and they used I tell
19 you what, this is wrong. This is on a different
20 page. I apologize, that's the input approach.

21 Page 30 is where I'm headed. The outcome
22 approach, according to the exhibit, was designed to
23 identify the estimated cost of meeting the
24 performance outcome standards adopted by the State
25 Board of Education, is that right?

1 A. That's correct.

2 Q. In order to get those standards, because
3 it's hard to fit in all the elements to how you
4 accredit schools, they picked the seven different
5 things we talked about?

6 A. That's correct.

7 Q. Now then, a cost function approach was used
8 of the various approaches that could have been used.
9 There's the professional judgment, evidence-base,
10 successful schools, and cost function analysis. And
11 the exhibit at page 32 decides what the cost function
12 analysis is, doesn't it?

13 A. It describes it.

14 Q. They picked the cost function analysis, and
15 because of their lack of sophistication, in that they
16 went ahead and got a consultant to help them, and
17 that's how Duncombe and Yinger became involved, is
18 that correct?

19 A. They asked around to see what approach they
20 should take, and among others, I believe they
21 referenced talking to Tom Downes. They actually
22 talked to me in the process, as well.

23 Q. The next page, Exhibit 33, describes how
24 Mr. Duncombe and Mr. Yinger, in particular
25 Dr. Duncombe, were selected as the consultants,

1 doesn't it?

2 A. Yes, it does.

3 Q. Now, the report then sets out that there are
4 several steps involved in using the cost function
5 approach and they summarized it?

6 A. That's true there.

7 Q. And that's at page 34. There's five years
8 data. That gives us the 1999 to the 2004, so that
9 would be years actually less than what the K State
10 professor looked at?

11 A. And for a different purpose.

12 Q. And then they used this sophisticated
13 statistical regression techniques to analyze the data
14 and examine relationships between the five factors
15 listed earlier and the historical spending. The five
16 factors they're talking about, do you know what those
17 were?

18 I'll help you out. It's Exhibit 33, talks
19 about district size, student characterizations --

20 A. That's correct.

21 Q. -- salaries, student performance, and
22 district efficiency?

23 MR. RUPE: You mean page 33?

24 MR. CHALMERS: Page 33, thank you,
25 Counsel.

1 Q. Then, after using the model to estimate the
2 base level cost of meeting performance outcome
3 standards and developing student weights for
4 enrollment, poverty, and bilingual students, then
5 they went forward. And in particular, what they
6 tried to do is estimate the base level cost per
7 students. The consultants used -- well, no, that
8 explains how those different things were used to get
9 to the student weights for the base level, is that
10 correct?

11 A. That's correct.

12 Q. Then, it talks about something I'm curious
13 about, and that is, because the original spending
14 data used in the building -- the cost model included
15 federal sources of funding, the estimated base level
16 cost in the student weights include cost that would
17 be paid for with federal funds. Put these figures on
18 a comparative basis with the input-based approach,
19 and to better reflect the cost the State might fund,
20 we removed the federal funding from the base level
21 cost and the student weights. We had to assume that
22 the relationship of state and federal funding would
23 stay relatively constant.

24 Now, we can get into exactly how they did
25 it, but they used the federal money as part of their

1 analysis --

2 A. There was some federal --

3 Q. -- and then they backed it out later on when
4 they were trying to figure out how to fund it?

5 A. There's some federal money in the
6 expenditure figure used for estimating the model, and
7 they backed it out by that method of a uniform
8 assumption in generating their Post Audit estimates.
9 That is one difference between the Duncombe estimates
10 and the Post Audit estimates?

11 Q. They backed it out using what now?

12 A. By assuming that that federal share stays
13 fixed.

14 Q. Well, is that the only way that you remember
15 them backing it out?

16 A. I'm sure we can look at it in the report.

17 Q. I don't want to trick you. I don't think it
18 is.

19 It also goes on, we didn't try to compute
20 the estimated costs of meeting the safe harbor
21 provisions in the Board of Education's QPA
22 standards. That would have required us to produce a
23 different base level cost for some districts instead
24 of a single base level cost that could be applied.

25 In short what they're saying is we applied

1 mathematically a higher standard than what you would
2 if you used the safe harbor provision?

3 A. They're saying they applied a uniform
4 standard to districts. Using the safe harbor would
5 have required that they lower the standard for some
6 districts and not for others, so they felt that a
7 uniform standard was necessary.

8 Q. What they did is they had to come up with a
9 way to talk about how kids are performing these
10 outcomes. So instead of trying to complicate it by
11 talking about, well, simply because you don't reach
12 the target outcome from one year doesn't mean that
13 you lose your accreditation or that you violated the
14 federal law; because of the safe harbor part, we'll
15 just take that out of the mix.

16 A. Right, they did not estimate the cost of the
17 accountability structure. They estimated the cost of
18 the outcome measures.

19 Q. And you would concede that the standard in
20 terms of outcome standard, if you had used or if it
21 was possible to use a safe harbor approach, it would
22 be something less than what the study used?

23 A. It would be inappropriate, but it would --
24 conceivably, if you could use a lower test score, if
25 you could figure out that would be, it would be a

1 lower standard for the districts for which you used
2 the lower test score.

3 Q. See if we look to page 37 -- I guess I ought
4 not skip over some of these, but real quickly, page
5 35, it talks about how they arrived at the base cost,
6 and then has an interesting statement about removed
7 federal funding.

8 It says the cost model was built using
9 historical spending data. As a result, however, the
10 consultant's estimate included costs that would be
11 paid with these federal funds. We reduced the
12 estimated base level cost to 3,899 per student, which
13 better reflects the cost the state might fund. Do
14 you see what I'm referring to?

15 A. Yes, I do.

16 Q. Says, we describe how to remove the federal
17 funds in Appendix A-1. So apparently, they back out
18 from what was part of the base funding in the
19 Duncombe formula --

20 A. Right.

21 Q. -- the federal funds, by actually reducing
22 the base some?

23 A. Right, which is -- well ...

24 Q. Then, let's look at that appendix, if we
25 can. It was Appendix A-1. And that's found on

1 page -- if I don't find it real fast, I'll come back
2 to it.

3 MR. RUPE: Appendix 1.2.

4 MR. CHALMERS: I think that's what
5 it said.

6 Q. And I find Appendix 1.2, starts at page --
7 well, the part we're interested in, I believe, is
8 really found at page 127 -- find that --

9 A. Okay.

10 Q. -- of the exhibit? And in particular, they
11 talk about, how should remove federal funding, and
12 they discuss the problems that they have. And then
13 they say, we projected the total estimate cost of
14 meeting outcome statewide using the base level per
15 pupil and student needs weight calculated by the
16 contractors -- that would be Mr. Duncombe --
17 Dr. Duncombe -- then we assigned the 205.5 million in
18 federal funds to three categories. There was the
19 base education, poverty, and bilingual. And then, to
20 remove it, they removed the estimated cost in each
21 one of those categories by a certain amount. Having
22 done that, of course, that reduced what the weights
23 would be as it applied to those amounts, didn't it?

24 A. That did reduce the weights.

25 Q. Now, in your analysis then, when you were

1 trying to compare what the LPA did, you made no
2 accounting for any of the federal funds that may have
3 exceeded what was assumed by this analysis, which is
4 that it would stay about the 205 million level, did
5 you?

6 A. No, I was simply reflecting that they
7 substantially reduced the weights, in fact, above and
8 beyond the magnitude of the federal aid effect.

9 Q. Additionally, when you try to compare the
10 Duncombe analysis to what was implemented, you
11 didn't -- that is the LPA analysis and then what was
12 implemented, you didn't account for the federal
13 dollars?

14 A. In that case, the federal dollars are out of
15 what I've considered to be the adequacy targets. So
16 I've used the LPA estimates, which don't include the
17 federal. It's when I only compare back to the
18 original Duncombe estimates to see what they're
19 weight should have been that I'm including the fact
20 that some federal expenditures were involved in that.

21 Q. Well, in your numbers, when you were looking
22 at the Duncombe's levels, you were looking only at
23 how general funds matched up to what Duncombe had
24 estimated?

25 A. No, in most of my analysis I'm looking at

1 how general funds match up to the Post Audit
2 estimates after the reduction of federal. In some of
3 them, I do the other analysis against the Duncombe
4 estimate.

5 Q. We'd have to look at your study, and we'll
6 get back to it. But would it surprise you to find
7 that when you're comparing with Duncombe estimated
8 numbers, that you were comparing that with general
9 fund which would not include, of course, federal
10 moneys?

11 A. That is correct.

12 Q. If we go back to page 37 of Exhibit 199,
13 says under paragraph 3, the estimated poverty rate is
14 .484 per free lunch student, most districts, .726 per
15 free lunch student in the high-poverty inner city
16 school districts. And that would be the weighting
17 that comes from the Duncombe report, is that correct?

18 A. I don't believe so. I believe that's the
19 weighting that comes from the Post Audit variation of
20 the Duncombe report.

21 Q. We'll go back to it. So if the estimated
22 bilingual weight is .100 per bilingual student, and
23 that these two factors and their effect on education
24 costs are recognized through the at-risk and
25 bilingual weightings in the current formula. Do you

1 see what I refer to?

2 A. Yes, I do.

3 Q. Now it says, the consultants used the cost
4 function to estimate the districts' additional cost
5 of having poverty and bilingual students reach the
6 same performance level that the students were
7 achieving, and to develop poverty and bilingual
8 weightings in the district. And it said, we had to
9 take two additional steps to turn their estimated
10 district-level poverty and bilingual weights into the
11 estimated statewide weights.

12 So actually, they're comparing what it was
13 before to what they were going to do, right?

14 A. Yeah.

15 Q. They say they estimate a separate poverty
16 weight for high-poverty, inner city schools. And
17 this was because there was recognition that the way
18 Kansas is set up, that you could have concentrated
19 poverty in certain areas that -- for which the study
20 suggested more money should be allocated than, say,
21 poverty and some rural areas, where the study
22 indicated maybe not as much as -- not as many
23 resources were necessary for those?

24 A. Right. They interacted poverty and
25 population density to pick up the additional costs of

1 high concentrations of poverty.

2 Q. So there was a variance in the way Kansas
3 had to deal with its statutes between that, where
4 they would have a high poverty weighting, then a
5 lower poverty weightings to try to make an adjustment
6 to not put a disproportionate high amount of money
7 into those districts that may be rural with poverty,
8 but don't need as much as an urban poverty area?

9 A. They adopted it separately as the high-
10 poverty density weighting, which was similar to what
11 Duncombe specified.

12 Q. Then, they removed the federal sources of
13 funding and they said, we had to reduce those weights
14 to better reflect the cost the state might fund in
15 recognition that the federal government would fund to
16 a certain level?

17 A. They chose to express it that way, yes.

18 Q. The next page, page 35, I think is the one I
19 was kind of starting to find. It shows how they
20 funded things when they removed the federal dollars
21 in terms of specific money. And then it shows the
22 adjustment made for inflation based on the original
23 estimate that would have been in 2003/'04 dollars and
24 put it into the 2005/2006 dollars, is that right?

25 A. That is correct.

1 Q. And so their mission solved. What they had
2 was the amount that they would propose -- or the
3 amount of the base where you have the adjustments for
4 federal funds and inflation?

5 A. That's what they report.

6 Q. There's another graph that talks about the
7 change because of the federal funds, which is page
8 38. That shows that the original estimated weight
9 and then the adjustment to the LPA to remove the
10 federal funds. Do you see that?

11 A. Yes, that's correct. That's what they
12 report.

13 JUDGE THEIS: Is this a test?

14 MR. CHALMERS: I'm sorry,
15 Your Honor. I'm, in part, trying to make sure you're
16 aware of this.

17 Q. But at page 39, the point is, is that they
18 used this cost model to predict what all districts
19 would have to spend in 2003 to achieve the same
20 outcomes that they achieved if they operated an
21 average level of efficiency, so they use that average
22 level.

23 A. That's what the original model did.

24 Q. There's also another piece to this, but just
25 real quickly -- was that they had to sort out, as

1 part of their costing, the impact that teachers'
2 salaries might have on outputs, is that right?

3 A. That's correct.

4 Q. So they came up with page 73, a predicted
5 salaries and cost indices. In this instance, it
6 talks about the highest and lowest for the year using
7 that weighting approach, is that correct?

8 A. Derivative of the model.

9 Q. There was a relationship found between
10 teacher wages and outputs, is that correct, in the
11 model?

12 A. They did not test that directly in that way.

13 Q. Do you remember that there was a finding
14 that for increase in teacher salary of about .0 -- I
15 think it was .02 percent, that that might result in
16 an increase in outputs?

17 A. That could be the case.

18 Q. I think maybe we got it flip-flopped around,
19 but we'll find it in the documents that there was
20 something. I guess my question is, the model and the
21 weightings, then, would have included the concept
22 that the money that is being generated under the
23 base, and the weights would in part be used to
24 address the teacher cost --

25 A. Absolutely.

1 Q. Page 77 of the exhibit, we go down to the
2 crunch where they actually give the numbers of the
3 current funding formula, and then based on the input
4 and outputs, as that works out, is that correct?

5 A. It appears to be, yes.

6 Q. Now, is there a footnote or is there some
7 indication in this document that would say these
8 numbers are kind of the beginning of it, don't expect
9 any increased outputs for this year?

10 A. I don't -- I don't imagine they phrased a
11 footnote in those words.

12 Q. Is there anything -- would there be a
13 footnote or any indication where there was not the
14 expectation as to these either output or input-based
15 formula that the outcomes desired would not be
16 reached that year?

17 A. Nor do I think that they state that the
18 outcomes would be reached in that year if you
19 immediately implemented that.

20 Q. It's what they hired the consultant to help
21 them figure out, isn't it?

22 A. No, not in those terms. They hired the
23 consultant to generate reasonable estimates of what
24 would be needed under different circumstances to
25 achieve the desired outcomes.

1 Q. At Appendix 1.2, starting at page 123,
2 there's -- the outcome based methodology approach
3 says, the cost study approach estimates how much it
4 would cost Kansas districts to provide the programs
5 and services required by law, including meeting the
6 standards related to student performance outcomes
7 adopted by the state board. That's what they were
8 trying to do, isn't it?

9 A. That is true.

10 Q. To estimate this cost, we used the cost
11 function. Says they used a statistical approach and
12 they hired Professor Yinger. There's nothing that
13 would indicate in this methodology that they expected
14 that, well, we're going to have to keep this in place
15 for three, four, five years before we see the sort of
16 outputs we expect?

17 A. Nor do they say that this is an estimate of
18 what you have to add next year to get this test score
19 next year. That would be absurd.

20 Q. I don't want to go over what I've already
21 gone over, but just so that we have some key
22 decisions that were reached, on page 124, that's
23 where they decided to use the assessment test and
24 graduation measures that we've talked about?

25 A. That's true.

1 Q. We turn to now, let's look to Dr. Duncombe's
2 report. I know there's one other thing I believe is
3 kind of important. When they were trying to figure
4 out what cost to consider as part of the data, they
5 had to pare certain things out. In other words, they
6 didn't want to look at the cost related to buildings
7 or adult education or food service. Those sorts of
8 things had to be removed from the analysis when they
9 were looking at how do we decide what expenditures
10 result in these certain outcomes?

11 A. Right, they removed certain categories.

12 Q. Appendix B found at C-47 of the exhibit, and
13 I have talked about it a little bit, but what it does
14 is it shows the funds included for 2000 through 2004,
15 the funds excluded, and then it also looks at it by
16 functions so that you're able to say, okay, this is
17 what we're looking at in terms of spending, right?

18 A. That's correct.

19 Q. One of the things they looked at was shown
20 as 16, over there on the right, highlighted, capital
21 outlay. That was included, wasn't it, in the
22 assessment?

23 A. It appears that they included the
24 expenditure of capital outlay funds because they're a
25 cash balance fund, yes.

1 Q. Now, capital outlay is not included in the
2 general fund when that's distributed, is it? It's a
3 separate deal?

4 A. It's separate.

5 Q. There's some capital outlay, or has been,
6 now, about four years ago, some equalization payments
7 for that, but that also wouldn't be part of the
8 general fund?

9 A. No, it would not.

10 Q. And when you were calculating your gaps,
11 whether it's the gap between actual spending and what
12 the LPA was looking at or the gap between actual
13 spending and Professor Duncombe's report, you didn't
14 include any --

15 A. I did not include capital outlay.

16 Q. The Exhibit 1037 contains the definition for
17 many of these services -- or functions, rather,
18 that's found in the Duncombe -- or it's found in the
19 appendix of the LPA study. And that's because these
20 functions, those definitions, are pretty much
21 something that are used uniformly --

22 A. That's correct.

23 Q. -- because of federal law -- okay. And then
24 there are reports, like the first one in Exhibit 137,
25 that shows the actual expenditures for this

1 particular instance 2004/2005, on those areas that
2 are called out in Exhibit B -- of Appendix B, rather,
3 of the cost -- the LPA study, is that right?

4 A. That's a list of those same expenditure
5 categories according to the federal classification.

6 Q. Because what they were trying to do, both
7 when they were trying to figure out how much they
8 need to spend, they were including these items in
9 Appendix B, and then saying, okay, of those
10 expenditures, what outputs will we receive?

11 A. In relation to -- potentially related -- the
12 categories as expressed in that Appendix B, which may
13 or may not be reflected the same as what you put up
14 there on Wichita for the federal classifications for
15 those same expenditure categories.

16 Q. You're thinking these functions are
17 different?

18 A. Well, they are identified by the same line
19 numbers and categories. They should be aligned, but
20 I can't guarantee without probing the expenditure
21 data to know the exact same components are contained
22 in each.

23 Q. You'd have to look at the definitions here
24 as well as the definitions --

25 A. And how the data are actually reported --

1 and how the data are actually reported on each
2 individual district to know that they are
3 consistent.

4 Q. Well, let's suppose for a hypothetical that
5 they are consistent and they are the same thing, that
6 when this LPA study was done by the consultant, and
7 then as it's modified, what they're looking at is
8 these items of expenditures against the outputs and
9 trying to say, from those items of expenditures what
10 outputs do we anticipate if we increase spending?

11 A. They are looking at a version of
12 expenditures across those categories in relation to
13 the outputs produced, yes.

14 Q. And it includes federal, which they then
15 subsequently back out?

16 A. It includes expenditure of some federal
17 funds, not special education because that was
18 separated out.

19 Q. It includes supplemental general?

20 A. It includes expenditure of supplemental
21 general funds that were not allocated to special
22 education, vocational, or transportation.

23 Q. And that would be -- supplemental general,
24 would be LOB?

25 A. Yeah, would include the expenditure of some,

1 but we don't know exactly how much of the
2 supplemental general or LOB funds.

3 Q. Yeah, because they take certain things out,
4 don't they? They take out vocational, special
5 reserve KPERS, bond and interest, whatever the --
6 transportation was moved from the whole piece?

7 A. Right.

8 Q. So if we looked at Exhibit 1037, we'd want
9 to remove some of those categories because they would
10 be in addition to or beyond what they were looking
11 at?

12 A. Right, we'd have to remove parts of those
13 expenditure categories which we don't have the
14 ability to remove based on the way you've presented
15 the data.

16 Q. But this would be, if we remove the
17 transportation, food services, community and adult
18 services, then we would have the total and actual
19 expenditures, not counting the capital outlay that
20 was considered or to be considered in these studies,
21 is that right?

22 A. No, because the instruction might also
23 include some of the special education instruction
24 which I believe is also excluded within the Duncombe
25 cost estimate. So there are a lot of pieces --

1 Q. You'd want to back out special ed, as well?

2 A. Toward the Duncombe underlying estimates.

3 JUDGE THEIS: Mr. Chalmers, we're
4 nearing the max here.

5 JUDGE BURR: And then some.

6 Q. (By Mr. Chalmers) The bilingual weighting
7 that was arrived at under the study was shown to be a
8 .00139, and it was explained as being surprisingly
9 low, is that right?

10 A. They found variations in the bilingual
11 weight across districts, but they did explain that if
12 you found, you know, where the weight was that low,
13 it was assumed to be very small.

14 Q. At C-22, there they set out -- the Court can
15 read it later on -- some of the issues with the cost
16 function level and its ability to accurately predict,
17 being the quality of data available to discretionary
18 spending, that is how it spends once it gets to the
19 districts, and that there's no direct method to test
20 or measure efficiency of a district's spending?

21 A. They do lay that out.

22 Q. Okay. They also conclude that standard
23 multiple regression methods are based on the
24 assumption that the direct causation runs only from
25 independent variables to dependent variables?

1 A. The framing is that it is the outcome
2 standard that warrants the spending level when framed
3 as a cost function.

4 Q. They presume causation?

5 A. They do not presume strict causation in that
6 sense. They presume that there's a meaningful
7 association.

8 Q. They say at C-49, standard multiple
9 regression methods are based on the assumption that
10 the direct causation runs only from independent
11 variables to dependent variables --

12 MR. RUPE: It says, direction of
13 causation.

14 Q. (By Mr. Chalmers) I'm sorry. Direction of
15 causation runs only from independent variables to
16 dependent variables. Did I read that correctly?

17 A. Yes, you did.

18 Q. What is standard error?

19 A. A standard error is the -- you have a
20 predicted value for any of these -- or an estimate
21 for any of these effects and there's a range within
22 which that estimate could lie. We have this
23 relationship of a .83, for example, between outcomes
24 and spending, but that .83 might vary within a
25 certain confidence range around .83, that it could

1 perhaps go from .75 to .9, in terms of our 95 percent
2 confidence of that. So there's standard error ranges
3 that can be specified around any of these estimates.

4 Q. The wider the standard errors, the less
5 confidence you can have in the prediction from the
6 data?

7 A. That would be a reasonable interpretation.

8 Q. What is the time series method of
9 instrumental variable models?

10 A. You've combined two different things there
11 but the time series method would be looking at data
12 over time, and instrumental variables model is where
13 we correct for those endogeneities that you
14 referenced earlier.

15 JUDGE THEIS: How are we doing,
16 Mr. Chalmers?

17 MR. CHALMERS: Your Honor, I'm
18 about down with the study and then I've got probably
19 another 20 minutes.

20 JUDGE THEIS: Well, why don't you
21 tell me the point you're trying to reach here. Seem
22 to have made him your witness.

23 MR. CHALMERS: I'm sorry?

24 JUDGE THEIS: You seem to have made
25 him your witness.

1 MR. CHALMERS: Well, what I'm
2 trying to do is --

3 JUDGE THEIS: Should be some big
4 bang theory here at the end.

5 MR. CHALMERS: I think the big bang
6 theory is the data, which is going to establish that
7 when you take these various funds, that those funds
8 within the study will match up to the spending to the
9 LPA levels -- is in part what I'm doing.

10 What I'm also looking now is at, as
11 relating -- now we've gone past the LPA study. We're
12 looking at his regression model. I was ready to move
13 to that. Then I want to talk to him about his
14 spending gap analysis, his achievement gaps analysis,
15 and then I've got about a half dozen questions after
16 that. Made a report that is over 150 pages,
17 Your Honor, so I'm having quite a bit of ground to
18 plow.

19 MR. RUPE: We have booked him a
20 later flight so he can come back in the morning.

21 JUDGE THEIS: All right.

22 JUDGE FLEMING: Let's recess.

23 JUDGE THEIS: Nine o'clock, is that
24 good?

25 JUDGE FLEMING: Yeah.

1 MR. RUPE: Your Honors, I'd like to
2 not have him back and then go unlimited amounts of
3 time tomorrow. I'm going to try to keep it short in
4 my redirect.

5 MR. CHALMERS: I get the sense that
6 the Court wants me to keep it short, and that's my
7 goal, as well. I'm not --

8 JUDGE THEIS: You're slow coming to
9 the realization.

10 MR. CHALMERS: I believed every
11 question I had had a purpose, Your Honor. Whether
12 it's right or wrong, I guess we'll find out.

13 JUDGE THEIS: What, another half
14 hour, hour in the morning?

15 MR. CHALMERS: If we get the sort
16 of responses I did after the break, I wouldn't be
17 surprised if it goes an hour. But I will look at my
18 notes and try to refine it down even more.

19 JUDGE THEIS: The plane to
20 New Jersey flies off when?

21 MR. RUPE: He's got time to make it
22 in plenty of time if we can have him out of here by,
23 say, 10:30 tomorrow morning.

24 JUDGE FLEMING: Let's start at
25 9:00.

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JUDGE THEIS: All right.

(Thereupon, the proceedings were
adjourned to June 12, 2012, at 9:00 a.m.)

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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 11, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 298 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 7)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 12th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

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16
17
18
19
20
21
22
23
24
25

EXAMINATION INDEX

BRUCE BAKER		
CROSS (CONT.) BY MR. CHALMERS		1499
REDIRECT BY MR. RUPE		1545
RE-CROSS BY MR. CHALMERS		1557
BY THE PANEL		1559
REDIRECT BY MR. RUPE		1566
ANDY TOMPKINS		
DIRECT BY MR. RUPE		1568
CROSS BY MS. TIBBETS		1586
REDIRECT BY MR. RUPE		1593
BY THE PANEL		1594
JOHN MYERS		
DIRECT BY MR. RUPE		1596
CROSS BY MR. CHALMERS		1647

EXHIBIT INDEX

RE-OFFERED / WITHDRAWN

Plaintiffs' Exhibit		
394		1554 1556

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: Morning.

3 Housekeeping this morning. We need to get out by
4 five tonight, and tomorrow, remember, we're quitting
5 at three. We did see you had a whole pile of
6 witnesses for tomorrow.7 MR. RUPE: And we're going to
8 really cut those down.9 JUDGE THEIS: Won't be lingering
10 after three.11 MR. RUPE: If they're on the stand
12 more than 15 minutes -- the teachers, principals, so
13 forth, that's what I'm going to try to keep them to.14 JUDGE BURR: I would assume that
15 some of their testimony would be similar to the
16 Kansas City, Kansas people. And I don't want to
17 demean the other school districts, but a lot of that
18 we obviously know.19 MR. RUPE: What I'm going to try to
20 do is tailor it to Dodge City and keep the cumulative
21 out of it. And I advised the other side of that,
22 too. As soon as we can get through with Dr. Baker
23 this morning, I think things will move along.24 JUDGE THEIS: All right. We'll get
25 him on a plane to New Jersey.

1 MR. CHALMERS: When exactly is your
2 flight?

3 THE WITNESS: Later today.

4 MR. RUPE: Around seven?

5 THE WITNESS: Something like that,
6 yeah.

7 MR. CHALMERS: We'll get on you
8 that, I hope.

9 THE WITNESS: I wasn't trying to
10 give him a time --

11 BRUCE BAKER, having been previously
12 sworn was examined and testified as follows:

13 CROSS-EXAMINATION (CONT.)

14 BY MR. CHALMERS:

15 Q. I want to talk to you, just one last
16 question, I hope, about the LPA study. We talked
17 about the outputs and how those were calculated under
18 those studies, and what they used was the test scores
19 the graduation. Now, after the LPA study was
20 published, and in 2006, there were new tests
21 implemented in Kansas, you're aware of that, aren't
22 you?

23 A. Yes, that's correct.

24 Q. Those tests applied to new standards that
25 had been -- started working on that, I think, in 2001

1 or 2002. But there were new standards in place that
2 were being tested after the LPA study was formulated,
3 you understand that?

4 A. That would be my understanding, yes.

5 Q. So the outputs that the LPA study was
6 looking at, well, they no longer were around in terms
7 of the standards and tests that were in place at the
8 time the LPA study was issued?

9 A. They do remain highly correlated, but yes,
10 that's correct.

11 Q. And they are highly correlated if we're
12 comfortable with the idea that the standards remained
13 about the same, and the folks that designed the test
14 tried to fit those standards so that there would be a
15 pretty constant movement from the previous assessment
16 test to the latter assessment test?

17 A. The data would suggest that. I mean, that's
18 what I can offer.

19 Q. And the data that you would look at that
20 would suggest that is how students have performed on
21 the academic -- or the assessment test, rather, after
22 the change, before 2005, and after 2006, is that
23 right?

24 A. And how that varies across children and
25 districts.

1 Q. Because there has been no mapping test done
2 between the original assessment -- well, the
3 assessment test that was in place when the LPA study
4 was involved and afterwards, has there?

5 A. Not that I'm aware of or not that I've
6 looked at. That doesn't mean there hasn't been any.

7 Q. Let me talk to you about the NCES. That is
8 the wage system -- well, it's the ECWI?

9 A. Education Comparable Wage Index, ECWI.

10 Q. That's an index that you and others have
11 developed to try to more accurately reflect what
12 teachers' salaries should be if we put them where you
13 contend they need to be in order to attract and keep
14 teachers in business, is that right?

15 A. Not so much. The NCES ECWI is really just
16 intended to pick up the variation in competitive
17 wages from one area in one labor market to another so
18 that we can evaluate, for example, would it take a
19 higher wage in the Kansas City metro than in Dodge
20 City or in Northwestern Kansas to recruit and retain
21 teachers, such that there's competitiveness with the
22 non-teaching wages in those areas. So it's about
23 picking up the variation, not setting a wage target.

24 Q. And the competitiveness with the
25 non-teaching salaries, that's what I want to focus

1 on.

2 A. Yeah.

3 Q. That would be trying to put teachers'
4 salaries so they're more in line with other
5 professions that have the same or similar educational
6 levels?

7 A. That's not the -- the goal of the ECWI,
8 though, is actually to is to determine how much more
9 or less teachers in one labor market would need to
10 earn versus teachers in another, based on the wages
11 of other professions. So if all other professions at
12 same age and degree level were to have a 20 percent
13 higher wage in the Kansas City, Kansas metropolitan
14 area than in Wichita metropolitan area, it would be
15 assumed that teachers would likely need -- to recruit
16 and retain comparable teachers, they would need a 20
17 percent higher wage in the Kansas City metro than in
18 the Witchita metro, but it doesn't speak to the
19 question of closing the gap between teacher and
20 non-teacher wages.

21 Q. So if you have, in Kansas City, a paid range
22 for MBAs, engineers, lawyers would be of comparable
23 education, wouldn't they?

24 A. Again, it's not about -- there actually is a
25 variable in that model that corrects for each of the

1 different professions and picks up how much -- what's
2 the percent variation from place to place. It
3 doesn't compare their wage directly, so ...

4 Q. Well, lawyers, then, are part of the model,
5 what their income is, with the variation you
6 described?

7 A. They are, I believe, in the data set that's
8 used in estimating that, yes.

9 Q. So what you look at is these other
10 professions, say, in the Kansas City metropolitan
11 area as opposed to out in, let's say, Colby, Kansas,
12 and then you use that as part of your evaluation
13 under this ECWI, is that right?

14 A. Right, you're looking just at the percent
15 difference between those locations, not what the wage
16 itself is.

17 Q. And then, you use the ECWY (sic) to help
18 inform you as to what the, quote, inflation rate, or
19 wage growth rate should be in -- and you've used that
20 in your report, is that right?

21 A. I've used the inflation component of the
22 ECWI, which is different than what we're talking
23 about. It actually relates to -- it's the employment
24 cost index wage growth over time, which is about the
25 growth in -- the average growth statewide in

1 employment costs, which is driven by the same
2 measures, yes.

3 Q. And the same measures include looking at,
4 with the indexes and the adjustments you discussed,
5 the relative salaries to other professions?

6 A. It's just general employment cost growth
7 over time, which is somewhat higher than CPI growth.

8 Q. The ECWI, then, develops an index number in
9 that is higher than the -- well, the consumer price
10 index?

11 A. Yes, that's correct.

12 Q. I want to talk to you about your report, and
13 I have some specific questions, I hope. So let me
14 get the report up on the screen, which is
15 Exhibit 199 -- excuse me, 384. If I look at page 84
16 of your report, first, this is one of the several
17 charts or --

18 A. Right.

19 Q. -- tables or figures, I guess, you describe
20 it, that purport to show the distribution of the
21 districts on which you have described as a gap
22 between -- well, at proficiency levels in testing on
23 the gap that you found between the LPA and the
24 general fund funding levels, is that correct?

25 A. That's correct, yes.

1 Q. Now, if we include to change this general
2 fund gap, if we include, by way of definition, LOB
3 funding and also federal funds, then what that does
4 is moves this line to the right, is that correct?

5 A. Except it's wrong to include federal funds
6 because this is the LO -- this is the general fund
7 gap with respect to the LPA outcome-based target,
8 which is the LPA estimate, not the original Duncombe,
9 so it already has the federal excluded.

10 Q. I appreciate that you believe we should not
11 include federal and we should not include the LOB.

12 A. This already has federal subtracted out for
13 gap, though.

14 Q. What I'm saying, though, is, can we agree
15 that if you add the federal back in, not only the
16 federal that's been subtracted out, but the
17 additional federal that's grown over time -- in fact,
18 let's not even add the 205 million. Let's take out
19 the 205 million plus inflation. If we just take the
20 extra federal and we add the LOB, the line moves to
21 the right, is that correct?

22 A. If you add money to those districts, the
23 line moves to the right.

24 Q. And I won't belabor the point, but you turn
25 to 85, same thing; line moves to the right?

1 A. That's correct, yeah.

2 Q. Now, at page 91 of your report, there's a
3 figure that talks about the relationship between free
4 and reduced lunch percentages and proficiency rates
5 on state assessments. And I think what this is
6 designed to show, it's a way for you to look at as to
7 the different math and reading test scores to say,
8 okay, those folks that are at poverty level, how are
9 they doing over time on those test scores. Is that
10 what it's showing?

11 A. Yeah, I'm impressed that you're able to --
12 this graph is, perhaps, my least clear in the whole
13 report. So it shows the negative -- like, the
14 negative .35 is to say that for each -- when you go
15 from zero to 100 percent free and reduced lunch, the
16 scores go down by 35 percent, so that's the strength
17 of the negative relationship between poverty and test
18 scores, and how that negative relationship plays out
19 over time.

20 Q. And what it shows is not much movement but a
21 gradual movement up from 2005 to 2010 in the way it
22 has been reflected in the figure?

23 A. It shows that, and I think I discussed this
24 on direct, it shows that somewhat for the 4th grade
25 math and maybe the reading. But the previous year's

1 tests was slightly different relationship where you
2 got that jump from '05s to the '06s.

3 Q. We've seen at trial various formats for it,
4 but a line chart that talks about the gaps between
5 the kids that are at poverty on test scores and
6 deaggregated gaps that is the African Americans --

7 A. Right.

8 Q. -- the English as a second language, and
9 then the general kids. And this would be consistent
10 with those charts that show a narrowing of the gaps
11 between the disaggregated groups and the aggregated
12 groups, wouldn't it?

13 A. It might. I mean, I'd have to kind of parse
14 it a lot more carefully to figure that out.

15 Q. If we look at page 96 of your report, this
16 is an attempt to talk about advanced placement
17 participation and then trying to show how that's
18 distributed based on those districts that have high
19 concentrations of poverty, is that right?

20 A. Well, comparing from lower to higher
21 concentrations, yes.

22 Q. What you used, however, so that we're clear
23 on this, for this data is this OCR data which is the
24 Office of Civil Rights data?

25 A. Right, they did a survey data collection on

1 the participation rates a couple years ago.

2 Q. And what they looked at was the districts
3 with the size 2,000 and up, right?

4 A. That's correct.

5 Q. So in Kansas, we look at Exhibit 1040, those
6 districts that have a full-time enrollment of less
7 than 2,000, which looks like they're on the first
8 page -- many -- they're not part of your chart?

9 A. They are not part of this graph.

10 Q. We'll come back to that in little bit. I
11 want to talk to you about the novice teacher point,
12 which is page 112 of your report. The novice teacher
13 concentration, and this particular figure, 52, on
14 page 112 of your report, attempts to show the
15 distribution of novice teachers in terms of amounts
16 based on against the free and reduced or the poverty
17 level, is that right?

18 A. Yeah, that's correct.

19 Q. And again, it uses the OCR data. So again,
20 we're talking about districts --

21 A. Yes.

22 Q. -- 2,000 and up?

23 A. Absolutely.

24 Q. What's the percentage of, do you know off
25 the top of your head, of districts in the State of

1 Kansas that have 2,000 kids and up?

2 A. I know that the vast majority of children
3 attend districts with 2,000 or more students, but it
4 is a small percent of the districts.

5 Q. Let's look at page 47. So I'm working
6 backwards at this point. 47 is where you used your
7 ECWI, under Figure 18, to show what the baseline
8 should be for the various increments, is that right?

9 A. If we were to extrapolate it from a couple
10 of different points in time, where would that base
11 have ended up.

12 Q. Three different times you extrapolated
13 from --

14 A. That is correct.

15 Q. This little tailing-off period here, that's
16 the actual base that we talked about yesterday that
17 varies depending on the amount of appropriation, the
18 number of kids, and their demographics?

19 A. An appropriation- and enrollment-sensitive
20 calculation of the base.

21 Q. You don't have a similar chart based on CPI,
22 did you?

23 A. No, I did not.

24 Q. Then if we go to page 59 of your report, if
25 I can find it, it has a table on it at page 59 that

1 talks about a regression analysis that you did as
2 part of your report, is that correct?

3 A. That's correct, yes.

4 Q. I want to spend a little bit of time trying
5 to help us all understand this table. The
6 coefficient -- and we're looking at the first column
7 under LPA formula estimate for '11/'12, there's a
8 coefficient of 2,035. And that is to reflect what if
9 you had a district of optimal size and kids with no
10 weightings, that's the base?

11 A. No, the 2,035 is -- based on the LPA
12 estimates, how much more money would you expect to
13 see in a district with a 100 percent free and reduced
14 lunch versus a district with zero percent free and
15 reduced lunch. So that's the weight or the tilt.

16 Q. Okay. I was completely screwed up on that,
17 wasn't I? So it would cost you -- if you had a
18 district with 100 percent poverty as opposed to a
19 district with none, it would cost you 2,000 more per
20 kid, is what your regression analysis shows?

21 A. My regression analysis teases out that that
22 is the differential in the Post Audit cost estimates,
23 excluding federal.

24 Q. Now, when you used the Post Audit cost
25 estimates, in order to look at what was estimated

1 over time -- show you what's been marked as
2 Plaintiffs' Exhibit 97 -- 197 you included, as part
3 of your calculation, not only in inflation, but you
4 also included what the study said was needed to
5 increase to 100 percent?

6 A. No.

7 Q. You did not?

8 A. I just did the inflation. It was a 3-point-
9 some percent from year to year.

10 Q. So 197 is a report that attempts to say,
11 here's what the ball should be, where we should be in
12 terms of spending. If we try to increase it to get
13 the outputs we want in '13/'14, your numbers would be
14 lower than those numbers?

15 A. That they should be, yes.

16 Q. Back to your exhibit or your report, so that
17 we understand, if we look at enrollment size of under
18 100, what does the 5,856 mean?

19 A. It means that on average the LPA estimates
20 were about \$5,800 per pupil higher for a district
21 with under 100 students than for a district with
22 2,000 or more.

23 Q. So they were estimating that you should give
24 more on the basis of size than you would other
25 districts because it's more expensive to operate

1 schools and --

2 A. Yes.

3 Q. -- because of diseconomies of scale?

4 A. There would be economies of scale, but also
5 because the -- in here, this is the final LPA
6 estimate which includes hold harmless provisions and
7 so on, so that may also just embed previous low
8 enrollment weight effects.

9 Q. So if we go up to districts that have a size
10 of 1,500 to 2,000, basically, then the coefficient
11 goes down. And the thought is, that when you're at
12 that level, that you're district, because of
13 economies of scale, is able to operate a little
14 cheaper than out in some smaller district in, say,
15 Western Kansas?

16 A. Right. The negative 29 suggests that by the
17 time you get to 1,500 to 2,000, you're roughly at the
18 same as 2,000 or more. It's approximately zero.

19 Q. Then, you have your general fund per pupil.
20 And what you're doing here is saying, if we have a
21 comparison between a district that is of optimal size
22 and a district that has 100 percent poverty as
23 opposed to 100 or no poverty --

24 A. Right.

25 Q. -- that the district with 100 percent

1 poverty should be receiving about \$540 more per kid?

2 A. That the general fund budget per pupil would
3 yield that much more on average per child.

4 Q. That's how much the general fund budget
5 would yield per child. How do you calculate how much
6 more a district needs based on this regression
7 analysis from one district to another?

8 A. This isn't about -- what a district needs is
9 the what-is side -- is the what-should-be side of a
10 what-is versus what-should-be comparison. This is an
11 analysis mainly of what-is, except the LPA formula
12 estimates are, you know, their estimates of what-
13 should-be.

14 Q. This is in the what-should-be category --

15 A. Based on LPA, there are other versions of
16 what-should-be. So if we compare this LPA version of
17 what-should-be to the two different versions of what-
18 is, the versions of what-is show lower effective
19 weights.

20 Q. Here's what I'm trying to get at.

21 A. Okay.

22 Q. Can we use that information, what-is, to be
23 able to say how much Wichita or how much Hutchinson
24 or how much Colby or how much Satanta needs under the
25 LPA study?

1 A. Under the LPA study, but that is after
2 they've already inappropriately reduced the poverty
3 weighting. So they're effective poverty weight I
4 then compare to the information in Table 4 on other,
5 kind of, research-based poverty weighting. But that
6 serves as the what-should-be in this table.

7 Q. What I'm struggling with is --

8 A. Okay.

9 Q. -- trying to clarify what this table shows
10 in this column. And are we to understand that, based
11 on your analysis of how the LPA formula is supposed
12 to work, that we can pick a district, pull it within
13 a certain category, and that will tell us what the
14 weighting should be relative to a district that has
15 the no-poverty, optimal level?

16 A. Yeah, this is, in effect, a statistical
17 characterization of the LPA estimates that could be
18 used as kind of a basis for broad comparison which is
19 what I tried do here.

20 Q. Now, you had indicated that there's kind of
21 a washout effect in various weightings? I don't know
22 if that was Mr. Rupe's phrase or yours, but washout
23 was --

24 A. It may have been my phrase. There's partly
25 a washout already in the LPA estimates because of the

1 way they added things back in. But I think we were
2 mainly talking about a washout effect in the
3 structure of the weightings and the general fund
4 budget.

5 Q. And you called out in particular the new
6 facilities weighting, I think you called it the new
7 facility --

8 A. New and ancillary new.

9 Q. And the new facility weighting, if we're
10 talking about in terms of the amount. It's a
11 relative amount, that's not a very big weighting, is
12 it?

13 A. The new and ancillary new, together, have
14 been pretty big in the districts like Blue Valley and
15 De Soto over the years.

16 Q. It's an increase in number of kids, isn't
17 it?

18 A. Can you clarify what you mean?

19 Q. The weighting for the new facility
20 weighting, it's a increase in the number of kids? In
21 other words, what they do is --

22 A. Right.

23 Q. -- I think there was an instructor -- or
24 rather a superintendent here that used that phrase
25 that she said that, in essence, she thinks it's more

1 kids when you add the weightings?

2 A. All of the weightings are about creating,
3 basically, an elevated, artificial kid count, right.
4 So this is, you know, putting a multiplier on kids in
5 new buildings to increase the number of kids that
6 generate money for you.

7 Q. Not so with the cost of living; that's an
8 increase in the local levy?

9 A. Right. Right, I don't -- yeah.

10 Q. So if we're talking about the weightings,
11 the ancillary new facility weightings, you do realize
12 that Wichita, Kansas City, Kansas, Hutchinson, and
13 probably Dodge, all benefit from that and have all
14 received those weightings, don't you?

15 A. I believe they received those ratings at
16 some point in time -- those weightings.

17 Q. And if we look at the amount that's assigned
18 to that particular weighting, that is the increase in
19 the number of kids, if you will, it's a much lower
20 increase in the number of kids than is, say, the
21 poverty weighting, the weighting for size of
22 districts, isn't it?

23 A. In some years, the weighting for new and
24 ancillary new in Blue Valley and Olathe has matched
25 or nearly exceeded -- prior to the increase of

1 weights, but the weighting for at-risk and bilingual
2 in KCK. So it's been very sizable in growing Johnson
3 County communities in some years.

4 Q. I'm not sure what years you're talking
5 about, but tell us how the formula works. Maybe we
6 can understand it that way.

7 A. Well, the new facilities weighting is a 25
8 percent for each kid in a new building for the first
9 two years, last I checked. There may have been
10 subtle changes. But it was my understanding that the
11 ancillary new -- and I'm not sure if there's been
12 changes to its design -- actually was based on,
13 effectively, a negotiated need for a -- by individual
14 districts for these -- you know, saying that they
15 need this much more to get these new facilities
16 open. And then a weighting was backed out of that,
17 and that amounted to, combined, thousands of dollars,
18 over a thousand bucks per pupil in some districts, in
19 the mid 2000s, and through the later 2000s in some
20 cases.

21 Q. Which is all ancient history for the
22 purposes of our lawsuit?

23 A. Except in my analyses I show it remains, in
24 recent years, strongly negatively correlated with low
25 income status. So I covered that. I wouldn't have

1 picked on it had it not remained negatively
2 correlated.

3 Q. The new development you're talking about in
4 the Blue Valley, the Olathe, that area, that
5 development has happened and gone, for the most part.

6 A. But in De Soto and to the areas beyond, it
7 continues.

8 Q. We've got new buildings in Kansas City,
9 Kansas. We've got tons of new buildings in Wichita
10 School District. We've got new buildings in the
11 other districts where the weighting would apply, if
12 the theory is right, that it does cost more to ramp
13 up your new facilities?

14 A. That's if you accept that the theory is
15 right, despite it not being in the Duncombe Yinger
16 chapter that you discussed earlier.

17 Q. If we look at, though, the percentage,
18 you've got .25 per kid for this window of time that's
19 a new facility tapering off --

20 A. Right.

21 Q. -- and compare that to the weighting for
22 high-density poverty, the .25 is, what, a third of
23 what the high-density poverty weighting?

24 A. On its face, it appears smaller, but its
25 magnitude of overall affect still seems to be

1 substantial.

2 Q. And then if we look at the other weightings
3 here to deal with the size of the school district,
4 whether it's low enrollment, high enrollment, those
5 are other weightings that are involved that you'd
6 have to look at in terms of this washout, is that
7 right?

8 A. With the way I've done it here, I've
9 actually -- I've controlled for those in the
10 washouts, so that I've accepted that there is
11 validity to the regional differences in wages and to
12 economies of scale, so I've not counted the size
13 weight as part of the washout effect. I'm really
14 counting only those counterbalancing weights.

15 Q. So the only ones you're looking at are
16 poverty against low enrollment, or --

17 A. What I'm doing --

18 Q. The poverty against the two that you don't
19 like?

20 A. Instead of comparing the individual weights,
21 I'm fitting the statistical model to the cumulative
22 general fund budget per pupil to see how it's
23 distributed statistically, including all those
24 weights, not trying to parse the individual effects
25 of each, and finding that there's a very small,

1 effective poverty weight in the general fund.

2 Q. Let's talk about that for a moment. There
3 are poor kids in Western Kansas?

4 A. That's correct.

5 Q. There are poor kids in some relatively large
6 cities as well as some small cities?

7 A. Yes.

8 Q. There is a substantial growing population of
9 English as a second language learners in Southwest
10 Kansas?

11 A. Yes, that's correct.

12 Q. I think it's also now in Northwest. It's
13 the whole state, but I suppose in some major
14 concentrations in Southwest and South Central Kansas?

15 A. That's correct.

16 Q. And so when you're doing this distribution,
17 what you're looking at is how all these weightings
18 combined to say, where do they fit relative to the
19 high-poverty areas is that right?

20 A. Right.

21 Q. What you found is, is that if we had used
22 the weightings called for in the formula estimate --
23 now, is that Duncombe's research?

24 A. No, that's the LPA estimates that were
25 informed by Duncombe, so it excludes the federal and

1 so on --

2 Q. Look at that, and we would have expected
3 there would be a 30-percent difference between --
4 here you've got the -- well, what is the 30 percent?

5 A. The 30 percent is the percent difference.
6 It's a \$2,000 difference or a 30-percent difference
7 between the districts with zero percent and 100
8 percent free and reduced lunch.

9 Q. I don't know if there's a zero or 100
10 percent free and reduced lunch?

11 A. It's a hypothetical. It's fit to the model
12 to simplify --

13 Q. That's trying to show how distribution is?

14 A. Yes.

15 Q. Then, when you look at the general fund,
16 which doesn't include the federal moneys, which
17 would, for the most part, be targeted to the higher
18 poverty --

19 A. Nor does the first column. That's the LPA
20 excluding federal. That's the LPA version of the
21 estimates.

22 Q. If you look at this column, that does not
23 include the federal moneys that were targeted mostly
24 to the at-risk, high-poverty concentrated areas, then
25 this is the number that you come up with in terms of

1 the actual distribution?

2 A. That's right, the federal money actually
3 adds anywhere from 6 to 10 percent to that, at most,
4 from going to zero to 100 percent free and reduced
5 lunch. That's how much it changes that poverty
6 weighting, it's about a 6- to 10-percent shift.

7 Q. And whether or not there's a washout or not,
8 the impact of that we talked about that yesterday, so
9 I don't want to talk about that again. But I do want
10 to talk to you about page, let's say 50 -- rats.

11 Here's where I'm headed: I want you to tell
12 me what the targets are for those three. And there's
13 a graph in your report. And I find the back page
14 for, and it's at page 53, is what I'm looking for
15 here's 54. Here's 53.

16 A. Okay.

17 Q. This would be one of them. This is 55.
18 You've got a variance between Topeka, Kansas City,
19 and Wichita on page 53 of your report, and it shows
20 those numbers and variances between the LPA study and
21 the general fund. And what I'm trying to get a
22 handle on is what was the number for the LPA target,
23 given your variance?

24 A. The number for the LPA target, I'd have to
25 check on that. I'm not sure I have it right here

1 available. But the LPA target for Topeka looks to be
2 somewhat above 8,000 per enrolled pupil. For Kansas
3 City, Kansas looks to be -- and for whatever reason
4 in this printout the axis numbers got cut off and
5 it's been bugging me.

6 MS. GARNER: This one.

7 THE WITNESS: No, they're all --
8 the chart's printed out weird in all these copies.

9 A. For Kansas City, Kansas, I think it's on the
10 order of 11 or over 11,000, and for Wichita it's just
11 under eight.

12 Q. So I've got 11,000 for Kansas City; Topeka,
13 8,000, or about 8,000; Wichita, about 8,000?

14 A. Yeah, that's correct.

15 Q. And if we wanted to look at whether or not
16 the actual spending met those targets, what we could
17 look at is the funds that we talked about yesterday
18 that are described in the LPA report as what they
19 considered in terms of calculating their base. We
20 could add up that spending and we'd see in reality
21 how close we are to these targets, wouldn't we?

22 A. We'd have to be more precise, though,
23 because these are LPA targets excluding federal. And
24 you were looking at the current operating expenditure
25 figure, so we'd have to parse out, you know, the

1 expenditure of federal money from that current
2 operating expenditure. There's some apples and
3 oranges in there.

4 Q. So we need to back out the 205 million in
5 federal. What else would we need to back out?

6 A. You know, it's hard to tell without parsing
7 the data that you're actually trying to describe
8 here. I know you gave me broad categories of a
9 current operating expenditure figure, but that takes
10 a lot more, kind of, refined parsing than I'm able to
11 do in my head based on my knowledge of these data
12 sets right here and now.

13 Q. As part of your study and part of your
14 report, you didn't actually calculate whether or not
15 the LPA's target was being met with the actual
16 expenditures?

17 A. I didn't have a clean way to actually do
18 some of that parsing that would be needed to do that
19 particular comparison.

20 Q. Talk to you about achievement gaps. There
21 are a set of conditions that are outside the control
22 of local schools and districts that affect the cost
23 of operations of school, isn't that correct?

24 A. Yes, that's correct.

25 Q. Social and family factors, they create the

1 achievement gaps, don't they?

2 A. They are a significant background factor
3 influencing the achievement gap, yes.

4 Q. Now, needs-based state financial policy --
5 excuse me, a needs-based finance -- school finance
6 policy, which is what Kansas purports to have and
7 what the LPA says we ought to have, is that right?

8 A. That's correct.

9 Q. It assumes that with financial leverage,
10 that is, more money, you can offset the deficits that
11 some children bring to the table, these social and
12 economic issues just by circumstances of their birth?

13 A. I think it assumes that financial resources
14 are needed to provide the programs and services that
15 might help to do that.

16 Q. And it assumes that those programs and
17 services can offset those deficits, at least to some
18 degree?

19 A. I think it assumes that there will be
20 benefits that help to offset those disadvantages.

21 Q. Your point is well-taken. Money by itself
22 is not the answer; it's how the money is spent that
23 may have the effect of offsetting the deficiencies
24 that maybe kids bring to the table?

25 A. Expect that if you don't have it, you can't

1 spend it well. So I would qualify with that.

2 Q. I'm not here to argue with you, but I can
3 put a stack of money on a table, and that's not going
4 to do anything unless it's spent in a way that's
5 effective to help the kid, right?

6 A. Right, it would need to be spent effectively
7 to help the kids.

8 Q. You can't point to a single district where
9 the assumption that applying more money will
10 completely offset the deficits that some children
11 bring to the table because of birth circumstances,
12 can you?

13 A. I cannot, you know, identify this
14 hypothetical to which you point.

15 Q. There is no state, that you're aware of,
16 that has eliminated, through it's offset strategies,
17 the gap between the disadvantaged and the
18 non-disadvantaged kids?

19 A. The gap has not been 100 percent eliminated
20 anywhere.

21 Q. What is vertical equity policies? What are
22 vertical equity policies?

23 A. Actually, I think you already kind of
24 explained them. It assumes that we can provide
25 varied funding on a need and cost basis toward

1 achieving these goals. Vertical equity concepts
2 started out with the idea that we had these different
3 costs and needs but we didn't necessarily, back in
4 the '70s and '80s, when these ideas were emerging
5 conceptualize in relationship to the measured
6 improvement of student outcomes and gap closure.

7 But it acknowledges there are different
8 needs in different settings and you might want to
9 allocate differential funding toward accommodating
10 those.

11 Q. When you used the phrase previously, talking
12 about vertical equity polices, you conceded there has
13 been no specific example where using these policies
14 produce the result with a complete and closure of the
15 gap between the kids we've been talking about?

16 A. As phrased to a complete closure of the gap,
17 I would say no, that there's not an example of states
18 or districts that have so significantly leveraged
19 vertical equity targeted funding so as to 100 percent
20 close the achievement gap.

21 Q. You concede that at least in Kansas that
22 gap, as measured on its standard assessment tests, is
23 narrowing?

24 A. And elsewhere it's narrowing more. I think
25 we have some kind of mixed results across all these

1 graphs about the extent of narrowing and the grade
2 level on which there is or isn't narrowing.

3 Q. And that was the graph that we just talked
4 about a few minutes ago that showed overall maybe
5 some were flat, some were, you know --

6 A. Yeah, I think it was earlier grades I saw
7 more of the narrowing but it was still relatively
8 subtle, but I didn't go deep on that particular
9 question.

10 Q. Let me talk to you about novice teachers for
11 a moment. And I don't want to pull up the report,
12 but you indicate that it is more likely in KCK --
13 well, I think you said it's more likely in districts
14 with higher poverty that they are to have a novice
15 teacher than those districts that are not in poverty
16 by about 70 percent. Was that your number?

17 A. That number comes from a comparison of these
18 kind of high-resource, high-outcome to low-resource
19 to low-outcome districts and the most advantaged to
20 the least advantaged or most disadvantaged districts
21 where it was the 70 percent more likely that a
22 teacher was novice in the low-resource low-outcome
23 districts.

24 Q. The data you were looking at there is the
25 OCR data?

1 A. No, that was actually based on an individual
2 staffing record file of Kansas teachers across all
3 districts, all settings, which then reconciles with
4 my comparisons in the OCR data.

5 Q. And the 70 percent figure, so we understand
6 what that means, if you have a one in 100 chance in,
7 say, Blue Valley of having a novice teacher, then
8 your chances in, say, KCK are 70 percent more,
9 meaning you have maybe a one in 100, maybe around one
10 in one --

11 A. You say 1.7 in 100 if you want to divide it,
12 you can.

13 Q. So you have a .17 chance as opposed to one
14 in 100 chance?

15 A. 70 percent more likely is ...

16 Q. Yeah, seven percent more likely --

17 A. 70 percent.

18 Q. 70 percent. I'm just trying to get a number
19 here so we understand what that means. And if we can
20 do it, we can say in Blue Valley if you have a .7 in
21 100 chance of getting a novice teacher -- we don't
22 want to use .7 --

23 A. That's a bad place to start.

24 Q. .3, then you have a one chance in 100
25 getting it in Kansas City, Kansas?

1 A. I think the better way to go is to say if
2 you have a one in 100 chance in getting a novice
3 teacher in Blue Valley, you have a 1.7 in 100 chance
4 getting that novice teacher in KCK.

5 Q. Two in 100 chance?

6 A. I'll let you round up.

7 Q. The advanced placement we discussed a little
8 bit. Did you look at the Sumner Academy in Kansas
9 City, Kansas and its curriculum?

10 A. It's included as part of Kansas City,
11 Kansas, within all these estimates.

12 Q. Did you look at the IB program in Wichita in
13 particular as part of your estimates?

14 A. It's included within all these -- within the
15 statewide estimates and the OCR estimates. Although,
16 the OCR, I think I have advanced -- the reason I
17 looked at advanced courses in addition to just AP was
18 to capture IB, as well.

19 Q. Did you find in your review that any student
20 had been denied the opportunity to take a class that
21 was required for accreditation?

22 A. I did not explore that issue.

23 Q. Did you look at whether the districts were
24 and their schools were accredited by the State?

25 A. I did not explore that issue.

1 Q. Did you look at whether -- when you talk
2 about advanced placement classes, whether there was a
3 child who wanted to be in an advance placement class
4 but the class was not available to them?

5 A. I didn't explore that.

6 Q. When a district decides how many advanced
7 placement classes it has, it's kind of a -- we look
8 at the demand from our kids against how many teachers
9 and how many classes we're going to have, right?

10 A. It's a circular issue, indeed.

11 Q. Did you look to see whether the curriculums
12 that were in the various districts were meeting the
13 accreditation requirements by the State?

14 A. No, I didn't.

15 Q. Did you look to see whether or not the
16 curriculums were in place that would allow for or
17 allow the opportunity for college entry for students
18 in the state?

19 A. That too was outside the scope of my
20 analysis.

21 Q. Did you look at whether there was any
22 financial -- well, let me look at it a different
23 way. Rather than what you didn't look at, let me ask
24 what you did look at.

25 Let's talk about levies for a second. You

1 indicated that there's a difference in levies between
2 the different districts and the range of the levy
3 districts -- the range in levying for property tax,
4 how varied was that?

5 A. I did a couple of graphs about the range in
6 the -- or the yield from capital outlay mill levies,
7 and I did a graph that related to variation in LOB
8 levies in relation to assessed value, but I can't
9 recall what the range was.

10 Q. Well, maybe I misspoke. I don't know. Did
11 you ever look at how the actual mills that were being
12 levied district to district were distributed?

13 A. In the ways I just described, I looked at
14 how they were distributed. I looked at the
15 distribution of the LOB mill levies with respect to
16 assessed valuation.

17 Q. Well, the assessed valuation, of course, you
18 did talk about that, and I think you used the example
19 of Satanta being the high, Galena being the low?

20 A. If that's where they show up on my chart,
21 I'll take your word for it rather than fish for it
22 right now.

23 Q. How did Satanta do against its Kansas
24 assessment tests?

25 A. That's not something I would recall off the

1 top of my head.

2 Q. How did Galena do?

3 A. Again, that's not something I would recall
4 off the top of my head.

5 Q. Out of the top ten, in terms of assessed
6 value areas, as opposed to the bottom ten assessed
7 value areas, how did the kids do in those schools?

8 A. I didn't, in my report, relate assessed
9 value to performance measures.

10 Q. Talk to you about your rebuttal chart for a
11 moment. In Exhibit 383, you re-print the report from
12 the Duncombe study, is that right?

13 A. Just the one table from his study, Table 4
14 from his version of the appendix.

15 Q. And we beat this horse to death, but we've
16 got the performance measure as the .83 that we talked
17 about yesterday?

18 A. Yes, that's correct.

19 Q. Now, you then, in your rebuttal report, did
20 a regression example. It doesn't have a performance
21 measure. Is that something that you can do as part
22 of your regression analysis?

23 A. That was toward -- that was toward a totally
24 different purpose. The performance measure, I think,
25 is the dependent variable there. And I'm simply

1 illustrating that there is a relationship between the
2 spending variable -- and it's framed as the
3 production function as opposed to cost function. And
4 it's just a response the Podgursky and Hanushek
5 scatter plots, to show that had they controlled for
6 other variables, they might have seen a positive
7 relationship between spending --

8 Q. I guess my question was whether or not you
9 could calculate a performance measure based on the
10 work you did on these regression analyses, and your
11 answer is no?

12 A. No, not from those at all. Those are
13 illustrative.

14 Q. Now, then as a production function, I think,
15 what you're using is a multi-leveled regression
16 analysis but when you try to display it, you're
17 trying to get one axis -- and well, the two sides of
18 the graph so you can display it, right, so it becomes
19 two-dimensional?

20 A. Well, except that the issue is it's
21 multivariant regression, so it's many-dimensional as
22 opposed to bivariate, which would be two-dimensional,
23 so --

24 Q. What you're trying to do is break out
25 certain aspects of it. And in one side, you'll have

1 cost, and other side you'll have that variable,
2 right?

3 A. Yeah, in this you're saying to what extent
4 are spending differences across districts related to
5 outcome differences across districts. And it's not
6 even the best approach to a production function
7 analysis. It's just an illustration of the flaw of
8 the graphs that I'm rebutting there --

9 Q. Let's talk about this number, the 5.30.
10 What does that reflect?

11 A. Oh, gosh, what is that, the F value?

12 Q. It's a calculated number.

13 A. In fact, I'm not sure what we've ...

14 MR. RUPE: The 5.03 up at the top.

15 A. Right, I'd to have to actually dig back
16 through my documentation for me to -- but that's not
17 a number we would commonly use in evaluating the
18 model. It's a diagnostic statistic. There are other
19 diagnostics that are more commonly used.

20 Q. You've got the output mean, what is that?

21 A. That's the average across multiple tests of
22 the -- of the, I guess, proficiency rates.

23 Q. So there are then a series of multiple
24 tests. What's the first multiple test?

25 A. It's not a series of multiple -- it's a

1 series of variables that might predict the
2 differences in the outcomes across districts, where
3 the first is the natural log of expenditures per
4 pupil.

5 Q. So the expenditure per pupil showed a
6 coefficient of 5.58. What does that mean?

7 A. That means that for every one-unit change in
8 the natural log of expenditures per pupil, there was
9 a 5.58 unit change in the mean outcome measured.

10 Q. And the mean outcome measure is the average
11 of outcomes that we've been talking about?

12 A. Right.

13 Q. So state that again, what you would have is
14 for every how much increase?

15 A. See, it's one unit in the natural log of
16 expenditures. So it's a re-scaled number, so it's
17 hard to, you know, here, kind of, calculate, for
18 example, how that would relate to the .83, or
19 anything else.

20 Q. It doesn't result in a .5 --

21 A. It's a five.

22 Q. Five-eight percent?

23 A. It's a 5.58 unit change in the outcome
24 measure, which is -- I guess it's 5.58 change in the
25 average percent proficiency for the one-unit change

1 in the natural log of expenditure, based on data
2 across districts.

3 Q. And you've got the next item under that
4 where it has the negative 23. What is that?

5 A. That is, how much difference is there in the
6 percent proficiency as percent free and reduced
7 lunch. As you go from zero to 100 percent free and
8 reduced lunch, when you correct for all these other
9 factors, your percent proficiency is going down by
10 about 23 percent.

11 Q. Well, put that in language that maybe we can
12 digest. That means, as you spend more, you get less
13 response --

14 A. No. No, it's percent free -- this is very
15 similar to what we were looking at before with those
16 .3 negative relationships between poverty and student
17 outcomes, that controlling for spending differences
18 and all these other factors, when you go from zero to
19 100 percent free and reduced lunch, the average
20 percent proficiency goes down by about 23.9 percent.

21 Q. And then the average proficiency goes down
22 for African American kids, what --

23 A. Right --

24 Q. -- 45?

25 A. -- if you were to go, hypothetically, from

1 zero to 100 percent, African American would go down
2 by 45.65. But if the maximum in African American is
3 more on the order of 50 percent, than from zero to 50
4 percent is half of that amount.

5 Q. Then, there is -- get to the punch line,
6 where do we find on this regression analysis, the
7 number that indicates a connection between increased
8 student outputs and spending?

9 A. The number is the 5.58, but again, it's an
10 incomplete illustration, not intended to prove
11 anything, but to illustrate what was not proven by
12 the oversimplified analysis. This is still not
13 complete analysis by any stretch.

14 Q. In the LPA study, where would we find a
15 similar production function number?

16 A. There isn't one. It's a cost function.

17 Q. But could be translated into a production
18 function?

19 MR. RUPE: Objection.

20 Mischaracterization.

21 A. The measures are scaled entirely
22 differently.

23 THE WITNESS: I'm sorry, I didn't
24 let you rule on the objection.

25 Q. The second regression analysis comes up with

1 another number, but you don't remember what it means,
2 and comes up with a entirely different coefficient,
3 doesn't it?

4 A. Another number, that was an -- what don't I
5 know what what means?

6 Q. You don't remember what this number is?

7 A. Oh, that's the -- well, it's just -- it's a
8 number that is -- that's not used as commonly to
9 interpret the model, because we'd be looking at the
10 R-squareds, we'd be looking at coefficients and their
11 standard errors.

12 So if I go to that particular output, what
13 I've done there is I've collapsed all those cost
14 factors into a -- that were in the previous graph,
15 into just the William Duncombe index. It's, you
16 know, expressed as an index where the average
17 district has a cost of one and the -- you know,
18 Kansas City, Kansas much more than that, and Blue
19 Valley, somewhat less. So I've just simplified all
20 those other factors into an aggregate cost index to
21 say what is the relationship between spending and
22 outcomes when we correct for all the cost factors?

23 Q. The 11.56 is now moved under the second
24 regression analysis up from the five?

25 A. Right, it's gone from five to 11 because

1 I've controlled, actually, for a whole lot more
2 stuff, so I've brought out a stronger relationship.

3 Q. And the relationship that is stronger in
4 this production function is what, this idea that you
5 have this theoretical increase in -- well, you tell
6 us --

7 A. It's actually -- it's not even a
8 theoretical. It is the statistical relationship of
9 increase between spending variation and outcome
10 variation across districts, just again,
11 illustration. So it's the relationship between
12 spending differences across districts and outcome
13 differences across districts, if we control for the
14 whole batch of cost factors that were controlled for
15 in the Duncombe analysis.

16 Q. Help us out. Does this mean that we've got
17 a -- this 11.56, does that mean that you've got that
18 percentage increase in outputs?

19 A. You've got a percent change in proficiency.
20 So it doesn't align -- my scales aren't the same as
21 the scales in the cost function. So you can't --
22 these numbers just don't one-for-one in any way
23 compare. It's an apples to, you know, KC strip steak
24 comparison to try to match up these to what's going
25 on in the cost model.

1 Q. You've got another regression analysis, and
2 there you come up with, again, the number that you
3 don't remember, but you come with another number.
4 Now we're up to 14.69?

5 A. That's in similar range to the eleven --
6 what I've done, is I've just taken the expenditures
7 per pupil and divided it by the cost index to say,
8 well, then what are the adjusted expenditures in
9 relation to the outcomes. Again, saying if we look
10 at how cost affects these different districts in the
11 scatter plots that I was critiquing here, then you
12 actually see that there's an underlying
13 relationship.

14 Q. And we've got three different figures or
15 three different numbers in terms of this coefficient,
16 but none of those numbers will tell us what the
17 relationship is between the increase in spending to
18 outputs, do they?

19 A. Nor was it in any way the -- it was simply
20 to illustrate that we can tease out that there is
21 some relationship there, but needs to do far more
22 extensive analysis to figure out the nature of that
23 relationship.

24 Q. It shows there's some relationship there,
25 how?

1 A. It shows that if we try -- again, what this
2 follows is there are a series of those scatter plots
3 that simply put spending on the horizontal axis and
4 outcomes on the vertical axis, and argue that, look,
5 there's no relationship. But the reality is that
6 those points were scattered all over the place in
7 part because those districts face totally different
8 costs of achieving the same outcomes. So we see --

9 Q. I understand your testimony on that point.

10 A. Right.

11 Q. How does this show the relationship as
12 opposed to how the other one didn't show it?

13 A. What this shows is that even if we make some
14 simple yet insufficient corrections for those cost
15 factors, if we take a couple years of data and fit,
16 still, an oversimplified regression analysis for
17 spending and outcomes and correct for poverty and
18 school district size and competitive wages, we see
19 that there is a statistically significant positive
20 relationship, which actually becomes bigger and
21 stronger as we correct for more things.

22 Q. The statistically significant positive
23 relationship, is that this coefficient of 5.58?

24 A. That's correct, yes.

25 Q. Or 5.80?

1 A. 5.580.

2 Q. If there were a one-to-one relationship or a
3 one-to-.83 relationship, what would your coefficient
4 show?

5 A. Again, we're comparing apples and KC strips
6 because the scale of these variables is different.
7 I've not done it on a percent to a percent --

8 Q. Let's take the one-to-1.3 -- let's talk
9 about what if you have a definite, clear causation,
10 one-to-one relationship, what does your coefficient
11 show?

12 A. In the one-to-one relationship, the
13 coefficient would be -- you're mixing up scales in
14 ways -- you're mixing numbers in ways they can't --

15 Q. This shows there's a relationship --

16 A. Yes.

17 Q. -- this 5.58 shows some sort of
18 relationship. What's the perfect relationship, the
19 top of the scale?

20 A. Well, there is no perfect relationship -- I
21 guess I'm stumped, statistically, to answer your
22 question. There is no answer to your question.

23 Q. Then help us understand, if there's no
24 perfect -- or well, if this were a zero, what would
25 that mean?

1 A. That would mean that any unit change in the
2 natural logarithm of expenditures per pupil would
3 yield no change in the outcome measure.

4 Q. If it were 100, what would it mean?

5 A. Again, scale matters, because if that means
6 if you had a one-unit change in the natural log of
7 expenditures per pupil, every district's percent --
8 or a district percent proficient would go up by 100
9 percent and therefore be over 100 percent and
10 theoretically impossible. So --

11 Q. If you're at 5.5, then, that talks about
12 or -- 5.58, that talks about a percentage increase,
13 doesn't it?

14 A. No, it's a change in the percent proficient,
15 which is different from a percent change in percent
16 proficient.

17 Q. The regression examples that you've shown
18 show what you contend is a statistically significant
19 positive relationship between spending measure and
20 outcome measure, statistically significant meaning a
21 probability of -- and then you've got a greater
22 than -- or less than, rather .05. What does that
23 mean?

24 A. That means we can be 95 percent confident
25 that that relationship is statistically positive that

1 there are higher outcomes with higher spending.

2 Q. Unfortunately, if I'm understanding what
3 you're saying, while it shows a positive relationship
4 in these graphs, it doesn't help us know the degree
5 of the positive relationship or how much more?

6 A. No, it doesn't go to that extent because I'd
7 need a lot more, you know, precise data and time to
8 tease that out.

9 MR. CHALMERS: I don't have any
10 other questions. Thank you.

11 REDIRECT EXAMINATION

12 BY MR. RUPE:

13 Q. Your point was, in your rebuttal report that
14 the variables you listed on the overhead that Counsel
15 was pointing to were not looked at by Podgursky and
16 Hanushek?

17 A. Right, my point was -- right, I haven't
18 necessarily looked at enough to come to a definitive
19 conclusion, but I've looked at some things, Podgursky
20 and Hanushek looked, effectively, at nothing.

21 Q. Is there a difference between a production
22 function and cost function regression analysis?

23 A. Yes, I mean, it's kind of -- it's kind of
24 either, you know, flip side to the same coin or glass
25 half full, half empty --

1 Q. Let me hand you what is marked 386. It's an
2 article by John Yinger. And that article explains
3 the difference between production function and cost
4 function, true?

5 A. That is correct.

6 Q. And with regard to the work done by LPA by
7 Duncombe --

8 A. Right.

9 Q. -- did he do a cost function analysis?

10 A. Yes, he did a cost function, which means he
11 was predicting the cost of achieving a given set of
12 outcomes.

13 Q. And is that what LPA did?

14 A. Well, LPA drew on the results of Duncombe's
15 cost function.

16 Q. Okay. And so we're clear, the cost function
17 that Duncombe did is Appendix F to the LPA study?

18 A. The cost function -- Appendix F is a table
19 within it. I think it's Appendix C that is the
20 actual Duncombe component of the report.

21 Q. Fair enough. It's an appendix to the LPA?

22 A. Right, and has his name on the cover page of
23 it.

24 Q. Let's move on. And based on the questions
25 you were asked, I got the impression from the

1 defendant's lawyer that there are throw-away kids,
2 that you'll never be able to get them to proficient,
3 and I want to ask you about that.

4 A. Okay.

5 Q. How important to the analysis of whether we
6 can move kids from non-proficient to proficient are
7 the observations of, let's call them the boots on the
8 ground, the teachers, the principals, and the
9 superintendents of the school districts, that say
10 they need more funds?

11 A. I think they're critically important because
12 they're the ones who see how those schooling inputs,
13 resources, programs, services actually play out.

14 Q. And I mean, we can talk scientifically all
15 day long, but when you talk to a principal or a
16 superintendent who describe a grade school that was
17 the third worst in the state in terms of academic
18 performance and they got ahold of a grant and turned
19 their scores around to above 85 percent, what does
20 that tell you in terms of money making a difference?

21 A. Well, it's -- I mean it's anecdotal, but
22 it's, you know, one of those suggestions of how might
23 we use these additional resources in a productive and
24 efficient way.

25 Q. I got the impression from Mr. Chalmers'

1 questions that he may have thought you authored the
2 LPA study. You didn't author it, did you?

3 A. No, I did not.

4 Q. Are you familiar with the fact that the
5 State, the defendants here, commissioned the study?

6 A. That was my understanding, yes.

7 Q. Do you know that the defendant actually paid
8 for the study?

9 A. That was also my understanding.

10 Q. In fact, they adopted a state law,
11 Plaintiffs' Exhibit 6, that set out what the study
12 was to do, correct?

13 A. That was also my understanding.

14 Q. And I think you explained this, the LPA
15 commission consulted with third parties, including
16 you and Duncombe and Yinger, in terms of preparing
17 this study, true?

18 A. Yes.

19 Q. Now explain to the Judges what LPA did with
20 federal fund in terms of their study.

21 A. We went over some of this yesterday, that
22 they went through a process of removing the federal
23 funds from what they believed was required for the
24 school districts to have through State and local
25 funds.

1 Q. All right. And then let's talk about local
2 option budget and the LPA study. When LPA did its
3 study, did LPA assume that there would be funding
4 through the local option budget, or did they assume
5 there would be funding by way of state aid
6 equalization under the local option budget?

7 A. I believe that the LPA study, in
8 establishing its targets made no assumption about
9 the -- that the local option budget money would be
10 toward -- would be toward those targets.

11 Q. Okay. So LOB was not included in the LPA
12 targets, true?

13 A. Well, I believe there was no assumption that
14 it would be used to achieve those targets.

15 Q. I'm clear. Are you in any way critical of
16 the LPA study?

17 A. I've been critical of the approach to
18 removing the federal aid, which appears to have
19 reduced the poverty weight perhaps more than it
20 should have.

21 Q. Your term was "washed away," but in terms of
22 weighting factors, have you been critical of
23 weighting factors that wash away the effect of
24 poverty?

25 A. I've been critical of weighting factors in

1 the formula that cancel out the strength of the
2 poverty weighting, yes.

3 Q. Was LPA meant to be a precise number that
4 was required for expenditures by districts?

5 A. My --

6 Q. My question goes to precision. What was the
7 precision of the LPA targets?

8 A. My understanding is that, you know, this
9 study and others like it are intended to provide a
10 reasonable mark, to provide some kind of basis for
11 figuring out how much more is needed here than there,
12 for these kids than those kids, and not that it is
13 some form of an exact prediction. I don't think that
14 anyone doing this type of work would suggest that we
15 can predict exactly what's needed and that we can
16 implement it and see what it's achieved tomorrow.

17 Q. And here we go, can a cost function give a
18 reasonable prediction?

19 A. Yeah, I think any, well-conducted rigorous
20 methodology can be used to provide us with some
21 guidance on the design of policy, otherwise, we're
22 really flying blind.

23 Q. And I want to show you Exhibit 233 -- I'm
24 sorry, 237. LPA was a study that showed a reasonable
25 prediction based on the demands at the time the study

1 was done?

2 A. That would be correct.

3 Q. And that study was done in 2006?

4 A. That study was completed in 2006, based on
5 data that were from prior to 2006.

6 Q. And we've got a million pieces of paper in
7 this case, but I want to ask you, do you know of any
8 piece of paper, any study, any analysis, anything,
9 any way that has said, since 2006, the cost of
10 educating disadvantaged kids has gone down?

11 A. No, I've not seen that the cost of educating
12 disadvantaged kids has gone down.

13 Q. And in fact, the number of kids in poverty
14 and English limited learners in Kansas since 2006 has
15 gone up, hasn't it?

16 A. That's my understanding, and I've certainly
17 conveyed that in some of the analyses in my report.

18 Q. I asked you about the cost of educating kids
19 of poverty. Have you seen any data from any place
20 that says the cost of educating any kids has gone
21 down?

22 A. No.

23 Q. Let's talk about James O'Keefe. And he's
24 the 25-year-old that posed as a pimp and indicated
25 that he was trying to get money from ACORN several

1 years ago, right?

2 A. Yeah, I have --

3 MR. CHALMERS: I would prefer
4 Counsel would ask questions rather than leading the
5 witness, and I object to the form.

6 MR. RUPE: Well, he opened the door
7 on all this and I think I can cure what he has
8 done --

9 JUDGE THEIS: I think it was the
10 description that probably was his objection.

11 MR. RUPE: Okay. I'll withdraw
12 that question and ask another one.

13 Q. Is Mr. O'Keefe the person who became
14 involved in the episode involving ACORN?

15 A. Yeah, as I understand it.

16 Q. And as a matter of fact, is he the one that
17 is now under investigation for wiretapping a
18 senator's telephone?

19 A. I've read that in news stories. I don't
20 follow every move of Mr. O'Keefe.

21 Q. But he was the one who picked up the phone
22 and called you, and had the conversation that we
23 heard excerpts of from Mr. Chalmers?

24 A. No, it was someone who works with him who
25 made the call.

1 Q. Okay. And in terms of that call, explain to
2 the Court whether what Mr. Chalmers read to you was
3 word-for-word as it was said in the call or whether
4 it was pieced together.

5 A. Those were small snippets of a very long
6 conversation, where I was called -- kind of, cold
7 called to talk about a number of study issues and in
8 the process, kind of, over the course of the call,
9 having -- you know, having kind of manipulative
10 leading questions asked of me. And so those were
11 words that did come out of my mouth. Those were
12 short clips; some of them continuous, some of them
13 not that, that were said.

14 But you know, it was -- again, it was a long
15 conversation which really ended with me thinking
16 that, you know, this is not someone I'd even like to
17 talk to anymore, no less consider actually doing any
18 work for.

19 Q. I don't want to consume time with this. Let
20 me hand you what's been marked as Plaintiffs' Exhibit
21 394. And have you, in fact --

22 MR. RUPE: Given me another copy.

23 Q. -- have you, in fact, responded to this
24 inquiry about the James O'Keefe situation in your
25 blog?

1 A. Yes, as soon as this happened I -- you know, I
2 wrote up a -- well, as soon as he released what he
3 released, as soon as, you know, we figured out what was
4 going on and I was suspicious as soon as the phone call
5 ended, I wrote up, you know, an explanation. I had saved
6 my emails that had gone back and forth between the
7 hypothetical character who called me. And I've pasted
8 those emails into the blog post so that I could explain
9 knowing that it wouldn't be represented for what actually
10 happened, so then I could explain what actually happened.

11 MR. RUPE: I move for the admission of
12 394.

13 (Plaintiffs' Exhibit Number 394 was
14 re-offered for admission.)

15 MR. CHALMERS: Document has just now
16 been produced to us and I've never seen it before.
17 Apparently, it's cumulative of what his testimony is, and
18 I object to its submission.

19 MR. RUPE: It's responding to the
20 excerpt that I had objected to. I think it explains his
21 response and I'm going to move on.

22 JUDGE THEIS: In regard to?

23 MR. RUPE: In regard to the excerpts
24 and the fact that they were taken as clips, and the
25 situation that he has, in part, described. I can go

1 through this with him, but I think it's just easier
2 to submit his blog and let you read his response to
3 it.

4 MR. CHALMERS: I think he has gone
5 through it already. It's cumulative and the document
6 wasn't produced before. We had a big speech the
7 other day about how this comes as surprise.
8 Apparently, they got all this information from the
9 internet --

10 MR. RUPE: I'm sorry, I'm normally
11 a fairly calm kind of guy.

12 JUDGE THEIS: Low-key.

13 MR. RUPE: But when Counsel takes
14 exhibits out of the courtroom that have been talked
15 about in the trial, and sticks them in a truck, and
16 drives them back to Wichita, and doesn't have access
17 to exhibits that are admitted into evidence, and
18 tells me that during the course of the trial, he's
19 going to substitute others that I haven't seen yet,
20 and then stands up and complains about my exhibit,
21 I'm sorry, it causes me a little concern.

22 MR. CHALMERS: A lot of times when
23 an attorney doesn't have good response, they throw
24 mud, so I've accepted some mud and I'm not going to
25 respond. It's cumulative. It's not been disclosed

1 and I object.

2 JUDGE THEIS: Can I be truthful with
3 you, that thing with Mr. O'Keefe, it registered zero with
4 me.

5 JUDGE BURR: And with me.

6 JUDGE THEIS: No effect at all, deep,
7 drop, thud.

8 JUDGE BURR: Discussion about teachers
9 is not --

10 JUDGE THEIS: If you want to drop
11 another thud on a thud, that's good with me. But you
12 know, just because he offered something, you never knew
13 about, now you're going to offer something he never knew
14 about, I think it's unnecessary.

15 MR. RUPE: I'll withdraw my offer of
16 Plaintiffs' Exhibit 394.

17 (Plaintiffs' Exhibit Number 394 was withdrawn.)

18 Q. (By Mr. Rupe) Let's move on.

19 A. All right.

20 Q. Under the formula that was -- the funding
21 formula, is the driver for that formula the base?

22 A. I mean, the base is what all else gets
23 multiplied by.

24 Q. And in terms of Kansas, has the base been
25 reduced over time?

1 A. As I understand it, yes.

2 Q. Have expectations or performance levels, as
3 set by the State, gone up?

4 A. Yes.

5 Q. Have they been met with the funding
6 available?

7 A. No.

8 Q. And do you know of any other cost studies
9 that have been done other than Augenblick & Myers and
10 Legislative Post Audit by the Kansas Legislature, the
11 defendant in this case?

12 A. Not that I know of.

13 Q. In your opinion, is the driver of that
14 base -- has it been set wide of any reasonable mark,
15 as you've described it?

16 A. Yes, that would be the case.

17 MR. RUPE: I don't have anything
18 else.

19 JUDGE THEIS: All right.

20 RECROSS-EXAMINATION

21 BY MR. CHALMERS:

22 Q. The washout, the weighting factors that you
23 talked about with Mr. Rupe just a moment ago, so that
24 we're clear on that, if you were the policymaker, and
25 you were re-designing the Kansas finance system, you

1 would adopt a system that would cut off the mountains
2 to fill in, in the valleys?

3 A. That's not necessarily the same thing, no.

4 Q. You would develop a system that would say,
5 hey, look we need to make sure that Blue Valley,
6 Olathe, Shawnee Mission, they have less money
7 because, otherwise, they'll pay their teachers more
8 than KCK and deprive KCK of their teachers?

9 A. We have to manage the differential. We have
10 to make sure that we target sufficient resources to
11 the high-need districts to give them some recruitment
12 and retention leverage.

13 Q. You would make sure that certain funds to
14 certain districts are less than, by proportion, the
15 funds to other districts?

16 A. That would be part of managing equity, yes.

17 Q. You would cut off the mountain, that is to
18 say the Shawnee Mission, the Blue Valley, in favor of
19 what you've described the valley, which would be KCK?

20 MR. RUPE: Objection. Asked and
21 answered and argumentative.

22 JUDGE THEIS: Sustained.

23 Q. You indicated to Mr. Rupe that in your
24 opinion, that the performance levels have not been
25 met. And are you measuring that by the Kansas

1 assessment scores?

2 A. I'm measuring that by my broader --
3 actually, I perceive that to be a broader question
4 that relates to those issues that I was discussing
5 yesterday about the broader performance goals of
6 college-readiness and equal access to labor market
7 and college, not specific assessment cut scores.

8 Q. You don't measure that by QPA?

9 A. That, you know -- had he asked me if the
10 accountability -- if districts had met their
11 accountability standards, which I believe you asked
12 me a while ago, I don't recall the accountability
13 status of every district in the state, but I would
14 not have answered it the same way.

15 MR. CHALMERS: I don't have any
16 other questions.

17 MR. RUPE: No further questions.

18 EXAMINATION

19 BY THE PANEL:

20 JUDGE THEIS: May I ask one? This
21 seems such an elaborate dance to get to all these
22 statistics.

23 THE WITNESS: Yes.

24 JUDGE THEIS: And Kansas is not
25 that large of a place, and someone's in charge of

1 every school district, so you know the costs there.
2 You've got educators. You've got other people that
3 know if you need -- if you got people that can't read
4 or you don't have time during the day, you bring in
5 somebody, a reading specialist. Those things all
6 seem quantifiable and finite and capable of being
7 determined.

8 So why do you have an elaborate
9 finance system here when you can go right to the
10 source perhaps and solve the problem right there?

11 THE WITNESS: You can go to the
12 source for some of those, kind of, great, intuitive
13 and experiential responses for what these kids need
14 here and now, but there are some, kind of, overriding
15 factors, conditions, that are actually,
16 unfortunately, complex that have to be dealt with.

17 Because if you go to each of the
18 individual districts and ask them what they need,
19 they'll have different reasons for what they need and
20 they'll have different needs. And some of them may,
21 ultimately, you know, create these conflicts between
22 them and their neighbors, the whole tension that we
23 see between Blue Valley and KCK --

24 JUDGE THEIS: Let me break in. You
25 have a State Board of Education with the power of

1 oversight.

2 THE WITNESS: Right.

3 JUDGE THEIS: Which, wouldn't you
4 think, be a repository of some knowledge?

5 THE WITNESS: Absolutely, someone's
6 got to --

7 JUDGE THEIS: And with the
8 authority to look at stuff and say, you're all wet.

9 THE WITNESS: Yeah, I mean,
10 someone's got to have the oversight --

11 JUDGE THEIS: The supervisor, if I
12 didn't like the way you were doing something or it
13 was off in left field, I'd say, you know, let's do it
14 a little different, or no?

15 THE WITNESS: But at some point,
16 the State Board in looking at, how do we solve the
17 problem of making sure that we can get, you know,
18 teachers of the same and some additional
19 qualifications to deal with, you know, English
20 language learners and so on, how do we make sure we
21 can get those teachers to go into KCK and stay there
22 to resolve some of these, kind of, labor market
23 disparities across the -- you know, the Johnson
24 County versus Wyandotte County districts.

25 Someone's got to figure out how to

1 do an analysis.

2 JUDGE THEIS: How does the school
3 formula help that?

4 THE WITNESS: Well, it provides the
5 money that's necessary to buy those resources that
6 the people on the ground know they need.

7 JUDGE THEIS: But they're not
8 required to buy them.

9 THE WITNESS: But they're not
10 required to buy them, that is -- that's true. So
11 that's why the insights of those people on the
12 ground --

13 JUDGE THEIS: You give them a
14 basket of money and tell them to go do good?

15 THE WITNESS: Yeah, that's where
16 the oversight comes in.

17 JUDGE THEIS: But I mean, if you
18 got the function of oversight, why can't you apply
19 it -- why do we have to apply it in such a
20 complicated fashion?

21 THE WITNESS: I guess what I'm
22 trying to figure out -- I kind of see where you're
23 going. I'm trying to think about, so how do you work
24 that into a model where --

25 JUDGE THEIS: Let's take the Sumner

1 Academy. They take took a little isolated thing and
2 made it better. The Emerson school one of the two,
3 they looked at it and said, needs this, and let's do
4 this. Apparently, it worked. Why do you take the
5 broad view when the individuals -- when you could
6 take an individual view and maybe accomplish the same
7 thing?

8 THE WITNESS: I guess I'm still --
9 I'm having trouble migrating all the way over to the
10 individual view because I think that you need both --

11 JUDGE THEIS: Why do you need the
12 statistician to determine a fact that you could
13 determine with a telephone call?

14 THE WITNESS: I guess because I'm
15 not -- I believe that those insights from the ground
16 level are really important to see how and why the
17 money that they have matters, but I also think that
18 the broad view and analysis can help us understand,
19 you know, how the bigger, more complicated system
20 works. And I think we need both.

21 We certainly can't take just the
22 broad, statistical view, create these estimates and,
23 you know, walk up with a bag of money and say, go to
24 it. You know, that's -- I agree with you there.

25 I think we need a real balance of

1 the two, which is, in part, why I answered Alan's --
2 Mr. Rupe's question the way I did about the ground
3 level -- I just -- I'm going to be thinking about
4 this for days, how could you build it from the bottom
5 up just from the insights from the people on the
6 ground.

7 I think professional judgment
8 analysis, which we talked about, tries to do that.
9 It puts them into focus groups and says, what do you
10 need to get done what you got to get done. And
11 doesn't ask them in dollar terms. It asks them in
12 terms of the people, stuff, space, and time. What's
13 a school look like that you need to serve kids that
14 have these characteristics.

15 Puts them in focus groups to make
16 that determination, and then we figure out, well,
17 what are the prices of those things that you need,
18 and sum it up. And that gives us those, kind of,
19 bottom-up insights. And that's what was done back in
20 the Augenblick study.

21 JUDGE THEIS: You got a good school
22 model, you know, where things work, so you try to use
23 those.

24 THE WITNESS: Well, that's --
25 yeah --

1 JUDGE THEIS: That's the
2 professional deal where, you know, you -- the
3 professionals maybe over-speak what they need,
4 but ...

5 THE WITNESS: And that's one of
6 those bias risks, I guess, that we talked about. If
7 you just did it from the bottom up, would everyone
8 have a reason why they need more than the person next
9 to them. And that's why I think, you know, the
10 top-down analysis, you know, system-wide analysis
11 does help, in part, to counter that. And I'm still
12 seeing it as a 50/50.

13 JUDGE THEIS: I'm just saying, why
14 put everything in the mix, and mix it all up, and
15 spit it out in a formula, when you have access --
16 we're not running the world. We're running Kansas
17 education.

18 THE WITNESS: And I agree with you
19 entirely, that we certainly -- that has to have at
20 least equal weight in the conversation, that this
21 kind of ground floor, you know, what's going on in
22 the schools. And it's also even a contrast in these
23 methodologies, the professional judgment being
24 largely based on that, and the statistical modeling
25 being a much more, you know, complicated, statistical

1 approach.

2 JUDGE THEIS: You have every state
3 agency in the State of Kansas applies -- creates a
4 budget, goes through a budget director, and vetted by
5 legislative committees, and then you come out with
6 the result. How many school districts are there in
7 Kansas?

8 THE WITNESS: What are we down to
9 now, in the 280s? Keep dropping since I left. I
10 lose track.

11 JUDGE THEIS: I'm through.

12 THE WITNESS: Thank you.

13 MR. RUPE: Can I ask one follow-up
14 question?

15 JUDGE THEIS: All right.

16 REDIRECT EXAMINATION

17 BY MR. RUPE:

18 Q. Mr. Chalmers kind of gave you the steering
19 wheel to create the perfect formula. As you think
20 about it, if you were able to do that, would a
21 component of that, being a budget from the school
22 districts on what it cost and what they need to spend
23 on what they want to achieve, would that be important
24 information?

25 A. Well, yeah, I think we always need to

1 take -- you know, if we come up with an overall
2 estimated cost of getting to these outcomes, we have
3 to look at those programs and strategies that are
4 designed to get kids to those outcomes.

5 MR. RUPE: That's all I have.

6 JUDGE THEIS: Okay. Can we take a
7 break?

8 MR. RUPE: That'd be fine. About
9 eleven? Can he get on a plane now? Anything else?

10 JUDGE THEIS: Mr. Chalmers?

11 MR. CHALMERS: Fine with me, yes.

12 I'm done.

13 JUDGE THEIS: Back to New Jersey.

14 MR. CHALMERS: Back to New Jersey.

15 (Witness excused.)

16 (A recess was taken.)

17 JUDGE THEIS: Be seated. Thank
18 you.

19 MR. RUPE: Our next witness is
20 Dr. Andy Tompkins.

21 ANDY TOMPKINS

22 Called as a witness for the
23 Plaintiffs, was duly sworn by the reporter and
24 testified under oath as follows:

25 DIRECT EXAMINATION

1 BY MR. RUPE:

2 Q. Tell the Court your name and the city in
3 which you live?

4 A. Andy Tompkins and I live in Topeka, Kansas.

5 Q. Dr. Tompkins, would you tell the Court what
6 your title is?

7 A. I'm President and CEO of the Board of
8 Regents.

9 Q. And how long have you been in the position
10 of CEO of the Board of Regents?

11 A. Approximately two years.

12 Q. And prior to that, what was your employment?

13 A. I was Dean of College of Education at
14 Pittsburgh State University.

15 Q. And before that?

16 A. Associate Professor at University of Kansas.

17 Q. And what was your faculty status of
18 University of Kansas, what did you teach?

19 A. Educational leadership.

20 Q. And before that?

21 A. Commissioner of Education, State of Kansas.

22 Q. And what's the Commissioner of Education for
23 the State of Kansas?

24 A. Works for the Kansas State Department of
25 Education and with the State Board of Education.

1 Q. And that would be the job that Diane
2 DeBacker holds currently?

3 A. Yes, sir.

4 Q. Let's keep going back?

5 A. Okay.

6 Q. Before you were commissioner of education,
7 where were you employed?

8 A. I was at Pittsburgh State, again, as a dean,
9 and a department chair prior to that.

10 Q. And before that?

11 A. School superintendent in Salina.

12 Q. Before that?

13 A. School superintendent in El Dorado.

14 Q. Before that?

15 A. School superintendent in Satanta.

16 Q. And before that?

17 A. High school principal in Pomona.

18 Q. And before that?

19 A. High school English teacher in Hugoton.

20 Q. And was Hugoton your first job out of
21 college?

22 A. No, I taught one year in Pauls Valley,
23 Oklahoma.

24 Q. So Pauls Valley then Hugoton?

25 A. Then Hugoton, mm-hmm.

1 Q. Describe for us what the Board of Regents
2 is, please?

3 A. The Board of Regents is the public body that
4 oversees higher education in our state. They govern
5 the six public universities. They coordinate
6 Washburn and the 26 community and technical colleges.

7 Q. Let's cover the six Regents colleges,
8 please.

9 A. Okay. University of Kansas, Kansas State
10 University, Wichita State University, Emporia State
11 University, Fort Hays State University, and
12 Pittsburgh State University.

13 Q. Okay. And you report to the Board of
14 Regents?

15 A. Yes, sir.

16 Q. Let's talk about what a student graduating
17 from high school in Kansas needs to do in order to be
18 admitted to a Regents university?

19 A. To the university, okay.

20 Q. Would you describe for us -- and I'll put
21 this exhibit in front of you -- Exhibit 66? You can
22 sure use that. That's admitted into evidence. But
23 would you describe for the Judges what the
24 requirements are for a high school graduate, from a
25 Kansas high school, needs to do in order to be

1 admitted to a Regents university?

2 A. Yes, currently they have to have either a 21
3 composite score on the ACT, they have to be in the
4 top third of their high school graduating class, or
5 they have to have a C average on a specified
6 curriculum that's specified in the regulation.

7 Q. Okay. And the C average on curriculum, is
8 that indicated in Exhibit 66?

9 A. Yes, sir, it includes --

10 Q. Briefly explain to the Court what it is.

11 A. Yes, it includes four units of English,
12 three units of a natural science, chemistry and
13 physics has to be one of those, three units of
14 mathematics including algebra one, two, and geometry,
15 three units of social science, and it has a list of
16 those, too, but there's several there.

17 Q. In terms of the exhibit, on the left-hand
18 side where it says, what are qualified admissions,
19 there's a set of criteria that guarantee admission to
20 a state university for certain Kansas residents. The
21 purpose of QA -- is that qualified admissions?

22 A. Yes, sir.

23 Q. Is to enhance success at the university
24 level by ensuring high school students are prepared
25 for the rigors of a university education. Is that

1 the purpose of the qualified admissions?

2 A. Yes, sir.

3 Q. And when I graduated from Salina High, I
4 think I was able to go to college regardless of any
5 grades --

6 A. That's right.

7 Q. -- that I had. The qualified admissions, is
8 that something different than it was in 1968?

9 A. Yes.

10 Q. When did the qualified admissions come
11 about?

12 A. The qualified admissions came about around
13 2000, I think. I'm just trying to look at that. I
14 think it's maybe 2001 or 2002, that they actually
15 went into effect. And I say that because when the
16 law was established, they -- it applies to freshman
17 so they have four years in which to get this taken
18 before they -- you know, so you don't catch them in
19 their senior year and they have a problem. So I
20 think it was around 2002 or somewhere in there that
21 they went into effect.

22 Q. And in terms of this Exhibit 66, I just want
23 to make sure that we're on track. It has a Q and A
24 on it but ...

25 A. Okay.

1 Q. Okay. The question I want to ask you about
2 is the question here.

3 A. Mm-hmm.

4 Q. Is the QA curriculum the same as my high
5 school's required curriculum for graduation?

6 A. It may be different, yeah.

7 Q. And the document indicates, students should
8 be aware that the local and QA curriculums are
9 separate and the requirements may not be the same?

10 A. That's correct.

11 Q. Okay. If a school district requires its
12 students to take the ACT, could that be geared toward
13 preparing them for college?

14 A. If it requires them to take the ACT?

15 Q. Yes.

16 A. I'm sure that would be -- it's a college
17 admission test, so I'm sure that would be correct.

18 Q. So if one of the goals of the school
19 district is to have kids college ready, requiring
20 them to take the ACT would be a tool to get there?

21 A. That might be an indicator, yes.

22 Q. Have college students been held to higher
23 standards since the adoption of qualified
24 admissions. Those kids that are trying to get into
25 college, have they been held to a higher standard?

1 A. It's higher than it was prior to qualified
2 admissions.

3 Q. And let me give you Exhibit 67 and 153.
4 What is 67, please?

5 A. 67 is a new set of qualified admissions
6 standards that the board passed.

7 Q. Okay. And maybe the best way to do this,
8 since this is already in evidence, is to have you
9 explain what the new standards are that are explained
10 in Plaintiffs' Exhibit 67.

11 A. Okay. Again, you'll see that -- here's the
12 difference in what we currently have. Currently, you
13 have a choice between 21 on the ACT, top third of
14 your high school class, or 2.0 on the qualified
15 admissions curriculum. In the new standards, you
16 have to have a 21 ACT and you have to also, if you
17 notice the pre-college curriculum, you have to do
18 that, also.

19 So what we're trying to do is to say that
20 what we found is, is that prior performance is a good
21 indicator of future performance, and the ACT helps us
22 in a prediction. And if you'll notice right there,
23 it says they have to complete the pre-college
24 curriculum and they have to achieve either the 21 or
25 the top third in their class.

1 Before, it was one of the three: 21, 2.0 on
2 the curriculum, top third of your class. Beginning
3 in the class of, as it mentions up here -- after
4 2014/'15, they will have to have both the pre-college
5 curriculum and either 21 ACT or top third of their
6 class.

7 Q. And the standards will apply to freshman
8 entering high school in the fall of 2011?

9 A. Right.

10 Q. This year, that's where it starts?

11 A. Last year.

12 Q. Okay.

13 A. To give them the four years to get prepared.

14 Q. I guess it's obvious, but are these new
15 standards in Exhibit 67 more rigorous?

16 A. Yes.

17 Q. What is 153, please?

18 A. It's a news release when the board passed
19 the new standards.

20 Q. And that news release simply explains what
21 those new, more rigorous standards are?

22 A. Yes, sir.

23 Q. I want to ask you, in terms of college
24 readiness, for your opinion. Are Kansas students
25 prepared to attend the Regents universities?

1 A. Some are and some aren't.

2 Q. What are your remedial or developmental
3 courses?

4 A. These are courses that help students who
5 have -- who we anticipate are going to have
6 difficulty in some of their beginning level classes.
7 The majority of those developmental classes are in
8 two areas, one is in composition and sometimes some
9 reading, but mainly in composition, and the other is
10 mathematics.

11 Q. How are these folks that need to be in
12 remedial or developmental courses identified?

13 A. Usually by placement exams by the
14 institution.

15 Q. So like KU would do a placement exam, and if
16 somebody scores low enough on the exam, they may be
17 steered toward the remedial or developmental classes?

18 A. That's correct.

19 Q. Do you know how many students are in
20 remedial or developmental classes?

21 A. As a percent, and just at the universities,
22 it's about 14 percent.

23 Q. Okay. Has that number increased or
24 decreased in the last five years?

25 A. I think it stayed relatively stable.

1 Q. We've heard some claims by the defendant in
2 this case, the State of Kansas, that Kansas
3 assessments have gradually -- that Kansas assessment
4 scores have gradually increased. Wouldn't you expect
5 the number of kids in remedial classes to be going
6 down as opposed to staying flat?

7 A. Yes, you would expect that possibly. It
8 would depend on the mix of students in those classes,
9 but that's -- and if it was all linear, the answer
10 would be yes.

11 Q. Let me show you what's been admitted as
12 Plaintiffs' 174, and ask if you would --

13 MS. GARNER: 145.

14 Q. I'm sorry, 145 --

15 A. Okay.

16 Q. -- and ask you to turn to -- there are
17 numbers down at the bottom. This is KBOR, which is
18 Kansas Board of Regents, 000028.

19 A. 28, okay.

20 Q. It's a slide presentation that we'll hear
21 more about, but I want to ask you to comment on this
22 from your perspective. It's the Workforce
23 Development Report, Governor's P-20 Council from June
24 of 2010. And what I want to ask you about is this
25 slide, and let me get it focused for you. This is

1 graduates ready for college-level course work. What
2 is an ACT benchmark?

3 A. The ACT test has gone through and
4 benchmarked students. I'm going to act like I
5 actually know this because I think I'm close. I
6 think when they say a benchmark, what they're saying
7 is, if a person has an 18 composite in English on the
8 ACT, that they have a 75 percent chance -- or a
9 percentage chance of earning a C or better in English
10 Comp as a freshman in college. So it's kind of a
11 predictor about how you'll do in those freshman level
12 classes.

13 Q. English benchmark 18, 74 percent, and
14 nationally 67 percent, correct?

15 A. Yes, sir.

16 Q. And do the math for us, if you would?

17 A. In other words, so the benchmark of the 22
18 on the ACT, it says 48 percent of students in Kansas
19 make a 22 or better, and 42 percent nationally.

20 Q. And reading?

21 A. 21 benchmark, 60 percent of the Kansas
22 students, and 53 percent in the nation.

23 Q. And science?

24 A. 24 is the benchmark, 33 percent Kansas and
25 28 percent in the nation.

1 Q. And then all four subjects?

2 A. 26 percent, Kansas; 23 percent in the
3 nation.

4 Q. So if I'm on track, and I think we can all
5 do the math, the bottom side of those percentages,
6 like English, 74 percent, that would indicate that 26
7 percent of the students are going to be struggling in
8 English?

9 A. Based on ACT's estimates.

10 Q. Based on ACT's benchmarks, okay. So in all
11 four subjects, do the translation for us, what does
12 the 26 percent mean?

13 A. 74 percent.

14 Q. Are going to what?

15 A. Well, it says 26 percent of our students
16 have met college readiness in all four subjects, so
17 that would say, basically, that 74 percent of them
18 have not met them in all four subjects.

19 Q. What does that say to you about the college
20 readiness?

21 A. Couple of things. Our students are doing
22 better than what the nation is in terms of meeting
23 those benchmarks. And then it tells us areas where,
24 based on their assessment of when, how, where you'll
25 make that grade, that we have a couple of areas that

1 obviously we have -- we're not as prepared as we
2 probably should be.

3 Q. Thank you. Is a college education important
4 in the 21 century?

5 A. The answer is yes.

6 Q. Explain to the Judges why.

7 A. We like to cast that in a little different
8 light, and that is that post secondary education is
9 important in the 21 century.

10 Q. Okay.

11 A. Because if you look at recent studies that
12 have been done in our nation, many of those point to
13 the fact that we need to have an increasing number of
14 our adults who have either a credential, certificate,
15 associate's degree, or a bachelor's degree.

16 One of the things we looked at, kind of
17 going through this last recession -- to try to answer
18 directly your request -- to say, you know, what's the
19 unemployment rate of those who have certain levels of
20 education.

21 And as you could probably predict, you know,
22 it was a higher unemployment if you had lower levels
23 of education and greater employment rate if you had a
24 higher level of education. So what we know is, is
25 that people in the 21 century, a greater proportion

1 of our adults, are going to have to have post
2 secondary education to make a living and have access
3 to a good life.

4 Q. Look at Plaintiffs' Exhibit 170, which has
5 been admitted into evidence, and I think you'll agree
6 with me, based on your explanation, that education
7 fundamentally impacts our state?

8 A. Certainly.

9 Q. True?

10 A. Certainly.

11 Q. Let's look at page 43 in this publication?

12 A. Okay.

13 Q. Which, just so we're on track, it's a state-
14 level analysis, Help Wanted Projections of Jobs and
15 Education Requirements through 2018. And it's a
16 publication by the Center on Education and the
17 Workforce.

18 And I just want to ask you if what you've
19 just explained is consistent with this information.
20 It says, between 2008 and 2018, the jobs in Kansas
21 requiring post secondary education and training will
22 grow by 99,000, while jobs for high school graduates
23 and dropouts will grow by 51,000. Is that consistent
24 with what you've just explained?

25 A. Yes, sir.

1 Q. In this same time frame, Kansas will create
2 482,000 job vacancies, both from new jobs and job
3 openings due to retirement. Is that consistent with
4 your explanation?

5 A. Yes.

6 Q. And 301,000 of these job vacancies will be
7 for those with post secondary credentials 136,000 for
8 high school graduates, and 45,000 for high school
9 dropouts. Is that consistent with your explanation
10 of the 21 century?

11 A. Yes, sir.

12 Q. And Kansas ranks 15th in terms of proportion
13 of its 2018 jobs that will require a bachelor's
14 degree and is 32nd in jobs for high school dropouts,
15 is that right?

16 A. From that report.

17 Q. But that's consistent with your --

18 A. Yes, what I'm -- I believe.

19 Q. And 64 percent of all jobs in Kansas, one
20 million jobs will require some post secondary
21 training beyond high school in 2018?

22 A. That's what the report is.

23 Q. So you would agree with the folks that have
24 come into the courtroom and will come into the
25 courtroom and say that a college education post

1 secondary education is essential in the 21 century?

2 A. That's for a growing number of adults.

3 Q. Well, for a growing number of adults in
4 Kansas?

5 A. Right.

6 Q. Are you familiar with what the dropout rate
7 was in Kansas 2009, '10, '11, '12?

8 A. I have not specifically looked at that. And
9 you're thinking about high school dropout?

10 Q. Yes.

11 A. Yeah, I haven't specifically looked at it.

12 Q. And do you know the difference between high
13 school dropout and folks that just don't graduate?

14 A. (Nodding head.)

15 Q. There is a technical explanation for that --

16 A. Yes.

17 Q. -- isn't there?

18 A. Yeah. We used the shift from dropout to
19 graduation rate because if there's an instance of
20 dropout and come back the next year. So it's a
21 one-year snapshot of what happened.

22 Q. Plaintiffs' Exhibit 151, which is in
23 evidence, says that more than 9,400 students did not
24 graduate from Kansas high schools in 2009. Any
25 reason to dispute that number?

1 A. Not that I know --

2 MS. TIBBETS: Objection.

3 Foundation. He said he doesn't know anything about
4 the dropout rate.

5 JUDGE THEIS: Sustained. He said
6 he didn't know.

7 MR. RUPE: Okay.

8 Q. Well, maybe we can go back and ask this
9 question. In regard to Plaintiffs' Exhibit 151, when
10 people don't graduate from high school, don't get
11 that post secondary education, does it have a
12 substantial impact on the Kansas economy?

13 A. Certainly does.

14 Q. Would you say that current high school
15 graduates are, today, held to a higher standard than
16 they were four, five years ago?

17 A. You mean in terms of coming to college?

18 Q. Yes.

19 A. The qualified admission standard is the same
20 since the Legislature passed it in 2002.

21 Q. In terms of the admissions requirement?

22 A. Yes.

23 Q. Is it more rigorous than it was before that
24 time?

25 A. Yes, sir.

1 Q. Now, I want to draw on your experience
2 starting in Pauls Valley through Hugoton, through
3 being a principal in three communities, through being
4 Commissioner of Education for the State of Kansas
5 for -- how many years?

6 A. Nine years.

7 Q. Nine years. I just want to draw on your
8 experience and tell us in your experience, have you
9 found that resources used in an appropriate manner
10 can make a difference in a child's education?

11 A. Yes.

12 Q. And when I say "make a difference," do you
13 agree that in moving a student's needle from
14 non-proficient to proficient, that money that is used
15 appropriately certainly makes a difference?

16 A. It's hard for me to do the proficient to the
17 non-proficient to proficient. In terms of their
18 learning, though, can it help them learn more? The
19 answer is yes, used appropriately.

20 Q. In terms of your perch now --

21 A. Yeah.

22 Q. -- the CEO of the Board of Regents, can it
23 help them be ready for college?

24 A. Certainly.

25 Q. This is probably no secret to you, but isn't

1 it accurate that -- it's no secret to you but it is a
2 secret from us, I guess, but we found it.

3 A. You found it.

4 Q. Part of the requirements of the Kansas
5 statute that I've referred to as the Rose Factors
6 talk about training or preparation for advanced
7 training in either academic or vocational fields so
8 to enable students to choose and pursue life work
9 intelligently. That's what you would describe as
10 college readiness?

11 A. My explanation of college readiness is
12 usually that they're ready to go to a post secondary
13 institution, or if it's college, and be successful at
14 that college.

15 Q. Okay.

16 A. And so, you know, my ultimate hope,
17 secondary hope, was that when they pursued that, and
18 if they completed that, that that would help them
19 pursue life work intelligently.

20 Q. All right. Thank you.

21 A. Mm-hmm.

22 MR. RUPE: No other questions.

23 CROSS-EXAMINATION

24 BY MS. TIBBETS:

25 Q. I just have a couple of questions for you,

1 just to put you sort of in context, during the Montoy
2 litigation, you were the Commissioner of Education
3 when that began?

4 A. I think that's, correct, mm-hmm.

5 Q. Then when you were a superintendent of
6 Salina in the '80s and '90s, was Salina a plaintiff
7 in some school funding litigation?

8 A. No.

9 Q. Okay. So in your job now, part of your job
10 is to promote post secondary education, is that fair?

11 A. Certainly.

12 Q. You were calling it post secondary education
13 as opposed to college education because you have 26
14 two-year schools that are either community colleges
15 or technical colleges, right?

16 A. Yes, and the one reason I try to
17 distinguish, is that a person may go for a
18 certificate.

19 Q. Okay.

20 A. They may go for a certain kind of
21 credential, so it's not -- it's in a college --

22 Q. Sure.

23 A. -- but it's not like a degree. So you know,
24 we're always kind of wrestling with the term. Is it
25 post secondary, is it higher ed. We know it's post

1 secondary so that's why we use that.

2 Q. In terms of the admission qualifications,
3 what we're talking about is guaranteed admission?

4 A. Yes.

5 Q. And so when Mr. Rupe went to college and I
6 was in 2nd grade, there was open admission for all
7 students. What you had to do was have graduated a
8 Kansas high school, right?

9 A. Yes.

10 Q. Then, in the last ten or 12 years there was
11 the change so that there were some qualifications in
12 addition to just having graduated from a Kansas high
13 school, right?

14 A. Yes.

15 Q. And you had to have one of three -- just
16 shorten it -- one of three qualifications, okay?

17 A. Yes.

18 Q. And then I think I heard you say that in
19 2015 that's going to change and you're going to have
20 to have two of those three?

21 A. Mm-hmm.

22 Q. Is that fair?

23 A. Mm-hmm.

24 Q. That is just for the six universities,
25 though, right?

1 A. Yes.

2 Q. So for these other 26 schools, which would
3 include the community colleges and the technical
4 colleges, those do not have the accelerated admission
5 requirements, right?

6 A. Right, we have -- the layer of admissions
7 now is open admissions for technical colleges, open
8 admissions in community colleges, and qualified
9 admissions for universities.

10 Q. Even at those universities that have these
11 qualifications, there's a 10 percent window --

12 A. That's correct.

13 Q. -- of places where 10 percent of the
14 students you admit can be admitted even if they don't
15 fit these qualifications?

16 A. That's correct.

17 Q. Or a student could go to a two-year, say,
18 community college, and then be admitted into a
19 university without these qualifications, correct?

20 A. Well, if you go, you have to have 24 hours,
21 and you have to make a certain grade point before you
22 can then transfer to a university.

23 Q. Okay. I want to just visit with you briefly
24 about some of things that Mr. Rupe asked you about,
25 about the remedial classes. You said that those

1 classes, the level of those, have stayed about the
2 same for the last five years?

3 A. Mm-hmm.

4 Q. Okay. And then he asked you, given that the
5 Kansas assessments had increased, wouldn't you have
6 expected the number of remedial classes to decrease,
7 right?

8 A. Mm-hmm.

9 Q. Remember that?

10 A. Mm-hmm. Yes.

11 Q. You said, well, that could be based on
12 several factors, couldn't it?

13 A. (Nodding head.)

14 Q. One of them could be that some of your
15 students don't come straight from high school, right?

16 A. That's correct.

17 Q. And it's been your experience that those
18 students who have been out of high school, or maybe
19 they did some college and they're coming back to
20 college those students have an increased need for
21 remedial classes, right?

22 A. I don't know that, specifically, but I would
23 guess that the further you've been out from taking
24 mathematics and now you're going to come back and if
25 you're taking a college algebra or trig class, you

1 would probably want some help before you took that
2 class, yeah.

3 Q. You testified earlier that that population
4 is more likely to need remedial than those students
5 who are coming directly out of high school, wasn't
6 that your earlier testimony?

7 A. I don't know if it's proportional; be honest
8 with you.

9 Q. Okay, that's fine.

10 A. Mm-hmm.

11 Q. Some of your students are going to be coming
12 to the universities that we're talking about -- are
13 going to be coming from high schools that were not
14 Kansas high schools, right?

15 A. There would be some, yes.

16 Q. So even if Kansas high schools did better on
17 assessments, that would not affect the amount of
18 remedial classes you'd need to give to those students
19 who didn't attend Kansas high schools, right?

20 A. Possibly.

21 Q. Sure. And some of your students are going
22 to come from the public high schools here in Kansas,
23 right?

24 A. Correct.

25 Q. Okay. I'm sorry the private -- I meant to

1 say private, I apologize. Some are going to come
2 from private high schools, right?

3 A. Certainly.

4 Q. And some of them are going to come from,
5 gosh, I guess, home school kids?

6 A. Certainly.

7 Q. Some of them are even going to come from
8 other countries?

9 A. Yes.

10 Q. And all of those different factors would
11 come into play if you were trying to evaluate whether
12 an increase in performance on Kansas assessments
13 would in any way affect the flat level of your
14 remedial classes, right?

15 A. Ask me that again.

16 Q. Sure. Sure. He was asking you, if Kansas
17 assessments improved wouldn't you expect there to be
18 a decrease in the need for remedial classes?

19 A. Right.

20 Q. And you said there would be a lot of factors
21 that would affect whether you --

22 A. Yes.

23 Q. -- could equate those two, right?

24 A. Yes.

25 Q. So some of the things that we've just talked

1 about are the factors you'd need to take into account
2 to figure out whether the need for remedial classes
3 would decline as Kansas assessments went up?

4 A. That's correct.

5 Q. Okay.

6 MS. TIBBETS: I don't have anything
7 further.

8 REDIRECT EXAMINATION

9 BY MR. RUPE:

10 Q. We heard in this courtroom from a woman
11 Valdenia Winn who taught at ...

12 A. Kansas City, Kansas.

13 Q. Kansas City, Kansas Community College?

14 A. Yes.

15 Q. And she made an observation, from standing
16 in front of the classroom, that over the last few
17 years, particularly in the recession, she has seen an
18 emergence, a greater number of what she called
19 traditional 18-year-old students coming into
20 community college. Has the Board of Regents tracked
21 that any how, any way?

22 A. I haven't particularly looked at that, but
23 we would have the data. We would have the
24 information, but I just haven't looked at it in that
25 specific way. Now, was hers that we've had a greater

1 number of high school -- I mean, traditional students
2 coming to the community college? Is that essentially
3 what she was saying?

4 Q. Yes. Do you have any information to dispute
5 that?

6 A. No. My -- I would have an opinion possibly.

7 Q. Okay. What's your opinion?

8 A. Well, I think one opinion I have is that
9 tuition has made some difference in people's choices
10 since we've not -- since, you know, our tuition has
11 increased some, we've seen some interest in people
12 going to community college before they come on to the
13 university.

14 So you know, I would guess that we've had
15 some of that, where they made choices to stay close
16 to home when we've gone through the recession. You
17 know, people having greater difficulty with their
18 finances, it may have been one of the reasons that
19 they've chosen to.

20 MR. RUPE: That's all I have.
21 Thank you.

22 MS. TIBBETS: I don't have
23 anything.

24 EXAMINATION

25 BY THE PANEL:

1 JUDGE THEIS: I've got one. Are
2 your new standards, are they budget driven?

3 THE WITNESS: Are they budget-
4 driven?

5 JUDGE THEIS: Yeah. In other
6 words, it's cheaper to educate fewer, isn't it?

7 THE WITNESS: Oh. Our new
8 standards are not budget-driven. Our new standards
9 are driven by what we're finding in terms of student
10 preparation. What we've learned over the last decade
11 is that what we're really trying to do with admission
12 standards is to encourage high school students to
13 look at what they're taking in high school.

14 And what we found is, this
15 consistency that they talked about on the 14
16 percent -- what we found is the place we have the
17 greatest needs is mathematics. And so in these new
18 standards, if you look into the area of the
19 pre-college curriculum, we have increased the
20 requirement, that if they don't meet that college
21 readiness benchmark, they have to take another year
22 of mathematics.

23 Because what we found is, is if
24 they have more mathematics, they have a greater
25 chance of success in college. So our standards are

1 based on those students having a better chance to be
2 successful in college, rather than coming and
3 dropping out, ultimately. So the goal is greater
4 success for the students.

5 JUDGE THEIS: Thank you.

6 THE WITNESS: Mm-hmm.

7 MR. RUPE: Nothing further.

8 MS. TIBBETS: Nope.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 MR. RUPE: John Myers is our next
12 witness.

13 JUDGE FLEMING: Tie is not
14 required.

15 MR. MYERS: Tie is not required.

16 JOHN MYERS

17 Called as a witness for the
18 Plaintiff, was duly sworn by the reporter and
19 testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MR. RUPE:

22 Q. Tell us your name and the city in which you
23 reside?

24 A. I'm John Myers. I live in Lafayette,
25 Colorado.

1 Q. And fastforwarding way ahead, you're the
2 John Myers in Augenblick & Myers?

3 A. Yes, for ten years I was a partner with the
4 firm.

5 Q. Let's get a little bit about your
6 background. And tell me first what your educational
7 background is?

8 A. I have a Master's Degree from Kansas State
9 University in Educational Administration with a focus
10 in school finance.

11 Q. When did you get that?

12 A. In 1980. I have a Bachelor's Degree from
13 Buena Vista University in 1972. I've done graduate
14 level studies at Kansas State University beyond a
15 master's degree and at Colorado -- University of
16 Colorado at Denver.

17 Q. So your post master's work at K State and at
18 University of Colorado Denver, has been in what?

19 A. School finance. Technically, the University
20 of Colorado, it was educational leadership and
21 innovations.

22 Q. Any other educational experience you've had
23 by way of course work other than what you've
24 described by way of your bachelor's, master's, and
25 post master's work?

1 A. There have been significant courses and
2 other activities. I guess, from a university
3 standpoint, no.

4 Q. When you say other course work, describe
5 that generally.

6 A. I've actually helped teach some classes
7 relative to school finance.

8 Q. And explain what courses you've taught or
9 classes that you've taught on school finance?

10 A. I've assisted with teaching some classes,
11 and this is not as a full-time professor, but have
12 assisted both in Kansas State and University of
13 Colorado Boulder and University of Colorado at
14 Denver.

15 Q. Were you born in Kansas?

16 A. No.

17 Q. Talk about your work history if you would.
18 What has been your employment history?

19 A. Well, I became a consultant in 1987 with the
20 Augenblick firm. And prior to that, I worked six
21 years for the National Conference of State
22 Legislatures as their education program director.

23 Q. And where were you located in that position?

24 A. Denver. That's the national headquarters
25 for the National Conference of State Legislatures.

1 Q. And you joined Augenblick in what year?

2 A. 1980 -- excuse me, 1993. I came to Colorado
3 in 1987 to join the National Conference of State
4 Legislatures.

5 Q. Now, work backwards from 1987 concerning
6 your employment.

7 A. Previous to that I was director of policy
8 and Executive Assistant to Governor John Carlin.

9 Q. And before that?

10 A. I was a member of the Kansas House of
11 Representatives.

12 Q. Representing what district?

13 A. 105th House District.

14 Q. What years?

15 A. 1977 to 1983, I was unusual; I was midterm
16 in and midterm out.

17 Q. And now, move forward from after Augenblick
18 & Myers in terms of your employment history.

19 A. Well, it was complicated in the sense that
20 in 1993, it started out -- originally was Augenblick
21 Van de Water, & Associates, and it became Augenblick,
22 Van de Water & Myers. Then it became Augenblick &
23 Myers. And then in 2003 --

24 Q. We're all familiar with law firms. This is
25 not any --

1 A. Yeah, this is not unusual. In 2003, I went
2 off and formed the J.L. Myers Group. So in 2004,
3 when I was here last, I had my own company. I
4 continued to work with what became Augenblick,
5 Palaich & Associates. And then, in January of 2005,
6 I came back to the firm called Augenblick, Palaich &
7 Associates.

8 Q. And your current status is what?

9 A. Titled Vice President.

10 Q. And you've been in that position since 2005?

11 A. Yes, since January of 2005, and I have now
12 bought in and I actually own shares of the company
13 again.

14 Q. Take a look at Exhibit 200, if you would.
15 To help your recollection, I want to talk about the
16 professional articles, papers, and reports that you
17 have done. It looks like on page 3 of Exhibit 200 --
18 well, first of all, Exhibit 200 is your CV, right?

19 A. Yes, that's correct.

20 Q. And you list in here your articles that you
21 have published, authored on matters pertaining to
22 school finance?

23 A. Yes.

24 Q. All right. And it looks like you have
25 published for some time, going back to 1988, on

1 school funding issues, is that a fair statement?

2 A. 1988, I had been at the National Conference
3 of State Legislatures, and so some of these articles
4 are related to policy issues that are not just school
5 finance.

6 Q. Yeah, and I didn't mean to suggest they were
7 all school finance. School finance and other school
8 related articles or education related articles?

9 A. Education policy, that's the way I would
10 describe it.

11 Q. Okay. Fair enough. And in terms of your
12 involvement with Kansas school finance, track your
13 involvement in Kansas with the topic of school
14 finance. You talked about going to college at
15 K State in school finance, but beyond that, tell us
16 what your history has been.

17 A. I was a community education coordinator for
18 the Hutchinson, Kansas Public Schools, the city, the
19 YMCA, and etc., after being a Boy Scout executive in
20 Hutchinson. That's when I was elected to the State
21 Legislature. And while I was in the Legislature I
22 immediately went on the education committee.

23 So my background in Kansas school finance, I
24 was taught by Senator Joe Harder, and Ben Barrett
25 from the Legislative Research Council, and Dale

1 Dennis from the State Department of Education, all
2 people in school finance, in order to get a handle on
3 how a Legislature puts together a school funding
4 formula.

5 And the graduate school at Kansas State, my
6 lead professor was former president of the American
7 Education Finance Association is now a dean, I think
8 he still is a dean, at University of Nevada in Reno.
9 And he was the lead professor at Kansas State on
10 school finance.

11 Q. What was his name?

12 A. William Sparkman.

13 Q. And then in terms of your involvement when
14 you joined Augenblick, describe, if you would --
15 we're going to drill down on it a little bit more
16 later -- but describe generally what your involvement
17 was with school finance in Kansas.

18 A. Well, once I went to work for -- with the
19 Augenblick firm, that was after we had done the
20 original work when Governor Finney appointed the task
21 force to respond to the original court case. But
22 that then happened before I joined the firm.

23 Then, when I joined the firm is when -- the
24 major products came in 1999, when we responded to RFP
25 on the consolidation study, the school district

1 boundary study. And that study was done. And then
2 that was followed by the RFP that came out in 2001
3 for the creation of what we would now call an
4 adequacy study. A study of determining the costs
5 associated with the suitable education in Kansas.

6 Q. And then, in terms of an overview you came
7 back in 2004 and were a witness in the Montoy case?

8 A. That's correct. As a result of the work --
9 described the work that we did in the 2002, actually,
10 report 2001 leading to 2002, actual report.

11 Q. Then to connect the dots to where you sit
12 today, we've asked you to come back and update the
13 work you've done?

14 A. Yes, you asked us to take a look at what was
15 in the existing report and think about the cost
16 adjustments that might be used in order to update, to
17 tune out.

18 Q. We'll get there in a moment. But what I'd
19 like to ask you about now is your work in states
20 other than Kansas on matters pertaining to school
21 finance. And if you need to review Exhibit 200,
22 please do so.

23 A. There have been a lot of states that I've
24 worked in on school finance over the years, many of
25 them are result -- you can see as reports in here.

1 When they talk about costing out studies or studies
2 on school finance, the most recent one has been --
3 recent ones have been in Pennsylvania. Another one I
4 like to highlight is Maryland.

5 Those were both done without being involved
6 in any court case. The additional work relative to
7 court cases was in Wyoming, South Carolina, South
8 Dakota, Massachusetts, Kansas -- well, Kansas --
9 Missouri, Montana, Nebraska, and North Dakota.

10 Q. I'm curious about your answer with regard to
11 Pennsylvania and Maryland. What was it that you did
12 in those states that did not involve litigation?

13 A. In Maryland there was a group called the
14 Thornton Commission that was appointed by the
15 Legislature. And it was a broad-base commission.
16 And we did work to help them do a costing out study.

17 There were other costing out studies that
18 were done, as well. And in the end, the Legislature
19 adopted what they call the Bridge to Excellence in
20 Education Act, which phased in a significant increase
21 in funding over a six-year period of time in
22 Maryland.

23 In Pennsylvania, we did the work
24 specifically for the State Board of Education at the
25 direction of the Legislature, not unlike what was

1 done here in Kansas. That resulted in a significant
2 increase -- the beginning of significant increase in
3 funding in Pennsylvania, cut off in part by the
4 economic downturn.

5 Q. And when did you do the work in Maryland?

6 A. I believe it was 2000 or 2001.

7 Q. And in Pennsylvania?

8 A. 2007.

9 Q. Let me move outside of school finance, but
10 related to school finance, if I could, and ask you if
11 you have done work with regard to teacher quality?

12 A. Yes, it really started with my work for the
13 Denver public schools on their Alternative Teacher
14 Pay Program that eventually became called ProComp, or
15 professional compensation -- expanded to include six
16 or eight school districts including the leading model
17 in the country, in my opinion, which is Austin,
18 Texas. We know that because they receive the largest
19 Teacher Incentive Fund grant from the U.S. Department
20 of Education to fund their alternative teacher pay
21 program.

22 So those alternative teacher pay programs
23 was one piece. The other major piece was my work
24 with the National Board of Professional Teaching
25 Standards. I've used 20 to 30 percent of my time

1 over the last, really, 15 years. First of all, as it
2 related to student policy, and then as what they
3 called the Regional Outreach Director, again, on a
4 part-time consulting basis. And now more advising
5 in, you know, variety of areas including their
6 Alternative Teacher Pay Program and their state
7 policy work.

8 Q. What is the National Board of Teaching
9 Standards?

10 A. National Board for Professional Teaching
11 Standards. It's a voluntary national organization
12 that has identified how to evaluate and identify
13 accomplished teaching. And that accomplished --
14 there are currently about 90,000 nationally board
15 certified teachers in the country. And in research
16 from the National Research Council and others have
17 shown that -- in fact, the national board does
18 identify accomplished teaching and that their
19 accomplished teachers have higher student
20 performance.

21 Q. And how long have you worked in the area of
22 teacher quality?

23 A. Well, I guess I'd go back to the 15 years
24 that I've worked with the national board.

25 Q. Now, let's get an understanding of some

1 terms. You've used the term costing out study.
2 Explain that to the Judges, please.

3 A. Well, there are a number of ways to look at
4 how much money is needed in order to get kids to
5 meeting state standards or the expectations, the
6 accountability of the State. And those mechanisms,
7 taken together, become the opportunity to identify
8 those resources.

9 And so that's what a costing out study is.
10 It's, in essence, taking the governance system and
11 the expectations of the state and the demographics of
12 the state, and aligning those things and saying, here
13 are the resources needed in order to meet state
14 standards.

15 Q. Okay. And the methods of costing out are
16 what?

17 A. Well, it has become a combination of
18 things. Originally, we helped create -- we being the
19 Augenblick firm -- helped create a couple of
20 approaches. And one of those approaches I would now
21 call -- I named it -- it's now called Successful
22 School Districts Approach. And that's identifying
23 those school districts in the state that are meeting
24 your state requirements. And then you look at how
25 much they spend and try to deduce a base cost from

1 that level. That's one approach that helps you set a
2 base cost from your actual spending.

3 Then there's a professional judgment
4 approach, and it was begun in Wyoming by
5 Dr. Guthrie. And we then went to Wyoming to assist
6 and did our first professional judgment study. We
7 then have used that multiple times in multiple
8 states.

9 And it is where the leading educators that
10 are challenged with meeting the accountability of the
11 state are challenged to identify the resources
12 needed. And this is usually time and teachers and,
13 you know, the materials that relate to an education
14 system. They identify those resources, and then we
15 find costs for them or prices for them, and then we
16 cost out that. That's another way to identify both a
17 base cost and weights for special programs in
18 education.

19 Then, there's the approach that is now
20 called the evidence-based approach. It was
21 originally the -- well, it had two or three names.
22 That doesn't matter much. But that approach was one
23 that said, researchers can identify things out of the
24 research literature that shows how to do -- how to
25 gain student performance in our models. And so they

1 then take a look at that and say, what if we applied
2 that in school sites, how much would that cost if you
3 tried to cost that out, if we put prices and -- at
4 those resources.

5 Finally, there is the statistical modeling
6 approach. And the statistical modeling is the use of
7 regression analysis by researchers to try to tie
8 together student performance or student expectations
9 and end costs.

10 Q. Okay, and the last one you called what?

11 A. Statistical modeling. And that covers a
12 variety of regression analysis plans that end up with
13 either cost functions or production functions or
14 specific to a given subject matter as to what the
15 costs of a given program or subject is.

16 Q. And as you work in different states, I think
17 we've accomplished this, but let me see if it squares
18 with your experience, different states have different
19 constitutional requirements concerning education?

20 A. Yes. This is all driven off from
21 constitutional responsibilities that belong to the
22 State. It's very important, because in standards-
23 based reform, the assumption behind it -- and we've
24 been in this for 30-plus years in America --
25 standards-based reform argues that the State has the

1 responsibility to set standards, have assessments
2 tied to those standards, and hold school districts,
3 teachers, and schools accountable for meeting those
4 standards.

5 I like to point those out because that's
6 what we're trying to achieve with a school funding
7 formula, is meeting that State responsibility. So
8 when a constitution, state constitution says,
9 thorough and efficient program, then you think of it
10 in the terms of how that relates to those things that
11 the State's responsible for.

12 Q. Now, when you did the Augenblick & Myers
13 study at the request of the State of Kansas, did you
14 look just at the question of whether kids were
15 meeting state standards and costing out just that, or
16 did you look at something called an adequate
17 education?

18 A. Both. It is safe to say that you can't have
19 one without the other because school districts,
20 school sites are held accountable for both. And
21 again, remember the context here, because much of the
22 work was done in 2002, and 2001 was when No Child
23 Left Behind was passed.

24 And so the federal expectations were just
25 beginning to be known. We didn't really have the

1 full impact of No Child Left Behind. But it was
2 beginning to be known and it played an important role
3 of taking the Kansas standards and adding to that the
4 expectations that were specific to meeting that
5 goalpost of proficiency in terms of state
6 assessments.

7 Q. Okay. This will become important to the
8 update, but let's go back in time to when you were
9 charged with the responsibility of costing out the
10 adequate education in Kansas. And let me hand you
11 Exhibit 1. And flip in it to page -- it's called
12 primer -- turn to 00080, and you're familiar with --
13 find it? You're familiar with Article 6 Section 6 of
14 the Kansas Constitution?

15 A. Yes, this is where suitable is mentioned in
16 the Kansas Constitution and the expectation of the
17 RFP that came out was that this was a key part of
18 what was going to be determined as part of the study.

19 Q. And in terms of working through what the
20 definition of --

21 MR. RUPE: Is this the statute?

22 MS. GARNER: Yeah.

23 Q. Look at Exhibit 7. Is this the statute that
24 was enacted with regard to the charge you had
25 concerning a costing out study?

1 JUDGE THEIS: Mr. Rupe, would it be
2 okay to quit about 12:15 today?

3 MR. RUPE: Absolutely, that's fine.

4 A. Yes, this is. This is, and again, reminds
5 me much of the work was done -- and I just said 2002;
6 it was done in 2001 with a report in 2002.

7 Q. So we're on track, Exhibit 7, which is
8 KSA 46-1225, is the legislative counsel charge to
9 provide a professional evaluation of school district
10 finance to determine the cost of a suitable education
11 for Kansas children?

12 A. That's right.

13 MR. RUPE: You know, we're going to
14 start wading into the -- this isn't a question to
15 him. We're going to start wading into the question
16 of what is suitable and what the definition was that
17 he worked from. It's not going to get done in five
18 minutes, so I say we stop now and pick up with that
19 when we come back from lunch.

20 JUDGE THEIS: That's fine. About
21 hour and fifteen minutes for lunch.

22 MR. RUPE: Fine.

23 JUDGE THEIS: 1:30.

24 (A recess was taken.)

25 Q. (By Mr. Rupe) Okay. Let me get Exhibit 203

1 in front of you as we resume our afternoon session.

2 And incidentally, this is the published Augenblick &
3 Myers report, is that right?

4 A. Yes.

5 Q. What we've called the cost study, true?

6 A. Yes.

7 Q. And where we were right before we stopped
8 for our noon recess was over the question, what did
9 Augenblick & Myers look to, to determine what a
10 suitable education was. And it I think we used that
11 interchangeably with the term adequacy. So explain
12 to the Judges what you used as the definition of
13 suitable when you looked at Augenblick & Myers?

14 A. First of all, the definition was begun by
15 what was in the RFP, what the Legislative
16 Coordinating Council sent out and asked -- they're
17 the ones that identified briefly, very briefly, what
18 they thought -- suitable education.

19 In the meantime, we had worked with the
20 Legislative Education Planning Commission. At that
21 point, that was its name. It was a committee of the
22 Legislature that specialized in education. And they
23 had invited us to -- once we won the RFP, invited us
24 to meet with them to get further information.

25 They, in the meantime, relied upon the State

1 Board of Education, State Department of Education to
2 provide them with an out -- a listing of the courses,
3 the listing of the QPA, the accountability programs,
4 and so that was the starting point.

5 What we found was there was a little
6 disagreement among those major documents of
7 whether -- as we began to prepare those materials
8 that we would use on the definition and that we used
9 to share with people who were helping us put this
10 together. And one of the differences was the State
11 Board was very specific that all of the things they
12 had listed were needed in order to fully define an
13 adequate education.

14 And the Legislative Education Planning
15 Commission that we met with said, well, in some
16 cases, because of either how rural you are or for
17 other reasons that there may be some reason why that
18 would not be the case. And so we said it would be a
19 mix of the programs, and that's the language that
20 ended up being a part of the definition that we
21 shared with everybody, a mix of programs.

22 Q. Turn, in 203, to Bates number LEG 001345.

23 MR. RUPE: I don't want to screw
24 this up. How do I turn it on?

25 MR. CHALMERS: Pass me the remote.

1 MR. RUPE: This is like home when I
2 hand the remote to the kid. Okay, thank you.

3 Q. In terms of Bates number LEG 001345, Setting
4 a Suitable Education Definition, in Augenblick &
5 Myers, does that section spell out what you did by
6 way of coming up with the definition?

7 A. Yes, this is what I generally just described
8 as those materials and those things that were
9 provided by the state or provided by the Legislative
10 Education Planning Committee, as well as the
11 Legislative Coordinating Council of the State Board,
12 State Department.

13 Q. Now, tell me as best you can what that
14 definition included.

15 A. Well, it included both the -- those items
16 that would be input items, in other words, classes or
17 professional requirements that are part of the
18 quality education -- quality accountability system.
19 Then, it also includes, then, those performance
20 indicators, so that under student performance --
21 that's at the top of 001346 --

22 Q. Included in the request for proposals was
23 information of the extensive system of input measures
24 that are contained in the Kansas Quality Performance
25 Act. And did it include outputs?

1 A. Yes, the next paragraph down is where it
2 describes the student performance assessment tests,
3 and at that point the tests were given in grades 4
4 through 11.

5 Q. And was there a meeting with the legislative
6 committee to evaluate the State Board's position on
7 the definition?

8 A. Yes.

9 Q. And it was modified, as I understand, your
10 explanation, somewhat?

11 A. Yes, slightly. I mean, it wasn't
12 significantly different, other than it did allow a
13 little more flexibility, so therefore, provide a
14 little flexibility for us and for the panels.

15 Q. And in terms of what has been described as
16 the Rose Factors, you're familiar with those?

17 A. Yes, I was one of the first consultants that
18 came into Kentucky in response to the court case.

19 Q. You know what the Rose Factors are?

20 A. Yes.

21 Q. Were those part of the definition of what
22 you looked at, of suitability?

23 A. I would say we were aware of them because
24 we close -- John Augenblick actually served as a
25 direct consultant to that ongoing process on the

1 finance side when they developed the Kentucky
2 education reformat. But I only came in to assist
3 them as they set it up. I was still at NCL at the
4 time.

5 So yes, we looked at them and were familiar
6 with them, and generally knew about those. We didn't
7 in any way pull them immediately and say, that's what
8 we wanted. We responded to what the State was
9 providing us.

10 Q. Who then came up with the final
11 determination of the definition that included inputs
12 and outputs?

13 A. I would say it was that Legislative
14 Education Planning Committee that was the primary,
15 final recommendation that we put in here.

16 Q. And for the best place for the Judges to
17 look to get that definition, the Augenblick & Myers
18 beginning chapter is the -- or the chapter, Setting
19 Suitable Education Definition, is the source for
20 that?

21 A. Yes, and on the next page, actually 1347, it
22 not only talks about the definition, but how it was
23 then used.

24 Q. Okay. And let's get into that, if we
25 could. It talks about -- the definition was used

1 differently for two approaches, professional
2 judgment, and then explains that, and then the
3 successful schools approach, correct?

4 A. Yes.

5 Q. Okay. So we start with the definition of
6 suitability, adequacy. You've explained what that
7 definition is. Now let's go to how that definition
8 was implemented through those two methods. Explain
9 each of those methods to the Court. Explain what you
10 did by way of ascertaining the cost.

11 A. In your question earlier, you said is used
12 differently; well, only because the needs of each of
13 these different approaches, it was portions of it,
14 but it was always all the same. It is the same
15 definition, regardless, only in one case, the
16 successful school districts case, that's built upon
17 the student performance data. And you're determining
18 the successful schools based upon their achievement
19 on the school -- on the achievement data.

20 And so that's why the inputs become more
21 important to them -- excuse me, the outputs become
22 more important than the inputs, where in the
23 professional judgment, they're using both. They have
24 to identify resources that are going to respond both
25 to the inputs that are required, as well as the

1 outcomes that are needed to achieve.

2 Q. So if I'm on track, the successful schools
3 approach has a tilt toward outputs and professional
4 judgment uses both inputs and outputs?

5 A. Yes, that's correct.

6 Q. Now, walk us through what Augenblick & Myers
7 did with each approach to come to a cost
8 determination?

9 A. I don't know whether you want me to start
10 with successful schools or professional judgment.

11 Q. Take your pick.

12 A. Well, because the next piece in the actual
13 material in front of us on 1350 is an explanation of
14 a professional judgment approach. And basically,
15 what we did is we created school panels, district
16 panels, and a statewide panel. And these are panels
17 of people that were from various school sizes and
18 school district sizes, that had meetings.

19 And those meetings we reviewed with them,
20 they had input into how they understood the suitable
21 definition. They then formed into smaller groups.
22 We had a facilitator with each of those groups to
23 both record their information as well as to be able
24 to assist them in answering questions.

25 But we asked them, then, in a consensus

1 model, in other words, everyone around the table had
2 to agree as to what resources would be needed in
3 order to meet those standards. And we described
4 different school sites or different school districts
5 by size and other things for them, so they had that
6 description, as well.

7 And we determined, really, the size that
8 was -- typically, it was on what we, in this case,
9 called the prototype schools. Again, these were
10 people who came from schools and districts of the
11 comparable size.

12 And they met, had a consensus that came
13 together on how many resources were needed. We
14 listed those resources. We then took those resources
15 from the school site level to the district panel.
16 The district panel added those that were uniquely
17 district costs, or district resources that were
18 needed, and took a look at the cost, then, of both
19 the district -- the school site models, as well as
20 their -- well, and the resources they put in from the
21 district level.

22 Then we took that to the statewide panel and
23 was able to see both pieces together to what we tend
24 to -- would argue is to even out, so that it
25 represents a consensus of all the people that have

1 been working on the project.

2 Q. How many people were involved in that
3 process?

4 A. There was a list of those names in here. I
5 don't remember because I was most recently looking at
6 how many attended those opinion pieces, which was
7 another piece of this study, that wasn't directly
8 used in the adequacy portion. And so I'd have to
9 look it up. Around 60, I believe.

10 Q. What was their finding by the time it went
11 through each of the levels you've described, and they
12 came to a conclusion? What was their conclusion?

13 A. Well, multiple conclusions about multiple
14 things that resulted in identification of these
15 resources. We then --

16 Q. What resources did they identify?

17 A. People. Time. People and time are the
18 biggest pieces. Obviously, most school district
19 budgets, a majority of it is in personnel, and most
20 of that is in teachers. 50-plus percent of a school
21 district's budget is tied up in teachers' salaries.
22 So it is a matter of identifying teachers that are
23 needed and identifying support staff and librarians
24 or whatever other pieces. So it was identifying of
25 those pieces.

1 And then we were the ones that identified
2 price. Now, we usually talked price with both the
3 district level and statewide panel. In other words,
4 we had identified a way to determine a teacher, the
5 average teacher cost, if you would, and the average
6 superintendent cost. And so we did that to apply
7 against the resources that were identified.

8 Q. Turn to 1404 in Exhibit 203. I may be
9 getting ahead of myself here. Before you finish
10 with -- and before we turn to that, talk to me about
11 what you did with regard to the successful schools
12 approach.

13 A. The successful schools approach takes the
14 identification of the student performance data and
15 identifies those places that were meeting the
16 accountability standards on the basis of those
17 schools. And at this point, again, there is this
18 proficiency level. We were able to identify a
19 certain number of those school sites and school
20 districts, and therefore tried to look at their data
21 to say, here's how much of that would be attributed
22 to a base, here's how much would be attributed to
23 high-need students, or other things.

24 And so we took those pieces out, the
25 weights, if you would, the weights that were set out

1 so you could come down to a base dollar amount. And
2 it's just a simple -- not a simple average. It's an
3 average of the school district's actual expenditures.

4 Q. Okay. Take a look at LEG 001325 through
5 1490.

6 A. I'm sorry I missed that. Do it again.

7 Q. I'm sorry, one particular page I want you to
8 look at, look at LEG 001404.

9 A. Yes.

10 Q. And let me also hand you Exhibit 211?
11 Here's what I want to ask you about 1404: Is it
12 accurate that the number after you did what you
13 described for successful schools and professional
14 judgment -- is it accurate that the figures derived
15 from the two adequacy studies were different 4,547,
16 based on the successful schools approach, and 5,811
17 based on professional judgment approach?

18 A. Yes, and that's in the -- right, the bottom
19 of that first paragraph on 1404.

20 MR. RUPE: Do I have another copy
21 of this?

22 Q. Then I'm going to hand you 211. And 211 is
23 evidence, and that summarizes those two amounts at
24 the top of Exhibit 211, correct?

25 A. That's correct.

1 Q. How long did this process for both these
2 cost studies -- how long did that take?

3 A. I don't remember exactly. Again, it started
4 in the fall of 2001 and finished in May of 2002.

5 Q. Once you obtained those two numbers, what
6 did you do from there?

7 A. Well, remember that what we're trying to
8 create here is a base cost in order to put in a
9 school finance formula. So in thinking about that,
10 theoretically, the base cost ought to be enough
11 money, once you at add weights onto it, that that's
12 sufficient money in order to meet the state
13 accountability standards.

14 So thinking about that, you always have had
15 this opportunity for local option budget, but that
16 local option budget was considered as an add-on or
17 special things that were wanted for that local
18 district as opposed to things that were definitively
19 required in order to meet the basic requirements. So
20 that's why there's two different bases here and two
21 different ways of thinking about this.

22 The successful school districts approach
23 does not give you the opportunity to put on weights,
24 does not give you the opportunity to identify these
25 additional things that would go on top, so we use the

1 lower level, we use the successful school districts
2 approach as the level that we recommended then to
3 start with, and with a target to grow to the level
4 that would be at the higher level using local option
5 budget in order to do that.

6 Q. Okay. Turn to LEG 001414, that I have on
7 the screen that is entitled, Summary of
8 Recommendations, and walk the Judges through what the
9 recommendation was.

10 A. Yeah, our recommendation was continue this
11 local option budget, which is what I was just talking
12 about. But it was a combination of the first tier,
13 which was your base, and then this second tier, which
14 is the local option budget. So we grow into that, in
15 other words. So the foundation level that we
16 recommended at that point was 4,650 as the foundation
17 for 2000/2001.

18 Q. Let me ask you if 211 is accurate then.
19 Based on what you just indicated, is it accurate that
20 with regard to the -- I'm going to cover up the
21 bottom, kind of build up the suspense here. With
22 regard to the A&M study, the study came up with two
23 base cost figures, 4,547 and 5,811. And then they
24 determined the lower figure could be used for the
25 base and the higher for the LOB limit. The LOB limit

1 was to be fixed at 25 percent, then the base could be
2 set at 4,649?

3 A. Yes.

4 Q. Is that accurate?

5 A. Yes.

6 Q. Okay. And the recommendation was to set the
7 base at 4,650 for Fiscal Year 2001?

8 A. Yes.

9 Q. Now, did you, in 2005, update that number?

10 A. Yes.

11 Q. And explain to the Judges what the process
12 was for updating that number?

13 A. It was simply taking inflation. And this
14 did not include -- it did not include changes in
15 demographics or any way to impute -- input a revenue
16 side. This is all, again, on the expenditure side.
17 So all of this has to do with how many resources were
18 needed and it was based upon three-year -- well,
19 parts of years that represented a three-year increase
20 in the inflation.

21 Q. And take a look at Exhibit 207. What is
22 207?

23 A. It was this response to your request in
24 order to update the numbers, and we did it based upon
25 what I just described, which was this inflation

1 increase.

2 Q. All right. And I jumped over a couple of
3 things I want to go back to. Look at 206, if you
4 would. What is 206?

5 A. 206 was the response to your request
6 relative to updating -- various approaches to
7 updating the figures that were in the original
8 report.

9 Q. All right. So the number there for the
10 update in 205, if you look to Exhibits 206 and 207,
11 you'll see the basis for those numbers for the
12 update?

13 A. Yes, and it was Option Number 1 on 206.

14 Q. Okay. Now, back up to 2002 for a second.
15 What is Exhibit 204?

16 A. Exhibit 204 was the State Department of
17 Education's response to our full report that was done
18 in order to try to put a total cost on what we
19 provided was a base, plus adjustments for various
20 sizes and types of districts. And this is an attempt
21 to cost out, in essence, put a dollar amount to how
22 much that would cost compared to current spending.

23 Q. We'll talk about this with Dale Dennis, as
24 well, but this is a memo from Dale Dennis to the
25 State Board of Education in which he took those

1 numbers that you provided in the Augenblick & Myers
2 report and calculated the cost, is that accurate?

3 A. Yes.

4 Q. In terms of the computation of base state
5 aid -- because at that time, like today, the base is
6 the driver, correct?

7 A. Yes, base is the driver as long as you
8 recognize that it also drives the weights.

9 Q. Understood. And that's where the number
10 came from in terms of the base state aid, correct?

11 A. Yes.

12 Q. So we're on the same page here, let me put
13 up an exhibit that we've seen from time to time,
14 Exhibit 237. And Exhibit 237, the purple represents
15 the occasions when this has been costed out by
16 Augenblick & Myers. You see the 4,650 here?

17 A. Yes.

18 Q. And the 4,806?

19 A. Yes, that was the 2000/2001 base, and this
20 is the base or average of base that was a starting
21 point relative to 2005.

22 Q. Okay. On the 2002 Dale Dennis memo, the
23 calculation was done on the second page of that which
24 is Myers S000003. And we've shown the calculation.
25 But one thing that I didn't cover is the summary of

1 the increases in state aid. The number that
2 Augenblick & Myers represent, the computation of your
3 number resulted in a total of 852,777,901 from Dale?

4 A. Yeah, that's when he tried to update it from
5 the 2000/2001 number that we created to a total
6 number that was based upon the 2003/2004.

7 Q. And that was as of, I'm sorry, July 2002?

8 A. Yes.

9 Q. Okay. Now walk forward, if you would, and
10 tell me, what you have done by way of update since?

11 A. When you asked this year for -- or actually
12 last fall -- was it last fall?

13 Q. Let me refresh your recollection. This is
14 in evidence, 208.

15 A. Yes, last fall we were asked again to look
16 at this and say, okay, if you were going to have an
17 inflationary increase on your base, what would the
18 base numbers look like for various sizes of
19 districts. So again, we did the same thing, which is
20 take a cost of living index growth.

21 Q. And when you say "cost of living index,"
22 what did you rely on?

23 A. Specifically it was the Consumer Price
24 Index.

25 Q. The CPI?

1 A. Yes.

2 Q. Well, tell us what your findings were.

3 A. Well, on this, Exhibit 208, on 00061, it
4 clearly shows the base costs that would be associated
5 with the inflationary increases.

6 Q. Then let's look at 211, if we could. Does
7 211 show the September 2011 update?

8 A. Yes.

9 Q. So you updated the original study by
10 calculating inflation of 23.4 percent on the FY 2001
11 calculated base cost of 4,550, rounded successful
12 school district approach, and said the updated base
13 cost would be 5,615 for Fiscal Year 2011?

14 A. Yes, and what we identified in doing this
15 was -- is that we had used 4,550, which was the
16 original, closest to the original successful school
17 districts base, but it didn't include what the
18 ultimate recommendation was that was used, and that
19 was the 50 -- or 4,650 number.

20 Q. So that would be the number that is shown
21 here in 2011?

22 A. Actually, what we've looked at so far was
23 September, and this was the October re-do based upon
24 the 4,650 beginning base.

25 Q. What's the number?

1 A. It is 5,738.

2 Q. That's indicated on Exhibit 237, 5,738?

3 A. Correct.

4 Q. And look at 208. I want to cover with you
5 something you said in that report. Down at the
6 bottom in the bottom paragraph -- let's just show it
7 to the Judges -- it says, it is important to note
8 that APA believes that the results of a costing out
9 adequacy study should be revisited every three to
10 five years, and not simply adjusted in perpetuity.
11 Why did you say that?

12 A. When we first started doing these, we kept
13 saying, seven or eight or ten years maybe would be
14 necessary in order to re-evaluate. But what we've
15 learned is the demographic changes and the
16 accountability changes and the expectation changes
17 that are on systems really say you got to do it more
18 often than that.

19 So sometimes in our reports, if you saw our
20 other state reports, you'd see four to six years, or
21 you'd see five to seven years. And we've really
22 reached the point where we said there are enough
23 changes in the environment that probably means every
24 three to five years. Now, if you get more stability
25 in the accountability system and in your state

1 standards, maybe you wouldn't have to say this. But
2 we know that's not been the case in the last decade
3 or two.

4 Q. Has the Legislature asked you, since your
5 study, to update it, or has the defendant asked you
6 to do that or to do another cost study?

7 A. No.

8 Q. Let's go to Exhibit 210. And I'd like to
9 ask you if you were called upon, again, to look at
10 this issue of costing out adequacy and whether you
11 have done that as a result of updating your previous
12 report?

13 A. I'm sorry, I lost the question.

14 Q. I'm sorry, what did you do in October 2011?

15 A. 2011 was the twenty -- excuse me, start
16 over. It was the use of the appropriate level of
17 base to begin with.

18 Q. Let's walk through this, if we could, on
19 Exhibit 210. In terms of your report on 210, it
20 appears that you explained what you did in May of
21 2002, correct?

22 A. Yes.

23 Q. And you explained the two approaches that
24 you used to estimate the cost, professional judgment
25 and the successful schools. Is that what you did?

1 A. Yes.

2 Q. Then, you've explained what you've explained
3 to us, that the May 2002 report identified several
4 elements that would be necessary to determine the
5 cost of a suitable education in several hypothetical
6 school districts, including a base cost figure
7 adjustment to the base cost relative to the
8 enrollment level, and adjustments to the base cost
9 figure associated with proportion of students in
10 special ed programs?

11 A. And free and reduced lunch and English
12 language learners, or bilingual students.

13 Q. Did you do anything by way of costing out
14 those weights in 211?

15 A. No.

16 Q. In 2011. You were simply updating the
17 information before?

18 A. Any changes in the proportion of English
19 language learners or special education students --
20 those are demographic changes that would be needed in
21 order to get a full cost. But we were trying to say,
22 what does the school finance formula -- what should
23 be put in as the beginning base -- in the beginning
24 weights as a percentage of those bases which we think
25 would be relatively adequate.

1 Q. In terms of the demographics of the State of
2 Kansas, are you familiar with how the demographics
3 have changed since 2002 with regard to ELL and kids
4 of poverty?

5 A. I haven't looked at the specifics on that.
6 I would -- I haven't looked at the specifics on that.

7 Q. In terms of knowing that they have
8 increased, do you have knowledge of that --

9 A. National --

10 MR. CHALMERS: Let me interrupt.
11 This is beyond the scope of his report. What he did
12 in his report is what Mr. Rupe has gone through.
13 He's retained experts. This has not been disclosed
14 and I object. Also, said he doesn't have a
15 foundation to talk about it.

16 MR. RUPE: I'm asking -- in terms
17 of his report, he addresses the cost of the weights
18 in 2002, and updates those. And I'm just making
19 clear that with regard to those weights he didn't
20 take into account the increasing demands by reason of
21 the increase in bilingual and poverty.

22 JUDGE THEIS: Overrule the
23 objection.

24 Q. In terms of your knowledge, explain what you
25 know nationally.

1 A. Well, we know nationally free and reduced
2 lunch has gone up. That's obvious because of the
3 economic downturn, and we know the percentage,
4 nationally of -- special education actually has
5 leveled out. It's come down a little bit because of
6 the implementation of a new approach to English
7 language -- or to learning disabled students.

8 We also know nationally that there is an
9 increase in English language learners nationwide.
10 How the specifics relate to Kansas would be very
11 important, but I don't know what those numbers were.

12 Q. And you weren't asked to go back into the
13 weights and cost out the weights or the
14 recommendations on the weights because of those
15 increases?

16 A. Correct. We always, through here, were on
17 the side of identifying the costs, the adequate
18 dollar amounts, not on -- in order to do what you've
19 described, you would have to multiply that by the
20 demographics, that that would come up with a total
21 target. And that's what Dale Dennis did earlier but
22 has not been done since that.

23 Q. Okay. When you say "Dale Dennis did
24 earlier," what do you mean?

25 A. That it is the -- Exhibit 204, this was the

1 original -- our original work that he put a total
2 cost on it.

3 Q. Okay. And that cost included the weighting
4 factors?

5 A. Yes, it did, and the actual demographics at
6 the time he did this.

7 Q. And if you wanted to go in and figure out
8 what additional costs have come about because of the
9 increase in ELL and poverty, you could do another
10 cost study, couldn't you?

11 A. Yes, or you could apply the new demographics
12 to the bases and adjustments. We'd argue you
13 shouldn't; you should go back and try to re-do that,
14 but you could do that.

15 Q. Were these studies designed to be actual
16 predictions of cost or just reasonable estimates?

17 A. Just reasonable estimates.

18 Q. Then going back to Exhibit 208 -- I'm sorry,
19 it's not 208. It's 210. Walking us through this,
20 tell us what conclusions you came to and how you came
21 to them.

22 A. At the top of 000217, the top paragraph
23 there, it gives the conclusion, and that is an
24 adjustment of 23.4 percent inflation between the most
25 recent year and trying to update it for the 2010/2011

1 school year.

2 Q. And it was updated to what number?

3 A. That was the 5,738 that you looked at
4 previously.

5 Q. Okay. And then, updating the other
6 information, explain that.

7 A. Well, what we've listed here is what the
8 percentages that came right out of our original
9 study -- what would be the adjustment percentages
10 based upon your enrollment differences among
11 districts.

12 Q. And how did you get that to those numbers?

13 A. Those numbers were based, again, on the
14 original work. They were based upon the cost
15 differences once we priced out those resources
16 identified by the various size of district and for
17 the various purposes.

18 Q. Okay. And then the next page, explain 218.

19 A. That's what I just described.

20 Q. Okay. Then your supporting documentation
21 follows?

22 A. Yes, that's the actual -- beginning of 206
23 is the actual Consumer Price Index that was used, and
24 then the previous page is a handwritten page -- was
25 the numbers, the actual numbers used that total to

1 that 34,000 -- or 34 percent -- excuse me, 23.4
2 percent.

3 Q. All right. Let's continue on 211 and see if
4 this is accurate. Going back, September 2011, we
5 asked John Myers to update the original study with an
6 FY 2012 base cost and total cost and sent him the
7 KSDE Dale Dennis summary from computations from July
8 8, 2002.

9 He updated the original study by calculating
10 inflation of 23.4, and came up with the number 5,615
11 for Fiscal Year 2011. And then we asked Myers why
12 his 2011 update was based on 4,550 instead of 4,650.
13 He revised his report to update 4,650, which is the
14 base that Dale Dennis used in his computations. The
15 update base cost would be 5,738 for Fiscal Year
16 2011. Is that accurate?

17 A. Yes.

18 Q. There's a number up here, 5,965. It is in
19 purple on Exhibit 237. What is that?

20 A. Don't know. That I believe is your
21 calculation -- or somebody else's calculation that
22 was -- raised the inflation rate in order to get it
23 up to current year.

24 Q. Look at 209. What is 209?

25 A. 209 is the Consumer Price Index that would

1 be the same kind of -- that we were using in order to
2 update our proposal -- our update based upon the
3 September 2011 work.

4 Q. If the CPI were used to compute the increase
5 over time from 5,738 -- and take my word for it, it's
6 5,965 -- would you disagree with that computation?

7 A. I assume it would be in that ballpark, yes.

8 Q. So for the Court's information and opposing
9 counsel, the numbers that are in purple and yellow
10 are his numbers; the purple and white is what we
11 computed based on the CPI, that he agrees with -- you
12 agree with that analysis?

13 A. Yes.

14 Q. In terms of the cost of education, do you
15 have any evidence that the cost of education of
16 Kansas students has decreased since your original
17 study?

18 A. Overall the cost expectations have had to
19 gone up.

20 Q. And explain.

21 A. The way you asked your question, actually,
22 you could say, oh, sure, we could identify a segment
23 where the cost is down, but it would be a minor,
24 minor portion of the overall cost.

25 Q. Calculators don't --

1 A. Technology costs less than it used to, for
2 example.

3 Q. But overall, has the cost of education of
4 Kansas kids decreased or increased?

5 A. My opinion is, is that if we would do this
6 study again, it would be -- and be based upon our
7 current expectations and the demographic changes, it
8 would result in a higher cost.

9 Q. And you've been in the courtroom this
10 morning for Dr. Andy Tompkins' testimony. And in
11 terms of your own knowledge, have the demands of high
12 school students, the demands on high school students
13 for college readiness increased or decreased?

14 MR. CHALMERS: This is outside the
15 scope of his report nothing was said about demands of
16 high school students. Nothing was said about costing
17 after 2002 other than inflation. So he's now gone
18 well beyond what has been disclosed.

19 JUDGE THEIS: Purpose?

20 MR. RUPE: I'm asking him with
21 regard to his knowledge. Counsel took his deposition
22 and asked him --

23 MR. CHALMERS: I took his -- I'm
24 sorry, go ahead. I took his deposition based on the
25 report that was prepared and produced, and therefore,

1 my understanding of what his opinions would be, not
2 on things that Counsel might try to add later on that
3 apparently he kept --

4 MR. RUPE: I'll withdraw the
5 question as long as, when we come back to it in the
6 defense experts, that there is some reciprocity.

7 JUDGE THEIS: Just remind us.

8 MR. RUPE: Count on it.

9 Q. (By Mr. Rupe) What did you mean earlier when
10 you said that Kansas has instituted standard-based
11 reforms?

12 A. Well, that's apparent in all of the -- the
13 definition of suitability, it's clear in their
14 acceptance of a comprehensive plan for No Child Left
15 Behind. It's clear because there are assessments in
16 that schools are put in turnaround status if they
17 don't make AYP.

18 All of those things are how it is that the
19 State's fulfilling its responsibility in standards-
20 base reform, is to set standards and assessments tied
21 to the standards and hold school districts and
22 teachers and school sites accountable.

23 Q. What are the effects of those efforts on
24 state accountability?

25 A. I think we have -- nationwide, we have

1 ratcheted up, and Kansas certainly has ratcheted up
2 the expectations of the school. It used to be our
3 expectation was a certain portion of students would
4 be college ready. It used to be a certain portion of
5 students would be able to go off, if they have a
6 8th grade education and find work. Those are no
7 longer expectations in Kansas and those are no longer
8 expectations in this country.

9 Q. Are all Kansas students held to the same
10 standards?

11 A. Now, if you believe that No Child Left
12 Behind requires a proficiency standard for all
13 students, you would say yes. That's not the entire
14 accountability system, though. There's a lot in an
15 accountability system that involves delivery of
16 courses, and etc. And for that not all students are
17 given the same opportunity to everything.

18 Q. But are they held to the same standards?

19 A. Well, at least as it relates to proficiency
20 and at least as it relates to college entrance
21 requirements, the answer would be yes.

22 Q. All right. And in terms of -- we can track
23 this through, and we have in our Primer Exhibit 1.
24 But in terms of the syncing up of your definition of
25 suitability, back when Augenblick & Myers defined

1 suitability at the direction of the Legislature, the
2 defendant in this case, does that definition sync
3 with what I've put in front of you, which I will
4 represent to you are the Rose Factors, contained in
5 current state law?

6 A. These are less specific than the actual
7 implementation of all of these things. But yes,
8 that's clearly very similar to what we've seen in a
9 lot of states. Every state defines it a little
10 different. Wyoming, it was very clear in their court
11 case that they wanted to make sure that any kid that
12 graduated from high school could be admitted to the
13 university, meet the university standards, university
14 system standards, so --

15 Q. Well, and Kansas has recognized that
16 training or preparation for the advance training in
17 either academic or vocational fields so as to enable
18 students to choose and pursue life work intelligently
19 is a goal?

20 MR. CHALMERS: Your Honor, I guess
21 we need to get the rule straight here. That statute
22 was passed after his report was done. The only
23 updates we would have would be what he talked about
24 on Consumer Price Index.

25 I mean, I don't know that I have

1 any problem with him talking about this in context of
2 understanding what the suitability definition was
3 that he had back in place when he did his report.
4 But if we're asking about what the suitability
5 definition is today, I have to object because that's
6 not anything that's been disclosed. And I also think
7 it's a subject that is for the Court to decide as a
8 legal subject. So I object.

9 MR. RUPE: I would respond to his
10 objection this way: The Rose Factors have been part
11 of suitable, clear back to the 229 case, clear back
12 to the books -- oh, shoot.

13 MR. ROBB: Did you spill something
14 else?

15 MR. RUPE: Yes.

16 JUDGE THEIS: This is cleaning day,
17 too; it's appropriate.

18 MR. RUPE: Graduated in '68 and I'm
19 officially washed up. So here we are.

20 Q. (By Mr. Rupe) Okay. Let's go back to
21 Exhibit 38, and let me hand you this because I'm
22 going to respond to it this way. Going back to
23 December 2, 1994, and working forward through the QPA
24 manual and Kansas law, as we've done in Exhibit 1,
25 the Rose Factors have been center stage in suitable

1 education. So my question is not --

2 MR. CHALMERS: Wait a second.

3 MR. RUPE: Not something new.

4 MR. CHALMERS: Go ahead. I'll let
5 you finish and then I'll -- unless you clarify --
6 since you don't misrepresent the law, I'll clarify
7 for you.

8 MR. RUPE: I'm clarifying. I'm not
9 misrepresenting law. Exhibit 38 is from the 229
10 decision.

11 MR. CHALMERS: Try.

12 MR. RUPE: Kansas law prior to
13 72-1127 had a statute that you're familiar with --

14 MR. CHALMERS: Which was repealed
15 and was one of the bases in the Montoy case, the
16 first one for your argument that we should re-open
17 and take another look at 229.

18 MR. RUPE: Then --

19 MR. CHALMERS: Then it was passed
20 after Montoy.

21 MR. RUPE: This was passed after
22 the repeal of the previous statute you just
23 mentioned.

24 MR. CHALMERS: And after Montoy.

25 MR. RUPE: It's the same language.

1 The same language.

2 JUDGE THEIS: Was your question --
3 didn't he say Kansas has performance-based
4 standards?

5 MR. RUPE: Yeah.

6 JUDGE THEIS: So isn't your
7 question if the standards change then --

8 MR. RUPE: The question is, is this
9 still the standard, Exhibit 39, the Rose Factors.

10 JUDGE THEIS: Question is if
11 standards changed, does something else change, isn't
12 it?

13 MR. RUPE: Okay.

14 Q. (By Mr. Rupe) Have the standards changed?

15 A. Yes, the standards have changed. There are
16 some consistent standards across time. And what
17 you're trying to describe are these more general
18 concepts to standards as opposed to the specifics
19 that are related to the performance levels, and to
20 the growing numbers of assessments, and the -- you
21 know, all of those things.

22 Q. And have those standards as they changed
23 become more rigorous?

24 A. Yes.

25 Q. And what has not changed are these general

1 standards as to the Rose Factors, as of today, in
2 Exhibit 39, they're still Kansas law?

3 A. As I understand it, they are again Kansas
4 law.

5 MR. RUPE: Thank you. That's all
6 the questions I have.

7 CROSS-EXAMINATION

8 BY MR. CHALMERS:

9 Q. I guess we probably ought to clear that up
10 real fast; that is, what the standards were at the
11 time you were doing your report back in 2002. 2001,
12 No Child Left Behind became law, and that was during
13 the time frame that the Augenblick & Myers study was
14 begun, is that right?

15 A. That's correct.

16 Q. At the time that the No Child Left Behind
17 was coming into play, Kansas educators were looking
18 at new standards, that they were put in place. And
19 they started that, actually, in 2001. You're aware
20 of that, aren't you?

21 A. You're talking about subject matter
22 specific --

23 Q. Yes.

24 A. -- standards that were being implemented?

25 Q. Yes.

1 A. That's correct.

2 Q. There was a QPA in place, but they were in
3 the process of significantly changing that QPA and
4 applying what would be new standards that would be
5 the subjects of tests?

6 A. Yes, and continuing a bunch of things from
7 previously, yes.

8 Q. And now, in that process, and for whatever
9 reason, the statute that pre-dated 72-1127, which had
10 the Rose Factors, was repealed. Do you remember
11 that?

12 A. I remember hearing about it, but no, not the
13 specifics.

14 Q. This shows in 2005, July 1, which would have
15 been after the Montoy decision, then the Rose Factors
16 are once again made law?

17 A. Yes.

18 Q. When you were doing your work then, the Rose
19 Factors, whatever they're worth or whatever
20 importance they might have in this case, they weren't
21 part of Kansas law?

22 A. Right. I mean, that wasn't necessary.
23 Those items, when you look at them, are very similar
24 to the things that you see in our report, the things
25 that you see in the quality performance.

1 Q. Exactly. And when you did your study, which
2 was in 2001/2002, you were provided information to
3 try to come up with the definition of what a suitable
4 education was, both by way of statutes and from input
5 from the LEPC, is that right?

6 A. Yes, and the State Board.

7 Q. And the State Board. And the LEPC, what was
8 that again?

9 A. Legislative Education Planning Committee, or
10 Commission. I think originally it was a commission.

11 Q. And that commission sunset, what, a few
12 years after Montoy, or actually before Montoy?

13 A. I don't remember when, but yes, it did.

14 Q. It was replaced with another commission, the
15 2010 Commission, are you aware of that?

16 A. I think I knew that, but I'm not -- I don't
17 think I ever appeared before that group, and I
18 certainly appeared before the Legislative Education
19 Planning Committee.

20 Q. And the testing on the standards that were
21 being modified and put in place, in -- beginning
22 2001, that first started in 2006. Are you aware of
23 that?

24 A. I don't understand what you just said. You
25 said that the --

1 Q. When you prepare standards, and then you
2 educate your district as to what the standards will
3 be, and then you prepare a test against those
4 standards, it has to be done in that sequence,
5 doesn't it?

6 A. Yes.

7 Q. And so it was in 2006 when the Kansas
8 assessment test first started testing the standards
9 that they were implementing during, in part, the time
10 that you were looking at the Kansas costing -- or the
11 costing out for the Kansas Legislature?

12 A. Right, and they became replacement for the
13 tests that were in place and were used --

14 Q. So when --

15 A. -- previously.

16 Q. -- you were preparing your materials you
17 were at that time looking at the test scores --

18 MR. CHALMERS: This is yours,
19 Mr. Rupe.

20 MR. RUPE: Thank you.

21 Q. -- looking at the test scores and the Kansas
22 assessment tests that pre-dated the assessment system
23 that's currently in place?

24 A. Yes, I would assume that that's correct.
25 And that's been true in almost every state, that

1 they've had this transition of moving that criterion-
2 based reference test -- those are their state
3 standardized tests -- moving them to update them,
4 whether in all subject matters or in part subject
5 matters. The federal government has then added on
6 the high school requirement and the science
7 requirement. So yes, all of that has happened since
8 2001.

9 Q. As you pointed out with Mr. Rupe, that you
10 can take the general factor, but someone needs to
11 drill down and give them meaning to tell the
12 districts what they're supposed to be teaching. And
13 that's done in Kansas through regulations and through
14 the standards that the school districts -- excuse me,
15 that the State Board provide the school districts
16 that they are to comply with to meet their test, is
17 that right?

18 A. Well, the one caveat I would add to that is
19 that Kansas considers itself very much a local
20 control state. And when you talk about what I tell
21 you about standards-based education reform, nothing
22 in that description of the state role includes how
23 you go about teaching and learning; that how you go
24 about teaching and learning is best left to the
25 teacher, the school, etc.

1 So the context for this accountability can
2 come from the state. The assessments related to
3 their state standards can come from the state. But
4 how you go about teaching and learning ought to be
5 the prerogative of your professionals.

6 Q. The context for the accountability, as you
7 describe it, is the accreditation process?

8 A. Yes, in part.

9 Q. Well, it's the accreditation process, in
10 part, and there are also some statutes that talk
11 about particular classes you take. What else?

12 A. Well, again, this is where your -- where the
13 No Child Left Behind, AYP, you know, how you
14 determine what school sites end up in turnaround
15 schools, etc.

16 Q. Now, the regulations that were put in place
17 that currently describe what is the quality of the
18 QPA in Kansas were first enacted July 1, 2005, so
19 that would be after Montoy. Do you agree with that,
20 if that's a correct date?

21 A. There's no reason I would think that was
22 wrong.

23 Q. One regulation provides, which is KAR 91-31-
24 32(b)(1), performance criteria shall be as follows
25 except as provided in subsection D -- it's not

1 important here. Having met the percentage prescribed
2 by the State Board of students performing at or above
3 the proficient level on state assessment score,
4 having increased overall student achievement by a
5 percentage prescribed by the State Board, is one of
6 the requirements for accreditation.

7 Does that sound consistent with what you
8 were looking at when you were preparing your costing
9 study?

10 A. No, this is more rigorous.

11 Q. You would say that you have to be proficient
12 on the state assessments, or you would have to have
13 increased overall student achievement by a percentage
14 prescribed by the State Board. And do you know how
15 the proficient standards were set, or for that
16 matter, the progress was set?

17 A. I generally understand how states go about
18 doing that. I mean, specifically in Kansas --

19 Q. Let me ask you this way. Rather than asking
20 you what it is today, let me ask you what was your
21 understanding. Was it your understanding that when
22 you prepared your study that the piece of NC -- or
23 the No Child Left Behind statute, the AYP would be
24 that we would meet the standards that are set by the
25 State with the approval of the federal government for

1 proficiency, or we would reach a level of safe
2 harbor?

3 A. That would have been answered in the
4 comprehensive report that the State of Kansas
5 provided to U.S. Department of Education. We looked
6 at that. I don't remember at this moment. But you
7 know, we certainly, 12 years ago, looked at that.

8 Q. Let's talk about --

9 A. Or ten years ago.

10 Q. -- your report -- I'm now talking about the
11 report that was done in 2002 -- and how it defines
12 suitable education. Let's see here 1345. The report
13 I have in my notes is exhibit ...

14 A. 203.

15 Q. 203, thank you. And I'm going to carry this
16 up so I don't get lost. At page III-1, I think also
17 it's LEG page -- has a 1345 on the bottom of that.
18 That may be easier to find it that way.

19 MR. CHALMERS: This might be yours,
20 Mr. Rupe.

21 MR. RUPE: Thank you.

22 Q. What you do is you talk about the setting of
23 a suitable education definition. And I don't want to
24 go through what you've already gone through, but in
25 essence, I think you said that you looked at

1 materials that you were provided by the State, the
2 legislation, the rules in place. You looked, then,
3 at what you got by way of input from the State and by
4 what counsel had talked about to come up with the
5 definition.

6 And I think at the next page it says, A&M
7 worked with the LEPC to develop a more specific
8 definition of suitable education. We suggested using
9 a combination to both inputs and outputs. And I
10 think that's what you said when you were talking to
11 Mr. Rupe, is that right?

12 A. Yes.

13 Q. Then, when we got to the performance
14 measures, said, again, A&M worked with the LEPC.
15 Together we determined which content areas and grade
16 levels would be used. The math and reading tests
17 were given the same grade levels each year. The
18 writing and science tests were given in alternating
19 years and the reading and math tests, which were
20 given every year, gave us the most flexibility in
21 setting the output measure. So you used those tests,
22 and then effectively used what the State was going to
23 adopt as its proficiency levels on those tests as
24 they would raise up to 100 under NCLB, No Child Left
25 Behind?

1 A. Yes, that's correct.

2 Q. You maybe explained this to me, because I
3 don't quite understand what the procedure was. Here
4 on the next page it says, the districts would be
5 given five years to get to a certain percentage of
6 their students to satisfy the levels on the test.

7 What was intended?

8 A. Where are you?

9 Q. Very top of page Roman Numeral III-3, also
10 has a number on the bottom of 1347.

11 A. This was where we were trying to understand
12 the phase-in of the proficiency levels that were
13 being used by the State.

14 Q. And this was a time of some turmoil, I
15 suppose, in that it was unclear how No Child Left
16 Behind would work out in this state or other states?

17 A. There was certainly some beginning
18 apprehension and some beginning concerns about that,
19 yes.

20 Q. So we had kind of a phase-in period -- was
21 contemplated as part of your approach?

22 A. The law was very clear, the federal law.
23 Federal law is very clear as to the ultimate target.
24 What wasn't clear was the phase-in, and that's what
25 came in the comprehensive plans by states to the U.S.

1 department.

2 Q. When the dust settled, you had a definition
3 of suitable education. And it says, what you did is
4 you took this definition and you gave it to these
5 educators that you said that met in different groups
6 for them to use as a decision-making point on what
7 strategies, what number of teachers, class sizes,
8 those sorts of things, to meet the standards, right?

9 A. Well, more than that. We started with this
10 as the starting point. The professionals that are
11 out there in the field, the high-quality teachers and
12 principals and superintendents, who were meeting --
13 and finance officers, they know more about state
14 accountability and the definition of suitability than
15 we were going to be able to put on two or three pages
16 to share with them.

17 So what we did is we put that out there as
18 an understanding, as a starting point. And then in
19 each of those we usually started at a large group, so
20 all of the school site people were in a large group
21 together, and we added discussion. We said, here's
22 what we know about these, the suitability
23 definitions, the standards, the requirements; what
24 else do you know, and how would you view these
25 upcoming standards. And that discussion then allowed

1 them the input -- and we made sure and say, no,
2 that's not what we understand, if they got off base.
3 But they almost always had more and different
4 information that was able to add into that
5 definition.

6 Q. So a panel, as they developed it, may have
7 been adopting suggestions based on a definition of
8 suitable education that was a little different than
9 what --

10 A. No.

11 Q. No?

12 A. In all cases, they -- we only let them
13 say -- they only added in what was not on the
14 representative two or three or four pages.

15 Q. If they added in, it's different, isn't it?

16 A. No, because they identified the reality.
17 What you're assuming is you can identify the reality
18 in this summary of two or three or four pages. Well,
19 we argue, what I think is correct, is that these
20 professionals out in the field have a better idea.
21 And they know as much as anybody in terms of being
22 able to help. And some of them didn't know the
23 requirements of No Child Left Behind. Some of them
24 might not have known the Legislative Education
25 Planning Commission's way of thinking about the

1 definition. We made that clear to them. But they're
2 the ones that are out there meeting those
3 obligations.

4 Q. Let's look at what you provided, which was
5 Appendix B. It's found at page 1428 of the exhibit.
6 And it starts out, the required subjects that have to
7 be taught in elementary school. And then it talks
8 about the qualified admissions pre-college
9 curriculum, and it sets that out in terms of what you
10 have to teach. You have to teach government,
11 history, computer technology. Then it gives
12 vocational ed. Those are the inputs that they were
13 told that they need to design these schools to reach,
14 right?

15 A. Yes, and the other things on here, yes.

16 Q. And then, on the output side, we have the
17 same language, that essentially you've got five years
18 to do this. But it has the, now as specifics on what
19 the proficiency levels will be for different grades
20 in the different subjects?

21 A. Yes.

22 Q. That's pretty bare bones. So it would have
23 been for them to sort out what sort of curricula they
24 might want to use, what sort of strategies, what sort
25 of approaches they might want to use. None of that

1 is called out in this definition of suitable
2 education, is it?

3 A. Correct.

4 Q. And you relied on them to fill in those
5 blanks?

6 A. We relied them to identify the resources
7 needed in order to -- now, in addition to this and
8 what you haven't shown is the instructions to them,
9 and the -- any part of that instructions includes the
10 specifics of how many kids, how many kids are in
11 special ed, etc., etc.

12 Q. We'll get to that in a second, but so I have
13 it, real quick, we have the lists and the exhibits at
14 page 1430 through -- see, that's 31 and 32. But we
15 have the list in the exhibits of the folks that were
16 on the various panels, is that right?

17 A. Yes.

18 Q. And they are, large measure,
19 superintendents, teachers, they're administrators --
20 they're education people?

21 A. Yes.

22 Q. And there may be somebody in here that
23 was -- well, I don't know. Was there anybody on this
24 that was, like, a member of the community that you
25 remember right off hand? I don't remember

1 seeing ...

2 A. I was trying to remember because in some
3 states we have, but I don't believe in this case.
4 And part of the reason was, remember the other part
5 of the RFP we responded to required us to have these
6 opportunities for community members. In fact, a
7 third of the people were business leaders who came in
8 and tried to -- and we asked them about the
9 definition of suitability, as well, in order to help
10 gather up information, and there were community
11 members in those groups.

12 Q. I want to talk to you about the instructions
13 that were given in a moment, but there are a couple
14 of things I want to talk about before we get to
15 that. You indicated that the study -- at one point,
16 you were saying, in the materials that were issued,
17 was to be updated every four to six years. And in
18 fact, I think at 1415 of the report, that's the -- I
19 think that's the recommendation that the foundation
20 amount would be reviewed every four the six years.
21 Since then, it's become your judgment in your
22 organization that it ought to be more frequent, every
23 three to five years, I guess?

24 A. Yes.

25 Q. You explained that's because we have changes

1 in standards, kind of like what happened in Kansas?

2 A. Yes.

3 Q. Changes in demographics, kind of like what's
4 happening in Kansas?

5 A. Yes.

6 Q. And maybe even definitions of what is a
7 suitable education changes?

8 A. Yes.

9 Q. The weightings, let me talk to you about.
10 We've got a blow-up, Exhibit 237. I think with
11 Mr. Rupe's explanation he has the purple being your
12 calculations. Is that what you understand?

13 A. Yes, and that's true up to 5,738, which was
14 the September 2011 inflation adjusted number from
15 here -- from here.

16 Q. And this number comes from -- it looks like
17 the number given is 4,466. That is the base number
18 that was -- actually, it's 46 -- it was a hair less
19 than that, but it's the base number that came out of
20 your report, is that right?

21 A. It's the base number that ended up being
22 used by -- being used, yes.

23 Q. Actually, your base number was actually even
24 a little less than that?

25 A. 4,547 was the successful school district's

1 number. One could argue that an average is much
2 higher than 4,650, but that's the number that has
3 been used.

4 Q. Now, in this successful schools approach,
5 what you have is these paneled experts building a
6 school up from ground level, saying -- no, that's
7 wrong. Actually, you looked out and you found
8 schools that were doing the job in the real world,
9 right?

10 A. We're meeting the -- we're meeting the
11 student assessment goals that were established at the
12 time.

13 Q. Okay. And now, that's how much it was
14 costing per pupil for those schools, but the sense
15 was that weights needed to be added on top of that to
16 capture a variety of different things, one being
17 difference in school size, and then you had at-risk,
18 then you had bilingual. What else was there?
19 Special ed?

20 A. Special ed.

21 Q. That covers it, doesn't it?

22 A. Yes, and do know that the dollars that were
23 in that base, average base, had already taken out
24 those dollars that were actually currently being
25 spent.

1 Q. That's what I had understood this base was,
2 this base was this, the amount expected to be spent
3 was this plus those weights?

4 A. That's correct.

5 Q. Now, when we get to this area down after
6 2005, and your number's going up, it's assuming a
7 different weighting system than the weighting system
8 that was in effect, is that right? In other words,
9 after Montoy, you know that there are weights that
10 are in place. There's still the foundation level and
11 then there's still weights. You understand that
12 don't you?

13 A. Yes.

14 Q. And the weights that are in place in Kansas
15 after Montoy are different than the weights that were
16 from your study?

17 A. That's correct. Just like this base number
18 here is the actual base number as opposed to the
19 numbers that we suggested.

20 Q. And so when we go to try to compare this
21 number to the number that is generated, not really by
22 the base, but the number that is generated by base
23 plus weights, to have an apples to apples comparison,
24 we would have to really calculate what the weights
25 are as you assume them and the weights are as Montoy

1 assumed them, wouldn't we?

2 A. Montoy. You pointed to this as Montoy.

3 This is the reality.

4 Q. Montoy.

5 A. You mean this number?

6 Q. I mean Montoy after 2006.

7 A. Oh, you mean these numbers?

8 Q. What I really mean is those numbers there
9 for the purpose of my question -- let me see if I
10 can --

11 A. These are the actual numbers.

12 Q. Let me see if I can't rephrase it so we're
13 clear. Do you know if, when dollar numbers are
14 crunched, that the weights under your system would
15 generate higher expenditures than the weights that
16 were put in place after the Montoy decision in
17 Kansas?

18 A. I am not surprised that that's true.

19 Q. I'm asking you if you know?

20 A. I don't know for sure, but I. --

21 Q. But you think probably the weights are
22 higher?

23 A. Yes.

24 Q. Look at page 333 of 1333 of the report. In
25 this part of the report, you are describing the two

1 methodologies to be used, that is the professional
2 judgment approach and the successful school
3 approach. And then you have a statement in the last
4 paragraph at the beginning. It says the professional
5 judgment approach is based on the assumption that
6 experienced educators can specify the resources
7 prototype schools need in order to assure that school
8 districts can meet state expectations.

9 Is that the case, that's the underlying
10 assumption?

11 A. Yes, that's the best people to do it.

12 Q. The professional judgment estimate ended up
13 being a little higher than the successful school
14 estimate. Why is that?

15 A. You're now talking about the base cost?
16 Because if you do base plus adjustments, you might
17 have a different answer, because the successful
18 school districts approach does not give you an
19 adjustment level, a weights level.

20 Q. Your thought is, is that the successful
21 school approach, when you input in the weights might
22 generate a higher number than the professional
23 judgment standard?

24 A. No, my assumption is that these various
25 approaches are used because they have strengths in

1 various areas. And you build off the strengths of
2 each of the areas, each of the approaches.

3 Q. In the instructions that your panel members
4 were provided, let me show you, there are three in
5 the appendix starting at Appendix C. C-2A through
6 C-2C, there are differences in instructions to the
7 different panels, but the instructions to each panel
8 is pretty much the same, isn't it?

9 A. Yeah, other than the specifics that relate
10 to, you know, a special ed -- to a site, school size,
11 or a site, yes.

12 Q. So that we have that, that's 1433, would be
13 the instructions to the prototype panel members. And
14 Court at its leisure can read through those. What
15 I'm really interested in is seven, which is, you can
16 make certain assumptions about the prototype schools
17 and the environments they exist. These assumptions
18 may not characterize the school or the school
19 district in which you work. We will devote some time
20 to discussing the assumptions after you've completed
21 your work.

22 And then there's an assumption made on
23 revenues, that you should not be concerned about
24 where revenues come from to pay for the program you
25 design. Don't worry about federal or state

1 requirements that may be associated with some kinds
2 of funding. You should not think about whatever
3 revenues might be available in the school or district
4 in which you work or about any revenue constraints
5 that might exist on these revenues.

6 That instruction was given to the prototype,
7 to the district panel members, and to the expert
8 panel members, is that right?

9 A. Yeah, we wouldn't want them to set too high
10 a dollar amount because we're concerned about those
11 restraints that were put on by these artificial
12 funding systems.

13 Q. Or too low amount?

14 A. Or too low amount. They needed to hit the
15 right amount. But what this is --

16 Q. So you told them, just basically, ignore
17 revenue sources, arrive at this based on ...

18 A. What we're trying to do, and I said this
19 earlier, is we're trying to set a new school finance
20 formula. You have to divide revenues from
21 expenditures. When you're talking about the costs,
22 you're on the expenditures side. You're saying, here
23 are the resources needed in order to meet standards.

24 Where those revenues come from, federal,
25 state, local sources, are another piece of the

1 formula. They are the revenues. At the point where
2 you begin to say, okay, we're going to only worry
3 about the federal sources, then Title I requires you
4 to spend money in certain ways. We don't want to
5 worry about that. That forces the cost up, if you
6 would. So we want to identify the resources needed
7 to meet the goals, then we have to worry about where
8 the revenues are in order to pay for it.

9 Q. To do that, essentially, you give them a
10 blank checkbook and say, come up with what you think?

11 A. No, we give them the expectations, we give
12 them the accountability, we give them what they're
13 held accountable for, and we say, what do you need to
14 identify as the right resources in order to do that.

15 Q. Well, if they're accountable for getting the
16 outputs, then wouldn't the natural human inclination
17 be to maybe estimate high to make sure you got plenty
18 of money to get to that result?

19 A. But we weren't asking them about money.
20 We're asking them about resources. We're asking them
21 about people. We're asking about programs, about how
22 services are delivered.

23 Q. Okay, so you --

24 A. What we know is these are the professionals
25 that know the most about being able to do that.

1 Q. So you estimate that you need more people,
2 more resources, more programs, wouldn't that be the
3 human -- well, wouldn't that be kind of a natural
4 sort of thing to do, if what you're worried about is
5 meeting those results. I'm not saying they did that,
6 but that would be a natural thing to do.

7 A. I have not seen that generally to be the
8 truth among educators. Educators don't get in this
9 business to make money for themselves. And you're
10 implying that in some sense they are worried more
11 about their own environment. And I know culture and
12 environment make a big difference, but I think,
13 generally, educators, particularly when you remember
14 that -- you know, we see those cases in these panels
15 where somebody who has a special interest in a
16 special area begins to push out the limit and says,
17 we need more of this area because that's my area.

18 What we find is when you get a consensus
19 among them, and remember that you're going to report
20 to another level, in other words, the site to the
21 school as a whole, that those things are taken out,
22 that there are fewer of them as you move forward.

23 Q. There are different cost methods that are
24 used now in your system when you go out and try to --
25 in other words, if you were asked to come into Kansas

1 to do another cost study, you would use a different
2 methodology than you used in Augenblick & Myers?

3 A. We would use the ones we did use and use
4 more of them, and how we use the models, we would do
5 differently, as well.

6 Q. Now, in the report back in 2001, it made
7 some comments and I want to see if you still agree
8 with these. At page 1341, in talking about
9 justification for the cost models, it says, the
10 effort to develop these approaches is necessitated by
11 the fact that no research exists that demonstrates a
12 straight-forward relationship between how much is
13 spent to provide education services and student
14 school -- or school district performance.

15 Is that something you still agree with?

16 A. No.

17 Q. You think between 2001 and today's date,
18 now -- now we know more based on research, is that
19 your position?

20 A. We do know more than we did then.

21 Q. There are those who would disagree with that
22 assessment. You recognize that, don't you?

23 A. Yes.

24 Q. And those that are highly-credentialed would
25 disagree with that?

1 A. I think there are a lot of highly-
2 credentialed people that would agree with it.

3 Q. In your report back in 2001, it says, the
4 successful school district approach is based on the
5 simple premise that any district should be able to be
6 as successful at meeting a set of objectives as those
7 schools that actually meet the objectives, provided
8 the district has the same level of funding and it has
9 been available to the successful schools, and that
10 the differences in student characteristics have been
11 taken into consideration.

12 That's the premise of the successful schools
13 approach?

14 A. Yes.

15 Q. Why, if you know, does Dr. Baker say that
16 the approach is useless?

17 A. I'm sorry, Dr. Baker, did you ...

18 Q. Dr. Bruce Baker. I thought you were here
19 during part of his --

20 A. I was, I just didn't understand what name
21 you said there.

22 Q. I muttered. I'm sorry. Why, if you know,
23 would someone like Dr. Bruce Baker say the approach
24 is useless?

25 MR. RUPE: Objection. Calls for

1 speculation and is argumentative.

2 JUDGE THEIS: Sustained.

3 MR. CHALMERS: I can rephrase it.

4 Q. Why are there people, experts who criticize
5 the successful school approach?

6 A. Some of them criticize it based upon the
7 fact that they don't think it takes into account
8 sufficiently the complexity of the schooling system.
9 And they don't believe that -- they don't believe
10 that the simplistic idea of being able to identify
11 successful places actually is a reason to look at how
12 much money they spend. I think that misses one of
13 the strengths of this system, which is the political
14 and public understanding of that system.

15 Q. Now, there's another system and I guess
16 Mr. -- or Dr. Baker would fit within that, that's the
17 statistical approach. And in your report at 1343,
18 it's written, the approach requires that the
19 availability of lots of data, much of which needs to
20 be at the school or student level in order to be most
21 useful.

22 Is that still your view?

23 A. Yes.

24 Q. Now, talking about all these approaches,
25 it's written, none of these approaches are immune to

1 manipulation. That is, each is subject to tinkering
2 on the part of the users that might change results.

3 If we're talking about the professional
4 judgment approach, that may be the tinkering by the
5 professionals that we talk about --

6 A. I disagree with that.

7 Q. You don't agree that it happens, but it can
8 be. I mean, in theory, that's the manipulation this
9 is talking about, isn't it?

10 A. No.

11 Q. You think there's another manipulation
12 involved in the professional judgment that we've not
13 talked about?

14 A. No. I believe that what this is talking
15 about is the researchers, and we work very hard to be
16 sure there isn't any manipulation in how we go about
17 it. We're describing others that use these models.

18 And we actually leave this line out now and
19 have for a very long time for the very reason why
20 we're talking here in court today. But what it
21 points out is that the perfect scientific approach
22 ends up to these R-squared numbers that are difficult
23 to understand by any policymaker, whether they be in
24 a court or in a Legislature.

25 Q. What you folks said when you issued this

1 report to the Legislature back in 2002, I think goes
2 on, in addition, it is not known at this point
3 whether they -- these approaches we've talked
4 about -- would produce similar results if used in the
5 same circumstances, in the same state, at the same
6 time, with similar data. In fact, there are some
7 speculation that the successful school approach and
8 the comprehensive school reform approach produced
9 lower costs than the professional judgment approach
10 or the statistical approach.

11 That's what was written in the report?

12 A. That was, yes.

13 MR. CHALMERS: Thank you, sir. I
14 don't have anything else.

15 MR. RUPE: You done?

16 MR. CHALMERS: Hope so.

17 MR. RUPE: I have no further
18 questions.

19 (Witness excused.)

20 MR. RUPE: We're out of witnesses.
21 We have no further witnesses today. I don't have
22 anybody else.

23 JUDGE BURR: Puts you back to even
24 for yesterday.

25 MR. CHALMERS: You notice things

1 went quicker when Gaye started questioning?

2 MR. RUPE: We actually are on
3 schedule as of noon today, and I thought John would
4 be on the stand longer.

5 JUDGE BURR: I'm just kidding.

6 JUDGE FLEMING: And you can get all
7 seven of these witnesses on and off by three
8 tomorrow?

9 MR. RUPE: Yup. If I don't -- I'm
10 going to -- we're going to put on the teachers and
11 the principals first to keep them to about 15
12 minutes. Actually, I'm sorry,

13 MR. CHALMERS: Hund.

14 MR. RUPE: Hund is first and then
15 we'll put the teachers on and principals and keep
16 them to about 15 minutes.

17 JUDGE FLEMING: Judge Burr and I
18 were talking about this earlier, and it doesn't
19 matter to me but I have to leave here by 11:30 on the
20 22nd. My daughter-in-law is being sworn in. Does it
21 make sense -- Judge Theis said you had a witness that
22 could only be here that day, is that right?

23 MR. ROBB: Yes.

24 MR. RUPE: Yes.

25 JUDGE BURR: What you're really

1 saying now is that you'll be done by Friday if it
2 takes all weekend, right?

3 MR. RUPE: As I represented to the
4 Court earlier, we are moving these witnesses along
5 and avoiding cumulative. I think we're in a position
6 to -- right now, we're on schedule, and I think that
7 calendar we gave you -- I think we gave you an
8 updated one yesterday.

9 JUDGE BURR: Right.

10 MR. RUPE: I think we're pretty
11 much on track with that. And that has plugged in
12 State's witnesses that they have suggested we
13 accommodate, as well.

14 JUDGE BURR: All right.

15 MR. CHALMERS: What Gaye was saying
16 to me is that there is -- so we don't end up with a
17 down time on the 22nd, there is the witness,
18 Mr. Dick, who as I -- well, he was not identified as
19 an expert. I don't think he was even identified as a
20 witness until right before. In other words, he
21 wasn't identified in the February disclosures.

22 I think he's an accountant. I
23 don't know why they would bring him in to testify
24 other than to offer expert's opinions. There is a
25 report in evidence that Mr. Dick prepared, so I

1 suppose his testimony might be cumulative of the
2 report.

3 But we object to Mr. Dick because
4 he would be offering opinions that had not been
5 properly disclosed, and we think will be prejudicial
6 because he's going to be giving opinion things as
7 opposed to some of the witnesses up here that have
8 been identified as school district members.

9 If he's the individual that we need
10 to worry about on the 22nd, then I thought maybe I
11 should bring that to your attention.

12 JUDGE THEIS: What does he have in
13 evidence? What exhibit?

14 MR. RUPE: What's the Dick
15 exhibit? He did a -- I'll get the number for you in
16 a second, but Counsel's had this exhibit for a long
17 time. He did a cash balance evaluation of the
18 Wichita Public Schools. And he is a fact witness.

19 Counsel is going to make, and has
20 made arguments, concerning this cash balance
21 argument, and Dick will advise what he did in terms
22 of investigation. We disclosed to him some time ago,
23 the minute we found out about him, that he had done
24 this investigation, and I supplied Counsel with a
25 copy of the report he did. It was not a report that

1 we asked him to do. It was a report that USD 259
2 asked him to do some time ago.

3 MR. ROBB: 348.

4 JUDGE THEIS: Is that the
5 contingency reserve fund?

6 MR. RUPE: Yes, 348 is the exhibit.

7 MR. CHALMERS: I don't know that
8 Counsel means to misstate this, but the way I found
9 out or a had any hint about Mr. Dick was there was a
10 report that Mr. Rupe provided to one of his witnesses
11 who he identified as an expert, who I wanted to
12 depose and did depose, and he provided to that expert
13 to take a look at. I don't think that I was ever
14 provided, directly, a copy, or if it was after that.

15 Point is, he was never identified
16 as an expert. The point is, I never had an
17 opportunity -- did not have an opportunity to take
18 his deposition. Unlike the school district folks, if
19 anybody was an expert, I wanted to take their
20 depositions. In fact, you may remember me and
21 Mr. Rupe fighting about whether I'd be able to take
22 their depositions, and then reaching an agreement, we
23 were able to do it.

24 So I think it is really too late
25 now to try to bring him in to talk about expert

1 opinions. If it's about fact opinions, I don't know
2 what they would be.

3 JUDGE THEIS: Are you going to
4 challenge something about the 259 cash reserve?

5 MR. CHALMERS: I don't know what
6 opinions he'll express. No, I'm not going to
7 challenge what he says in his report. And if the
8 report's in evidence, then you've got it. I don't
9 think we need to have a witness to read the report to
10 you.

11 MR. RUPE: Hang on, though. This
12 sounds like I dropped this on Mr. Chalmers at the
13 last minute. April 27th --

14 JUDGE THEIS: Let's answer the
15 practical question: If the report's in, what do you
16 need the witness for?

17 MR. RUPE: As in all cases, I want
18 a witness to explain, as Myers did. We didn't just
19 admit the Augenblick & Myers report. We didn't just
20 admit the LPA study. We're going to have the guy
21 that did it here. With regard to this investigation
22 by Mr. Dick --

23 JUDGE THEIS: Is he just going to
24 repeat his report, though?

25 MR. RUPE: No, he's going to

1 explain what he did and how he reached his
2 conclusions.

3 MR. CHALMERS: Which are opinions.

4 MR. RUPE: They're not -- well,
5 he's an accountant and he did -- we have teachers
6 that are on the stand expressing what they did with
7 regard to students.

8 JUDGE THEIS: Is he a poor writer?

9 MR. RUPE: Pardon?

10 JUDGE THEIS: Is he a poor writer?

11 I mean, can I know and understand what he says?

12 MR. RUPE: Judge --

13 JUDGE THEIS: Because if he's not
14 going to challenge the report -- what I was thinking
15 of, if he was going to challenge the report, let him
16 challenge the report, and then you could call this
17 man in rebuttal, and there wouldn't be any standard.
18 So if you're not going to have a standard in that
19 situation, you might as well not have one now. And
20 back on the first --

21 MR. RUPE: We disclosed him on
22 April 27th. We intend to ask him questions about
23 cash balances in USD 259. I'm not sure everything
24 that is in here -- I don't want to say everything
25 he's going to testify is in 348, because he did an

1 investigation. There may be parts to this he needs
2 to explain to the Court.

3 MR. CHALMERS: So we have the time
4 sequence down, you disclosed him after the expert
5 deadline, and after the deadline for making witness
6 disclosures in February.

7 MR. RUPE: As you have done with
8 exhibits in this courtroom.

9 JUDGE FLEMING: Let me suggest that
10 we've got a little time. We can read this exhibit --
11 it's only three or four pages -- and then we'll
12 decide whether we think it's cumulative or not.

13 JUDGE THEIS: Because if you're
14 going to ask him something that's not in the report,
15 then maybe it's something Mr. Chalmers wanted to
16 know.

17 MR. RUPE: But on that rationale,
18 we would never put any witnesses on, Your Honor. And
19 I think part of my responsibility here is to show you
20 and allow cross-examination of witnesses in order to
21 prove the case.

22 JUDGE THEIS: Only if somebody
23 wants cross-examination.

24 MR. RUPE: That's true.

25 JUDGE THEIS: If they don't want

1 it, then we go to plan B. We'll read the report and
2 see what the evidence is tomorrow. Okay? Is it 348,
3 is that it?

4 MR. RUPE: Yeah, 348.

5 MS. TIBBETS: 358 is what you
6 said?

7 MR. RUPE: No, I said 348.

8 MS. TIBBETS: I'm sorry.

9 JUDGE THEIS: Where's he coming
10 from, Wichita?

11 MR. ROBB: Uh-huh.

12 JUDGE THEIS: All right. Thank
13 you.

14 * * * * *

15 MR. RUPE: I guess I was caught off
16 guard. I thought the Court ruled on this.

17 JUDGE THEIS: I don't think we ever
18 ruled on all the witnesses on that motion.

19 MR. RUPE: Well, I think that's
20 going to give him --

21 JUDGE BURR: Let's talk about it
22 tomorrow. I don't know whether we did rule on it or
23 not, but ...

24 JUDGE FLEMING: I think what we
25 said is we would determine, as we went along, whether

1 something was cumulative or not, and I think the
2 words I used were, if we think it is, we'll cut you
3 off.

4 MR. RUPE: Yeah, and wanted me to
5 announce in advance what we're doing, and that's what
6 I've done so.

7 JUDGE FLEMING: All right.

8 MR. RUPE: Okay. Thank you.

9 JUDGE FLEMING: See you tomorrow.

10 (Thereupon, the proceedings were
11 adjourned to June 13, 2012, at 9:00 a.m.)
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CERTIFICATE

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 12, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 190 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 8)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 13th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

1		
2		
3	JACQUE FEIST	
4	DIRECT BY MR. RUPE	1690
5	CROSS BY MS. TIBBETS	1704
6	REDIRECT BY MR. RUPE	1712
7	BY THE PANEL	1715
8		
9	KATHY HUND	
10	DIRECT BY MR. RUPE	1716
11	CROSS BY MS. TIBBETS	1735
12		
13	MARIA ORTIZ-SMITH	
14	DIRECT BY MR. RUPE	1740
15	CROSS BY MS. TIBBETS	1753
16	BY THE PANEL	1759
17	REDIRECT BY MR. RUPE	1762
18		
19	KATHY RAMSOUR	
20	DIRECT BY MR. RUPE	1764
21	CROSS BY MS. TIBBETS	1782
22	REDIRECT BY MR. RUPE	1790
23	BY THE PANEL	1791
24	RE CROSS BY MS. TIBBETS	1794
25		
26	SARAH SCHAEFFER	
27	DIRECT BY MR. RUPE	1795
28	CROSS BY MS. TIBBETS	1812
29	BY THE PANEL	1815
30		
31	ALAN CUNNINGHAM	
32	DIRECT BY MR. RUPE	1820
33	CROSS BY MR. CHALMERS	1867
34	REDIRECT BY MR. RUPE	1909
35	RE CROSS BY MR. CHALMERS	1911

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: Morning.

3 JUDGE BURR: You can be seated. He
4 usually says that.

5 JUDGE THEIS: I did. I just didn't
6 say it loud enough, apparently.

7 Can we clean something up? On the
8 22nd we read that report. He's not going to cross-
9 examine it?

10 MR. RUPE: And I was prepared to
11 say this morning, if he agrees with the report and
12 doesn't want to cross-examine it, then we'll withdraw
13 the subpoena of Mr. Dick.

14 MR. CHALMERS: I don't plan on
15 cross-examining the report or Mr. Dick if that's the
16 question.

17 JUDGE THEIS: You can cancel him.
18 If anything changes you can bring him back on
19 rebuttal.

20 MR. RUPE: If counsel mounts an
21 attack on cash balances in Wichita, then I'm going to
22 probably need him on the stand. So we'll revisit
23 that if it happens.

24 JUDGE BURR: Well, apparently the
25 report, which I haven't read but I've been filled in

1 on, has to do with the plans and the fact that the
2 average is 23 days and whatever. And if that fits
3 into your closing somehow, then obviously you can
4 still use it. So I don't see any reason for it.

5 MR. RUPE: Okay. And it's in
6 evidence, so.

7 JUDGE BURR: Right.

8 MR. RUPE: We talked about that
9 last night and thought -- we roughly came to the same
10 conclusion, and I'll talk to Mr. Dick to make sure he
11 knows he's released from the subpoena subject to
12 recall.

13 JUDGE FLEMING: So we are open next
14 Friday then. You don't need a hotel reservation for
15 Thursday night.

16 MR. RUPE: That's assuming we keep
17 on schedule with the other stuff. Some of that I
18 don't have control over, so I'll represent the best I
19 can. I will tell you, Your Honor, I'm not canceling
20 my hotel room.

21 JUDGE BURR: You're saying the
22 state's experts might take longer than two days?

23 MR. RUPE: I don't know how long
24 direct is going to be. I typically don't do a real
25 long cross-examination, although I do do some.

1 JUDGE BURR: Then we'll blame
2 Mr. Chalmers.

3 MR. RUPE: I may be asking the
4 Court's help. Our first witness scheduled,
5 subpoenaed to be here, and we filed the return, I
6 believe, is Cathy Hund from the Department of
7 Commerce, and she isn't here. So I have another
8 witness ready to go.

9 JUDGE BURR: That's fine.

10 MR. RUPE: We'll proceed. But if
11 she's not here I may have to enlist some help.

12 JUDGE BURR: All right.

13 MR. RUPE: All right. The first
14 witness this morning is Ms. Jacque Feist.

15 JACQUE FEIST

16 Called as a witness for the
17 Plaintiffs, was duly sworn by the reporter and
18 testified under oath as follows:

19 DIRECT EXAMINATION

20 BY MR. RUPE:

21 Q. Tell the Judges your name and the city in
22 which you live.

23 A. My name is Jacque Feist. I live in Dodge
24 City, Kansas.

25 Q. Ms. Feist, would you tell the Judges what

1 your title is, please.

2 A. I am the principal at Dodge City High
3 School.

4 Q. And give us a little background on your
5 educational background.

6 A. I received my associate's degree from Burton
7 County Community College in Great Bend. I completed
8 my Bachelor's degree at Kansas City University in
9 Manhattan, Kansas and my Master's degree in
10 administrative education from Fort Hayes State
11 University.

12 Q. And how long have you been at Dodge City
13 High?

14 A. I've been at Dodge City High School for the
15 past 23 years as a teacher and now as the building
16 principal.

17 Q. Did you teach anywhere before Dodge City?

18 A. No. Dodge City is my only educational
19 experience as a leader.

20 Q. And when did you become principal?

21 A. Became principal 12 years ago.

22 Q. Tell the Judges a little something about
23 yourself personally, please.

24 A. Between my mother's family and my father's
25 family, I have 72 first cousins, so I have a very

1 large extended family.

2 Q. Okay.

3 JUDGE BURR: Can we have their
4 names?

5 MR. CHALMERS: It's in an exhibit,
6 I think.

7 THE WITNESS: It would take a bit
8 of time, but I think I could produce them.

9 Q. (By Mr. Rupe) I'm going to, as I indicated
10 to you, I'm going to step over what the state
11 requires, what the state law is regarding standards,
12 what the state law is regarding college readiness and
13 vocational readiness, and I want to jump right into
14 describe for the Judges your high school, the
15 demographics.

16 A. Okay. Dodge City High School for this
17 current school year, the one we just completed, we
18 had approximately 1,800 students. Of those students,
19 74 percent are labeled at-risk by definition, as they
20 are eligible for free and reduced lunches.

21 We have about right under 70 percent of our
22 students are minority and of that, 65 percent of our
23 minority population are Hispanic.

24 Of our total student population, right under
25 40 percent, I think it's 38 percent, are second

1 language learners.

2 Q. In terms of the poverty level in your
3 school, what is the percent of poverty?

4 A. Our percent of poverty would be based on the
5 74 percent that are eligible for free and reduced
6 lunch.

7 Q. Give us an idea of what your parking lot
8 looks like in terms of how many kids drive to school?

9 A. We have a parking lot that can facilitate
10 700 parking spaces or 700 vehicles. We have 200 --
11 right over 225, 230 staff members when we have our
12 certified staff, as well as our classified staff, so
13 our maintenance lunchroom folks, everybody. And so
14 most of those drive to work every day.

15 Student-wise we have about a third of our
16 students who are dropped off at school. We have
17 right at 50 percent of our students who ride the bus
18 to and from school every day.

19 So we have a large percent of our students
20 who do not drive themselves to school. The majority
21 of them ride the bus or are dropped off.

22 Q. In view of the fact you've been at Dodge
23 City High for 23 years, describe for the Judges the
24 change in demographics during that period of time.

25 A. When I started my teaching career at Dodge

1 City High School, obviously we were a much smaller
2 high school. At that point in time it was a 10-12
3 high school, grades 10 through 12. And we had about
4 800, 900 students on our campus at that time.

5 About four or five years later we
6 transitioned from a 10-12 building to a 9-12
7 building. And at that time we were about 1,200
8 students.

9 So over the course of the last 15 to 18
10 years, we have grown tremendously. And a big portion
11 of that growth has been students who are of Hispanic
12 descent.

13 Q. And incidentally, Dodge City is the home to
14 some industries that have attracted minorities to
15 town; is that right?

16 A. That would be correct. We have two beef
17 packing plants in Dodge City and a lot of jobs
18 related to that, ag-related industries. That also
19 has enticed minority populations to move to Dodge
20 City.

21 Q. What has been the change in the
22 demographics, say in the last five years at Dodge
23 City High?

24 A. Dodge City High School has grown in the area
25 of not necessarily minority students in general but

1 in particular, our Hispanic students have grown about
2 10 percent in our building over the course of the
3 last five years.

4 Q. Are you aware that there have been cuts that
5 have -- cuts in the budget that have affected your
6 school?

7 A. Yes.

8 Q. Describe what the cuts have been and what
9 the effect of those cuts have been in your high
10 school.

11 A. Well, to start with, I don't think it would
12 be appropriate for me to say that we have done a
13 great job of keeping cuts away from students in the
14 sense that we have tried our best to not cut direct
15 line items that impact classroom settings, but any
16 cuts that are made in a high school or in any school
17 are obviously going to either directly or indirectly
18 impact students.

19 But what's most obvious in our building over
20 the course of the last five to eight years have been
21 directly in the sense that we have grown as the
22 number of students, about 200 students during that
23 time frame.

24 We have not hired any additional staff
25 during that time because we've been on a hiring

1 freeze due to budget cuts.

2 And most noteworthy of the students that we
3 have grown, those 200 students, the majority of those
4 students are going to fall into those high risk or
5 at-risk categories, in particular poverty students,
6 as well as second language learner students.

7 So not only do we have more students, we
8 have students who need more attention direction
9 support from us.

10 So that's been the biggest area that I've
11 seen, our support in meeting the needs of those
12 students.

13 And also in the process of prioritizing for
14 the entire building, all of our students have seen an
15 impact. We have larger class settings. We have not
16 been able to meet some of the requests for elective
17 type of program course offerings simply because we
18 don't have the room in our schedule to offer them.

19 This can be anywhere from our advanced
20 placement courses to fine arts or other elective type
21 of programming.

22 The reason I emphasize that this morning is
23 we believe at Dodge City High School, as I'm sure all
24 high schools do, that our jobs are to prepare
25 students for whatever they choose to do when they

1 leave high school.

2 That's going to be different maybe for every
3 student in our building. But when we're not able to
4 meet the needs of those students, even if they are
5 our best and brightest, then obviously we have done
6 somewhat of a disservice to those students if we've
7 not been able to push them or provide them that
8 necessary preparation before they leave our building.

9 Q. Give us an idea -- I think we're going to
10 introduce or it has been introduced into evidence
11 through another witness from Dodge City, but give us
12 an idea of what the cuts have been.

13 A. The cuts in our building have been directly
14 related to any extended learning, whether it's an
15 extended day. In particular our after-school
16 programs, all of those have been eliminated over the
17 course of the last five years.

18 Our summer school program at Dodge City High
19 School used to be much larger than it is right now.
20 It's extremely limited in its scope, and it's really
21 focused on those students for credit recovery towards
22 graduation.

23 So we're missing that gap of where -- the
24 opportunities that we've had in the past to provide
25 the additional support and time that in particular

1 our second language learner students have needed to
2 be successful, especially those students who -- well,
3 I guess there's two pieces to that. There's students
4 that come to us at the high school level that may not
5 be very well educated in their primary language or
6 their -- so when they're coming to us and we're
7 having to not just help them to learn the English
8 language and hopefully also then the content along
9 with that, we're also having to teach the content or
10 bridge the gap of the content that they didn't have
11 when they came to us.

12 So that element there that is significant
13 for those students is time. They need more time than
14 their counterparts. We used to be able to meet some
15 of that need during our extended day, which we would
16 run an after-school program until 5 o'clock. And
17 then summer school we would provide a minimum of a
18 month of time six hours a day to support language and
19 content for those students.

20 Q. With regard to those extended learning
21 opportunities, they're just gone?

22 A. They're just gone, yes.

23 Q. Have you -- I understand we'll hear this
24 more from another witness in a moment, but in terms
25 of state assessment scores, your most current scores

1 are what?

2 A. Our most current scores are actually better
3 than they were last year. We have put a lot of focus
4 in on not only -- well, basically all of our students
5 who were non-proficient. We've kind of reorganized
6 our academic programs and put some major emphasis on
7 those students.

8 But our preliminary scores that have been
9 released have shown that we have actually made some
10 gains. We haven't made the AYP target scores for the
11 majority of our subgroups, but we have made gains
12 from last year.

13 Q. You have improved, but you haven't met the
14 AYP targets?

15 A. That is correct.

16 Q. You've been doing this for 23 years and
17 you've been a principal for five. Can you tell the
18 Court whether money spent on educational strategies
19 makes a difference in improving student performance?

20 A. Yes. I believe that having adequate
21 resources allows us some flexibility to be able to
22 meet more individual needs of students. Rather than
23 trying to teach to the middle of the class, we were
24 able to more appropriately -- in previous years
25 because we had more staff, we were able to work in

1 much smaller learning groups or communities. In
2 other words, teach a pupil ratio much smaller than it
3 is now.

4 This last school year a lot of our second
5 language learner classes were in excess of 25 to 30.
6 We had a couple of our math classes that were
7 bordering 40.

8 And it's very difficult to meet those
9 individual learning needs in classes that are that
10 large.

11 Q. Are you providing a suitable education, as
12 we started, to all your kids?

13 A. I don't feel as though -- that's a hard
14 question to answer, Mr. Rupe. I guess to answer that
15 honestly, I think that we have had to do some things
16 that are less effective for all of our students.

17 Our expectations are the same across the
18 board for all of our students. But due to the fact
19 that we have not been able to offer all of the
20 courses that we have in the past, I feel like perhaps
21 some of our best and brightest students in our
22 buildings have not been able to have some of the
23 advantages that they've had in the past to be as well
24 prepared for college, because we've made some very
25 direct cuts in those programs so that we can put more

1 money into working with students who are struggling
2 more. And in the process they are not getting the
3 same education that they have had in the past at
4 Dodge City High School.

5 Q. What's the level three student?

6 A. When we're talking about second language
7 learner students, we have put the focus of our
8 attention and our efforts, our resources, to those
9 students who are levels one and two, which are the
10 lower level second language learner students.

11 Level one students would be those who are
12 non-proficient in the sense of even their vocal
13 language. They're not going to speak English very
14 well.

15 Level two students are going to speak
16 English fairly well, but their reading and writing
17 skills are not going to be comparable to their
18 counterparts.

19 And we have put our focus in on level ones
20 and level twos so that we can get them into the core
21 content classes as quickly as possible.

22 What we have not been able to do over the
23 course of the last couple years is been able to spend
24 as much time and resources, smaller groups with those
25 students who are levels threes and fours, which will

1 get them into that reading and writing
2 proficiencies.

3 And our data will support that, that we do a
4 pretty good job of getting students to level three.
5 We don't do a very good job of getting them from
6 level three to level four and then level four to
7 level five.

8 So the majority of our students that start
9 with us at Dodge City High School labeled ELL will
10 graduate also being labeled as ELL students.

11 Q. Are there strategies that you have found
12 effective in moving those level three kids to level
13 fours?

14 A. Yes. And the strategies that we have used
15 in the past what have been helpful have been small
16 learning communities, lots of practice and support
17 and revisions, in particular with reading and
18 writing. Those comprehension skills with vocabulary
19 that gets to that next level from that comprehension,
20 from level three to level four and level four to
21 level five, that takes a lot of individualized
22 instruction, and it's very difficult to do that in
23 large classroom settings.

24 Q. In terms of the diminished resources, have
25 the kids that may have moved because of a strategy

1 available to you from level three to four to five not
2 been moving?

3 A. Correct.

4 Q. So back to my question, in terms of have you
5 provided a suitable education to all your kids and
6 you've looked at those kids that you're directing
7 resources away from, what's your answer?

8 MS. TIBBETS: Objection. Leading.

9 JUDGE THEIS: Probably sustain.

10 Q. (By Mr. Rupe) Let me ask the question again
11 in light of what you've said.

12 Are you providing a suitable education to
13 all your kids?

14 A. We're not --

15 MS. TIBBETS: Go ahead.

16 A. We're not providing as suitable of an
17 education as we were able to in previous years
18 because we are not able to provide the resources, the
19 time, the smaller group learning for our level three
20 and level four students.

21 Q. In terms of increased class sizes, have
22 class sizes gone up as teachers remain the same
23 number and you add 200 students?

24 A. Yes.

25 Q. Is Dodge City somehow, some way exempt from

1 the Common Core requirements?

2 A. No, we are not.

3 Q. From NCLB?

4 A. No, we are not.

5 Q. From special education law?

6 A. No, we are not.

7 Q. From getting kids ready for college?

8 A. No, we are not.

9 MR. RUPE: That's all I have. 15
10 minutes.

11 JUDGE BURR: We'll mark that down.

12 CROSS-EXAMINATION

13 BY MS. TIBBETS:

14 Q. So, ma'am, I think you said you have how
15 many students right now?

16 A. Approximately 1,800.

17 Q. 1,800. And if I look back to about 2007, so
18 about five years ago, you had almost 1,000 less.

19 Does that sound right?

20 A. No.

21 Q. Let's see, you have unfortunately -- in 2008
22 about 1,700?

23 A. Correct.

24 Q. Okay. So that's been a growth in four
25 years --

1 A. Mm-hmm.

2 Q. -- 1,000 students, is that right, 1,800 now,
3 you had about 1,700 then?

4 A. From 2009?

5 Q. 2008. The number --

6 A. Yeah.

7 Q. Does that sound right?

8 A. Yes, yes.

9 Q. So growing your population like that is
10 going to have challenges?

11 A. Yes.

12 Q. Obviously. And that is going to mean that
13 it's going to be difficult for you to adjust staffing
14 no matter what your resources; is that a fair
15 statement?

16 A. To some degree, yes.

17 Q. And, actually, you've kind of had some
18 fluctuation. Sometimes you had as many as 1,800 or
19 over 1,800, but you've had as many as 1,699, right?

20 A. Correct.

21 Q. So having that kind of fluctuation year to
22 year has made it difficult for you to do some of your
23 programs; is that fair?

24 A. To some degree, yes.

25 Q. Your school has remained accredited?

1 A. Yes.

2 Q. You talked a bit about your growth and we
3 just talked a minute about how that has fluctuated.
4 That's because some kids are coming in who weren't
5 originally in your Dodge City school system?

6 A. That's correct. We have a lot that move in
7 well after the countdown September 20th.

8 Q. So those folks have not had the benefit of
9 some of the programs that you've initiated in your
10 elementary and your middle schools, right?

11 A. Correct.

12 Q. So they get to you and they have the
13 deficits that you've described on day one?

14 A. Correct.

15 Q. And your job is to try to move them and
16 catch them up in the time that you have with them; is
17 that fair?

18 A. Correct.

19 Q. So part of -- when we look at the AYP, you
20 said you didn't make AYP this year?

21 A. Correct.

22 Q. But your graph on the terms of your scores
23 has been a pretty upward projectory (sic), hasn't it?

24 A. Yes, and we're very proud of what we've been
25 able to do.

1 Q. Absolutely, absolutely. And that's your
2 goal is to improve.

3 And that's also why given that you haven't
4 met AYP is that you continue to be accredited,
5 because you're in that Safe Harbor because you've
6 been making -- because you've been making increases
7 in your scores, correct?

8 A. Actually, we haven't made Safe Harbor until
9 this -- well, it's not official yet, because it's
10 preliminary, but we're hoping that we make Safe
11 Harbor this coming year.

12 Q. You think you're going to?

13 A. Our preliminary reports would indicate that,
14 yes.

15 Q. Congratulations.

16 A. Thank you.

17 Q. The students that you talked about that you
18 have particular challenges with, ELL students, the
19 district receives federal money specifically to
20 assist ELL students, correct?

21 A. Yes, we do receive some.

22 Q. And the same thing for those students who
23 are on free and reduced lunches. You receive Title I
24 funds for those students, too?

25 A. We were not a Title I high school.

1 Q. But your district receives Title I funds?

2 A. That is correct.

3 Q. And you don't decide, for example, if on the
4 ELL students it's not your decision as the principal
5 of Dodge City High School as to how much of those
6 resources comes to your school, right?

7 A. Are you talking about the ELL resources?

8 Q. Yes, ma'am.

9 A. To the best of my knowledge those resources
10 are determined per the number of students that we
11 have enrolled in our school at the time that the
12 budgets are created.

13 Q. Okay. All right. One of the things that
14 your district has used the Title I funds for is for
15 the learning center, right?

16 A. Yes.

17 Q. And the learning center is something that's
18 available to you and to your teachers, right?

19 A. Yes.

20 Q. For the whole district, right?

21 A. Correct.

22 Q. The learning center is a resource center
23 where there are teaching professionals and there are
24 instructions and all sorts of help for teachers to do
25 a better job, right?

1 A. Yes.

2 Q. Okay. And is that something that your
3 teachers use?

4 A. A lot of the -- once again, to the best of
5 my knowledge, the majority of the events that take
6 place through a learning center aren't actually
7 established by USD 443. It is a hub, if you will,
8 for other agencies and groups to come in.

9 So we don't -- our particular teachers will
10 use it when our district has inservice that we
11 utilize that facility. But as a general day-to-day
12 regular scheduled event, that would not necessarily
13 be the case.

14 Q. It's something that your district provides
15 with the Title I money, right?

16 A. Yes.

17 Q. And your people do use it some?

18 A. Yes.

19 Q. And it is a resource for strategies with
20 those children that you've described who have the
21 disadvantages that make them more difficult to
22 educate?

23 A. Yes.

24 Q. We talked -- we heard earlier from some of
25 the Kansas City folks about a strategy of having what

1 they called "school within a school," smaller groups
2 within a larger high school.

3 You have that strategy as well, correct?

4 A. Similar to that, but we do more -- it's a
5 little different setup than the school within a
6 school.

7 Q. You make smaller groups, though?

8 A. We don't any longer. We used to, but we are
9 no longer able to do that because we don't have the
10 number of staff available to do it.

11 Q. You have technology there at your school,
12 and that's increased over the last several years?

13 A. As far as laptops? Or I'm not sure what you
14 mean by technology.

15 Q. You have SMART Boards?

16 A. No, we do not.

17 Q. Tell me what technology you have.

18 A. We have the laptop computer cards that our
19 students have access to. We have four laptop carts
20 that are available to each academic house. And there
21 are anywhere from 15 to 20 classrooms in each
22 academic house.

23 Q. You got a new high school in 2003?

24 A. 2001.

25 Q. And you talked a little bit about after

1 school and extended day and summer school. And I
2 think I heard you say that you've had to ratchet
3 those back over the last five years?

4 A. Correct.

5 Q. And then when you talked about offering some
6 extra things for high school students, you have a
7 football team?

8 A. Yes.

9 Q. They did really well this year?

10 A. Not so well.

11 Q. Okay.

12 In the last few years?

13 A. A year ago we did well.

14 Q. Okay, a year ago, all right. And you have
15 band?

16 A. Yes.

17 Q. And you have cheerleaders?

18 A. Mm-hmm.

19 Q. And you have the kinds of things that we'd
20 see at -- do you have an orchestra?

21 A. Yes, we do.

22 Q. And you have a choir?

23 A. Yes.

24 Q. Vocal music program?

25 A. Yes.

1 Q. You have art?

2 A. Yes.

3 Q. And you have some sort of partnership with
4 the local community college, where the students can
5 earn more challenging credits for taking some of
6 those classes?

7 A. That's correct.

8 Q. So those students who want a little bit of
9 extra can utilize that program?

10 A. Yes, that is correct.

11 MS. TIBBETS: I don't have anything
12 further.

13 REDIRECT EXAMINATION

14 BY MR. RUPE:

15 Q. I want to understand what you said by way
16 of this year you may make Safe Harbor. Explain that
17 to the Judges.

18 A. Our preliminary scores, which we are able to
19 get on our website each day and look at where things
20 are, it would appear that we are going to make enough
21 growth from last year's scores to the current year's
22 AYP or the testing scores that we'll have made enough
23 growth in each of our subgroups that we would be
24 allowed to remain accredited, if you will, as a
25 result of the growth that we've made.

1 But that doesn't necessarily mean we've hit
2 the AYP target scores.

3 Q. So to make Safe Harbor -- this is Exhibit 74
4 that just shows the AYP targets over time, to make
5 Safe Harbor, what do you have to -- is there a
6 certain number you have to score or you have to
7 improve or what?

8 A. We have to improve in each of our subgroups
9 approximately 10 percent from what we scored the
10 previous year.

11 Q. So if I'm understanding your testimony, and
12 tell me if I've got it wrong, you have not reached
13 the targets but you have increased your numbers by 10
14 percent this year over last year?

15 A. Yes, in each of our subgroups.

16 Q. In each of your subgroups. So you're still
17 below what AYP requires but you're improving?

18 A. Yes.

19 Q. Okay, and incidentally, you may not know the
20 amount of money, but is it accurate to say that after
21 the Montoy decision, the Dodge City School District
22 received substantially more state funding than they
23 had received before?

24 A. Yes.

25 Q. And did you put those additional resources

1 at Dodge City High to good use after the Montoy
2 decision?

3 A. Yes, I believe that we did. We spent a
4 great amount of time and effort and resources in
5 preparing our teachers, in particular with most
6 effective or research-based strategies that were
7 good, not just for second language learners or
8 at-risk students in general but for all of our
9 students.

10 Also, when we looked to expand our advanced
11 placement program and our college prep program, it
12 was also about the same when the college and career
13 readiness work was being done, so we felt like we
14 needed to ramp up a lot of our college prep programs.

15 Q. In terms of professional development, I
16 think you were able to send a team outside the state
17 to learn some strategies with English language
18 learners?

19 A. Yes, that's correct.

20 Q. What has been the result of the cuts you've
21 described in terms of professional development?

22 A. In particular within our building we have
23 not been able to send teachers out to receive that
24 type of -- the same type of professional development
25 that we were able to do previously.

1 So our focus has been more on what our
2 teachers internally have been able to do with
3 their -- the internet's a wonderful thing and we're
4 able to access a lot more information that way, but
5 it's been a lot more teacher driven. And as a result
6 of that, hopefully it's the right way, but it's not
7 driven so much by professionals in that setting.
8 It's been more with the teachers -- I can't think of
9 the right way to say it.

10 I guess I would think about it is they may
11 make multiple choices in how they present something
12 before they figure out what's the most effective
13 strategy. But I think we've landed on that through
14 trial and error.

15 Q. In terms of the extended learning
16 opportunities, a strategy that you described works
17 with those ELL kids, has that been substantially
18 diminished by the funding?

19 A. Yes, it has.

20 MR. RUPE: That's all I have.

21 MS. TIBBETS: Nothing further.

22 EXAMINATION

23 BY THE PANEL:

24 JUDGE BURR: Could I ask you one
25 question. You indicated the fluctuation in

1 enrollment has gone from like 800 to 1,200 to 1,800.
2 And part of that, you indicated, was you went from a
3 10-12 school to a 9-12 school. Is that --

4 THE WITNESS: Yes.

5 JUDGE BURR: Did I understand that
6 right? When did that happen?

7 THE WITNESS: That happened and,
8 Your Honor, I can't tell you the exact year, but it
9 was prior to the Montoy case.

10 JUDGE BURR: That's good enough.
11 Thank you.

12 MR. RUPE: You're done. Thank you.

13 (Witness excused.)

14 MR. RUPE: My other witness is
15 here, and I'd call Kathy Hund to the stand, please.

16 KATHY HUND

17 Called as a witness for the
18 Plaintiffs, was duly sworn by the reporter and
19 testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MR. RUPE:

22 Q. Morning.

23 A. Morning.

24 Q. Tell us your name and title, please.

25 A. Kathy Hund, the director of workforce

1 education and training with the Department of
2 Commerce and Kansas Board of Regents.

3 Q. Your employer is the Department of Commerce
4 and the Board of Regents?

5 A. Yes, sir. The employer of record is the
6 Board of Regents, but it's a joint position.

7 Q. I'd like to ask you a little bit about your
8 background. How long have you been in that position?

9 A. Four years.

10 Q. And in terms of the value of an educated
11 workforce is there a value to an educated workforce
12 for the State of Kansas?

13 A. I -- yes.

14 Q. Would you explain to the Judges why an
15 educated workforce is valuable.

16 A. Employers today, the business community
17 needs a qualified workforce in order to keep their
18 businesses profitable.

19 Q. Okay. Have you -- let me hand you what has
20 been marked as Exhibit 149.

21 Andrew will hand that to you. And is this a
22 presentation that you made in April of 2010 as part
23 of the Governor's P-20 Council?

24 A. Yes, sir, it was prepared for the Governor's
25 P-20 Council.

1 Q. And give the Judges a little idea of what
2 the Governor's P-20 Council is.

3 A. My understanding is the Governor appointed a
4 variety of experts and business leaders to look
5 specifically at alignment in our system K through
6 gray or K through 20, however, you want to describe
7 that, to make sure policy decisions were supporting
8 alignment and that was a primary purpose.

9 Q. And may I use the Elmo here?

10 I'm going to put up the -- Ms. Hund, down in
11 the bottom right-hand corner, KBOR 00157 on
12 Exhibit 149, you provided the Governor's P-20 Council
13 some information about the Kansas workforce, correct?

14 A. Yes, sir.

15 Q. And that information is that workers in
16 Kansas, there'll be 10,200 jobs added in March; is
17 that right?

18 A. Yes, sir.

19 Q. And then you have some data on a historical
20 perspective of the GDP.

21 What is that, please?

22 A. That slide itemizes trend data from previous
23 down cycles and the upward trend after a downward
24 spot in the economy.

25 Q. Since 1948?

1 A. Yes, sir.

2 Q. And then in terms of recent job
3 announcements, you indicated to the P-20 Council
4 what -- are these Kansas numbers?

5 A. This data is from the Department of Commerce
6 on recent companies that had been recruited to
7 Kansas, and that was just kind of a spot in time.

8 Q. A snapshot?

9 A. A snapshot, and it wasn't meant to be
10 comprehensive but just here's the current or recent
11 successes.

12 Q. Some recent opportunities with increased
13 jobs in Kansas?

14 A. Yes, sir.

15 Q. You talked about the changing job
16 requirements, and I want to ask you about this
17 slide.

18 You compared 1955 to 2010 in terms of
19 unskilled and skilled professional and skilled. I
20 said skilled twice. But is that what you did in that
21 slide?

22 A. Yes, sir, but I might just say that's ACT,
23 Inc., data. It wasn't my personal data, but it's a
24 slide that they used.

25 Q. Sure. And we've had some data from ACT

1 elsewhere in this case. And that's where you
2 obtained this information?

3 A. Yes, sir.

4 Q. Then you compared again a snapshot from the
5 Kansas Department of Labor information, job
6 vacancies, 25,000; and unemployment rate at 102,305?

7 A. Unemployment numbers; not rate.

8 Q. Unemployment numbers, okay.

9 A. Yes, sir.

10 Q. Thank you. And the illustration that the
11 slide that you put up indicates skills shortages, and
12 I assume that you were referring to the vacancies
13 when substantially more people are unemployed?

14 A. Yes, sir, I was. I think --

15 Q. I'm sorry, go ahead.

16 A. It's important to note that there are other
17 factors that impact that as well as skills.

18 Q. Thank you. And then with regard to the
19 roundtables, explain what the slide is, please.

20 A. This was two years ago and I can't recall
21 the exact roundtable reference. But as you are
22 probably well aware, there are multiple opportunities
23 for business groups to get together and speak to
24 policymakers and educators to say this is what we're
25 seeing, this is what we're feeling, this is what

1 we're needing. So that would be anecdotal
2 information from various business leaders.

3 I cannot source the exact roundtable, the
4 date or the time. It's probably a combination.

5 Q. And the information you communicated to the
6 P-20 Council was that there were workforce shortages
7 existing in every community, especially western
8 Kansas?

9 A. Yes.

10 Q. And there was a profound shortage of
11 healthcare professionals existing statewide, and that
12 central and eastern Kansas needs more engineers?

13 A. Yes, sir.

14 Q. And then continuing, you talked to them
15 about the need for lifelong learning and education
16 needs to be more nimble to meet business needs. And
17 then you have at the bottom high school graduation
18 expectations must align with college admissions
19 requirements. And I assume that comes from input you
20 had with the Board of Regents and your role in the
21 Department of Commerce?

22 A. I don't know. I don't understand the
23 question.

24 Q. Okay.

25 MR. RUPE: I'm sure Counsel doesn't

1 intend to do this, but Counsel is shaking her head
2 and responding as the witness does, and I'm just a
3 little uncomfortable with that.

4 JUDGE THEIS: Watch the witness.

5 MR. RUPE: I'll watch the witness.

6 Q. With regard to the high school graduation
7 expectations must align with college admissions
8 requirements, where did that information come from?

9 A. It's on the slide from the Voice of
10 Business, so I don't recall the exact source, but I
11 believe that's a business statement, you know.

12 Q. And if you know, is that also state law?

13 MS. TIBBETS: Object. Lack of
14 foundation.

15 JUDGE THEIS: Question is if she
16 knows.

17 A. Ask me again, please.

18 Q. If you know, is that also state law?

19 A. I don't know.

20 Q. Then you communicated to the P-20 Council
21 Voice of Business TEA. Help me understand what that
22 is.

23 A. Yes, sir, that's the Kansas Post Secondary
24 Technical Education Authority.

25 Q. So what you've chronicled here would be

1 input from them?

2 A. Yes, sir, various statements in Technical
3 Education Authority meetings.

4 Q. Okay. And one of those is education
5 partners critical for bioscience success and
6 employees must arrive fully skilled?

7 A. Yes, sir.

8 Q. And that was input from TEA?

9 A. Yes, sir.

10 Q. And they also indicated that other -- I'm
11 not going to go through each of those because they're
12 in the evidence, but they also indicated a real need
13 for skilled workers, technicians and an educated
14 workforce; is that fair?

15 A. Yeah, if I may.

16 Q. Sure.

17 A. This information was presented to the TEA.

18 Q. I see. Okay.

19 A. As I recall.

20 Q. Well, then you quoted information that came
21 from the roundtables?

22 A. It -- a variety of sources. Some of the
23 Technical Education Authority initiatives.

24 Q. Then in terms of the information concerning
25 the fastest job growth segment, I am assuming, but

1 you tell me, did you obtain that information from the
2 Bureau of Labor Statistics?

3 A. Yes, sir.

4 Q. And what is indicated is that occupations
5 requiring post secondary credentials are expected to
6 account for nearly half of all new jobs from 2008 to
7 2018?

8 A. Yes, sir.

9 Q. And I assume that information came from the
10 bureau?

11 A. The Bureau of Labor Statistics.

12 Q. Right. And then the growth rate is more
13 than 17 percent for occupations requiring a post
14 secondary credential. That was the information you
15 communicated?

16 A. Yes, sir.

17 Q. And the fastest growing occupations over the
18 next ten years will occur in careers requiring an
19 Associate degree?

20 A. Yes, sir.

21 Q. So as part of your presentation to the P-20
22 Council, you cited that information from the Bureau
23 of Labor Statistics.

24 And then the information you presented
25 Kansas participation in workforce, where did that

1 information come from?

2 A. As quoted there on the slide, it was a
3 Kansas profile of adult learners produced in 2008.
4 CAEL stands for the Council of Adult and Experiential
5 Learning, I believe. They're a national
6 organization.

7 Q. And I think we can figure out what this
8 means, but what does the "less than high school 65
9 percent" mean?

10 A. That indicates attachment to the labor
11 force. Those people without a high school degree are
12 65 percent attached, as I recall, and then on down
13 the line.

14 Q. And when you say attached?

15 A. Working.

16 JUDGE BURR: Can I interfere here?
17 I mean, that's sort of surprising to me, but does
18 that include like the kids who are still in school
19 that work at McDonald's and that kind of stuff or
20 not?

21 THE WITNESS: I'm sorry, I don't
22 know.

23 JUDGE BURR: Okay.

24 THE WITNESS: I don't know.

25 JUDGE THEIS: The Associate's

1 degree is a community college degree?

2 THE WITNESS: Associate degree is
3 two-year degree, yes, sir.

4 JUDGE THEIS: Not a technical
5 degree?

6 THE WITNESS: They are often
7 technical degrees, Your Honor. An Associate degree
8 would be a broad term. It might be an Associate
9 degree of applied sciences, meaning a technical
10 degree.

11 Q. (By Mr. Rupe) Are you familiar with the --
12 we've seen other data on the less-than-high-school
13 person in the workforce and my question to you is, do
14 you know of any other data from the Department of
15 Commerce that supports the notion that kids that
16 don't graduate high school have a hard time finding
17 their way into the workforce?

18 A. No, sir, I don't.

19 JUDGE FLEMING: Let me interrupt.
20 I'm confused. Do I read this correctly, that Kansans
21 with graduate degrees, 12 percent of them are
22 unemployed? You said attached to the workforce.
23 That means working. Does that mean 12 percent are
24 unemployed?

25 THE WITNESS: That's what that

1 indicates, that's what that CAEL data indicates.

2 JUDGE FLEMING: Well, the national
3 unemployment rate is 8.1 percent and Kansas is less
4 than that. How do you reconcile that?

5 THE WITNESS: I don't know if I'm
6 able to do that, sir, I'm sorry. I reported the CAEL
7 data.

8 JUDGE FLEMING: You think this is
9 retired --

10 THE WITNESS: May be.

11 JUDGE FLEMING: Go ahead, Counsel.

12 Q. (BY Mr. Rupe) All right. Let me go on. In
13 terms of the presentation you made, recent Foresight
14 20/20, that information came from the Board of
15 Regents?

16 A. Yes, sir.

17 Q. And educational systems alignment means
18 what, please?

19 A. The purpose is to make sure that students
20 are prepared for the next step. So educational
21 alignment would mean that specifically from the
22 Regent's perspective that secondary students are
23 prepared for post secondary education.

24 Q. And participation in higher ed, that's
25 fairly obvious, but go ahead and explain that.

1 A. Well, I'm not an expert on the Foresight
2 20/20 plan, but the -- it's increasing the
3 participation rates of Kansas citizens in higher
4 education.

5 Q. And these are the declarations of the Board
6 of Regents?

7 A. Strategic plan goals.

8 Q. Focus on learner outcomes?

9 A. Making sure they were able to measure and
10 assess educational attainment.

11 Q. And alignment with the Kansas economy.

12 What is the Lumina Foundation for Education?

13 A. Lumina Foundation is kind of a policy-making
14 body I would describe it.

15 Q. And I assume because of the boldness of this
16 particular slide and the star that this was something
17 that you wanted to communicate to the P-20 Council?

18 A. Yes, sir, I think that effort across the
19 nation is bold.

20 Q. The discussion was to increase post
21 secondary credentials, and is that what was discussed
22 during your presentation?

23 A. Yes.

24 Q. And then you made some observations to them
25 concerning leveraging statistics or learning

1 certificates from the roles with state policy, and
2 I'm not going to go through those, but you made those
3 recommendations to the P-20 Council?

4 A. For their consideration. They are the
5 policy-determining body. I was providing data.

6 Q. Right.

7 And then I'll move on to the economic
8 imperative, which I want to make sure we talk about
9 here, and in terms of the information you provided on
10 educational level, high school diploma or less fell
11 by 15 percent. Is that a national number?

12 A. You know, I don't recall, but since it's a
13 Lumina Foundation statistic, I believe it is.

14 Q. All right. And college graduates increased
15 by 19 percent since 1975?

16 A. Yes.

17 Q. Then this would probably go without saying,
18 but you talked about the added benefits of the
19 lasting impact of more or less crime rates, less
20 poverty, less healthcare costs and decreased
21 unemployment; is that a fair statement?

22 A. A wide variety of research will report those
23 benefits.

24 Q. Great, thank you.

25 And then this information that you reported

1 to them was particularized to Kansas and this is the
2 1.7 M working age adults?

3 A. Million.

4 Q. Million. And 1.23 not completed college;
5 178,000 not completed high school; 494,000 completed
6 high school but not entered college; 448,000
7 completed some college but no degree; and 47,000
8 speak little or no English; 249,000 living in
9 families with less than living wage.

10 A. Yes, sir.

11 Q. All right.

12 Then explain the slide that says, Alignment
13 seamless with high schools, to the Judges, please.

14 A. One of the charges of the Technical
15 Education Authority was to align, work with secondary
16 and align and build career pathways, if you will.

17 So one example of the way this might work is
18 the student, while they are in high school, can earn
19 their certified nurse assistant or CNA and at the
20 same time, complete their high school requirements.
21 They could begin college in the high school, where
22 they might take some college level courses; a couple
23 of examples there.

24 Then while they're in college they could
25 proceed on a fast track, if you will, to complete the

1 licensed practical nurse, etc.

2 Q. And you talked about adult basic education
3 and you have CASAS and COMPASS and remedial courses.
4 I think we know what remedial courses are.

5 Tell us what CASAS and COMPASS is.

6 A. To the best of my ability, CASAS is a
7 national exam that's used to assess educational
8 levels, skill levels, and that is used widely in the
9 adult education system and in the public workforce
10 system.

11 COMPASS is a test by ACT and it's used by
12 colleges to test incoming freshmen for their academic
13 levels.

14 Q. And then you presented some information on
15 remedial education. And that information is from an
16 organization, Complete College America. What is that
17 information, please?

18 A. As I recall that's national information from
19 that national organization.

20 Q. Sixty percent of entering community college
21 students and around 40 percent of all students are
22 placed into remedial education?

23 A. Yes, sir.

24 Q. And in terms of the reasons for the
25 presentation to the P-20 Council and Plaintiffs'

1 Exhibit 149, what was the reason for the
2 presentation?

3 A. The Council asked for some background
4 information on education and workforce and data,
5 which I attempted to provide for them to help them in
6 their policy decisions.

7 Q. Did you follow up with anything that the
8 Governor's P-20 Council did following the information
9 gathering that included your presentation?

10 A. I followed up with a second presentation at
11 their request.

12 Q. Is that what is marked as Plaintiffs'
13 Exhibit 145?

14 A. Yes.

15 Q. Yes?

16 A. Yes, sir.

17 Q. Thank you.

18 And the information that you presented in
19 145 was presented in June of that year?

20 A. Yes, sir.

21 Q. Okay. There's one that I think you wanted
22 to -- we'll go through this. There's one
23 developmental course work slide at KBOR 000031, and I
24 think you wanted to indicate that the addition of the
25 totals was wrong?

1 A. Yeah. One cannot add percents. I apologize
2 for the error.

3 Q. We're learning all kinds of people have
4 difficulty in mathematics from time to time,
5 including me. And so we appreciate that
6 information. But, I'm sorry, go ahead.

7 A. I was just going to say, the numbers are
8 correct, it's the totals that are incorrect.

9 Q. Thank you. That's what I was going to see
10 if I could establish.

11 So universities, 15 percent; community
12 colleges, 44 percent; and technical college, 5
13 percent in the '08 academic year. And then what is
14 that percentage?

15 A. The number?

16 Q. Yes.

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

18 Q. But in terms of what is the percentage of
19 developmental course work? Let's assume it's 64
20 percent, but if you add up these three, is that of
21 all adults or what?

22 A. Recent high school graduates.

23 Q. Okay.

24 A. Who have attended Kansas post secondary
25 institutions and that's from the Kansas post

1 secondary database.

2 Q. Now I'm on track. And that would not
3 include dropouts or kids that did not graduate from
4 college -- or high school, correct?

5 A. Correct, I believe.

6 Q. Then from the college board annual report to
7 the nation and Kansas, I want to make sure I'm on
8 track with this.

9 This is advanced placement pass rates and
10 the brown is the national figure and the blue is the
11 Kansas figure?

12 A. Yes, sir.

13 Q. Okay. And this would be percentage of what?

14 Percentage of what?

15 A. I believe, I haven't looked at this data for
16 two years, but I believe what this data indicates is
17 that of the students who are enrolled in advanced
18 placement courses in Kansas, 4.10 percent passed at a
19 level that might earn them college credit.

20 Q. So it looks like Kansas is below the
21 national averages on that?

22 A. Is that a question?

23 Q. Yes.

24 A. Yes, it looks like it.

25 Q. Thank you. I'm sorry.

1 Okay, now, after this presentation in June
2 of 2010, did you follow up in terms of what the
3 Governor's P-20 Council did with the information, all
4 the information, including yours?

5 A. No, I did not. That wasn't my role. I
6 mean, I presented data.

7 Q. At their request?

8 A. (Nodding.)

9 MR. RUPE: That's all I have.
10 Thank you.

11 CROSS-EXAMINATION

12 BY MS. TIBBETS:

13 Q. Ms. Hund, you are not a member of the P-20
14 Council, correct?

15 A. Correct.

16 Q. Andy Tompkins, one of your bosses, was a
17 member, right?

18 A. No, actually his predecessor was.

19 Q. Okay.

20 A. As I recall, yeah.

21 Q. You work for the Board of Regents?

22 A. Yes.

23 Q. One of their roles is to promote post
24 secondary education here in the state, right?

25 A. Yes.

1 Q. I wanted to ask you about a couple of these
2 slides that Mr. Rupe put up. This one was the
3 remedial education slide. That's a national number?

4 A. As I recall, yes.

5 Q. So it's different then, you would agree, the
6 numbers that you put in the slide that was specific
7 to Kansas, correct?

8 A. Correct.

9 Q. And those numbers, to be fair, they say
10 recent high school grads. It doesn't necessarily
11 mean Kansas high school grads, does it?

12 A. I don't remember how that was sorted.

13 Q. Okay. But what you were looking at were the
14 people who were coming into these different post
15 secondary schools, right?

16 A. Yes.

17 Q. And yesterday I think that Mr. Tompkins told
18 us that for universities 15 percent is a pretty
19 consistent number for the last several years of
20 students who need some remediation. Is that
21 consistent with your memory?

22 A. I don't have a memory. I have that data.
23 He knows more than I do about that.

24 Q. He would be the person that would know that?

25 A. Yes.

1 Q. And the reason it doesn't make any sense to
2 add these numbers is that this is 15 percent of the
3 folks who are entering universities, that's 15
4 percent of one group; and then this is 40 percent
5 of -- 44 percent of a different group?

6 A. Correct.

7 Q. This is five percent of a different group,
8 right?

9 A. Correct.

10 Q. And that's why the total shouldn't have
11 happened?

12 A. Exactly.

13 Q. Now, the purpose of the commission -- is it
14 the P-20 commission?

15 A. Yeah.

16 Q. Was to have business interact with some of
17 the education policy members so that there would be
18 some discussion about education policy in Kansas,
19 right?

20 A. I believe so.

21 Q. And it was particularly focused on post
22 secondary education, correct?

23 A. I think that it was really focused on every
24 connection. There was a lot of time spent on
25 preschool and then high school to post secondary.

1 Q. And one of things that they talked about in
2 the P-20 commission was that post secondary education
3 and the K through 12 education needed to have better
4 communication about what post secondary education
5 wanted to have taught in the high schools?

6 A. Correct.

7 Q. And that's one of the benefits of this P-20
8 commission was that there was dialogue between those
9 two groups?

10 A. Yes.

11 Q. The other benefit of the P-20 commission is
12 that business learned more about how the educational
13 system works; is that fair?

14 A. It's beyond my scope of understanding. I
15 attended, you know, not frequently enough, so ...

16 Q. You really were not very involved other than
17 presenting this data?

18 A. I presented twice and I attended on behalf
19 of the secretary of commerce when he was not able to
20 attend.

21 Q. Okay.

22 As far as the unemployment data from your
23 presentation April of 2010, some of that data would
24 be a little over two years ago?

25 A. Yes.

1 Q. And those are not numbers that stay static,
2 are they?

3 A. No.

4 Q. And then some of data you had, I think that
5 was from a national organization from 2008?

6 A. Correct.

7 Q. And were those numbers the kinds of things
8 that stay static, if you know?

9 A. Those numbers are based on the numbers from
10 the Department of Labor or the Bureau of Labor
11 Statistics, so they would not stay the same.

12 Q. So translating those into 2012 would be
13 almost impossible, would you agree?

14 A. It's only 2008 data.

15 Q. Okay.

16 MS. TIBBETS: That's all I have.

17 MR. RUPE: No further questions.

18 Thank you.

19 (Witness excused.)

20 MR. RUPE: Next witness is Maria
21 Ortiz-Smith.

22 MARIA ORTIZ-SMITH

23 Called as a witness for the
24 Plaintiffs, was duly sworn by the reporter and
25 testified under oath as follows:

1 DIRECT EXAMINATION

2 BY MR. RUPE:

3 Q. Morning.

4 A. Good morning.

5 Q. Tell the Judges your name and the city in
6 which you live.7 A. My name is Maria Ortiz-Smith and I live in
8 Dodge City, Kansas.9 Q. In terms of your job title, what is it,
10 please?11 A. I am an instructional coach for USD 443 and
12 I focus on 1st grade curriculum.13 Q. We'll come back to instructional coach in
14 just a moment. But I'd like to ask you a little bit
15 about your background. Where did you grow up?16 A. I grew up in Chihuahua, Mexico. I came to
17 the United States when I was a 1st-grader. My mom
18 worked in the construction of Excel, our second meat-
19 packing plant in Dodge City. And I was an English
20 language learner. I grew up in Dodge City and
21 graduated from Dodge City High School.22 Q. When you came from Mexico, did you know
23 English?

24 A. No, I was a second language learner.

25 Q. And in terms of your education background,

1 did you go through Dodge City High School? Yeah, did
2 you go through Dodge City High School?

3 A. Yes. I graduated from Dodge City High
4 School and then later as the daughter of an immigrant
5 worker working in the meat-packing plant, I never
6 thought I'd get the opportunity to go to college.
7 But I received a life-changing opportunity to go to
8 Kansas State University on a full scholarship and I
9 was able to become a teacher. And then I went back
10 and now I serve my community.

11 Q. When did you graduate? When did you
12 graduate from Kansas State?

13 A. I graduated from Kansas State in 2004 and
14 began working in January of 2005.

15 Q. Give us a little information about you
16 personally.

17 You've already given a lot of information
18 about you personally, so let me move on.

19 A. Okay.

20 Q. Let's talk a little bit about what a
21 learning coach is.

22 Explain that position to the Judges.

23 A. I'm sorry, we support new teachers as they
24 come to our district. We facilitate the new teacher
25 institute and we provide support their first year of

1 teaching and their second year of teaching. It also
2 has to do with their license as new teachers.

3 It's part of the mentoring program. But we
4 also provide support to more experienced teachers.
5 We model research-based strategies in their
6 classrooms.

7 We also are available to them -- you know, I
8 focus on 1st grade curriculum, so teachers come to us
9 because we know that State assessments begin in 3rd
10 grade, but we have different measures of success
11 before 3rd grade.

12 We want to know if the kids know how to read
13 before they get to 3rd grade. Of course, that starts
14 in kindergarten.

15 So with those different measures of success
16 we want to know if they need to have interventions,
17 then the instructional coaches help identify
18 interventions for struggling learners and we help
19 teachers with that.

20 And then you have the kids who need more, so
21 we help teachers identify things that they could be
22 doing in the classroom for kids who need more.

23 We help the teachers get data from KELPA,
24 which is the Kansas English Language Proficiency
25 Assessment. We want the kids in the classrooms to

1 learn the English language, so we help teachers
2 identify strategies that they could be using in the
3 classrooms with levels one, two, three and four.

4 Not only what they could be -- the
5 strategies they could be using at the current level
6 in their language acquisition but what can they be
7 doing to further their language acquisition.

8 We also do staff development.

9 Q. Okay. Go on.

10 A. We implemented -- we started using Common
11 Core in kindergarten, 1st and 2nd grade classrooms,
12 so as a team we formed Teams of Teachers and we
13 unpacked the standards in kindergarten, 1st and 2nd
14 grade teachers. Last year we started using the
15 Common Core Standards in our classrooms, so we
16 supported the teachers through that transition also.

17 Q. In terms of supporting the teachers through
18 Common Core, are you supporting doing staff
19 development with all teachers or just teachers at the
20 elementary level?

21 A. Just the elementary level.

22 Q. In a particular grade?

23 A. Last year only kindergarten, 1st and 2nd
24 grade.

25 Q. And where did you get your training to be a

1 learning coach?

2 A. I actually have a Master's degree in
3 educational administration and leadership through
4 Kansas State University.

5 Q. So your undergrad and Master's were at K
6 State?

7 A. Yes.

8 Q. And have you had any professional
9 development yourself from any source?

10 A. We attended -- not on Common Core. We
11 attended a conference in San Francisco for second
12 language learners and how to support their learning.

13 Q. When did you do that?

14 A. That was last summer.

15 Q. And in terms of that course work --

16 A. I'm sorry, can I back up?

17 Q. Sure.

18 A. I'm sorry, I don't want to lie, but I didn't
19 lie purposely. I forgot. I'm sorry. Last year we
20 did come to a math conference. I know, no. Last
21 year we did come to a math conference here in Topeka,
22 but we were a little bit ahead of what the rest of
23 the districts were doing in the state. So it was
24 like in Dodge, we were already implementing the
25 standards in the classroom and everybody else in the

1 state was just getting to know them.

2 So our population is so unique in Dodge
3 because we have so many second language learners and
4 here we are, we're already teaching the standards
5 with our second language learners and then the rest
6 of Kansas is just like, well, let's see what they're
7 all about. And here we are, nope, we're already
8 starting to use them, just give them to us, because
9 we ...

10 Q. When did you go to San Francisco?

11 A. Last summer.

12 Q. And the Topeka experience was when?

13 A. At the beginning of last school year.

14 Q. Now, let me ask you about, I guess I am
15 going to ask you some more personal questions. In
16 terms of the Dodge City elementary schools, describe
17 the majority of kids demographic-wise. Are they
18 Hispanic?

19 A. Yes. The majority of the kids are Hispanic.
20 And I don't have exact numbers. I did -- I can say
21 that about 4,500 people are employed by the meat-
22 packing plants.

23 When I was in the classroom a couple years
24 ago, my grandma always reminded me to be patient with
25 the moms because when my family came to Dodge City,

1 there was only one meat-packing plant and it was
2 National Beef and women were not allowed to work
3 there. It was a man's job.

4 So my grandma always reminded me that women
5 were doing the men's jobs.

6 So our population, just they have different
7 needs, because women are there doing physically
8 arduous jobs and then coming home tending to
9 children. And so their needs aren't met like they
10 should be.

11 Not intentionally, but it's -- it's an
12 immigrant lifestyle. So when they come to school
13 they might be a little hungry. They might not be
14 cared for as well as we would like them to.

15 Q. And how many Maria Ortiz-Smiths are there
16 who have kids that have graduated from the Garden
17 City schools, gone on to college and are now in the
18 workforce and professional positions in Dodge City?

19 A. Our community cares about their children and
20 we all want the American dream. We all want our kids
21 to go to college. That's what my mom wanted for me.
22 Parents don't want their children to work in the
23 meat-packing plant.

24 People have carpal tunnel. They lose limbs.
25 But they're uninformed about college and how to get

1 there. And we don't have a lot of kids -- you know,
2 when you have going back to the KELPA, which is, you
3 know, like Jacque said, when they graduate at a
4 language proficiency level of three, that's not the
5 language of college. They can't be successful in
6 college if they don't know the academic language.

7 So kids might graduate from high school and
8 we're doing a great job of that, but they don't have
9 the academic language to be successful in college.
10 So we are not getting them there. We're graduating
11 them from high school, but we still have to push them
12 to go to college and graduate from college.

13 Q. In terms of the number of folks like you in
14 the Dodge City community, would you say that in this
15 majority of Hispanic population that goes to high
16 school you are in the minority that graduates from
17 college?

18 A. Yes, I can probably -- less than twenty
19 college -- Hispanic college graduates.

20 Q. Now, in terms of budget cuts, in recent
21 history have there been budget cuts in your school
22 district?

23 A. Yes.

24 Q. Explain how those cuts have impacted your
25 position as a learning coach. Let's start with

1 professional development. Is professional
2 development outside of Dodge City allowed?

3 A. No, we have -- we have boundaries. I think,
4 and I don't know for sure, but I think our boundary
5 is like Wichita for professional development.

6 Q. You took a trip to Topeka. Was that at a
7 time when there was professional development travel
8 money available?

9 A. Maybe it's Topeka. Maybe our boundary is
10 Topeka.

11 Maybe that's just out of my ...

12 Q. In terms of being able to go to places
13 outside the State of Kansas, has that travel been
14 curtailed?

15 A. Okay. We can't go where we need to be.
16 Kansas doesn't offer the professional training that
17 we need. There's nowhere in Kansas that has a
18 population like Dodge City does. We need to be in
19 places that have the population that looks like Dodge
20 City so that we can have professional conversations
21 with teachers that teach in a population like Dodge
22 City so we can learn from one another, and we can't
23 go there.

24 Q. As a learning coach are you in and out of
25 the classroom?

1 A. Yes.

2 Q. And describe for the entities again, at what
3 grades would you typically be in the classroom
4 helping teachers with strategies?

5 A. K-4.

6 Q. Then talk to me about the K-4 classrooms.
7 Have they grown in size, that is the ratio of
8 students to teachers.

9 A. Yes, tremendously. 25, 26 children in a
10 classroom.

11 Q. And let's stand in front of the classrooms
12 in Dodge City and describe them for me. How many
13 Hispanics by percentage-wise in that classroom?

14 A. It's a little bit different in each school,
15 but when I was in the classroom two years ago, I only
16 had about two or three Caucasian students.

17 Q. The rest were Hispanic?

18 A. Yes.

19 Q. And are these ELL Hispanic kids?

20 A. Okay, statistically speaking, about 75
21 percent of our district is Hispanic and about 55 are
22 English language learners.

23 Q. And that would describe generally what the
24 classroom in the elementary level was like?

25 A. Yes.

1 Q. And in response to the growing number of
2 kids, especially ELL kids and English -- and Hispanic
3 kids, have the number of teachers at the elementary
4 level increased?

5 A. I'm sorry?

6 Q. Class size has gone up in response to the
7 growing number of kids. Is there the same number of
8 teachers?

9 A. Well, we've recently -- okay, we have
10 restructured recently.

11 Q. Explain that to the Judges.

12 A. Okay. We have restructured because our
13 middle school was literally busting at the seams, so
14 we have taken schools apart and built walls where
15 there weren't walls before. And one of our
16 intermediate centers is now an elementary school.
17 And so, therefore, now we have another elementary
18 school where there wasn't one before.

19 And see, maybe that's just not my area of
20 expertise, because I know that now the 5th grade is
21 going back into the elementary schools and I just
22 don't know if we had enough teachers then for that
23 new elementary school that was.

24 Q. Okay, let me --

25 A. Okay.

1 Q. -- ask somebody else that question.

2 A. Okay.

3 Q. And I'll focus with you on --

4 A. Good idea.

5 Q. -- something that you may be more familiar
6 with.

7 A. Okay.

8 Q. What has been the result of these cuts as
9 far as extended learning opportunities?

10 A. Okay. This year we had no summer school.
11 I'm very concerned about our community with that.
12 There are teachers in the district who tutor. The
13 problem with that is that they tutor for \$25 an
14 hour.

15 Last year we had a very dry summer. The
16 cattle prices are outrageous because of our dry
17 summer. That means that the beef-packing plants were
18 working four-day weeks. That's less than a
19 300-dollar-a-week paycheck for families.

20 So during conference time teachers said to
21 some families, Your child is really struggling and
22 sorry, this year there won't be any summer school,
23 you know, here's a list of tutors. Tutors are 25
24 bucks an hour.

25 I think that's a big concern for our

1 children, for the children in our community.

2 Q. And the extended learning opportunity of
3 summer school previously had been offered to --

4 A. Yes.

5 Q. -- these families so that kids that were
6 struggling could get summer school education?

7 A. Yes.

8 And on the other side of that, when I
9 started teaching in 2005, we also had enrichment
10 during summer school, so kids who needed more
11 extended learning were also able to have that
12 opportunity.

13 Q. Is the summer school available now?

14 A. Not in elementary schools.

15 Q. And what about enrichment?

16 A. Definitely not. That was the first to go.

17 Q. And I think even the state's experts in this
18 case will say that extended learning opportunities in
19 the early grades up to third grade really can impact
20 a kid's ability to perform. Do you agree with that?

21 A. I agree with that.

22 Q. Are there any other consequences to the cuts
23 that you're aware of that we have not discussed? In
24 other words, were there other cuts that you have
25 knowledge of that I haven't asked you about?

1 A. No.

2 Q. Okay.

3 Are we providing a suitable education to all
4 the elementary school kids that are in Dodge City
5 schools?

6 A. No.

7 Q. Why not?

8 A. We need more. Common Cores was written to
9 prepare kids for college and we're not getting them
10 there.

11 MR. RUPE: That's all I have.

12 Thank you.

13 CROSS-EXAMINATION

14 BY MS. TIBBETS:

15 Q. You work in the learning center?

16 A. I have an office at the learning center, but
17 we are at the schools.

18 Q. Sure. I'm sorry, I should have said that.
19 Your office is in the learning center?

20 A. Yes.

21 Q. The learning center is a separate building
22 from any of the schools or even from the school
23 administration, right?

24 A. Yes.

25 Q. And it has resources for the teachers to use

1 in making lesson plans or doing their tasks, right?

2 A. Yes, and I -- I start my day at the learning
3 center, and a lot of times, most of the time I take
4 resources to and from the schools. The teachers make
5 the requests and then I deliver them.

6 Q. Okay. And there are a number -- are there
7 eight instructional coaches?

8 A. Let's see, K-5, and then we have 6th grade,
9 and then two middle school coaches.

10 Q. So eight?

11 A. Mm-hmm, yeah.

12 Q. And you are all certified teachers, right?

13 A. Yes, we are all certified teachers.

14 Q. And earlier I believe that Ms. Feist said
15 they began to cut back on extended day and summer
16 school about five years ago. Does that sound about
17 right to you?

18 A. I -- that's not my area of expertise.

19 Q. Well, you just talked about stopping summer
20 school.

21 A. Summer school for elementary school, this is
22 the first year that elementary school won't have
23 summer school.

24 Q. All right. So you've had it up until the --
25 through, let's see, last summer would have been the

1 summer of 2011; is that right?

2 A. Elementary school.

3 Q. Summer school, elementary school summer
4 school?

5 A. Mm-hmm.

6 Q. Okay.

7 And you provide coaching and instruction to
8 the teachers who work with the students, right?

9 A. Yes.

10 Q. And you also provide some coaching and
11 instruction to the principals?

12 A. No.

13 Q. Okay, all right. In terms of professional
14 development, you were able to go to the conference in
15 San Francisco last year?

16 A. Yes.

17 Q. But to supplement that, I guess you're able
18 to do some research on the internet like Ms. Feist
19 indicated?

20 There are resources on the internet where
21 you don't have to travel to places; is that fair?

22 A. We read a lot.

23 Q. Okay. And the stuff that you learned in San
24 Francisco, that is stuff that you brought back to
25 your district, right?

1 A. Absolutely.

2 Q. That's the way it works, if someone goes out
3 of town, they bring back the information and teach it
4 to the folks in Dodge who didn't get to go out of
5 town; is that right?

6 A. Absolutely.

7 Q. It sounds to me like part of what you teach
8 the teachers is teaching strategies, right?

9 A. Yes.

10 Q. But part of what you teach the teachers,
11 too, is background on what the kids might be facing,
12 right?

13 A. Yes.

14 Q. And that's an important role that you play
15 there in Dodge; isn't it, ma'am?

16 A. Yes.

17 Q. You said that some of the kids are going to
18 graduate from high school but you're confident that
19 they would be successful in college; is that true?

20 A. That's right. And the way Common Core was
21 written, its purpose is so that all kids are
22 successful in college.

23 Q. Sure. If a kid is going to start in your
24 Dodge City schools in pre-K -- you have pre-K, right?

25 A. Yes.

1 Q. And they started in pre-K and they went
2 through the school, all were able to consistently
3 stay in your Dodge City schools with your special
4 programs in elementary schools and your middle school
5 and then they were to graduate, you would feel more
6 confident that they would be able to face that
7 college ready future; wouldn't you?

8 A. Actually, Common Core are national
9 standards, so really ...

10 Q. Maybe you didn't understand my question.
11 Let's take a kid who starts at your Dodge City
12 schools when he's 14 or 15. In the three or four
13 years he's going to be in your schools, you're not
14 confident you're going to be able to get him to a
15 level that he'd be ready for college; is that fair?
16 If he's only in your school district a few years,
17 you're not going to be confident that he's going to
18 be ready for college when he graduated; is that true?

19 A. I don't feel comfortable answering that.

20 Q. Okay. Let me ask you the other question,
21 though. My first question is, if the child starts in
22 your district in pre-K and he or she is able to take
23 advantage of the special programs you have in
24 elementary school and the special programs you have
25 in the middle school and the special programs you

1 have in the high school, do you feel more confident
2 about that child being college ready than the child
3 who entered later in his life?

4 Do you understand that question?

5 A. Okay. I would say if any of those two were
6 my own child, I would want both of them to, so ...

7 Q. No, but that's not the question I asked
8 you.

9 A. Okay.

10 Q. Do you not understand my question?

11 A. I do. I'm just having a really hard time
12 answering it, because I would want both children to
13 be ready for college.

14 Q. Let's say that we all agree that we would
15 like both children to be ready for college. But I'm
16 saying given the special programs that you have in
17 Dodge City from pre-K to the 12th grade --

18 A. Uh-huh.

19 Q. -- do you feel confident that a child who
20 has been through all of those special programs when
21 they graduate will be ready for college?

22 A. That both of them?

23 Q. No, ma'am. Just one child who's going to go
24 through all of your programs, do you feel confident
25 that child would be ready for college?

1 A. Which child are we talking about?

2 MS. TIBBETS: You know what, I
3 think that that's enough.

4 MR. RUPE: No further questions.

5 JUDGE THEIS: May I ask her a
6 question?

7 MR. RUPE: Sure.

8 EXAMINATION

9 BY THE PANEL:

10 JUDGE THEIS: I don't want to
11 prolong it too much.

12 ELL, how does it work in terms of
13 the elementary teachers in Dodge? Do they all speak
14 Spanish?

15 THE WITNESS: Most of them do,
16 because we have a lot of students from Guatemala who
17 speak various dialects. So what the Guatemalan
18 community has then done, because Guatemala -- in
19 their schools they teach Spanish, so they have their
20 very rare, in most cases, native dialect and Spanish,
21 so we have students who are trilingual.

22 And then we also have our most recent
23 Somali refugees, so we also have our most recent
24 immigrants, the Somali refugees.

25 JUDGE THEIS: How does that work in

1 class? Give me an idea.

2 THE WITNESS: We have
3 paraprofessionals, who are in most cases Hispanic.
4 And a lot of our teachers have ESL certifications.
5 And that's special because then you rely on
6 strategies instead of a second language then to teach
7 children to speak English.

8 JUDGE THEIS: But ELL isn't a
9 separate class, is it? They're integrated with
10 people who actually speak English, correct?

11 THE WITNESS: Right. They are
12 integrated.

13 JUDGE THEIS: How does that
14 communication work in the class, for example?

15 THE WITNESS: Mm-hmm. A child who
16 just, for example, is a level one speaker is going to
17 point. So a teacher is going to use guarded
18 vocabulary. They wouldn't use a lot of metaphors,
19 probably.

20 In the lower grades there's going
21 to be a lot of pictures in the books to help the
22 students in their language development.

23 And, really, the children are so
24 eager to learn, and they're going to start with basic
25 vocabulary, which is what we call BICS. It's a term

1 we use for that that is playground language. And
2 then they'll development their academic language
3 later.

4 JUDGE THEIS: So a teacher who's
5 ELL certified or whatever their requirement is has
6 the lingual skills to discuss or talk with the
7 Guatemalans and Somalis?

8 THE WITNESS: Actually, no. Most
9 teachers who have an ESL certification are not
10 bilingual. They rely on those strategies.

11 JUDGE THEIS: But the communication
12 between student and teacher, how does that work?

13 THE WITNESS: With guarded English,
14 sheltered English is what we call it.

15 JUDGE THEIS: Tell me again.

16 THE WITNESS: Sheltered English,
17 which is your basic commands and the student then --
18 when you ask -- see, now, I'm going to be the
19 translator by the time we're done. When the teacher
20 asks the student a question, in their early stages of
21 development, the teacher is not going to ask a
22 question that requires the student to give a sentence
23 in reply.

24 In their early stages the child
25 will point, and that will be the reply. And then the

1 next -- the response will require a one word answer.
2 And then it'll develop into a one sentence. Or if
3 it's written, it'll be a picture and then a sentence
4 or a sentence starter, that type of thing.

5 JUDGE THEIS: But the teachers,
6 what would the teachers be speaking, though?

7 THE WITNESS: English. English
8 with the support of maybe a bilingual para. That's
9 why paras are so important.

10 JUDGE THEIS: Paras are kind of the
11 intermediary?

12 THE WITNESS: Yes.

13 JUDGE THEIS: Okay. Thank you.

14 MR. RUPE: I have a follow-up
15 question.

16 JUDGE THEIS: *No habla Espanol*
17 *perfectamente.*

18 THE WITNESS: *Oh, que bueno.*
19 *Felicidades y gracias.*

20 REDIRECT EXAMINATION

21 BY MR. RUPE:

22 Q. In terms of the average class in Dodge City,
23 it's taught in English?

24 A. Yes.

25 Q. And the paras are not teacher certified, are

1 they?

2 A. No.

3 Q. And a number of those paras are Hispanic and
4 are bilingual?

5 A. Yes. And one of my colleagues and I do para
6 training, because we want them to be as knowledgeable
7 as possible in education.

8 Q. And this may not be your area, it may be
9 something I have to ask somebody else, but as part of
10 the cuts has the Dodge City School District reduced
11 the number of paraprofessionals?

12 A. Yes.

13 Q. Has that affected the ability to translate
14 in the classroom?

15 A. Absolutely.

16 MR. RUPE: No other questions.

17 THE WITNESS: Anything else?

18 JUDGE THEIS: No. Thank you very
19 much.

20 (Witness excused.)

21 MR. RUPE: You want to take a break
22 or do you want me to plow ahead?

23 JUDGE THEIS: A break sounds good
24 to me. About 11:00.

25 MR. RUPE: Okay. All right. Thank

1 you.

2 (A recess was taken.)

3 JUDGE THEIS: Be seated. Thank
4 you.

5 MR. RUPE: Our next witness is
6 Kathy Ramsour.

7 KATHY RAMSOUR

8 Called as a witness for the
9 Plaintiffs, was duly sworn by the reporter and
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. RUPE:

13 Q. Now tell the Judges your name and the city
14 in which you live.

15 A. I'm Kathy Ramsour, and I live in Dodge City.

16 Q. Ms. Ramsour, what is your title?

17 A. I am an elementary principal at Northwest
18 Elementary School there in Dodge.

19 Q. And how long have you been -- or what's the
20 name of the elementary school?

21 A. Northwest.

22 Q. And how long have you been Northwest's
23 principal?

24 A. Since 1992.

25 Q. And prior to 1992, what was your position?

1 A. My brother says I'm one of the first little
2 girls to play in dirt, but I began teaching in Dodge
3 City in 1971, and I taught 1st grade, pre-1st grade,
4 4th grade. And I began -- I was a counselor for
5 about six years and then became principal. So I've
6 had about 40 years in education.

7 Q. And has all your experience been in Dodge?

8 A. Yes.

9 Q. What's your educational background?

10 A. I have my Associate's degree from Dodge City
11 Community College. I have my BS from St. Mary's of
12 the Plains. And then I have a Master in counseling
13 from Fort Hayes. My building level certificate for
14 administration is from Fort Hayes, as well as the
15 district level administrative certification is from
16 Hayes. And I have about 30 of the college credit
17 hours on my doctorate at K State.

18 Q. I'd like you to tell us a little bit briefly
19 about your -- give us a little personal information.

20 A. Personal, well, I married my high school
21 sweetheart, engaged at the senior prom. And I ride a
22 Harley motorcycle and am part of the Patriot Guard.

23 Q. I wasn't ...

24 JUDGE BURR: Just the stereotype
25 elementary school principal.

1 MR. RUPE: Holy cow.

2 Q. (By Mr. Rupe) Okay, let's back up and talk
3 to us about the demographics of Northwest
4 Elementary.

5 A. Today?

6 Q. Today.

7 A. We have about 85 -- 83 percent of ours is
8 low socioeconomic and about the same on minority.
9 Special education I think 13 percent.

10 Q. And when you say economic, this would be
11 free and reduced lunch?

12 A. Yes.

13 Q. At-risk?

14 A. At-risk, free and reduced lunches, yes.

15 Q. And so it's about 83 percent minority. And
16 describe the minorities, if you would.

17 A. Minority population is basically Hispanic
18 with Guatemalans. And I have some African American
19 and Vietnamese.

20 Q. Ever calculate how many different languages
21 there are among the ELL population at Northwest?

22 A. Presently I have probably four or five, but
23 in the past we've had up to seven.

24 Q. What I'd like for you to do is go back to
25 your first day on the job as principal in 1992 and

1 compare the demographics at that time to how they are
2 today at Northwest Elementary.

3 A. In 1992, I can give you a picture of what
4 our building looked like. We were what I would call
5 a real estate school. When the realtors would work
6 with people coming into town they would say, Well,
7 you want your kids to go to Northwest because it was
8 on the north end of Dodge.

9 So we had more of the affluent Caucasian
10 neighborhoods, professional people.

11 Then we had the meat-packing plants come
12 into town and the culture of the community began to
13 change, and the diversity became an issue. And we
14 had Office of Civil Rights visit with us. So we
15 decided as a community in Dodge that the district had
16 to start looking like the complexion of the town.
17 And we instituted controlled choice, meaning parents
18 when they came to town got their first choice, second
19 choice or third choice of elementary schools that
20 they would go.

21 This divided all of our parents and our
22 population and our ethnicity equally into our school
23 district. And it took into account the ethnicity and
24 the language into the building.

25 So in 1992, we were basically a Caucasian

1 White three percent low socioeconomic, maybe eleven
2 percent minority. And that was doctors' families
3 coming into town and that type of person that we
4 brought in with the professionals. Then we became to
5 where we are now in that span of time.

6 And during that time in order to meet the
7 needs, we even became a bilingual school, a dual
8 language school, because research said, I had four
9 strands. And by four strands it means I had four 1st
10 grades, four kindergartens, so I had a strand of each
11 four.

12 I had two that was in the dual language
13 school and two that were regular English. And we
14 taught in Spanish and in English, and it was
15 phenomenal, because when we take a child with their
16 native language and we teach them both languages at
17 the same time and use their home language, like, She
18 has a glass there, and with her information coming in
19 about that glass she knows that you can put it on
20 your mouth and you can suck it and it'll stay there,
21 you can throw water at somebody, all this information
22 about that little glass she brings with her.

23 Children have that same information. So all
24 we had to do is build from their information and give
25 them the word "glass." Like we would -- I would say,

1 "vaso" for you. Just that one word would make that
2 whole difference.

3 We were doing wonderful. And then the state
4 told me that I could not test them in Spanish at 3rd
5 grade. So the curve for those children changed and
6 the ideas for our school changed, because what we
7 were doing was right and they were immersing in
8 English so much faster and they were learning and
9 they were keeping the academic standard.

10 The state said, No, our state assessments
11 are in English. So we pulled back from the dual
12 language because they were not ready for that English
13 academic language that quick.

14 So we went another path, and we tried to get
15 some more inservicing in and everything. And then we
16 got the extra money from the Montoy case and we were
17 able to institute and put paras in the building and
18 do all kinds of other stuff to get the kids back
19 where they belonged. And it kind of leads us up to
20 today.

21 Q. Talk to us about in an elementary school
22 that you described, Northwest Elementary in Dodge, I
23 think I'd like for you to describe what -- and you're
24 talking to somebody who has went to school in the
25 '50s and '60s, so describe for the Judges what kinds

1 of things the school needs to do beyond the textbook
2 and a teacher standing in front of the class with the
3 chalkboard teaching them reading and writing and
4 arithmetic. What else do you need to do as an
5 elementary school with the population that you've
6 described in order to provide suitable education to
7 those kids?

8 A. Well, the first and foremost would be the
9 safety of the children. And back when we were in
10 school, our parents took us to school and picked us
11 up or you walked home, did all of this stuff, and we
12 knew somebody was there.

13 Children today come in and their parents are
14 doing shift work, so they may or may not see parents
15 in the morning or in the evening. And we need to
16 provide a safe haven for them to come, either like a
17 before-school program and an after-school program,
18 provide some kind of transportation for them, provide
19 them their breakfast, give them those kinds of
20 supports.

21 We also now are taking care of children that
22 have severe medical needs, too. Besides the ELL
23 language and all of that, I have a child that we have
24 to catheterize every day at noon. That means I have
25 to have a nurse in the building. I share a nurse.

1 We can't afford to have a nurse there all the time.

2 So we have to make sure that some time that
3 catheterization takes place. And if she's not there,
4 I'm not trained, but I have to be ready to do that in
5 case of emergency and stuff.

6 We have the fact that the parents want the
7 exact same things that our parents wanted is there.
8 They don't know how to go about it, though. They
9 entrust their child to us and they want us to give
10 them everything we can give them to make them
11 successful in life.

12 And that's what they want, everything that
13 our parents wanted and what you wanted for your
14 children, that's what they want. But we have to go
15 at a different pace. We cannot just put a book in
16 front of them and say, Learn, because if you don't do
17 your homework you'll get spanked when you get home or
18 mom's going to help you. Because many times they go
19 home and there's no one at home to help them but an
20 older brother or sister. And they may or may not
21 understand that textbook a 2nd-grader brings home.
22 And mom and dad may not understand it either.

23 But they want that child to learn. They
24 truly want that.

25 Q. In terms of like feeding the kids, do you

1 have meals at Northwest Elementary?

2 A. We serve breakfast and we serve lunch. And
3 because of our city and the YMCA, I have an after-
4 school program that just started. And they give them
5 a snack. But parents have to pay to put them in
6 that.

7 Q. I'm going to jump ahead and jump back, but
8 in terms of reductions by reason of funding cuts, has
9 it affected your after-school program?

10 A. I have no after-school program right now as
11 far as an academic learning facility and to extend
12 children's learning, I have none this summer.

13 Q. When was the last time you had that program?

14 A. At the capacity we once had it, which was,
15 gosh, '05/'06, we had probably 200 and some in summer
16 school. We had after-school programs that did
17 enrichment. We had readers' theater. We had
18 intramurals. We had academic learning, all of those
19 interventions. We had all of those going on then.

20 And we slowly had to back out to where last
21 summer we only had about 30 that we were able to take
22 into it because of the money situation, and those
23 were the most needy kids that we brought in. 30 to
24 60, depending on the day, you know. But this summer
25 we have nothing to offer them.

1 Q. That summer school program is this summer
2 completely gone?

3 A. Completely gone, yes.

4 Q. And the after-school program this year was
5 completely gone?

6 A. I didn't have an after-school one last year
7 either.

8 Q. Last two years?

9 A. No, I haven't had -- yeah.

10 Q. But it sounds like the YMCA has picked up a
11 program?

12 A. They've -- yeah, they're kind of trying a
13 program to see if they can't -- but it's parents have
14 to pay.

15 Q. I'm going to ask you an old-fashioned
16 question. Why would feeding the kids at breakfast
17 and at lunch and having after-school programs or
18 those other programs you listed, why is that
19 important for a school?

20 A. Well, if you don't have nutrition in the
21 kids, they don't learn. And many of our children
22 either on the weekends when they leave on Friday we
23 give them a backpack full of food so there is food
24 for the weekend for them to eat.

25 At noon a lot of our little kids clean their

1 plate, even stuff that you wouldn't think kids would
2 eat, they clean their plate because that may be the
3 last meal they have.

4 Or they may have macaroni that they fix at
5 home. Not all the kids, but several children have
6 that situation going on at home. And it's important,
7 because they need the nutrients to learn.

8 Q. Now, let's talk about -- let me jump back.
9 Let's talk about when the cuts occurred and what cuts
10 were instituted at your school.

11 A. When the cuts began, that was when we
12 started the no travel and inservicing the teachers
13 and staff. The cuts affected -- I had to start
14 making decisions on my budget, like instructional
15 supplies and what teachers reordered versus being
16 able to pay for paras, because I use the same line
17 items and can work them across.

18 This next year I'm gaining three classrooms
19 and I'm losing three paras, so I'm gaining 75 kids
20 and losing three educational support people in my
21 building because of these cuts.

22 So I've slowly had to give up summer school,
23 after school, teacher inservices. We don't do any
24 field trips for the children, which is very important
25 to them to give them language development and

1 experiences.

2 My library, we haven't supplied the books
3 that we really need. And I'm getting 5th-graders in
4 and I need higher levels of books for that.

5 We have -- I've had to cut back on some of
6 my extra-duty help, like at noon recess. And we
7 don't have kids do crossing guard like we used to
8 when we were little. We are having older kids do
9 crossing guard, and I can't pay people to come in and
10 help with crossing guards, so I have teachers. I
11 have one that I pay to help with buses and one I pay
12 for on a really busy section of the street.

13 But prior to that it's -- there's just a lot
14 of safety issues that I worry about, as well as the
15 academic learning.

16 Q. Talk to us about how your -- how those
17 reductions have affected the kids in the classroom.

18 A. Part of the reductions and the way it has
19 affected them is that the services that we give them
20 and the instruction that we give them is not as
21 intense and small group, hands-on like it used to
22 be. When you cut people out of a building and
23 smaller groups, you take some of that personal close
24 instruction. Like she was talking about, for
25 especially ELL learners or struggling students, you

1 take some of that away.

2 The supplies, you know, we ask kids to bring
3 more Kleenexes from home. We try to get -- you know,
4 the supplies aren't there. We don't do the arts. We
5 don't do the crafts like we used to. It's very
6 academic. That's a big difference there.

7 Q. Talk to us about the status of your
8 assessment scores the last few years.

9 A. We've been blessed in the past that we've
10 made AYP. With that being said, the preliminaries of
11 this year I'm going to be put on warning. And my
12 scores say from, I'll just be real honest, before
13 Montoy we were here and we were going up. With
14 Montoy, we started going up.

15 Now with the regression of the funds, my
16 scores have started to go down. When I take out
17 those programs and all those extras that we knew what
18 we were doing, they have started going down.

19 And the preliminary, and I know you're going
20 to ask about Safe Harbor, I don't think Safe Harbor
21 is going to help me this year. It helped me last
22 year keep my head above water. But we're crossing
23 our fingers, but I don't think we're going to make
24 AYP at all.

25 Q. In fact, Dodge City has the assessment

1 scores online already, don't they?

2 A. Yes. We parallel. We parallel. We have
3 that program that parallels the state. And how close
4 the parallel goes is when my last 4th grade reading
5 student took his state assessment and he clicked the
6 button to submit it, I knew immediately what his
7 score was. And it was his score that led us at the
8 line of proficiency.

9 Q. And when was that?

10 A. That was April this year.

11 Q. Okay.

12 A. One student made that difference.

13 Q. You've indicated that your school is not
14 making AYP?

15 A. No. My 3rd grades were at 75 percent. They
16 did not in reading. And in math we will probably
17 make AYP, but as a school on reading I don't -- we're
18 not going to make it.

19 Q. And when you say Safe Harbor is not going to
20 help you, what does that mean?

21 A. In the past because of the growth, because
22 we really worked hard on eliminating the differences,
23 like in our socioeconomic we worked hard on
24 eliminating the gaps of boy/girl ratio with science
25 and reading and all of those that we read about, we

1 were closing those gaps and we were making the growth
2 up to about four years ago and were really strong
3 closing.

4 And, in fact, we received this last year the
5 Title I nationally distinguished school award. In
6 the nation there was two given in Kansas and we were
7 one of them for closing that gap of learning with
8 children. And we were presented that, a nice honor,
9 in Seattle, Washington, where they asked us to be on
10 a panel about using our data and how we went about
11 closing that.

12 Q. And what do your current test scores do as
13 far as closing that gap?

14 A. We're starting to open it up again a little
15 bit. We're not having the results.

16 Q. And you talked about the money from Montoy.
17 Explain to the Judges what strategies you used with
18 those resources to close the gap at Northwest
19 Elementary.

20 A. Well, the first thing we did was we started
21 inservicing teachers on the best strategies, how do
22 you teach an ELL learner, how do you teach a child
23 that doesn't understand reading or can't read.

24 Inservicing them was the very key, because
25 we teach children differently now. So much is

1 required.

2 The next one was we started using these
3 strategies before school and after school. We
4 implemented in the middle of the day our building
5 stops for 30 minutes, everything stops. Every person
6 in the building teaches reading and math to some
7 group, a subgroup of some sort with their specific
8 indicators they are needing extra work on.

9 My PE teachers teach reading, my music
10 teachers, my parent liaison in the office, my
11 counselor, everybody stops and we teach reading and
12 math to those students. We implemented that.

13 The after school, the summer school, all of
14 that, we started really, really digging in and were
15 able to then connect and extend that day for that
16 child needing those specific skills and those
17 building blocks. And that's what that let me do.

18 Q. In terms of the budget cuts, have those
19 affected your ability to use those strategies?

20 A. We use the strategies, but because of the
21 cuts we aren't as effective with it because we cannot
22 extend it the way we were doing it.

23 Q. Sounds like you are a fan of extended
24 learning opportunities and those opportunities have
25 diminished with the cuts?

1 A. Absolutely. I'm one of the few staffs that
2 would ask -- I mean, our teachers would ask for a
3 longer day because they -- they see the need for
4 extended learning for children.

5 Q. So here's the question to you, are you able
6 to provide every student at Northwest with a suitable
7 education?

8 A. The way I'm going to answer this is no. And
9 may I explain that?

10 Q. Sure.

11 A. I can provide an education for every child.
12 Whether it's suitable and connected with that child
13 is a whole different ball game, because we can -- I
14 can educate all of you, but if one of you is having
15 trouble with what I'm telling you, if I can keep you
16 a little bit longer during the day, you will be
17 educated at the same level the other two are.

18 And right now I'm not able to do that. My
19 playing field is not even anymore.

20 Q. In terms of the national distinguished Title
21 I school award that you described, the strategies
22 that helped you get that award, are those programs
23 still available?

24 A. No.

25 Excuse me, one of them is. We still have

1 left that 30 minutes of -- I mean that's --

2 Q. Intensive training?

3 A. Yes, it's kind of a Bible right there.

4 We're hanging on to that.

5 I don't know how that's going to go next
6 year having to add three more rooms, because we don't
7 have the room and have people go different places.

8 Q. Can the paras assist in that effort?

9 A. Yes, all my paras do.

10 Q. It sounds like you're going to have three
11 less next year?

12 A. Yes.

13 Q. Would you qualify for that award based on
14 your preliminary results that you described?

15 A. No, I don't think so.

16 Q. And overall what does that data show, the
17 preliminary results that you've looked at?

18 A. The preliminary results show that I will not
19 be making AYP in reading. I will be in math. But I
20 will not probably in reading. I'll be in -- the way
21 it came out on the computer is it's in red and says
22 warning. I don't want to see that, but that's what
23 it says.

24 MR. RUPE: Nothing further.

25 18 minutes.

1 CROSS-EXAMINATION

2 BY MS. TIBBETS:

3 Q. So, ma'am, you said that when you started
4 being the principal 20 years ago, your school was a
5 real estate school, a school that folks wanted their
6 kids to go to.

7 A. That economical, that level, yes.

8 Q. It's still a school that folks want their
9 kids to go to; isn't that right?

10 A. Correct.

11 Q. Your grandson goes there, right?

12 A. Yes.

13 Q. And you have a waiting list of folks who
14 want to come to your school; is that correct?15 A. Yes. May I qualify that? There's a waiting
16 list at every school.17 Q. Sure. But there's a waiting list at your
18 school, right, of parents who want their children to
19 go to your school, correct?

20 A. Yes.

21 Q. And the award that your school won was the
22 distinguished --

23 A. Title I.

24 Q. -- Title I school, so that you got to
25 present at the national Title I conference, right?

1 A. We didn't present. We were given the award
2 there and they asked us to be on a panel --

3 Q. Sure.

4 A. -- at one of their breakouts.

5 Q. And the panel was on the best practices for
6 using data to improve schools, right?

7 A. Yes.

8 Q. Because using data is one of the teaching
9 strategies that you have implemented, right?

10 A. We use the data that we receive on every
11 child to use their interventions.

12 Q. And that's been part of your success, right?

13 A. Yes.

14 Q. Two schools in the state won this award last
15 year?

16 A. Yes.

17 Q. It was a competitive award?

18 A. Yes.

19 Q. They don't just trade it around?

20 A. No, they do not.

21 Q. There's two ways you can win the award; one
22 is for having exceptional improvement?

23 A. Yes.

24 Q. And the other is for closing the gap?

25 A. Yes.

1 Q. And you won on the closing the gap category,
2 correct?

3 A. Yes.

4 Q. Last year all your students made AYP in
5 reading?

6 A. The building made AYP.

7 Q. Okay. All your students made AYP in math;
8 am I right on that?

9 A. All of my -- if you're asking me individual,
10 no, not all of my students --

11 Q. Sure. I'm sorry.

12 A. -- made AYP, but my building made AYP.

13 Q. The building made AYP?

14 A. Mm-hmm.

15 Q. The subgroups within your building, for
16 example, your ELL students made the AYP goal; didn't
17 they?

18 A. On?

19 Q. On math.

20 A. Yes. Some of them with Safe Harbor.

21 Q. All right. And your Hispanic students
22 didn't quite make the AYP on math, but they almost
23 did, right?

24 A. I think it was like 87 percent or 90.

25 Q. They were supposed to make 87.8, but they

1 made 87.4, right, so really close, right?

2 A. Mm-hmm.

3 Q. And in reading, the building made AYP last
4 year?

5 A. Yes.

6 Q. But not all of your subgroups, right?

7 A. No.

8 Q. As part of what you did for the award, in
9 addition to going to Seattle you got a cash prize,
10 right?

11 A. No.

12 Q. The school didn't get a cash prize?

13 A. No.

14 Q. But part of what you did too was make a
15 little blurb for the program, to the Title I program
16 for the conference, there was a little blurb about
17 your school?

18 A. It was -- we had a little published one.

19 Q. Sure. And you had a hand in writing that?

20 A. Yes.

21 Q. Okay.

22 A. Well, it was a telephone interview.

23 Q. With you?

24 A. With myself and a couple of teachers and
25 from that telephone they made up the blurb.

1 Q. Sure. And so one of things that you said in
2 your blurb was that you attributed your school's
3 success in closing that gap to using the MTSS system,
4 right?

5 A. Mm-hmm.

6 Q. Yes?

7 A. Yes.

8 Q. And you started that in 2009?

9 A. Yes.

10 Q. So the progress you'd made from 2009 to the
11 time that you were given the award you attributed to
12 that particular kind of learning?

13 A. That was one of the ways.

14 Q. Sure.

15 A. That MTSS is a multi-tiered level of
16 teaching children on -- you know, we take them out
17 and we teach them on the level they are needing on.
18 That's that 30 minutes that I'm talking about during
19 the day.

20 Q. That was the other thing that you
21 specifically mentioned that you thought had been
22 successful; is that right?

23 A. Mm-hmm.

24 Q. And you are continuing those things?

25 A. This year we were able to, yes.

1 Q. Great. And you still have paras at your
2 school, right?

3 A. I have paras, yes.

4 Q. And you have access to instructional coaches
5 like Ms. Ortiz, who just testified?

6 A. Actually, I have access to her. I don't get
7 her every day.

8 Q. But you have access to her. And more
9 importantly, your teachers have access to her, right?

10 A. Yes, they do.

11 Q. And your paras, she trains your paras in
12 reading coaching; doesn't she?

13 A. We have one that I think twice a year they
14 are trained.

15 Q. Okay. So they help so that the paras can
16 participate in this intensive learning?

17 A. Most of our paras are trained by their
18 teachers that they're working with.

19 Q. Have you helped train some paras in doing
20 some reading help assistance?

21 A. We've trained them several different times
22 to try to keep them up. They're part of the team.

23 Q. All right. And another reason your school
24 has been successful in closing the gap is that you
25 have highly qualified teachers, right?

1 A. Yes, I do.

2 Q. And you have 100 percent of your teachers
3 are highly qualified, right?

4 A. Yes.

5 Q. Another thing that you've been blessed with
6 is parent input, parent participation in school,
7 right?

8 A. That's one of our goals.

9 Q. Okay.

10 A. That's one of our goals that we keep working
11 on.

12 Q. Sure. You have a PTO?

13 A. We have a PTO that has five, six moms. Same
14 five, six moms that work everything.

15 Q. Sure. But they've been able to raise money
16 for your school, right?

17 A. Mm-hmm.

18 Q. They've bought some playground equipment?

19 A. Yes, they have.

20 Q. They bought some microphones for your
21 stages?

22 A. Yes, they have.

23 Q. They've held events every year?

24 A. Yes, they have.

25 Q. They've helped teachers with supplies for

1 the classroom?

2 A. Yes, they have.

3 Q. Okay. They've written some grants for the
4 school?

5 A. I don't know about that.

6 Q. Okay.

7 Because of some of the successes you've had
8 at your school you've also been asked to work on some
9 statewide committees about teacher evaluation?

10 A. I'm on our district teacher evaluation
11 committee, but I don't know about the statewide,
12 unless there's one out there that I don't know about.

13 Q. Okay. You have a counselor at your school?

14 A. Yes.

15 Q. Okay. And earlier you mentioned the
16 programs that you thought were successful in after
17 school and summer school and reading theater and did
18 you say the peek of those was in '05?

19 A. No, no, the peek of those probably when we
20 had everything going was around '09.

21 Q. Okay.

22 A. Right around in there. Well, about '07,
23 '08, somewhere in there is when it was.

24 Q. So you had all of those things. And then
25 the MTSS that you cited at the Title I conference,

1 those things you started in '09 as these other things
2 were winding down?

3 A. Yes. When the money started ending up on
4 this end we were trying to find ways to supplement.

5 Q. Fortunately, you found a strategy that
6 worked for you?

7 A. Mm-hmm.

8 MS. TIBBETS: That's all I have.

9 REDIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Did your PTO step in and help you when the
12 funding cuts occurred?

13 A. No, sir.

14 Q. In terms of your warning that you got in
15 your assessment scores, there's going to be some
16 folks that say that money funding these strategies
17 that work don't have anything to do with student
18 achievement. What's your opinion on that?

19 A. I see a direct correlation in my building.

20 Q. In other words, when you spend the money on
21 the strategies that work, it increases student
22 performance?

23 A. It has in my building, yes.

24 Q. And did so during the Montoy years, right?

25 A. Absolutely.

1 Q. And it ain't working now?

2 MS. TIBBETS: Objection. Leading.

3 MR. RUPE: I'll withdraw the
4 question.

5 JUDGE THEIS: One question.

6 MR. RUPE: That's all I have.

7 EXAMINATION

8 BY THE PANEL:

9 JUDGE THEIS: Refresh me on the
10 MTSS system.

11 THE WITNESS: It's called --
12 actually, we call ours WOW, Working on Winners.

13 MTSS is a multi-tier way of
14 teaching kids very specifics.

15 For instance, the first Tier Is all
16 kids learning. We're going to teach reading every
17 day, we're going to teach math every day, we are
18 going to teach science every day.

19 The next Tier Is those kids that
20 didn't quite get it we're going to work with them on
21 this tier a little bit more structured, a little bit
22 more in depth.

23 The third tier are the ones that we
24 have summer school now, because -- I mean in the
25 past, when we had cuts, those were the ones that had

1 significant learning and we had, in fact, in the MTSS
2 groups they were smaller teacher led and maybe five
3 to eight kids per teacher on a very specific skill in
4 that group.

5 That's what MTSS is, multi-tier
6 level of instruction. And it's very specific for
7 each child.

8 And we could tell you, for
9 instance, if your son or daughter had problems when
10 they were reading a sentence of missing the first
11 letter when they're reading along and saying the rest
12 of the word. We can narrow it down and specifically
13 work on that when we have those in place

14 JUDGE THEIS: And the impact on
15 that WOW program now is what, if anything?

16 THE WITNESS: It's in question,
17 because I'm getting three more classrooms in my
18 building and I'm getting three less paras. And in
19 order for it to work and be supported like it needs
20 to, I need to have at every grade level at least five
21 or six people involved with that class so we can
22 break it apart and work on those different tiers.

23 I mean, we have like three groups
24 going in the gym. We have two groups going on
25 stage. We have every one of our closets are being

1 used for an MTSS group. Hallways are being used.
2 You walk in that building in that time and that's all
3 you see.

4 And we teach them a different way.
5 If they can't -- if they're not understanding math
6 the way we're teaching it in the classroom, this MTSS
7 presents another way for them to try to understand
8 it. Some kids have to do it and see it in order to
9 learn it. And that's what we do with that time.

10 JUDGE THEIS: Thank you.

11 JUDGE BURR: I want to clarify what
12 I think I know. You were using the term "warning."
13 You think you're going to be put on warning; is that
14 what you said?

15 THE WITNESS: Yes.

16 JUDGE BURR: Is that the -- I'll
17 lose track of acronyms, but is that the term where if
18 you don't get the right test scores or high enough
19 test scores, you have a 2 1/2-year period to come
20 back?

21 THE WITNESS: You're very correct
22 about that, and I'm guessing a lot of paperwork.

23 JUDGE THEIS: Then you'll be on
24 improvement?

25 THE WITNESS: Yes, sir.

1 JUDGE THEIS: All right.

2 RECROSS-EXAMINATION

3 BY MS. TIBBETS:

4 Q. Just to follow up, you don't have that as a
5 final -- you don't have that final information now?

6 JUDGE BURR: I understand that.

7 A. You are absolutely correct on that, but
8 because of our parallel I would say we are almost on
9 the mark with that.

10 There's no way my 75 percentile on
11 proficiency in my 3rd grade reading is going to make
12 it. I know that.

13 Q. Let me ask you the same follow-up question
14 about the WOW program. You say that's in question,
15 but for right now, you're planning to have that next
16 year, right?

17 A. No, I'm not.

18 MS. TIBBETS: Okay.

19 THE WITNESS: I don't know how to
20 fit it in.

21 JUDGE THEIS: Thank you.

22 MR. RUPE: No further questions.

23 (Witness excused.)

24 MR. RUPE: Sarah Schaeffer.

25 SARAH SCHAEFFER

1 Called as a witness for the
2 Plaintiffs, was duly sworn by the reporter and
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. RUPE:

6 Q. Tell the Court your name and city in which
7 you live.

8 A. Morning. My name is Sarah Schaeffer. I'm
9 the library media specialist at Dodge City Middle
10 School.

11 Q. Give us a little bit of background on
12 yourself in terms of your educational background.

13 A. I was raised in South Dakota, and I got my
14 Bachelor's degree from South Dakota State
15 University. Go Jack Rabbits.

16 And I got a Master's degree at Fort Hayes in
17 elementary and secondary education, and I have an
18 endorsement in library science.

19 Q. Your work history?

20 A. My work history: This is my 42nd year
21 working with middle-level children and the only -- in
22 two schools. The first half was in Red Oak, Iowa,
23 the southwest corner of Iowa, and now for the past
24 20-some years in Dodge City.

25 Q. In the 20 years you've been in Dodge City,

1 where have you been the librarian?

2 A. I've only been the librarian -- I'm actually
3 a neophyte at this. This is my fifth year as the
4 library media specialist at Dodge City Middle
5 School. Before that time I was a visual arts and
6 video production teacher, also at Dodge City Middle
7 School.

8 Q. What was the reason for the move from visual
9 arts to library?

10 A. It was an opportunity. I saw it as an
11 opportunity. The person that was leaving the job
12 came to me and said I had the certification and they
13 said I'm -- they were retiring. And I saw it as an
14 opportunity to serve as a resource person for not
15 only the students at our school but for the faculty.

16 I'm very interested in interdisciplinary
17 teaming and interdisciplinary learning and I thought
18 maybe this would be an opportunity for me to be able
19 to serve as that kind of a resource person. And it
20 has certainly proven to be true.

21 Q. And describe for us what interdisciplinary
22 learning and teaming is.

23 A. At the middle school we are a transitional
24 school. We're the school between the elementary and
25 high school.

1 Our job, one of our main functions, is to
2 get the kids ready for high school and to be able to
3 wean them away from the self-contained classroom of
4 the elementary and get them ready for the
5 departmentalized structure of the high school.

6 And so one of things that we do is that we
7 have interdisciplinary teams where we have a science,
8 social studies, math, reading teacher, language arts
9 teacher in a small what has been mentioned "the
10 school within a school program."

11 We have about 800, over 800 students at the
12 middle school. But these teams of about 125 students
13 are shared by a group of teachers so that they also
14 have the opportunity to have a shared period of time
15 where they can discuss the needs of those particular
16 students.

17 Now, this also gives them autonomy over that
18 time and gives them an opportunity to flex the time,
19 which means like, for example, if they're doing --
20 one of the things they do is they teach the Civil War
21 unit in social studies, and so, therefore, the
22 language arts teacher can do a unit on the social
23 studies at the same time. They can plan together.

24 They come to me for resources to be able to
25 implement those kinds of interdisciplinary units and

1 teaming projects.

2 Q. Tell us a little something personal about
3 yourself.

4 A. Well, tomorrow I am going to be the mother
5 of a 30-year-old FBI agent. I'm very proud of that.

6 Q. Congratulations.

7 A. To her.

8 Q. I'm going to step over what we all know is
9 required by way of a suitable education and ask you
10 about the cuts that you've had at -- well, I better
11 get the demographics first. Give me the demographics
12 of the Dodge City Middle School.

13 A. We're about 75, 77 percent Hispanic. Of
14 that we are about 45, 47 percent are ELL students, so
15 there you have limited language skills.

16 Q. Now, is that 45, 47 percent of all kids, or
17 of the 75, 77 percent?

18 A. That's 47 percent of the whole student
19 population is ELL.

20 Q. Okay. Thank you.

21 A. Then we're about 14 percent special
22 education, students with special needs, that kind of
23 thing, about 80 percent free and reduced lunch.

24 Q. Eighty percent economics?

25 A. Yes.

1 Q. So in terms of the change in that
2 population, can you describe it over the last, say,
3 five or six years?

4 A. I can go back even farther than that,
5 because I can say 20 years ago when I started
6 teaching in the building, the room right next door to
7 my room, my art room, was the ELL classroom. And
8 there was 25, 35 kids in there, that kind of thing.
9 And now we're at 70 percent.

10 JUDGE BURR: What's the -- I don't
11 think you said the total enrollment at the middle
12 school.

13 THE WITNESS: About 800.

14 JUDGE BURR: Okay.

15 Q. (By Mr. Rupe) So the ELL population has
16 exploded?

17 A. That's an excellent way to describe it.

18 Q. And the at-risk population?

19 A. Same thing.

20 Q. Can you describe that?

21 A. Same thing, we had one room. We now have
22 four -- four.

23 Q. When you say four rooms of --

24 A. That's where we have specialized needs.
25 Most of the special education students are

1 incorporated into the core curriculum. They are
2 mainstreamed for the students. But there's still
3 students that have very specialized needs that need
4 to be brought in. So we have one for our students
5 that have emotional struggles and they have a
6 particular classroom that they have a teacher that
7 services their needs.

8 And then they have another one whose
9 educational needs are so acute that they need a
10 special teacher for those. And most of those
11 students are all day in that classroom, going out for
12 exploratory classes.

13 Q. Now, let's focus on what I was going to ask
14 you about, and that is, have there been any budget
15 cuts that have affected the library at Dodge City
16 Middle School?

17 A. Well, yes, I mean.

18 Q. Describe those --

19 A. Okay.

20 Q. -- for the Judges.

21 A. For example, when I took over five years
22 ago, and I know that it happened at least one year
23 before that time, because I worked with the gentleman
24 that I replaced, that the budget amounts that was
25 given to the library for services for the students is

1 exactly the same amount that it was six years ago,
2 exactly the same amount. \$7,400 was given to the
3 library to use.

4 Now, if you think about that, we have 800
5 students, 7,400, that's about \$9 a student that you
6 have, if I could use that money just to buy books for
7 kids. But one of the requirements that I also have
8 is that I also supply teachers with resource
9 materials, media materials, DVDs, and that kind of
10 thing that they can use in conjunction with their
11 lessons that they teach in classes. Any kind of
12 extra resource materials that they could use, that
13 comes out of it.

14 Strictly the materials that I need to run
15 the library to put the spine labels on books and that
16 sort of thing, the mylar to cover book covers, that
17 kind of thing. And also because I'm the media
18 specialist, I also have to deal with the AV equipment
19 that has to be taken care of, specifically replacing
20 bulbs and that kind of thing.

21 If I may go on, for example, that LCD
22 projector you've got right there, overhead projectors
23 have now become dinosaurs, even though I have one
24 teacher that won't give it up. But LCD projectors
25 are in the classroom because they can be hooked up to

1 computers and they can be used as a teaching tool.

2 Those LCD projector bulbs, the bulb that's
3 in it has a life expectancy of about two years.
4 Starting cost on that bulb is \$325, between 325 and
5 400.

6 So these are the kind of things that I have
7 to take out of my budget to try and maintain those.

8 Q. During the period of time that you've
9 described where your budget has remained the same,
10 has there been an increase in enrollment?

11 A. Oh, yes, sir.

12 Q. And --

13 A. Yes, sir.

14 Q. -- that increase has included the ELL kids
15 and at-risk kids?

16 A. Absolutely.

17 Q. Describe what the costs of the books are.

18 A. Well, when I first started, we could get a
19 paperback for about 9, \$10. Right now right you're
20 going to probably pay 12 or \$13 for one, hardback
21 books.

22 And then when you get into nonfiction,
23 that's a whole different matter entirely. They are
24 outrageously expensive. They're going to start at
25 25. They're going to go up from there. They're

1 going to be terribly expensive. With the advent of
2 Common Core coming in and saying there needs to be
3 more nonfiction materials in the library, that's
4 going to be a need that we're going to be having.
5 And they're very expensive. They're going to start
6 at 25 and go to 60, \$70 apiece depending on
7 what they particularly need.

8 We also run into the situation of the needs
9 of our particular kids. For example, you know, we
10 talked about when students come to the school for the
11 first time, and we've got students that will be the
12 first time they are in school in the United States in
13 Dodge City is when they are 7th- and 8th-graders. So
14 we're talking 13, 14 years old and they don't speak
15 the language.

16 They're good kids. They want an education.
17 They just are handicapped by they don't happen to
18 speak English. And so we're then charged with trying
19 to get them started. And we need to give them
20 resources then that are appropriate for the reading
21 level that they have.

22 Well, to say to a 14-year-old young man,
23 here is a Dick and Jane picture book that you can
24 read because it's appropriate for your level is
25 difficult to do.

1 And I prefer to be able to get materials
2 that are more suited for him.

3 There is a whole burgeoning industry by book
4 publishers in what's called high-low reading, high
5 interest, low reading level. Book looks great, has
6 the same cover, has the soccer player on the front of
7 it, has that kind of thing. It looks the same as
8 everybody else has in their hand, but the reading
9 level is about 2nd grade so that that young man can
10 keep his dignity and still be able to continue to --
11 continue on with his language acquisition when it
12 comes to this.

13 And these are the things that I want to do.
14 And they're not cheap. Those books aren't cheap.

15 Q. I don't want somebody to misinterpret what
16 you just said.

17 A. Okay.

18 Q. You said --

19 A. Please.

20 Q. -- you would prefer to have those books in
21 terms of the outcomes of ELL students and at-risk
22 students?

23 A. Okay.

24 Q. Would you put that in the category of a
25 preference or something that you think is necessary?

1 A. In my opinion it's absolutely crucial. We
2 want these students to stay in school.

3 You see, our middle school kids are at the
4 cusp. They are at that age where they're making
5 decisions, and they're making crucial decisions in
6 their lives, particularly as to whether they want to
7 go on, continue on to high school.

8 And I don't want them to be a statistic in
9 Jacque's school as a dropout when if I could give
10 them resources in the middle school that would help
11 them increase their language acquisition in a way to
12 help them. I think it's absolutely necessary. I
13 think it's absolutely crucial.

14 Q. And describe for the Judges why it is
15 important to have other than just middle school books
16 in the middle school.

17 A. Well, I have 800 students at this school,
18 and in order to service the needs these kids have, I
19 literally have to have books on the shelves with a
20 reading level of almost pre-K, certainly
21 kindergarten, through adult level, because that's
22 where the reading levels are for these students, for
23 all the students that I have.

24 To say that I only need books that are for
25 7th- and 8th-graders quite literally is ludicrous,

1 because I have all of those wide reading levels with
2 our general population, with our ELL population, with
3 our special ed population, with everybody that we
4 have in the school. I have to have a full range. I
5 have to have a full range.

6 Kathy has mentioned she's going to have a
7 5th grade in her elementary school, and it's
8 something she's going to have to address in their
9 library of having books added to their collections.

10 Q. Is your current nonfiction section what you
11 need in order to comply with Common Core standards?

12 A. No.

13 Q. I do know the answers to these questions,
14 because I talked to you about it. But explain to the
15 Judges what some of the books that you have in your
16 science section, how old they are and what they make
17 reference to.

18 A. I'm weeding my collection. It's become -- I
19 think it's becoming apparent to virtually everybody
20 that a reference section in a library is pretty much
21 out-dated anymore. I haven't bought since I've been
22 at the Dodge City Middle School a printed
23 encyclopedia. I don't intend to, because we can get
24 those services online that are updated and in better
25 shape and atlases.

1 And the geography changes daily, hourly
2 sometimes and all of those kinds of things. So I
3 decided to dismantle the reference section and then
4 rebuild, reorder the nonfiction section of the
5 library. And in order to do that I also decided it
6 was time to weed the collection.

7 And we've been going through and we've had
8 kind of a contest finding out what was the most
9 interesting copyright date. I won. The other day I
10 got a 1929 copyright date on a book. I also ran
11 across a book in the science section that said that
12 they hope very soon to decipher DNA.

13 I also found another one in the science
14 section that said they hope some day to land a man on
15 the moon.

16 Those books, by the way, have been weeded
17 from the collection.

18 Q. In terms of the affordability of technology
19 to replace the books, describe how that works in
20 terms of your budget.

21 A. It's kind of tough. I don't know how that's
22 going to happen, quite honestly, to tell you the
23 truth, because there are online services that you can
24 get to replace a lot of these things. You can buy
25 licenses for schools or districts and you can do

1 that.

2 But, okay, they are pricey. They really
3 are. And where that money's going to come from? I
4 know it can't come from my library budget. I don't
5 know.

6 Q. Okay.

7 In terms of the cuts that you've described,
8 how -- well, let me talk about space for a second,
9 not landing a man on the moon, but the space at the
10 library.

11 A. They did that, by the way.

12 JUDGE BURR: You can put that book
13 in the history section.

14 THE WITNESS: That's a really good
15 idea. Thank you.

16 Q. (By Mr. Rupe) As the enrollment has
17 increased at the middle school --

18 A. Right.

19 Q. -- describe what has happened to the
20 library.

21 A. We are the every shrinking Dodge City Middle
22 School library. I have quite literally half the
23 floor space I had before.

24 When I walked in there five years ago they
25 had one section that they used as office space for

1 the gifted education facilitator. And then they had
2 another little space carved in the back where they
3 had an in-school suspension kind of area and they
4 needed more space so they were going to chop it up
5 again.

6 And basically what happened is they put a
7 wall right down the middle of the library, so I have
8 now been squeezed out and I have a conference room.
9 I have two offices, I have a classroom, and I have
10 another storeroom that has been carved out of the
11 space that I had. So they keep encroaching into the
12 area.

13 We have to -- we've got teachers teaching in
14 what literally were storerooms because we're so
15 overcrowded. And we just don't have any choice.

16 So I was the last bastion, so they took over
17 my space too.

18 Q. In terms of the increased enrollment, that
19 enrollment has increased over time in the last few
20 years?

21 A. Oh, yes, absolutely.

22 Q. Sounds like it has affected your space?

23 A. Without a doubt.

24 Q. In terms of -- let me phrase the question
25 this way: Couldn't you go out and get technology to

1 replace these books and have computers for the kids
2 and doesn't all this result in a significant benefit,
3 because we have more classroom space because of what
4 had to be done and the library doesn't need as much
5 space as before?

6 A. Yes. As a matter of fact, part of the space
7 that I took out and one of the things that I fought
8 for when I came in there and I took away part of my
9 own space was that I wanted a computer lab. And I
10 have a computer lab in that library now.

11 Q. When did you put that computer lab in?

12 A. That started the year that I went in. That
13 went in five years ago, four years ago.

14 Q. Now, tell the Judges whether a library is
15 important to the student population of Dodge City
16 Middle School and why it is.

17 A. Well, it's not just a matter of checking out
18 books. It's a matter of that computer lab is a
19 teaching lab. Other than our actual computer labs
20 that we have for the team, there are no computer
21 labs -- there's one lab and that's in my library,
22 where teachers can bring a whole group of students
23 down and teach in that lab. And they do that.

24 As a matter of fact, I've had to restrict
25 them to three consecutive days because otherwise

1 they'd just hog the place, and because there are so
2 many resources and so many things they can do online,
3 they know that's important.

4 I knew that was important when I came in.
5 And I said, I will give up space to have that lab in
6 there. The computers that I got were the ones that
7 were left over, you know, because they got me folding
8 tables and put computers on there. And that was okay
9 to start with. That's fine. They have over the time
10 replaced them as they can afford to.

11 But that computer lab is critical. That's
12 absolutely critical. All of the work that we did in
13 the reference section is now being done in that
14 computer lab. All of that's being done in there.

15 I teach in that lab all the time. Teachers
16 teach in that lab all the time.

17 So, yes, I mean, the character of a library,
18 of a public school library is changing. There's no
19 doubt about that. There's no doubt about that.

20 Q. Tell us what your budget covers.

21 A. My budget covers books to put in the hands
22 of children. It covers materials that I need to
23 process books and get them on shelves and take care
24 of that.

25 It also purchases media materials for

1 teachers to use, DVDs and materials that they may
2 need, audio visual materials that they need in the
3 classroom. Professional materials as I can afford
4 them as money will afford to have additional things
5 for the classes to use, particularly in the
6 intervention programs and those kinds of things. And
7 then try and maintain AV equipment.

8 Q. And when you say professional interventions,
9 interventions being one of those strategies that
10 works with at-risk and ELL kids?

11 A. Right.

12 MR. RUPE: That's all I have.

13 Thank you.

14 THE WITNESS: Thank you.

15 MS. TIBBETS: I just have a couple
16 of things, ma'am.

17 CROSS-EXAMINATION

18 BY MS. TIBBETS:

19 Q. I was looking on the state website and it
20 looks like in '04/'05, you had about 840 students in
21 that building, but that since then you kind of
22 hovered around 799, 800, 805 mark. Is that different
23 than your memory?

24 A. Not that I'm aware of.

25 Q. You just said you thought that the number of

1 students had climbed, and that would not be what the
2 state would show. And I'm just wondering if you
3 think the state's incorrect?

4 A. Well, I don't think the state is incorrect,
5 but I think the character of the classes changed.

6 Q. Sure. But number of students you would
7 agree has not increased since '04/'05?

8 A. Perhaps so.

9 Q. Okay. And I think you also said that the
10 budget about six years ago, about 2006, was the same
11 as it is today?

12 A. Yes, ma'am.

13 Q. At Dodge City Middle School you teach -- you
14 have a band program?

15 A. Yes.

16 Q. And orchestra?

17 A. Yes.

18 Q. And vocal music?

19 A. Yes.

20 Q. And then life skills?

21 A. Mm-hmm.

22 Q. And life skills is teaching things like
23 what?

24 A. We remember it as home ec.

25 Q. Okay. There you go. You have video

1 production there?

2 A. We did up until this year. It's been cut.

3 Q. Okay. You teach technology skills there?

4 A. Yes.

5 Q. And then this year your school was honored
6 as a finalist in the Kansas Association of Middle
7 School Administrators as the middle school of the
8 year, right?

9 A. Correct.

10 Q. And there was a banner and an announcement
11 in the newspaper about that, right?

12 A. Yes, ma'am.

13 Q. And the newspaper says that it was because
14 of your state test scores and the programs that you
15 offer there at the school. Do you understand that
16 that was part of the criteria?

17 A. Yes, ma'am.

18 Q. Also, your school has been awarded -- or was
19 awarded the 2010 reading challenge award?

20 A. Yes.

21 Q. In 2009, a gold standard award in reading
22 and in math?

23 A. Yes.

24 Q. And you have a program where on Wednesdays,
25 there's professional learning committees and your

1 administrators or coaches check on how the children
2 are doing?

3 A. Yes. What happens is that a middle level --
4 a middle school schedule, each teacher has two prep
5 periods. They have one personal plan and one team
6 plan. What we have done is we have manipulated the
7 schedule -- well, shuffled the schedule in such a way
8 that on one day a week instead of working with their
9 interdisciplinary teams, they can work with their PLC
10 group, which is the professional learning groups.

11 Which means that all the math teachers get
12 to talk together, all the reading teachers get to
13 talk together, so forth.

14 Q. That's one of those strategies that we've
15 heard about so that they can keep track of how
16 individual kids are progressing?

17 A. Yes, and also be able to share information
18 as to what's happening at the grade levels.

19 Q. Okay.

20 MS. TIBBETS: All right. I don't
21 have anything further.

22 THE WITNESS: Thank you.

23 JUDGE BURR: I'm sorry, go ahead.

24 MR. RUPE: No, that's fine.

25 EXAMINATION

1 BY THE PANEL:

2 JUDGE BURR: How many -- I want to
3 call them junior high schools, but there's a
4 difference?

5 THE WITNESS: Yes, there is.

6 JUDGE BURR: How many middle
7 schools are there in Dodge City?

8 THE WITNESS: One this year. There
9 will be two next year.

10 JUDGE BURR: Well, I guess, how do
11 you get 1,800 people in the high school? I guess you
12 got more grades. Maybe that's why. That's what I'm
13 trying to rationalize.

14 THE WITNESS: The restructuring has
15 done this because of the size of the school. And
16 this balloon of children that's coming up through the
17 elementaries, it's become necessary. And so what we
18 did, we have two intermediate centers that have 5th-
19 and 6th-graders.

20 JUDGE BURR: Okay.

21 THE WITNESS: One will become an
22 elementary school next year, a K-5 elementary. The
23 other 5-6 intermediate will become the second junior
24 high. And those junior highs, those are -- I did it
25 myself -- middle schools, will then be 6th, 7th, 8th.

1 The 6th grade is going to be put in there. It will
2 be a three-year middle school. This year right now
3 we are 7th and 8th grade. We'll be three grades next
4 year.

5 MR. RUPE: Nothing further.

6 JUDGE THEIS: I have one question.
7 Do you have some kind of working program with Dodge
8 City Library?

9 THE WITNESS: Public library, yes.
10 We have a really good working knowledge with that.
11 We have the consortium that has all the school
12 librarians, the community college librarians and our
13 public library and we all meet monthly and have an
14 open communication and work very openly with one
15 another, yes.

16 JUDGE THEIS: And your students
17 have library cards for the main library?

18 THE WITNESS: Yes, sir.

19 JUDGE THEIS: So you can refer them
20 if you don't have something there?

21 THE WITNESS: Yes.

22 And quite honestly, they do the
23 reverse for young adult literature, the middle school
24 library has a very good collection.

25 JUDGE THEIS: Better than at the

1 city library?

2 THE WITNESS: Mm-hmm.

3 JUDGE THEIS: Thank you.

4 THE WITNESS: Is that it?

5 MR. RUPE: Nothing further.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 JUDGE THEIS: What's your plan?

9 MR. RUPE: We've got two by 3:00,
10 so two witnesses left by 3:00.

11 JUDGE BURR: Are they both Dodge
12 City people, or I guess what I was asking, you've got
13 one more of the Dodge City people?

14 If that's not the case, I don't
15 believe it makes any difference.

16 MR. RUPE: They're all together and
17 I have the superintendent and the business manager
18 left to go.

19 JUDGE BURR: I'm sure they want to
20 stay as long as possible.

21 MR. RUPE: We can break now if you
22 want or I can get started with Alan Cunningham and
23 stop at 12:30, whatever you want to do.

24 JUDGE THEIS: Take an hour and
25 fifteen minutes. We're going to get an hour and a

1 half either way you cut it.

2 Is that plenty of time?

3 MR. RUPE: I'm going to try to make
4 it work.

5 JUDGE THEIS: Do you think that'll
6 work?

7 MS. TIBBETS: I don't know.

8 MR. CHALMERS: I don't know how
9 long the direct will be, but it could be pushing. I
10 think it should work.

11 JUDGE FLEMING: We'll just take an
12 hour.

13 MR. RUPE: Okay.

14 JUDGE THEIS: Be back at 1:15.

15 MR. RUPE: All right.

16 (A recess was taken.)

17 JUDGE THEIS: Be seated. Thank
18 you.

19 MR. RUPE: I think in terms of the
20 evidence this afternoon, we're going to put on, as I
21 indicated, Alan Cunningham.

22 I think what we'll try to do is get
23 him completely done today and Bill Hammond, the
24 business director, has indicated he's available to
25 come back and complete his testimony sometime in the

1 last two weeks of trial.

2 JUDGE THEIS: Okay, if necessary,
3 sure.

4 MR. RUPE: Okay. So I'm shooting
5 for 3:00 is what I'm saying.

6 JUDGE THEIS: You'll be home alone
7 if it's after 3:00.

8 JUDGE BURR: Which you might
9 prefer.

10 MR. RUPE: I might make some
11 progress.

12 Call Alan Cunningham to the stand,
13 please.

14 ALAN CUNNINGHAM,
15 Called as a witness for the
16 Plaintiffs, was duly sworn by the reporter and
17 testified under oath as follows:

18 DIRECT EXAMINATION

19 BY MR. RUPE:

20 Q. Tell the Judges your name and the city in
21 which you reside.

22 A. I'm Alan Cunningham and I live in Dodge
23 City.

24 Q. Would you describe for the Court what your
25 title is.

1 A. Yes, I'm superintendent of schools.

2 Q. For Dodge City?

3 A. Dodge City USD 443.

4 Q. Give us a little idea of your educational
5 background.

6 A. I am a native Oklahoman, graduated from
7 Oklahoma Baptist University with a BS in education.
8 Got my first teaching job in Dodge City USD 443 in
9 1974. Have been there ever since.

10 In the meantime finished a Master's degree
11 from Kansas State University in education and
12 finished in building licensure for a school district
13 school building administrator from Fort Hayes State
14 and a district superintendent licensure from Fort
15 Hayes State. And have about 60 additional hours on
16 top of that.

17 Q. What year did you become superintendent?

18 A. I just finished my sixth year, so I believe
19 it was 2006.

20 Q. So you were in Dodge City as superintendent
21 during the period of time where they saw resources as
22 a result of the Montoy case?

23 A. That's correct.

24 Q. And you were there through the cuts we're
25 going to be talking about?

1 A. That's correct.

2 Q. If you would, describe -- well, we've got
3 education, we've got work history. Tell us a little
4 something personal about yourself.

5 A. Just I've been privileged to be in Dodge
6 City, learn my career there, make my mistakes, and
7 they still kept me around.

8 Q. Well, let's --

9 A. I've also had two kids go through Dodge City
10 public schools.

11 Q. Let's go through the demographics of Dodge
12 City in the period of time that you have been there.
13 Explain the change in the demographics of that school
14 district. We've heard a little bit about different
15 schools, but give us the overview on the district
16 during that period of time.

17 A. What I know of the district when I first
18 started, because I was a teacher at Northwest
19 Elementary School where Ms. Ramsour is the principal
20 now, we had a majority of Caucasian. If we had
21 minority students at all there may have been a few
22 African Americans whose families had been in Dodge
23 City for many, many years or a few Hispanic folks
24 whose families had come in with the railroad way back
25 in the early 1900's.

1 So they were multi-generational ethnic
2 minorities, but yet they were a very strong part of
3 our community.

4 Since that time with the advent of the beef
5 plants and other industries that have come into our
6 area, migrant works for ag-related industries, for
7 instance, we are now a 75 to 90 percent -- let me
8 restate that. As a community we're between 60 and 70
9 percent minority, I believe. As a school district we
10 are approximately 84 to 85 percent, from 80 to 85
11 percent minority students in my elementary grades.
12 Overall district-wide we're between 75 and 80 percent
13 minority.

14 In addition, back when I began and for the
15 20 years before the beef plants came into town we
16 were probably considered a good blue collar, average
17 income, hard-working southwest Kansas ag-related
18 community. And since that's come in we have
19 increased the number of migrant students. Those are
20 students whose families move with the ag-related
21 industries. We've increased the number of minority
22 and significantly increased the number of students
23 whose families live what we would consider in
24 poverty.

25 Q. Let's see if we can get some accurate

1 numbers as of today in terms of the district's ELL
2 population percentage-wise.

3 A. I want to be sure everybody understands just
4 because you're Hispanic doesn't mean you're ELL. We
5 have about an 80 something -- about an 80 percent
6 Hispanic population but have about a 56 percent ELL
7 population.

8 Q. So in terms of student population in your
9 district, the ELL population is the majority?

10 A. That's correct.

11 Q. And in terms of the Hispanic population,
12 it's closing in or around 80 percent?

13 A. Yes.

14 Q. What about kids and poverty, at-risk?

15 A. We have about 84, 85 percent of all students
16 either qualify for free or reduced price meals. We
17 also have, which is a couple other significant
18 populations, we have about 12 to 13 percent of our
19 kids qualify for special education services.

20 And we, being one of the larger communities
21 in southwest Kansas, are able to provide educational
22 services for those families and their children.
23 We're also able to provide some medical services.

24 So we're seeing our special education
25 numbers go up, especially among the higher needs, the

1 kids who need medical services on a daily basis
2 throughout the school day.

3 The other group that is significant for us
4 is a migrant population. We have about 15 percent of
5 our students, about 17 percent, I believe, that
6 qualify under the federal definition of migrant
7 families. And those are families who move frequently
8 for agriculture-related jobs.

9 And the significance of that group to us is
10 that those children have often had their schooling
11 interrupted frequently, often multiple times in a
12 school year. And so they come to us with some
13 significant interruptions in what they've been
14 prepared to come into our school district with.

15 Q. Give us the idea of -- give us an idea of
16 the growth of your district in the last five or six
17 years.

18 A. I believe the numbers of students have
19 increased 400, 500 students in grades K through 12.
20 If you add in our early learning or preschool
21 programs, as well as some of the adult services we
22 try to provide in our community, we're up about 600
23 students in four or five years.

24 Q. And I may be wrong about this, but do I
25 remember that your -- for the last four, five, six

1 years, your kindergarten class has been larger than
2 the previous year?

3 A. That's correct. We have -- you heard one of
4 the other people mention the bubble that's going
5 through in Dodge City. We have 410 students
6 graduated from Dodge City High School last year, the
7 largest graduating class in Dodge City history, 125th
8 graduation, the commencement ceremony.

9 However, we had last year 550
10 kindergartners, 530 1st-graders and 500-and-something
11 2nd-graders.

12 This year pre-enrolled for next year, and we
13 still have a whole year to go, we're approaching 600
14 kindergartners coming into our school for next year.

15 So the plan we have to do, we have to look
16 way in advance. That's what's led us to some of the
17 things you heard us talk about grade level
18 reorganization and moving grades around in the
19 buildings.

20 Q. In terms of that increasing number per next
21 year, that would make how many years in a row that
22 your kindergarten class has been larger than the
23 preceding year?

24 A. Oh, I know the last -- I believe it's the
25 last four years in a row we've had over 500. It's

1 almost always been greater than the preceding year in
2 the last 14 years.

3 Q. Is the demographics of that incoming class,
4 kindergarten class, what you've described by way of
5 percentages?

6 A. It's more heavily other ethnic other than
7 Caucasian. It's more heavily Hispanic in most of the
8 cases. We have a larger percentage of those families
9 who are also migrant. And a larger percentage than
10 our district average of those new students who are
11 English language learners.

12 Q. Take a look at Plaintiffs' Exhibit 115. If
13 the Court would like to see the percentages that
14 you've explained are they listed on this exhibit?
15 That's the report card for 2010/2011 for your
16 district.

17 A. Those are for the prior school year, yes.

18 Q. What you gave us is?

19 A. What I believe to be this past school year.

20 Q. By the way, on Plaintiffs' Exhibit 115, it
21 says at the top, Title I District On Improvement
22 Dodge City. What does that mean?

23 A. It means that as a district we did not make
24 adequate yearly progress for two consecutive years in
25 one or more subgroups of students on the state

1 assessments.

2 Q. And you have, we've heard a little bit about
3 it, a parallel assessment mechanism to keep track of
4 assessments?

5 A. Yes, sir. We've spent a lot of money and
6 time and manpower developing a parallel data
7 management system. Typically state assessment
8 results aren't available to my teachers and
9 principals until after they are released to the state
10 board in August or September or October.

11 We can't wait until school starts next year
12 to find out what the kids the previous year ended the
13 year needing.

14 So over the last several years we've
15 developed an instructional management system that we
16 can get that data very quickly and run parallel
17 reports while we wait on the state to make it the
18 official copy.

19 That's now been taken down to where that's
20 available to every teacher on their desktop, so they
21 can access their incoming students, their prior
22 year's scores not only on state assessments, but also
23 on our local and any other local indicators we use.

24 So the teacher coming into a new classroom
25 full of students can immediately know what the

1 deficits and needs and strengths are of those
2 students coming into his or her classroom.

3 Q. Describe for the Judges what your test
4 scores are this year.

5 A. Well, the reason we were on improvement is
6 we had one subgroup of students, who just happened to
7 be our special education students or students with
8 disabilities, who were not able to make adequate
9 yearly progress.

10 What is unique is that my buildings as
11 buildings all made AYP, but as a district we didn't.
12 And the way that happens is when they aggregate the
13 number of students, in order to have a group, a
14 subgroup, a building has to have at least 30 or 35
15 students in a subgroup to have their scores count for
16 that subgroup. Many of my buildings, for instance,
17 don't have 35 or 40 special education students. But
18 when you aggregate those numbers as a district, the
19 number becomes large enough to have that subgroup.

20 So as the district we did not make AYP with
21 our special education students for the last two
22 years.

23 Preliminary results this last year from last
24 spring's assessments show that even though the bar
25 went up to make AYP, the bar goes up each year, that

1 I now have six subgroups that did not make AYP this
2 past school year.

3 Q. And with the current test scores with your
4 parallel system, do you consider those preliminary on
5 your own?

6 A. They are preliminary as far as the state's
7 concerned, but they're not preliminary for us. We're
8 planning right now for next school year based on that
9 data.

10 Q. Now, tell us the subgroups that did not make
11 it.

12 A. If I remember them correctly, it was the all
13 students group, and I'll explain that a little more
14 in a second. It was our Hispanic students group, it
15 was our ELL students group, it was the students with
16 special education needs, and it was our free and
17 reduced lunch students.

18 Now, in Dodge City, many of those students
19 in each of those subgroups are the same students.
20 And since we are an 80 percent Hispanic district, if
21 the Hispanics don't make it, our district doesn't
22 make it. Since we're an 84 percent free and reduced
23 lunch district, if our free and reduced lunch kids
24 don't make it, all students don't make it.

25 So we went from one subgroup, that being in

1 my opinion the most needy, and that's the students
2 with disabilities not making it for the last two
3 years.

4 This year it appears we'll have six
5 subgroups.

6 Q. Let's talk a minute about graduation rates.
7 In Plaintiffs' 115, explain what the district -- you
8 don't have to itemize these, but maybe I can just
9 show this and move things along.

10 Let me just show this Exhibit 115. Explain
11 to the Court what the four-year cohort graduation
12 rate is. And you don't have to go through the
13 percentages, because they're on the exhibit, but just
14 explain what those are, four-year cohort graduation
15 rate and five year.

16 A. The simplest explanation I can give you, and
17 Ms. Feist can do a much better job than I on this, is
18 that the students who began with us four years ago,
19 the 80, I believe it's over 80 percent, 82.7 percent
20 of those students graduated. And the five-year
21 cohort is they graduated within five years. They may
22 have taken an extra summer to graduate, an extra
23 semester, but we had 77 point something total
24 graduate over five years.

25 And I could stand corrected on some of that,

1 but I believe that's the designation.

2 Q. Okay. And so among the four-year cohort
3 rate, free and reduced lunch is 80 percent; am I
4 understanding?

5 A. Yes, you are.

6 Q. Twenty percent did not graduate?

7 A. Not exactly.

8 Q. Okay, explain.

9 A. If you consider not graduating being
10 dropouts, that is not a correct statement. If you're
11 considering 20 percent not graduating from Dodge City
12 High School, that is a correct statement.

13 Q. All right. So now I think we understand
14 percentages and five-year cohort rate, it drops down
15 to 72.6 percent --

16 A. That's correct.

17 Q. -- of free and reduced lunch that
18 graduated?

19 A. That's correct.

20 Q. Turn to Exhibit 271, please. And in terms
21 of a visual, I think of what you've described so we
22 can see this over a period of time, 2005 to 2011
23 is -- what is 271?

24 A. It's a report made to our Board of Education
25 following a staff trip to California, I think you've

1 heard it mentioned before, to learn from
2 practitioners better strategies to use with English
3 language learners. And they came back and made a
4 presentation to our Board of Education about what
5 they'd learned.

6 Q. As part of that presentation, there was some
7 information on your enrollment 2005 to 2011. And
8 just walk us through that. Are those the percentages
9 for the disaggregated group?

10 A. Yes, they are.

11 Q. And those are listed at the bottom. What's
12 LSES?

13 A. You're going to have to help me out with
14 that one.

15 Low socioeconomic status.

16 Q. Is that the at-risk?

17 A. It would be in this case, I believe, that
18 the only ones are there were free lunch students. I
19 don't believe we included the reduced price lunch,
20 LSES.

21 Q. So LSES would be free lunch students?

22 A. I believe free and reduced, yes.

23 Q. And then we have the Hispanic population,
24 ELL, White and --

25 A. Special Ed.

1 Q. -- special ed. And that shows the growth in
2 your community over that period of time, growth in
3 percentage?

4 A. Growth in percentage of our total student
5 population. Doesn't show the growth in number of
6 students. Just shows how our low SES population, our
7 low income students, have gone from 70 percent to
8 almost 80 percent in the last five years.

9 Hispanic students 65 to 75 and so on.

10 Q. Describe for the Judges what the changing
11 demographic population has, what effect it has on
12 your district.

13 A. If you're talking about changing from when I
14 first started teaching in Dodge City, the changing
15 demographic had a significant impact on our community
16 and our school district because it made a lot of
17 difference in how we met the needs of kids.

18 If you're talking about just the changing
19 numbers in the last five or six years, it just means
20 that we have more kids to deal with, with virtually
21 the same number of staff.

22 We have added a few staff in a few places
23 with an increase in students of about five to six
24 hundred and probably added less than a dozen or maybe
25 around a dozen, less than 20, staff to take care of

1 those.

2 We've got larger class sizes. As you can
3 see from the demographics, we have more students that
4 are English language learners, more students coming
5 to us from poverty, more students with special ed
6 needs and more students that have moved as a result
7 of their parents' employments. So we have more
8 students with educational deficits.

9 Q. And do you agree with what we've heard in
10 this courtroom in terms of disadvantaged groups by
11 way of free and reduced, with regard to ELL, with
12 regard to Hispanics and with regard to African
13 Americans, that when those kids come to school they
14 cost more to educate?

15 A. I can't speak to African Americans, but to
16 the other groups, especially with the Hispanics with
17 an English -- with a language other than English, the
18 answer is very definitely yes.

19 Q. And I'm going to step over what is a
20 suitable education, but let me go right to the
21 question of whether in your opinion Dodge City has
22 the resources today to provide a suitable education
23 to all its kids.

24 A. My answer, the short answer is no. Our
25 Board of Education has set a goal that we are

1 supposed to produce all of our students as being
2 capable and contributing citizens in our world. And
3 we don't believe that the resources we have right now
4 are adequate to be able to do that for all students.

5 Q. In terms of the goal your board has set, do
6 you see that any differently than what state law is
7 requiring you do?

8 A. No.

9 Q. In terms of what you've just explained, what
10 is lacking?

11 A. To produce a successful student to be a
12 capable contributing participate in our world, we
13 believe it takes good quality education. And quality
14 education in my opinion is based upon three things.
15 It is having a highly qualified, well-trained,
16 compassionate, caring teacher working with students.

17 It's based on adequate resources available
18 to meet the needs of those kids.

19 And it's based on having enough time for
20 students who come into your classrooms with any sort
21 of deficit having enough time for them to recover
22 from the negative effects of that deficit and then to
23 proceed to excel or exceed to what they're capable of
24 doing.

25 Q. And here's what I'd like you to explain to

1 the Judges, because I'm sure we're going to hear
2 about that, in terms of the money that Dodge City
3 receives because of the additional students you've
4 described, has Dodge City received more money than it
5 has the year before in the last year?

6 A. No.

7 Q. Okay. In terms of budget cuts, when did you
8 first experience budget cuts?

9 A. Almost seems it's the way of life right
10 now. With the 2009 school year, I believe, was the
11 first big one.

12 Q. We've got the time line.

13 A. You've got the time line.

14 Q. I'm sorry, it's up here.

15 A. Okay, I'm right, the Fiscal Year 2009.

16 Q. Dodge City was a plaintiff in the Montoy
17 case?

18 A. That's correct.

19 Q. And Dodge City received additional funding
20 as a result of that Montoy decision and Kansas
21 action, right?

22 A. That's correct.

23 Q. And then in 2009, you indicated that's when
24 the funding decreased?

25 A. Began decreasing, that's correct.

1 Q. In terms of the funding decrease, would you
2 describe for us what Dodge City experienced by way of
3 cuts and what they did about it.

4 A. Our Board of Education at the time was made
5 up of about half former educators, retired educators,
6 and they were very aware of the effect of assets,
7 resources, to the classroom teachers.

8 We went through a time where our Board of
9 Education met, administrative team met, we met with
10 teacher groups, met with community groups to identify
11 priorities for funding and continued funding in our
12 school district and then priorities for the cuts.

13 On one Dodge City USD 443 has been very
14 blessed. We've been a growing district. One of not
15 very many in the State of Kansas. And as a result,
16 we were able to weather the cuts that came from the
17 state much better than many other districts could
18 because we had additional income coming in from the
19 additional students that we had coming to our
20 district.

21 It didn't mean we had the additional money
22 to meet the needs of those students. It just means
23 we didn't have to cut anybody we had prior.

24 As part of all these study groups that our
25 board initiated, we identified four or five

1 priorities. The first being we would just not incur
2 any additional expenses.

3 So one of those things as an example is we
4 knew we had increased numbers of students, we would
5 just not incur additional expenses for adding
6 additional staff. We needed to fill up all the
7 classrooms or add those incoming students into
8 existing classrooms in order to take advantage of
9 that and not incur any additional expenses.

10 The other thing that they did, they
11 identified things that they knew would be coming that
12 we could do something about in the short term,
13 because in the long term it was going to get us. And
14 that had to do with classroom space. Even with the
15 Montoy money, which was fantastic for us, we didn't
16 have any classrooms empty in our district that we
17 could hire new teachers or additional teachers to put
18 in the classrooms.

19 So one of the board's priorities was to look
20 for ways to add additional classroom space.

21 Our community has been very supportive of
22 its schools. And in 1995, which I know is many, many
23 years ago, but it's really not for those of us that
24 have been there like some of the times you've heard
25 us talk about today, we voted, our community voted,

1 to build three new schools.

2 We hadn't built any schools since 1958. We
3 had asked for them; not for not asking. We had asked
4 for them, but the bond issues had not been
5 successful.

6 Finally in 1995, we voted to build three new
7 schools. We continued to grow as a district.

8 Later we actually voted to build a new high
9 school, renovate the old high school. So we have
10 really taxed our community through bond issues to
11 build facilities for kids.

12 However, with the new high school opening in
13 2001, as you could see from our enrollment, we've
14 continued to grow.

15 We believe we could take care of some of the
16 growth in existing facilities, but we have literally
17 maxxed out every available classroom.

18 So in the budget cut planning process, our
19 Board of Education said we have got to get additional
20 classrooms. So rather than use some of those funds
21 that the Montoy case gave us for teachers for
22 resources, for extended learning opportunities, we
23 did do some of those things; the extended learning
24 opportunities specifically. But we also designated
25 some of those dollars to help us provide additional

1 facilities.

2 We built an elementary school and paid cash
3 for it in five years so we would have classroom
4 spaces to hire teachers to take care of the
5 increasing numbers of kids.

6 That's what we used our Montoy money for.

7 When our board continued to get ready to
8 plan for the cuts that have come since 2009, they
9 said, Let's don't incur any additional expenses, so
10 we're not going to hire a lot of new staff. The
11 other big thing we said was, we've got needs from
12 those elementary numbers. We talked about 550 kids
13 in kindergarten and 550 kids in 1st grade. Those
14 kids will be at our 7th and 8th grade middle school
15 pretty soon.

16 That's 1,100 kids in a building that this
17 year has 800. They said we've got to do something
18 for middle-level learners. We don't want to wait
19 until the crisis to do it.

20 So at that time, they voted to renovate some
21 of the -- the current middle school to bring its
22 electrical systems up to the capacity to handle
23 computers, upgrade the heating and ventilation and
24 air conditioning systems, replace some windows that
25 were literally letting snow blow in the windows and

1 rain; spent a little bit of money on that.

2 They also said at the same time one middle
3 school is not going to do us. So we began talking
4 with our public about a second middle school.

5 I apologize for the history lesson. But it
6 gives you a perspective on what we've tried to do in
7 Dodge City to accommodate this.

8 We had a college close down in Dodge in the
9 early '90s, the St. Mary's of the Plains College.
10 That facility set virtually empty since that time.
11 It's been assumed by -- the responsibility for it has
12 been assumed by our city.

13 We went to the city and said, If we could
14 get our voters to approve the bond issue, would you
15 allow us to have the facility? We would almost need
16 to almost double the size of it, but open it as a
17 second middle school.

18 The city graciously did that. We did all
19 the planning preparation, bond campaign, the whole
20 nine yards. Took it out for a vote to the public.
21 It was about the time the economy started going south
22 and the community said, We can't do that, our
23 indebtedness is too much already. Our ratio of
24 bonded indebtedness in Dodge City to our district
25 valuation is significant.

1 And I can't tell you the exact percentage,
2 but in order for us to have any more bond issues, we
3 have to go to the state Board of Education to get
4 approval to exceed our debt limit.

5 So our community is already indebted. But
6 our board said we've got to provide the space for
7 these middle school students coming up.

8 So we tried it once. It didn't work. We
9 decided to tread water for a couple years. Went back
10 the following year, a year and a half later, I
11 believe, in January. Proposed another middle school
12 bond issue not using the St. Mary's of the Plains
13 complex, because we had some people thought why would
14 you put that kind of money into an old building. So
15 we proposed a new middle school. It was at the same
16 time the legislature began talking about doing away
17 with the equalization that they provide for capital
18 projects for school districts.

19 Because of our district's valuation in
20 poverty, we qualified for a 51 percent match from the
21 state for any physical facilities we had a bond issue
22 to pass. So for every dollar that our voters needed
23 to spend on a new school, the state pool would pay 51
24 cents of that.

25 It was at that time the legislature began

1 talking about doing away with that pool. And it
2 frightened our voters to the point of saying, We
3 can't afford the full dollar. We might be willing to
4 afford the 49 cents if the state does their part, but
5 we can't now guarantee the state will do their part.
6 So that bond issue was defeated.

7 We found out that result as a result of a
8 follow-up survey we did in our community. There were
9 a number of folks who said, We just don't want to
10 spend any money for anything, period. But among
11 those who really gave a good reason it was, We're
12 afraid we're going to lose the state match and we'll
13 end up paying for the whole thing.

14 So our board charged us and the community
15 with putting together plans to handle these things
16 the best we could within our available resources.

17 As a result, two years ago we began talking
18 about a reorganization plan that will result in our
19 5th-graders moving out of the intermediate centers
20 and back into elementary schools, our old high school
21 facility, which has been an intermediate center for
22 the last several years, becoming a second middle
23 school and moving the 6th-graders into the middle
24 school. That will allow us to open next fall with
25 two middle schools with about 720 students each.

1 But if our kindergarten, 1st, 2nd, 3rd-grade
2 kids -- kindergarten, 1st, 2nd grade or 2nd-, 3rd-,
3 4th-grade kids get there in a few years, that number
4 instead of being 1,400, will be closer to 1,600.

5 Q. And the follow-up survey, let me hand you
6 269. Is that -- this is in evidence. Is that
7 Exhibit 269 the follow-up survey?

8 A. That's correct. We hired a group out of the
9 Kansas City area, Stilwell, Kansas, I believe, to do
10 a phone survey of registered voters in Ford County to
11 find out why our bond issue didn't pass.

12 The results show very strongly it wouldn't
13 have passed no matter what the economy was like. And
14 the second one was the economy was bad. And the
15 third highest answer was people worried about whether
16 the state would pay the 49 percent of the cost that
17 they had promised.

18 Q. Take a look at Exhibit 263. As we talk
19 about the cuts, you prepared an affidavit that is in
20 evidence in which you discussed the cuts; is that
21 correct?

22 A. Yes, I did.

23 Q. And in that affidavit you indicate that the
24 negative effects, as far as increasing enrollment is
25 concerned, is need for additional staff and facility?

1 A. That's correct.

2 Q. And in terms of hiring additional teachers,
3 let's cover that in terms of the budget cuts. After
4 the budget cuts started, what has been the -- in
5 terms of slots, we'll talk about teacher availability
6 in a minute, but in terms of slots, has the number of
7 teachers remained constant or increased?

8 A. The number of teachers has increased very
9 slightly. We opened a new elementary school, as I
10 said a moment ago, that had four classes of each
11 grade, K through 4, so we had 20 classrooms. We
12 hired half of the teachers we needed for those new
13 classrooms, new to the district. The other half we
14 moved in from other buildings and ended up making the
15 classrooms in the other buildings a little bit
16 larger.

17 Q. All right. So in terms of the budget cuts,
18 after the budget cuts began, your staffing needs you
19 cut in half?

20 A. We only hired half of the elementary staff
21 we needed to open a new school.

22 Q. That's what I meant.

23 A. Yes.

24 Q. Thank you.

25 Now, what cuts have been done as far as

1 non-teacher employees?

2 A. Okay. We identified several areas. The
3 board said, Let's keep it as far away from the
4 classroom, you've heard that before, as we possibly
5 can. So we identified some areas where we could
6 increase revenues. That was the first thing they
7 did, other ways we could increase revenues.

8 So we implemented students' fees, enrollment
9 fees. Many of us probably paid textbook/workbook
10 fees when we enrolled in school.

11 When you have 85 percent of your kids in
12 poverty in your school district, imposing that fee on
13 them is significantly difficult. We had done away
14 with it for about ten years prior to this time, but
15 we re-implemented fees.

16 So the first step was to try to find ways we
17 could get additional resources or additional
18 revenues.

19 The next one is we wanted to eliminate,
20 reduce or defer anything we saw coming up in the
21 future. So we just didn't hire things like -- didn't
22 hire additional staff.

23 We decided we would not continue with staff
24 development opportunities outside of 250-mile
25 radius. We fudged a little bit on Topeka.

1 But, anyway, we just don't do that.
2 However, we knew that staff development was the life
3 blood of keeping new teachers trained to work with
4 the kind of kids that we have in Dodge City.

5 So we took a look at how we could mitigate
6 that new law that said not outside of 250 miles. So
7 we put together a rubric that says if a grant, like
8 if your ELL program requires you to go and the ELL
9 program will pay for it, we'll let you go ahead and
10 let you go.

11 That's how that group got to go to San
12 Francisco. The English language learner and
13 bilingual program grants required it or paid for it.

14 Then we began to look at things that we
15 could defer. We deferred some maintenance. A lot of
16 maintenance we deferred. Textbook adoptions, we are
17 on right now a six-year cycle. Every sixth year you
18 get a new math series or a new science series. We
19 deferred that. Actually, now I've done that twice in
20 the last two years.

21 Then we began looking at ways we could cut
22 things that didn't affect the classroom or didn't
23 affect the teacher/student ratio.

24 We began to eliminate the para positions,
25 which in my opinion was not necessarily the best

1 thing to do. We began to look at extra duties,
2 paying people to do the things before and after
3 school we would typically pay them to do. We looked
4 at discretionary budgets that went out to buildings
5 so they could use it to identify building needs. We
6 reduced that by 10, 15, 20 percent over the last
7 couple years.

8 We reduced by 50 percent -- you heard us
9 talk about summer school. And summer school just
10 didn't go away this year. Summer school has been
11 reduced each year for the last three years.

12 So we went down from about serving between
13 2,000, 2,500 students in the summer school program
14 down to this past year just a few hundred students in
15 the summer school program. This summer serving way
16 fewer than that. It'll be good to reach 100 or 200.

17 Q. What about after-school programs?

18 A. After-school programs, you know, if you
19 remember, one of those three legs of the stool of a
20 successful education, that being teachers, resources
21 and time, after-school program is one of those legs.
22 And we've pretty much kicked that out from under our
23 staff now, because we just can't afford to fund it
24 anymore.

25 Q. Look at Plaintiffs' 266, if you would.

1 Is that the rubric you talked about?

2 A. This is the rubric we used to determine
3 whether or not somebody who is requesting to travel
4 for staff development, whether we will approve that
5 travel or not.

6 Q. In terms of the affidavit, let me ask you to
7 direct your attention to that. I want to make sure
8 we talk about all the cuts that you've listed in that
9 affidavit.

10 Take a look at 264 and 268.

11 Let's start with 268. In looking at the
12 cuts, you've talked about summer school, extended
13 year program. You've talked about after-school
14 extended year program. Let's jump over instructional
15 coaches for just a second, so we're going to come
16 back to that. What was the cut involving
17 developmental kindergarten?

18 A. We have a comprehensive preschool program in
19 Dodge City that's not funded by any local money at
20 all. It's funded by either the federal Head Start
21 Program, Migrant Head Start, Migrant Even Start, the
22 Governor's Preschool Initiative or Kansas At-Risk
23 Four-Year-Old Program. We put all those under
24 umbrella of what we call our Bright Beginnings Early
25 Childhood Center.

1 We are able to serve less than half of our
2 incoming kindergartners in our preschool program
3 simply because of available space and funding.

4 So we have a lot of kids that come to us in
5 kindergarten who because of again our student
6 population, the poverty, the mobility, those kinds of
7 things, come to us as five-year-olds who are not
8 ready for kindergarten. Never held a pencil. Never
9 held a pair of scissors. Just don't understand what
10 the basics of coming into school is all about.

11 So we implemented a developmental
12 kindergarten program which gives them a second shot
13 at kindergarten. They come into a developmental
14 program prior to going into kindergarten.

15 The board voted as one of our cuts it wasn't
16 mandated, it isn't required by the state that we do
17 that. Unless we could find another funding source,
18 they voted to eliminate that.

19 Our district many, many years ago, if I can
20 move on to full-day kindergarten. Our district many
21 years ago identified the fact that if we can
22 intervene earlier, it saves money, headaches and a
23 lot of grief dealing with kids later on who are not
24 successful in school.

25 So many years ago we implemented a full-day

1 kindergarten program. We were able to quit using
2 some federal dollars and began paying for a little
3 more of that with the Montoy money.

4 With the loss of the Montoy money the
5 board -- and the budget cuts that have come
6 subsequent to that, the board voted to eliminate
7 full-day kindergarten unless we could find additional
8 funding sources for it.

9 So about the same time we began to have the
10 ARRA money, the American Recovery and Reinvestment
11 Act, I think that's the title.

12 Q. That's federal money.

13 A. Federal money. Federal money. We were able
14 to save our all-day kindergarten program by using
15 some of those funds for some other expenses and being
16 able to use some of those available funds and keep
17 our all-day kindergarten.

18 Q. Are those ARRA funds still available?

19 A. No, they went away last year. So we put the
20 money -- we were able to keep it back in place
21 because of some federal Title I money and some
22 at-risk dollars that we just directed from other
23 sources and decided to focus it on kindergarten,
24 because we knew if we could get the kids earlier and
25 intervene earlier, it would save us all the

1 remediation later on.

2 Q. Continue on.

3 A. The other programs that were cut, staff
4 development expenses, this is in 2009, and it's been
5 cut more since that time. We've reduced staff
6 development expenses going to the buildings by 10
7 percent.

8 We reduced, as I said, the travel. We
9 eliminated -- well, didn't eliminate overtime, but we
10 eliminated most all temporary employees. If we had a
11 critical employee absent for an extended period,
12 typically we would have hired a temporary. I'm not
13 talking substitute teachers. I'm talking other
14 positions. We pretty much eliminated covering
15 nonessential or non-teaching positions.

16 We reduced overtime. I gave a directive
17 there would be none, knowing that I wouldn't get
18 none, that I could get a whole lot less. So we
19 reduced overtime by about 50 percent.

20 We also directed our buildings to eliminate
21 10 percent in 2009 of their extra-duty salaries.
22 That's the before and after school. That's
23 crosswalks, bus duty, those kinds of things, even
24 intramural sports after school among the elementary
25 students.

1 We have what we call a base salary for our
2 special ed or special programs. Like the football
3 coach's salary is based on a percentage of the
4 teachers' salaries. We froze that. So for the last
5 two or three years any of our special people,
6 including coaches, have not gotten any increase to
7 their coaching duty salaries.

8 We also froze the cash in lieu of benefits
9 amount we gave to teachers. The board varied their
10 health insurance benefit to teachers unless they
11 opted out of that. And for many years the people who
12 opted out of it got cash. This is up to 2001.

13 In 2001, the board voted that either you
14 take it or you lose it. So as you can imagine we had
15 more people get in, but we still have a few that were
16 getting the cash in lieu.

17 Every time the insurance premium went up for
18 all the other staff, they also increased the amount
19 of money that went to these people receiving cash in
20 lieu of their insurance benefit. That was frozen in
21 2009/'10 school year. So those people are still at a
22 benefit that's I believe about \$1,200 less than the
23 teachers would receive.

24 Q. What has been the history of teacher raises
25 since 2009?

1 A. I can tell you this last year and the coming
2 year we gave a 200 dollar raise for the 2010/2011
3 school year across the board, 200 dollar flat raise,
4 plus gave them their education that they had attained
5 for the new degree. For next year that will be
6 either a 400 or 600 depending on where they are on
7 the salary schedule dollar increase, plus any
8 additional education.

9 Prior to that I believe it was between one
10 and 3 percent for teachers, about 1 percent average
11 for all the other employee groups, classified and
12 administrative.

13 Q. What other cuts have you experienced?

14 A. We cut an early retirement incentive
15 program, which was really a two-edged sword for us.
16 It was on one hand a good thing because teachers who
17 were ready to leave the classroom were given an
18 incentive. We would agree to pay them so much per
19 for up to three years for notifying us that they
20 wanted to retire and retire early.

21 On the other hand we lost some good people
22 as a result of that.

23 So it was like I said a two-edged sword. We
24 eliminated that early retirement incentive program
25 simply because of the budget. It was going to cost

1 about 100,000 a year for three years. For every
2 three years we did it, \$100,000 per year each year
3 for three years, and the board just said no more
4 incentive.

5 So we kept some good teachers as a result of
6 it, but I can also tell you that we probably kept a
7 few people in the classroom that otherwise would have
8 liked to have been gone from the classroom.

9 Q. How have these cuts affected Dodge City?
10 Were you able to do what you wanted to do, and that
11 is keep the cuts away from the classroom?

12 A. Anything you do ultimately affects the
13 classroom. When you ask teachers to cover things for
14 nothing that they previously had been paid for, that
15 affects the classroom a little bit.

16 When a teacher knows that they can provide
17 their students an opportunity if they didn't get it
18 in class, there's another opportunity before school
19 or after school to get caught up, teachers like
20 that. And now that opportunity for most kids is
21 gone.

22 As I said, we've been very blessed because
23 we haven't had to cut any more than what we've had to
24 cut. We haven't had to reduce teachers because of
25 the increased numbers of students. It would have

1 been foolish to do that.

2 But the things we've had to do ultimately
3 are affecting the classroom. The biggest one is our
4 opportunity for kids to have more time to learn and
5 to succeed.

6 Q. In terms of requirements that I've kind of
7 skipped over, but those requirements include an
8 education that must be based upon an improvement in
9 performance that reflects high academic standards and
10 is measurable.

11 My question to you is, as a result of these
12 test scores you've discussed since the cuts began,
13 are those test scores reflecting an improvement in
14 test scores on the Kansas assessment?

15 A. They're not reflecting improvement this past
16 year in scores on the students on the Kansas
17 assessments.

18 Q. So are you able to provide a suitable
19 education in Dodge City for all the kids?

20 A. No, we don't determine a suitable education
21 simply by scores on a state assessment. Are our kids
22 successful one year to the next? Can our graduates
23 go to the post secondary choice that they make,
24 whether it be college, university or trade school?
25 Can they be successful?

1 And the answer to that for us is no, all
2 students cannot do that. And until all students can,
3 then we're not as successful as we need to be.

4 Q. And in terms of an improvement continuum,
5 you aren't even providing that for all your students?

6 A. That's correct.

7 Q. Look at Exhibit 116. And this is not the
8 current scores that you mentioned, where you have six
9 subgroups that didn't make it. These are for 2011,
10 after the cuts began. And I want to ask you about --
11 my notes up here. I want to ask you about this
12 amount right here, between where you finished in
13 2011, 79.8 and 86. What is that?

14 A. That's a 5.2 gap.

15 Q. Between what and what?

16 A. Between where our students as a whole scored
17 and where the state target for our students was.

18 Q. Back up a year. Where were they in terms of
19 a gap?

20 A. We were about a 4, just slightly under a 4
21 percent gap. So the gap actually increased.

22 Q. And if we include your numbers from 2012, is
23 the gap going to be wider?

24 A. Yes, it will.

25 Q. And in the years of the Montoy money that

1 you've talked about, were you able to close that gap?

2 A. We can -- yes, we can accredit the growth
3 you see in 2006, '07, '08, '09, and even a little bit
4 still since then, because our test scores continue to
5 go up and we're very proud of that. But they're not
6 going up at the same rate as the expectations that
7 the state and the federal government has for us.

8 Q. And that was reading assessment and I think
9 for White kids -- I'm sorry, what I read to you was
10 all students reading assessment. And then looking at
11 the second page of 116, for White students your
12 number for 2011 was what?

13 A. We were at 86, which is exactly what the
14 state target was.

15 Q. And was the state target down?

16 A. No.

17 Q. What's the 87 to 86?

18 A. That's where we were the year before. We
19 were at 87 percent of our White students and the
20 state's target was 81.

21 Q. I'm understanding. Now, in terms of free
22 and reduced lunch, where were you in 2011?

23 A. We were at 77.6 and the state target was 86.

24 Q. And this year you're going to be down from
25 that?

1 A. Yes, we believe so.

2 Q. And then Hispanics in 2011, you were 78.2
3 percent and state's target was 86?

4 A. That's correct.

5 Q. Is that continuing to go down in 2012?

6 A. When you say down, let me put it in relevant
7 terms, our number of students proficient may be very
8 similar. Our percentage of students proficient may
9 be very similar but the bar has been raised from 86
10 percent by the state to 90.7 percent.

11 So in that sense we'll continue to have more
12 and more kids become proficient, but we won't be able
13 to close that gap. As a matter of fact, that gap is
14 widening, we believe.

15 Q. And ELL 2011, you were 74.1 and the target
16 was 86 percent?

17 A. 86.

18 Q. And the gap will be wider in 2012?

19 A. The gap will be wider.

20 Q. African Americans 79.1 percent. In 2012
21 will the gap be wider?

22 A. Yes.

23 Q. Then math assessments, all students in 2011,
24 82 percent was the target. 82.3. And you were at
25 what?

1 A. We were at 79, I believe, 79.7.

2 Q. And then math assessments you were better
3 with Whites, 82.3 percent, and the target was 86.4
4 percent?

5 A. That's correct.

6 MR. CHALMERS: Flip it around,
7 Alan.

8 A. It was the other way around. The target was
9 82 and we were 86.

10 You have to remember this is about 16 to 20
11 percent of our students who are 80 percent. 80
12 percent of our kids aren't on that chart.

13 Q. I understand. That was White kids. Then
14 free and reduced lunch is what?

15 A. We were at 77; the state target was 82.

16 Q. This year is that gap going to be wider?

17 A. Our number may go up slightly, but it won't
18 be anywhere close to the state target and the gap
19 will be wider.

20 Q. Hispanics in math?

21 A. I believe 78.2 and state target was 82. And
22 this year our numbers may be about the same it looks
23 like preliminarily, but the state target went up.

24 Q. And then English language learners in math,
25 your gap was 75.4 to a target of 82.3?

1 A. Roughly a 7 percent gap. And the gap will
2 probably increase.

3 JUDGE THEIS: About 7 percent gap?

4 A. And the gap will probably increase closer to
5 12 to 13, 14, points this year.

6 Q. And then African Americans, the gap was 65.2
7 to 82.3?

8 A. That's correct. And I will give a
9 disclaimer on that group. That group is so small it
10 barely has enough to be a subgroup in Dodge City. So
11 one or two students' scores on that one will really
12 skew it one way or the other. So we either look
13 really good or really bad.

14 Q. So it sounds like in terms of the minority
15 population, the Hispanics, ELL and the disadvantaged
16 are where you are facing the biggest challenge?

17 A. It is, but that's who we are in Dodge City
18 now. We are a majority/minority district; a majority
19 low SES district and a majority English language
20 learner district.

21 Q. In looking at the funding, let me ask you
22 the question first in terms of what we're going to
23 hear in the courtroom I think in the future. What is
24 your opinion in terms of additional resources spent
25 wisely and what effect it has on student performance?

1 A. From purely a statistical analytical point
2 of view here, no emotions involved, it's very easy to
3 see the correlation between the increase in available
4 funding for our schools and the increase in student
5 achievement scores as measured by the state
6 assessments. That's just the one indicator.

7 What we see in our classrooms for other
8 indicators is a parallel and even a greater increase
9 in student achievement as a result of things we were
10 able to do with the Montoy money.

11 Q. Talk to us about whether that injection of
12 money caused an immediate change in student
13 performance and whether the subtraction of the money
14 caused an immediate change in student performance.

15 A. The only thing I can relate it to is
16 something we've all probably had experience with and
17 that's taking antibiotics, taking a medicine, being
18 sick. You know, the minute you put the first pill in
19 your mouth you don't feel better.

20 The infusion of that new money did not
21 immediately make a difference. It began to make a
22 difference.

23 And in the same way as you run out of that
24 medication you needed for whatever it was and you
25 were supposedly over whatever the illness was, you

1 don't start feeling bad again for a few days until
2 that gets out of your system.

3 In the same way this infusion of new money
4 into our school district. First of all, the first
5 thing we applied it to was where we were really
6 hurting. And it helped us out there.

7 And over a year or the next two years we
8 began to see the positive benefits of that. We
9 believe it'll also take -- it has taken now a year or
10 two years to begin to see the effects of losing
11 that. Because we turn over about 15 to 20 percent of
12 our students in our district every year, either with
13 new or incoming kindergartners or new students to our
14 district. We turn over about 12 to 15 percent to 20
15 percent of our staff every year that need to be
16 retrained, brought up to date on how to deal with the
17 students we serve in Dodge City.

18 So the residual effect of that new money is
19 still seen a little bit. But as you can see from our
20 test results this year, it's not because we quit
21 teaching, it's because we quit having some of the
22 resources that we had available to us previously.

23 Q. One of the things we've heard from other
24 districts is the things like learning coaches that we
25 heard from Maria Ortiz-Smith this morning, those

1 types of positions in other districts have been
2 eliminated. And I believe Dodge City considers the
3 learning resource center to be a cost-cutting
4 measure.

5 A. Yeah.

6 MR. CHALMERS: Your Honor, we're
7 getting close to the end time. I'd like to have
8 opportunity to have cross. I think it would be
9 facilitated if Mr. Rupe would ask questions instead
10 of making little speeches.

11 MR. RUPE: I was trying to lead him
12 so I could get done. I'm almost done.

13 JUDGE THEIS: Whatever speeds it
14 along.

15 Q. (By Mr. Rupe) Okay. Explain to the Judges
16 how the learning center and these learning coaches
17 are a cost-cutting measure in your community.

18 A. The learning center is really an effort on
19 behalf of our district to cut expenses. All of my
20 elementary schools, all eight of them, have been
21 Title I schools. All eight of them as Title I
22 schools receive Title I money.

23 And we began to see -- when we had to start
24 looking at cutting budgets, we began to see a lot of
25 our schools had duplicated resources. Instead of

1 having all our resources centered or concentrated in
2 one area, each of my schools were buying some of the
3 same materials among the eight elementary schools.

4 And so we decided we would bring those
5 resources together, concentrate them in one place.
6 The teachers could then share the resources and save
7 money.

8 As a growing district, we also ran out of
9 something as simple as office space. When we decided
10 to do instructional coaches because that's the best
11 way to provide staff development for my teachers
12 within the available resources, we decided
13 instructional coaches would be something we would go
14 die on the hill for. We would go to battle for that,
15 because that provides daily or weekly access by my
16 new staff, by my staff who struggles with working
17 with our kids to resources that they need to be
18 successful.

19 We didn't even have classrooms for the kids,
20 much less a place for these instructional coaches to
21 hang his hat. They only use the learning center as a
22 place to go in and check in first thing in the
23 morning, drop off their stuff, pick up what they need
24 and head out to the buildings. And they're then back
25 at the end of the day.

1 They do take part of the day each week to
2 talk to each other about how they can help one
3 another. But for the most part, the expectation is
4 they are out in the buildings working with kids and
5 teachers.

6 So, anyway, as such, we believe we've saved
7 money by concentrating the resources that were spread
8 across eight schools into one location called the
9 learning center.

10 MR. RUPE: That's all I have.
11 Thank you.

12 CROSS-EXAMINATION

13 BY MR. CHALMERS:

14 Q. You talked about the problems that your
15 district has had. I want to give you an opportunity
16 to brag on it. You're proud of your district?

17 A. Absolutely. I wouldn't be there if I
18 wasn't.

19 Q. You have done some exceptional things for
20 your children over the recent past using the
21 resources that you have available; is that true?

22 A. That's correct.

23 Q. Your district is or has been on improvement,
24 not any individual school but your district has, and
25 that happened because of the aggregation of special

1 ed scores?

2 A. That is correct.

3 Q. But when that happened, as part of the
4 procedures in place with the state, you were included
5 with the group with the Kansas State Department
6 through the Education and Learning Network came in to
7 try to provide assistance to your district?

8 A. That's correct.

9 Q. They came and did a needs assessment. And
10 that needs assessment was provided in terms of a
11 report that was in 2010; is that correct?

12 A. I believe that's correct.

13 Q. So it would have been depending on when you
14 count the, as Mr. Rupe described, the cuts, it would
15 have been two or three years into the cuts is when
16 the report came out?

17 A. It would have been the fall of the second
18 year, I believe.

19 Q. Exhibit 1145 is the needs assessment for
20 Dodge City. And I want to go through that just real
21 quickly, because I think it might speed things up.
22 The introduction states -- or a portion of the
23 exhibit on Page 2 talks about how in 2009, the Kansas
24 Learning Network was expanded to reach 12 districts,
25 and that includes the Dodge Public School District.

1 And that's what you indicated, it was about that time
2 frame --

3 A. Yes, sir.

4 Q. -- that you were involved. So the reason
5 that you got put on or the time periods that we're
6 looking at in terms of your school's performance that
7 led to the state's involvement in the learning
8 network, those would have been the preceding years?

9 A. That's correct.

10 Q. Of '07/'08, '08/'09?

11 A. It would have been '08/'09 and '09/'10.

12 Q. So '08/'09 having been one of the peak years
13 of the Montoy funding is when you performed at a
14 level that got you on the needs assessment; is that
15 correct?

16 A. The '08/'09 school year was the third year
17 of the plan and the first year of the cuts.

18 Q. Now, they say in here, unfortunately there's
19 no silver bullet for making improvements and the KSDE
20 has finite capacity to help, pointing out that when
21 you have issues with students that present problems
22 with the AYP, that there's no one strategy that fits
23 all students; is that right?

24 A. That's correct.

25 Q. That there are multiple strategies that can

1 be employed, some have greater success than others?

2 A. With certain students that's correct.

3 Q. Is there disagreement among educators as to
4 which is to be most effective in the particular
5 circumstance?

6 A. I don't know that you'd find disagreement in
7 Dodge with things like sheltered English instruction,
8 for instance. We pretty much agree on that.

9 Q. Then on the next page, Page 3 of the
10 exhibit, it summarizes the student achievement at
11 Dodge saying that it's been relatively high academic
12 achievement; that it's consistently made AYP over the
13 years; that in 2009, that would have been the year I
14 think that you said the cuts were in place, that the
15 district garnered 30 standards of excellence awards
16 from the state.

17 What is a standards of excellence award?

18 A. It's a mathematic formula to determine an
19 award. It's based on the numbers of students that
20 you have scoring in the above proficient groups on
21 state assessments, percentage of students, excuse me.

22 Q. Then it walks through some of the data
23 points that we'll talk about a little bit more.

24 On Page 5 of the exhibit it points out that
25 Dodge enjoys strong support in the community and then

1 it references that 2008 survey that you talked about?

2 A. 2009 survey, I believe.

3 Q. Okay. This talks about the 2008 survey of
4 patrons. Was there another survey?

5 A. There may have been prior to or following
6 the first bond issue.

7 Q. It references there appeared to be mixed
8 reactions in the community regarding the bond
9 proposal and ultimately the bond failed, and that's
10 what you were describing --

11 A. That's correct.

12 Q. -- when you said that there were like three
13 higher points and the third one was the concern about
14 state --

15 A. The state fund.

16 Q. -- equalization. By the way, so the record
17 is clear on that, that equalization money continued
18 to be -- after that bond election continued to be in
19 place?

20 A. Yes, it did.

21 Q. And fully equalized. And that would have
22 been what, in 2009 was the concern you said?

23 A. '09, the spring of '09 was our last bond
24 issue, so the '09/'10 school year, '10/'11 school
25 year and this past year.

1 Q. And for each successive year, even this
2 year, the funding for the equalization for bond and
3 interest has remained in effect?

4 A. Yes, it has.

5 Q. It says, "The district has also invested in
6 development of a cutting edge data system to support
7 the district staff in identifying student needs in
8 areas that need improvement."

9 And that cutting edge data system I think is
10 talked about in a little greater detail, but just so
11 we have a big picture of it, is it involved to some
12 measure the mapping assessments you've talked about,
13 it involves technology and using that to know as kids
14 go along, how they're progressing so you can target
15 kids if they don't have -- if you see they have
16 problems immediately and get them back in line?

17 A. That's correct.

18 Q. That's my layman's version of it. Is that
19 fairly accurate?

20 A. That is fairly accurate. And I would say
21 the reason we've been able to do that is because of
22 one person. We have a wizard in our school district
23 that we've been able to afford that knows how to make
24 that available to our staff.

25 Q. I want that name on the record.

1 A. I don't want that name on the record,
2 because I don't want anybody else to have him. I'm
3 doing all I can to keep him.

4 Q. On Page 8 of the exhibit it talks about
5 empowering the cult of human capital, it discusses
6 quite positively the leadership. I think that would
7 be you or others.

8 And then it talks about the district has
9 implemented an aggressive effort to recruit and
10 retain high quality staff, and as a result, at least
11 as of the time of this document, your district was
12 able to fill vacant positions with high quality
13 applicants and lower staff turnover, pointing out
14 that in '09/'10, you only had to fill 45 positions as
15 opposed to 67 when the Montoy money first came in
16 place.

17 A. That's correct.

18 Q. Now, then, it talks about some curriculum
19 assessments, and I'm going to go through those
20 hopefully real quickly. But it talks about WestEd.
21 What is WestEd?

22 A. It's an educational consortium. It's an
23 educational research laboratory, if you will, that
24 brings best practices, does the educational research
25 and then communicates those to school districts.

1 It's an agency the states use in developing their
2 curriculum and their state assessments.

3 Q. It provides the advanced educational
4 opportunities, including 19 honors classes and nine
5 advanced placement courses provided in connection
6 with this WestEd?

7 A. No. WestEd does not do that. It's just
8 saying that we offer 19 honor classes and nine
9 advanced placement classes at our high school.

10 Q. I see. That's in addition to --

11 A. The WestEd is a staff development tool.

12 Q. Then it says, "The district has developed a
13 program with the community college in which it
14 enables students to enroll concurrently."

15 And at least at the time this was issued
16 there were 141 kids that were actually getting
17 college credits at the time they were going to your
18 high school?

19 A. That's correct.

20 Q. That's available to kids who are
21 academically in the place they need to be to go to
22 school even as of today?

23 A. Juniors and seniors for the most part, yes.

24 Q. It says, "The curriculum is based on
25 integrating the 21st Century learning skills with an

1 aligned core content of essential indicators."

2 What is the 21st Century learning skill or
3 what are they rather?

4 A. It's a research identified list of skills
5 that go beyond just the basic facts of reading and
6 mathematics and to being able to take what they
7 learn, apply them in the workforce, apply them in
8 their life, integrate learning so math is not a
9 separate content from language arts, is not a
10 separate content from social studies. They all blend
11 together.

12 Q. And the curriculum in the state now, not
13 necessarily your district, because it sounds like
14 you're ahead of the curve, but now you're looking at
15 Common Core standards and your other curriculums that
16 are going with that, the multi-tiered sort of
17 approach as well?

18 A. We call it multiple-tiered curriculum.
19 Common Core is exactly what we started with WestEd
20 before the state ever got into Common Core.

21 Q. Then it talks about those things that
22 probably concern the guy that you don't want to tell
23 me about?

24 A. Yes, his name is there. I see it.

25 Q. It talks about the superior data system and

1 talks about some specific things that are used to
2 assist the school.

3 A. Realtime intervention for kids.

4 Q. It then proceeds, and I'm not going to read
5 all this, but on the next page of the exhibit, it
6 talks about the full range of supplemental programs
7 and services, including those that come through the
8 federal programs that are available at your
9 district. And those are still available and will be
10 available next year?

11 A. Not all of them.

12 Q. Which one won't?

13 A. English language acquisition. We talked
14 about that being before and after school
15 interventions. That's not available at our schools
16 anymore.

17 As part of the -- we integrate so many of
18 these. We can't pull out and say this is an at-risk
19 program and this is a bilingual program. We
20 integrate it because they're the same kids. We
21 reduced -- our Perkins funding for vocational
22 technical education has been reduced, so we've had to
23 supplement that more.

24 Most of the rest of those, I know our early
25 Head Start and our Bright Beginnings preschool

1 programs, those are all experiencing reductions in
2 funding.

3 The Title I programs, the bilingual program,
4 and Title III, which is your migrant students, are
5 all seeing reductions in state and federal
6 programming for those, as well. But most of the rest
7 of those we will still have in one form or another.

8 Q. Sounds like you probably have all of them in
9 one form or another, but some of them they have been
10 reduced?

11 A. Been reduced, that's correct.

12 JUDGE BURR: Can I ask a quick
13 question?

14 MR. CHALMERS: Yes.

15 THE WITNESS: Yes, sir.

16 JUDGE BURR: I'm not familiar with
17 the Danny Hanson School, and then you got the
18 parentheses, Methodist. Is that in Dodge City?

19 THE WITNESS: Yes. There was one
20 in Newton and there's been one in Dodge City for
21 many, many years. We provide on-campus school
22 services for all the residents at Youth Village as a
23 residential treatment facility.

24 Q. (By Mr. Chalmers) I think those are the
25 comments. Eventually, there are recommendations that

1 are contained in the needs analysis and that would be
2 available for the Judge to look at.

3 A. Absolutely.

4 Q. That's what these professionals came in and
5 said, Here's what we think you need to do to improve,
6 and you agree with their report; don't you?

7 A. Yes, we do.

8 Q. And there's not anything that you can think
9 of that they overlooked in their report?

10 A. No, I thought it was very thorough.

11 Q. Now, your district is accredited?

12 A. Yes, sir.

13 Q. Your schools within the district are
14 accredited?

15 A. Yes, sir.

16 Q. Are they accredited by any entity other than
17 the State of Kansas?

18 A. Dodge City High School is accredited by
19 Advanced Ed, which used to be the North Central
20 Accreditation Group that you may have been familiar
21 with.

22 Q. What does one have to do to be accredited
23 under that program?

24 A. I really can't answer that since they went
25 from North Central to Advanced Ed. I know the

1 guidelines have changed.

2 Q. There are no schools in your district that
3 are on Title I improvement now, is that correct?

4 A. That's correct.

5 Q. Now, let's talk about the current status of
6 the AYP for a moment. And I think that there's a
7 chart over here that might be helpful, Exhibit 74.
8 This is for math, but it shows the targets in math as
9 they have progressed from 2002 up until where
10 there'll be in 2014, at least as of the date of this
11 map; is that right?

12 A. That's correct.

13 Q. Now, you had indicated that in the recent
14 test preliminary scores that you've looked at, that
15 this year we'd be looking at what, 2012?

16 A. 2012, yes.

17 Q. Hard for me to look at that. This year with
18 the entries in the expectations, that is the
19 performance levels that you think in you say six
20 different categories?

21 A. There are six categories preliminarily that
22 we did not make.

23 Q. Six categories you wouldn't make it. Now, I
24 don't think you meant to say, but if you did, let me
25 know, that your cuts -- your performance levels

1 haven't necessarily gone down, it's a matter of the
2 bar going up as opposed to the performance levels?

3 A. I know in a couple cases our performance did
4 go down.

5 Q. Tell me about those couple cases.

6 A. I know in 3rd grade reading district-wide,
7 our assessment scores did decrease by a few
8 percentage points. The rest of them will be at or
9 within an acceptable statistical range of the same.

10 Q. So that if we were to talk about what
11 happened in your preliminary results this year under
12 the 2011 standards, 3rd grade reading would be the
13 only area that would be --

14 A. That's the one I recall right now, yes. And
15 traditionally those each have shown an increase each
16 year and we don't believe they will this year.

17 Q. Let me show you another chart. Let me show
18 you what has been marked as Exhibit 1208, and I'll
19 represent to you that this is designed to show what
20 the proficient and above percentages were from 2003
21 to 2011, which would have been the last available
22 data that the state possesses.

23 And can you look at that and see that it's
24 consistent with your memory, that there has been an
25 uptake or improvement in test scores pretty much

1 consistently from 2003 through 2011 across the board?

2 A. That's correct.

3 MR. ROBB: Excuse me, Counsel, I'm
4 looking for 1208 on your list and I don't find it.

5 MR. CHALMERS: That's because this
6 is one of the boards that Mr. Rupe wanted me to mark.

7 MS. TIBBETS: Ms. Garner has the
8 list.

9 MR. RUPE: You can withdraw all the
10 boards if you want. I thought you wanted them as
11 part of the deal to admit all the exhibits.

12 MS. GARNER: We have them. They're
13 just not on the list that was printed at the
14 beginning of trial.

15 JUDGE BURR: There was a similar
16 one for Kansas City, Kansas.

17 THE WITNESS: There is one for
18 Kansas City, Kansas, for Dodge and for Wichita, as
19 well as the state.

20 JUDGE THEIS: In lieu of Big Bird.

21 MR. RUPE: I'm sorry.

22 Q. (By Mr. Chalmers) Exhibit 1156, so we've
23 talked about that. You don't have it in front of
24 you, but you're familiar with the report cards?

25 A. The report cards, yes, sir.

1 Q. These would be the report card for your
2 district for '10/'11?

3 A. Yes.

4 Q. Back to -- oh, well, you can see it was for
5 '04/'05 by looking at the bottom.

6 A. Okay.

7 Q. Which by the way is the data for --

8 A. That chart.

9 Q. -- our chart. Okay.

10 A. All right.

11 Q. I'll talk to you about this for just a
12 second, because I think Mr. Rupe covered most of it.

13 If what we want to do is find the scores for
14 the disaggregated groups, we just -- and for
15 particular grades, we go to the report card. It
16 would show us, in this instance the 3rd grade
17 reading, and it would show how we did for all
18 students, economically disadvantaged, and so forth.

19 When you said that there is a problem now
20 with the 3rd grade reading, was it among any of the
21 subgroups or was it all students?

22 A. I know the all student group went down and
23 as a result, I'm sure the other subgroups went down,
24 too.

25 Q. It almost would have to be on the

1 economically disadvantaged because such a large
2 portion --

3 A. And Hispanic group, that's correct.

4 Q. This report card which shows the percentages
5 that were proficient or above in math and reading, if
6 we compare those to the cut scores -- or not the cut
7 scores, I'm sorry, the proficiency levels, which is
8 Exhibit 74, I think that those are lower than what
9 the proficiency level would have been for that year.
10 Maybe not. The last one would have been '11.

11 A. Look right here.

12 Q. If we're looking at math 82.3.

13 A. For high school.

14 Q. For high school?

15 A. 86 for elementary.

16 Q. 86 for elementary. That helps me out. This
17 is for the whole group. We could pull it out for --
18 I don't know that I want to struggle to find it right
19 in here. This would be high school. No, that's a
20 different deal. We could pull it out for high school
21 and so forth and see where they fit --

22 A. That's correct.

23 Q. -- somewhere in that document. And would
24 you agree with me that this number is probably lower
25 than what the proficiency level is on AYP?

1 A. In every case, yes, sir.

2 Q. Because you were making AYP using the Safe
3 Harbor?

4 A. That's correct. We're showing consistent
5 improvement year to year.

6 Q. And both the federal government and the
7 state accreditation provisions that deal with testing
8 recognize that if you're making consistent
9 improvement on your test scores, that that's adequate
10 for the measured assessment tests?

11 A. That's correct.

12 Q. This year -- or last year, and I'll talk to
13 you about this year in a moment, you say that your
14 district was on improvement and that was because
15 of -- and I can't remember if it was math or it was
16 the reading, but the African-American subgroup didn't
17 make it.

18 A. Special education.

19 Q. And then special ed both. I've looked and
20 the African American, however --

21 A. Is such a small group.

22 Q. -- it's -- my notes would reflect it's about
23 1.4 percent of your student body.

24 A. That's correct.

25 Q. Would you agree with that? And then so it's

1 the special ed that you've had problems with that
2 previous year when you've not looked at it from
3 building to building but when you built them all
4 together?

5 A. That's correct.

6 Q. Then we've got graduation rates here and you
7 talked about those. And I think everybody
8 understands it, but there is a big difference between
9 graduation rates and dropout?

10 A. That's correct.

11 Q. And I'm not pretending that everybody should
12 or will understand the difference between the five
13 year and the cohorts you used to get to graduation.
14 That's not my point. If we're looking at the
15 dropout, those are people that leave your school and
16 there's a number that's kept on that every year?

17 A. And those are students who do not re-enroll
18 in another school.

19 Q. That normally is a number that is a very
20 small relative number?

21 A. One to two to three percent.

22 Q. The graduation rate if it's at 80 percent,
23 obviously there's 20 that did not graduate with their
24 cohorts in four years, but you could have people that
25 graduate in six years, seven years?

1 A. That's correct.

2 Q. So that has a different -- this is talking
3 about how quickly you get through the system. The
4 dropout has to say whether you get through the system
5 at all?

6 A. At all.

7 Q. The gaps between the student subgroups have
8 been closing in your district; is that right?

9 A. Yes.

10 Q. And to the best of your knowledge even with
11 this year's test result, those gaps have closed from
12 where they were pre Montoy time; is that right?

13 A. Yes, and I --

14 Q. And even post Montoy time after the cuts
15 began?

16 A. I believe that's both the function of
17 improved instruction teaching and learning as well as
18 a function of the fact that our student groups are
19 now becoming the same students. The Hispanic student
20 is a free lunch student, is an at-risk student. So
21 one affects the other.

22 Q. And I want to shift gears with you a little
23 bit. You talked about some of your need for space
24 and I want to try to clarify that a little bit.

25 Capital improvement projects were

1 implemented in 2011; is that right?

2 A. Yes.

3 Q. And that includes the Comanche Middle
4 School?

5 A. It will be Comanche Middle School.

6 Q. And that is now complete; is that right?

7 A. No. It'll be -- the classrooms will be
8 complete when school opens this August. The physical
9 education, health part of the building won't be open
10 until after Christmas.

11 Q. And there is some renovated existing space
12 and some relocation of classrooms to modular
13 buildings at the middle school that were ongoing this
14 last year?

15 A. That's correct.

16 Q. Incidentally, the Comanche space that is
17 going to be the intermediate center, that was
18 formerly the Dodge City High School?

19 A. High school prior to 2001.

20 Q. The high school had been kind of not been
21 used for a bit?

22 A. No.

23 Q. It had been used?

24 A. It was only not used one year while it was
25 being renovated to become a 5th/6th grade center.

1 Q. When we have an idea of renovation, I drove
2 by it when I was out there. But could you kind of
3 describe it for the Panel so they have kind of an
4 idea of what we are talking about.

5 A. You're talking about at Comanche, at the old
6 high school.

7 Q. We're not talking about going in and putting
8 a coat of paint?

9 A. No, we're not.

10 Q. Tell us what the renovations are.

11 A. We needed additional classroom space.
12 You've heard me talk about that. The Comanche
13 facility took care of the needs of about 600 5th and
14 6th grade students. We knew that wouldn't be
15 adequate, so we decided to turn it into a middle
16 school.

17 We knew we needed more classroom space, so
18 we had the option of either building additional
19 classrooms onto that facility, because our community
20 wanted us to use our available resources before they
21 voted any new ones.

22 We took a look at it. It had two gymnasiums
23 in the old high school that became Comanche
24 Intermediate Center that will become Comanche Middle
25 School.

1 The old original gym, we are talking about
2 built in the 1920s, no longer met safety standards,
3 Kansas High School Activity Association standards for
4 conducting any athletic events in that gymnasium.
5 There just wasn't enough space off the court, away
6 from the court, to have things safely.

7 So the board voted to, as part of their
8 renovation, they are actually turning that old
9 gymnasium into two stories of classrooms, six
10 classrooms or seven on the lower level and six or
11 seven on the upper level.

12 We are adding then to the north of the
13 building an additional gymnasium to handle the needs
14 for a 700- to 900-student middle school, including
15 both locker rooms for athletics and activities and
16 some ancillary spaces, as well.

17 So it's about a 9 million dollar project,
18 the renovations. There are a few other small pieces,
19 like the some lunchroom space and stuff, but those
20 are the two big ones.

21 Old gym and new classrooms and adding a new
22 gymnasium complex to the north of the building, that
23 was done without a bond issue.

24 Q. I'm going to switch gears with you for a
25 second. I appreciate that description. You

1 indicated that you had an uptake of 17 percent in
2 migrant families in the last -- was that last year?

3 A. I think we are up to about 14 to 17 percent
4 migrant families.

5 Q. Migrant families, there's a program through
6 the federal government where additional funds are
7 provided; is that correct?

8 A. That's correct.

9 Q. And your district is a recipient of those
10 funds?

11 A. Yes, we are.

12 Q. You also get Title I federal dollars; is
13 that right?

14 A. That's correct.

15 Q. And other federal dollars?

16 A. Yes

17 Q. Now, you talked about -- you talked about
18 programs for adults and the preschool and for full-
19 day kindergarten, and I want the record to be clear
20 on that. I'm not quarrelling with you for the
21 purpose of my question as to the desirability of the
22 programs.

23 A. Sure.

24 Q. But will you agree that those are not
25 programs that are required by any state statute?

1 A. I will agree to that.

2 Q. In fact, the state statute talks in terms of
3 half-day kindergarten as being the required level of
4 instruction for those students; doesn't it?

5 A. That's correct.

6 Q. It allows a district to, if it wishes to,
7 charge a fee to parents to fund full-day
8 kindergarten. I don't know, does your district do
9 that?

10 A. With 85 percent of our people on free and
11 reduced lunches, it doesn't make sense to do that.

12 Q. It does not say anything about the statutes
13 don't require any preschool sort of -- it's K through
14 12?

15 A. That's correct. And no local tax dollars
16 are used to support our preschool. It's all state
17 and federal programs.

18 Q. And when you talk in terms of the state
19 requirements, they have a certain number of days that
20 kind of work out to a certain number of hours that
21 kids need to be or the schools need to be open for
22 kids?

23 A. That's correct.

24 Q. And those days and hours do not include
25 summer school, they do not include after school or

1 preschool education or enrichment, do they?

2 A. That's correct.

3 Q. I'm not sure that I heard this correctly,
4 maybe I did. In terms of the gross dollars that your
5 district has received, haven't those dollars gone up
6 over the years even after Montoy or even after the
7 cuts, as Mr. Rupe calls them?

8 A. If you're talking the aggregate from all
9 state and federal programs, state dollars, those
10 kinds of things, I believe that's the case. But
11 Mr. Hammond could speak to that much more clearly
12 than I can.

13 Q. I'll try not to spill over into what I want
14 to talk to Hammond about, but let me talk to you
15 about Exhibit 1030 for a moment. That's been
16 referred to in previous testimony as the USD Form
17 150, but I don't think it's ever been shown to the
18 Panel.

19 It kind of looks like a tax form, I think,
20 but it starts out with the number of estimated kids
21 for this would have been for the '11/'12 year, this
22 last year.

23 A. Yes, sir.

24 Q. And then it works down to with the
25 weighting, the affected kids that are used to apply

1 against the base. In this instance it's 11,707.

2 A. That's correct.

3 Q. So there's almost a doubling with the
4 weightings in terms of calculating the full-time
5 enrollment against the base in your district?

6 A. There is something in there that puts the
7 special ed students and their weightings in and then
8 takes them immediately back out. Our ratio is about
9 62, 63, about 6,200 students. And we get funded, our
10 district gets funded for about 10,000 after you take
11 the special ed flow-through money out.

12 Q. I was thinking the special ed was worked
13 down here. It's whatever your memory is and whatever
14 the documents show.

15 A. We're close. We're close.

16 Q. The point being that as the demographics of
17 your district change, as you get more bilingual kids,
18 as you get more -- that would be up here, wouldn't
19 it, or as you get more at-risk kids, which would be
20 here, which those are the ones that qualify for free
21 lunches?

22 A. That's correct.

23 Q. We've been referring to them as poverty
24 kids, that what you do is the amount of money that
25 your district receives goes up in proportion to those

1 numbers?

2 A. Also in proportion -- in opposition to the
3 amount that the base state aid that all those numbers
4 are based on has gone down.

5 Q. It goes up relative to the base is your
6 point?

7 A. It goes up relative to the base, that's
8 correct.

9 Q. Now, there are some documents that -- and
10 now that these boards have been marked, Exhibit 1192
11 is a board. This applies to the state. There
12 actually is one that applies to the district, but for
13 convenience's sake, it shows various functions that
14 have to be reported in terms of your -- in terms of a
15 district's spending?

16 A. That's correct.

17 Q. And those functions include instructions,
18 support services, instructional staff services. So
19 instruction, those would actually be the teachers,
20 wouldn't it or include teachers?

21 A. Most teachers, not all teachers.

22 Q. You might have -- instructional staff may
23 include some other focus?

24 A. Include things like counselors, for
25 instance, yes.

1 Q. And if we look at Exhibit 1196, what I'm
2 going to tell you is that this is these highlighted
3 categories for the years for Dodge City. And it
4 would show then, if that's accurate, the per-student
5 spending as it has -- in those categories as it's
6 taken place from 2005 to 2012. Can you see that?

7 A. I can.

8 Q. It would suggest --

9 MR. RUPE: It doesn't say 2012.

10 MR. CHALMERS: '11/'12.

11 MR. RUPE: Okay.

12 MR. CHALMERS: You're right, I
13 don't have a 2012.

14 THE WITNESS: The past school
15 year.

16 Q. (By Mr. Chalmers) Actually, I don't think
17 it would include 2012, because the expenses aren't
18 turned in yet.

19 A. That's right.

20 Q. And we don't know what that would be.

21 A. That's right.

22 Q. Your district will turn in that information
23 to the state and then the state will fill out its
24 chart.

25 A. That's correct.

1 Q. So where it says '10/'11 -- thank you,
2 Counsel, that would -- that number would have been
3 9,397 per kid in terms of spending in those
4 categories.

5 And do you have any basis to quarrel with
6 that number? I'm not asking you to verify it. I
7 just want to know on the face of it --

8 A. I just don't know if that includes all
9 funding sources, includes state and federal
10 programs?

11 Q. It does.

12 A. I would not have any reason to quarrel with
13 that number.

14 Q. A couple smaller points. I guess you
15 indicate that one of the things that you have cut is
16 some summer school classes. Are there to be summer
17 school classes this next year?

18 A. There are some summer school classes at
19 Dodge City High School, some at Dodge City Middle
20 School, primarily for those what we call Tier I
21 students who need the most severe intervention.

22 Q. Tier I?

23 A. Excuse me, Tier 3. I'm going the other
24 direction.

25 Q. And that has been reduced from the past, but

1 there will be some summer school?

2 A. Yes, there will be.

3 Q. And I think you gave the numbers. So I
4 won't talk to you about that again. There is
5 instructional fees. You talked about those.

6 What was it you were waiving before?

7 A. We had waived instructional fees,
8 textbook/workbook fees and reinstated that the last
9 couple years.

10 Q. So if statute would permit, for instance, a
11 charge by a school district to be levied -- to be
12 required against parents for their kids?

13 A. That's correct.

14 Q. And also to tell kids and their parents
15 bring in supplies, those sorts of things. But in
16 years past you have waived any sort of fee on that,
17 now that's been put back in place?

18 A. That's the textbook/workbook fee only.
19 Doesn't have anything to do with the supplies.

20 Q. I was probably blending two different
21 things. Your kids are still required to bring in
22 some supplies?

23 A. Absolutely.

24 Q. And that's always been the case since you've
25 been there?

1 A. Yes.

2 Q. I think things have changed since I left
3 school. That's why I was asking.

4 If a kid doesn't have the money or if
5 parents don't have the money or they just refuse to
6 pay this fee, you still give them the textbooks,
7 though?

8 A. Absolutely.

9 Q. You do provide inservice days still to your
10 teachers, is that correct?

11 A. We have inservice days built into our
12 calendar, yes.

13 Q. There's another area of questions I wanted
14 to go to, and I've lost the exhibit figures. Oh,
15 here it is.

16 You were last in the classroom actually
17 teaching kids what, in '79/'80?

18 A. That's correct.

19 Q. In your district, so that I have a clear
20 understanding of it, there are kind of some schools
21 that have really performed well on AYP and then there
22 have been, at least a couple, that have struggled; is
23 that right?

24 A. That's correct.

25 Q. One is Sunnyside Elementary, the other is

1 Ross Elementary?

2 A. That's correct.

3 Q. They continued to struggle this last year?

4 A. Yes, but both showed significant
5 improvement.

6 Q. And Sunnyside Elementary, that's the one
7 that has the very transient population. And at least
8 when I visited with you in your deposition, the
9 teacher and the administrator turnover had been kind
10 of high?

11 A. That's correct.

12 Q. And gave those as the explanation as to why
13 that school is performing lower than maybe some other
14 schools?

15 A. Yes.

16 Q. And when you say a "transient population,"
17 you talked about migrant kids, but you have people
18 that are not only qualified as migrant kids for
19 purposes of federal funding, but also kids that just
20 come in from other districts, don't you?

21 A. That's correct.

22 Q. And you're asked to educate those kids just
23 as you are educating the kids that maybe started with
24 you in one of your preschool programs?

25 A. That's correct.

1 Q. But if they weren't with you from the
2 preschool program, that maybe offered some additional
3 challenges, or frequently that's been your challenge?

4 A. That's correct.

5 Q. And then you have Ross Elementary and that's
6 only been open for three years. It was drawing kids
7 from all over town and they had new staff, and those
8 are the explanations you gave as to the problems?

9 A. Yes.

10 Q. And now down the road it's made
11 improvements?

12 A. Made improvements. Still isn't going to
13 make AYP, but it's made improvements.

14 Q. The decision on how to fund individual
15 schools, that's a decision from the board with the
16 input from its administrator; is that right?

17 A. Yes.

18 Q. A decision is made. There's a formula, I
19 think, that would say based on the number of
20 classrooms you have, this is kind of how much you're
21 going to get for your building budget?

22 A. It depends on the funding source and the
23 students in those buildings who qualify under those
24 funding sources. If you're talking just state
25 general funds, local option budget, it is a per

1 student.

2 Q. Mine was very much an incomplete question.

3 A. Okay.

4 Q. I appreciate that. If we take out those
5 dollars that have a specific direction attached to
6 them, federal dollars, at-risk dollars, those sort of
7 things, and just talk about the dollars that you have
8 absolute discretion where you place them, the way
9 that you decide that it will go to an individual
10 school's budget is based on a formula that is, at its
11 heart, how many classrooms you have?

12 A. Classrooms and programs, yes.

13 Q. Now, as far as teachers' salaries, that's
14 something that's negotiated with the union and that
15 applies pretty much across the board?

16 A. That's correct.

17 Q. The decision to try to fund in this fashion,
18 to make a decision to say we want to make, as we
19 perceive it, equitable in terms of where the money
20 goes to the particular schools, is that correct?

21 A. Yes.

22 Q. Is there any attempt made to try to, short
23 from these special funds that are targeted from the
24 at-risk, federal money, and so forth, to say, well,
25 maybe there's a program at a given school that really

1 needs a little bit more funding, maybe we ought to
2 take a little less from those places and move to
3 another school? That's not a decision process that
4 is involved in your present budgeting system?

5 A. Not out of the general fund and local
6 options budget. We do target those resources from
7 state and federal programs.

8 Q. When you have a state grant or when you have
9 a federal program at-risk money --

10 A. Yes.

11 Q. -- weighted money, that's how?

12 A. That's what supports those other programs.

13 Q. That's presently how you're handling it?

14 A. Yes.

15 Q. I'm going to talk to you about some
16 testimony that you just gave concerning levies. I
17 think that what you had said was there was a bond and
18 interest election, and that it passed several years
19 ago. That there was another attempt at the bond --
20 or another couple of attempts at the bond and
21 interest election and those both failed.

22 A. The most recent two failed.

23 Prior to that there had been two successful
24 ones.

25 Q. In Exhibit 1107 there is a printout or a

1 schedule that shows over the years starting 1998
2 through 2012, back page, showing the levies that were
3 in your district. And it shows a bond and interest
4 mill levy over here in the column that has a 1082 at
5 the top. Would that be the levy you're talking about
6 for the bond and interest that are presently still in
7 place?

8 A. Well, we have bonded indebtedness for the
9 buildings we built in 1995. We continue to have
10 bonded indebtedness for the high school we opened in
11 2001 and for the renovations to the old high school
12 to make the intermediate center.

13 So the mill levy for current bond and
14 interest district indebtedness was 10.82.

15 Q. That seems to have gone down, with a peak in
16 2004, in recent years. Is that because you're
17 retiring some of that debt?

18 A. We have retired some of those. We also were
19 paying for the latest facility renovations outside of
20 the bond and interest mill levy.

21 Q. Let me talk to you about the capital outlay,
22 mill levy, and the sup general mill levy. The sup
23 general mill levy, I think we all understand, is the
24 same thing as the local option budget money, right?

25 A. Yes.

1 Q. And your board decided to levy, at least for
2 the year 2012, the maximum amount it could to get for
3 LOB?

4 A. That's correct.

5 Q. And we've gone through the formula before,
6 but there's a cap on what you can do and you've gone
7 up as much as you can to the cap?

8 A. That's correct.

9 Q. The preceding years, 2011, 2010, not so
10 much?

11 A. That was the cap for the preceding years.

12 Q. That's helpful. So in year 2011/2010, it's
13 your memory that the cap on LOB when you looked at
14 the 30 percent based on the adjusted formulas led to
15 those?

16 A. We were at 30 percent.

17 Q. Now, let's talk about the capital outlay
18 mill levy. And it shows in the year 2012 a zero. In
19 the year 2011, 2.9.

20 Those would have been decisions by your
21 board to not levy as much taxes as they were
22 statutorily allowed to levy?

23 A. In that fund. However, if you look at the
24 supplemental general fund, the mill levy went from --
25 let's round it off, from 25 to 30, it was going to go

1 up five mills. In order to save the impact on our
2 taxpayers, our board opted to eliminate the capital
3 outlay mill levies, because we knew we had to raise
4 the local option budget mill levy.

5 Q. You're getting a question or two perhaps
6 beyond what I'm asking.

7 Can we agree that your board had the
8 authority because there's a resolution in place that
9 passed I think several years ago to go ahead, without
10 protest, to go ahead and issue a mill levy of up to
11 four mills?

12 A. Four mills, yes, sir.

13 Q. And that they chose not to in '11 and '12
14 for the reasons that you explained?

15 A. That's correct.

16 Q. The 3.99, so we can clarify that, if you
17 have some money left over or if there's an adjustment
18 because you don't quite -- you collect more than you
19 thought, it ends up being kind of a mathematical
20 thing?

21 A. That's the county treasurer's problem, not
22 mine.

23 Q. But that's intended to be a 4?

24 A. That's correct.

25 Q. And now, on this last year, 2012, so that we

1 talked about that, the calculation that your district
2 made was, if we went with LOB and increased that to
3 our maximum, then we would get the LOB money, we'd
4 have then the benefit of equalization aid from the
5 state, although it's not up to the full amount of
6 equalization, but we would get that plus our LOB?

7 A. That is correct.

8 Q. If we went with the capital outlay mill
9 levy, we would not get any equalization?

10 A. That's correct.

11 Q. But the intent was to take the money from
12 general funds and from the LOB and to shift it over
13 to use it for capital outlays?

14 A. To the extent we needed to do that.
15 However, we do have a carryover in capital outlay.
16 So this allowed us a year's grace where we might not
17 need to do as much of that.

18 And if you notice on the next page, the
19 second page of your exhibit, our total mill levy to
20 the entire community of Dodge City went up. The net
21 effect of it went up.

22 Q. I don't want to miss that. But it went up
23 about two mills as a result of what you did, right?

24 A. That's correct.

25 Q. And I'm not questioning the wisdom of it.

1 It's the local board's decision. But the reality is
2 that there were four more mills that they could have
3 legally raised had they wanted to this last year?

4 A. That's correct; 100 percent on our local
5 taxpayers.

6 Q. Do you know how much a mill will raise or
7 would have raised last year in your district?

8 A. I can probably get close, about \$180,000 I
9 believe.

10 Q. Do you know how much one additional mill is
11 to an individual who has a home of, say, 50,000 or
12 100,000?

13 A. I really couldn't tell you that.

14 Q. And I have just -- well, I'm past the time.
15 Let me be very quick. You testified that in the
16 recent past what you have seen is as a result of the
17 Montoy money an immediate uptick in student
18 performance, is that correct?

19 A. If that's what I said. I know we have seen
20 an uptick immediately.

21 Q. Maybe you didn't.

22 A. I may have.

23 Q. I thought you said it was phased in.

24 A. It was not an immediate impact.

25 Q. You said it's like taking an antibiotic.

1 A. Right.

2 Q. Exhibit 161 or 1161, I'm not going to go
3 through it because of the time constraints, but it
4 contains with it the assessment results for your
5 district and kind of gives a time line on some of
6 them as to -- well, this would be 11th grade reading
7 assessments. And what we could do is we could go
8 back and look at how those progressed to see whether
9 at your district level we saw the sort of immediate
10 or not immediate or increase or non-increase,
11 couldn't we?

12 A. Yes, sir. The one factor that doesn't come
13 into those results is all of the new students that
14 come into our district since that didn't have an
15 opportunity to have advantage of the interventions at
16 the previous grades, and that number is fairly
17 significant for us.

18 Q. Which you would expect that they would
19 probably produce then a lower proficiency level and
20 maybe less of an increase?

21 A. I would hope that our students are higher
22 than incoming students, yes, and I believe they are.

23 Q. Now, you expressed opinions about the
24 sufficiency of funding, whether it was suitable, and
25 I want to just kind of close with asking you about

1 that.

2 In your opinion, Dodge City since you've
3 been there, and that's been how many years?

4 A. I begin 39th next year.

5 Q. 39th year, has never had in those 39 years
6 adequate resources to provide an adequate education
7 as you define that; is that right?

8 A. As I define it? That's correct.

9 Q. And as you define suitable education, Dodge
10 City has never had adequate resources to provide a
11 suitable education?

12 A. That's correct.

13 MR. CHALMERS: Thank you. I don't
14 have any further questions.

15 MR. RUPE: And I do have a little
16 bit of redirect. I'll keep it short.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. In terms of some of these cuts we've heard
20 about, you were asked if all-day kindergarten was
21 required, if after school was required, if some of
22 the strategies that you've talked about that you had
23 to cut were required, and I want to ask you if in
24 terms of although there may not be a state law that
25 says you're supposed to have all-day kindergarten, as

1 part of the law that requires you to provide a
2 suitable education to kids, and here is KSA 72-1127
3 that lists a number of factors that include college
4 readiness and aptitude for vocational and suited for
5 later learning, is it required in your district to
6 accomplish these things?

7 A. It's required for my students to be
8 successful.

9 Q. And when you have to cut them, are you
10 dropping short of providing them that suitable
11 education?

12 A. Yes, sir, we are.

13 Q. Now, let's talk about your mill levy for
14 just a second. The LOB money is equalized, right?

15 A. Partially, yes.

16 Q. Not fully funded like a lot of things from
17 the state?

18 A. That's correct.

19 Q. But it is some equalization?

20 A. That's correct.

21 Q. True?

22 A. I think we receive I believe it's 38 cents
23 for our LOB for every dollar raised locally. That
24 may not be correct. Please don't quote me on that.

25 Q. Okay.

1 A. And I'm seeing a head nod in the back of the
2 room it's not correct.

3 Q. In terms of the capital outlay money it is
4 not equalized, correct?

5 A. That's correct.

6 Q. And it hasn't been equalized since 2009?

7 A. Yes.

8 Q. And in terms of that money, rather than
9 going to your voters and asking the folks that make
10 \$300 a week to pay additional, you used LOB money?

11 A. That's correct.

12 MR. RUPE: That's all I have.

13 Thank you.

14 RECROSS-EXAMINATION

15 BY MR. CHALMERS:

16 Q. Just to be clear, the LOB is funded by motor
17 vehicle tax, it's funded by property tax. If you
18 have a home that is subject to the tax, the first
19 \$20,000 on the home is exempt from the tax. So if
20 you've got somebody who's very, very poor, they're
21 unlikely to be affected by a levy, is that correct?

22 A. I don't believe that's correct. Most of our
23 people live in rented houses and the landlords pay
24 the taxes.

25 Q. It's going to be the landlords?

1 A. Yes.

2 MR. RUPE: Nothing further.

3 We're finished for today.

4 THE WITNESS: Thank you.

5 JUDGE THEIS: All right. Enjoy
6 your spring break. We'll see you Tuesday.

7 JUDGE FLEMING: Are you guys
8 driving up Tuesday?

9 MR. RUPE: We'll be coming here
10 Monday.

11 JUDGE FLEMING: The chief says
12 9:30.

13 (Thereupon, the proceedings were
14 adjourned to June 19, 2012, at 9:30 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 13, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 228 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

EXAMINATION INDEX

SCOTT FRANK

DIRECT BY MR. RUPE	1917
CROSS BY MR. CHALMERS	1989
REDIRECT BY MR. RUPE	2048
RECROSS BY MR. CHALMERS	2052

BRAD NEUENSWANDER

DIRECT BY MR. RUPE	2053
CROSS BY MR. CHALMERS	2112

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 MR. RUPE: Morning.

3 JUDGE THEIS: We've learned that
4 everything's comparative in life, and I tell you, by
5 10:30 Thursday morning, you'll wish the trial was
6 still in action.7 MR. RUPE: Isn't that some sort of
8 syndrome?9 JUDGE BURR: I want to announce
10 that at the joint Judges Meeting Bar Convention, I
11 wanted the autograph of Charlie Weis, KU football,
12 which is for sale to anybody.13 MR. RUPE: Let me give you a
14 rundown on -- speaking of football, I'll give you the
15 line-up for today. From Legislative Post Audit,
16 Scott Frank is going to testify. He will be followed
17 from the Department of Ed by Brad Neuenswander. Art
18 Chalmers and I have agreed to submit to you with the
19 exhibits and with all objections to form waived by
20 Mr. Chalmers the depositions of Duane Goossen and
21 Kent Olson. So we have notified them that -- I
22 assume that's going to be okay with you to actually
23 just give you the depositions with the exhibits and
24 let you read them.

25 JUDGE THEIS: Are the budget

1 director and the director of accounts?

2 MR. RUPE: Right, and this
3 primarily would be the class action allegations, and
4 we think those are pretty well spelled out in their
5 answers and in the law, so we're going to move
6 through that. So I think we've got a full day's
7 line-up with Scott Frank and Brad Neuenswander, and
8 then tomorrow, we're going to give the floor to
9 Mr. Chalmers, and he's going to have two days of his
10 experts.

11 JUDGE BURR: All right.

12 JUDGE THEIS: Okay.

13 MR. RUPE: As I understand it from
14 him, your experts order is, Hanushek first and then
15 Podgursky and then Hall; is that correct?

16 MR. CHALMERS: That's correct.

17 MR. RUPE: Great with that?

18 JUDGE THEIS: Sounds good.

19 MR. RUPE: With that, call Scott
20 Frank to the stand, please.

21 SCOTT FRANK,

22 Called as a witness for the
23 Plaintiffs, was duly sworn by the reporter and
24 testified under oath as follows:

25 DIRECT EXAMINATION

1 BY MR. RUPE:

2 Q. Tell the Judges your name and the city that
3 you reside in, please.

4 A. Scott Frank, and I live in Lawrence, Kansas.

5 Q. Mr. Frank, would you talk to us a little bit
6 about what your job title is currently and your --
7 give us a job description?

8 A. I am the Legislative Post Auditor. I'm the
9 head of the State's audit agency, Legislative Post
10 Audit. I oversee the operations of a 22-person staff
11 conducting performance audits for the Legislature.

12 Q. I want to come back to a description of what
13 Legislative Post Audit is in just a minute, but in
14 the meantime, I'd like you to talk to us a little bit
15 about working backwards, your job history.

16 A. Okay. I've been the Legislative Post
17 Auditor since September 2010, would make me the
18 permanent post auditor. Prior to that, I served as
19 an audit manager with the division for about five
20 years. Prior to that as an auditor starting
21 originally in 1999 with post audit.

22 Q. And prior to that?

23 A. I was an assistant manager at Godfather's
24 Pizza in Lawrence.

25 Q. Let's talk a little bit about your

1 educational background. Okay?

2 A. High school, Manhattan High School, class of
3 1990, went to Kansas State, graduated 1995 with a
4 Bachelor's in Business Management Information Systems
5 and then a Master's Degree in Human Resource
6 Management from the University of Kansas in 1998.

7 JUDGE THEIS: You need to bump it
8 up just a little bit.

9 MR. RUPE: The Judge is having a
10 hard time hearing you, so speak up a little bit.

11 THE WITNESS: Okay.

12 Q. (By Mr. Rupe) If I'm on track, you became
13 Auditor in 2010?

14 A. Correct.

15 Q. And who did you replace?

16 A. Barbara Hinton.

17 Q. And she had been Auditor when you started
18 back in 1999?

19 A. That's correct.

20 Q. And you served as Audit Manager with her
21 from 2005 to 2010?

22 A. Correct.

23 Q. Is that approximately right? And during
24 that period of time, did you become involved in a
25 cost study that involved costing out education in

1 Kansas?

2 A. Yes, I became -- I became an audit manager
3 right at the time that that project was beginning.

4 Q. Okay, let's now get an understanding from
5 you of what is the Legislative Post Audit?

6 A. The Legislative Post Audit is the audit arm
7 for the State Legislature. We evaluate agencies and
8 programs. Anyone who receives state funding in any
9 way is subject to an audit or could be subject to an
10 audit. We take our direction from the Legislative
11 Post Audit Committee. That's a bipartisan committee,
12 ten members, five senators, five house members. They
13 are the ones who select most of our audit topics, and
14 they are the ones who hired me.

15 Q. Give us an idea of the kinds of things
16 Legislative Post Audit audits. Just pick two or
17 three examples.

18 A. Prisons, obviously schools, local bond
19 issuances, economic development, taxes, about
20 anything.

21 Q. Okay. And I think you said this, but you
22 have a staff of 20 something?

23 A. Total agency size is 22.

24 Q. 22? Okay. Let's drill down if we could on
25 the -- what we call the LPA cost study, and explain

1 if you would how that came about.

2 A. I believe -- I'll probably get the year
3 wrong. I believe it was during the 2005 session when
4 the Montoy decision first came down in the
5 Legislature, was told they would have to put more
6 money into school finance. There were -- in addition
7 to revamping the formula, that Legislature passed
8 three initiatives overseeing -- overseeing school
9 finance. One was creating a 2010 Commission that
10 would study education for the next five years. One
11 was to create an audit team within our office that
12 would monitor schools going forward, and the third
13 was a study to help determine or estimate what the
14 costs would be of meeting the state requirements for
15 education.

16 Q. I want to show a couple of things to you.
17 First is exhibit -- Plaintiffs' Exhibit 199, and can
18 you identify that as the cost study, the Legislative
19 Post Audit study?

20 A. Yes.

21 Q. That's what this is? Okay. And then let me
22 show you what is 236, and I think this will help you
23 on the date. The Montoy money was in -- as you
24 indicated, there was a decision in 2005, and the
25 additional money then started in 2006, and the date

1 on the Legislative Post Audit report is what date?

2 A. January 2006.

3 Q. So does that refresh your recollection that
4 it was a legislative assignment, LPA, in 2005? You
5 spent 2005 doing the cost study, and it was handed to
6 the Legislature on the first day of the session in
7 2006?

8 A. That is correct.

9 Q. Okay. And what you might want to look at --
10 I think page 141, but tell me if you would what your
11 charge was in terms of what the Legislature had asked
12 you to do.

13 A. Actually, can I back up to 139?

14 Q. Sure.

15 A. The Legislature directed us to a study in
16 KSA 46 11 30. That was the -- that was the statute
17 that was passed that directed us to do the cost
18 study. There were actually two main analyses that
19 were requested or directed, and then a number of kind
20 of secondary pieces of work. The main analyses were,
21 one was to estimate the cost of meeting all of the
22 state -- for school districts to meet all of the
23 State's education requirements, including the
24 accreditation requirements which includes some
25 outcome measures. There was a second directive to do

1 a cost of estimating just what it would cost to
2 implement the curriculum and other requirements that
3 have been imposed in the statute which would not
4 include any outcomes. So those were our two primary
5 charges, and there were some other or secondary
6 analyses that I could talk about if you like.

7 Q. Let me hand you a couple of exhibits, or an
8 exhibit because I think it -- let me hand you
9 Plaintiffs' Exhibit 6. Is that the statute that you
10 were referring to that --

11 MR. RUPE: Can I use this?

12 A. Yes, this is the statute.

13 Q. (By Mr. Rupe) It says in KSA 46 11 31, which
14 would charge that in conducting such cost study
15 analysis, historical data expenditures may be used as
16 in future reasonable and actual costs, so long as any
17 examination of historical data and expenditures
18 corrects any recognized inadequacy of such data of
19 expenditures through a reliable method of
20 extrapolation that the cost study analysis shall
21 incorporate in these requirements, and any report to
22 the Legislature must demonstrate how the corporation
23 was accomplished. And that's the statute and part of
24 your charge?

25 A. Correct.

1 Q. Okay, and if I'm tracking with what you just
2 explained, the cost study was to cost out education
3 and particularly cost out inputs and outputs?

4 A. Yeah. I'd like to explain the -- implicit
5 in the two analyses that are required that led us to
6 a method that focused on inputs. When you're talking
7 about what does it cost to implement the requirements
8 in statutes and then one that focused on outputs
9 because that's when you're trying to look at the
10 state accreditation requirements which also require
11 some outcomes, so it implied two different
12 approaches.

13 Q. In terms of outputs, you were looking at the
14 state accreditation at the time?

15 A. Yes.

16 Q. And with regard to the two purposes that
17 were outlined in the statute, you were to get an
18 estimate of the cost of providing enough resources
19 and inputs to meet all the required curriculum and
20 then an estimate of cost of essentially meeting those
21 outcomes. Is that an accurate statement?

22 A. Yeah, and I think the wording is in
23 paragraph D, lays out -- paragraph D lays out the
24 requirements that include the outcomes because that's
25 the one that D, paragraph D-1 says the school

1 performance accreditation system. That's what brings
2 in the outcomes, and then paragraph E lays out what
3 became the inputs, based one, because it was more
4 limited in what we were supposed to consider.

5 Q. So D-1, a determination of the services,
6 programs required by law to be provided by the school
7 district and a review of the high school graduation
8 requirements and the school performance accreditation
9 system, pupil assessments and other requirements and
10 amendments?

11 A. Right.

12 Q. And then you referred to E?

13 A. Yeah.

14 Q. The division also shall conduct a
15 professional cost study analysis considering the same
16 factors specified in D except that such cost study
17 analysis shall consider only those curriculum-related
18 services and programs mandated by state statute. Am
19 I on track?

20 A. Yes.

21 Q. So what LPA was looking at in terms of
22 outputs was, as indicated, it included the state
23 accreditation requirements?

24 A. Yes.

25 Q. Okay. Now, talk to us about -- well, first,

1 when was the cost study conducted? Get our bookends
2 on the time you worked.

3 A. We would have started -- I would say
4 probably about May of 2005, when the session wrapped
5 up, and the work went pretty much all the way through
6 until the very first part of January when it was
7 released in January of 2006, so about seven, eight
8 months.

9 Q. So seven, eight months, mostly in 2005, but
10 lapsing over into the first part of '06?

11 A. Yes.

12 Q. And I believe you added staff in order to
13 accommodate this?

14 A. As I mentioned earlier, the Legislature
15 added a school district team that would, going
16 forward, be charged with auditing school districts
17 even after the case was finished. We received those
18 positions in July of 2005, so we got them at the same
19 time, and of course, we used them for this, but they
20 weren't really explicitly for this project.

21 Q. I see what you're saying. The legislature
22 is part of the enactments after the first Montoy
23 directed an audit -- audit personnel be added for the
24 purpose of auditing school districts?

25 A. Yes.

1 Q. And you used those folks in order to conduct
2 this LPA cost study?

3 A. Yes. They were involved in the cost study.

4 Q. How many staff were involved in the LPA
5 study?

6 A. We had through most of the study a total of
7 26 staff. Three are pretty much purely
8 administrative, and so I would say the other 23 were
9 all on the study. We stopped all other work.

10 Q. And the auditor at the time was Ms. Hinton?

11 A. Yes.

12 Q. And your role in the cost study was what?

13 A. I was an audit manager.

14 Q. Explain what your involvement was in the
15 cost study.

16 A. Okay. Maybe starting from the bottom up, we
17 divided our office into teams of auditors, two or
18 three auditors would be in a group. They would have
19 a supervisor that was the leader, and then those
20 teams would report up to the audit managers. There
21 were three managers, and each one of us had two or
22 three teams working for us out of the hierarchy.

23 So I didn't directly conduct much of the
24 work. I oversaw what the auditors were doing. I
25 gave them guidance, help answer questions. That's

1 the general role of an auditor.

2 Q. Then fast forward to after you submitted the
3 report -- and don't worry, we're going to come back.
4 After you submitted the report, did you from time to
5 time respond to questions from the Legislature about
6 the LPA cost study?

7 A. Yes.

8 Q. Okay. Well, what I'd like to do is now
9 focus a little more on the actual study that was done
10 and explain to The Judges what your methodology was.

11 A. Which part of the study do you want to talk
12 about?

13 Q. Well, let's start with inputs, and then
14 we'll go to outputs.

15 A. Okay. Do you mind if I refer to this?

16 Q. No, that's absolutely accurate. And kind of
17 set the stage as you thumb through your pages. This
18 was the first cost study that LPA had ever done,
19 correct?

20 A. Correct.

21 Q. And have you done any other cost studies
22 since?

23 A. Not of K through 12. I'm not sure of any,
24 but definitely not of K through 12.

25 Q. Let's focus on inputs, and explain what

1 your -- how you went about ascertaining the costs
2 when it comes to the inputs part of the study.

3 A. The first thing that we had to do was get
4 the lay of the land to figure out what is required by
5 statute for the school districts to do because the
6 foundation of this analysis is what is required in
7 statute.

8 Once we figured that out, then we could
9 start building our methodology for estimating the
10 cost.

11 And the methodology is -- at a high level
12 with the methodology involved with creating prototype
13 districts of various sizes, taking a stab at
14 estimating how many staff would be needed in those
15 districts, what the cost of that staff would be, and
16 then what the other costs, the nonstaffing costs that
17 those districts might incur, and that gives you for a
18 various size district an estimate of what they would
19 need to spend and then you can divide that by the
20 number of students in those hypothetical districts to
21 get the estimate of the per-pupil cost and that
22 translates into the estimated per-pupil cost of
23 implementing the state requirements.

24 Q. When you're looking at Exhibit 199, what
25 pages are you looking at that discusses what you just

1 said?

2 A. It starts on page -- our number 22, y'all's
3 number 001573.

4 Q. And in terms of Legislative Post Audit
5 ability to do this kind of study, were you equipped
6 to do this kind of study?

7 A. On the input side, absolutely. We didn't --
8 we didn't need to get any additional resources
9 outside. When we get to the outcomes based one, we
10 did end up contracting with some researchers from
11 Syracuse University to help us with the statistics
12 part of it.

13 Q. Let's cover the input --

14 A. Yup.

15 Q. -- side first. In terms of the costing out,
16 then you've explained the methodology. Now, explain
17 to The Judges how you went about it and what you
18 accomplished.

19 A. Okay. So like I said, once we identified
20 the requirements, we had to create prototype
21 districts. We created eight prototypes, and so we
22 were estimating the cost of a district that had 100
23 students, 200 students, 300 students, 400, and then
24 we start spacing it out, 600, 1,100, 2,000 and
25 15,000. So we start with that. We have to figure

1 out what types of staff they're going to need.
2 They're clearly going to need teachers, but they also
3 need administrators. They're going to probably need
4 librarians, media specialists, janitors, bus drivers,
5 whatever they need.

6 Once we've done that, then we figure out the
7 number of each type of staff. For teachers, what we
8 did was, you have to make assumptions about class
9 sizes. There's no state requirements for certain
10 class sizes, so we developed some different options
11 of having average class sizes of 20 students, average
12 classes of 25, and then kind of a hybrid of 18
13 students in grades K through 3, and 23 students in
14 grades 4 and above.

15 Whichever assumption you use is important
16 because the smaller the class size is the more
17 teachers you are going to need, the more expensive
18 it's going to be and vice versa. The larger the
19 class sizes, the fewer teachers and the less
20 expensive. So we build models based on all of those
21 to get the number of teachers that we needed.

22 We then also had to come up with a
23 reasonable number of those other staff positions for
24 these districts, and we did that by looking at
25 historically how many positions did districts that

1 are kind of around the size that we're looking at
2 have. So if we're taking a look at a prototype of
3 200, we might look at districts that have between 175
4 and 225 students and analyze what kind of, you know,
5 do they have a full-time superintendent? Do they
6 have a part-time -- trying to figure out what's
7 typical out there, and so that's how we get the
8 number of those type of staff is empirically, what do
9 other districts have?

10 Q. Help us understand where you got your
11 information. As you're looking at different size
12 districts and what they need and what they have,
13 where does your information come from?

14 A. Virtually all of this comes from what school
15 districts report to the State Department of Education
16 each year.

17 Q. All right. So continue on.

18 A. Okay.

19 Q. And in your report, you're focused on right
20 now, page 23?

21 A. Yeah, and I just talked about 23 and 24. On
22 page 25, the next thing is to -- is you -- now,
23 you've got counts of the number of teachers, the
24 number of administrators, number of other types of
25 staff that you think these prototype districts are

1 going to need, and the next step is to estimate what
2 are they going to cost in terms of salaries and
3 benefits. And so we did that for teachers -- for the
4 teachers and the principals and the superintendents.
5 That information is collected by the state department
6 as far as salaries, and so we used that kind of
7 information to estimate the salary costs. For the
8 other types -- for the other types of staff that the
9 state department doesn't normally collect, we
10 actually went back and surveyed some of the districts
11 to find out what they were spending on these
12 different positions. So we end up building out the
13 staffing costs that way.

14 Q. You took into account economies of scale?

15 A. That's kind of built in when you are
16 estimating. When you're building the number of
17 staff, that's what builds in the economies of scale.
18 You look at -- for teachers you get the really small
19 district, and you may say, we have a goal. We're
20 trying to say 25 kids in a class, but the district is
21 so small that they can't -- they can't do that, and
22 so they get extra teachers just because they only
23 have 10 kids in a class. So that pumps up the cost
24 of those smaller districts. When the districts get
25 larger, it's much easier for them to staff at the

1 levels that we're looking at, so that's what creates
2 the economies of scale for them, so that's kind of
3 built in.

4 Q. You didn't create districts with 20 kids'
5 classroom. You accepted the lay of the land in
6 Kansas, and if it's a sparse district, you accepted
7 in your building and model that there might be just a
8 handful of kids in the class, but they had to have a
9 teacher nonetheless?

10 A. Exactly.

11 Q. Continue on, please.

12 A. Okay. Once you've costed out the salaries,
13 the last piece are the non-salary stuff, you know,
14 paper, pencils, fuel, you know, whatever other things
15 need to be included. What we chose to do was to look
16 at expenditure data that the districts turn in to the
17 state department and use that and to say, what are
18 the districts that are about the same size as our
19 prototypes? What do they spend on these things?

20 And so we compiled that, and so for each
21 district that we were using as comparison, we figure
22 out how much do they spend on, you know, paper and
23 pencils and those things, and you get a dollar
24 amount.

25 And then, for each prototype what we did

1 was, we didn't use the average for the comparison
2 districts. We used what we called a 33rd
3 percentile. We basically assumed an above-average
4 level of efficiency for those districts. So if
5 you've got ten districts, you array what they spend
6 from low to high, and you start at the bottom, go a
7 third of the way of the list, and stop, and that's
8 what we were plugging in as the cost there.

9 It was a decision that we had made that it
10 seemed like the State would be able to expect maximum
11 efficiency out of the school districts, but it would
12 probably be reasonable to expect an above level
13 average of efficiency. So that's how we built that
14 in, and we tried to be consistent with that in all
15 aspects of the cost study.

16 Q. Where is that explained in your report for
17 The Judges?

18 A. It is on page 25, item number 6.

19 Q. What did you do after that?

20 A. At that point, we now have -- we can now
21 just add up all of the costs that we've estimated for
22 each of these prototypes, and we have an estimate of
23 the total operating costs for this prototype district
24 of 100, a prototype of 200 and so on. And then, the
25 last step is, you take the total cost, divide it by

1 the student count, the 100, the 200, and that gives
2 you the estimate of the per-pupil operating costs for
3 these districts, and that is explained on page 26.

4 Q. All right. So figure 1.1-4. Is that the
5 tally?

6 A. Yes.

7 Q. Okay. So on page 26, you have the input
8 based estimate, and then compare that to the current
9 funding formula?

10 A. Yes. That's what we did.

11 Q. Okay. So you ran into a difference per
12 student. Explain what that column is.

13 A. So what we would have found is that for the
14 2005/2006 school year, which would have been the
15 school year that we were in as we were conducting the
16 study, that for that school year, if you are trying
17 to assume that there ought to be 20 students in a
18 class that for that year our estimate would have been
19 that the base state aid for those districts would be
20 4,943 per student. The actual formula at that time
21 was 4,257, and so there would have been a \$686-per-
22 student shortfall.

23 On the other end of the spectrum, if you
24 assume 25 students, then you are assuming a lesser
25 cost per student because you don't need quite as many

1 teachers. So it would have been 4,375 per student
2 would have been our estimate, which would have still
3 been more than what the formula was at about \$118 per
4 student.

5 Q. So you arrived at the number. You adjusted
6 it to inflation. You compared it to the existing
7 formula, and then you came up with the difference?

8 A. That is correct.

9 Q. And again, that was on the input side?

10 A. Yes.

11 Q. All right. Well, how did -- and we'll get
12 to this in a moment, but then, did the Department of
13 Education working off the driver of the BSAPP compute
14 a tally for each school district after you finished
15 your study?

16 A. I don't know if they did.

17 Q. Okay, all right. Well, let's now
18 concentrate on what you've described as the output's
19 charge that you had. Explain the methodologies that
20 were available to you, and take a look at page 32 of
21 your report because you talked about four of those
22 methodologies considering, and explain what the
23 methodologies available to you were in terms of
24 focusing on outcomes.

25 A. Okay. Based on our background research, we

1 identified on page 32 the four general approaches
2 that were out there in trying to estimate the cost of
3 outcomes. They were the professional judgment model.
4 Essentially, get a lot of people that are very smart
5 about education together and have them kind of figure
6 out what you would need based on their past
7 experience.

8 Q. We've heard from John Myers of Augenblick &
9 Myers in this courtroom, and I think he explained
10 what professional judgment was. Talk to us about the
11 other methods. Okay?

12 A. The evidence based one, that was the next
13 one. My understanding of that was that there are
14 certain educational programs that have been put
15 together. Like if you want to go into a struggling
16 school and boost achievement, that some researchers
17 have put together kind of a package of reforms that
18 you might implement. And they have a cost associated
19 with them, and so the evidence-based one would
20 basically be the cost of putting that kind of reform
21 into a school.

22 The successful school's model is one that
23 also was incorporated into Augenblick & Myers, taking
24 a look at those who have succeeded, figure out what
25 it costs there and use that as an estimate of what

1 things would cost for those who have not succeeded.

2 And then the final one, which is the one we
3 settled, on was the cost function analysis. This is
4 a statistically based approach where you're trying to
5 understand the relationship between certain cost
6 drivers of education and in the end what education
7 costs. And so that's the approach that we ended up
8 settling on.

9 Q. Let's go back to your earlier testimony on
10 what the outcomes were that you were looking at. You
11 weren't -- you were looking at an outcome that was --
12 what it would cost to get to accreditation?

13 A. Yes.

14 Q. Okay, so in looking at how to do that and
15 determining what the cost was to reach accreditation
16 for schools as outcomes, what methodology did you
17 arrive at?

18 A. The approach -- the approach essentially
19 builds a model that says the cost of education is
20 driven by -- and this is on page 33 -- five different
21 sets of factors that would all have an influence on
22 what you might spend on a per-student basis.

23 Q. I think you're -- let me stop you for a
24 second.

25 A. Okay.

1 Q. Because I want to go back to the fourth
2 option that was available to you, the cost function
3 analysis. Explain what that is to The Judges.

4 A. Okay.

5 Q. So you had professional judgment, evidence
6 based, successful schools' cost function analysis on
7 your menu?

8 A. Right.

9 Q. And explain briefly what the cost function
10 analysis is.

11 A. Okay. That's kind of what I was doing.

12 Q. Okay, well, then I apologize for
13 interrupting you. Continue on.

14 A. Underlying this is, you've got these five
15 cost drivers that would affect what a school costs,
16 the size of the district, the characteristics of the
17 students, the prevailing salaries you need to pay in
18 an area, the performance that you're trying to
19 achieve with those students and how efficient the
20 district is.

21 And so the cost function approach takes a
22 dependent variable, which would be cost, what you're
23 trying to explain, and then use the statistics to
24 figure out what's the relationship between these
25 other five things and cost. Some of them cause costs

1 to go up. Some of them cause costs to go down, and
2 so you're trying to tease those out using
3 statistics. And that's -- becomes the backbone of it
4 is it's built around this cost function or what
5 drives costs in schools.

6 Q. So you looked at a methodology where you
7 would have the dependent variable be the cost and the
8 independent variables be these other things that you
9 just described?

10 A. Correct.

11 Q. And you control for these other things in
12 order to determine the cost?

13 A. You establish the relationships. How much
14 does -- we know that -- we know that larger districts
15 on a per-student basis are going to be less
16 expensive, and smaller districts would have much
17 less, and so the statistics help you figure that
18 out. We figure that the students that have special
19 needs are going to be more expensive, so statistics
20 help us figure that out.

21 Q. It's no secret, but you arrived at which
22 method to cost out your outcomes?

23 A. I'm sorry?

24 Q. What was the method you decided on?

25 A. On how we selected this one?

1 Q. You did select a cost function analysis?

2 A. Yes.

3 Q. How did you go about making that decision?

4 Who was involved in it?

5 A. Okay. The decision was Barb's. The thought
6 process -- and it was really kind of hinged on back
7 in the statute that requirement of coming up with a
8 reliable means of extrapolation if there'd been
9 underfunding. We felt that after looking at all
10 these methodologies, this was the one that was really
11 the only one we felt was going to adequately meet
12 that part of the statute.

13 Q. So what you focused on was the charge from
14 the Legislature that talked about in Subsection F
15 through a reliable method of extrapolation?

16 A. Yes.

17 Q. Okay. Continue on.

18 A. I would say that was probably the key
19 determinant that put the cost function analysis ahead
20 of everything else. Another factor that we took into
21 consideration was that because Augenblick & Myers had
22 already done a professional judgment study and a
23 successful school study, we figured that if the
24 Legislature wanted to see those kinds of results,
25 they already had those, and so we didn't think that

1 there was a lot of utility in us repeating the same
2 methodology because we would probably get about the
3 same results, and that wouldn't yield any additional
4 information for the Legislature.

5 Q. You mentioned earlier that you contracted
6 with the group from Syracuse, but before you get to
7 that contract and what they did, talk to me about who
8 you consulted with in order to find out if there was
9 any help out there for achieving this method.

10 A. We spoke to -- in addition to just
11 researching the literature, we had I believe three
12 people come talk to us with some ideas on how we
13 might approach this. One was -- one was Dr. Walt
14 Chapel, who had been an educator in various school
15 districts and had some thoughts on how you might --
16 might go about analyzing costs. One was Tim Rooney,
17 who's a finance director of some sort with the
18 Shawnee Mission School District. He had some ideas,
19 and the third was Dr. Bruce Baker, who at that time
20 was with the University of Kansas and had done
21 research, and he was the one who talked to us a lot
22 about how the cost function approach worked.

23 After talking to him, we liked what we
24 heard. We went and did more research on it and came
25 to realize that the folks from Syracuse were going to

1 be the ones that -- we didn't think we could work
2 with Dr. Baker because he was working with the
3 plaintiffs in the case.

4 Q. In terms of the folks from Syracuse, they
5 had experience in cost function analysis and costing
6 out education?

7 A. Absolutely. They'd used this approach in
8 numerous states.

9 Q. And they had costed out those outcomes?

10 A. Yes.

11 Q. Who did you contract with from Syracuse?

12 A. It was two professors, Bill Duncombe and
13 John Yinger.

14 Q. In terms of what they did, first of all, in
15 Exhibit 199, identify that portion of the report that
16 is their work if you would.

17 A. If you go by the USD 443 number, it's on
18 page 001816.

19 Q. Okay. I think it actually starts on 15, the
20 page before, which is Appendix 17.

21 A. Okay, yeah.

22 Q. Okay.

23 A. So in that Appendix 17 is their report to
24 us. And it goes for quite a ways.

25 Q. If you would -- by the way, was the

1 entire -- was there a consensus among LPA Post Audit
2 staff that the cost study analysis was the
3 appropriate methodology?

4 A. Amongst the management team. The rest of
5 the staff really wasn't involved in the decision.
6 Amongst the management team though, yeah, there was
7 consensus.

8 Q. And was the decision to utilize the cost
9 study analysis one that was brought before the Post
10 Audit Committee?

11 A. It was after we'd made the decision. It
12 wasn't for their approval, but we briefed them on the
13 approach that we intended to use.

14 Q. Did anybody from Legislative Post Audit push
15 back and say, no, you need to do something else?

16 A. No, there wasn't any push back. There was a
17 lot of questions because a lot of people, you know,
18 most people are not familiar with the statistics,
19 and so they wanted to know -- they had a lot at stake
20 in this, and so they wanted to know more about what
21 we were doing.

22 Q. Well, now, let's talk about what the
23 consultants did. If you would, just walk us through
24 a description of what they did and what their results
25 were in their consultation with you.

1 A. Just before what they do -- won't go into
2 any detail, but we gathered and compiled all the data
3 for them, and most of that came from the State
4 Department of Education.

5 Q. What data did you accumulate?

6 A. It would be various measures of the five
7 areas I talked about earlier, school district
8 enrollment, the characteristics, the poverty, ESL
9 status of the students, data on teachers' salaries,
10 all of the performance measures, the math and reading
11 scores, graduation rates, etc. And then some kind
12 of -- we talk about district efficiencies. There
13 were some indirect measures that they requested that
14 would help them measure efficiency, so we gathered
15 all that. It was for a five-year period, and it was
16 for all the school districts in the state.

17 Q. And help me understand -- you said it was
18 for a five-year period. What were the five years?

19 A. Let me see if I can find that.

20 Q. Look on USD 443 001822.

21 A. Yeah. It would have been the '99/2000
22 school year up to the 2003/2004 school year.

23 Q. So that is immediately to the preceding
24 year, five years before that?

25 A. Yes.

1 Q. And if I'm on track, you provided them data
2 on what you called earlier the independent variables?

3 A. Yes.

4 Q. Explain what they did then.

5 A. So they take that data and run what is
6 called a statistical regression. And I'm probably
7 not the best person to try and explain the details of
8 regression, but the essence of it is, it's a
9 statistical test that takes a look and measures how
10 much changes in the independent variables, say
11 changes in district size or changes in poverty appear
12 to be affecting changes in cost, and it identifies
13 those relationships, measures them, gives you some --
14 gives you feedback on whether there's actually a
15 relationship there and then quantifies the magnitude
16 of those relationships, and so their job was to run
17 those tests and put together models that seem to be
18 capturing the relationships out there so that we
19 could see what the results were.

20 Q. Okay. On C6, as part of that appendix that
21 we talked about that is their report, look at USD 443
22 001823. Is that a list of the variables they looked
23 at?

24 A. Yes.

25 Q. If I'm tracking with what you just

1 explained, they looked at the relationship among
2 those variables and controlled for those in their
3 analysis?

4 A. Yes, the control part's a technical term
5 that comes on later, but yeah, they're accounting for
6 how much these var -- the very first line on here is
7 per-pupil expenditures that the dependent variable,
8 and they're going to measure how much everything else
9 on the list affects that.

10 Q. Then continue on with what they did.

11 A. So they would have conducted -- they
12 conducted and put together a number of models trying
13 to get something where all of the pieces kind of fit
14 together in a way where the relationships that are
15 being identified are in the direction that you would
16 expect, that when the things that you would expect
17 are supposed to increase costs are actually showing
18 that, or the things that are supposed to decrease
19 costs are showing that. Until you get some
20 stability, they run different, slight tweaks on the
21 model. It doesn't change a whole bunch.

22 Once they've got a stable model, then they
23 feel like they've captured the relationships.
24 There's no real illogical values in there, and it's
25 not dependent on just one very specific way of

1 assembling the data. It is kind of robust across a
2 lot of different ways. When they're done with that,
3 they produce the results.

4 Q. And tell me what page shows their results.

5 A. Okay. That is on USD 443 001835.

6 Q. Okay, now, if you would, walk us through
7 what their results were.

8 A. Okay. What they found -- so on each of
9 these you've got the variable, you've got a
10 coefficient that for now I'm going to say just tells
11 you the direction of the relationship. Does it cause
12 spending to increase or to decrease? And then the P
13 value, which is sort of maybe a simple way of saying
14 it. What are the odds that we're wrong about this?

15 And so for example, they have a performance
16 measure because the coefficient is positive, it is
17 saying that the higher the performance you're trying
18 to achieve, the more cost we saw associated with
19 that. And the P value is .00, which means that
20 there's a less than one percent chance that we just
21 kind of stumbled upon this. There's a 99-plus
22 percent chance that there's some real relationship
23 there that we've identified.

24 You get to the cost variables, teacher
25 salaries. Again, as teacher salaries go up, the cost

1 per student goes up as indicated by the fact that the
2 coefficient is positive. The P value is .02, which
3 would mean there's about a two percent chance that we
4 may have just stumbled upon that as opposed to there
5 being a 98 percent chance that teachers' salaries
6 really do increase costs.

7 Percent free lunch, that would be the
8 percent of the students whose family income is low
9 enough that they qualify for free lunches. Again,
10 the coefficient is positive, which would indicate
11 that the more of those students you have, the more
12 expensive it's going to be, and the chance of that
13 being wrong is less than one percent.

14 Do you want me to go through all of them?

15 Q. I think you're giving us an idea of how to
16 interpret this, but if I'm on track, so we understand
17 the way they did it, on the free lunch group -- I'm
18 sorry, percent free lunch students, the chances of
19 them being wrong about them costing more are
20 virtually zero?

21 A. Very small, yes.

22 Q. And so the P value column, is that the
23 chances of being wrong?

24 A. Yeah.

25 Q. And what they did was then run the analysis

1 and come up with final numbers?

2 A. Yes. This is the capturing of those
3 relationships. This is what those relationships look
4 like.

5 Q. Right.

6 A. The directions on those coefficients are
7 easier to interpret than the numbers themselves. You
8 then -- you take data and you build an equation off
9 of this, like an algebra equation, and you take the
10 data for average school districts for different
11 things and plug them into the model, and that pops
12 back out an estimate of what the per-student cost
13 would be for a particular school district.

14 Q. And where is the estimate of the per student
15 cost contained in the report?

16 A. Let's see.

17 Q. By Duncombe and Yinger?

18 A. Yeah. If you go to the USD 443 001886 --
19 85, Appendix F.

20 Q. Okay.

21 Let me get there. Okay. It goes on for
22 more than a page, but I want to show The Judges what
23 it looks like. Appendix F would be an adjusted
24 general fund budget per pupil in '05/'06, an
25 estimated cost to meet performance outcomes in Kansas

1 districts. This is in three, four dollars, right?

2 A. Believe, yes.

3 Q. And driver here is, as always, the budget
4 per pupil?

5 A. Yes.

6 Q. Okay. Explain this chart then.

7 A. So we've got the -- obviously, the first two
8 columns identify each of the school districts. The
9 third column adjusts the general fund budget per
10 pupil for 2005/2006. Would have been the actual --
11 what they would receive under the school finance
12 formula that year as it existed then. The next three
13 columns are using the consultant's report. What
14 would this district need on a per-student basis in
15 order to meet the outcome target in 2004, 2006, and
16 in 2007?

17 And for every district, those numbers are
18 going to go up because each year the State's
19 accreditation standards are going up. So the finding
20 would be that to get the higher standards would be
21 more expensive. And then the final columns are
22 basically quantifying the percent shortfall or
23 surplus of what -- for example, for the first one,
24 the district area, St. Paul, had about \$5,000 per
25 student under the current formula. To have met the

1 '04 standards, they would have only needed 4800, so
2 they were -- needed five percent less than what they
3 received, but in the future years, it went past and
4 went positive.

5 Q. Okay. Explain this. Simple average, pupil-
6 weighted average, total spending, total spending
7 increase.

8 A. The simple average was to take the 300-ish
9 school districts that were in existence at the time,
10 and you'd say, what are they receiving on a
11 per-student basis and just average them. So a small
12 district counts the same as a large district in a
13 simple average. The pupil-weighted averages is just
14 that, weighted so that Wichita or Shawnee Mission,
15 their numbers count a lot more than the smaller
16 districts.

17 Q. So the pupil-weighted average would be that
18 base budget per pupil times the weighting factor and
19 then average?

20 A. Both of these have done that. Both of these
21 have said, what do we think for a particular district
22 they would need per pupil to hit these standards?
23 The simple average says, the average for the state is
24 just take all 300ish districts. Add their numbers
25 up. Divide them by about 300 and that's your

1 average. The pupil weighted average says, for each
2 district, take the number, multiply it times the
3 number of students, add all of those up, divide it by
4 the 400-and-some thousands and then -- the weighted
5 average.

6 Q. And total spending and total spending
7 increase?

8 A. The total spending would have been, for each
9 district, take the student enrollment times the
10 number that we came up with. That would give me the
11 total spending for the district, add it up across all
12 the district, and then that's your number, and it's
13 expressed in millions, and then the increase is how
14 much more money would have been needed under this
15 analysis to -- how much would you have to add to that
16 first column to get to the subsequent columns later?
17 \$2.1 billion total spending in 2005/2006. You need
18 to add 115 million to get to the 2004 number.

19 Q. And just to kind of point out the obvious,
20 the amounts have fairly wide variation among the
21 districts?

22 A. Yes.

23 Q. On Exhibit 236, we haven't got the
24 Legislative Post Audit's number, but we do not have
25 Duncombe and Yinger's number on 236. Is that fair to

1 say?

2 A. Yes, that would be fair to say.

3 Q. So you get the -- what do you do with the
4 work from Duncombe and Yinger?

5 A. So we take their work, and we tried to
6 translate it into information that would model the
7 structure of the State's school finance formula, and
8 so that meant to try and glean from it a base state
9 aid per pupil, a poverty weighting, we call that
10 risk weighting, English as a second language
11 weighting, a low enrollment weight. It is kind of
12 basically a base and a set of weights that would
13 mimic the way the school finance formula was
14 constructed. We thought that would be -- probably be
15 the easiest way for legislators to interpret what we
16 were finding if it could be compared more directly
17 against what the current formula at that time
18 showed. So that would be the next step is to go
19 through and pull out what is the base and what are
20 these weighting factors.

21 Q. I understand, and identify in the LPA study,
22 Exhibit 199, where that's done.

23 A. Okay.

24 Q. Look at 001585.

25 A. 1585.

1 Q. It's page 34 of the study.

2 A. Yeah. This is where we start -- this is
3 where we describe -- higher up on the page on item
4 number three is where we describe at a high level
5 estimating the base cost and the various weighting
6 factors.

7 Q. Okay, you're talking about using the cost
8 model to estimate the base level cost of meeting
9 performance outcome standards and developing student
10 weights for enrollment, poverty, and bilingual
11 students?

12 A. Yes.

13 Q. So that's where you explain as part of the
14 study what you're about to do?

15 A. Yes.

16 Q. Then let's move to the section, cost study
17 results of the outcome-based cost model --

18 A. Okay.

19 Q. -- and walk us through what LPA Post Audit
20 did with the information, and what they did as part
21 of their analysis.

22 A. Okay. So we end up with the base level cost
23 in a set of enrollment weights. The base level cost
24 is item 1 on our page 35. The enrollment weights
25 start on page 36.

1 Q. I want to cover something first before you
2 get into that.

3 A. Okay.

4 Q. You've got a note on page 35, estimated base
5 level cost of meeting outcomes, and I've got it
6 marked there. And you estimated base level cost of
7 meeting the '05/'06 performance outcome standards set
8 by the Board of Education and indicate 4,167 per
9 student, but then you remove -- oh, and then you say
10 the amount is \$90 per student less than the current
11 base state aid per pupil of 4,257. The consultant
12 estimate of the base level cost of meeting the
13 standards was 4,024 per student. In order to use
14 that estimate as a basis for what the State might
15 fund, however, we made several adjustments.

16 Now, explain what your adjustments were and
17 why you made them.

18 A. I'm going to start with the second one.
19 It's just a little simpler. The second adjustment
20 was simply to adjust for inflation. The consultants'
21 analysis put things in 2003/2004 dollars, but we are
22 trying to compare -- we're trying to look at the
23 2005/2006, 2006/2007 school years, and so we felt
24 like we needed to take into account inflation, that
25 other things being equal, it costs a little more to

1 get the same -- purchase the same teachers and so
2 forth.

3 Q. And what did you use, CPI?

4 A. CPI.

5 Q. Okay, go ahead.

6 A. So then going back to the first one,
7 removing federal sources of funding, when we build
8 the model, we include all the sources of expenditures
9 that we think would be relevant to producing outcome,
10 and certainly, you would expect that these federal
11 programs help -- help, you know, that's why we have
12 those federal programs. So you put those in there,
13 so when you estimate, what does it cost to meet a
14 certain performance level? Included in that cost is
15 programming that was actually paid for by the federal
16 government. And our assumption is that the federal
17 government would probably continue to pay for some of
18 that, and so when you're trying to analyze, well,
19 what's the State's share here, we thought it was
20 prudent to pull the federal funding out.

21 So the federal -- when we remove the federal
22 funding, it's going to take the consultants' number
23 and going to lower it a little bit, but then when we
24 adjust for inflation, we're going to push it up back
25 up higher because inflation is always going up.

1 Those are the two steps, and they are illustrated in
2 this figure.

3 Q. So what the Legislature had charged you with
4 doing was determining what state funding was needed?

5 A. I would have to go back to see if it was
6 specific to state.

7 Q. Okay, but it sounds like that was part of
8 the reasoning why you backed out the federal because
9 it was a state number you were looking at?

10 A. That was definitely why we did it. I mean,
11 that was our rationale for it.

12 Q. Now, continue on.

13 A. So what you end up with in the figure,
14 Figure 1.2-4, is our estimate of the base state aid
15 per pupil for these two school years, and it's
16 comparable to the -- it's a complimentary piece to
17 when we talked about the input-based approach, we did
18 the same thing. Here's what the base would be.

19 Q. Did the same -- I'm going to read it from
20 here because it's darkened and a little tough to see
21 on the overhead, but you put the school year and then
22 you estimated the outcomes with the cost function,
23 the original estimate by the consultants, the
24 adjusted -- where you removed the federal funding,
25 where you adjusted for inflation, and then you got

1 the per-pupil current formula and then the difference
2 per student. Is that what that shows?

3 A. Yes.

4 Q. Now, what did you do with the information
5 then?

6 A. That's kind of where that piece stops.

7 Q. Okay. What else did you do as part of your
8 cost study?

9 A. The next was to estimate the enrollment
10 weights, which is on page 36. So this is -- we did a
11 comparable piece on the input-based approach, and so
12 this is -- we -- because of economies of scale, you
13 would expect that the larger the districts become,
14 other things being equal, they're going to become
15 less costly on a per student basis, and so we
16 captured that in the figure on page 36, where you see
17 the smallest districts would have the highest
18 enrollment weights or the extra funding it would take
19 to account for -- the extra funding it would take to
20 account for them being small.

21 Q. So we've got enrollment weight, and we've
22 got the district size?

23 A. Right. And the two lines on there, the
24 bottom line that's slightly more curved or a little
25 more this one, that's our estimate. And the top line

1 is the enrollment weight as it existed in the school
2 finance formula in our -- and so we do that
3 comparison.

4 Q. So long story short, the low enrollment
5 weight in the formula was overstated?

6 A. Yes, that was our conclusion.

7 Q. Continue on.

8 A. Then we move to page 37. The last two
9 pieces of information on weighting is in item number
10 3, the poverty and bilingual weights, and so we
11 estimated how much more it costs to educate a student
12 who's eligible for free lunches. We estimated how
13 much more expensive it is to cost -- to educate a
14 student who's eligible for free lunches in a high
15 poverty inner city area.

16 Q. And explain how your estimates were arrived
17 at.

18 A. We go back to that original function, the
19 analysis that the consultants did, and we're able to
20 algebraically turn their results into -- I mean, you
21 do a couple of operations, and it turns into a -- on
22 a per student basis, this would be a 50 percent more,
23 70 percent more, and so we did that for -- for each
24 district.

25 Q. Okay. Again, stating the obvious, but the

1 basis for what you did was the notion or the fact
2 that kids from poverty cost more to educate?

3 A. There's a lot of evidence to indicate that,
4 and that's what we found when we did the analysis,
5 yeah. When you had concentrations -- when you had
6 kids from poverty that it was more expensive to
7 educate them, other things being equal.

8 Q. That's nothing a teacher standing in front
9 of a 95 percent at-risk classroom would tell you, but
10 you came to the same conclusion a different way?

11 A. Yes.

12 Q. Continue on.

13 A. Okay. So we end up with -- when it comes to
14 poverty, we end up with two weighting factors, and
15 these are shown on page 38 in the figure. We have a
16 regular poverty factor, which would be comparable to
17 what at that time would be at-risk weighting; and
18 then the high poverty inner city weighting, where we
19 found that districts that were classified as being
20 mid and large-sized cities by the census and had
21 above average poverty, the kids were even more
22 expensive to educate there.

23 Q. Okay.

24 A. And so --

25 Q. And explain the bilingual.

1 A. Then bilingual is same analysis but this
2 time on figuring out how much does the percentage of
3 the students who are English language learners. As
4 that goes up, how does that affect per pupil
5 spending, and so we -- we do the same thing there.

6 Q. And explain your conclusions.

7 A. Okay. First one, the -- after we -- after
8 we got the original weighting, we removed the federal
9 funding, and that gives that kind of middle column,
10 and says that the regular weighting suggested by the
11 analysis -- well, the regular poverty weighting would
12 be .484, or another way of saying it, an average of
13 students who is eligible for free lunch would be
14 about 48 percent more expensive to educate, other
15 things being equal, and we concluded that that is
16 significantly higher than what the school finance
17 formula had at the time when the weighting factor was
18 .193.

19 Q. Okay.

20 A. Secondly, we concluded that it was about 72,
21 73 percent more expensive to educate the student
22 who's eligible for free lunch -- the average student
23 eligible for free lunch when they're in a high
24 poverty inner city area, and there really is no
25 comparable, additional weighting factor. There was

1 none in the school finance formula.

2 And then finally, we concluded that the
3 bilingual weighting was about .1, so it's 10 percent
4 more expensive. The formula at that time actually
5 was much higher, .395 weighting for bilingual. There
6 were a couple of reasons for that. One is that we
7 counted bilingual differently than the formula does.
8 We used a head count. The formula uses a full-time
9 equivalent count.

10 Q. Right.

11 A. We analyzed that later. We don't -- we
12 didn't think that was a good way of measuring. We
13 didn't think that the formula used a good measure, so
14 we used a different one, but when you go to a head
15 count, there's more students. So that spreads the
16 costs thinner, so you get a lower weighting. The
17 other thing is, there's a higher correlation between
18 being the ESL student and being a free lunch student,
19 and we believe that the statistical model really
20 couldn't parse out the difference real well, and that
21 would also account for why the bilingual weighting is
22 lower. Basically, it's captured in the free lunch.

23 Q. You make the observation in the four inner
24 city districts with high poverty, Kansas City, Kansas
25 City Turner, Topeka and Wichita. You estimated

1 poverty weight is .726, and that would be those
2 cities that are high poverty inner city?

3 A. Yes.

4 Q. Continue on.

5 A. Those are the weighting -- the base and the
6 weighting factors. We have a section on page 39 that
7 just sort of states our observations as to what
8 appeared to be driving some of the variations and
9 costs. Most of it is accounted for in those -- those
10 poverty enrollment, ESL. There's some other smaller
11 staffing level things that we talked about.

12 Q. Well, let's look at your variation in cost
13 paragraph on page 39.

14 A. Okay.

15 Q. And what you've indicated is, district size,
16 student characteristics, teachers' salaries, and
17 district efficiencies appear to explain a lot of the
18 variation in district spending per student. On
19 average school districts spend 6,887 per student in
20 three or four. However, there was a tremendous
21 amount of variation spending range from 4,915 to
22 12,684.

23 The cost function analysis found that the
24 following contributed to increased per-student
25 spending, and that is, smaller districts spent more

1 than larger districts. Districts with more students
2 in poverty with more bilingual students spent more,
3 and districts that paid higher teachers' salaries
4 spent more. That was part of the variations in cost
5 you identified, and that was as the result of the
6 dependent variable and the analysis of the
7 independent variables by LPA and by Duncombe and
8 Yinger?

9 A. Correct.

10 Q. You say, when we compared those estimates to
11 what districts actually spent per student, we found
12 20 districts that spent at least 20 percent more than
13 the cost model predicted, controlling for the factors
14 noted above, and another nine districts spent at
15 least 20 percent less than predicted.

16 Did you identify anywhere those nine
17 districts?

18 A. I do not -- do not think so. I do not think
19 we do in the report. I'm not certain without going
20 back through it.

21 Q. All right. Then, what else did you do,
22 please?

23 A. Then, the last thing we had as a result of
24 this was our final observation that there was a
25 strong association between the amounts the district

1 spend and the outcomes they achieved, and that's on
2 page 40.

3 Q. Let's look at that language so that we have
4 it in front of us. We found a strong association
5 between the amounts districts spend and the outcomes
6 they achieve, you say. And then in the cost function
7 results, a one percent increase in district
8 performance outcomes was associated with a .83
9 percent increase in spending, almost a one-to-one
10 relationship. Explain that to us.

11 A. That goes back -- that goes back to the
12 original results from the consultants' report when I
13 showed all those coefficients, and I just talked
14 about the direction of them at that time, but if
15 you -- in that one, you find the coefficient is .83
16 or -- something, something.

17 Q. What you're referring to is Bates number USD
18 443 001835 at C 18 in the Duncombe report. That's
19 the chart we had up before --

20 A. Yes.

21 Q. -- where they have the variables listed.
22 That's what you were referring to --

23 A. Correct.

24 Q. -- at .83 to 1?

25 A. It's the second line on there.

1 Q. .83, and the 1 is?

2 A. No, the -- that's just how you interpret the
3 .83.

4 Q. Fair enough. All right. But that's what
5 the .83 has reference to?

6 A. Yes.

7 Q. Then back to your conclusion. The results
8 were statistically significant beyond the .01 level,
9 which means we can be more than 99 per cent confident
10 there is a relationship between spending and
11 outcomes.

12 A. Yeah.

13 Q. So I take it from what you did by way of
14 your study and by way of what the consultants
15 provided you, you came to the conclusion that money
16 makes a difference?

17 A. That was our conclusion, yes.

18 Q. Okay.

19 JUDGE THEIS: We'll take a break
20 about 11.

21 MR. RUPE: Great.

22 Q. (By Mr. Rupe) Now, what I want to turn to
23 now is just a little information about some updates
24 that you did, and I've got some exhibits I'm going to
25 hand you. Oh, before I get to that, take a look at

1 Exhibit 198. What is 198?

2 A. This is what we'd call -- refer to as the
3 executive summary for the report. It's an
4 abbreviated version of the report and its findings.

5 Q. Okay. And it obviously summarizes the
6 earlier report that we covered, but turn to Bates
7 number Baker 000886 on page 3.

8 A. Okay.

9 Q. In terms of trends and student achievement,
10 I want to ask you to explain the paragraph that says,
11 the percent of Kansas students who have scored
12 proficient or above on statewide assessment tests
13 generally has increased since 2002. Taken as a
14 whole, Kansas students have exceeded performance
15 outcomes established by the State Board of Education.
16 Do you see where I am?

17 A. Mm-hmm.

18 Q. Then you say, but when those figures are
19 broken down into various subgroups such as students
20 coming from families in poverty, most special needs
21 or minority subgroups are struggling to achieve
22 outcomes. What does that mean?

23 A. It's beyond what it says. When you can't --
24 when you take the average for all the students, I
25 mean, then, yes, they all -- they appear to meet the

1 standards when you break out certain subgroups that
2 are disadvantaged, and you just look at them, their
3 performance at that time did not meet the standards
4 much of the time.

5 Q. Have you ever heard the phrase, averages
6 hide the problem?

7 A. No, but I think I can figure out what it
8 means.

9 Q. Okay. You just heard it from me. Can you
10 figure out what it means? Indicating that when you
11 take the average of all kids in Kansas where some
12 kids do exceptionally well, it tends to disguise or
13 mask the subgroup problems.

14 A. Yeah, and it can, and I think that would be
15 consistent with what we've stated here.

16 Q. Okay. On page 10 of the executive summary,
17 and I know this was commissioned by the -- by the
18 defendant here in the statute that you looked at. As
19 part of your charge, did you see a responsibility to
20 predict what the expenditures would need to be
21 through 2013/14 school year?

22 A. No.

23 Q. There's an observation on page 10. Those
24 standards will continue to increase each year through
25 2013/14. 100 percent of all students must reach

1 proficiency on statewide math and reading exams.
2 That was a recognition of where the standards were
3 going?

4 A. Yes.

5 Q. True? All right. How far out did you
6 project the funding in your LPA study?

7 A. I believe we just projected to 2006/2007 in
8 the study.

9 Q. Okay. We'll get to the rest of that in a
10 little bit.

11 MR. RUPE: I think now is probably
12 a good time to take a break, and then I'll shift to
13 my other exhibits.

14 JUDGE THEIS: About 1:00 to 1:15
15 would be good.

16 (A recess was taken.)

17 JUDGE THEIS: You can be seated.
18 Thank you.

19 Q. (By Mr. Rupe) When were the results of the
20 LPA study that's dated January 6, when was that
21 presented to LPA?

22 A. The Post Audit Committee would have received
23 an advance copy no more than a week in advance. I
24 can't -- we never send them any reports more than a
25 week in advance. So I don't recall the date, but

1 it's probably documented somewhere.

2 Q. Then it was available to the entire
3 Legislature subsequently to them being notified of
4 it?

5 A. Yes. It was made available the day that we
6 had the hearing and presented the study.

7 Q. And the hearing was before LPA?

8 A. Yeah. It was in front of the committee,
9 yes.

10 Q. And did they have an opportunity to do what
11 I'm doing with you today and that's ask you
12 questions?

13 A. At that meeting, yes.

14 Q. Okay. And were all members of the committee
15 present?

16 A. I don't recall.

17 Q. So there's no mistake about this later on,
18 the LPA Cost Study was presented to the Legislature
19 in January 2006?

20 A. Correct.

21 Q. Take a look at Plaintiffs' 195 if you would,
22 and I will represent to you this is a collection of
23 information that was requested from the Legislative
24 Division of Post Audit, and just to kind of give the
25 Court a sense of what this exhibit is, this is a

1 compilation of the various requests from legislators,
2 advisors, or research staff for new data or recasting
3 data subsequent to the publication of your cost study
4 that you've been testifying about, right?

5 A. Okay.

6 Q. Is that what this is?

7 A. Appears that I'm familiar with some of these
8 documents. I'm not familiar with others.

9 Q. There's a letter I want you to turn to, LEG
10 003438, and do you see that? That's a letter from
11 Barb Hinton, the Legislative Post Auditor at the
12 time, to the Chairman of the Kansas State Board of
13 Education. Do you see that letter?

14 A. Yes.

15 Q. What I want to ask you about is the next
16 page, 3439, where it talks about multiple regression
17 analysis. Do you see that?

18 A. Yes.

19 Q. And it's going to be my testimony, but to me
20 this is a pretty good explanation of what regression
21 analysis is. Who wrote this? Did you?

22 A. I did.

23 Q. Okay. And if somebody wants to get a basic
24 understanding of multiple regression analysis, this
25 one-page letter to Senator Abrams that you authored

1 does that. Would you agree with that?

2 A. That was the intent.

3 Q. So that's LEG 3439 in Exhibit 195.

4 Take a look at Plaintiffs' 176, and that's a
5 memo that you sent to the 2010 Commission, is that
6 right?

7 A. That's correct.

8 Q. Explain to The Judges what the 2010
9 Commission was and what the occasion was that you
10 sent this information to them.

11 A. Okay. The 2010 Commission was sort of a
12 long-range steering committee that the Legislature
13 created at the same time that they directed us to do
14 the cost study and at the same time they gave us five
15 auditors for ongoing school audits. The Commission
16 had the number of legislative appointments and then
17 some actual legislators on it, and they were the ones
18 who directed the work of our ongoing school audits
19 after the cost study that the five-person team would
20 have conducted. And so we had an ongoing
21 relationship with the 2010 Commission.

22 Q. Okay, and there is an attachment. What does
23 the attachment show?

24 A. There's actually two on here. I'll start on
25 the first one, although, they're pretty similar. On

1 page A 00076, attachment A, the \$59 version. So what
2 this was, we were asked to take our results from the
3 cost study and project them out -- all the way out to
4 2014. So this was some things to follow up to the
5 study, not something we did as part of the study.

6 Q. And that was the question I asked you
7 earlier I wanted to make sure we covered, and that is
8 on Exhibit 176. You actually provided the 2010
9 Commission what the projections were through 2014?

10 A. Correct.

11 Q. And then attachment B is what?

12 A. It's the same information. At the time
13 there were -- there was an amount of money that had
14 been approved to go into the school finance formula,
15 an increase to the base of \$59 per student. The law
16 actually -- based on the consumer price index was
17 actually needed to be fully funded would be an \$80
18 increase. So we were asked to do two versions
19 comparing what the current formula with the \$59
20 increase, how that compared to our results with the
21 current formula with an \$80 increase, how that
22 compared to our results.

23 Q. Again, you projected it out to when?

24 A. To 2014.

25 Q. Now, let me --

1 JUDGE THEIS: What are the dates on
2 those?

3 Q. The date of the memo is August 14, 2008,
4 when you produced this to the 2010 Commission?

5 A. Yes.

6 Q. Did you actually make a presentation, or did
7 you just prepare the memo?

8 A. My recollection is that I did present it in
9 person to them at one of their meetings.

10 Q. I want to ask you about a couple of things
11 you say in this letter.

12 A. Okay.

13 Q. You've explained what the attachments are in
14 your projections. You say, historically, it was the
15 State Supreme Court's interpretation and, therefore,
16 our interpretation at the time of the cost study that
17 districts' general fund budgets were intended to
18 cover the operating costs of meeting the State's
19 outcome targets while the budgets were intended to
20 cover the operating cost of -- while the school
21 finance formula allowed districts to raise additional
22 funds through a local option budget, some of which is
23 paid by the State. These additional funds were
24 intended to enhance local programs.

25 And I just want to make sure I am on track

1 with the next paragraph and what you say that I just
2 read. You go on to say, when the Legislature passed
3 Senate Bill 549 in the '06 session, it added the
4 provision to state law, making it clear that state
5 equalization aid paid to school districts should be
6 included in any calculation of state funding for
7 education and support services for school districts.
8 My question to you is, what is state equalization
9 aid?

10 A. It is the State's share of district's local
11 option budget.

12 Q. Okay, so when we talk about the LOB being
13 equalized by the State, the state equalization aid is
14 that portion of LOB paid by the State --

15 A. Yes.

16 Q. -- to boost the buying power of the
17 districts that have poor property wealth?

18 A. Exactly.

19 Q. Therefore, we've included both district --
20 I'm sorry. You go on to say, this interpretation was
21 accepted by the Court. Therefore, we've included
22 both school district general fund budget and state
23 equalization aid in this comparison. Note, because
24 the State's payment into KPERS was excluded from the
25 original cost study analysis to determine adequate

1 funding, we have also excluded it. Is that what you
2 said?

3 A. Yes.

4 Q. And the reason for excluding KPERS was what?

5 A. When -- when we did our initial analysis
6 with the consultants, we did not include KPERS, and I
7 would have to look at the documentation as to why
8 that was not included as one of the costs. But we --
9 the decision was made, and I can't remember what the
10 reason was to not include it in there. So any time
11 we projected out the results of the study, and we
12 say, this is what you need to reach potentially a
13 certain outcome level, we also still exclude KPERS
14 because it was excluded in the original analysis to
15 make sure that the numbers remain consistent.

16 Q. Well, if I remember what you said earlier
17 about what it was you were costing out, and we talked
18 about those things that would be necessary to achieve
19 standards, does it make sense that you were looking
20 at those direct classroom costs and would have
21 excluded KPERS for that reason?

22 A. No, it would not have been because of direct
23 classroom costs because we most definitely included
24 various support services. I mean, it was more than
25 just the dollars in the classroom that was part of

1 the analysis.

2 Q. Okay.

3 A. I can't remember what the reason was on the
4 KPERS payment.

5 Q. Would it be in your report at some place?

6 A. It's either in the report or in the
7 supporting documentation, the working papers.

8 Q. Okay. We'll come back to that.

9 A. Okay.

10 MR. RUPE: Let's go to the next
11 exhibit.

12 Q. (By Mr. Rupe) Take a look at 197, please.

13 So we're on track with apples to apples,
14 KPERS originally was not included, and it wasn't
15 included in the projection, fair enough?

16 A. (Nodding head.)

17 Q. Now, what is 197?

18 A. 197 is a January 2006 memo from Barb Hinton
19 to the Senate Education Committee. This is a
20 projection of what implementing the outcome's based
21 approach would cost the state going out to 2014?

22 Q. Was there a recommended BSAPP increase?

23 A. I want to be careful. There was never any
24 recommendations in -- but if you were to model a -- a
25 formula after our results, then there would be an

1 implied base state per pupil, but we never made any
2 recommendations to Legislature.

3 Q. You were stating facts?

4 A. Yes.

5 Q. You weren't making recommendations. You
6 were telling them what it was going to cost?

7 A. If you take what we found and turn it into a
8 formula, this is what you might expect the cost to
9 be.

10 Q. I understand. Okay. And so 197 projects
11 out the cost on outcomes based for the BSAPP through
12 2014?

13 A. Yes.

14 Q. Is that what it says? And in terms of the
15 numbers starting in '06/'07, what's the number for
16 the base state aid?

17 A. 4,659.

18 Q. And that's on Exhibit 236. Do you see that?

19 A. Yes.

20 Q. And what was the actual base at that time?
21 Let me give you an answer, 4,257?

22 A. Okay.

23 Q. Is that right?

24 A. According to this chart, yes.

25 Q. And then in '07/'08, it's 5,012, and the

1 actual base was 4,316?

2 A. Yes.

3 Q. And then in '08/'09, it was 5,239, and the
4 actual base was 4,374?

5 A. Yep.

6 Q. And then in '09/'10, it was 5,466, and the
7 actual base was 4,400?

8 A. Yep.

9 Q. And then it was projected in the next year
10 to be 5,695, and it was 4,012, and then it was
11 projected in the following year to be 5,922, and it
12 was 3,780. I'm getting that right? And then 6,142
13 is the final year, and it's 3,838?

14 A. Okay.

15 Q. Did the Kansas legislature ever adopt the
16 amount you indicated the base state aid per pupil
17 should be?

18 MR. CHALMERS: Object to the form.
19 I think he said he's never indicated what the amount
20 should be. Misstates his testimony.

21 MR. RUPE: No, I think he said what
22 the amount should be. He said he didn't make any
23 recommendations. He just told them what the amount
24 should be.

25 JUDGE THEIS: Your question is

1 what?

2 MR. RUPE: Did they ever adopt what
3 you said should be?

4 JUDGE THEIS: Well, he stated -- he
5 claimed they didn't recommend it, but they implied it
6 by the amount of money that they projected would be
7 needed. So as I understood his answer.

8 Q. (By Mr. Rupe) Did the Legislature ever fund
9 what you projected?

10 A. No.

11 Q. Did your projection ever indicate the base
12 should be reduced?

13 A. No.

14 Q. Did you ever any how, any way, any time,
15 make any -- present any information to the Kansas
16 legislature with regard to kids in poverty,
17 bilingual, inner city kids, that the cost of
18 educating those kids was going down?

19 A. The only thing that would be like that is we
20 did indicate that the bilingual weighting was
21 probably higher than what our results would suggest.

22 Q. And duplicated in the at-risk level
23 weighting?

24 A. Yes.

25 Q. All right.

1 And then I didn't ask you about low
2 enrollment. At some point, you indicated it was
3 overstated in the formula?

4 A. Yes.

5 Q. All right. Quickly, last few series of
6 documents. Take a look at Exhibit 314. Exhibit 314
7 is the estimated effect of tax reductions in
8 increases enacted since 1995. And I want to ask you
9 about the second page of that where it says, total
10 tax reductions. Do you see that number?

11 A. Yes, I'm --

12 Q. Am I reading this right? It says, estimated
13 effect of tax reductions and increases enacted since
14 1995. Dollars are in millions, so that number for
15 the year 2005 is 933.6 million with a cumulative of
16 6.7 billion. Am I reading that right?

17 A. I'm not familiar with the document.

18 Q. Okay. I think I asked you about it in your
19 deposition. Maybe I need to get to that. We'll come
20 back to that one.

21 A. Okay.

22 Q. Look at Exhibit 315. And that's from the
23 Kansas Legislative Research Department to Senator
24 Anthony Hensley. That would be dated February 11,
25 2009, a list of some of the tax policy changes

1 enacted since the 2000 session. Have you seen that
2 document before, listing the tax cuts and credits and
3 repeal of taxes?

4 A. I'm not certain if I've seen this document.
5 I've seen some more documents from Chris Courtwright,
6 but I may have seen this one, I may not have.

7 Q. And if I'm interpreting this document
8 correctly, on the back page, from these items alone,
9 the reduction is approximately 228 million from the
10 2012 bills, legislative enactments. Am I looking at
11 that right?

12 A. I don't know. This is not -- this is not
13 our work product.

14 Q. After the Legislative Post Audit
15 recommendations -- I'm sorry -- statements of fact to
16 the Legislature, did the Legislative Post Audit
17 Committee ever study how school districts use the
18 additional funding that they receive?

19 A. Let me answer this carefully. We did at the
20 direction of the 2010 Commission, not the Post Audit
21 Committee. They didn't request.

22 Q. Okay. And look at Exhibit 196 you have in
23 front of you. What is 196?

24 A. That is the audit directed by the 2010
25 Commission to look at the school district's use of

1 additional state funding.

2 Q. And on the top of the executive summary,
3 starting at Baker 001079?

4 A. Yes.

5 Q. Question 1 is, have school districts used
6 the additional state funding they've received since
7 2005?

8 A. Yes.

9 Q. Can you walk The Judges through what your
10 conclusions were.

11 A. We first -- going through the executive
12 summary on that page I, first found that over the
13 past three years at the time of that audit they
14 received a cumulative total of \$2.3 billion in the
15 funding, and of that, 1.6 billion was from the State.

16 Q. Okay.

17 A. On page -- Baker 001080 we found that more
18 than 70 percent of their increased spending during
19 the time period was for student instruction. And
20 then conversely, at about 29 percent of the increase
21 spending was for support services, administration,
22 maintenance, transportation, and then finally, that
23 overall the reading and math student outcomes
24 continue to show improvement at all grade levels.

25 Q. So the finding we had on the slide

1 projector -- boy, that dates me. What we had on the
2 Elmo earlier with regard to the money making a
3 difference, it appears that in your report to the
4 2010 Commission, the notion of reading and math
5 students outcomes continue to show improvement for
6 all grades was as the result of the additional
7 funding?

8 A. Well, be careful. I don't think that is
9 exactly what we concluded, so let me -- our
10 conclusion to the 2010 Commission on page 22 or Baker
11 001104 was, since the Legislature began making
12 changes to the school finance formula in 2005, school
13 districts have received cumulatively \$2.3 billion in
14 new funding over the last three years. Because
15 student performance is the result of years of
16 accumulated instructions, it's too early to tell how
17 the new funding has affected performance. However, a
18 review of increase -- of recent expenditures showed
19 that most of the district's increased spending was in
20 areas thought to have the most direct impact on
21 performance, student instruction, where there were
22 also noticeable increases in spending for
23 administration, maintenance, and transportation.

24 Q. What did you mean when you said, because
25 student performance is the result of years of

1 accumulated instruction?

2 A. That when you spend -- if you spend
3 additional, or perhaps conversely, less money in a
4 particular year, the -- some of those effects may be
5 immediate, but a lot of it is the accumulation over
6 time as students go through hopefully progressively
7 better classes.

8 Q. And Dr. Baker was in that chair recently and
9 indicated that you really had to look at continuous
10 and sustained activity before you can draw any
11 conclusions.

12 MR. CHALMERS: It would be helpful
13 if you could just ask questions. I object to the
14 form. I'm not sure that's necessarily a fair summary
15 of all that Dr. Baker said, but I think it's best
16 that counsel just ask the witness questions.

17 MR. RUPE: This is the State's
18 witness. I mean, he works for the State. I can ask
19 him leading questions.

20 JUDGE THEIS: Well, I don't know
21 that's necessarily true. I don't think he's a
22 hypothetical witness if that's what you're saying. I
23 think he was objecting to the form of your question,
24 and I sustain that.

25 MR. RUPE: Then, let me ask it this

1 way.

2 Q. (By Mr. Rupe) Explain this effect that
3 you've described as because student performance is
4 the result of years of accumulated instruction.
5 Explain that to The Judges.

6 A. The -- each year of performance builds on
7 previous years of experience. So I think -- and I'm
8 not an education professional, but my understanding
9 would be that if a student has progressively been
10 through several bad grades and then several bad years
11 of instruction and then has good instruction, that
12 may not produce immediate results. That you may need
13 to have that for several years, and so it just
14 accumulatively takes -- the effect takes some time to
15 be seen fully in the system, and we thought it was
16 too early at this point to make that assessment.

17 MR. RUPE: That's all I have.

18 Thank you.

19 MR. CHALMERS: It's going to take
20 my longer than 15 minutes. Do I just want to go on
21 until you until you tell me to stop?

22 JUDGE BURR: Go awhile after that
23 as far as I'm concerned.

24 JUDGE THEIS: Sure, go ahead.

25 MR. CHALMERS: Great.

1 CROSS-EXAMINATION

2 BY MR. CHALMERS:

3 Q. I want to talk about that last point,
4 Mr. Frank, first, and that comes from Exhibit 196 and
5 the statement concerning the accumulated instruction.
6 We now have after 2005, a number of years have gone
7 by. Wouldn't it be possible to look at how the money
8 that was infused in the system starting in 2005 has
9 produced outcomes over that time period?

10 A. I would think that would be very possible.

11 Q. And when you say, accumulated instruction,
12 certainly, we're looking at now seven to eight years
13 out, we should see some sort of proof in the pudding
14 as to how the increases have impacted academic
15 performance, shouldn't we?

16 A. Again, without being an education
17 professional, I think -- but I still think that would
18 be reasonable because we're talking about two-thirds
19 of a lot of those students' careers.

20 Q. I tell you what, I'll come back to those
21 after lunch, so I don't have to pull those out.

22 Exhibit 198, I know you don't have it in
23 front of you, but that's the document that Mr. Rupe
24 referred to when he was addressing -- what I think he
25 has described as averages hide the problem. Do you

1 remember that document?

2 A. I do.

3 Q. The data that was being used then to the
4 extent that it described a problem in the differences
5 between average test scores and the deaggregated test
6 scores. The most recent data would have been for the
7 2004/2005 school year, is that correct?

8 A. In Exhibit 198?

9 Q. Yes.

10 A. Yes, that would be correct.

11 Q. So if what we wanted to do is really see how
12 over time that gap has closed, if it's closed or
13 hasn't closed, we'd probably want to try to pull up
14 the most recent statistics, wouldn't we?

15 A. I would think so.

16 Q. Let me talk to you about the LPA study for a
17 moment. And I want to look at some pages of the
18 study, so that we're clear on what your mission was
19 and what you did.

20 In the exhibit, which is Exhibit 199, at
21 page 140, do you have that in front of you?

22 A. Page 140?

23 Q. Yes.

24 A. Okay.

25 Q. There's an Appendix C, and would you

1 describe for the panel what Appendix C is?

2 A. Appendix 3?

3 Q. Yeah.

4 A. Appendix 3 --

5 Q. I said C, didn't I? Three.

6 A. Yeah. Appendix 3 is the scope statement for
7 the audit that was approved by the Legislative Post
8 Audit Committee.

9 Q. And the scope statement then describes in
10 writing precisely what it is that you are trying to
11 do to then provide a report to report back to the
12 Legislative Post Audit for information for the
13 Legislature, is that right?

14 A. Exactly. It was a translation. We don't
15 normally audit directly from a statute. It's not
16 often phrased in a way that sets up our audit work,
17 so we translated the statute into a scope statement
18 that puts it in a language that's more familiar to
19 our auditors, where we could -- so that we could do
20 the study.

21 Q. And the next page in the appendix then
22 defines or describes both the input-based approach as
23 well as the output-based approach. As to question
24 one, what was meant by question one?

25 Here, I'll speed things up. There actually

1 was a series of question that you were asked, right?

2 A. Right.

3 Q. So question one said, tell me information
4 about input-based and output-based approach; and then
5 there were question two, what are the additional
6 estimates for educating special need kids? Question
7 three for bilingual at-risk kids, is there a
8 significant relationship between student counting for
9 funding purposes and whether they actually received
10 that money?

11 Question four was, what does education
12 research show about the correlation between the
13 amount of money spent on K-12 education and education
14 outcomes?

15 Question five is, what percentage of the
16 estimated cost to providing educational services and
17 programs was funded by the various types of state
18 aid?

19 Were each one of those questions responded
20 to in your report?

21 A. Yes.

22 Q. Because I think you've talked about in your
23 testimony, principally, the answer to the first
24 question, is that right?

25 A. Yes.

1 Q. There was another group that looked at all
2 the studies and education outfit and answered by way
3 of illustration question four, is that right?

4 A. That's correct.

5 Q. Now, you pointed out to Mr. Rupe that there
6 was a statute that was used, and that's actually
7 found in the report, 46 11 30, that defined what it
8 is you were to do that in your scope you're then
9 putting in terms that you're used to?

10 A. Correct.

11 Q. That statute has since been repealed?

12 A. Yes.

13 Q. There's another statute that was passed, and
14 it was KSA 46 12 36 that provided that the LPA study,
15 any other study, the Augenblick and Myers study shall
16 not be binding on the Legislature and that the
17 Legislature may reject all or portions of the study,
18 you're aware of that?

19 A. Only in passing. I'm not real familiar with
20 that statute.

21 Q. Let's talk about the inputs approach for a
22 moment just generally speaking. In the inputs
23 approach, what you're trying to do is calculate based
24 on how many teachers you need, classrooms you see,
25 supplies you need, what the dollar value would be, is

1 that right?

2 A. Yes.

3 Q. The input approach, which makes it very
4 different from the output approach, does not try to
5 account for differences in demographics. That is
6 poverty. That is English as a second language, those
7 sorts of things, is that right?

8 A. Not directly. Because those programs
9 existed, we ended up using the results, the results
10 of our outcomes-based approach as the substitute for
11 those on the inputs-based side. There's no direct
12 way -- because there's no direct requirement of how
13 much additional assistance you have to give to
14 someone who's an English language learner. We
15 couldn't translate that into an inputs-based approach
16 directly. So we had to use the results from the
17 other analysis.

18 Q. So in the inputs approach that you used as
19 part of your report, you kind of imported in some of
20 the outputs information?

21 A. Correct.

22 Q. But in a stricter sense, if we're just
23 looking at inputs saying, okay, we want a certain
24 class size, we want to teach these classes, this
25 curriculum, that would not include the weighted

1 approach?

2 A. Yes, you're right.

3 Q. And as a result, if we all accept that there
4 are some kids that it costs more to educate because
5 of what they bring to the school by their
6 circumstances of birth, the input approach is going
7 to understate what the actual cost of the education
8 is?

9 A. Correct.

10 Q. Now, the figure I want to talk to you about
11 is just briefly at page 26 of the report. There's a
12 figure 1.14 that I think you visited with Mr. Rupe.
13 And I mentioned it in my last question, but just to
14 clarify, the amount that would be the base amount on
15 an input approach varies radically based on what
16 assumption you make concerning class size, doesn't
17 it?

18 A. Absolutely.

19 Q. So there has to be kind of a policy decision
20 made as to what the class size would be that in large
21 measure drives the input approach?

22 A. Yes.

23 Q. The input approach, I think, identifies cost
24 per student by looking at what curriculum program
25 services are mandated by the State and then the costs

1 to review that, and I think you spoke with Mr. Rupe
2 about what those courses were that were mandated by
3 the State. That was part of that evaluation?

4 A. Yep.

5 Q. In looking at what the courses are that were
6 required by the State for the input approach, let's
7 look at pages 21 and 22, and there's a figure that
8 starts 1.12, Summary of Statutory and Other Mandates,
9 Attendance, Curricular Requirements. Is that what's
10 meant by the required curriculum in classes?

11 A. Yes.

12 Q. And then there's a second page. I don't
13 mean to overlook that. There's an elementary
14 curriculum, and then there are some statutory
15 requirements to the basic education that are also
16 spelled out dealing with health exams and student
17 assessments?

18 A. Right.

19 Q. So those aspects, the classes that you're
20 going to take are all part of something you look in
21 the output or in the input part?

22 A. Correct.

23 Q. Let's contrast that to the output. In the
24 output setting, what we're looking at is data that
25 has been collected, making adjustments under

1 regression analysis for that data to try to figure
2 out what the correlation is between per-pupil
3 spending and certain outputs. Is that a fair
4 summary? If I'm wrong, let me know.

5 A. It's the relationship between per-pupil
6 spending and the variety of cost drivers, one of
7 which is the achievement levels, the output level
8 that you're looking for.

9 Q. Ultimately, what you're hoping to have is
10 something that you can say, if we increase spending
11 by this amount, this produces a certain output?

12 A. Yeah. I would probably phrase it the other
13 way. If you're trying to achieve this certain
14 output, then this is what we would think it would
15 cost.

16 Q. Okay. And that's an important distinction,
17 why? I'm not arguing with you. I'm just trying to
18 understand.

19 A. Because it's a cost function -- maybe this
20 is a statistics issue. It is a cost function not a
21 production function, so it's not, what is the cost to
22 produce something? It's what we would expect things
23 to cost.

24 Q. And with that clarification, it is important
25 to define then what it is that constitutes the output

1 that you're hoping to affect through spending and
2 direct --

3 A. Yes.

4 Q. Now, when they define what is an output --
5 when it was defined in this study, it would not
6 include all aspects of what it takes to become
7 accredited under a Kansas -- to become an accredited
8 district or school, would it?

9 A. No.

10 Q. I'll get to exactly how that was defined in
11 a moment, but I want to show you Plaintiffs'
12 Exhibit 55 which is a Council for Public School
13 Improvement Steering Committee and Administrators
14 Roundtable of November 28, 2011, published by the
15 Kansas Department of Education.

16 And it, first of all, talks about the
17 general status of what Kansas accreditation is today.
18 Are you aware that the accreditation process is
19 evolving? We're looking at new accreditation
20 requirements, new standards, that those are being
21 implemented even as I stand here today?

22 A. I'm somewhat familiar.

23 Q. But back when you were preparing this
24 report, there was a QPA that was defining what the
25 accreditation requirements were, is that correct?

1 A. Correct.

2 Q. Now, when you were evaluating what it was,
3 however, for your outputs, you would have been
4 looking at the QPA that was in force as of
5 immediately before your report was issued, is that
6 right?

7 A. Correct.

8 Q. There's been testimony that in 2001 the No
9 Child Left Behind Act became law, and about that time
10 or before, Kansas was looking at changing its
11 standards for testing, and that testing standards
12 were changed in response to No Child Left Behind, and
13 the testing was first implemented in 2006.

14 Were you aware that after your report was
15 prepared that now there were new standards for
16 testing as well as a new standardized test in Kansas?

17 A. Yes.

18 Q. The QPA, though, talking about in today's
19 sense, has a quality aspect of it. It has a school
20 improvement plan, an external assistance team. It
21 has those eleven items that are being blown up from
22 exhibit --

23 JUDGE FLEMING: 55.

24 MR. CHALMERS: 55. Thank you,
25 Your Honor.

1 Q. (By Mr. Chalmers) Now, those quality aspects
2 are not part of the cost study outcome directly, are
3 they?

4 A. They are not directly accounted for, no.

5 Q. And in fact, the outcomes are the test
6 scores for math and reading in three grades and the
7 graduation rate, and then, a simple average of those
8 several items is taken, and that was what was defined
9 as the desired outcome for the purposes of the LPA
10 study?

11 A. That's correct.

12 Q. So it would have been based on test scores
13 for a test that was now changing and then graduation
14 requirements. Are you aware that the graduation
15 requirement was changed, what, a couple years ago,
16 three, four in the state?

17 A. Not necessarily.

18 Q. Okay. Then, there is the second part or
19 bigger part of the QPA, and that's in Exhibit 55, the
20 performance aspect. And that includes the percentage
21 standard or above in reading and math, and that's
22 the, you understand, the kind of the AYP requirement,
23 is that correct?

24 A. Correct.

25 Q. And that AYP requirement is what is set by

1 the State as -- was required for proficiency moving
2 up through 2014, is that right?

3 A. Yes.

4 Q. And then there were other requirements. 95
5 percent of the kids are taking state assessments,
6 attendance rates of 90 percent or more and then,
7 graduation rate. Of these four parts of the
8 performance standard for accreditation, the
9 percentage standard and above and the graduation
10 standards are the only ones that made it into the
11 output requirements for your study, is that right?

12 A. That's -- yes, although that was based on
13 the preliminary analysis from the consultants, as
14 they worked with the data not seeing a relationship
15 between percent, we take assessments or attendance
16 rates. They did not yield as cost drivers.

17 Q. This could be very important in terms of
18 making sure that you've got an accurate read on the
19 assessments. In other words, if you only have 50
20 percent of the kids taking the assessments, that
21 could be the problem and could be very important in
22 terms of people showing up to school, but in terms of
23 trying to talk about output's performance on
24 academically, those are lesser concerns, apparently?

25 A. Lesser concerns as far as a cost driver.

1 Q. The first part -- hold it down. We'll
2 probably find it in a moment, but the first part of
3 the performance standards is the percentage at or
4 above on reading. In No Child Left Behind, as well
5 as the Kansas regulations concerning accreditation,
6 there is a safe harbor concept that talks about if
7 you're making certain percentage relative improvement
8 each year, then you're satisfying the AYP and the
9 Kansas assessment requirements. Are you generally
10 familiar with that?

11 A. Loosely.

12 Q. When it came time to try to input that into
13 this test, however, the study rather, the safe harbor
14 was not included as an element, is that correct?

15 A. Honestly, I can't remember. I know we
16 looked -- I know we looked at trying to incorporate
17 it, and I can't remember if we were able to.

18 Q. I'd like to blame you, Jerry, but it isn't
19 going to happen. Here we go.

20 So I want to talk to you now about the
21 output program or output approach in a little greater
22 detail than we have. First, you used consultants,
23 and you've talked about that.

24 A. (Nodding head.)

25 Q. And the use of consultants in part was

1 driven by within your agency's knowledge base and
2 your own personal knowledge base, you feel you were
3 able to do this without the help of somebody else, is
4 that right?

5 A. That's correct.

6 Q. And these consultants were ones that were --
7 they were recommended by Mr. Bruce Baker, who uses
8 kind of a technique similar to theirs, is that right?

9 A. He mentioned them when he did his thing, and
10 then we researched them and some others.

11 Q. Then there are four methods or so that you
12 found that can be employed, and those are described
13 in your report?

14 A. Yes.

15 Q. And each one of those methods has certain
16 advantages and certain drawbacks, is that right?

17 A. Yeah.

18 Q. The drawbacks, if we were to pick on the
19 cost function analysis just for a moment, would
20 include the fact that you've got to have really good
21 data to make it operate, is that right?

22 A. Definitely.

23 Q. And that's not only talking about the
24 quality of data collected and retrieved and its
25 accuracy, but it would also include having a

1 sufficient sample size, enough time to look at it,
2 wouldn't it?

3 A. Yes.

4 Q. Then you need to have beyond quality data
5 you also need to make certain assumptions. One of
6 those assumptions is that because under the -- one of
7 the assumptions has to do with what economists refer
8 to as efficiency, is that correct?

9 A. That's correct.

10 Q. When you give a school district money, how
11 the school district spends the money is left to the
12 school district's discretion. Is that your
13 understanding?

14 A. Yes.

15 Q. And so when you talk about efficiency, you
16 look at -- you're talking about, well, did the school
17 district use the money in a way that maximizes the
18 student achievement for the lowest cost?

19 A. Correct.

20 Q. Now, that can sound kind of pejorative. If
21 I'm a teacher, and I found putting -- having low
22 class sizes, or I'm the administrator, and I find
23 having low class sizes is an effective way to improve
24 outcomes, but somebody else says, well, what you can
25 have, you can have teaching coaches that can come in

1 and you'd get the same outputs for the same -- for a
2 lesser amount. Assuming that's true, and I'm not
3 asking you to say that it is, that would be an
4 example of how one would be more efficient than the
5 other?

6 A. Definitely could.

7 MR. RUPE: I'm going to object.
8 I've heard this objection. I think it would be
9 helpful if questions were just posed rather than
10 discussions.

11 MR. CHALMERS: I think it's
12 cross-examination.

13 JUDGE THEIS: He was framing a
14 question, and just as the comparison of costs is the
15 way I understood it. It was a long question.

16 MR. CHALMERS: It was.

17 MR. RUPE: I think without the
18 editorial comments that was the question, and that's
19 my objection.

20 JUDGE THEIS: Well, yeah, but the
21 final stinger was the last sentence.

22 Q. (By Mr. Chalmers) Let's look at part of the
23 study here. At page 30 I want to drill down on what
24 it is precisely the outcome-based approach was
25 attempting to accomplish, and at page 30 of the

1 Exhibit 199, it states at the top -- I've got it
2 highlighted up on the board. The outcomes-based
3 approach was designed to identify the estimated cost
4 of meeting the performance outcome standards adopted
5 by the State Board of Education.

6 The performance outcome standards we're
7 talking about are what?

8 A. The graduation rate, attendance rate,
9 participation rate on the assessments.

10 Q. Then, if I go to page 36, and there it talks
11 about -- I'm not sure page 36 is where I wanted to
12 go. Well, I'll ask you about it, and we'll find it
13 after lunch, but see if you remember this. The
14 purpose of identifying the level of spending to give
15 the outcomes -- well, the purpose for the outcome
16 approach was to give the districts the opportunity to
17 meet performance standards, is that correct?

18 A. Correct.

19 Q. Wasn't any guarantee that they would reach
20 but rather just simply to give the opportunity?

21 A. Correct.

22 Q. I don't have to find that. There were some
23 key decisions that had to be made in setting up this
24 study and those are called out on page 127 of the
25 report, I think -- page 123 of the report --

1 A. Okay.

2 Q. -- I think is where it starts. In Appendix
3 1.2, the outcome based approach and it gives the
4 methodology. One of the things that's a key decision
5 was -- in fact, this was the language I was looking
6 for before, says to estimate these costs, we decided
7 to use the cost function approach.

8 Under this approach, researchers used
9 statistical tests to understand the relationships
10 between the district's historical cost and the
11 variety of factors -- they put those out. The
12 relationships are reported into a model that is used
13 to estimate what it would cost each district to
14 achieve the desired outcome, and so that's what we're
15 trying to do is figure out what they would need to
16 have the opportunity to meet the desired outcomes?

17 A. Yes.

18 Q. Then, to work through that, they wanted to
19 look at what funding should be included in the
20 analysis. And I want to make sure that we're clear
21 on this. You spoke with Mr. Rupe about the
22 regression analysis. And what the consultants did
23 is, they took the data that you provided, including
24 spending expenditures data, and then they analyzed
25 this with their statistical tools to try to draw

1 conclusions as to what the appropriate indexes and
2 weights should be, is that correct?

3 A. Yeah.

4 Q. So one of the critical things to do is to
5 figure out, well, what do we look at in terms of that
6 spending amount because what we're trying to see is
7 for that spending how it relates to the outputs as
8 we've defined outputs, is that correct?

9 A. That's correct.

10 Q. And so when we start out as a key decision,
11 we said we decided which funds and functions and
12 objects to include, and we included all other
13 spending that may have contributed to the student's
14 achievement or outcome, and then, in particular it
15 sets out in Appendix 17. That's when it says, this
16 is what we're going to include.

17 A. Yes.

18 Q. So if we look at Appendix 17 -- tell me
19 where that is if you could -- which is at C 47
20 and 48, we have a list of the expenditure definitions
21 with certain coded numbers by them. On the second
22 page, we have a functions and objects that have been
23 excluded and included by certain coded numbers. Now,
24 the coded numbers -- we look for the functions by way
25 of illustration. Under instruction, it is 1,000.

1 When expenditures are reported to the state, they are
2 placed into different accounting categories. Those
3 accounting categories are assigned a certain number,
4 and the number for instructional costs which are
5 defined in the general accounting rules is 1,000.

6 A. That's correct.

7 Q. Is that how that works?

8 A. Mm-hmm.

9 Q. So we're using the State's definitions and
10 their general accounting purposes to talk about what
11 funds make it into our studies and what don't, is
12 that right?

13 A. That's right.

14 Q. The expenditure definitions, now, we've got
15 for 2000 to 2004, we've got some things that are
16 included in 2000 that aren't included in 2004. Why
17 is that?

18 A. Would you give me an example?

19 Q. Well, I don't know that I can. Maybe I'm
20 mistaken, but it looks to me like there are more
21 things that are in and excluded in 2000 than there
22 are in 2004.

23 A. There are funds -- over time the Department
24 of Education changes the funds. Most of them are the
25 same number and same meaning from year to year, but

1 occasionally, there's -- fund goes away and that --
2 and that spending is rolled into another category.
3 Sometimes a new one is created because of something
4 new that someone wants to track. So they're fairly
5 consistent from year to year, but there's variation,
6 and so that's why you would see some differences.

7 Q. This is supposed to all be apples, but we
8 just may have different fund names. Is that a fair
9 way to put it?

10 A. Right.

11 Q. And you had mentioned with Mr. Rupe that
12 KPERS -- that is item 51 here -- was not included in
13 looking at what was the appropriate spending level.

14 A. Yeah.

15 Q. By contrast, there are school retirements,
16 44, would be included?

17 A. Although, that's not the same thing.

18 Q. Okay, I understand. Capital outlay is
19 included?

20 A. Right.

21 Q. Now, the statistician expert, they take the
22 data that fits in these categories. Why is a
23 function different than a fund?

24 A. The fund is the -- fund is the accounting
25 group, like almost like a checkbook that the money

1 goes through and it spends out of. They're often
2 tied to educational purposes but not always. There's
3 a general fund and then a supplemental general fund
4 that are really tied to the source of the revenue.
5 Functions are the area -- the business that you're
6 spending the money on and then finally, you have
7 objects, which is kind of what you're purchasing,
8 salaries, benefits, paper.

9 Q. You can have a capital outlay -- that would
10 be this 16 that comes within the instruction function
11 depending on how the capital outlay is spent?

12 A. You could, yeah, it actually -- you can --
13 you can have expenditures -- you can possibly have
14 expenditures for instruction that came out of the
15 capital outlay fund.

16 Q. So we take these numbers and they put that
17 in the formula, and then, what they are trying to say
18 is, what we want to come up with is a pot of money
19 that will generate this same sort of funds because we
20 found a relationship between this type of funds and
21 outputs?

22 A. That's -- yeah, that would generally be it.

23 Q. Now, I'm going to talk to you about what
24 base level is for a moment because what happens is
25 that under this outcome approach, you've got now

1 interpretive data from which you may or may not be
2 able to draw conclusions, and you want to implement
3 it, and the way most states have done it, and Kansas
4 was doing it under your report, is to come up with a
5 base level and then to with weightings add on to, is
6 that right?

7 A. Yes, we wanted to do something that mirrored
8 the approach that Kansas was taking.

9 Q. So we want to look at what the base is, and
10 there's a definition for that, and that's found at
11 page 1 -- or 125 of the exhibit, I think. It says
12 the base level costs of meeting outcome standards is
13 an estimate of what it should cost to meet the state
14 outcome standards in a hypothetical district that is
15 optimally sized, pays average teachers' salaries, has
16 no students with special needs and operates with
17 above average efficiency. So that's the base?

18 A. Yup.

19 Q. Now, let me talk to you about Exhibit 236
20 for a moment. This would reflect what the base has
21 statutorily been in the -- under the Act that was put
22 in place in 1993, and that's this blue line that you
23 and Mr. Rupe spoke about. That's the actual base.
24 Is that what you understand?

25 A. Yes.

1 Q. Now, there's an inflation number here which
2 would be important depending on what the base should
3 be or shouldn't be down the road. And what I mean by
4 that is, is that if you found that the base should
5 have been 4,167, but in 1993 that base was inflated
6 to a number much higher than that, what's the
7 significance of the inflated number in '93?

8 MR. RUPE: Object to the compound
9 question.

10 MR. CHALMERS: I'll rephrase it.

11 Q. (By Mr. Chalmers) What's the significance, if
12 any, to inflating the base number in 1993 to get a
13 bigger number than what you found was the required
14 base under your study?

15 A. There's really two pieces here. One, the
16 reason the inflation would be counted is, if you
17 would think that this level of spending would
18 purchase the same amount of goods and services for
19 the school district as that amount of spending
20 would. So it's keeping these on a comparable basis.
21 What we're finding is -- what we would have found
22 then is that that level is more than would have been
23 needed to meet the outcomes at that time.

24 Q. Now, is there another issue here? Let's use
25 the Augenblick & Myers example for a moment. You're

1 generally familiar with their study, are you not?

2 A. Yes.

3 Q. And more pertinently, you're familiar with
4 the weightings that were in place under the Kansas
5 system before 2005, are you not?

6 A. Yes.

7 Q. The weightings under the LPA study increased
8 in aggregate how much money would be received by the
9 school district, didn't they, over what would have
10 been in place before?

11 A. I'm sorry. I'm not quite following that.

12 Q. That's okay. We can look at them one at a
13 time, but just by way of illustration, the weighting
14 in terms of what one would get on top of the base for
15 a child who is eligible for a free lunch or free
16 meals, that base is higher, or that weighting is
17 higher after the LPA study in the law than it was
18 before, is that right?

19 A. The amount that is in statute now?

20 Q. Yes.

21 A. Yes, yes, it has definitely gone up.

22 Q. If what we wanted to do is figure out what
23 the required amount of spending would be, which is
24 the base plus the weights, we'd want to put in both
25 not only the base but also the weights, wouldn't we,

1 to see how that spells out?

2 A. I would think so.

3 Q. So let's talk about weights for a moment,
4 and I'm conscious of where I am in my outline and
5 timewise. Should I keep pressing on?

6 JUDGE THEIS: Whatever you're
7 comfortable with. When you get to a good spot, it's
8 up to you.

9 MR. CHALMERS: This is probably a
10 good spot as any. I could talk about weights and
11 then stop. Whichever is easier, may be 10, 15
12 minutes on weights.

13 JUDGE THEIS: Doesn't make a
14 difference to us.

15 MR. CHALMERS: Why don't we stop
16 now?

17 JUDGE THEIS: Okay.

18 JUDGE BURR: Okay.

19 JUDGE THEIS: 1:45.

20 (A recess was taken.)

21 JUDGE THEIS: Be seated. Thank
22 you.

23 Q. (By Mr. Chalmers) Before the break, I was
24 just going to talk to you about Duncombe and Yinger,
25 and I have a few questions about their study. To

1 begin with, you were shown as part of Exhibit 199,
2 Appendix F, and I just want to try to clarify what
3 that shows. Appendix F would reflect the adjusted
4 general fund per pupil and then the estimated cost
5 per pupil to meet performance outcomes, and those
6 numbers would include not only the base but then the
7 indexes that Duncombe and Yinger used to adjust the
8 base, is that right?

9 A. That would be correct, yes.

10 Q. By way of illustration, look at page 35.
11 When we are talking about figure 1.2-4, and there is
12 an original estimate by consultants, and that
13 original figure shows for '05/'06 a base of 4,024,
14 which obviously is something less than is shown in
15 Appendix F. So could you explain to the panel how
16 they got from that base -- that is the Duncombe and
17 Yinger to their adjusted numbers?

18 A. When you do -- when you do the Appendix F,
19 you're going to include -- you're going to allow for
20 each district variation on all the cost factors, like
21 how much poverty do they have, how large is a
22 district, how many ESL students do they have? And so
23 when you plug in values for the district into an
24 equation that produces those results, you're going to
25 use the district's actual values on a number of those

1 things, and then you'll use some averages, or in our
2 case some 33 percentile, some of the control values
3 like efficiency and stuff so that those are varying
4 based on the relevant characteristics of the school
5 district.

6 Q. And we'll talk about this in a little
7 greater detail, but you've got '04 -- excuse me, '04,
8 '06, '07 and the numbers are getting incrementally
9 larger. Why is that?

10 A. Because the standards were increasing.

11 Q. The AYP targets?

12 A. Yes.

13 Q. If we look at Exhibit 74, which is one, I
14 think, for mathematics. What you would look at would
15 be '04. The targets would be lower than what you
16 would find in '07?

17 A. Right.

18 Q. For K-8 and K-9?

19 A. Right.

20 Q. So the adjustment is made as part of this
21 formula that as this goes up, there is a resulting
22 increase in cost to reach that output is the theory
23 of the --

24 A. Yes.

25 Q. -- study? Now, if we pick 2007 and we pick

1 on Erie, St. Paul, Cimarron, and we see a number of
2 \$5,659, that's a per-pupil cost, right?

3 A. Correct.

4 Q. What that's saying is, is that for that
5 district for that year, you need to have spending
6 fitting in the categories we talked about before,
7 whether it's instruction or instructional support,
8 but you have to have spending that is total per pupil
9 that \$5600 figure from whatever source to reach those
10 outputs?

11 A. That's the idea.

12 Q. Now, the study itself does not -- it does
13 not draw a distinction between whether the money
14 comes from federal money or state money or local
15 money, does it?

16 A. Not for these numbers, no.

17 Q. For this number, that's the number you're
18 going to have?

19 A. Right.

20 Q. If I look at Exhibit 199 C 18, that's what's
21 been referred to as the table for the cost model
22 results, and I have a few questions about it, okay?

23 A. Okay.

24 Q. The number, this 8.83, I think you and
25 Mr. Rupe talked about, and that's the number that

1 supposedly shows a correlation between outputs and
2 spending, is that right?

3 A. Correct.

4 Q. What is the number down here where it says
5 adjusted R square?

6 A. That is the share -- you can interpret that
7 as the percent of all variations in spending that is
8 explained by the model. So you've --

9 Q. So stated in another way, there's about
10 half, 48 percent, the model doesn't explain?

11 A. That would be correct.

12 Q. There's something else going on that is
13 influencing outputs that we can't explain by looking
14 at these variables?

15 A. There's -- it's -- it would be influencing
16 costs.

17 Q. Influencing costs?

18 A. This is always a cost function.

19 Q. Now, there are also -- I think Mr. Rupe
20 talked to you about this P value. There are some
21 years down at the bottom, 2001. It says, a year
22 indicator variable. What's that?

23 A. Potentially, due to either inflation or
24 perhaps a change in the way districts go about their
25 spending patterns year to year where you just may see

1 some variation from year to year that's not related
2 to any of the other categories, so as a control
3 measure, you plug in the year from which that
4 particular observation was drawn.

5 So like there's about 300 observations in
6 2001. There's about 300 in '02, 300 in '03, 300 in
7 '04. There's actually been 300 in 2000 as well, but
8 that one would not show up in the results. I could
9 explain that if need be, but -- so that's the year of
10 the observation. And you're trying to just control
11 if there's some -- some odd reason why things change
12 due to those year variables, so that's why it's a
13 control.

14 Q. So for instance, if we take the coefficient
15 for 2001 for year -- it comes up with .02209. What
16 does that mean?

17 A. It means that -- it means that other things
18 being equal, the dollar amount was a little less in
19 '01 than in 2000. 2000 is the omitted year. It would
20 have a coefficient of zero. So it's a little less,
21 but then the P value indicates that it's really --
22 it's about a third of the time. That's probably just
23 due to chance. There's not a real relationship
24 there.

25 Q. Okay, and then in 2002 -- well, it would

1 reflect here that for each one of these years that
2 the money is less than what in 2000, right?

3 A. Correct.

4 Q. And then for 2002, there, we've got less
5 than a coin flip in terms of that being just random?

6 A. Right.

7 Q. The sample size is for those five years and
8 works out to be about 1,468?

9 A. Mm-hmm.

10 Q. And I guess there's some multiple accounting
11 there because you have roughly 300 districts each
12 year?

13 A. Right.

14 Q. So you're accounting each district five
15 times. It's not quite each district because the
16 numbers change --

17 A. Right.

18 Q. -- but roughly, you've got five readings per
19 district, right?

20 A. That's correct.

21 Q. So if we were looking at the sample size
22 just saying, district over time, we've got about 300
23 we're dealing with?

24 A. Right.

25 Q. I want to talk to you about the LPA

1 weights. When it came time to implement the study
2 and to give some information for the Legislature to
3 decide how it would codify if it chose to, we've
4 already talked about how there was a base selected
5 because we have a base form. That was kind of the
6 first step, right?

7 A. Right.

8 Q. Then on top of that base, there are
9 weightings that were put in place. Did your study
10 consider and analyze those various weightings?

11 A. We looked at -- based on this, we looked at
12 the enrollment weighting, the poverty-related one.
13 We did cover a new one on urban poverty, looked at
14 the ESL weighting.

15 Q. One of the things you looked at was the
16 enrollment weights?

17 A. Correct.

18 Q. And what is an enrollment weight?

19 A. It's a recognition that smaller districts
20 are going to be less efficient on a per-student basis
21 because they lack the economies of scale that a
22 larger district would have, and so in the funding
23 formula, those districts receive additional funding
24 to help with those costs, and in our results, we
25 found that those costs were greater for the small

1 district, and so they're reflected in here as well.

2 Q. And after the LPA study, were there
3 modifications to the statute that you recall
4 concerning the enrollment weights?

5 A. There have been. I'm not sure that they're
6 related to the study, but one of the changes --
7 there's a weighting factor called high enrollment
8 weighting that is for all the districts that are
9 larger that don't receive low enrollment weighting,
10 and over time that's come and gone, and since the --
11 since the study was released, I know that it was
12 reinstated and increased, and that has kind of the
13 affect of lowering the low enrollment weights.

14 Q. So you have those enrollment weightings in
15 the rationale, at least as you looked at it, had to
16 do with the economies or diseconomies of scale?

17 A. Yes.

18 Q. Then, in addition to the enrollment
19 weighting you look at, you looked at the poverty and
20 the bilingual weightings. And after the LP study,
21 there were changes in those weightings in the system,
22 is that right?

23 A. Yes.

24 Q. And I think we've talked about those. The
25 poverty went up substantially, and the way they did

1 the bilingual, was that left pretty much the same?

2 A. Bilingual was left the same.

3 Q. And there was a problem in terms of how to
4 measure the bilinguals. Could you describe that.

5 A. In the school finance formula, they -- the
6 students are counted based on the amount of time they
7 come in contact with a -- what's called a ESL
8 endorsed teacher -- teacher who's been through a
9 special curriculum to help them work with the ESL
10 students. And so in the formula, the student's time
11 is counted in how many hours in the day do they spend
12 time with those types of teachers.

13 One of the problems with that is that some
14 districts have done a better job of hiring or
15 encouraging people to get that certification, which
16 makes it easier for them to rack up hours that
17 count. Other districts have not been as successful
18 in getting those teachers. Maybe they didn't place
19 the emphasis on it, or what have you. So they may
20 have comparable bilingual populations, but they don't
21 rack up the same hours, and therefore, they're not
22 counted the same way under the current formula. So
23 we think that a head count is a more appropriate way
24 to measure the number of bilingual students, and we
25 point that out in the study.

1 Q. Your study then when trying to do this head
2 count approach applied a weighting of about .1 per
3 bilingual student?

4 A. That's where we ended up, yes.

5 Q. Which would have been a lesser weighting
6 than what was under the other method albeit with
7 probably a different way to count?

8 A. Correct.

9 Q. But in either event, both were an attempt to
10 try to find a way to afford additional funds to those
11 kids that were bilingual recognizing that there, at
12 least from your study, appeared to be an increased
13 cost to some degree to those kids?

14 A. Yes.

15 Q. Well, special education was kind of a
16 separate deal. You looked at that in your study,
17 didn't you?

18 A. Yes.

19 Q. And in that there were recommendations made
20 as to increase the special education's funding?

21 A. We didn't make any recommendations.

22 Q. I caught the same trap that Mr. Rupe was in.
23 Data was provided concerning the special education,
24 and after the LPA data was provided, the special
25 education funding went up, is that right?

1 A. The special education funding did go up a
2 little bit, but I think it was already scheduled to
3 go up.

4 Q. Okay. The special education weighting is a
5 different animal in that special education funding is
6 kind of separate, but then they put it through the
7 formula so that they can calculate the LOB, do you
8 understand that?

9 A. Yes.

10 Q. But in any event, you studied the special
11 education, provided that information along with your
12 study to the LPA and then the Legislature, is that
13 correct?

14 A. Yes.

15 Q. Then there was transportation, and that's
16 also something that was separated, wasn't it, from
17 your original --

18 A. Yes.

19 Q. -- study? Why was transportation pulled
20 out?

21 A. Transportation is very -- it's always proven
22 difficult to model when it's grouped in with all the
23 other expenditures, and so we couldn't figure out a
24 way to accurately pull that together while still
25 including it in our cost function model, so the

1 decision was made to separate that and analyze it
2 separately.

3 Q. There's a transportation weight now in the
4 present statute?

5 A. Yes.

6 Q. The transportation information that you had
7 in your study, you reported that to the LPA and to
8 the Legislature, is that right?

9 A. Yes.

10 Q. And there was a change after that report to
11 the way transportation was weighted in the present
12 statutes?

13 A. No, there was not.

14 Q. It wasn't the same?

15 A. There was no change made.

16 Q. Then there was vocational education. That
17 was also something that you all considered?

18 A. Correct.

19 Q. That was separate from the base, the
20 weighting that we've talked about, is that right?

21 A. That's right.

22 Q. You reported that to the LPA and to the
23 Legislature as to what your findings were concerning
24 vocational education?

25 A. Yes.

1 Q. There's a vocational education weighting now
2 in the present system or the present statute?

3 A. Yes, but it didn't change. It had been
4 there all along.

5 Q. There also is a cost of living weighting
6 that is available to get an increased levy, and that
7 is something you looked at in your study a little
8 bit, is that correct?

9 A. That's correct.

10 Q. And you concluded in your study that the
11 cost of living in the community is another way of
12 looking at the differences in teachers' salaries --
13 well, say another way of looking at differences in
14 teachers' salaries is to compare the cost of living
15 in different communities?

16 A. That's a piece of that, yes.

17 Q. It says there are two primary ways of
18 measuring the cost, and I only have the first page.
19 What were the two primary ways at page 70 of
20 measuring the cost concerning teachers?

21 A. There's actually -- there were three
22 potential approaches. When you're trying to look at
23 regional variations, starting on page 71, it'd be
24 average teachers' salaries in a district. The second
25 is the cost of living in the community, and the third

1 is the statistical teacher wage model. We used the
2 wage model.

3 Q. You used the wage model. The legislature
4 essentially adopted the cost of living approach?

5 A. I believe the Legislature previously adopted
6 the cost of living approach.

7 Q. Stuck with it?

8 A. And stuck with it.

9 Q. Now, there are some other weightings that
10 are in the system now, and I don't know if they were
11 any part of your LPA study, a declining enrollment
12 weighting?

13 A. We did not look at that in the study.

14 Q. Is that something that you've reviewed in
15 your position through the LPA?

16 A. Yeah, we've not assessed the validity of
17 it. I think it's a policy choice to kind of cushion
18 the blow as districts are getting smaller over time.

19 Q. There's the new facilities weighting. Is
20 that something that you all have looked at?

21 A. No.

22 Q. And the new facility weighting is based on
23 what rationale?

24 A. My understanding is the new facilities
25 weighting is based on the idea that when you open a

1 school, for its first couple years of operation,
2 it'll be more expensive, maybe in part because you
3 don't have -- the school's not full, and so you don't
4 have as many students in there to spread cost.

5 Q. The non-proficient head count weighting, how
6 is that? Is that something that you analyzed?

7 A. That is a weighting that came about after
8 the study.

9 Q. Is that something the LPA has looked at?

10 A. We've helped -- we helped legislators who
11 were interested in compiling information on what
12 different proposals might mean for different school
13 districts, but we never really evaluated --

14 Q. What does the weighting accomplish?

15 A. I think the idea is, in the current formula
16 of the predominance of the at-risk funding is for
17 students who are eligible for free lunches. It is
18 essentially based on poverty, using poverty as a
19 proxy for being at-risk. The non-proficient
20 weighting is a way of saying, let's count up the kids
21 who don't pass certain state assessments and use that
22 as our measure of the number of kids who are at-risk,
23 and that was implemented. It's a much smaller scale
24 than poverty-based weighting, but it's a different
25 way of getting at-risk funds out to districts.

1 Q. And I don't know that I overlooked anything,
2 but if we take all those weightings and put them
3 together, they will generate, when you look at the
4 base plus the weighting, a higher number of them was
5 in place before the LPA study on the basis of its
6 weightings?

7 A. You mean, all the changed weightings will
8 generate more?

9 Q. Yes.

10 A. Yes.

11 Q. Let me talk to you about question number 3
12 in the study. At page 107 of Exhibit 199, the
13 question is repeated, what does the educational
14 research show about the correlation between the
15 amount of money spent on K-12 education and
16 educational outcomes? And there was another member
17 of your team that was -- or members of your team that
18 were tasked to look at the literature and answer that
19 question, is that correct?

20 A. That's correct.

21 Q. They looked at literature -- I think some of
22 it is shown on page 108, the studies that they looked
23 at and they tried to analyze, and then they prepared
24 an answer which is found at page 107, indicating that
25 educational research offers mixed opinions about

1 whether increased spending on education inputs is
2 related to approved student performance. So those
3 people that were tasked with that obligation reached
4 that conclusion and put it in your report, is that
5 correct?

6 A. Correct, their conclusion is that when you
7 look at the research, you have the different mixed
8 results.

9 Q. Let me talk to you about Exhibit 197 real
10 quickly -- or 196, I'm sorry, real quickly, and
11 you're not going to find it over there because I
12 stole it. I just got the first page of it. That's
13 your school district performance report, and I think
14 you did it with Mr. Rupe.

15 A. Okay.

16 Q. I just want to be clear on a couple of small
17 points on it, I think. If I look at page 15 and
18 16 -- if we're inclined to go back and read this, I
19 just want to have a handle on how to do that. Figure
20 1-5, summary of school district spending increases
21 from the year '04/'05 to '06/'07 -- I don't know if
22 you can see it that well from where you are, but
23 would you walk us through basically what the
24 procedure was to arrive at that data?

25 A. I got to look at it for a second.

1 Q. For instance, you've got an increase in the
2 instruction of 20 percent, so how do you get to that?

3 A. I'm sorry. Can I have the document?

4 Q. Sure.

5 A. Okay. You can put that back up.

6 Q. Just trying to help interpret. I picked
7 instruction because it's at the top of the list, but
8 if you could just tell us how it was the audit team
9 arrived at that data.

10 A. Okay. So we would have taken -- that is
11 district expenditure data that is turned in from
12 every school district when they submit their budgets
13 to the Department of Education. So we take that data
14 and compiled it across all the school districts for
15 the '04/'05 school year, which kind of symbolized
16 before the funding started going up in '06/'07 school
17 year, which I'm guessing at that time was probably
18 the most recent data that were available.

19 So that's -- what that shows is a comparison
20 of that they spent \$448 million more on instruction
21 in '06/'07 than they did in '04/'05. That's a 20
22 percent increase. Overall, I think that it says that
23 they spent \$630 million more on the operational areas
24 over the three year -- from '04/'05 to '06/'07. I
25 think that's hard to read, but I think that's what it

1 says down in the total at the bottom.

2 Q. Yeah. So what you have is information
3 that's provided by the districts through part of
4 their budgeting information to the Kansas Department
5 of Education, which you would have had access to that
6 would provide you with these numbers in the column
7 where it starts out with 448 million?

8 A. That's correct.

9 Q. And then, what you did is just basically did
10 a percentage increase from '04/'05 to '05/'07 to say
11 how much those different categories went up, which is
12 part of what your --

13 A. Yes.

14 Q. -- task was to see how the money had been
15 spent?

16 A. Yes.

17 Q. And then, these percentages would indicate
18 of the 100 percent -- well, maybe not. These
19 percentages would increase -- the 18 percent wouldn't
20 be -- that's the total amount increased, but that
21 would be an increase from the previous year not an
22 increase in those particular amounts. In other
23 words, it's not relevant to each other. It's just
24 relevant to what it was before?

25 A. Right. The next column, percent of total

1 increases, starts with 71 percent, is the one that
2 says that 71 percent of the new money went into
3 instruction.

4 Q. So we're trying to say, where did the money
5 go? Did it go into buildings? Did it go into
6 administration? We know that 71 percent of it got
7 into instruction?

8 A. Correct.

9 Q. If we flip-flopped to, I think, the next
10 page, when we talk about instruction, it's fair to
11 say that a large part of instruction is teacher
12 salaries, right?

13 A. Yes.

14 Q. I mean, your study shows that by large
15 measure, the biggest item as far as cost to school
16 districts is paying staff?

17 A. Yeah.

18 Q. And that includes salaries, benefits, and
19 all the other things that go on --

20 A. Yes.

21 Q. -- with the teachers? Okay. And this
22 particular Figure 1.6 is an attempt to show how
23 salaries were affected or how they went in that
24 particular year. It shows that there was an increase
25 in pay to regular certified salaries of 17 percent.

1 Now, that isn't necessarily that people get a 17
2 percent bump, but that's how much more for teachers,
3 right?

4 A. Correct.

5 Q. Now, that will include both new teachers,
6 new staff, as well as the old staff?

7 A. It'll include a few that are not, per se,
8 teachers but are certified. By and large, that
9 regular certified staff will be the teachers.

10 Q. And if I dig around, I can find it in here
11 real fast, but will you accept for me, or do you
12 remember that there was a -- of the present teachers,
13 there was an increase -- here it is. The statewide
14 average salary increased by 11 percent, yeah, over
15 the first two years. So those teachers -- there was
16 an increase to 11 percent for the new teachers?

17 A. Yes.

18 Q. There's also an interesting item in here I
19 want to talk about, interesting to me, anyway, and
20 that is professional technical services. Would that
21 include cost for professional development?

22 A. Can you pull the thing down so I can see
23 what the other categories are? It could. I mean,
24 yeah, I don't know that that would be all that would
25 include --

1 Q. Probably?

2 A. -- but it could.

3 Q. It probably would include other than
4 professional development as well?

5 A. I think so, and that would be in there.

6 Q. At any rate, this would have shown over a
7 two-year period of time there was an increase in
8 professional development plus others of about \$5
9 million, is that right?

10 A. Yeah, that's what that shows.

11 Q. And that's 5 million of the -- can't read it
12 real well, but that's 2.7 billion for '06/'07?
13 Trying to read.

14 A. Yeah, probably would be more comparable
15 numbers to share the increase. In '06/'07 there was
16 a total amount of spending of \$2.7 billion on --

17 Q. And the increase would have been roughly
18 450?

19 A. Right.

20 Q. Then, let me talk to you about Exhibit 197.
21 You may have a copy of that up there. That's your
22 January 17 -- or a January 17, 2006 memo that has the
23 estimated costs through '13/'14. Can you find that,
24 or am I taking your copy?

25 A. Yeah, I can read it off here.

1 Q. I'll make it bigger. I want to make sure
2 that we're on the same page on this. Where it talks
3 about foundation level and then it has a number,
4 that's the base amount multiplied by some number of
5 kids, right?

6 A. And the weightings.

7 Q. And weights?

8 A. Yeah.

9 Q. So it's the base plus the weightings times
10 whatever the demographics and number of kids are that
11 generated this estimate for what we would need to be
12 able to educate our kids to get to those performance
13 standards for 2006?

14 A. Yeah, it would be 2007, but, yes.

15 Q. 2007. Okay. Great.

16 The next item down after that is hold
17 harmless, and what is hold harmless?

18 A. When you -- if you were to implement a
19 funding formula that looked like what we had
20 constructed, most districts would have gotten more
21 money, but some would have received less. And so --
22 and we know that the Legislature often does not like
23 to do that with its policies. So we estimated for
24 them what it would cost if they wanted to make sure
25 that no district lost any funding, really it's in

1 nominal dollars, would get at least as much as they
2 had the previous year, and so that's the cost of
3 filling in the gaps for some of the districts.

4 Q. When you worked out your formula, or more
5 accurately, when the consultants did, and then you
6 worked through how it would be implemented, the
7 conclusion was, there was some districts that were
8 getting more money than what they needed to hit those
9 outputs?

10 A. Correct.

11 Q. And so the hold harmless was to say to those
12 folks, we'll at least keep you at the level you were
13 at, right?

14 A. Yes.

15 Q. Then you've got supplemental aid, and I
16 think we all know and understand that supplemental
17 aid is the equalization aid for the LOB?

18 A. Yes.

19 Q. Now, when you were putting together -- did
20 you put this together for Ms. Hinton?

21 A. Oh, yeah.

22 Q. When you were putting this together for
23 Ms. Hinton, the purpose of putting supplemental aid
24 down was to inform the 2010 Committee that this is
25 what dollars would be that we anticipate based on the

1 increases from outputs over time based on
2 demographics, the weightings and all those things, is
3 that right?

4 A. Yes, although I believe this memo was to
5 the -- maybe the Post Audit Committee.

6 Q. Was it? Okay, I see.

7 A. In the senate of education.

8 Q. This was one to the committee. Great. The
9 point being, I guess, this is to tell them, this is
10 money that's going to have to come out of your
11 budget, out of your funds, but it doesn't have
12 anything to do with what is the foundation level,
13 does it?

14 A. Yeah, the foundation level is the estimate
15 of what districts would need in order to achieve
16 these standards. The other parts are pieces that at
17 that point either didn't exist, like hold harmless or
18 supplemental aid, which under the law at that time
19 was not supposed to be -- was not intended to pay for
20 that -- reaching the outcomes. It was supposed to be
21 for extras, and the KPERS contribution, which we had
22 excluded from our analysis, therefore, was not in the
23 foundation level. So this was an attempt to say, if
24 you model a formula after what we've come up with,
25 your price tag isn't just 3.1 billion. It's the

1 whole thing here.

2 Q. You not only have to pay the 3.15, you have
3 got to pay supplemental aid, which is going to
4 increase relative to what it had been set before
5 because you're increasing effectively what the LOB
6 could be?

7 A. Exactly.

8 Q. And you're also going to have to make
9 additional KPERS contributions because you're going
10 to, as part of this, expect to have higher salaries
11 to people --

12 A. Exactly.

13 Q. -- or more people?

14 A. You do assume they're going to spend a lot
15 of money either on new staff or pay raises to
16 existing staff.

17 Q. Well, that's maybe the short question I
18 should have asked to begin with. Is the BSAPP
19 number -- that is based on the foundation level
20 alone, is that correct?

21 A. Other way around. That's what's driving --
22 that's part of what's driving that foundation level.

23 Q. My point is, is that this number does not
24 include KPERS nor does it include the supplemental
25 aid or the hold harmless?

1 A. Correct.

2 Q. The other exhibit that I think that Mr. Rupe
3 showed you was to the 2010 Commission. That's
4 Exhibit 176.

5 A. Yes.

6 Q. So that we don't get confused on it, it's no
7 longer talking about base. It's now talking about
8 actual dollars. Those are dollars in millions based
9 on the assumptions that we've talked about?

10 A. Yeah.

11 Q. And here's another page of it. Again, here
12 we're talking about dollars in millions if we go
13 ahead and extrapolate this thing out.

14 A. This was a slightly different intended
15 comparison.

16 Q. I'm going to go back and talk to you about
17 the projections here.

18 Now, every year under the -- Exhibit 74 is
19 illustrative, I guess, but every year under the LPA
20 model, the cost study output model, there is an
21 increase by both inflation as well as an increase to
22 generate a higher output, is that correct?

23 A. Yes, and there's a third element that's a
24 smaller one but is in there as well, and that is the
25 cost of special education has a tendency to grow

1 every year. That's built in there as well.

2 Q. The cost of special education, is that
3 separate from the base, however?

4 A. It's shown -- it's separate from the base,
5 but it's shown in the foundation level.

6 Q. Okay. So that foundation level -- in fact,
7 I guess the base is entirely separate from the
8 foundation level because that's going to include this
9 special education in it?

10 A. Yes.

11 Q. Okay, so when we look at this in terms of
12 looking at what are the drivers for moving that up,
13 this shows only in '06/'07 dollars. The inflation
14 isn't a factor. The reason that that base is going
15 up then is to try to get to those different outcome
16 targets?

17 A. Yes.

18 Q. And the way that you accomplish that,
19 simplified, is, you went to the Duncombe and Yinger
20 formula that had that 1 to .83 relationship or
21 correlation, and you found that in order to get the
22 increased outputs we need, we need to bump up the
23 spendings by the amounts referred to, right?

24 A. Yeah, that's the only piece that would
25 change from year to year.

1 Q. Now, when you originally, that is, you and
2 the LPA originally did your study, you were looking
3 at only and modeling only the data to see where the
4 cost would be through the end of 2008, is that
5 correct?

6 A. I think it was through 2007.

7 Q. 2007?

8 A. Yeah.

9 Q. Okay, that may be. Your last data would
10 have been for the year 2004. Well, it would have
11 been 2005, because your study came out in 2006?

12 A. Yeah, our data had -- our data that we
13 analyzed went through '04, because the '05 data did
14 not become available until we were midway through the
15 study.

16 Q. So you were looking at '04, '06, and '07,
17 right?

18 A. I'm sorry?

19 Q. You were looking -- when you did the big,
20 thick study that we've been going through trying to
21 figure out what the costs were for those three years
22 is your best recollection. I can't remember if it's
23 '08 or '09.

24 A. No, we would have only look -- we were
25 projecting out the '06 and '07 because we were

1 already in '05, so that was already known.

2 Q. And when the study was done, there was no
3 effort to try to take the numbers from the cost study
4 and project out to 2014?

5 A. No, there was not.

6 Q. Now, you analyzed and were involved in how
7 this cost study works both at the time you were
8 involved in preparing it and issuing it and before
9 and then since, right?

10 A. Yes.

11 Q. And is it true that the further away you get
12 from the original data, the less predictive the cost
13 study is going to be as to what the costs are?

14 A. Yeah, without a doubt.

15 Q. Would you be comfortable using the data that
16 you have today to try to predict what the cost is in
17 2013 or 2014?

18 A. Not very.

19 Q. Now, I want to ask you another question on
20 that. I want you to assume that there is a partial
21 waiver in effect on AYP with the federal government
22 in our state not to say that the whole waiver has
23 been decided one way or the other, but would say that
24 the standards this last year were to make AYP at the
25 2010/2011 level, which I'm not sure if that's one or

1 that one as this is set up.

2 So now, I understand the mechanics of how
3 this works. If we make that assumption, that would
4 mean that using your projections here, it would go up
5 and then it would flat line if we keep it in today's
6 dollars?

7 A. That's correct.

8 Q. Now, a couple of other things, and then I'm
9 done. I want to talk to you about federal funds and
10 LPA, or excuse me, LOB. At page 34 of your report,
11 in talking about federal funds, it states, we had to
12 assume that the relationship between state and
13 federal funding would stay relatively constant. Is
14 that an assumption that was made in the report?

15 A. Where? I'm sorry, where are you at?

16 Q. I'm at page 34, second full paragraph under
17 paragraph 3.

18 A. Okay, can you repeat the question?

19 Q. Was an assumption made that federal funding
20 would stay relatively constant?

21 A. Yes.

22 Q. In your report at page 127, it explains how
23 you backed out the 205.5 million in federal funds to
24 three categories. Why was that done?

25 A. Because when we built our estimate -- well,

1 the consultants analyzed, and they came up with
2 their -- their model, we needed to include every --
3 all sources of spending that were reasonably going to
4 be -- could be associated with student outcomes, and
5 the federal funding was certainly a piece of that.
6 So that was included in.

7 We made the decision when we were trying to
8 translate that into how the State might want to
9 model -- might want to model a funding formula the
10 State would probably not -- we didn't think the State
11 would probably want to duplicate the federal
12 funds, and so since they were built into the
13 analysis, we needed to have a methodology to kind of
14 pull them back out of the results, so in the end, you
15 would have -- here's what the feds pick up, here's
16 the state piece, and together, they would add up to
17 the amount you're looking for.

18 Q. This comes from Exhibit 197. This is trying
19 to say -- this upcoming year -- it is saying that in
20 '07/'08 dollars -- '06/'07 dollars, rather, that we
21 need 3.6 -- excuse me, \$3.86 billion in foundation
22 funding to meet the -- well, actually, it would be
23 this level?

24 A. Yes.

25 Q. And that number does not include 205.5

1 million in federal funds?

2 A. Right, those would be on top of that number.

3 Q. Now, in terms of what you need to have, it
4 also doesn't include LOB money, is that right?

5 A. That's correct.

6 Q. This is just simply saying from whatever
7 source and it was anticipated for the purposes of
8 your study that it would be state moneys. That's the
9 number you need in '11/'12 if we stay true to our AYP
10 figures?

11 A. Correct.

12 Q. And from a numerical standpoint and from the
13 standpoint of your study, it didn't matter whether
14 this is paid by state funds, local funds, LOB funds,
15 or federal funds on top of the 205 that's been backed
16 out, is that true?

17 A. Exactly, and the way we were modeling it was
18 simply as the formula and the legal interpretation
19 was at the time.

20 MR. CHALMERS: I don't have any
21 other questions at this time.

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. Well, in terms of at the time, when you
25 looked at the costing out -- excuse me, when you

1 looked at the costing out -- I want to get back to my
2 water point here. When you looked at the costing
3 out, you were looking at meeting the standards at the
4 time?

5 A. Correct.

6 Q. And what you costed out in the LPA study was
7 those standards?

8 A. Yes.

9 Q. All right. Now, in terms of what you would
10 do today with a cost study, would you look at what
11 the state requirements are for educators on their
12 obligations to kids? Would you include that, what
13 the law requires today?

14 A. We would do it about the same way, I would
15 think, that we did then.

16 Q. Okay, and I'll represent to you that 721127
17 is what every educator has said constitutes a
18 suitable education in what the state law requires,
19 and it requires college readiness and vocational
20 readiness. Are you familiar with Common Core
21 Standards?

22 A. Little bit.

23 Q. All right. So you know that Common Core
24 Standards are being implemented now?

25 A. Yes.

1 Q. All right, so if our water mark when you did
2 it was state assessments, is it accurate to say that
3 the demands on the school districts in terms of what
4 is required has increased?

5 A. I think that's possible. I don't know, but
6 I wouldn't argue with that.

7 Q. All right, well, everybody that is in
8 education and everybody that sat in that chair has
9 indicated that. You wouldn't argue with that?

10 A. No, I would not.

11 Q. And in terms of what you looked at in terms
12 of the funding, you showed that the post audit
13 numbers as we indicated for the base should be at
14 this level through these years, right?

15 A. Right.

16 Q. And the base has, in fact, dropped down, is
17 that right?

18 A. Yes, it has.

19 Q. And in terms of federal funding, you'd have
20 to consider what Dale Dennis testified to in that
21 chair last week, and that is that the \$200 million in
22 federal aid is gone this year?

23 MR. CHALMERS: That's not what he
24 said, Your Honor. I object to form.

25 MR. RUPE: The ARRA funds are not

1 available this year.

2 MR. CHALMERS: That's not ARRA
3 funds, Counsel.

4 JUDGE THEIS: You can ask him a
5 hypothetical.

6 Q. (By Mr. Rupe) You would have to take into
7 consideration if you looked at the total number that
8 was needed and where those resources came from that
9 some \$200 million in federal funds from whatever
10 source are not available this year, wouldn't you?

11 A. If they are not there -- that I'm not sure
12 is the case, but if they're not there, then, yeah,
13 you can take that into consideration.

14 Q. Do you know who Dale Dennis is?

15 A. Yes.

16 Q. Would he be in a position to know what
17 federal funds are available and what are not?

18 A. Yes.

19 Q. So what you provided the Legislature, if I'm
20 understanding what the LPA study is, was a reasonable
21 estimate of the cost of achieving the standards at
22 that time, true?

23 A. Absolutely.

24 Q. And if I'm understanding what you've said,
25 those costs have not gone down?

1 A. I have no reason to think they've gone down,
2 no.

3 Q. By the way, has the Legislature come back to
4 you and asked you to do another cost study in light
5 of increasing demands?

6 A. No, they have not.

7 Q. In fact what they've done is adopt some law
8 that Mr. Chalmers referenced that said they shouldn't
9 be held to any cost study, haven't they?

10 A. Sounds like it.

11 MR. RUPE: No other questions.

12 RECROSS-EXAMINATION

13 BY MR. CHALMERS:

14 Q. I don't want there to be any confusion.
15 Let's look at Exhibit 199, and this is from page 127,
16 and it's talking about the federal funds, and I don't
17 know if you can read it, but it's calling out Title I
18 as one of the sources, right?

19 A. Correct.

20 Q. You know what the ARRA is, don't you?

21 A. Absolutely.

22 Q. That was stimulus funds that just for the
23 last preceding years -- that's something entirely
24 different from the federal funds that you were
25 dealing with in the 205, in this study, is that

1 right?

2 A. Definitely.

3 MR. CHALMERS: I don't have
4 anything further.

5 MR. RUPE: No other questions.

6 JUDGE THEIS: You can step down.

7 Thank you.

8 (Witness excused.)

9 MR. RUPE: Next witness is Brad
10 Neuenswander.

11 BRAD NEUENSWANDER,

12 Called as a witness for the
13 Plaintiffs, was duly sworn by the reporter and
14 testified under oath as follows:

15 DIRECT EXAMINATION

16 BY MR. RUPE:

17 Q. Tell The Judges your name and the city in
18 which you live.

19 A. My name is Brad Neuenswander, and I live in
20 Ozawkie, Kansas.

21 Q. What is your current title?

22 A. Deputy Commissioner of Education for the
23 Division of Learning Services.

24 Q. For the State of Kansas?

25 A. State of Kansas, yes.

1 Q. And how long have you been deputy
2 commissioner?

3 A. Approximately a year and eight months.

4 Q. Let's move backwards from deputy
5 commissioner and talk about what positions you've
6 held in the Department of Education and the positions
7 you've held prior to that.

8 A. Okay, before I was Deputy Commissioner of
9 Education, I was director of school finance for the
10 State of Kansas at the State Department of Education
11 for four years. Prior to that, I was a
12 superintendent of schools in Cheney, Kansas, for six
13 years. Prior to that, I was superintendent of
14 schools in Ellis, Kansas. Prior to that, I was high
15 school principal in Kingman, Kansas. Before that, I
16 was an assistant principal in Cheney, Kansas, and
17 before that, I was a high school business teacher in
18 Norton, Kansas.

19 Q. And your educational background is what?

20 A. Education? I've --

21 Q. Okay.

22 A. -- got my bachelor's from Baker University,
23 my master's -- finished up at Bethany College, got my
24 master's from Kansas State University in education
25 administration. I got my district level leadership

1 from Wichita State University.

2 Q. I ask every witness to tell us a little
3 something personal about yourself.

4 A. Education's been my life from my parents,
5 cousins, large family, and I've got a wife that's
6 amazing and two awesome kids.

7 Q. Your dad was a school superintendent?

8 A. Yes, for about 28 years.

9 Q. In Abilene?

10 A. He finished up in Abilene.

11 Q. I'd like to have you give us a job
12 description for the two positions that you've held
13 over the last five years. Start with deputy
14 commissioner, your current job, and then work through
15 the director of school finance.

16 A. Okay. As deputy commissioner, I oversee the
17 Learning Services Division of the State Department of
18 Education. That includes standards and assessments,
19 teacher licensure, special education, title programs
20 and services. And before I was deputy commissioner,
21 I worked in the other division at the State
22 Department of Education. There's two divisions. And
23 I was director of school finance, and my
24 responsibilities there was the distribution of the
25 state and federal funds that run through the formula,

1 distributing those to the 286-plus school districts
2 in the State of Kansas.

3 Q. Since we are coming off a brief discussion
4 of that a few minutes ago with another witness,
5 explain to The Judges what the federal funds
6 available are to school districts in Kansas.

7 A. The majority of the federal funds -- well,
8 federal funds are geared towards providing supports
9 to the -- basically, the most neediest children. And
10 the largest three pots of that money is the federal
11 free and reduced lunch funds that go for the child
12 and nutrition and wellness programs to pay for free
13 and reduced lunch meals. The next largest one, or
14 one of next largest ones is special education,
15 federal funds that go for our disadvantaged students.

16 And the third large pot of federal money is
17 for the title programs and services. Now, there's a
18 lot of strands of that whether it's migrant,
19 homeless, but it's basically to take care of the --
20 to provide supports and resources and programs to the
21 low socioeconomic students.

22 Q. Let's talk about what you just called
23 strings, and let's focus on free and reduced lunch.

24 For example --

25 A. Okay.

1 Q. -- if I'm running a school district, and I
2 have high poverty kids, and I get free and reduced
3 lunch money, can I go out and buy a school bus with
4 it?

5 A. No, the --

6 Q. Talk to us about what the restrictions are
7 on free and reduced lunch money.

8 A. Federal -- we have to submit applications as
9 a state to the US Department of Ed on what our plans
10 are to -- what programs, supports we have in our plan
11 to provide. They have to approve those, and there's
12 very strict guidelines on what you can and cannot use
13 federal funds for. And then once they accept our
14 application and how we intend to use those funds,
15 then they monitor extensively to make sure that they
16 were spent; one, within their guidelines; and also
17 within the plan that we submitted to them on how we
18 were going to allocate and spend those funds.

19 Q. And what happens if a school district uses
20 funds outside the intended purpose or outside the
21 strings that are attached?

22 A. Very simple. They have to send it back, and
23 we send it back to the feds.

24 Q. So they just can't do it?

25 A. Yes, they can't.

1 Q. Now, let's talk about the restrictions on
2 special education. What are the strings attached to
3 that federal money?

4 A. Same thing. You can only spend those
5 federal special education funds on approved students
6 and programs that meet the requirements of IDEA,
7 Individuals Disability Education Act.

8 Q. In terms of using those funds for purposes
9 other than special education and those designated by
10 IDEA, you can't do it?

11 A. Not allowed.

12 Q. All right. Let's take Title I, and explain
13 to us what those funds are and the availability of
14 those funds, and what strings are attached to those
15 funds.

16 A. The Title I, there are different strands,
17 but the amount of money you get is based on census
18 results based around poverty, mobility of transient
19 students, migrant students. And then we apply as a
20 state on how we want to use those across the state,
21 and then individual school districts then submit
22 their application, and once approved, then they draw
23 down those funds. But they have the same
24 restrictions of any other federal funds. They're
25 very tightly monitored on whether they used it for

1 appropriate purposes or within their -- the plan that
2 they submitted to us for approval.

3 Q. Are Title I funds available to any school
4 district any time they want, just have to ask for
5 them?

6 A. No, there's -- there's approximately 1,400
7 schools -- public schools in the State of Kansas. Of
8 those, because of poverty levels, approximately 700
9 of them are Title I schools, which means that they
10 meet the initial requirements to submit application
11 for those funds. Some of them are distributed on a
12 formula, which just means, based on once you're a
13 Title I school, based on your head count, you'll get
14 a certain amount. Other ones are based on a
15 competitive, which means they have to apply to
16 receive the funds. The vast majority you have to be
17 designated as a Title I school.

18 Q. And do you have to use those Title I funds
19 for the Title I school for the kids in poverty in
20 those schools?

21 A. Yes.

22 Q. All right. Then we've heard mention of ARRA
23 funds, long story short, those were federal funds
24 available that could be used to supplant state
25 moneys, true?

1 A. There were several options of what they
2 could have been available to be used for. It was
3 actually the governor's office that would accept
4 those, and they were -- the governor's office decided
5 which option that they wanted to choose in order to
6 use the ARRA stimulus money.

7 Q. Which office -- or which option did the
8 governor's office choose?

9 A. To -- I'm not quite sure what the word they
10 used at that time, but basically, they reduced state
11 aid and filled it with the federal ARRA.

12 Q. I call that supplant, but -- it was back-
13 filling the decrease in state funding?

14 A. I'm not sure if they used supplant in their
15 application, but that's -- would be another term for
16 it.

17 Q. All right. And what years was that money
18 available?

19 A. I believe it first became available in 2007,
20 2008, right in that area. It was right after the
21 nation went into the recession.

22 Q. Is that money available today?

23 A. No.

24 Q. When did it stop?

25 A. The lion's share of it, I believe, was the

1 2009/'10 fiscal year. There was another round of
2 about 90 million in the '10/'11 school year.

3 Q. And '11/'12?

4 A. None.

5 Q. All right, let's talk -- I want to get
6 some -- does he have these in front of him?

7 MS. GARNER: Not yet.

8 Q. (By Mr. Rupe) I want to get some of these
9 exhibits in front of you and talk a little about
10 state assessments, so we can understand some exhibits
11 we've got. What is Exhibit 104?

12 A. The first page or --

13 Q. Yes, the first page.

14 A. Those are the AYP targets. The blue line is
15 the AYP targets for the state math assessments.

16 Q. Okay.

17 A. And it appears that -- oh, go ahead.

18 Q. No, go ahead.

19 A. It appears that the red numbers are how the
20 state was achieving as compared to those targets.

21 Q. Okay, so let's look at -- and 103 would
22 be -- I'm sorry. 104 is math, and 103 would be
23 reading?

24 A. Correct.

25 Q. And what is the Department of Ed report

1 card?

2 A. That's the -- the similar as the student
3 would get a report card that they would take home
4 showing how well they were doing in school, the AYP
5 report card for the state reflects how the state is
6 doing in meeting its targets and goals.

7 Q. Okay.

8 A. And there's also a report card for each and
9 every building in Kansas.

10 Q. And if we take, for example, the Exhibit 104
11 from the report card, the blue line is the annual
12 target, the yellow line is what the performance has
13 been, and the red box shows what amount is below 100
14 percent?

15 A. Correct.

16 Q. And for all students then in Kansas, the
17 math assessments would show these results in
18 comparison to the target and in comparison to
19 proficient. Am I on track?

20 A. The yellow line would be the percent of all
21 students in Kansas that met the level of proficiency.
22 The red would be the remaining percent of students.

23 Q. Then if we look at 103 for reading, we can
24 see what the Kansas kids did, who was non-proficient
25 and what the target was?

1 A. Correct.

2 Q. All right. Then, let's follow math through
3 some subgroups if we could. And if we look at the
4 white kids on assessments, and this is math, tell us
5 what we see.

6 A. That in 2011, 89.1 percent of the white
7 students in Kansas met the level of proficiency.

8 Q. Okay, and the targets were 82.3 percent?

9 A. Correct, 89.1.

10 JUDGE THEIS: Exhibit number?

11 MR. RUPE: I'm sorry. I'm still on
12 exhibit -- math assessments, which is Exhibit 104.

13 JUDGE THEIS: Okay.

14 Q. (By Mr. Rupe) Okay, then let's look at the
15 subgroup, free and reduced lunch, and tell us what we
16 see in Exhibit 104 on math assessment.

17 A. Again, the targets don't change, but the
18 free and reduced lunch students, 77.8 percent of the
19 kids that qualified for free and reduced lunch met a
20 level of proficiency in 2011. So they fell below the
21 target.

22 Q. And 22.2 percent of the free and reduced
23 lunch kids or the kids of poverty in the state scored
24 below proficiency?

25 A. Correct.

1 Q. And then for the subgroup, Hispanics, same
2 exhibit, same math scores -- well, different math
3 scores but same annual target and results. Explain
4 what we see.

5 A. Same target, but in 2011, 77.4 percent met a
6 level of proficiency. I think one thing we've
7 struggled with, or in the past, is we always look at
8 one year, but if you look at these, you look at also
9 trend data, they've seen a lot of growth over the
10 several years, but it's just been in the past few
11 years they started falling below the targets.

12 Q. Well, actually, they fell below the targets
13 in 2010 and 2011 and were starting to get the early
14 returns on 2012?

15 A. Correct.

16 Q. Then, let's look at ELL, English language
17 learners, for the, again, the same exhibit, Bates
18 number achievement 000023. That shows what the math
19 assessments were for those ELL kids. Explain what we
20 see.

21 A. Very similar trends is the -- the last ones
22 were -- they showed growth over time, but over the
23 last two to three years, they've -- they have not met
24 AYP targets.

25 Q. And I think we've done the math on the

1 number of kids in each of these exhibits that falls
2 in the subgroup. Now, let's look at African-American
3 kids in Kansas, and in terms of that subgroup,
4 explain what we see on Exhibit 104, math assessments,
5 for 2011 and the years previous.

6 A. Although, since 2005 we have seen gains, we
7 have not the level of gains we've had -- not also in
8 other subgroups but with all students, but the --
9 they've fallen below target over the last four years.

10 Q. And simply stated, 32.6 percent of all
11 African-American students in the state scored below
12 proficiency on the state assessments. That would be
13 about 11,569 kids?

14 A. I'll concur to your numbers.

15 Q. Let's do the same for reading, and I'll go
16 through this a little bit quicker with regard to the
17 performance. We have on the first page of
18 Plaintiffs' 103, all students. What the target was
19 and what the scores were, right?

20 A. Correct.

21 Q. And covered that. And then with regard to
22 whites, it looks like the whites scored about 27,000
23 kids. The whites scored 91.7 percent in 2011, is
24 that right?

25 A. Yes.

1 Q. And that's above target?

2 A. Correct.

3 Q. So 8.3 percent of all the white students in
4 the state scored below proficiency on the state
5 assessments but above the target?

6 A. Correct.

7 Q. Then, we look at free and reduced lunch, and
8 they for two years running are below the targets, and
9 about 19.5 percent of the kids in poverty in the
10 state on the reading test scored below proficiency,
11 true?

12 A. That is correct.

13 Q. That's about 44,248 kids. Then, in terms of
14 Hispanics, in reading for 2011, the score was 78.4
15 percent and the target was 86 percent.

16 A. Correct.

17 Q. For African Americans below target in
18 2011 --

19 JUDGE THEIS: For the record,
20 that's ELL.

21 MR. RUPE: I'm sorry. I apologize.
22 ELL. Thank you.

23 Q. (By Mr. Rupe) The target was 86 percent, and
24 the scores for 2011 were 72.2 percent for that
25 subgroup, true?

1 A. That is correct.

2 Q. And then, we go to African Americans, and in
3 2011, 73 percent, target was 86 percent. 27 percent
4 of the African-American students in the state scored
5 below proficiency on the state reading assessment,
6 true?

7 A. That's correct.

8 JUDGE FLEMING: For whatever it's
9 worth, Exhibits 104 through 108 are blank in -- the
10 tabs are there, but there's nothing behind the tab.

11 MS. GARNER: 104 through 108. Is
12 that what you said?

13 JUDGE FLEMING: Yes. At least in
14 mine. I don't know about the rest of them.

15 JUDGE THEIS: You can borrow mine.

16 MR. RUPE: That's supposed to have
17 a colored copy, but we'll make sure that gets fixed.

18 JUDGE FLEMING: I'll get them
19 later.

20 Q. (By Mr. Rupe) Okay, so to summarize 103,
21 which was the reading assessment, about a third of
22 the African-American students were below proficiency,
23 is that accurate?

24 A. Correct.

25 Q. And on 104, again, about a third of all

1 African-American students were below proficiency on
2 math?

3 A. Correct.

4 Q. We've heard it in this courtroom, but see if
5 you agree with it, that with regard to these
6 subgroups, ELL, poverty, African American, Hispanic,
7 those subgroups cost more to educate?

8 A. I would agree.

9 Q. And explain to The Judges why that is.

10 A. Not every kid comes to the classroom with
11 the same supports, the same -- there's a lot of
12 research that shows students that live in poverty are
13 subjected to far fewer words before they enter
14 schools, so there's a -- there's a larger gap to
15 overcome. They don't have the resources at home, the
16 priorities at home, so it's not all, but as a
17 subgroup, they have a lot larger challenges to
18 overcome when they enter the school system.

19 Q. One subgroup I want to ask you about and
20 that are the kids that are non-proficient, do they
21 cost more to educate?

22 A. The non-proficient -- are you referring to
23 weighting, the non-proficient weighting --

24 Q. Yes.

25 A. -- or just all non-proficient?

1 Q. Just all kids that score below proficiency.

2 A. Those -- the students that in this data
3 that's showing that have not met a level of
4 proficiency yet are the hardest students. They are
5 the ones that require the heaviest lifting. They
6 have larger challenges because over time as we've
7 moved student achievement forward in kids to a level
8 of proficiency, the ones that are left are our
9 toughest, challenging kids.

10 Q. What is the achievement gap?

11 A. The achievement gap is measured in a lot of
12 different ways, but you could look at it, you know,
13 with these results, but as an example, where is the
14 largest percent of the population, and how are they
15 achieving, and then you look at different subgroups
16 and how are they achieving as compared to the
17 majority of the population, and that is typically how
18 people look at achievement gaps. And in Kansas it's
19 the largest percent of our population are white
20 students, then how are the subgroups achieving as
21 compared to the largest percent of our student body.

22 Q. Take a look at Plaintiffs' 106, which I will
23 put on the overhead, and I want to ask you about the
24 first column, all students, and these are state
25 assessment grade 11 mathematics, and we've got all

1 students and then, on the left hand column, we've got
2 the percentage on the state assessments. And this is
3 a bar chart of what we've seen before, but below
4 standard would be -- 7.3 percent would be on academic
5 warning. What's that?

6 A. There's five performance categories on a
7 state assessment. The lowest one, which is
8 represented in pink -- excuse me, in pink, is
9 academic warning.

10 Q. Okay.

11 A. The next level is approaching standards, so
12 the yellow is the percent of our students, all
13 students that are performing proficiently at meeting
14 the standards. The green level is what percent of
15 our students are exceeding the state standards at
16 grade 11 mathematics and the blue one is what percent
17 of our students are performing at the exceeds level.

18 Q. Okay. So roughly, proficiency corresponds
19 to the level between approaches. What was
20 approaches?

21 A. Approaches standards.

22 Q. And standard?

23 A. So when you look at the first exhibit and
24 you look at the targets, what it's saying is, that
25 target is what percent of the kids need to be in the

1 yellow or above in the top three categories. But we
2 only report the percent at or above as one whole
3 percent.

4 Q. So let's walk through this. It's not real
5 clear. It is on the Exhibit 106?

6 MS. GARNER: There's a big one,
7 too, Alan.

8 MR. RUPE: Yeah, we can do it here.

9 Q. (By Mr. Rupe) Walk through what each of
10 these subgroups show. Start with the white.

11 A. The white, since they're the majority of the
12 student population in Kansas, is not a lot different
13 than the all students, although the whites perform a
14 little better than the all students. And then, as we
15 go through each category, you can see the challenges
16 of certain subgroups. We have a larger percent of
17 the students free and reduced lunch that are below
18 proficiency. Hispanic is very similar to the free
19 and reduced lunch. English language learners have
20 greater challenges of getting those students to a
21 level of proficiency, and then the African-American
22 students.

23 Q. In terms of growth, the last -- oh, let's
24 pick a year. Since 2006, in terms of growth of
25 subgroups, what has been the largest growth?

1 A. Probably the largest growth of students has
2 been the Hispanic and English language learners.

3 Q. And has the number of kids in poverty, free
4 and reduced lunch, increased?

5 A. Yes, that has grown dramatically, too, over
6 the last three, four years.

7 Q. I think we have got an exhibit that shows
8 that, but take a look at Exhibit 107. Does that show
9 the increase in free and reduced lunch and in ELL
10 since 2004?

11 A. Yes, I would agree with that.

12 Q. Okay. Okay, take a look at Exhibit 126,
13 please. What is 126?

14 A. That's the 2005/2006 accountability report
15 that's prepared by the State Board of Education.

16 Q. What is an accountability report?

17 A. It's kind of a summary of how Kansas is
18 doing on all of our benchmarks and targets that have
19 been set. Kind of a report for the public.

20 Q. Turn to page 18, or KSDE 001398.

21 And this was the report for '05/'06. I want
22 you to walk through what this report says with regard
23 to this section on significant achievement gap
24 remains. And this talks about the NEAP scores, and
25 I'd like you to walk us through this, please.

1 A. Basically, what it's reflecting is, although
2 Kansas has always and traditionally done very well on
3 the NEAP, which is about the one national assessment
4 that you can compare states to states, that Kansas
5 continues to perform well on it comparatively as a
6 nation, but yet we still have an achievement gap that
7 we still need to be concerned with and address.

8 Q. Okay. It shows scores, fourth grade
9 reading. Fourth grade reading in the two columns
10 represent what?

11 A. The difference between Caucasians and
12 African-American students.

13 Q. In each of those -- and each of those
14 indicated '98 to 2005, '98 to 2005?

15 A. Right, and then one is African American and
16 then the next one is Hispanic.

17 Q. So the Caucasian, African American,
18 Caucasian, Hispanic. Is that the way it reads?

19 A. Yes, and it's showing in 1998 what the gap
20 was between those two. Some of them we've closed the
21 gap just a little and others the gap has increased.

22 Q. Take a look at 127, please. This is from
23 2006 to 2007. And by the way, when was the first
24 year of the budget cuts?

25 Do you agree this is -- we can cover this,

1 but the third year of the plan and the first year of
2 cuts was '08/'09. Do you agree with that?

3 A. I would agree with that.

4 Q. Let's keep that in mind as we look at this.
5 On page 20 of Exhibit 127, is there the performance
6 gap again discussed for reading and mathematics,
7 grades four and eight for Caucasian, African
8 American, and white -- I'm sorry, Caucasian, African
9 American, Caucasian, and Hispanic comparisons?

10 A. In fourth grade reading, between '98 and
11 2007, we've, in both the African American and
12 Hispanic, we have closed the gap slightly in 4th
13 grade, but in 8th grade between African Americans the
14 gap has widened slightly, steadily. Hispanics, it
15 has reduced but gone up just a little since 2005 to
16 2007. In mathematics, although we reduced it from
17 '98 to 2005, both in African American and Hispanic,
18 they have widened just a little bit on the NEAP.

19 And 8th grade reading, we've closed it -- or
20 excuse me, 8th grade math, we've done a really good
21 job of closing the gap at 8th grade between African
22 American, but haven't made much progress, maybe lost
23 just a little ground with Hispanic.

24 Q. And NEAP, by the way, tests in what areas?

25 A. I believe it's grades 4, 8, 4th grade and

1 8th grade, and it's a random sample across the state.

2 Q. It's not everybody in the state?

3 A. No, it's about 3,000 students at each grade
4 level.

5 Q. They test in the subject matters of what?

6 A. Math and reading.

7 Q. Let's take a look at 129. Is that -- what
8 is Exhibit 129 from the Kansas accountability report?

9 A. That's just another similar to the ones
10 we've been looking at. This is kind of a condensed
11 version that's put out annually by the State Board of
12 Education, kind of an education summary.

13 Q. And for The Judges' benefit, I won't go
14 through each of these since we've covered this, but
15 it shows on Exhibit 129, KSDE 146208, it shows the
16 progress that was made at the time of this report
17 with regard to what you've described as the gap,
18 correct?

19 A. 146208, or is it 205?

20 Q. I'm sorry. 205. You're right.

21 A. Okay, yes, over since 2000 to 2011, although
22 there is a gap that we still have in Kansas, it has
23 been reduced over the last ten years in just about
24 every assessed area.

25 Q. And track -- and this is as of '10/'11, the

1 gap has -- what's the current status of the gap in
2 2011?

3 A. There appears -- when -- there's different
4 ways you can look at gap. In that first situation,
5 we're looking at poverty to determine the gap, so
6 we're comparing those students -- the top line is
7 those students that pay for their lunches. It is
8 compared to students that are on reduced lunches,
9 then students that qualify for free lunches. And you
10 can see that over time we've seen a lot of improved
11 achievement, but we've basically over an 11-year
12 period have cut the gap in half.

13 Q. And then with regard to mathematics, the
14 same three lines. Now, let's go down to reading gap
15 by ethnicity, the blue is Caucasian?

16 A. Yes.

17 Q. And the tan line is Hispanic, and the darker
18 line is African American?

19 A. Correct.

20 Q. Okay. And then the same information for
21 mathematics?

22 A. Correct.

23 Q. For the same period of time.

24 Can we agree that the gap still exists?

25 A. Yes, it is still a challenge for Kansas.

1 Q. And in terms of the requirements of NCLB
2 state law what we've determined as suitable, do we
3 need to address that gap?

4 A. We will always address that gap.

5 Q. What do you mean by that?

6 A. Whether it's under No Child Left Behind,
7 which we have submitted a waiver, but even if we are
8 successful in receiving our waiver, we still will not
9 ignore what the data shows us that are our biggest
10 challenges. Even in the waiver we will be addressing
11 subgroups.

12 Q. Are you saying that we could work all day
13 long with as much resources as we possibly could get,
14 and we could never end the gap?

15 A. No, what I'm saying is, we'll never give up
16 on trying to reduce the gap because I don't believe
17 anybody in Kansas wants to ask which subgroup would
18 like to be left behind.

19 Q. Is your belief, and one that is shared with
20 folks at the Department of Ed, that all children can
21 learn?

22 MR. CHALMERS: I think -- I think
23 he agreed to testify on his behalf as opposed to
24 everybody at the Department of Ed, and I object to
25 the form of the question.

1 MR. RUPE: Okay. I'll back up
2 because I'll ask the other folks that.

3 Q. (By Mr. Rupe) With regard to your belief, is
4 your belief that all children can learn?

5 A. I believe every child can learn but at
6 different levels.

7 Q. Have you seen situations where Kansas
8 educators given the resources through federal funding
9 or through a grant or through situations where they
10 have the money available are able to achieve the gap,
11 to close the gap?

12 A. To totally eliminate the gap to zero, I
13 don't believe I've seen that. We have in Kansas
14 what's called the Kansas Learning Network, which is
15 where we identify the lowest performing schools in
16 Kansas, and we provide specific targeted assistance
17 to those schools. And once they entered the Kansas
18 Learning Network and we allotted them federal school
19 improvement money to specifically use to guide
20 curriculum and instruction, do a needs assessment and
21 implement an action plan based on their needs, have
22 had incredible gains.

23 Q. And the schools that are identified for the
24 learning network are those -- how are those schools
25 identified?

1 A. Based on their results on the state reading
2 and math assessments.

3 Q. And are they arrayed in a rank and then a
4 line drawn and the learning network schools are a
5 certain percentage?

6 A. There's a formula that we use to look at who
7 are persistently the lowest performing schools based
8 on achievement using the state math and reading
9 assessment and then, yes, then we do rank them and
10 then identify, based on their results, which ones now
11 become part of the network. And then we allocate
12 them the federal school -- title school improvement
13 grant funds to implement a plan, but we don't just
14 give them the dollars, we follow it with technical
15 assistance that's led by a team to go in -- because
16 every school is different as to why they're low
17 achieving based on subgroups, based on demographics,
18 but once we've worked with them, we've seen, yes,
19 considerable gains.

20 Q. In terms of the money to help those schools
21 that are identified as schools that need the
22 attention of the Kansas Learning Network, where does
23 that money come from?

24 A. That money comes from the federal school
25 improvement dollars.

1 Q. Are there state dollars available for those
2 schools?

3 A. Only through the normal formula, school
4 funding formula.

5 Q. So the occasions where you've seen a school
6 and kids in the bottom side of the achievement gap
7 turn around have been occasions where this grant
8 money has become available through the Kansas
9 Learning Network and progress has been made?

10 A. Correct. We've seen schools that are not in
11 the network make great gains, but we don't collect
12 specific data on them because they're using just
13 their -- their normal --

14 Q. Resources?

15 A. -- resources. The ones that we have the
16 data to show are the ones that we specifically target
17 because they're lowest performing, and we're getting
18 them specific resources.

19 Q. Well, as you've observed these situations,
20 what is your opinion with regard to the difference
21 that resources, translate that as money, makes in
22 student achievement?

23 A. We look -- first, we look at their needs'
24 assessments, and a lot of them what we find the needs
25 are is to get their lowest performing students, which

1 are typically -- fall into the poverty or the ELL or
2 the African American, what type of resources and
3 supports they implement, reading specialists,
4 implementation coaches for those school districts to
5 be able to give leadership and assistance to the
6 principals to help guide them through the process.

7 They extend the learning day. They've hired
8 instructional support for the teachers to be able to
9 provide tiered interventions, pull out those kids
10 from the regular classroom to give them more
11 in-depth, more specific support, so it's very
12 technical in nature in what they use those resources
13 for.

14 Q. What is MTSS?

15 A. Multi-Tiered Systems of Support.

16 Q. We've heard a little bit about that from
17 some teachers, but explain to The Judges what that
18 is.

19 A. MTSS is a framework which describes a
20 process in order to -- to see systemic change within
21 a school district. It can also be within a school
22 building. It's not a shelf-bought product. What it
23 is, it's a way to get schools to look at how they're
24 allocating their resources, whether it's time,
25 whether it's fiscal, financial, human resources to

1 really do a deep dive into how are they currently
2 using their resources to improve student learning and
3 then reallocate their professional development, their
4 staff. There are times where they look at, hey, we
5 need to provide extra instructional supports to the
6 lower grade teachers. So it's a framework to help
7 schools move through the process of systemic school
8 improvement.

9 Q. Is that a strategy that costs money?

10 A. Some parts.

11 Q. And here's what I want to ask you. In terms
12 of requirements by the State Board of Education, and
13 the State Department of Education, are there
14 occasions when the department requires interventions
15 at the school level?

16 A. Yes, when you become a school that qualifies
17 for technical assistance. Otherwise, you are a Title
18 I school, and you are identified as one of lowest
19 performing, we are required as a state to provide
20 technical assistance to help you improve.

21 Q. And is MTSS one of those interventions that
22 would satisfy that requirement?

23 A. In many of the cases, those districts have
24 chosen to -- it's -- MTSS is not a mandate, but when
25 we go into a school that we're required as a state to

1 provide technical assistance, there are times where
2 we will say, you need to either be involved in MTSS
3 or some other systemic process to move forward
4 because since your performance is at a certain level,
5 then now, we become accountable to help you move
6 forward.

7 Q. And how many schools become eligible for
8 these federal funds that are administered with the
9 Kansas Learning Network?

10 A. We have currently about 35 school districts
11 in Kansas that are involved in the Kansas Learning
12 Network.

13 Q. And is it the district that receives the
14 KLN, or is it a school?

15 A. It depends on what their needs are. In --
16 currently, we have -- just outside of requirements,
17 we have about 190 school districts that are
18 voluntarily going through some part of MTSS. They're
19 at some level of implementation. Of those 190,
20 there's a handful of them that are in the Kansas
21 Learning Network that we have recommended you do need
22 to start implementing MTSS as a way to move your
23 system forward.

24 Q. Okay. We've talked about the demographics
25 that have changed in recent years. What are Common

1 Core Standards?

2 A. Common core Standards are a new set of
3 standards that the State Board of Education adopted
4 in the fall of 2010 to replace our existing state
5 standards, and Common Core Standards are more of a
6 deeper dive into the curriculum to -- to prepare --
7 it'll be the set of standards to help prepare kids
8 better for level of college and career readiness.

9 Q. And let's go to -- I want to ask you about
10 something, and we'll come back to Common Core in just
11 a minute.

12 MR. RUPE: You want to take a
13 break?

14 JUDGE THEIS: Wouldn't hurt. Are
15 we going to get done with him today?

16 MR. RUPE: Yeah. Depending on
17 cross, but we could.

18 JUDGE THEIS: It's a broad question
19 when I ask it.

20 MR. RUPE: You want to take 15
21 minutes?

22 JUDGE THEIS: Yeah, that's fine.

23 (A recess was taken.)

24 JUDGE THEIS: Be seated. Thank
25 you.

1 Q. (By Mr. Rupe) I'd like to visit with you
2 about MTSS just for a brief moment and then move back
3 to where I was. Explain the tier levels of MTSS,
4 this intervention.

5 A. MTSS is an approach to improving instruction
6 and learning within a system by -- if you -- by
7 breaking instruction into three tiers. If you think
8 of Tier I as the classroom where all students in the
9 class receive a level of instruction. Some students
10 because of challenges need more time, need more
11 intense instruction, so it's implementing a second
12 tier of smaller group instruction based on the
13 individual needs of the learner.

14 Some students even need more interventions
15 than that depending on what their challenges are, so
16 that's the third tier.

17 MTSS is a process to where a school or a
18 district goes through and looks at, how do we
19 reallocate all of our resources, whether it's human
20 resources, financial resources, its curriculum, and
21 supports around that kind of a model to be able to
22 quickly use data to quickly identify the individual
23 needs of the learner and then implement the supports
24 to be able to get that student the supports and
25 services they need as quickly as we can to get them

1 back at either grade level or back with their peers
2 instead of in the past sometimes it took getting a
3 team together and collecting -- you know, so it's
4 quick, direct, interventions to the students at three
5 different levels.

6 Q. And the resources that you need to -- for
7 lack of a better word -- attack with that strategy
8 and intervene, what are the resources you need?

9 A. Sometimes you may already have staff in
10 place that you need to reallocate them and put them
11 in the areas that best meets the needs. Some
12 districts look and say, we've never -- we've been
13 spending our professional development dollars in the
14 wrong way. Let's focus it in this area. Some
15 districts need to spend more on professional
16 development. They need to invest in some technology
17 to be able to have better student level data.
18 Sometimes they need to look at and say, we need some
19 people to be able to provide the supports to the --
20 because one teacher can't do all three tiers.
21 There's got to be the supports to provide to those
22 teachers. Some of them you already have the supports
23 there, you're just not using them in a most efficient
24 manner. Sometimes, it's getting staff, hiring paras,
25 hiring reading specialists, hiring people, or

1 reallocating the people you currently have.

2 Q. And look on exhibit that we've looked at,
3 106, our achievement gap exhibit that shows 11th
4 grade mathematics -- good catch -- with regard to the
5 Tier III kids, where do they fall?

6 A. The Tier II and III kids?

7 Q. Yes.

8 A. Are -- all these kids below proficiency, and
9 how do we target instruction to get those kids to a
10 level of proficiency? And it's not a special ed
11 intervention. It's not -- it's all students. How do
12 we design a system to improve instruction and support
13 to all kids performing below a level of proficiency.

14 Q. We've heard from the principal who said that
15 she wasn't going to be able to afford MTSS this year
16 or next school year because of lack of resources, and
17 I want to segue to discussing lack of resources.

18 I think this goes without saying, but I just
19 want to get it in front of The Judges and put it in
20 context for your testimony here. 2005/2006 was the
21 first year of what we call the Montoy money. '06/'07
22 was the first year of the three-year plan. In the
23 third year of that three-year plan that put money
24 back into public schools in '08/'09 was the first
25 year of the cuts, and then you're aware there were

1 cuts in 09/'10, '10/'11, '11/'12, and this year there
2 was a modest increase.

3 A. I would agree with that.

4 Q. Okay. What I want you to look at is what
5 the State Board of Education has recommended to the
6 Kansas Legislature, and take a look at Exhibit 184 if
7 you would. And look at KSBE 000090, and it looks
8 like the board took action on a recommended \$41
9 increase in the BSAPP for the following year. So
10 this would be August 15, 2007, according to
11 Plaintiffs' Exhibit 184. Is that what the State
12 Board recommended to the Legislature?

13 A. Since these are copied, the minutes, I would
14 agree.

15 Q. So for Fiscal Year 2009, the State Board
16 recommended an increase in the base of \$41?

17 A. Correct.

18 Q. Then, let's go to 191. As of July 8, 2008,
19 and turn to KSBE 000722, where it says FY 2010
20 budget. Is it accurate that there was a recommended
21 increase for Fiscal Year 2010 of \$11 and a
22 recommendation that the formula be funded to its
23 statutory level? I'm looking where it says,
24 Mr. Dennis recommended increase in BSAPP to \$11 as
25 well as funding the cost of programs necessary to

1 comply with the current law.

2 A. That's correct.

3 Q. Let's move to Exhibit 188. These are
4 minutes from July 15, 2009, and turn to Bates number
5 A 00080, and it looks like there was a motion for
6 additional -- total recommended funding of
7 \$281,780,233, is that correct?

8 A. That is correct.

9 Q. And it broke it down into -- on the next
10 page into terms of what the general state aid BSAPP
11 should be, the supplemental general state aid,
12 special education, capital outlay, parents as
13 teachers mentoring program, professional development
14 school lunch, and national board certification. Is
15 that what it was?

16 A. That is correct.

17 Q. And that was for the school year 2010.
18 Okay, let's move now to Exhibit 190, and I'll have to
19 stand here with this one since this is my only copy.
20 Plaintiffs' 190 is minutes from July 13, 2010,
21 correct?

22 A. Correct.

23 Q. And it is for the Fiscal Year 2012 budget,
24 and is it indicated and approved a recommendation of
25 \$471,761,017 in new funding to the Legislature?

1 A. That is correct.

2 JUDGE FLEMING: What page was that
3 on?

4 MR. RUPE: That's on page KSBE
5 000779.

6 Q. (By Mr. Rupe) And that was for FY '12.

7 Then take a look at 186, which is July 12,
8 2011, and it's for FY 2013. What is recommended by
9 the State Board to the Legislature was to fund the
10 current law to its statutory level. Do you see that
11 on Bates number KSBE 001689? It's the motion that
12 was made at 25234?

13 A. That would be correct.

14 Q. All right. Now, did the Kansas Legislature
15 adopt any of these recommendations?

16 A. I don't believe they did.

17 Q. With regard to what they did, they cut the
18 base state aid, didn't they?

19 A. Yes.

20 Q. In every year except this last year where
21 there was the modest increase, is that right?

22 A. That would be correct.

23 Q. You were in the courtroom when Mr. Scott
24 Frank talked about the Legislative Post Audit and
25 there was some questions about standards and the

1 costing out of those standards. I'm not going to ask
2 you about the costing out part of the LPA, but I do
3 want to ask you, what do those Kansas standards test
4 for?

5 A. The current Kansas standards were set -- if
6 you think of a high jump standard or a pole vault
7 standard, they were set at a level -- grade level
8 proficiency. Where do we want all kids to be to be
9 considered at grade level in grades 3 through 8 and
10 7th grade in reading, math? We also have them in
11 science, history, social -- so they're the
12 foundational level that for every kid to be
13 considered at grade level, and if you meet this
14 level, then you're prepared to move to the next
15 level.

16 Q. Okay, so the standards are testing for grade
17 level proficiency?

18 A. Correct.

19 Q. All right, now, drop back to what we talked
20 about, Common Core Standards, and with regard to
21 Kansas law, let me show you KSA 72 11 27. In terms
22 of what is required of our schools, public schools in
23 Kansas, is this -- do you recognize these factors as
24 being required by the State of Kansas?

25 A. Mm-hmm.

1 Q. Your answer is yes?

2 A. Yes, yes.

3 Q. Okay, in terms of these standards, it
4 includes -- and by the way, I call these the Rose
5 standards because they're based on a Kentucky Supreme
6 Court case, but in terms of these Rose Factors, do
7 they include college readiness in terms of training
8 or preparation for advanced training in either
9 academic or vocational fields?

10 A. I would say it is a piece of college and
11 career ready.

12 Q. Okay.

13 A. I would say there's more to college and
14 career readiness than just how you scored on an
15 assessment. What are your industry recognized
16 certifications and skills? I would say that would be
17 a component of college readiness.

18 Q. Okay, so college readiness would include
19 more than just the statement --

20 A. Yes.

21 Q. -- is what you're saying? And with Common
22 Core, it would be whether you're actually college
23 ready or not, right?

24 A. The Common Core Standards are not designed
25 at a level of grade level proficiency. They actually

1 take a deeper dive into the content to not only to be
2 able to -- to work an algebraic equation, but how do
3 you apply it? How do you use it at different levels
4 as opposed to just, can you work the formula? Can
5 you also apply it as an example?

6 Q. So use your track analogy. If the grade
7 level progress of the standards is here, where does
8 Common Core -- is it higher in terms of demand?

9 A. It is. And if you look at the five
10 proficient levels we currently have in the state
11 assessments, we all know that just being at grade
12 level doesn't necessarily mean that you're ready for
13 college or a career. If you -- if you mapped where
14 we think the Common Core Standards will be in the
15 assessments, it would be at the equivalent of scoring
16 maybe at the middle of the acute standards. So there
17 will be a higher, more rigorous set of standards.

18 Q. Okay, so we've got higher assessments as you
19 just explained, and then we have -- is college and
20 career readiness higher than the grade level
21 proficiency?

22 A. Yes.

23 Q. So we're on track -- the testimony from
24 Mr. Scott was what it costs to get to there, right?

25 Your answer is yes?

1 A. Yes.

2 Q. Okay. Let me talk to you about a couple
3 other areas. I want you to talk to us about the
4 importance of cash balances within districts.

5 A. On cash balances, the attention around cash
6 balances is basically, why do schools have cash in
7 certain funds on July 1, the first day of a fiscal
8 year? The reason they have to have cash there is
9 because they don't receive state aid in many of the
10 funds until later on in the year.

11 An example, one fund that they carry a lot
12 of cash in is special education. Schools don't --
13 the State does not submit the first special ed state
14 aid until October 15. So they have July, August,
15 September, and really October because they have their
16 board meeting before the 15th -- that they have four
17 months' worth of expenses before they get their first
18 state aid check, so they have to have cash on hand.

19 Another good example is bond and interest
20 state aid -- or bond and interest fund. Their first
21 payment is in September.

22 Well, they don't get anything from the
23 State, really, or the county, but they have to have
24 enough money in the bank on July 1 to make that
25 payment because they can't default on a payment.

1 Does that answer -- do you want me to keep going?

2 Q. No, in fact, let me hand you Exhibit 337,
3 and I'll put it on the Elmo here.

4 A. You're not going to focus on my first slides
5 in this, are you?

6 Q. You've made a presentation to focus before
7 on cash balances, haven't you?

8 A. Yes.

9 Q. And in terms of this presentation from
10 Plaintiffs' 337, you have a slide that I'm going to
11 put on that says -- and this is Bates number KSDE
12 144033. That slide sets forth what you just
13 explained with regard to why cash balances are
14 needed.

15 A. Yes. Those are four funds that I used as an
16 example, but there's -- all funds have a reason why
17 you would need a cash balance. That's just four of
18 them I used as an example.

19 Q. And explain to The Judges how it works with
20 the State payments that you receive after
21 July 1 -- school districts receive after July 1 that
22 they're required to book by June 30.

23 A. Approximately eight years ago, the State of
24 Kansas was short of finishing out the school year.
25 They're required to finish with a certain cash

1 balance, and they can't go below zero.

2 In that year, and it was about eight years
3 ago, could have been nine, could have been seven, the
4 Legislature chose to withhold the final June state
5 aid payment to schools so they could finish their
6 fiscal year, and they held it -- or they just didn't
7 make it. And then -- so they could balance the
8 State's books by June 30th when they closed.

9 Immediately into July, the new fiscal year,
10 the State borrowed -- and I believe at that time it
11 was around 3 to 400 million, from themselves, made
12 the payment to the schools, and then adopted statute
13 to tell them to backdate it as if you received it
14 June 30.

15 So it was a one-time way for the State to
16 balance their books, but the schools received it in
17 the next fiscal year, but they had to -- it -- you
18 can imagine how the CPAs worked through that. So
19 they had to backdate it as if they received it on
20 June 30th to record it in the fiscal year that they
21 were supposed to receive it.

22 Q. And have there been auditors across the
23 state that have noted that in the audits of school
24 districts?

25 A. Pretty much -- every audit report that I've

1 seen that when I review audit reports and budgets
2 when I was a school finance director, they always
3 note the cash basis violation, but then they follow
4 it up with a note that the reason they did it was
5 because the Legislature had a statute allowing the
6 State to do that.

7 Q. And has there been a situation with state
8 aid payments in the LOB and the general fund?

9 A. Being?

10 Q. Is that the situation you just described?

11 A. There was -- that was the original law, but
12 there was one year I believe they also did it with
13 special ed, and I know they did it one year with
14 special ed that it wasn't in the statute to have the
15 authority to do it, but the State did it anyway. And
16 then they may have done it a few times with KPERS,
17 the State KPERS payment.

18 Q. All right, and there was an issue with the
19 property tax payment as well. Explain that situation
20 to The Judges, property tax.

21 A. In regards to cash balances, about five or
22 six years ago we used to pay our -- Kansans paid
23 their property tax in May -- excuse me, in June, and
24 then the counties collected it, and they would send
25 the money to the schools on July 20th. So 20 days

1 into their fiscal year they received about 30 to 35
2 percent of their county money, the schools received.

3 Well, about five or six years ago, again, to
4 address the State's fiscal problems, they moved our
5 property tax payments to May and sent the money to
6 the schools in June, that same pot of money in June.

7 Q. 30 to 35 percent?

8 A. 30 to 35 percent of their money they
9 received with 20 days left in the fiscal year as
10 opposed to 20 days starting the fiscal year. So you
11 saw a large increase of cash balances because they
12 carried it over because their next county payment
13 does not happen until January 20.

14 So now schools have to go -- and it's been
15 this way for the last six years or so. They have to
16 make it from July 1 to January 20 until they get --
17 so basically six-and-a-half months they don't receive
18 really anything from the county, which increased the
19 need to carry the cash balances over because their
20 state payments are periodic throughout the year,
21 monthly. And it's to fund them basically month to
22 month.

23 Q. Explain to The Judges the financial state of
24 school districts with regard to cash balances. Are
25 there -- as you counsel districts on their finances,

1 are there districts who have depleted their available
2 cash?

3 A. This -- the purpose of this slide was to
4 remind business managers, superintendents, why you
5 have -- why you cannot run your cash balances down.

6 Q. You're pointing to 337 on the slide that's
7 on the screen, 144033?

8 A. Correct.

9 Q. Okay.

10 A. And the reason is, if you don't -- if you
11 don't have enough cash balance in your special ed
12 fund to get you at least three to four months, then
13 you have to use cash in your general fund or other
14 funds to cover those expenses, to where by the end of
15 the fiscal year, by May, June, you've exhausted your
16 general and your LOB to the point where it makes it
17 very difficult to finish the fiscal year out.

18 Q. Okay, and you're being very tactful in your
19 answer, but are there districts who have run out
20 their cash balances, maybe used up everything it
21 could, don't have any bond and interest money
22 available and are tapped out?

23 A. We've had -- when I was finance director, we
24 had some districts specifically in the year when the
25 state revenue was coming in short and the State was

1 late on making payments, we had some districts
2 because they did not start with cash balances could
3 not make payroll by the month of December because
4 they didn't have enough cash flow to flow them until
5 they got their -- either their state payment they
6 were late on or their January 20th county
7 distribution.

8 Q. How many of those situations have you seen?

9 A. That year it was approximately seven school
10 districts we had to ask the division of budget for a
11 supplemental payment to help them make payroll right
12 before Christmas, right before the end of December.

13 Q. And are there -- is there any district out
14 there -- I won't ask you the name, but is there any
15 district out there that is on the verge of
16 bankruptcy?

17 A. I have -- I believe there's a couple
18 districts out there that their cash balances are so
19 low that if they don't make some decisions soon,
20 that -- legally, I don't think there's a legal way to
21 become bankrupt, but they're about as close as you
22 can get to meet the definition.

23 Q. What's the mechanism when these districts
24 just don't have enough money to run? What are their
25 options if bankruptcy is not one of them?

1 A. Cut expenses.

2 JUDGE THEIS: I missed that. What
3 did you say?

4 THE WITNESS: Cut expenses.

5 A. And the hard part of cutting expenses during
6 the fiscal year you're in is the majority of your
7 expenses are personnel and teachers that have
8 contracts that are signed that you're obligated to.
9 So it's non-contracted expenses. If you have to do
10 that within the -- if you've got a cut within the
11 fiscal year, it's non-contracted expenses.

12 Q. And I've had four kids in college, so I know
13 what this feels like. Are there occasions where the
14 State Board has contacted a school district to cover
15 payroll?

16 A. Can you explain a little more.

17 Q. Where you've identified a district that has
18 such a low cash balance that unless something
19 happened they would not be able to meet payroll?

20 A. As in State Board or employees of the State
21 Department of Education?

22 Q. Well, let's talk about school districts.

23 A. As a State employee, I would contact school
24 districts, and there were times I even visited with
25 the local boards of education to let them know the

1 situation they were in, and they needed to rectify
2 it.

3 Q. And what are their options? Is there money
4 available where they can call somebody to put money
5 in the bank so they can make payroll?

6 A. Schools have no legal authority to go out
7 and borrow money. They have to live within the
8 budget that is -- that is set based on formula, so
9 they have no other legal authority to go out -- their
10 option is, you got to cut expenses.

11 Q. Have there been districts that did that?

12 A. Yes.

13 Q. Look at Exhibit 348 if you would. This
14 is -- he's not going to testify, but his report is in
15 evidence, Plaintiffs' 348, authored by an accountant,
16 Mark Dick, and turn to page 5 of that exhibit, which
17 is EXP Dick 000005 --

18 MR. CHALMERS: I'm not sure what
19 our plan is, but I've got about 30 until 5. I do have
20 cross-examination. This is a document that's in
21 evidence. If all we're doing is reading documents to
22 the witness, I think it's cumulative. I have to
23 object.

24 MR. RUPE: I'm going to ask one
25 question about this, and then move on.

1 JUDGE BURR: Okay.

2 Q. (By Mr. Rupe) Do you agree with Mr. Dick's
3 analysis of recommended cash balance on the bottom of
4 page 5?

5 A. Is that what's in bold?

6 Q. Yes, and the paragraph or that above it,
7 seen as the stand alone number put in perspective
8 using the average, daily, unrestricted funds. Do you
9 agree with his analysis? Particularly what a
10 business owner considered 23 days of working capital
11 adequate cash on hand?

12 A. I would agree with the analysis. I don't
13 know if the numbers work out, but I would agree that
14 is the intent of cash balances.

15 Q. What does the term unencumbered mean?

16 A. Unencumbered as far as budgeting, the state
17 budget means, what cash did you have on hand July 1
18 that was not tied to a purchase order, has not had a
19 claim on it yet, so it's unpaid. It doesn't mean
20 it's not needed to get through to the next payment,
21 it just hasn't had an expense drawn on it yet because
22 per accounting procedures, you cannot encumber money
23 for something that has not -- you can encumber money
24 for utilities that haven't happened, someone's wages
25 that they haven't worked. But unencumbered is, you

1 carry it for the anticipated expenses you need.

2 Q. And I asked you that question in terms of
3 what encumbered meant recently, and you indicated
4 that it meant spoken for.

5 A. Encumbered means you have a purchase order
6 spoken for that money, but the materials just haven't
7 been delivered yet, so you haven't handed -- but it's
8 spoken for.

9 Q. So are the cash balances spoken for?

10 A. If spoken for means encumbered, then cash
11 balances aren't spoken for. Cash balances are
12 anticipated.

13 Q. Okay. And probably goes without saying, but
14 does a decrease in state revenue affect the need to
15 just basically retain rather than spend down their
16 cash balances?

17 A. I really believe it depends on the local
18 school district's plan.

19 Q. Explain that.

20 A. If you have decreased revenue, that may not
21 necessarily mean you have to have -- increase your
22 balances unless your district strategic plan
23 anticipates that if we have -- if we anticipate the
24 same cost, but the revenue goes down, how long will
25 we need to rely on those balances to get us through

1 the out years because you can't spend it all -- you
2 can't burn it all up in one year to incur for the
3 costs. So in most cases you would need to build some
4 balances if your plan -- if you don't anticipate the
5 revenue going up soon, then you need to have some
6 money in your savings account put away to cover costs
7 that you used to rely on with the revenue source.

8 Q. And I want to cover one last area with you,
9 and that is, I want you to look at Plaintiffs'
10 Exhibit 314 and 315. Go ahead and hand him 313 as
11 well.

12 MR. RUPE: Let's get them all in
13 front of him, 310 and 312. We'll go through them
14 fairly quickly.

15 Q. (By Mr. Rupe) Okay, and 313, that's just a
16 slide presentation that is in evidence, and it
17 indicates that it tracks the legislation in 2006 that
18 eliminated the Kansas -- the state tax as of 2010.
19 The franchise tax phased out. The legislation
20 enacted in 2005 reducing the severance tax receipts
21 and other actions by the Legislature in terms of the
22 name of the slide, financing government, or where has
23 all the money gone. Is that correct?

24 A. It appears to be. This isn't.

25 Q. My point is, you go out and present to

1 districts on what the future will hold by way of
2 dollars from the State, and have you chronicled and
3 presented information to member districts or school
4 districts in Kansas as to what the tax exemptions,
5 tax reductions have been?

6 A. In my role as school finance director from
7 2006 to 2010, that, yes, I did.

8 Q. Okay, look at Plaintiffs' Exhibit 310, and
9 that is a list of tax credit filers and cost, and it
10 shows a grand total cost of 237,609,291. What does
11 that represent?

12 A. That represents how much less the State will
13 be bringing in to fund State initiatives and what
14 they currently were, due to those exemptions.

15 Q. And what the exemptions are are listed on
16 that Exhibit 310, correct?

17 A. Correct.

18 Q. Then 314 is an estimate of tax reductions
19 and increases enacted since 1995, and you've actually
20 used this document in your presentations, haven't
21 you?

22 A. Correct.

23 Q. And so you can translate for us what the A
24 00007 total tax reductions and cumulative reductions
25 mean in terms of those numbers 933.6. Explain what

1 that is.

2 A. That is cumulative how much the State is
3 bringing in due to those reductions less than what
4 they would have had they left those exemptions alone.

5 Q. And I think you gave me the next line down
6 in terms of cumulatives. The first line, I think, is
7 2005?

8 A. Yeah, cumulatives

9 Q. And the second is the cumulative number?

10 A. Yeah, if I misstate -- I misused the word
11 cumulatively. The 933 is if you add up all of the
12 expectations, the effect of them, it totals 933 for
13 that year.

14 Q. Okay.

15 A. Cumulatively, since they were put in place,
16 that's the loss of revenue to the State.

17 Q. What's that number? It's 6.7 billion?

18 A. Yes.

19 Q. Then take a look at Plaintiffs' Exhibit 315,
20 February 11, 2009. Does the last page of that show
21 228 million in cuts from the bills listed on this
22 page in 2012 alone, where it says total?

23 A. Yes.

24 Q. Bills?

25 A. 227, roughly 228 million.

1 Q. And that was in 2012. Okay, let's look at
2 Plaintiffs' Exhibit 312, and this is sales tax
3 exemption fiscal impact estimate, all funds, and it
4 is for -- the listing I want to point to is the one
5 for Fiscal Year 2012 that the total of all those
6 services is 433,000,924?

7 A. Correct.

8 Q. And what are these?

9 A. This is not one that I've used since my
10 current position, but due to the sales tax exemptions
11 that were approved --

12 Q. This would be the --

13 A. The effects -- estimated effects of the
14 reductions.

15 Q. With regard to the last one I want to show
16 you, which is Exhibit 299. In light of the very most
17 recent tax cuts, does 299 show the state general fund
18 ending balance projections?

19 A. That would be these.

20 Q. The red line?

21 A. That would be correct.

22 Q. What are you advising school districts in
23 terms of the future funding of education in Kansas?

24 A. Well, when I was the finance director
25 during -- if you point at the heighth. At that time,

1 it was predicted or estimated that we would be down
2 here. They had projected. So when we would do --
3 when I was finance director at that time, we told our
4 school districts when we'd do budget workshops across
5 the state, the same as why you have to have cash
6 balances in the local district, if it's predicted
7 that the State's cash balances are going to go down,
8 you have to have a plan at the local level because if
9 the State -- if the predictions are true, and school
10 funding is half the state general fund, if you don't
11 prepare in advance and have some cash balances, can
12 you absorb those kinds of cuts within one or two
13 years.

14 Q. And I won't find it, but we have an exhibit
15 that shows at the time of the funding peak, there was
16 a projected hole of some \$400 million --

17 A. Correct.

18 Q. -- down the road. And you told them to be
19 aware because of that projected hole.

20 A. We tried to tell them two to three years in
21 advance, you need to have a plan. If the State can't
22 fund the budget they've approved in the out years,
23 then you have to have a plan locally of how you will
24 deal with that when education's over half the state
25 general fund budget.

1 Q. I'm going to show you from Exhibit 199 A
2 00001, and that shows the projected budget hole that
3 you just mentioned.

4 MS. GARNER: 299.

5 A. I believe this is one of them we used during
6 the Fiscal Year 2006/2007 time that shows the
7 estimated -- the projected state balance to be a
8 negative 426 million.

9 Q. (By Mr. Rupe) Okay.

10 A. So at the same time now, we find ourselves
11 trying to give schools similar recommendations. If
12 the State's budget is projected to be here in the out
13 years, you don't have control over the State's
14 budget. You have to have a plan on what you're going
15 to do at the local level to be able if -- if history
16 repeats itself, how you're going to sustain your
17 programs and services to kids if you don't prepare --
18 if you don't have a plan.

19 Q. All right. Now, explain, because this has
20 come up as a question. Explain how the budgeting
21 process for school districts work. How does that
22 work with regard to the State Department of Ed and
23 the funding?

24 A. State agencies -- we submit a budget to the
25 Legislature that says, here's what our needs are, and

1 we ask for funding to fulfill our needs. School
2 districts are totally different in where the
3 Legislature will set a base state aid per pupil in
4 the weightings, and the districts then have to build
5 their budget based on what they're told they're going
6 to get. So it's not based on what our needs are. We
7 have to base our needs within the budget that was
8 calculated for us. So in July and August they
9 start -- they estimate how many kids we're going to
10 have, how many of them are free and reduced lunch.

11 They estimate all of those and predict what
12 their budget is going to be, and based on the formula
13 and the base state aid, we go out and audit them and
14 then either raise or lower based on what they're --
15 the formula says they're going to have. It's not
16 based on what their district needs are, so it's a
17 totally different process than a state agency's is.

18 Q. And other than the Augenblick & Myers study
19 and the Legislative Post Audit cost study, are you
20 aware of any other occasions where the Legislature
21 has conducted a study of the actual costs of
22 delivering outcomes?

23 A. I'm not aware of ...

24 Q. And I take it from what you've said, the
25 Legislature does not ask the individual school

1 districts for a budget on a year-to-year basis?

2 A. No.

3 Q. What the Legislature does is provide the
4 money and say to the districts, this is what you're
5 going to get. Is that the way it works?

6 A. Through the formula, and it's all driven off
7 of what basically the base state aid per pupil is
8 because the weightings are a percent of that base.
9 So they just set that base state aid per pupil, and
10 then the budget is calculated on how many students
11 you have, how many of them are transported, how many
12 of them qualify for free lunch, so.

13 Q. If you throw in the changing demographics in
14 Kansas that you've described with regard to ELL kids,
15 limited English kids, immigrant kids, kids of
16 poverty, Hispanic and add the college readiness
17 requirements and the Common Core and the state
18 assessments, has anybody, to your knowledge, in the
19 Legislature determined the actual cost of delivering
20 to those standards?

21 A. No, not to my knowledge.

22 MR. RUPE: That's all I have.

23 CROSS-EXAMINATION

24 BY MR. CHALMERS:

25 Q. College readiness, it's not on a regulation

1 that's been published, is it?

2 A. It's in the waiver that we're submitting to
3 the US Department of Ed.

4 Q. Not in a regulation that's been published or
5 approved, is it?

6 A. No, not that I'm aware of.

7 Q. Not in a statute that's been passed?

8 A. I don't believe so.

9 MR. RUPE: I'm going to object --

10 MR. CHALMERS: The Rose Factors --

11 MR. RUPE: I'm going to object to
12 that. Every witness has said it's included in what
13 you just held up.

14 MR. CHALMERS: Is that an objection
15 or a speech, Counsel?

16 MR. RUPE: It is an objection --

17 MR. CHALMERS: I'd like to
18 cross-examine the witness.

19 JUDGE THEIS: Let him ask.

20 Q. (By Mr. Chalmers) The Rose Factors that had
21 been described in Plaintiffs' Exhibit 39, tell me
22 where it says college readiness.

23 A. I don't believe it specifically said college
24 ready.

25 Q. The process to decide whether or not a

1 school is accredited or not, where does it say
2 college readiness?

3 A. Nowhere, yet.

4 Q. Common Core is going to -- it's been passed
5 by the State Board?

6 A. Mm-hmm.

7 Q. The Common Core Standards are in the process
8 of being disseminated and learned by the districts,
9 is that correct?

10 A. Correct.

11 Q. And then, at least we're targeting 2014, or
12 is it 2015, that we'll first start testing in Common
13 Core?

14 A. We will pilot it in the '13/'14 year and
15 full implementation in the '14/'15.

16 Q. In terms of looking at what's going on in
17 this next year, Common Core is still a work in
18 progress?

19 A. It's -- we have retired the old standards
20 and are transitioning into the Common Core Standards
21 as a state.

22 Q. And the Common Core Standards contemplate a
23 method of curriculum as well as standards that will
24 make kids college ready and/or career bound more
25 accurately will have that opportunity, is that right?

1 A. Correct.

2 Q. Because it's all about providing the
3 opportunity, isn't it?

4 A. It's a huge piece of it.

5 Q. Now, working backwards real quickly, the
6 change in demographics, the weightings go to the
7 demographics, don't they?

8 A. Yes, they do.

9 Q. Okay, just so I'm not confused on that. The
10 way that we are presently financed, if you have more
11 kids at risk, if you have more kids that are English
12 language learners, that the weightings automatically
13 will pick up more money for those kids in those
14 districts, right?

15 A. Correct.

16 Q. If I can find it real quick, I'll show it to
17 you. Exhibit 314 is one of the exhibits that
18 Plaintiffs' counsel visited with you about, and these
19 are estimated facts of tax reductions and increases
20 enacted since 1995 to present, and you remember
21 providing testimony about this, is that right?

22 A. That's correct.

23 Q. These are not your numbers?

24 A. No.

25 Q. Now, you did give presentations where you

1 would go around the state, and you would talk about
2 tax reductions, tax exemptions in the context of
3 school finance?

4 A. Not -- we didn't talk about tax policy.
5 What we talked about was, if the State loses a
6 portion of their revenue to fund state services. So
7 this was an example of how they were going to lose
8 their -- their pool of money to fund highways and
9 schools and services.

10 So if their resources are going down -- and
11 this was an example that they need to be concerned
12 that if the State loses part of their ability to fund
13 services, and public education is half of it, then
14 you need to start looking at your local budgets. If
15 the State were to lose its ability to fund the budget
16 because the same advice we would give to the schools
17 if their cash balances are going down, it just means
18 one thing. You're spending more than you're bringing
19 in. And when we saw the State taking that pattern,
20 we had to recommend to the schools that you need to
21 have a plan locally in case at some time the State
22 cannot fund the budget that they've approved.

23 So we didn't do tax policy, we just said
24 this is a concern that we have for schools to be able
25 to -- the State to be able to fund their commitment.

1 Q. I appreciate that because I want to clarify
2 that. I don't know why this was shown to you, but if
3 we were to talk about from a tax policy standpoint,
4 and we would talk about some of these things. I
5 don't know if there's one good illustration over
6 another, just take it at the top. You've got tax
7 credits for adoptions as one of those items, and you
8 weren't ever getting up in there saying, look, we
9 ought to do away with the tax credit for adoptions,
10 so we have more money for schools?

11 A. We never looked or talked about what was at
12 the line. We focused on the total loss of revenue to
13 the State and how that could impact the State's
14 ability to fund public education.

15 Q. The Legislature has to make those hard
16 judgments --

17 A. Yes.

18 Q. -- as to what to do with tax policy?

19 A. Absolutely.

20 Q. Now, you were talking about cash balances,
21 and so that I understand that, you say that it really
22 kind of depends on district to district?

23 A. Correct.

24 Q. You indicated there were some districts, at
25 least when you were last in the finance director's

1 office, that were if not bankrupt were in all
2 respects closed?

3 A. Correct.

4 Q. You're not saying that those districts are
5 there this year when you're no longer in that office?

6 A. We have some.

7 Q. You have some. And they have been
8 addressing their concerns, or they've been told you
9 need to address your concerns as part of your
10 budgeting process to look at what you might have to
11 cut, choices that you may have to make?

12 A. That is correct.

13 Q. Now, ultimately, what the State does is, it
14 provides moneys to the district, and then the
15 district decides how to spend that money, right?

16 A. That's correct.

17 Q. So we have an illustration of a principal
18 that said, look, I was using a multiple-tiered
19 approach. I'm worried that I'm not going to be able
20 to do it next year. Her district could look at that
21 and say, look, I think that's an important program.
22 We'll go ahead and fund that. That expense is
23 something else, and that's the trade-off that the
24 district may have to make.

25 A. Those are all local decisions.

1 Q. And those are local decisions districts make
2 all the time judging on what they see in their
3 district is their biggest needs?

4 A. Absolutely.

5 Q. If I'm going too quick, you slow me down.

6 A. I'm with you. If I start doing this, that
7 means, slow down.

8 Q. All right. I want to talk to you about some
9 scores, and I just want to see if you agree with some
10 things. You were shown some NEAP scores. You were
11 shown some scores talking about gaps. Plaintiffs'
12 Exhibit 131 is a document published by the Kansas
13 Association of School Boards, and it states, Kansas
14 has made progress closing the achievement gap among
15 student groups. Programs targeted for at-risk
16 children are working effectively. Do you agree with
17 those statements?

18 A. I can't read it.

19 Q. I'm sorry.

20 A. Kansas made progress -- I would agree with
21 that.

22 Q. Okay, and those statements were made January
23 2012. So this isn't old information, right?

24 A. Yep, I would agree with that.

25 Q. And for the backup for that, they show at

1 page 3 of the exhibit some graphs, and they say,
2 Kansas at-risk students with historically lower
3 educational outcomes made larger gains. You agree
4 with that?

5 A. Absolutely.

6 Q. Says reading in 2006, every major subgroup
7 was below 70 percent proficient by 2011. Those are
8 the last test scores we have, right?

9 A. Confirmed, yes.

10 Q. Confirmed. Yes. We're waiting for the
11 confirmation of the current test scores?

12 A. Correct.

13 Q. By 2011 every group was above 70 percent and
14 had increased at least 10 percent at this point. Do
15 you agree with that?

16 A. Mm-hmm.

17 Q. Says, math in 2006, every major subgroup was
18 below 65 percent proficient. By 2011 every group was
19 above 65 percent and had an average increase in 15
20 percentage points. Do you agree with that?

21 A. Yes, I do.

22 Q. Mr. Rupe showed you what has been marked as
23 Exhibit 106 that he has styled achievement gap.
24 That's just for one year, right?

25 A. Yes, 2011.

1 Q. It's just for 11th grade math?

2 And you're nodding your head.

3 A. Yes.

4 Q. She has to take it down.

5 A. Okay.

6 Q. Now, 11th grade math means you may take it
7 depending on the district at a different time. Could
8 be 10th grade, 9th grade or 11th grade?

9 A. 10th grade. It's opportunity to learn. If
10 the school district feels that the -- it's an 11th
11 grade assessment, but if they feel that the student
12 is ready at 10th grade, instead of making them wait a
13 year, they can let them, and then we bank the score
14 until they're 11th graders.

15 Q. What I want to be clear on here is, when we
16 talk about -- first, let's take free and reduced
17 lunch, and it gives us a number here, and then we've
18 got a number for Hispanic. The Hispanic kid that
19 fits in the non-proficient category could also be in
20 the free and reduced lunch category, right?

21 A. Correct.

22 Q. You don't add these things up. They're kind
23 of all included within each other?

24 A. You could have a student that met two to
25 three different subgroup categories.

1 Q. Okay, so if you were to say, I've got 10,000
2 or 20 or 40,000 kids that are free and reduced and 10
3 or 20,000 kids that are Hispanic, you really can't
4 add those two together. You'd have to look at who
5 falls into one group?

6 A. Right, we -- yes.

7 Q. Now, based on your experience and your
8 education, does the color of your skin make a
9 difference as to your ability to learn?

10 A. Not necessarily the color of your skin, it's
11 the environment that you've been raised in. So when
12 you look at subgroups, research shows that certain
13 subgroups, Hispanic, African American, come to school
14 not in the same environments that the majority of the
15 populations in Kansas do.

16 Q. And by and large and big large, that's
17 because they fit in the category of poverty?

18 A. Yes.

19 Q. So you got a black kid who is raised by an
20 upper middle-class family, we're not really thinking
21 because of color of his or her skin that that's going
22 to be a factor?

23 A. Which is why we believe, regardless of the
24 color of skin or what subgroup, every one of those
25 kids has the ability to achieve at higher levels.

1 Q. Yeah. Now, let's talk about that for a
2 moment because nobody would want to discourage you
3 from that belief, but the reality of it is that there
4 are gaps in subgroups and between the subgroups and
5 between all students, and that exists today, right?

6 A. That is correct.

7 Q. It's existed now for at least ten years.
8 It's always existed in your knowledge, hasn't it?

9 A. As long as I've been in education.

10 Q. And it is a national problem?

11 A. Correct.

12 Q. And if you were to compare Kansas as opposed
13 to the nation, we're probably doing a better job of
14 it than most states, addressing that gap?

15 A. I know Kansas is doing a good job. I've not
16 compared our gaps to the nationals.

17 Q. And there's not a district that you're aware
18 of yet that has been able to lick that gap?

19 A. We have some districts that have
20 dramatically closed that gap at quicker levels than
21 others across the state.

22 Q. Blue Valley, I'll pick on that district
23 because it's been mentioned before as one that is
24 relatively affluent. That district has a gap?

25 A. I would -- you have gaps within the same

1 subgroup, so there's always gaps.

2 Q. There's not an individual school that you're
3 aware of that has been able to address and resolve
4 this issue of gaps as of today's date, is there?

5 A. We have some schools in Kansas that have 100
6 percent of all kids above proficient. But they still
7 have some kids at the middle category. Some so --
8 you will always statistically have some kind of a
9 gap, but they may all be high achieving. That's why
10 there's only certain valedictorians.

11 Q. And none of this is to suggest, I don't
12 think, that it is allowed or desirable to ignore
13 efforts to close the gaps, but no one has yet found
14 that silver bullet to close all gaps.

15 MR. RUPE: I'm going to object.
16 That's argumentative. He's indicated that there are
17 schools that have done that.

18 JUDGE THEIS: Let him ask the
19 question. His witness can answer.

20 A. We do not believe there's a silver bullet,
21 but we do believe there's a lot of shiny ones.

22 Q. (By Mr. Chalmers) Let's talk about the shiny
23 bullets then. First, all the Kansas schools are
24 presently accredited, is that right?

25 A. Correct.

1 Q. All the Kansas districts are presently
2 accredited, is that right?

3 A. Just schools. We don't accredit districts
4 at this time.

5 Q. I'm sorry. You're right. The way that the
6 Kansas schools are accredited is there are -- and
7 now, I'm talking about presently because I understand
8 things are changing a little bit, but presently, in
9 terms of the regulation in place, there are -- and if
10 I look at Exhibit 1126, table of contents, there are
11 quality criteria -- and I don't know if you can read
12 that or not. There are 11 of them. There are
13 performance criteria, right?

14 A. Yes.

15 Q. And those quality criteria and performance
16 criteria are at least presently set up to try to
17 establish standards and curriculum that will allow
18 kids to at least succeed at grade level is what I
19 thought you said to Mr. Rupe?

20 A. There's -- quality criteria requires them to
21 have a set of standards -- or the law requires them
22 to have a set of standards. Quality criteria
23 requires them to have a curriculum that teaches to
24 those standards. So there's a difference between the
25 curriculum and the standards that they're measured

1 by, along with the school improvement plan and the
2 other 11.

3 Q. And I want to use just one as an example.
4 The book's in evidence. But I want to look to page
5 18, which is a discussion of one of the regulations
6 dealing with formal training to teachers. And so one
7 of the quality criterias is that each district has to
8 have in place kind of a mechanism for the purpose of
9 formally training their teachers, right?

10 A. Correct.

11 Q. When we hear about professional development,
12 that's kind of what we're talking about, right?

13 A. Correct.

14 Q. And that's been that way ever since the QPA
15 has been in place, well, at least since --

16 A. '92.

17 Q. -- '92. Okay. Under the verification,
18 there is a description of a quality performance
19 accreditation summary report and then professional
20 development logs. What is a quality performance
21 accreditation summary report?

22 A. Each year the school district has to submit
23 to the State Department of Education a QPA summary
24 report outlining that there are assurances that
25 they're assuring to us that they've met those 11

1 quality criteria and the 4 performance.

2 Now, some of them, we have the data. The
3 ones that we don't, they assure to us that they've
4 met it.

5 Q. So if we were to take, for instance,
6 Plaintiffs' district Hutchinson, Kansas City,
7 Wichita, and Dodge City, we would expect that each
8 one of those for each year has self-assured the State
9 that their schools in their districts that we have
10 this program of quality performance and accreditation
11 in place?

12 A. We have curriculum aligned to the
13 standards. We have a school improvement plan, so
14 yes, they're assuring to us that they've met those
15 quality and performance criteria.

16 Q. That they have in place a system for
17 educating their teachers and that they have
18 professional development logs to verify that their
19 teachers are getting the professional development
20 that the regulations require?

21 A. That's what they're assuring to us.

22 Q. Let me look at another quick page in the
23 exhibit, which is page 44, and again, this is in the
24 exhibit. I don't want to spend too much time, but
25 there are regulations that talk about what the

1 accreditation status is, and that's actually spelled
2 out in regulations that are part of the law --

3 A. Mm-hmm.

4 Q. -- for the school districts to read and for
5 us to understand, right?

6 A. Correct.

7 Q. This indicates under requirements that a
8 school that meets the minimum performance and quality
9 criteria established by the State Board is granted
10 accredited status. And the minimum criteria are what
11 we've talked about, and does that include certain
12 required courses for the elementary grades and for
13 the college -- or for the high school classes?

14 A. Yes, -- yes.

15 Q. And how is it that the school board, that is
16 the Kansas School Board, knows that the various
17 districts are providing the curriculum and the
18 classes and the teachers that the accreditation
19 process says they must?

20 A. At the state level, we look at two things.
21 Number one, they have to submit to the state --
22 Department of Education a licensed personnel report.
23 So we ensure that we know what every teacher's
24 teaching, what courses, and we know what their
25 license is. So we know if they're meeting the

1 licensed part.

2 Kansas is a local control state, so where we
3 don't tell the seven board members in schools and
4 teachers what has to be in their school improvement
5 plan as long as they're meeting those targets, those
6 AYP targets. But whenever they fall below the
7 targets, then they're listed on improvement, and then
8 we go out, and we start looking at, okay, if you're
9 not meeting the performance, now we get more involved
10 into your business of ensuring the quality. You've
11 assured to us all the time, but as soon as you start
12 not performing at the target levels, now we're going
13 to come out and look at your school improvement
14 plans. We're going to look at your curriculum. So
15 that's how the process works.

16 Q. So we have each one of the school districts
17 saying, we are doing what's necessary for those 11
18 items of quality. We trust them until we start
19 seeing a problem, then we'll start verifying?

20 A. That's correct.

21 Q. Okay. A school is accredited on improvement
22 when for two years it -- and then it has multiple
23 things that can happen, fails to meet one of the
24 performance criteria applicable to the school as a
25 prescribed percentage of the students assessed at

1 scores below a proficient level on state assessment
2 or has a prescribed percentage of students in one or
3 more student subgroups.

4 Actually, there's a third one there or
5 fourth one there, but I guess my point is, that there
6 are schools that are on improvement, and that's when
7 you start getting more involved?

8 A. That's correct.

9 Q. What do you do when you get involved? You
10 first start looking to see how they're complying with
11 other parts of the QPA. What else does the State do?

12 A. That's where -- we talked earlier about the
13 Kansas Learning Network. It's the -- Kansas's
14 approach to providing technical assistance to schools
15 that are not meeting performance criteria, so we'll
16 send a team out to do a needs analysis. We accredit
17 at the school level, but when we find a school that's
18 not meeting performance criteria, then we send a team
19 out to not only do a needs assessment, we do walk-
20 throughs through their classrooms. We interview
21 teachers, board members, community members, and we
22 spend about two, three days really finding out what
23 the issues are, and then we help them set a plan to
24 address those concerns.

25 Q. If you have a kid -- a school that is

1 accredited but on improvement, does it automatically
2 qualify to get the Kansas Learning Network help?

3 A. Only if they are a Title I, which means they
4 have to have a certain level of poverty. So we have
5 some schools that are on improvement. Under federal
6 accountability, they can't be part of the Kansas
7 Learning Network, so then we approach it through QPA,
8 the state accreditation model, to get them the
9 supports, but there's no additional resources at the
10 state level to help them.

11 Q. Those schools that are on improvement that
12 are Title I, that's where the federal money gets
13 involved?

14 A. That's correct. The federal school
15 improvement money.

16 Q. And the federal school improvement money,
17 you indicated you saw that when that money was
18 applied that you could see real differences in
19 school -- student outputs, is that right?

20 A. That is correct.

21 Q. And you talked about the multi-tier approach
22 and some other approaches they use. That's all then
23 funded by the federal government as part of their
24 intervention when you're a Title I school on
25 improvement?

1 A. Yes, for example, we'll give the building
2 that went on improvement a set dollar amount of that
3 federal school improvement money, and then we go in
4 and put a plan in place to help them use those
5 federal funds to help move their system forward as
6 opposed to just sending them a pot of money.

7 Q. And this funding and this approach to
8 dealing with these schools that are on improvement,
9 it has been there since what, the No Child Left
10 Behind statute's been in place?

11 A. No, it was actually -- the first year of the
12 Kansas Learning Network was in 2008.

13 Q. So from 2008 until present, we've had the
14 Kansas Learning Network and the federal fundings that
15 is behind it?

16 A. That is correct.

17 Q. In Exhibit 199, you would pre-date that. At
18 page 127, they talk about \$205.5 million in federal
19 funds in three categories. There's the base
20 education, poverty, and bilingual, and they said that
21 because federal Title I funding is given to a school
22 based on poverty, we have assigned 9.4 million in the
23 Title I fund to the '03/'04 poverty category, and
24 then they talk about some other federal fund, but I
25 want to focus on that for a second.

1 The federal Title I funds go to what you've
2 talked about now that's the Kansas Learning System,
3 but before that, again, went to programs to deal with
4 schools that are in poverty and at-risk kids, right?

5 A. Before 2008, we didn't get additional
6 Title I money. There's a large -- the two and a
7 half, 205.5 million always went out to schools. What
8 we did was, starting in 2008, we took about the 9
9 million -- I can't remember. I'm looking forward on
10 there, to start -- to develop the Kansas Learning --
11 we always sent them the funds. We started using 9
12 million of it approximately to develop this learning
13 network to change how we go about helping them use
14 their funds in a more meaningful way, if that.

15 Q. Well, here's what I'm trying to find, and
16 hopefully, I got the chart out here real fast.

17 JUDGE THEIS: Mr. Chalmers, how are
18 we doing? Do we want to have him back or --

19 MR. CHALMERS: Well, gosh, Judge, I
20 was hoping that I had another five to ten minutes.
21 That's what I was aiming for.

22 JUDGE BURR: We can do that, can't
23 we?

24 JUDGE THEIS: What's Mr. Rupe going
25 to do?

1 JUDGE BURR: That's true.

2 MR. CHALMERS: Then this is as good
3 a breaking point as any then.

4 MR. RUPE: I've probably got 15
5 after that.

6 JUDGE THEIS: Can you make it back
7 tomorrow morning?

8 MR. RUPE: Tomorrow morning, first
9 thing.

10 THE WITNESS: My schedule is
11 yours. I can change my schedule.

12 MR. RUPE: Spoken like a truly
13 subpoenaed witness.

14 JUDGE THEIS: Can we go at 9:00 in
15 the morning then?

16 MR. RUPE: Let's do, and I think we
17 can wrap him up.

18 JUDGE THEIS: Okay. All right.
19 Thank you.

20 (Thereupon, the proceedings were
21 adjourned to June 20, 2012, at 9:00 a.m.)
22
23
24
25

CERTIFICATE

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 19, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 222 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 10)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 20th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

1		
2		
3	BRAD NEUENSWANDER	
4	CROSS (CONT.) BY MR. CHALMERS	2138
5	REDIRECT BY MR. RUPE	2159
6	RE CROSS BY MR. CHALMERS	2173
7	BY THE PANEL	2174
8	REDIRECT BY MR. RUPE	2186
9	RE CROSS BY MR. CHALMERS	2186
10		
11	ERIC ALAN HANUSHEK	
12	DIRECT BY MS. TIBBETS	2206
13	CROSS BY MR. RUPE	2281
14	BY THE PANEL	2335
15		
16	MICHAEL PODGURSKY	
17	DIRECT BY MS. TIBBETS	2341
18		
19		
20		
21		
22		
23		
24		
25		

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 MR. RUPE: Good morning.

3 JUDGE FLEMING: Good morning.

4 MR. RUPE: I think we're going to
5 continue with the cross and redirect of Brad
6 Neuenswander. But I wanted to alert the Court,
7 before Dr. Hanushek gets on the stand, I have a
8 pending motion regarding him that I preserved and I'd
9 like to be heard on it.

10 JUDGE THEIS: Okay.

11 JUDGE BURR: All right.

12 BRAD NEUENSWANDER, having been
13 previously sworn was examined and testified as
14 follows:

15 CROSS-EXAMINATION (CONT.)

16 BY MR. CHALMERS:

17 Q. Mr. Neuenswander, I want to talk to you
18 about first, federal programs. And we mentioned
19 those yesterday and I think Mr. Rupe talked about how
20 some have what he described as strings attached. One
21 program is food services. And what's the title for
22 food services, if it has one?

23 A. Food service.

24 Q. One is for special ed. Is there a title
25 that applies to it?

1 A. They're governed by, like special ed, the
2 federal IDEA, the Individuals with Disabilities
3 Education Act. The title we use is special ed, food
4 service.

5 Q. Focusing on food services for a moment, when
6 that money comes in and is spent, if it's federal
7 money it has to be accounted for, and that
8 information needs to be reported some way by the
9 State. How is it accounted for?

10 A. It is reported from the school districts to
11 our food service department, and then federal
12 auditors come to the state and audit those numbers.

13 Q. There's an exhibit blow-up here, 1192, that
14 has a function code for food services of 3100.

15 A. Correct.

16 Q. When they report that function, the food
17 being spent, whether it is federal money or other
18 money, it works it into that code, is that right?

19 A. That's correct.

20 Q. Then there is -- I think there has been
21 discussion about special ed money. That money is
22 going to be spent pursuant to an IED, but it flows
23 through the state and then gets to the individual
24 districts, is that correct?

25 A. Correct.

1 Q. Now, in terms of the county for how that
2 money is spent, it fits into one of these functions
3 that are shown in 1192, is that correct?

4 A. Correct.

5 Q. It might fit -- part of it might be in
6 instruction, support services, those sorts of
7 functions, is that right?

8 A. Correct.

9 Q. Now, then you talked about Title I funds,
10 and those funds, they are directed for what purpose?
11 Why does the federal government provide that money?

12 A. To provide federal support to the poverty,
13 the low-income students across the nation.

14 Q. And there are some other Title programs.
15 What are they, besides Title I, the principal ones?

16 A. There's a migrant for -- to provide supports
17 to school districts that have high populations of
18 migrant students. There's the Title I School
19 Improvement funds, which are the schools that have
20 the highest percent of low-achieving students. Those
21 are probably the -- there's some Title I teacher
22 quality funds to go out and provide statewide
23 assistance around professional development on a broad
24 scale for improving teacher instruction.

25 Q. These Title programs, these federal programs

1 that you've talked about, setting aside for a second
2 the food service and special ed that we've talked
3 about, they're all going to come within when we
4 account for them on 1192, instruction, support
5 services, pupil support services, instructional
6 staff, support services, general administration,
7 school administration, operations, maintenance or
8 other support services, is that correct?

9 A. Some of them will include -- for example,
10 Title I will include -- you can use Title I that
11 might fall into instructional support services but
12 probably not operations and maintenance. So --

13 Q. They're going to be one of all -- for one of
14 those?

15 A. Correct.

16 Q. They're not going to be transportation,
17 they're not going to be food services, and they're
18 not going to be community and adult services, is that
19 correct?

20 A. Right. They could be one or more but maybe
21 not all.

22 Q. Switch gears with you for a second and talk
23 to you about what's been marked as Plaintiffs'
24 Exhibit 39. There's a blow-up of it here, as well.
25 I'm going to try to make this bigger so we can all

1 look at it. This is the statute that Mr. Rupe refers
2 to as incorporating the Rose Factors, and those are
3 the sub-part C, highlighted on the blow-up that you
4 have, is that right?

5 A. Mm-hmm, yes.

6 Q. I want to go through with it, so we have a
7 complete understanding of what the statute does. It
8 says in subsection A that the subjects and areas of
9 instruction required by certain statute says, "Every
10 accredited school in the State of Kansas shall teach
11 subjects in areas of instruction adopted by the State
12 Board of Education as of January 1, 2005."

13 And your board has adopted and put into
14 regulation those classes that have to be taught to
15 our Kansas kids, right?

16 A. Correct.

17 Q. And they're in addition to and include these
18 subjects that are set out in these specific
19 statutes. I mean, we can go back and look at the
20 statutes, but that's your understanding, right?

21 A. Correct.

22 Q. Then it says, "Every accredited school in
23 the state," in subsection B, "shall teach the
24 subjects or areas of instruction necessary to meet
25 the graduation requirements."

1 Again, the school board has gone through
2 and -- the state school board with the assistance of
3 your office and have identified those subjects that
4 need to be instructed in order to get the graduation
5 requirements that are in place, is that right?

6 A. Correct.

7 Q. And then it says in subsection C, "The
8 subjects and areas of instruction shall be designed
9 by the State Board of Education to achieve the
10 following goals established by the Legislature will
11 allow for," and then has these items.

12 So when you are designing what classes to be
13 taught in A and B, it has to be with these principals
14 in mind, is that correct?

15 A. Correct.

16 Q. And that's what -- that's what the Board of
17 Education through your office -- through your
18 department has done. They have come up with
19 curriculum that is designed to teach those subjects,
20 is that correct?

21 A. Correct.

22 Q. Now, let's talk C7 -- C5. "It would require
23 training or preparation for advanced training in
24 either academic or vocational fields" -- that's not
25 the one I want, is it?

1 Well, I tell you what, one of these I
2 thought -- maybe you can help me out. Doesn't one of
3 these require that we train so that the kids have --
4 or put that we have the classes in place so that the
5 kids are able to get into a school, post high school,
6 through the Board of Regents?

7 A. That is part of the regulations under QPA.

8 Q. Okay. So if we're trying to match that up
9 here, we'd want to look at probably 5. I guess I was
10 right, with the training or preparation for advanced
11 training in either academic or vocational fields so
12 as to enable students to choose and pursue life work
13 intelligently.

14 And then what's happened is, your Board has
15 drilled down on that and said, well, what we need to
16 have is classes in place that if you take the classes
17 and pass them, then you'll be able to get into a
18 college that is under the Board of Regents' control,
19 is that right?

20 A. It is -- I think they could be separated.
21 One component of accreditation is you have to, at a
22 minimum, have a curriculum that would allow a
23 graduate to qualify -- qualified admissions to be
24 able to enter into the post secondary. I believe
25 this one is -- which we talked about this yesterday,

1 even though it doesn't say college and career ready,
2 that's what this one is speaking to, they have to be
3 ready --

4 Q. You have to have --

5 A. -- for college or career, and I believe this
6 one leads more towards the career aspect, where the
7 other regulation --

8 Q. What you have to have is a curriculum in
9 place with classes that allow kids to be able to get
10 into college or to pursue a career. That's what this
11 statute requires?

12 A. Correct.

13 Q. Now, if I look at Exhibit 1126 and that's
14 the Quality Performance Manual, and in particular
15 look at page 7. And where we talked about yesterday,
16 the 11 different things as part of the quality part,
17 I've highlighted Number 8. And this is a checklist
18 that is part of the manual that's provided to the
19 districts to say that, hey, look we've done what we
20 have to do, right?

21 A. Correct. Those are the 11 assurances.

22 Q. Yeah. I mean, they can go through and they
23 can check yes or no to say whether or not they've met
24 those 11 assurances for the quality aspects of a
25 accreditation?

1 A. Correct.

2 Q. And Number 8 is the one I highlighted. It
3 says, "The curriculum allows each student to meet the
4 Regents' qualified admission and state scholarship
5 program." And it says, "If you answered no, please
6 explain why."

7 Is that form actually completed and sent
8 into the State?

9 A. Yes, every June.

10 Q. To your knowledge -- we'll talk about the
11 Plaintiffs' school districts here. It's Wichita,
12 Dodge and Kansas City and Hutchinson. They all would
13 have checked yes, that we have a curriculum that
14 allows students to meet the Regents' qualified
15 admissions and state scholarship program, is that
16 right?

17 A. I would be pretty confident in saying yes,
18 all four of those have checked.

19 Q. And we've already talked about how all the
20 schools in this state are accredited?

21 A. Correct.

22 Q. Let's talk about Exhibit 186, and Mr. Rupe
23 showed this, I think, to you yesterday. This is the
24 Kansas Board of Education meetings from June 12th.
25 And you were at that board meeting?

1 A. I'm pretty confident, yes.

2 Q. At page 8 of that exhibit, there is the
3 discussion that, I think, Mr. Rupe referenced about
4 the motion to recommend a budget to the Legislature
5 for what would be the '12/'13 year. And I think what
6 you focused on was this language where there was a
7 motion and a second that all funds would be -- that
8 all education programs currently in the state statute
9 would be funded to those levels, and I'm
10 paraphrasing.

11 But I want to talk to you about that. There
12 was a motion by Mr. Willard, seconded by Mr. Bacon,
13 that the board recommend a budget with the 3 percent
14 increase to the base state aid per pupil,
15 supplemental general aid \$100 on the base with a
16 provisor that if additional state revenues were
17 received, K-12 would receive 50 percent of the BSAPP,
18 being the first priority, and any above that being
19 used to fund current law for other programs.

20 That motion -- do you remember that motion
21 being made and being turned down?

22 A. I don't remember it but ...

23 Q. There was discussion, it says, of that
24 motion that it was mentioned by one of the board
25 members that the board could find itself as a

1 defendant in a funding lawsuit if it didn't advocate
2 this for students in the state by funding the law.
3 And it says the motion failed.

4 The board then -- were you present when it
5 said, basically, the reason we're voting as we are is
6 we feel we're going to be a defendant in a lawsuit if
7 we don't advocate this for kids?

8 A. In July of 2011, I was in my current
9 position that I hold now, so I wasn't the school
10 finance director.

11 Q. So you might not have been there?

12 A. I was in the building, but I'm typically in
13 the room when we're -- now we're talking about
14 academic standards.

15 Q. You can't add anything more than what the
16 exhibit shows?

17 A. Correct.

18 Q. Let me talk to you about Exhibit 1142, and
19 that's the Kansas flyer or handout, an Overview for
20 the Kansas System of Support. And would you describe
21 what the Kansas system of support is?

22 JUDGE THEIS: What was the number?

23 MR. CHALMERS: Your Honor, it's
24 1142.

25 JUDGE THEIS: Thank you.

1 A. This document explains the different support
2 systems and initiatives that we have across the state
3 to help districts that are not meeting AYP targets to
4 provide them supports.

5 Q. (By Mr. Chalmers) In a short paragraph,
6 would you describe to the Panel what those systems
7 are that are presently available and will be
8 available this next year to our Kansas kids?

9 A. There's numerous supports across the State
10 of Kansas. Some of them are led by our agency, some
11 of them are led by service centers, some of them are
12 led by universities. This document explains the
13 services that the State Department of Education can
14 provide in support to Kansas schools. One example
15 would be MTSS. Districts can choose to use that one
16 to help improve instruction, or they could go out and
17 look for other models that might meet their needs.
18 So one example would be MTSS.

19 Q. The assistance provided to the district
20 then, how is that funded?

21 A. The Kansas Learning Network, for example, is
22 funded through those school improvement -- federal
23 school improvement grants. MTSS is funded at the
24 local level.

25 Q. In the next page of Exhibit 1114 -- let me

1 talk to you about 1127 next, however, that's the
2 State Technical Assistance Team Fact Sheet. What is
3 the State Technical Assistance Team, the STAT?

4 A. That's a group of staff members at our
5 agency from different divisions that provide supports
6 to schools. So when you look at a school district,
7 if they're struggling in the area of curriculum, then
8 we would use our Standards and Assessments Team
9 members to go out and help them align their
10 curriculum.

11 If they're struggling in the area of special
12 ed, then we would send a team from our special ed
13 staff. So that Technical Assistance Team is made up
14 of members throughout not only our agency, but also
15 qualified people out in the field that can provide
16 support to the schools.

17 Q. How is that funded?

18 A. From the local level.

19 Q. The STAT team is funded at the local level?

20 A. The people -- we don't -- if I go out -- if
21 someone from our office, the Kansas State Department
22 of Education, we're funded through our state agency
23 budget. If we go provide a service to a school, we
24 don't charge them for that.

25 Q. That's what I was wondering. Okay.

1 Now, on the second page of 1142, there is a
2 chart that discusses AYP. But I want to try to,
3 before we talk about that, bring that into focus.
4 There is a federal law that is in place that was
5 essentially amended by the No Child Left Behind
6 statute, and that was in 2001, is that right,
7 thereabouts?

8 A. Correct.

9 Q. And we've heard quite a bit about AYP. That
10 sort of accountability program is kind of developed
11 as part of No Child Left Behind statute, is that
12 right?

13 A. Correct.

14 Q. Now, the statute, the federal statutes that
15 are in place with the current No Child Left Behind,
16 they sunset in 2014. That is absent some additional
17 legislation, it's not going to be the way it is now,
18 right?

19 A. The current No Child Left Behind Elementary
20 and Secondary Education Act, we know it as No Child
21 Left Behind, has the targets going out to 2014.
22 Congress was supposed to re-authorize or re-do No
23 Child Left Behind two to three years ago, but we know
24 how things are going there, and they have not
25 re-authorized it.

1 So we are still living -- we don't know what
2 happens in 2014. If nothing changes with No Child
3 Left Behind that -- the assumption is that 100
4 percent just stays there until they re-authorize it.
5 It doesn't say that it's gone. It's just that's
6 where you have to be by that time, if that answers
7 your question.

8 Q. I think it does. And as a function of this
9 confusion, the fact that they've not re-done it,
10 they've not re-authorized it, the federal government
11 has let it known that they will invite certain
12 waivers from the No Child Left Behind requirements,
13 is that correct?

14 MR. RUPE: I'm going to object.
15 This is all speculative. He's operating in "what
16 ifs" in the future, and I don't think anybody in this
17 room knows whether waivers in the future are going to
18 be granted.

19 JUDGE THEIS: He can. I think the
20 last one he said at the end is the question that's
21 whether they've soliciting waivers.

22 Q. (By Mr. Chalmers) The Department of
23 Education is soliciting waivers, aren't they?

24 A. Yes, and we have submitted a waiver from
25 certain components of No Child Left Behind.

1 Q. And I'll get to that in a second. But I
2 want to talk about now, going back to the second page
3 of 1142, it talks about universal needs. It says,
4 "Status: Made AYP," and then it says, "Targeted
5 needs, On Watch." What does on watch mean?

6 A. Okay. It helps to understand that there's
7 two accountability systems. One under No Child Left
8 Behind or the federal accountability, and then the
9 state has an accountability system called
10 accreditation. And it was decided, years ago, that
11 instead of running two accountability systems, we
12 would parallel both of them so schools don't have two
13 different sets of expectations.

14 What you're looking at here is if a school
15 district does not meet the targets, or if a building
16 falls below those targets, the first year they fall
17 below the targets, they become on watch. And then it
18 lists what the expectations are for those schools
19 that year.

20 Q. So if we look at this, the next year if they
21 don't improve, then they're a school on improvement
22 year one, year two, and then corrective action?

23 A. Correct.

24 Q. And that's all under intensive needs
25 category?

1 A. Right. And that's when you see down there
2 under KSDE's roles, the second year that they've hit
3 the targets and they become on improvement, that's
4 when they enter the Kansas Learning Network.

5 Q. And you're talking about down here under
6 what are KSDE's expectations for schools and
7 districts; if you're into the intensive needs, then
8 you get into the Kansas Learning Network?

9 A. Right.

10 Q. The structure, and I skipped over that,
11 that's if you're improvement one to two -- past the
12 first two years of improvement into corrective
13 action, and the last step is the re-structuring?

14 A. Correct.

15 Q. There's a column or row here, sanctions, and
16 it has the sanctions that are in place in the event
17 that you are improvement in year one, two, or in
18 corrective action or re-structuring, is that correct?

19 A. Correct.

20 Q. And one of the sanctions is set aside
21 10 percent professional development. What is that?

22 A. These are -- these all apply to Title I
23 schools. So when they receive that -- they have to
24 take part of their Title I funds and set aside
25 10 percent of that to use for professional

1 development to help them write their integrated
2 improvement plan.

3 Q. So that we're clear the way the system is
4 set up, if you work your way onto the intensive needs
5 category, then you get federal funding?

6 A. Correct.

7 Q. And with that federal funding if you're into
8 this intensive needs program, you've got to at least
9 put 10 percent of it into professional development,
10 is that right?

11 A. Correct.

12 Q. You've got the responsibilities set down
13 here for an expectation, and those are something I
14 think we can talk about -- or could be read, rather,
15 by the Judges at their leisure. But where we are
16 now, coming up to 2014, what is anticipated in terms
17 of how the intensive needs systems will change, or is
18 there any anticipation as to how it will change?

19 A. If we get a yes on our waiver or a no?

20 Q. I'm talking about globally.

21 MR. RUPE: This is speculation. I
22 would object that it calls for speculation.

23 JUDGE THEIS: Well, you can ask if
24 they've engaged in planning for certain
25 contingencies, I suppose.

1 Q. Well, I'll try to rephrase the question
2 because I'll get back to that.

3 But what I'm trying to get at is at the
4 national level, with the information that you've
5 received from the Department of Education, what is
6 the probable course of action through 2014?

7 MR. RUPE: Well, he changed the
8 question to make it now probable, but it's still
9 speculation, so I'd object.

10 MR. CHALMERS: I can correct it.
11 I'm not trying to get anything Mr. Rupe's concerned
12 about with the waiver.

13 Q. I just want to know what the Department of
14 Education has said in terms of how it's going to look
15 at and deal with the fact that in 2014, we've got
16 some uncertainty as to where we go. What's been
17 communicated to your school district -- or to your
18 state department.

19 MR. RUPE: Why isn't that hearsay?
20 I object.

21 JUDGE THEIS: I think the first
22 question would be if you received any communication
23 through the Department of Education. And if it's
24 part of the operation, I don't see it as hearsay, per
25 se. I mean, if they received them, they've received

1 them, and they're part of the records or information.

2 Q. I think you can answer if you understand.

3 A. Yeah. The expectations of getting all
4 children to a certain level of proficiency won't
5 change in any year in the future. The expectations
6 from the federal level and the state level is we
7 still have to provide supports in this model or in
8 the model we proposed in the waiver isn't very
9 different from this.

10 We are proposing to continue with the Kansas
11 Learning Network in the future to provide technical
12 assistance to the lowest performing schools,
13 regardless of whether we're under No Child Left
14 Behind, whether we get the waiver, the expectations
15 are still the same. We have to provide supports and
16 services to those lowest-performing schools.

17 Q. Now, the expectations, do they all also
18 remain, that we'll do that in exchange for continued
19 federal dollars?

20 A. Doing it brings the benefits of receiving
21 over \$600 million of federal supports for food
22 service, special ed, Title. But even if we didn't,
23 we still have the responsibility to provide the
24 supports and services to the lowest-performing
25 students and schools.

1 Q. And the responsibilities you talk about then
2 would be based on whatever the state law requirements
3 are, not on the federal law?

4 A. Correct.

5 Q. Now, let me ask you about Plaintiffs'
6 Exhibit 103 for a moment. This is one of Mr. Rupe's
7 charts showing the reading assessment scores for
8 '10/'11. And the blue line, as you recognize, are
9 the target scores as they would apply for reading.
10 Looking at this real quickly. I can't tell what
11 grade level that is, but I guess it's not important
12 for my question.

13 We've talked about how, in 2014, the
14 expectation is -- is it 100 percent of the kids would
15 be proficient, at least under the current system?

16 A. Correct.

17 Q. Now, there has been a request by the State
18 for a waiver from these requirements, is that
19 correct?

20 A. That's correct.

21 Q. And that waiver request is in evidence.
22 It's a long, detailed document and I'm not going to
23 go through with that with you.

24 A. Thank you.

25 Q. Everybody can say thank you.

1 But we have received, that is the state, has
2 received a partial waiver as of today's date, hasn't
3 it?

4 A. Correct.

5 Q. And the partial waiver is that for the year
6 2012, the proficiency level will remain at the
7 '10/'11 level, is that right?

8 A. That's correct.

9 Q. That's for reading and math and so forth?

10 A. Correct.

11 MR. CHALMERS: I don't have
12 anything else. Thanks.

13 REDIRECT EXAMINATION

14 BY MR. RUPE:

15 Q. That waiver's good for how long?

16 A. One year.

17 Q. One year?

18 A. Correct.

19 Q. Pull the minutes from the State Board of
20 Education, if you would, which were Exhibit 186. And
21 Mr. Chalmers asked you about this interesting
22 discussion that happened at the state board and he
23 showed you the language. It was mentioned by one
24 board member that the board could find itself as a
25 defendant in a funding lawsuit if it didn't advocate

1 for students in the state by funding the law.

2 And I want to ask you about that because in
3 the -- and this is in evidence in Exhibit 1, Bates
4 number PRIMER 000237. I want to show this language
5 to you and ask you if that discussion makes sense in
6 light of what the Kansas Supreme Court has said.

7 In the Montoy V, decision the Supreme Court
8 said it is -- "Constitutionality of Senate Bill 549
9 is not before the Court. It is new legislation, and
10 if challenged, its constitutionality must be
11 litigated in a new action filed in the district
12 court. We have already made the determination that
13 the school finance formula, which was before this
14 court in Montoy II, was unconstitutional."

15 So let's go back to the board meeting where
16 the board member talked about if we don't stand up
17 for the kids in Kansas, we can find ourselves as a
18 defendant. That kind of makes sense, doesn't it?

19 MR. CHALMERS: Your Honor, I -- I
20 don't know what he's asking for, his opinion as to
21 what the board members' thinking, or if he's asking
22 about what happened at the board meeting that he said
23 he wasn't likely at.

24 JUDGE THEIS: He's making an
25 argument. It's an argumentative question.

1 MR. CHALMERS: And that as well.

2 MR. RUPE: And he brought it up, so
3 I think I'm entitled to go back into it.

4 JUDGE THEIS: Well, argumentative
5 questions count zero. I mean, really, they weigh
6 nothing.

7 MR. RUPE: All right. Thank you,
8 Your Honor.

9 Q. (By Mr. Rupe) What happens with a school on
10 improvement that's not Title I? Where does the money
11 for the interventions come from?

12 A. Their local budget.

13 Q. From the general fund?

14 A. General or supplemental general.

15 Q. And are the federal dollars that you have
16 identified from Mr. Chalmers -- for example, food
17 service -- are those federal dollars sufficient to
18 meet the needs of the schools in the area of food
19 service? In other words, is there a shortfall?

20 A. I don't know the averages, but there's three
21 sources of funding. The federal, what the students
22 pay for their lunch fees that don't -- the ones that
23 actually pay, and then most districts have to
24 supplemental the food service program from -- by
25 making a transfer from their general or their

1 supplemental general fund.

2 Q. So if the kids don't have enough money to
3 pay for the lunch and there isn't enough federal
4 dollars, then we use general fund money?

5 A. Correct.

6 Q. And as of right now, is NCLB the law in
7 Kansas?

8 A. It's the federal accountability law we're
9 currently under.

10 Q. And adopted by the state board in its QPA
11 system, right?

12 A. It is a component of accreditation.

13 Q. In the State of Kansas?

14 A. Yes.

15 Q. By reason of board action?

16 A. Correct.

17 Q. Let me show you Exhibit 131. And
18 Mr. Chalmers put this on the overhead. And I'll try
19 not to make this argumentative, but he drew your
20 attention to Item 4, and the focus on that says,
21 "Programs targeted for at-risk students are working
22 effectively." And that was as of the date of this
23 publication?

24 MR. CHALMERS: Last page.

25 JUDGE BURR: January 2012.

1 MR. RUPE: January 2012.

2 Q. We've heard from some teachers and
3 principals in this courtroom sitting in that chair
4 that programs that they have today are not going to
5 be available next year. In terms of the programs
6 targeted for at-risk students, is the effectiveness
7 of those programs dependent on resources?

8 A. There are very few effective volunteer
9 programs. The ones I believe that they're talking
10 about are the ones that either require materials,
11 human support -- yes, resources of different nature.

12 Q. And if those intervention programs you've
13 described are not able to be funded, what does that
14 do to the progress with at-risk kids?

15 A. If at-risk students don't receive the
16 additional supports that they individualized and
17 need, then they most likely continue to fall farther
18 behind than their peers.

19 Q. Okay. I want to cover some matters that
20 Mr. Chalmers brought up. I want to hand you
21 Exhibit 39. And that's the statute that Mr. Chalmers
22 mentioned and we'll come back to this in a minute
23 when we talk about some other specifics.

24 But you explained, I believe, that Item 5
25 and Item 6 in K.S.A. 72-1127 indicates that you think

1 there is an obligation among the state board to make
2 sure kids are college ready or vocationally adept
3 when they enter -- when they leave the public school
4 system?

5 MR. CHALMERS: Object to the form
6 of the question. It's leading and I don't think he
7 accurately characterizes what his testimony is, and
8 of course, I have my continuing objection as to
9 calling for a legal conclusion.

10 JUDGE THEIS: I think he can answer
11 the question. Overruled.

12 A. The direction that the State, State Board,
13 the Governor with his career tech ed bill that was
14 just passed, the superintendents, conversations
15 across Kansas is really around that the high school
16 diploma does not carry the value that it used to. It
17 doesn't open the doors. A 21 on the ACT is only one
18 measure of whether or not a kid can enter college
19 without taking remedial -- there's more to a kid
20 being prepared for beyond school than just say
21 score.

22 So the direction that the
23 Governor's bill, the State Board, and the field, and
24 the waiver, and a new accreditation model, is putting
25 a focus on what is it, truly, that a student needs

1 when they leave high school; towards industry-
2 recognized certifications added to a high school
3 diploma; being able to have employability skills. So
4 that's the direction the conversation that the State,
5 which includes the board, it is going towards -- that
6 would meet 5 and 6.

7 Q. Okay. And this probably goes without
8 saying, but you're aware that as part of the
9 constitutional responsibilities of the state board
10 and the Kansas Legislature, the State of Kansas has
11 an obligation to, I'll use the language from the
12 statute or from the Constitution, shall make suitable
13 provision for finance of the educational interests of
14 the State?

15 A. Can you rephrase the question or say it
16 again?

17 Q. You're aware that the State's obligation is
18 to provide that suitable finance?

19 A. Yes.

20 Q. And as part of what you've discussed, if you
21 look at Exhibit 54, the QPA Manual, and specifically
22 addressing Mr. Chalmers' notion that college
23 readiness is not part of state law, look at the QPA
24 Manual marked Exhibit 54, if you would. And does
25 that indicate that the State Board of Education felt

1 that whether students are preparing to go to college,
2 post-secondary technical schools, or to enter the
3 world of work, the content and required course of
4 study should provide them with the opportunity to
5 learn in context and through application without need
6 for remediation?

7 A. Yes.

8 Q. That's part of the QPA standards, isn't it?

9 A. (Nodding head.) Correct.

10 Q. And then what you mentioned as part of the
11 Governor's program -- I'm going to turn to
12 Exhibit 121, which is in evidence that is from
13 Governor Brownback in terms of his -- we've got the
14 highlight with lighter highlights -- in terms of what
15 Governor Brownback has by way of measurable goals,
16 one of them is increasing the percentage of high
17 school graduation who are college- or career-ready.
18 Is that what you made reference to?

19 A. Yes.

20 Q. And you have up there Exhibit 129, which is
21 the Kansas Accountability Report from KSDE. And this
22 is a publication of the Kansas State Department of
23 Ed?

24 A. Correct.

25 Q. And this indicates, doesn't it, that we also

1 have a responsibility to our students to ensure they
2 leave high school prepared for success in both
3 college and career, doesn't it?

4 A. Correct.

5 Q. And that's what you've indicated, in terms
6 of college readiness, is the State Board and State
7 Department's position?

8 A. (Nodding head.)

9 Q. And so we have it, the executive summary
10 prepared here, these are in the words of Diane
11 DeBacker, the Kansas Commissioner of Education?

12 A. Yes.

13 Q. Now, I want to ask you about another quote
14 in the Montoy case because it goes to something
15 Mr. Chalmers was talking about. And you described --
16 do you see a distinction between -- in the education
17 world and educating kids between inputs and outputs?

18 A. In what manner?

19 Q. Inputs being the Big Chief tablet and the
20 pencil, and outputs being what they achieve once they
21 have been taught?

22 A. I understand the difference between the two.

23 Q. Okay. And Mr. Chalmers was asking you about
24 the statute that is 72-1127 and he was indicating
25 that this involved providing a curriculum to do these

1 things. Do you recall that questioning?

2 A. Yes.

3 Q. What I want to know is if the -- let me read
4 to you from Exhibit 1229, PRIMER 000229.

5 MR. CHALMERS: It does seem to me
6 that this is kind of argumentative to ask the witness
7 to comment on what the Supreme Court has meant.

8 MR. RUPE: No. I'm going to show
9 him this, and then ask him his opinion as a member of
10 State Department of Ed.

11 MR. CHALMERS: Well, then you're
12 asking his opinion on a legal point and I don't think
13 that again, it's proper.

14 JUDGE THEIS: Let's hear the
15 question first.

16 MR. CHALMERS: Okay.

17 Q. (By Mr. Rupe) Okay. And this is the same
18 difference that the court in Montoy IV said:

19 It also appears that the study contemplated
20 by 2247 is deficient, because it will examine only
21 what it costs for education, quote, inputs, end
22 quote, the cost of delivering kindergarten through
23 grade 12 curriculum, related services, and other
24 programs mandated by the state statute and accredited
25 schools. It does not appear to demand consideration

1 of the costs of outputs, achievement of measurable
2 standards or student proficiency.

3 So my question to you is, as part of what
4 you considered the obligation to be in terms of
5 college readiness and vocational readiness and
6 assessments, do you look at whether or not these
7 kids, once they're given the Big Chief tablet and the
8 pencil actually learn?

9 MR. CHALMERS: Let me object to the
10 question in terms of the way it's formed and
11 switching from apples to oranges. First, it's
12 calling for a legal conclusion; second, the outputs
13 they talk about are setting a curriculum that allows
14 the opportunity for these -- for this output, which
15 is what the Rose Factors is.

16 And now we have switched the gear
17 and we're now asking the witness to express an
18 opinion on the legal point, I guess, which is, is the
19 a guarantor that the kids get that output. And I
20 think that the question is leading, and calls for a
21 legal conclusion, and is improper.

22 JUDGE THEIS: Overruled.

23 Q. If you need to explain, that is fine.

24 A. I'm not quite sure I understand. What we
25 focus on -- what schools focus on is the outputs.

1 But they have to live within the limits of what they
2 can put into it based on, this is your budget. So
3 they may have to adapt the inputs based on what their
4 resources are. But -- so the -- it's -- we know
5 where we want to go. The challenge is how do we get
6 there with what we have, so we have to be adaptive in
7 order to do it. So I'm not quite sure --

8 Q. What I want you to explain is the where we
9 want to go. As part of where you want to go, do you
10 see your role in the Department of Ed, the locally-
11 run school boards, the State Board, the State of
12 Kansas, do you see that as simply providing the
13 material for kids to learn, or do you see embedded in
14 part of that process the notion that we want kids to
15 learn?

16 A. Our focus as a state is where do we -- what
17 do we want in education? We want to reduce the
18 dropout rate. We want to increase the graduation
19 rate. We want to -- on a statewide basis, we still
20 have 15 percent of our hardest kids not even at a
21 level of grade level proficiency.

22 And then how do we take all of them and make
23 sure that they're prepared when they leave our system
24 to be productive, not a burden on our state, and have
25 in their hand a key to be able to enter college or a

1 career with a skill or a trade. So that's -- those
2 are the outputs we're looking at.

3 We know longer look at how many library
4 books are in the library and then assume that will
5 efficiently educate kids. We moved away from that in
6 the late '90s. QPA was good at the time; it moved
7 the needle the direction we wanted to go. But we
8 still know that we have a lot of work to do. So,
9 yes, we look at the outputs, not assume, whether they
10 get the Big Chief, they're going to be successful.

11 Q. One last area that I want you to explain to
12 the Judges and that is -- there may be another area
13 after that -- but I'd like you to explain how KPERS
14 is accounted for. Explain the KPERS accounting
15 method.

16 A. KPERS accounting?

17 Q. Yeah.

18 A. I don't remember the year. It was probably
19 five years ago, could have been longer. Before that
20 time, state -- I'll use the example, a teacher's
21 retirement, they put a little bit in and then the
22 State does. The portion that the State put towards
23 their retirement went straight from the State right
24 to KPERS.

25 About five or six years ago, a bill was

1 passed to have the money -- schools had to create a
2 KPERS fund, and the money was then wired to the
3 school district's account and then wired right back
4 out and then sent to KPERS. I wasn't involved in the
5 discussion, but the net effect of it is, school
6 districts' total pot of funding statewide went up 90,
7 \$100 million because it's now reflected in their
8 budget.

9 So the process is, it's wired to their
10 account from the State and then wired right back.
11 And the schools don't do any of the wiring. They
12 just provide the account number. Is that --

13 Q. In terms of how that operates, it's not
14 unlike the special ed funding accounting that is
15 included for the computation of the LOB?

16 A. Each one of them had a purpose. I know the
17 purpose of why special ed was changed to then flow
18 through the general fund and then transfer to the
19 special ed fund. We all know the intent of what that
20 was.

21 Q. And intent was to boost the percentage of
22 the LOB available?

23 A. Because your LOB is a percent of your
24 general fund budget.

25 MR. RUPE: That's all I have.

1 more questions about it. Nothing further.

2 MR. RUPE: No further questions.

3 EXAMINATION

4 BY THE PANEL:

5 JUDGE THEIS: I've got one maybe.

6 Those AYP standards, or the tests
7 you give in different years which appears to be
8 the -- have a minimum standard of what used to be the
9 graded scale, I'd say would be a C minus is a 68
10 percent, those are minimum standards, correct?

11 THE WITNESS: The standards in
12 Kansas for math and reading are the minimum or the
13 foundational of what we would expect every kid to be
14 able to at least perform at in order to be considered
15 at grade level.

16 JUDGE THEIS: All right. But are
17 they a proxy for the rest of the class? I mean, I'm
18 looking for performance measure. Once you hop above
19 those, what's the performance measure above those?

20 THE WITNESS: Then the next -- the
21 goal of No Child Left Behind was to get all kids at
22 least to that level.

23 JUDGE THEIS: Kids with the C
24 minus?

25 THE WITNESS: Or -- yeah. At least

1 to be able to have the skills to be able to move to
2 the next grade level, or to be satisfactory
3 performing at your grade level. There's two other
4 levels above that where the highest percent of Kansas
5 students are at, but it's like, you know, if you were
6 ever in a track meet, there's a minimum height that
7 you have to jump to be able to -- they start it at
8 six foot -- or that's pretty high. I couldn't be
9 able to jump that.

10 JUDGE THEIS: That's way too high.
11 We'll run under that one.

12 THE WITNESS: Five foot. And they
13 say, to be able to qualify, you at least have to jump
14 five foot. Most of the kids are jumping higher than
15 that and we have higher performance categories, but
16 that's just the minimum opening height, and that's
17 the goal.

18 It's -- I don't want to offend
19 someone, but I'm going to use KU. Bill Self sets
20 free throw shooting goals as a team. And if they
21 don't meet them, then he sets a plan that we need to
22 work more on our free throws.

23 And so when we look at standards,
24 we're looking at, what is the minimum that we're
25 going to expect, the foundational. But we don't want

1 that to be the only target we shoot at.

2 JUDGE THEIS: Right. But what I'm
3 saying, are those proxies for needs in a school if
4 you've got a lot of kids in that it kind of reflects
5 on everybody else? I mean, I've looked at some of
6 those kids at -- like, the Wyandotte County people,
7 you know, and I see they're excellence -- the kids in
8 the excellent category are also, you know, trending
9 down, not up so ...

10 THE WITNESS: But the issues that
11 as a state we've had with No Child Left Behind is
12 one, the 100 percent; no one's going to shoot and
13 make every free throw every time. We know that.
14 There is a natural ceiling to any assessment you're
15 never going to have 100 percent of all the kids get.

16 So when that becomes the target,
17 sometimes it's at the expense of higher students.
18 You know, I've seen the focus taken off of gifted
19 programs or -- because the whole pressure has been to
20 get kids to here. And then we no longer acknowledge
21 or recognize where we want to go with all kids.

22 It's just the No Child Left Behind
23 kind of snapped that line and said get above that,
24 and that's the only acknowledgment schools get. And
25 it's -- we believe it's been at the expense, even

1 though the highest two performance categories in
2 Kansas is the top two categories, schools have still
3 been going to that. But as we got closer to that 100
4 percent, a lot of the focus went back to getting
5 those kids from not meeting, to meeting.

6 JUDGE THEIS: But if one were to
7 have a perception that, you know, if everyone makes a
8 C minus, we all go home, it's not a good idea.

9 THE WITNESS: That's why, in our
10 waiver -- the waiver that the U.S. Department of Ed
11 is allowing states to go to, is to say -- U.S.
12 Department of Ed's main focus is, because that's
13 where all their title, their special -- is this most
14 needy kids. They want to ensure that you don't
15 forget about the kids that still haven't made it to
16 that level.

17 In our waiver, we propose we now
18 have four different measures of accountability,
19 recognizing achievement at every performance
20 category, which is exactly where -- right now, it's
21 just getting from meets to -- or not meeting to
22 meeting, which is the wrong way. That's a very
23 narrow focus. We're proposing we acknowledge growth
24 at every performance category.

25 We're also looking at trend growth

1 because we have some schools that may not have hit
2 the target, but they've had incredible growth that we
3 don't look at or acknowledge under No Child Left
4 Behind. So in our waiver, we're addressing that very
5 issue.

6 JUDGE BURR: I want to take your
7 analogy about the high jump standard. And it appears
8 to me that we're a long ways from six feet. I mean,
9 we're probably more like two or three feet. I mean,
10 we're trying to get everybody over the same height.

11 But are we spending our money on
12 setting the bar, or are we spending our money to
13 teach kids who are using the old scissors approach --
14 that was back in my era -- to do the Fosbury flop so
15 we can set the standard higher? I mean, are we doing
16 both? I don't know. Do you understand my question?

17 THE WITNESS: You'll know by my
18 answer.

19 JUDGE BURR: Well, I may not, but
20 go ahead.

21 THE WITNESS: The standards are
22 just, what do we expect every child to know and be
23 able to do at a certain point in time. And they're
24 set by educators in the field that say, you know, at
25 the 5th grade, the 6th grade, we expect them to know

1 and be able to do this.

2 The current standards were set at
3 the grade levels. The Common Core Standards take
4 more of a deeper dive. And the new assessments that
5 will measure those will measure broad levels, and
6 more in-depth of not only did they know it, but can
7 they use it? Can they apply it?

8 So the standards are, basically,
9 what do we want and expect kids to be able to do at a
10 certain point in time. And then, the assessments
11 just measure whether or not the child was either
12 there or how are we doing as the system in order to
13 prepare our kids.

14 So wherever you -- you set the
15 standards at multiple levels, but then No Child Left
16 Behind required us to snap that line and say, that's
17 the goal that we want all of them to get to at a
18 minimum. But in Kansas we look -- we look at all
19 five levels, but we only report the one currently.

20 What we're proposing is we look at
21 multiple measures of how -- and not just an
22 assessment. Like I said, getting -- we know a lot of
23 kids that can get a 29 on the ACT and then crash when
24 they get to college. There's a lot of measures of
25 whether or not a kid is ready for college or a

1 career.

2 JUDGE THEIS: That's what I'm
3 asking exactly, where do we look for those measures?

4 THE WITNESS: The ones we're
5 proposing?

6 JUDGE THEIS: Well, you've got your
7 tests you give that give whether you can do the
8 Fosbury flop. But where you get -- to measure the
9 rest of the students' progress, what exactly -- where
10 would I look to see what those measures are? Do I go
11 to the quality performance standards or do I go to
12 the Common Core? Where do I go to -- how do I tell
13 the student that's either average or better, you
14 know, in the Army terms, is being all he can be, he
15 or she, all she can --

16 THE WITNESS: Currently, you would
17 have to go out on a state website -- and it's hard to
18 drill down to student level data because of FERPA
19 issues. But looking at the statewide data, you'd
20 have to look in multiple areas. What are the
21 discipline issues? What are the graduation rates?
22 What are the statewide attendance rates?

23 So there's multiple measures as to
24 know how a building is doing. When you want to drill
25 down to a student, and that's one thing that -- there

1 are systems we're designing right now to give student
2 growth data measures on every student, on every
3 building, on the district, and across the state.

4 So a lot of the measures we're
5 talking about, we're going -- we are in the process
6 of designing collection and reporting systems to be
7 able to display to you multiple ways to be able to
8 determine whether your school, your district, or that
9 child is ready. And the state assessment should only
10 be one measure of whether or not we believe that that
11 child is ready.

12 JUDGE THEIS: But is that in the
13 future or now?

14 THE WITNESS: Right now, you just
15 have to go out to the state website and fish around
16 for it because it's never -- those multiple measures
17 have never been built into No Child Left Behind
18 because it only looks at one measure. And
19 accreditation really, currently under its QPA, the
20 way we live with it now, uses that same measure.

21 JUDGE THEIS: It's a minimum.

22 THE WITNESS: And that's why we're
23 also in the process of totally remodeling or re-doing
24 our state accreditation system to where student
25 achievement, at multiple levels, is only one measure

1 of whether or not we judge the quality of the
2 system.

3 We want to look at how are you
4 engaging students? What are you using -- doing in
5 the area of leadership and technology? How are you
6 engaging your parents in your community? What are
7 you doing to ensure that kids are college- and
8 career-ready? How are you using your resources.

9 I could use Kansas City, Kansas as
10 an example. They've shown incredible growth in
11 student performance, and they didn't get it because
12 they lectured their kids to take the tests serious.
13 It's all the other places they started looking at,
14 their curriculum, their instruction, how they engage
15 students, their school climate. Those are the things
16 we want to focus on as being truly meaningful and not
17 just what was your score, either at the school or the
18 child level.

19 JUDGE THEIS: But I could look at
20 the tests that are given, like on the math and the
21 reading, and see that the students in the highest
22 category are either static or declining. Or I could
23 look at that middle pocket of kids that are more than
24 proficient but not excellent to see whether they're
25 folded into a higher category or not. That's at

1 least some proxy for what's happening with the rest
2 of the student body.

3 THE WITNESS: That's correct.
4 Currently, you could look at performance categories
5 at those five levels across the state and compare one
6 year to the next to see which ones are growing more
7 rapidly. Is it -- is it just getting them to the
8 middle category of meeting standards and we're
9 stopping? Because you could look and say, well,
10 these two, the top two, over years, have been --
11 we're getting more and more kids into these two
12 categories, so you can see that out on the state
13 website right now.

14 JUDGE THEIS: We asked some of the
15 teachers -- you know, I didn't understand. I don't
16 have any grandkids and my kids are older. They're
17 not going to teach in little groups anymore, you
18 know, everybody's all together regardless of ability,
19 which, if a teacher's working with somebody that's
20 got a question, then if I have a better-than-average
21 student, he may have an extra question that might
22 spark his interest or put him in a higher category.
23 There's not going to be a teacher there to do it
24 because they're concentrating --

25 THE WITNESS: They're trying to

1 bring the mass --

2 JUDGE THEIS: Seems to me they're
3 pulling up the bottom rather than elevating the top.

4 THE WITNESS: And the challenge for
5 teachers right now is that differentiated instruction
6 of being able to move every child to a higher
7 level -- I would say you would see very few
8 traditional classrooms where they're all sitting in
9 rows. When you walk in classrooms now, you'll see
10 them around tables working in groups using
11 technology.

12 In order to get over the six foot,
13 some may choose to use the Fosbury flop. We don't
14 care how they get over measures now. We want them to
15 use their own creativity, you know, as long as they
16 get to the goal. You may have five different kids
17 get there a different way, and that's the challenge
18 with teaching now, is changing your instructional
19 style to meet the learning needs of every other
20 different kid.

21 JUDGE THEIS: If that's the
22 modality they operate in now, that if you reduce a
23 class size or increase a class size, then the
24 opportunities --

25 THE WITNESS: It's harder to do

1 that --

2 JUDGE THEIS: -- diminish
3 quickly -- incredibly quickly, don't they?

4 THE WITNESS: And the instructional
5 supports that go along with that teacher. Now a lot
6 of schools use instructional coaches to where a group
7 of teachers now has a coach to come in. So they
8 don't have to create everything on their own, they
9 can come in, they can set, and they can monitor, they
10 can watch their instruction, they can coach them
11 through those processes.

12 No longer can one teacher do it all
13 on their own. They have to have a lot of support,
14 whether it's with MTSS, providing, when you find
15 those groups of kids that immediately you can
16 recognize that they're behind their peers, what are
17 the quick, immediate supports you can get to them
18 without the teacher having to just stop instruction
19 for everybody else to take care of those.

20 JUDGE THEIS: Even to the extent to
21 give the average student or better-than-average
22 student an opportunity to ask the teacher a question
23 that might push him into the next level.

24 THE WITNESS: That's correct.

25 JUDGE BURR: Your answers were

1 better than our questions.

2 MR. RUPE: Can I ask a follow-up
3 question?

4 JUDGE THEIS: Sure.

5 REDIRECT EXAMINATION

6 BY MR. RUPE:

7 Q. And this may show the difference in our
8 ages, but you talked about if we want to find out how
9 we're doing with all kids, you could go out on the
10 web and look at your web page. Is another source
11 asking the teachers in the classroom and the
12 principals and the superintendents of the school
13 districts how they're doing?

14 A. Oh, absolutely. Our data is their data.

15 Q. And in terms of getting all the answers from
16 the web, you can also ask the people that are there?

17 A. Correct.

18 MR. RUPE: All right.

19 JUDGE THEIS: Mr. Chalmers.

20 MR. CHALMERS: Yeah.

21 RE-CROSS EXAMINATION

22 BY MR. CHALMERS:

23 Q. Just for expediency, it's in evidence. I
24 don't know what the exhibit is, but so that -- is
25 this what you're talking about as being on the web?

1 A. Yes. And you can look at year-by-year at
2 state level data to see what percent of the students
3 are -- how is each performance category either
4 growing or shrinking year to year. And go to all
5 students, you can do it by subject groups, you can do
6 it ...

7 MR. CHALMERS: That's not what it
8 is, Alan.

9 Q. But the web -- so that we have a record of
10 what we're talking about, what I've shown you is the
11 11th grade for USD 500 for all districts.

12 MR. CHALMERS: And there is an
13 exhibit, Your Honor, that -- Your Honors, rather,
14 that's in the Defendant's Exhibits and I'll dig it
15 out to make the record of it, that shows those
16 different categories.

17 Q. And this is what you were talking about?

18 A. Correct. And what percent of the students
19 are performing in each one of those -- part of our
20 problem now is we just -- we look at data at a
21 snapshot each year.

22 What we're proposing in our waiver, and we
23 hopefully are going to get a yes this week -- we have
24 a call with them tomorrow -- is that we look at
25 multiple years' data and trend data to be able to

1 show performance over time at each -- not only each
2 performance category, but down to the student level.
3 How is that child doing, not only as compared to all
4 students, but other like students? Because right
5 now, it's one measure and every kid's got to make it,
6 regardless of your conditions.

7 MR. RUPE: I would like, just for
8 the record, the exhibit you've identified so we can
9 have that as part of the record, the one Mr. Chalmers
10 just referred to.

11 JUDGE THEIS: I think --

12 MR. CHALMERS: It was part of
13 Exhibit 1163 and 1162. So 1162 and 1163. But in
14 that series of 1158 through 1163, I think, is where
15 those printouts of that particular display are.

16 JUDGE THEIS: Are we through here?
17 Thanks for coming back.

18 THE WITNESS: No problem. Thank
19 you.

20 (Witness excused.)

21 MR. RUPE: I want to be heard on
22 that motion at some point and ...

23 JUDGE THEIS: I wish I'd known
24 about it last night. I could have read it better.

25 MR. RUPE: I apologize.

1 JUDGE THEIS: We can go ahead if
2 you want to refresh us on your motion.

3 MR. RUPE: Thank you very much.

4 This is the motion that came about
5 as a result of the deposition of Dr. Hanushek. It'll
6 come up in the other witnesses as well.

7 And as you recall from that motion,
8 my concern was, when I asked the question on, let me
9 see your rough drafts or tell me information on what
10 you changed in drafting your report, Mr. Chalmers
11 instructed the witnesses not to answer. He indicated
12 that the reason he was doing it was a statute -- and
13 I don't have the number of it, a statute that goes
14 into effect, I think, in July that says that that is
15 protected as work product.

16 JUDGE THEIS: Wasn't the argument,
17 as I recall it, the inquiry made of what
18 Mr. Chalmers -- what the discussion was between
19 Mr. Chalmers and the witness?

20 MR. RUPE: And what the particular
21 document was. And there is a redacted email in which
22 Mr. Chalmers provided an email between him and the
23 expert and has written "redacted" across the front,
24 and I'm particularly interested in that. The
25 rationale was based on a statute that didn't become

1 law until later. Mr. Chalmers now is saying that it
2 was based on work product and we've addressed all
3 that in our brief, which I would suggest you re-read
4 it.

5 JUDGE THEIS: Let me ask you, was
6 it going to what he was asked to give an opinion on?

7 MR. RUPE: No. It was going on
8 what his opinion was and a correction of his opinion.

9 JUDGE THEIS: Whether Mr. Chalmers
10 was influencing his opinion?

11 MR. RUPE: That's what I want to
12 know, and I want to know what the previous opinion
13 was.

14 JUDGE THEIS: And do you ask him if
15 he changed his opinion?

16 MR. RUPE: I don't remember whether
17 I did or not. I would hope I did.

18 JUDGE THEIS: And that's when
19 Mr. Chalmers jumped in?

20 MR. RUPE: Yeah.

21 MR. CHALMERS: No.

22 MR. RUPE: And instruction was not
23 to answer.

24 JUDGE THEIS: He has a different
25 view.

1 MR. RUPE: Well, that's usually
2 what happens.

3 MR. CHALMERS: I don't have
4 anything to argue, but I'm frustrated by the
5 misstatements. I'm sorry. Go ahead.

6 JUDGE THEIS: Let's see what
7 Mr. Chalmers says and you can rebut him.

8 MS. TIBBETS: Actually, it's not
9 Mr. Chalmers, but I may need his assistance to jump
10 in. I've marked what I think is at least one of the
11 places. And it says -- it's when Mr. Rupe asked the
12 witness, "Do you have drafts available, the red
13 line?"

14 And the witness said, "No. I
15 started building a document, so there aren't
16 intermediate steps."

17 "Well, will you tell us what you
18 added after your conversation with Mr. Chalmers?"

19 "Well, I had a conversation with
20 Mr. Chalmers," and then Mr. Chalmers, says, "Let me
21 make an objection. I think you were just asked
22 whether you could, and the law in Kansas is changed,
23 but discovery drafts and work product communications
24 between lawyers and their retained experts are not
25 discoverable."

1 And then Mr. Rupe says, "Well, what
2 are the changes?"

3 And Mr. Chalmers says, "They're not
4 discoverable."

5 And he said, "Are you instructing
6 him not to answer?"

7 And then they talk a lot after
8 that, but that's the gist of the conversation. And
9 so Mr. Chalmers was just raising work product.

10 All that is at issue here, and this
11 is pretty easy, is Mr. Chalmers' mental impressions.
12 It's not the things that Mr. Chalmers told the
13 witness in order to base his opinions upon. It's not
14 anything other than Mr. Chalmers' mental impressions,
15 which are covered by work product. I mean, it's a
16 plain old work product rule.

17 We didn't have any Kansas cases.
18 We have our old Kansas expert opinion statute, which
19 says, you know, as to regards to given the facts and
20 assumptions on which their opinions are based and to
21 give their opinion.

22 The federal rules changed about a
23 year ago where they made it explicit that comments by
24 counsel to an expert that would involve their mental
25 impressions that would have to do with changes made

1 to a draft, or any of those things, would no longer
2 be the subject of motions to compel, the theory being
3 that lawyers were spending a whole lot of time
4 fighting about trying to get mental impressions of
5 the other lawyers and it was eating up a lot of court
6 time.

7 The Kansas law had always kind of
8 tracked along with the federal law, and now Kansas
9 has passed a statute that explicitly says that those
10 kinds of conversations are protected. So when Kansas
11 passed as a statute, as will often happen, we say, of
12 course, they were just clarifying what the law was
13 before. Mr. Rupe says, no, they're passing a statute
14 because they wanted to change the statute.

15 But the truth is that Kansas law of
16 work product applies to these kinds of conversations,
17 you know, the conversations where Mr. Chalmers is
18 communicating with the witness about his particular
19 mental impressions about the report or about his plan
20 for the case.

21 JUDGE THEIS: There was the other
22 question, that did you change your opinion based on
23 what Mr. Chalmers said?

24 JUDGE BURR: That's what I want to
25 know. I didn't get the original question, I guess,

1 maybe. What was it? Was it asking for his opinion?

2 MS. TIBBETS: It was asking for
3 Mr. --

4 JUDGE FLEMING: Let her talk.

5 MS. TIBBETS: He was asking what
6 Mr. Chalmers told -- Mr. Chalmers said, "Can you tell
7 us what you added," and he's talking about the
8 report, "after Mr. Chalmers?"

9 "Well, based on the conversation
10 with Mr. Chalmers," and then Mr. Chalmers said,
11 "Don't talk about the conversation. I'm going to
12 instruct you not to answer about the conversation."

13 MR. RUPE: If I may.

14 MS. TIBBETS: And -- well, I would
15 just say, too, that he says he didn't keep drafts.
16 You know, it's not like there's a draft out there.
17 He said, I just worked from one report. And then,
18 that's where they got into the argument.

19 "Do you have the draft red line?"

20 "No, I just started building a
21 document and there are not intermediate steps.
22 They're independent documents."

23 "Can you tell me what you added
24 after your conversation with Mr. Chalmers?"

25 And then he says, "Well,

1 Mr. Chalmers," and he starts to give the
2 conversation, and then Mr. Chalmers tells him we
3 usually don't disclose that.

4 JUDGE THEIS: It wasn't something
5 that would be included in part of what the inquiry
6 was that he was to respond to?

7 MS. TIBBETS: I'm sorry?

8 JUDGE THEIS: It wouldn't the
9 premise on upon which he's making any expert opinion
10 on?

11 MS. TIBBETS: Absolutely not.
12 Nothing that's been redacted has to do with the facts
13 or the assumption from anything on which he's basing
14 his opinion. It's only Mr. Chalmers' mental
15 impressions.

16 MR. RUPE: And it involved what he
17 changed in his report. And he says -- and I
18 appreciate counsel reading that because that's what
19 happened. He says he changed his report. And I want
20 to see what the change was. And at the time he was
21 instructed not to answer, there was no statute in
22 place.

23 These questions were asked of our
24 expert and we provided the information and we
25 provided the drafts, and Bruce Baker gave

1 explanations as to what. Then I asked the question
2 at Hanushek's deposition, and there's an instruction
3 not to answer.

4 Counsel has recognized now --
5 didn't in the deposition -- that the statute was not
6 effective at the time. And I think I'm entitled to
7 that email so I can see what the change was based on.

8 JUDGE THEIS: Well, did they ever
9 say -- did the witness ever say what the change was?

10 MR. RUPE: No.

11 JUDGE THEIS: From what to what?

12 And that was objected to --

13 MR. RUPE: He was told not to
14 answer --

15 JUDGE THEIS: -- because he talked
16 to Mr. Chalmers?

17 MR. RUPE: Right.

18 JUDGE THEIS: So he wouldn't even
19 say what his change was?

20 MR. RUPE: No, he didn't.

21 MS. TIBBETS: I don't see where he
22 was asked what the change was. He began to say,
23 "After I talked to Mr. Chalmers and he," and then the
24 two of them began to argue about whether or not he
25 had to say what Mr. Chalmers said. And I don't see

1 in the transcript --

2 JUDGE THEIS: Well, why don't we go
3 about 20 minutes here, about five to 11:00 and then
4 we'll talk it over and give you a ruling.

5 (A recess was taken.)

6 JUDGE THEIS: Be seated. Thank
7 you. I think our position is this: That the
8 question probably, the way it was asked, doesn't
9 sound to be proper. And the witness -- you could ask
10 the witness whether he had an opinion and changed it
11 for any reason and whether or not that was based on
12 any input as to change the premise or anything of
13 that nature, if he said, yes. Of course, if he says
14 no, then I think it ends there.

15 We agree, I mean, a witness' report
16 is what he finally gives someone and he arrived at an
17 opinion. And if he consequently changes it, you can
18 ask him if he changed it, did you change it and why
19 did you change it.

20 But, for example, a draft opinion
21 on something, my goodness, I defend a draft opinion
22 to the end of the earth because it's not ready until
23 it's ready, you know. And you don't want to get a
24 witness like that into conflict with their lawyer,
25 because the only way you could ever -- the only way

1 to attack the credibility of the answer the witness
2 is to put the lawyer on, and that's not going to
3 happen so ...

4 MR. RUPE: That's fine. And with
5 regard to Dr. Hanushek, I understand the Court's
6 ruling. The email actually was in the Podgursky
7 deposition. We talked about this when you were back
8 there, so I'd like to be heard on Podgursky before he
9 testifies.

10 JUDGE THEIS: Is it the same
11 theory?

12 MR. RUPE: No. In Podgursky he
13 was -- there was an email in which Mr. Chalmers asked
14 him to give a report on various topics. And the
15 email is redacted as to what those topics are.

16 And what we have is what Podgursky
17 gave as his report. And I want to know what other
18 areas he was asked to give a report on that he
19 didn't. Now, if that falls in the same area, I guess
20 I'm going to get the same ruling, but I think it's
21 different.

22 MS. TIBBETS: Your Honor,
23 there's -- the email that was redacted, basically,
24 Mr. Chalmers says, here's what I'm going to do in my
25 case, what do you have some expertise in. I mean,

1 that's a little bit of a summary. I have it here if
2 the Court wants to make an in-camera inspection of
3 it. Do you want to do it now? The one I'm going to
4 hand you is actually limited to Mr. Hanushek -- or
5 wait.

6 And just to be clear, these are way
7 before any reports are written. This is just sort of
8 preliminary inquiry, the gist of which was, here's
9 what my case is about, what is it that you have
10 expertise in.

11 MR. RUPE: Since she has it right
12 here, I would suggest you look at the Hanushek one,
13 too, because there's that email to Hanushek, as well.

14 JUDGE THEIS: One at a time.

15 JUDGE FLEMING: What part of this
16 did you -- how did you get access to this?

17 MR. RUPE: I didn't. I haven't
18 seen it. Either I haven't.

19 MS. TIBBETS: We redacted
20 everything after, "I am interested in expert
21 testimony on the following subjects," and then --

22 MR. CHALMERS: Copy showing what
23 the redactions are.

24 MS. TIBBETS: So it's the part that
25 says, "I need your help about the following," and

1 then it kind of outlines -- yeah. And then the
2 part -- the outline is what was redacted.

3 JUDGE THEIS: Is there another
4 formal document making a formal request to him?

5 MS. TIBBETS: I don't know that.

6 JUDGE THEIS: What did you do, file
7 a motion to produce and they identified that but
8 wouldn't produce it?

9 MR. RUPE: It was produced at the
10 deposition as redacted --

11 MS. TIBBETS: Redacted.

12 MR. RUPE: -- and I asked him if he
13 would produce the original, and he said no. And then
14 I followed it with -- so I did my --

15 JUDGE FLEMING: Your motions are in
16 the trunk of my car sitting over at the Ramada Inn.
17 I don't want to look at them now because your motions
18 are actually to strike the testimony of the
19 witnesses, right?

20 MR. RUPE: It is, and I'm asking
21 for sanctions, but I will give up all of that if I
22 can get the emails so I can cross-examine him about
23 it on both Hanushek and Podgursky.

24 MS. TIBBETS: And since the motions
25 are in the trunk of your car, I might just remind you

1 that they were filed out of time, which was our very
2 first objection. They were filed after the deadline,
3 and you set a specific deadline for objections to
4 expert issues.

5 JUDGE FLEMING: I thought about
6 removing them from the trunk and putting them in the
7 garage because I figured I'm going to need all that
8 trunk space to carry home the exhibits.

9 MR. RUPE: And Counsel, I respect
10 what she said. I think in the pretrial order we
11 indicated a date by which we would get the motion
12 filed, and we were a couple of days late and that was
13 not what the Court ordered. That was what we
14 indicated to the Court we would be filing.

15 JUDGE THEIS: Is there any other
16 document, a formal letter that goes to him, or is it
17 just merely this email?

18 MS. TIBBETS: You mean as to what
19 he eventually would write a report on?

20 MR. CHALMERS: We produced all
21 emails with the exceptions of some that were held
22 back. And as to Mr. Podgursky, the only email that
23 was held back is the one that's redacted.

24 As to Mr. Hanushek, it is an email
25 that is almost identical. But we produced a lot of

1 other emails, too, so they have all of it. But as to
2 Mr. Hanushek, there's an email that is pretty similar
3 to Mr. Podgursky's.

4 And then there are, as sometimes
5 happens when you send emails back and forth, the same
6 thing appears. So it's the same material, but there
7 are multiple copies of the email that were held back
8 at the deposition. And documents were produced, and
9 emails were requested as part of the production at
10 the depositions, and that's why we produced what we
11 produced at the deposition.

12 MR. RUPE: And I appreciate that.
13 I think what he's saying is there's a Hanushek email
14 that's sitting right there on the table that I
15 haven't seen. And Podgursky's and those emails,
16 because of the replies back and forth, appear at
17 different times but were redacted, so we still don't
18 have them.

19 JUDGE THEIS: What I'm trying to
20 get to is when the expert is asked to render an
21 opinion, is this the document on which he based his
22 opinion or is there --

23 MR. CHALMERS: Those were
24 preliminary documents sent to him to try to find out
25 what opinions they could provide help on. That

1 was -- that is not -- the opinion then came. I don't
2 know the date of it, but many months after it, the
3 opinion comes out. So that would be kind of a
4 preliminary document talking about -- telling me
5 about areas that you can help me on, and here are my
6 thoughts as to where I might go.

7 JUDGE THEIS: Okay. But the only
8 evidence of what he actually gave an opinion on is in
9 his opinion?

10 MR. CHALMERS: I guess. I think
11 that's right.

12 MR. RUPE: But --

13 MR. CHALMERS: Yeah.

14 MR. RUPE: -- I mean, we've all, as
15 lawyers, cross-examined experts on what they were
16 asked to do and they didn't do, and I think it's
17 absolutely something that I should be entitled to
18 see.

19 JUDGE FLEMING: I think our
20 position is your motions to strike are denied, but
21 we're going to grant you some latitude in cross-
22 examination. Only if one of the witnesses changed
23 the substance of his opinion based on conversations
24 or emails with Mr. Chalmers would it be appropriate
25 to allow you to inquire into that. Otherwise, it's

1 privileged -- not privileged, it's work product.

2 JUDGE THEIS: I think the way to
3 handle this would be, off the top of my head, is to
4 have a copy of this email and a copy of the other
5 gentleman's and see what his report says.

6 MR. RUPE: I have -- if she'll give
7 you that copy of his -- Hanushek's email, I've got
8 his report right here and you can look at it.

9 JUDGE THEIS: Well, I was going to
10 get it from the mouth.

11 MR. RUPE: Okay.

12 JUDGE THEIS: The short form,
13 okay?

14 MR. RUPE: I see. Okay. I'm on
15 track.

16 JUDGE THEIS: And then see if
17 there's anything that what he did not give opinion on
18 doesn't seem to be particularly relevant. And the
19 way this reads to me -- and I'm talking about the
20 Podgursky.

21 MS. TIBBETS: Podgursky.

22 JUDGE THEIS: Podgursky's deal is
23 asking what you know.

24 MS. TIBBETS: Exactly.

25 JUDGE THEIS: Otherwise --

1 MS. TIBBETS: Here's an outline of
2 our case.

3 JUDGE THEIS: Otherwise, it does
4 reflect as a preliminary of what Mr. Chalmers was
5 thinking about, what he may need information on.

6 MS. TIBBETS: Exactly. And,
7 Your Honor, I'll just hand to you now the Hanushek
8 equivalent of that email that you already have.

9 JUDGE THEIS: And I'm not even sure
10 holding onto these and listing them would make too
11 much difference but I ...

12 MR. RUPE: I've never been in this
13 situation before. I've been doing this a long time.
14 Can we somehow mark those and seal them up so they
15 become part of your --

16 JUDGE THEIS: We'll examine them in
17 chambers and put them with the court reporter and
18 seal them.

19 MR. RUPE: Great.

20 JUDGE BURR: It'll be made part of
21 the record.

22 JUDGE THEIS: Certainly.

23 MR. RUPE: But I think they need to
24 be under seal because I can't see them.

25 MS. TIBBETS: How strong does that

1 seal need to be?

2 JUDGE THEIS: Be on double-secret
3 protection.

4 MR. RUPE: Thank you.

5 JUDGE THEIS: Turn them over and we
6 can go ahead and proceed.

7 MS. TIBBETS: At this time, the
8 State will call Dr. Eric Hanushek.

9 ERIC ALAN HANUSHEK

10 Called as a witness for the
11 Defendant, was duly sworn by the reporter and
12 testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MS. TIBBETS:

15 Q. Sir, will you tell us your name and where
16 you're employed?

17 A. My name is Eric Alan Hanushek. I'm employed
18 at Stanford University.

19 Q. What do you do there?

20 A. I'm a senior fellow in education policy at
21 the Hoover Institution.

22 Q. How long have you been in that position?

23 A. I joined Stanford in the year 2000.

24 Q. Will you tell the Judges a little bit about
25 your academic background?

1 A. I was an undergraduate at the Air Force
2 Academy, and went from there to get a Ph.D. in
3 Economics at MIT. I returned to the Air Force
4 Academy as a professor for four years. During that
5 time, I spent two years in Washington, one as a
6 senior staff member of the Council of Economic
7 Advisors for the President, and secondly, I returned
8 after teaching to the Cost of Living Council where I
9 was a senior economist.

10 I had a short stint while I was still in the
11 Air Force, then, at Scott Air Force Base. And I left
12 the Air Force to join the faculty at Yale
13 University. I was at Yale University for four years
14 and then went as a professor of economic and
15 political science at the University of Rochester.
16 And I was at Rochester for 22 years until I went to
17 Stanford.

18 Q. And you've provided us with your CV, which
19 is a part of Exhibit 169. Let's see if I can ...

20 MR. RUPE: I think it's 1169,
21 Counsel.

22 MS. TIBBETS: I'm sorry. Yeah,
23 1169. I apologize.

24 Q. And on your CV, you have some honors. It
25 says you're a Fellow in the International Academy of

1 Education. Can you explain to the Judges what that
2 is?

3 A. This is an honorific group that involves
4 people from around the world who are tops in various
5 fields of education, including ranging from
6 economists to psychometricians to practitioners.

7 Q. And that brings up the question, your
8 degree. You don't have any degrees in education,
9 correct?

10 A. I do not.

11 Q. Okay. And why is it that as an economist
12 that you would be selected as a member of the
13 International Academy of Education?

14 A. Well, I'm well-known around the world for my
15 analyses of education policy and education research.

16 Q. Okay. And the Fordham Prize for Excellence
17 in Education in 2004, can you tell us what that is?

18 A. The Fordham Institution for, I believe it
19 was six years, tried to select the most important
20 researchers in the field of education, and I was one
21 of those selectees.

22 Q. Because of your expertise, are you sometimes
23 asked to assist governments in their creation or
24 evaluation of their education policy?

25 A. I am.

1 Q. And in your CV on government experience,
2 you've listed several of the commissions that you
3 belong to, and I just want to ask you about a couple
4 of them. The first one is the Commissioner on Equity
5 and Excellence Commission. Who appointed you
6 commissioner?

7 A. That's a congressionally-mandated
8 commission, and the U.S. Secretary of Education
9 appointed me as the commissioner. That's still in
10 the process.

11 Q. Okay. The second one is that you were a
12 member of the Board of Directors for the National
13 Board of Education Sciences, and you were the chair.
14 What is the National Board for Education Sciences?

15 A. The National Board for Education Sciences is
16 the essentially board of directors that oversees
17 federal government research and education. An act
18 right after No Child Left Behind created the
19 Institute for Education Sciences which funds and
20 monitors education for the nation.

21 The members of the board of director
22 presidential appointees go through a confirmation
23 process in the senate. And I was particularly proud
24 of that appointment because many significant changes
25 occurred in U.S. education research and policy. One

1 of which was the institution of better scientific
2 research methods to study what works and what doesn't
3 in education.

4 So, for example, there was a discussion of
5 the last witness about professional development. In
6 fact, the Institute for Education Sciences had two,
7 what I think, are spectacular reports that try to
8 evaluate conventional wisdom on what in the
9 professional development works, and using randomized
10 trials much like medical trials for drugs.

11 MR. RUPE: I'm going to object. I
12 think we're getting into hearsay and we're getting
13 into an area that is beyond what his report is on,
14 and it's being kind of addressed as part of his
15 qualifications. But I think we're in hearsay and I
16 would object because it's outside the scope of his
17 report.

18 MS. TIBBETS: I would just say he's
19 talking about what the particular board that he
20 served on did, and all he's doing is just kind of
21 describing the process. I don't think he's putting
22 in any evidence.

23 JUDGE THEIS: What do you think,
24 Bob?

25 JUDGE FLEMING: I don't believe he

1 should be commenting on the testimony of the prior
2 witness. That wasn't the scope of the question you
3 asked.

4 MS. TIBBETS: All right.

5 Q. Let me ask you this question: This National
6 Board for Education Sciences, you said that they work
7 on developing data about what's going on in
8 education?

9 A. That's correct.

10 Q. And you mentioned that in connection with
11 the No Child Left Behind statutes, and you said that
12 it was established on the heels of that. What's
13 the connection between the board here that you belong
14 to and the No Child Left Behind statutes?

15 A. Well, the board oversaw research into the
16 evaluation of different parts of the statute. It
17 also oversaw giving out a half billion dollars of
18 U.S. funds to fund educational data programs. Kansas
19 was one of the beneficiaries of that.

20 Q. Okay.

21 A. And trying to put together longitudinal data
22 so that you could track the performance of students.
23 That was initiated by the board -- or the Institute
24 for Education Sciences.

25 Q. And the 2006 appointment to the No Child

1 Left Behind Growth Model Pilot peer review, very
2 briefly, what was that? What was your responsibility
3 of that?

4 A. Secretary of Education Spellings, at the
5 time, wanted to have a group evaluate alternative
6 operations of No Child Left Behind, and to allow
7 states that had the capacity to use information about
8 individual student progression and growth in their No
9 Child Left Behind accountability statutes. And so
10 the panel both set the policy for that and judged on
11 the quality of the applications of several different
12 states.

13 Q. Okay. In addition to these appointments by
14 different federal officials, have you also been
15 appointed to give advice and policy expertise to
16 different states on their education policy?

17 A. I have. Two of the items that you highlight
18 there were appointments by the Governor of Texas and
19 the Governor of California to commissions to evaluate
20 their overall education, actually. I've also advised
21 the U.S. Department of Education on their creation of
22 education statistics, and have done general economic
23 advice, for example, for the State of New York.

24 Q. And your CV runs about 30 pages, so would
25 you like to read each of the entries into the

1 record? That's a yes or no question.

2 A. No.

3 Q. Let's move on. You've testified in school
4 finance cases before, right?

5 A. I have.

6 Q. Both here in Kansas and in other states?

7 A. That's correct.

8 Q. And as a percentage of, sort of, the time
9 you spend, what percentage of the time do you devote
10 to working on your responsibilities for being an
11 expert witness?

12 A. I never thought about that. The specific
13 expert witness is a very small part, maybe 5 percent
14 of my time. My main job is as a researcher. And the
15 testimony I give relates to the fact that I've done
16 research that's relevant for some of these cases.

17 Q. Okay. And in some of other school finance
18 cases in which you've been involved, has Dr. Baker
19 also been involved in some of those?

20 A. He has.

21 Q. We heard earlier from Mr. Myers from what
22 was Augenblick & Myers. Are you familiar with the
23 Augenblick firm?

24 A. I'm very familiar, both when it was
25 Augenblick & Myers, and now Augenblick & Palaich.

1 Q. And how did you reach that familiarity?

2 A. Oh, I've read many more costing out studies
3 than anybody should admit.

4 Q. And so you wrote a report in this case, and
5 that report is found at Exhibit 1169. And so I want
6 to move to that now, and where I would like to start
7 is on page 1 of that report where you say, "The
8 primary fact that is relevant in these discussions is
9 that the Kansas schools are doing quite well."

10 What did you -- or when did you -- what did
11 you do to try to figure out how the Kansas students
12 were doing?

13 A. We have, basically, one comprehensive way to
14 judge the performance of schools in different states,
15 and that's the National Assessment of Educational
16 Progress, which is the federal government's testing
17 of students.

18 The National Assessment of Educational
19 Progress actually started in the late 1960s with some
20 early math and science tests for the nation. In
21 1992, it expanded to have representative samples of
22 students in as many states as wanted to volunteer.

23 Unfortunately, Kansas did not volunteer to
24 be part of the original data collection. But as part
25 of the No Child Left Behind in 2003, all the states

1 had to agree to participate in the National
2 Assessment of Educational Progress.

3 Q. Why did you look at -- we call that test
4 NAEP, right?

5 A. Yes.

6 Q. Why did you look at the NAEP scores in order
7 to figure out whether the Kansas schools were doing
8 quite well?

9 A. Each state today has their own unique test.
10 It is impossible, on the basis of that test, to
11 figure out how well are Kansas students doing
12 compared to New York students or Mississippi students
13 or anybody else. The NAEP test provides a common
14 metric, at least for grades 4 and 8, and in math and
15 reading and some other subjects, that allows us to
16 compare the performance of students across states.

17 Q. So as an attachment to your report at
18 page 1, we have the NAEP 4th grade mathematics in
19 2011. Is that the most recent data?

20 A. Yes, it is.

21 Q. Okay. And how is it that the 4th grade math
22 students did in Kansas?

23 A. Kansas, if I have it correct, it was fourth
24 from the best state in the union.

25 Q. I think if we count, it's seven.

1 A. Seventh, sorry. It was seventh. It
2 started -- Massachusetts scores the best on the far
3 left-hand side, and it goes all the way down to the
4 District of Columbia, which is 51st in the nation.
5 Kansas is seventh.

6 Q. Okay. Let's look at the same kind of
7 information for 8th grade mathematics, and how did
8 Kansas stack up there when compared to other schools?

9 A. They're not quite as well, but I think
10 that's 11th, if -- I'm not sure. I can't quite
11 compute that.

12 Q. I understand.

13 A. But the green, hashed line in the middle is
14 where Kansas falls, so you can see it's well up in
15 the top quarter of the states in terms of student
16 performance.

17 Q. Okay. Now, that's -- and these the two
18 slides we just looked at are for all kids across the
19 state, right?

20 A. That's correct.

21 Q. Did you also look at a subgroup of kids,
22 which are the free and reduced lunch kids?

23 A. Yes, I did.

24 Q. On slide -- we're looking now at slide 3 out
25 of your report. And how does Kansas stack up with

1 the rest of country on 4th grade mathematics for the
2 kids who we've been calling the at-risk kids but the
3 kids who fall in that poverty group?

4 A. Well, interestingly, Kansas does even better
5 in statewide comparisons with at-risk students.

6 It's -- poor kids in Kansas are 4th in the nation in
7 terms of performance compared to other states.

8 Q. Why was it important to look at this subset
9 in addition to the two slides we looked at earlier
10 which included all kids?

11 A. I think as a national goal and as a state
12 goal, we have two different things we're trying to
13 do. We're trying to make sure that everybody does
14 well, but we're particularly concerned about poor
15 children that might come from families that aren't
16 providing the same amount of background for their
17 education. And so we want to make sure that they, in
18 particular, are not left out in the future.

19 Q. Okay. That's the 4th grade. How did our
20 8th grade poor kids do?

21 A. Again, you see that in 8th grade
22 mathematics, poor children in Kansas do relatively
23 better than the entire state when you're compared to
24 the rest of the nation. Here, I guess 7th or 8th
25 from the best in terms of how each state does

1 educating at-risk students.

2 Q. And so kids who would have made these scores
3 in 2011, they would have started school in maybe
4 2002 ...

5 A. These are 8th graders, so it would be
6 2002 -- 2002 for kindergarten presumably.

7 JUDGE THEIS: What does the left --
8 what do the numbers mean on the left?

9 MS. TIBBETS: Oh sure. I
10 apologize.

11 Q. The Judge just asked what the numbers mean
12 on the left there.

13 A. I'm sorry. Those are the scale scores that
14 are given on the test. It's an arbitrary unit that
15 they use to rank the scores on performance. It
16 actually is supposed to relate to both 4th and 8th
17 grades so you can see the progression and how many
18 points. But it's arbitrary numbers, where higher
19 numbers are better, is what it means.

20 JUDGE THEIS: 300 is an odd number,
21 though. Are they percentages or scores?

22 THE WITNESS: No. Those are just
23 numbers. All of the tests that are given, both
24 nationally and internationally, choose an arbitrary
25 scale. So there's a set of international tests, for

1 example, that have an average of 500 across all the
2 developed countries, and countries fall within that
3 range. Similarly on this, they have an arbitrary
4 test that I think you can get up to 400 on this test,
5 but no state average is up that high.

6 Q. (By Ms. Tibbets) We've been talking about
7 mathematics. Let's talk a minute about reading. How
8 are our Kansas 4th graders stacking up against the
9 other states in reading?

10 A. Kansas 4th graders are not doing quite as
11 well in reading as in mathematics, but they're still
12 in the top third of the nation, doing quite well.

13 Q. Okay. And in 8th grade reading, let's see,
14 if you count that out, I think it's about 13th,
15 14th? I'm not sure.

16 A. Again, it's clearly within the top third of
17 the nation. And doing not quite as well as in math,
18 but still doing a respectable top third of the
19 nation.

20 JUDGE FLEMING: Do these charts
21 represent all students or just at-risk?

22 THE WITNESS: These charts are all
23 students.

24 JUDGE FLEMING: Okay.

25 THE WITNESS: There's a color

1 coding that probably isn't apparent. But the green
2 bars mean all students. And then turn to red bars,
3 it means the at-risk students. And we'll show you
4 that.

5 JUDGE FLEMING: Okay.

6 THE WITNESS: Again, here, where
7 again, you see in terms of reading, students on free
8 and reduced priced lunch do relatively better than in
9 reading than all students in Kansas when compared to
10 other states. So that the performance is, again,
11 dealing with disadvantaged students at a higher level
12 relative to what other states are able to do.

13 Q. (By Ms. Tibbets) And it was these slides
14 that we've looked at that you based your opinion that
15 Kansas schools are doing quite well. If the scores
16 had been ranked more in the 45th, 48th, the lower
17 numbers, would you have had some reluctance about
18 making that conclusion?

19 A. Absolutely. I mean, you probably didn't see
20 all the states that were on the bottom, but my own
21 State of California is systematically in the bottom
22 ten states across all these comparisons. And there,
23 I would never say that California is doing well.

24 Q. Okay. In addition to expressing an opinion
25 that the schools in Kansas are doing quite well, did

1 you also look at how schools in Kansas were doing
2 compared to -- for what they spent compared to what
3 other states spent?

4 A. I did.

5 Q. Okay. And was one of the states that you
6 compared Kansas to the State of Wyoming?

7 A. That's correct.

8 Q. And you're familiar with Wyoming having had
9 school finance litigation?

10 A. I actually did not participate in the school
11 finance litigation in Wyoming, but Wyoming stands out
12 nationally for people who study school finance
13 because it had one of the biggest decisions in terms
14 of spending impacts of any of the states in the
15 nation.

16 So not many people realize it, but Wyoming
17 is clearly within the top five of the nation in terms
18 of spending per pupil. And if you adjust for cost of
19 living or any kinds of costs to provide schooling,
20 you find that Wyoming is probably the top-spending
21 state in the nation.

22 Q. So this chart you created to compare the
23 expenditures per pupil between Kansas and Wyoming,
24 looks like from -- at different check points, between
25 1989 and 2008?

1 A. That's correct.

2 Q. And you adjusted these numbers for
3 inflation?

4 A. All of these are adjusted for inflation
5 using the Consumer Price Index.

6 Q. So they all are expressed in 2009 dollars?

7 A. Yes, they are.

8 Q. All right. And so Wyoming, it looks like,
9 has traditionally out spent Kansas, but in the 2008-
10 2009 year, it's almost a 50 percent again what Kansas
11 is spending -- or 30 percent again, I guess?

12 A. Yes. You see over time, because
13 particularly of the court case in Wyoming, the gap in
14 spending between Wyoming and Kansas just kept
15 growing.

16 Q. Okay. And you know from Montoy that the
17 2008/2009 year was one of the years that there was
18 some excess funding -- was some extra funding?

19 A. Yes.

20 Q. So then, when you looked at how much Wyoming
21 spent and how much Kansas spent, you also looked at
22 the population characteristics of those two states.
23 And I want to talk to you first about why would you
24 do this. Why would you want to compare the
25 population characteristics of the two states?

1 A. Well, the whole analysis of Wyoming had two
2 purposes that were related. The first purpose was
3 just to show what is possible from judicial decisions
4 in terms of performance. And we see what's possible
5 in terms of the funding when we go look at
6 performance in a minute. But secondly, Wyoming and
7 Kansas are reasonably similar in terms of their
8 populations. Both have a fairly large rural
9 population. Both states have a population that is
10 whiter than the rest of the nation.

11 Q. Well, specifically as to that, it looks like
12 you've listed here that the white population in the
13 United States is 54.9. Kansas is higher than that,
14 and Wyoming is even higher than that?

15 A. Yes.

16 Q. And you also broke out black and Hispanics.
17 And when you compare Kansas and Wyoming, Kansas has a
18 larger population of those minority populations,
19 correct?

20 A. Yes.

21 Q. And then you looked at education. And can
22 you explain to us what you've put in your chart
23 there?

24 A. Well, what I was looking at -- the reason
25 for looking at the demographics is that we know

1 families have a big influence over learning of
2 children. And so if you look at a state that has a
3 more educated population or a more advantaged
4 population in terms of income, you normally would
5 expect the students to perform better just because of
6 the parents, and not because of the schools.

7 And what this shows is the proportion of the
8 population in Kansas, Wyoming, and the U.S. that have
9 a high school education or more, these would be
10 parents of that population, 25. And what you see is
11 that in general both Kansas and Wyoming have a better
12 educated population than the nation on average, and
13 both are pretty high up on these.

14 Q. But if we compare Kansas and Wyoming to one
15 another on the level of education, which state has
16 better-educated adults?

17 A. What you see across the board is that
18 Wyoming has a slightly better demographics by
19 conventional measures. They have a slightly better-
20 educated adult parental population. They have less
21 poverty, which is in the last line there, than
22 Kansas.

23 They have a population that is whiter, fewer
24 minorities in it. So on average, if you ask somebody
25 would you expect the performance of students in

1 Wyoming to be better than Kansas, you would say, yes,
2 on the basis of family backgrounds.

3 Q. Okay. So what you did was go to the NAEP
4 scores, which is the same comparison you gave us
5 earlier. And look at where Kansas ranked and where
6 Wyoming ranked. And so this would be for 2011. The
7 last year we had money for is 2009.

8 A. Right.

9 Q. But you have to reason to believe that
10 that --

11 A. No. I know that Wyoming has continued to
12 fund their schools highly.

13 Q. Okay.

14 A. They're finally feeling some pinch of the
15 economy, but they're still funding their schools
16 highly.

17 Q. So in terms of 8th grade mathematics, how
18 did Kansas stack up against Wyoming?

19 A. What you see is the opposite of expectations
20 in terms of performance, that Kansas does in 8th
21 grade math noticeably better than Wyoming. In other
22 words, the simplest explanation is that the schools
23 of Kansas, even at only spending two-thirds what the
24 schools in Wyoming are spending, are able to overcome
25 any differences in family background and, in fact,

1 provide a superior education.

2 Q. You made a chart here based on your review
3 of the check-in of mathematics in the 4th and 8th
4 grade, check-in of reading in 4th and 8th grade. And
5 can you just discuss how Kansas stacked up in areas
6 other than 8th grade mathematics, which we just
7 talked about?

8 A. What these charts show is that Kansas,
9 particularly in mathematics, does noticeably better
10 than Wyoming. Wyoming and Kansas in 4th grade
11 reading are roughly tied in terms of performance.
12 And in 8th grade reading, Wyoming seems to be doing
13 better.

14 Q. Okay. You also made a chart about what you
15 termed preparation for college, and it has looked at
16 the number of factors, or college -- preparation for
17 college chances. You have a column here called
18 "college chances." Can you describe for the Judges
19 what that is?

20 A. This is essentially the probability that
21 children that start in the 9th grade in each of the
22 states will go to college. Nationally and in Kansas,
23 there's been a lot of discussion about making sure
24 that the schools prepare students to go to college,
25 and that's why I provide these data.

1 Q. Okay.

2 A. In this, again Kansas ranks 12th in the
3 nation in terms of chances to go to college, where
4 Wyoming, with top spending in the nation, or top five
5 spending at least, is only 24th, right in the middle
6 of the nation.

7 Q. All right.

8 A. And that's also with the better demographics
9 in terms of parents.

10 Q. Okay. The next column that you look at is
11 high ACT or SAT per 1,000. What makes up that part
12 of the chart?

13 A. This is trying to get at the quality of
14 education as measured by college attendance on
15 college examinations. The problem with the college
16 examinations is that they're somewhat dependent upon
17 how many kids take the exams than average scores. So
18 all this is doing is looking at, well, how well do
19 the top students do on either the ACT or the SAT.

20 Q. So it's looking at the top of each different
21 state?

22 A. Right.

23 Q. The top performers?

24 A. Correct.

25 Q. And not a percentage of all performers.

1 A. It's not a percentage of all. It's looking
2 at how many top performers are produced in each state
3 on one or the other tests. It's often optional which
4 test you take, the ACT or the SAT.

5 And what you see, is Kansas is sixth in the
6 nation in terms of producing top performers. So that
7 what we're seeing, is that even though Kansas is
8 doing well with the disadvantaged population we saw
9 in the NAEP scores, it's also doing well at the top
10 end in terms of promoting college skills.

11 Q. Okay.

12 A. Wyoming does worse. It's 15th.

13 Q. Which is not bad.

14 A. It's not bad.

15 Q. Okay. And you also compared high school
16 graduations. Can you just ...

17 A. This is the traditional measure of
18 performance, is how many people graduate from high
19 school. And what you see is that Kansas is again, up
20 near the top, 14th in the nation, where Wyoming is
21 essentially at the middle of the nation in terms of
22 graduation.

23 Q. Now, when you made the charts that we've
24 just looked at then, you were still looking at
25 national data?

1 A. Yes, I was.

2 Q. Why would you not have compared how Kansas
3 did on Kansas assessments with how Wyoming kids on
4 Wyoming's assessments?

5 A. Well, there's no way to really do that.
6 Each of the tests are different. They have different
7 scales. So the confusing scale on the left-hand side
8 of my NAEP charts doesn't exist to compare Kansas and
9 the other states. And so what you have to do is go
10 for national if you want to compare it to other ...

11 Q. Okay. And when you reached your conclusion
12 that the Kansas schools were doing quite well, why
13 didn't you look at how Kansas students were doing on
14 Kansas assessments?

15 A. Well, I'm going to look at that later on,
16 how well Kansas students are doing. The problem is
17 that there are different cut scores, there are
18 different tests. The tests themselves are of more or
19 less difficulty in different states.

20 It turns out that that doesn't really matter
21 for any of the national comparisons. Cut scores,
22 whether they're chosen as high or low level, is
23 unrelated completely to the actual performance as
24 measured by the NAEP test and how well the students
25 do.

1 Q. Okay. We heard some testimony earlier about
2 cut scores. Those are where a state decides that
3 this is a place that you'll be proficient?

4 A. Yes. There's a lot of confusion about this,
5 but this is something that's been elevated by the No
6 Child Left Behind Act. Each state was required to
7 describe what is proficient according to their state
8 standards, and then to measure proficiency against
9 that.

10 Q. So each state could choose their own
11 numbers?

12 A. Each state chose their own numbers. Kansas
13 chose fairly low cut scores so that large numbers of
14 the students would be proficient by that standard.
15 Massachusetts chose very high standards.

16 What we find is that the point that's chosen
17 doesn't seem to affect the amount of education that
18 goes on in a state. It reflects some of the
19 reporting, but it doesn't reflect what students know
20 as measured by these math and reading tests.

21 Q. We also have heard a little bit about the
22 adoption of Common Core Standards. Are you familiar
23 with Common Core Standards?

24 A. I am. That's a very highly-discussed area
25 today across the whole nation.

1 Q. Because Kansas is not the only state that's
2 adopting those standards, right?

3 A. Well, at the current time, over 40 states
4 have said that they're going to adopt them.
5 Currently, a number of states are backpedaling on
6 that, and how many actually adopt them is unclear.

7 Q. So when a state like Kansas -- and I think
8 we've heard of at least three, maybe more than three
9 different standard adoptions -- when a state like
10 Kansas adopts different standards, should that affect
11 their performance on, for example, the national
12 testing?

13 A. I don't think it will. I mean, empirically
14 if you look at the quality of standards that exist
15 today, they're not the Common Core Standards, but
16 every state has declared what their standards are.

17 There are different people that rate the
18 quality of those standards. Are they tough or easy
19 or what have you. It turns out that the rating of
20 these standards is again, unrelated to performance of
21 students. I think it's nice to tell teachers in
22 schools what the students should know, but it doesn't
23 seem to have much impact on how well teachers provide
24 8th grade mathematics to students.

25 Q. Okay. And we also heard some testimony this

1 morning -- or no we had a question this morning I
2 think about teacher/pupil ratio about the number of
3 teachers assigned to pupils. Is that something that
4 you have done some research on?

5 A. Extensive.

6 Q. And I would say that -- do teachers believe
7 that a lower teacher/student ratio leads to better
8 outcomes, is that your understanding?

9 A. Almost uniformly.

10 Q. And as a layperson it seems intuitive, but
11 what did your research find about what correlation
12 there is of a lower teacher/pupil ratio and student
13 performance?

14 A. Well, there have been a huge number of
15 studies that have looked at the impact of
16 teacher/pupil ratios. This chart actually is a
17 little bit complicated, but it summarizes the best
18 studies that relate to how characteristics of schools
19 affect achievement.

20 Q. Let me interrupt you so we can lay out the
21 chart. Here on the left you have zero to 100
22 percent. What is that, zero to 100 percent of what?

23 A. What this is, is a summary of looking across
24 all the existing studies through the mid '90s.
25 People have actually stopped doing these studies

1 because the results have been so conclusive. But it
2 tried to summarize what all of the studies -- so this
3 is a percent of the total number of estimates of the
4 impact of pupil/teacher ratios and of characteristics
5 of the teacher force.

6 Q. So sort of like, four out of five dentists
7 surveyed?

8 A. That's right.

9 MR. RUPE: Counsel, my copy of that
10 is on page 31 so --

11 MS. GARNER: Were there more? I'm
12 not sure why the numbers change.

13 MS. TIBBETS: The copy that I gave
14 you today is the correct copy. I think that a piece
15 of paper got slipped in as a cover sheet. But it's
16 the same -- I gave you the copy of what I'm using
17 right now this morning.

18 MS. GARNER: I just don't know why
19 the numbers aren't matching up with what's in the
20 report.

21 MS. TIBBETS: Right. I believe
22 that this cover sheet might have changed the number
23 at the bottom.

24 MS. GARNER: Well, all of the rest
25 of them match the numbers.

1 MR. RUPE: No. The cover sheet is
2 not marked as a page number.

3 JUDGE THEIS: Let's figure it out
4 later --

5 MS. TIBBETS: I'm sorry.

6 JUDGE THEIS: -- so we don't get
7 lost.

8 MR. RUPE: All right. Well, I want
9 to preserve an objection on this because I was handed
10 a new report this morning. And I haven't objected so
11 far, but I want to see what's going on because the
12 numbers don't sync.

13 MS. TIBBETS: And I just want to
14 say on the record, he changed some labels, and if
15 there's a syncing problem with the numbers, I'll help
16 sort it out. But nothing was added to the report at
17 all.

18 MR. RUPE: I trust you on that. I
19 just want to know where the other page is and what is
20 it.

21 MS. TIBBETS: You have a copy of
22 what I'm using right now, so you can follow along.

23 MR. RUPE: Okay.

24 MS. TIBBETS: Thank you.

25 Q. (By Ms. Tibbets) And where we were was --

1 so the things that you tried to figure out how many
2 studies came to conclusions. So the first thing is
3 teacher/pupil ratio. And which of -- your key
4 doesn't come out very well --

5 A. That would be the one on the left-hand
6 side. There's three columns. There will be three
7 columns of each. Let me try to explain this a little
8 bit more.

9 Q. Sure.

10 A. A large number of people have tried to look
11 at what determines differences in the achievement
12 across children, and these summarizes a first-round
13 attempt to look at whether background of teachers in
14 terms of their experience or their education level
15 affects achievement systematically.

16 And secondly, whether the class size affects
17 the achievement systematically. These have been
18 studied by hundreds -- literally hundreds of
19 different estimates have been made of these. And
20 this is the summary of the very best, highest-
21 quality, from a scientific standpoint, of the
22 studies.

23 These three elements on this chart are
24 particularly important because they essentially
25 determined spending per pupil. Salaries across the

1 states are uniformly determined by a master's degree
2 or more, the amount of graduate education of
3 teachers, and the amount of experience that teachers
4 have. Their salaries go up with both of those.

5 And then, once you know the salary of the
6 teacher, the teacher/pupil ratio or the class size
7 essentially says, how many kids are these salaries
8 spread across? And out of that you get spending per
9 pupil.

10 Q. So what did the studies find when you look
11 at, for example, teacher/pupil ratio? Help us read
12 this chart. That's the one on the far left?

13 A. On the far left, the diagonally-hashed part
14 on the far left.

15 Q. All right.

16 A. And it says that, I believe the answer is
17 4 percent of the studies -- of the best studies found
18 that having a larger teacher/pupil ratio improved
19 performance. A larger teacher/pupil ratio is the
20 same as a small class size.

21 So you should expect each of these factors
22 to have a positive impact. More teachers per pupil
23 should lead to higher achievement by conventional
24 arguments. More-educated teachers should lead to
25 higher achievement, and more experienced teachers

1 should lead to higher achievement.

2 Q. I want to back up, though. You're saying
3 you compared studies that were -- that you considered
4 the best studies?

5 A. Yes.

6 Q. So did you just pick out the studies that
7 would support your position that these factors are
8 not significant?

9 A. Absolutely not. I went across all of the
10 literature at the time, which is now a little bit
11 old, as I say, because have stopped doing these
12 studies on the basis of this. But I found every
13 study that was in published journals so there was
14 some quality standard.

15 These studies are the ones that look at the
16 performance of individual students and the gains in
17 their performance, which is something that we're
18 trying to do nationally in all the cases, is to look
19 at how much these students gain in their classrooms,
20 and it relates to specific classrooms.

21 So these are the highest-quality standards
22 by the way these statistical studies are done.
23 They're all statistical studies that have hundreds of
24 students across numerous classrooms, and then
25 comparing whether kids are learning more in some

1 classrooms than others.

2 Q. And the conclusion that they came to after
3 your review and that you've captured on slide number
4 32 is?

5 A. Well, the big lump in the middle of studies
6 are the ones that are labeled insignificant, that's a
7 statistical shorthand to say that we have no reason
8 to believe that there's any effect one way or
9 another, positive or negative, of any of these
10 factors.

11 Q. So statistically, there's not a reason to
12 believe that if there are fewer pupils assigned to a
13 teacher that the pupils will have a better outcome?

14 A. That is correct. And, in fact, you if you
15 go to the far right-hand column, it records the
16 proportion of studies that find a negative
17 influence. And if you see the hashed area on the far
18 right, it says that a number of the best studies
19 would even suggest that smaller classes lead to
20 poorer performance.

21 Now, I don't think we should take that as
22 reality. I think the reality is that class size has
23 a very, very small impact on performance across all
24 of these studies. And what's much, much more
25 important is the quality of the teacher.

1 Q. You said that these were done in the 1990s
2 and that there were a number of those studies. What
3 would be the purpose of testing, you know, the effect
4 of teacher-to-pupil ratio on performance?

5 A. Well, this is the research background for
6 making educational policy. It's conventional wisdom,
7 as you point out, that smaller classes are always
8 better. This just simply tests that and says, with
9 our best available evidence, we're misled a little
10 bit because we don't see strong evidence that smaller
11 classes have a real important influence on student
12 achievement.

13 Q. Okay. I want to switch gears now and talk
14 about how Kansas spending on education compares,
15 looks like nationwide. And you've created a graph
16 here that's 1990, 2000, and 2009. And Kansas is
17 spending less than the average per pupil expenditure
18 than the rest of the nation. Is this something that
19 we should be concerned about?

20 A. Well, as a first reaction, you should be
21 happy about that. The best -- the ideal situation
22 would be one where you got high achievement and spent
23 the least of any place in the nation.

24 Q. Okay.

25 A. You're not spending the least. In fact,

1 you've been coming closer to the national average
2 over time, probably as a result of the reactions to
3 the Montoy decision. But the fact that Kansas can
4 get such good performance that we showed before out
5 of its schools without spending excessive amounts of
6 money I think is something that you should be proud
7 of.

8 Q. You also created a graph that shows -- that
9 contrasted Kansas growth and expenditure per pupil
10 versus the national. And the green line would be
11 Kansas and how did this aid in your analysis?

12 A. This is the growth in spending per pupil
13 again, in real dollars. It's been adjusted for
14 inflation. But the growth in real spending per
15 pupil, first in the decade of the '90s, and then in
16 the decade of the 2000s.

17 And during the '90s, Kansas had a lower
18 growth in per pupil spending than the average for the
19 nation. That reversed in the 2000s, again, probably
20 related to the Montoy decision, where Kansas growth
21 in spending for last ten years or nine years has, in
22 fact, been faster than that in the nation.

23 Q. And by nation, you're talking about other
24 states in the nation. You're not talking about
25 federal dollars, right?

1 A. No. No. I've taken an average of per pupil
2 spending across all the other states compared to what
3 is happening in Kansas.

4 Q. Now I want to talk to you about the analysis
5 you did of spending in what we would call the
6 poverty -- the school districts that have poverty
7 kids. And this is on Slide Number 20. And you
8 created this not-terribly-comprehensible graph. At
9 the bottom, you have free and reduced priced lunch.
10 And so what are the numbers that you've listed here?

11 A. Those are the proportion of students that
12 are eligible for free and reduced priced lunch. Each
13 dot is one of the districts in the state. So you
14 have 284 dots, I guess it is --

15 Q. Okay.

16 A. -- that represent the free lunch proportion
17 in each district. And then, that's a rate, on the
18 vertical axis, against per pupil spending.

19 Q. So we don't know what it is. But if we look
20 at say, the dot I'm pointing to here, it would say
21 that this district has 40 percent of free and reduced
22 priced lunch kids, and it spends less than \$10,000
23 per kid?

24 A. That's correct.

25 Q. That's what that chart projects, okay.

1 And then you have a line that you've drawn
2 through the chart. And can you tell us how that line
3 is created?

4 A. The line is actually using a standard
5 statistical procedure, regression analysis, or
6 Ordinary Least Squares regression. All it is, is
7 trying to find the best line through those points by
8 a standard statistical procedure.

9 And so the best line suggests that as the
10 free and reduced priced lunch proportion increases,
11 so does the spending of districts. There's variation
12 around that, but it suggests that the weighted
13 student funding in Kansas, in fact, leads to
14 providing more resources to highly -- districts that
15 have concentrated poverty.

16 Q. Okay. There's some other things that we can
17 tell by this chart. If I'm reading it correctly,
18 since there are the most dots between 10,000 and
19 15,000, would that indicate that most school
20 districts spend in that range?

21 A. Yes, it does.

22 Q. And that these that have fewer free and
23 reduced priced lunches, looks like really only one
24 spends above the \$15,000?

25 A. That's right. I mean, there's clearly a

1 scatter around there. But I should have mentioned
2 that these data come from 2011, so they're the most
3 recent data for Kansas that was available.

4 Q. And so just sort of ground us here. There
5 is a district that spends more than 20,000 per kid
6 that has something less than 60 percent free and
7 reduced lunch?

8 A. That's correct.

9 Q. That is the way we read that?

10 A. That's correct.

11 Q. And then there is a district that has more
12 than close to 100 percent kids on free and reduced
13 lunch, and it spends something more than 15,000 per
14 kid. Is that a correct way to read that?

15 A. Yes, that's correct.

16 Q. Now, you did a similar chart that you made
17 even more beautiful. Is this the same data being
18 represented that was represented in our last chart?

19 A. This is exactly the same data as in the last
20 chart with one exception. The size of the circle
21 indicates the enrollment in each district. So again,
22 each circle is one of the 280-plus districts in
23 Kansas. And out of this, you can see, for example,
24 the district you pointed out with the highest poverty
25 rate out there is fairly large. That's Kansas City,

1 Kansas.

2 Q. And the largest district is Wichita?

3 A. That's Wichita, of course.

4 Q. The biggest circle would be Wichita?

5 A. And if you go to the bottom right, the
6 district with the second largest most poverty is, in
7 fact, Dodge. And then you can find Hutchinson is
8 sort of buried in the middle of the smaller districts
9 to the left of Wichita.

10 Q. Now, we've got some kind of interesting
11 outliers here. We've got a school that spends more
12 than \$20,000 per kid that's very tiny.

13 A. That's Healy, which had 74 students in
14 2011. And the other one right next to it is West Elk
15 that had 308 students in the entire district.

16 Q. Okay. But from this chart, again, most
17 schools are in that ten to \$15,000 range and Kansas
18 City is slightly above that?

19 A. That's correct, they're most in that range.
20 But what you see is that they're drifting upwards;
21 that the more poverty students you have, the more
22 likely it is you're around 15,000 as opposed to
23 10,000.

24 Q. Now, you also graphed that same analysis,
25 but instead of using all districts, you used

1 districts with more than 2,000 students. And why did
2 you want to look at the relationship between free and
3 reduced priced lunch and per pupil expenditure in
4 those larger districts?

5 A. Because Kansas has so many rural districts,
6 on average, the rural districts spend more than the
7 more populous districts, those with 2,000 or more
8 students in them, just because there are diseconomies
9 of scale. If you have few students, you have more
10 fixed costs, largely. And I wanted to make sure
11 that, in fact, the poverty spending relationship held
12 for the large districts that we pay attention to.

13 This is also the way that Bruce Baker did a
14 lot of his analysis of just looking at the 44
15 districts that have 2,0000 or more total enrollment
16 in the district. And what you see is exactly the
17 same thing as before. The higher the poverty rate
18 within the larger districts, the more they spend, so
19 that money is being made available to disadvantaged
20 students through the school funding in Kansas.

21 Q. Okay. And one more and we'll leave this,
22 but you did a similar reflection of the size of the
23 districts in that graphing, and the school on the far
24 right is Kansas City, Kansas?

25 A. That's Kansas City on the far right that you

1 have highlighted, and Wichita is the bigger school.
2 And again, the second most concentrated poverty
3 district is, in fact, Dodge. And out of this you can
4 sort of pick out Hutchinson, which is one of the
5 medium-sized circles just a little bit below and to
6 the left of Wichita.

7 Q. In this area here?

8 A. Up and to the left a little bit. Right
9 there.

10 Q. Above the 12,000 mark?

11 A. Yes.

12 Q. Now I want to turn to the part of your
13 report where you address the correlation between
14 spending and student achievement. You spent quite a
15 bit of your career on this subject.

16 A. I have.

17 Q. And why. Why is it interesting to you?

18 A. This is one of the central policy questions
19 that we face in deciding what we should do with our
20 school, and it becomes central to all of these school
21 finance court cases and other -- all the decisions of
22 the state legislatures, how much money should we put
23 in our schools. It's important to know whether if
24 you just add more money to the schools, you can
25 expect better performance out of the students or not.

1 Q. Would that be an assumption that has been
2 tested by studies?

3 A. Oh, absolutely. I mean, that's -- the
4 common, conventional wisdom is, well, if we want to
5 see how well we're doing -- how much we're investing
6 in our schools, we should just look at how much is
7 being spent.

8 Q. I want to start with kind of a little bit of
9 historic background. It talks about the public
10 school resources in the United States in the last
11 almost 50 years. And you start on the left with
12 1960. And you show the pupil/teacher ratio and the
13 expenditures per student. Now, are those
14 expenditures in 1960 dollars?

15 A. Those are in 2008/2009 dollars.

16 Q. Okay.

17 A. The actual number is like \$300 per student
18 if we actually looked at what we spent, but it's been
19 adjusted to be in 2008/2009 dollars.

20 Q. So a little over \$2,500 in 1960. And then
21 that more than doubled between 1960 and 1980, but
22 special ed kids have an affect on that change between
23 '60 and '80?

24 A. There was federal legislation passed to give
25 special treatment to special ed kids in '74 or '76.

1 That legislation led to identifying kids who needed
2 extra services, and then providing resources for
3 them. So there's a little bit of impact there to the
4 extent that the school districts previously were not
5 providing support for these students. Of course,
6 many school districts were providing support for
7 special education students before the federal
8 legislation just made it mandatory that there was a
9 process to identify and to develop programs for
10 special education students.

11 Q. You include on this chart, I assume, things
12 that you thought were important. So you looked at
13 money across the board, and it has quadrupled funds
14 per student?

15 A. Absolutely.

16 Q. Which funds are these? Are these state
17 money funds or LOB funds or federal funds?

18 A. These are spending and it doesn't -- you
19 can't decide whether -- where the money came from.
20 It's the combination of federal, state, and local
21 revenues that allow you to spend this amount. But
22 this is what actually reaches the child in the sense
23 of schools are spending, buying things with these
24 funds.

25 Q. And so the ratio there is, it's four times

1 higher in 2009 than it was in 1960, but I notice you
2 also included a pupil/teacher ratio. And can you
3 explain to us first why you have that on this chart?
4 Why is that important to your analysis?

5 A. This is what I alluded to previously.
6 Pupil/teacher ratios, the education of teachers and
7 the experience of teachers are what really determine
8 the spending per pupil. So that the reason funding
9 quadrupled between 1960 and 2009, is that we had
10 dramatically lower pupil/teacher ratios.
11 Pupil/teacher ratios fell from 26 pupils per teacher
12 in 1960 to just about 15 in 2009.

13 Q. And is that certified teachers or is that
14 just adults in the schools available to help the
15 kids?

16 A. These are certified teachers. And the
17 proportion of those teachers with a master's degree
18 doubled at least by 2000. We don't have a complete
19 series, but it's done nothing but go up. So that
20 instead of a quarter of the teachers with master's
21 degrees, we have half of the teachers -- over half of
22 the teachers with master's degrees.

23 Q. Okay.

24 A. And experience levels increased so that
25 they're currently at the highest level they've been,

1 I think since World War II.

2 Q. All right. Now, with this change over those
3 years, you then included in your report a chart that
4 charts the improvement of 17-year-olds over roughly
5 those years, 1971 to 2008 on the NAEP scores, the
6 NAEP scores. What does this add to your analysis?

7 A. Well, this is the NAEP, as I said, is the
8 National Assessment of Educational Progress, allows
9 us to track performance of students on a common
10 metric. They gave an exam that you could compare
11 what kids knew in 1970 to what they know in 2010.
12 This is performance of 17-year-olds, so essentially,
13 as they're ready to go into college or work, what is
14 their performance.

15 Q. All right.

16 A. And the top line is mathematics. Scores of
17 17-year-olds on NAEP, you notice on the scales, are
18 again, these arbitrary scales, but they're larger
19 than the ones I give gave you on 8th grade because
20 the scales match 4th, 8th and 12 graders,
21 essentially.

22 Q. Okay.

23 A. And what you see is, if you draw a line from
24 the first point from math in 1970, to the point in
25 2010, you see that it's about one point higher, which

1 is a trivial amount higher.

2 Q. Are you talking about here?

3 A. Yeah.

4 Q. If we see where they were here and where
5 they are --

6 A. Right.

7 Q. -- here?

8 A. Correct.

9 Q. That's a rise?

10 A. It's one or two points higher, so we
11 quadrupled spending and students are achieving at
12 precisely the same level. You do the same for
13 reading, which is the bottom line, and you see also
14 the same, that there's a one- or a two-point gain in
15 reading which is again, a trivial amount by this
16 scale compared to the quadrupling of funding.

17 So this gives you some pause, immediately,
18 about whether just providing more funds and providing
19 funds in the ways that are traditionally asked for
20 has anything to do with student performance.

21 Q. You made another chart about the same group
22 of scores. It has a little bit of a different line.
23 You used the same legend again. And then on the left
24 you have standard deviation difference.

25 A. Some people prefer to put things in standard

1 deviations. This is exactly the same chart that
2 amplifies some of the changes that occurred over time
3 because it compares it to the starting point. So
4 everything is compared to the starting point.

5 Q. And the starting point would be here at
6 zero?

7 A. Yes. So it again, shows you the same thing,
8 that there's been almost no change measured in these
9 different units over these 40 years of schooling
10 where we've quadrupled funding.

11 Q. These are national numbers?

12 A. These are national numbers.

13 Q. And we're talking about national funding?

14 A. Yes.

15 Q. How is this helpful to our analysis of
16 Kansas?

17 A. Well, the first thing I believe, is that
18 Kansas schools look a lot like schools in other
19 states. So that when we study schools in other
20 states, we get some information about potentially
21 what makes sense for Kansas. All of the studies I
22 gave you before, and this one, use the best available
23 data, but most researchers think that there's a
24 similarity.

25 Q. Okay.

1 MS. TIBBETS: Do you want me to
2 keep going or do you need a break?

3 JUDGE THEIS: Get a spot about
4 12:15 or so.

5 MS. TIBBETS: All right.

6 Q. Back to this graph that's on Slide 30. If
7 adding money and reducing numbers of pupils per
8 teacher had increased performance, what would we
9 expect this line to look like?

10 A. It would be tilted up to the right, so that
11 instead of being flat, you would see a line that had
12 an upward slope to it, and hopefully, a steep upward
13 slope, but it doesn't have that.

14 MS. TIBBETS: I'm at a really good
15 stopping point, if you'd like me to, here, because
16 I'm going to start on something that takes time.

17 JUDGE THEIS: Is 1:30 good?

18 MR. RUPE: That's fine.

19 (A recess was taken.)

20 JUDGE THEIS: Be seated. Thank
21 you.

22 Q. (By Ms. Tibbets) Dr. Hanushek, now I want
23 to shift and talk about the relationship between
24 spending and student achievement. All right?

25 A. (Nodding head.)

1 Q. You provided some charts that support your
2 conclusions that you offered here today, and so I
3 want to look at the one that is labeled Number 24.
4 And the title of this chart is, Effective Spending on
5 Performance Adjusted for Poverty. What does that
6 mean, adjusted for poverty?

7 A. This is the result of a statistical analysis
8 that allows for how spending would be predicted to
9 change with poverty -- excuse me, how achievement
10 would be expected to change with different amounts of
11 poverty in the school. And then, in addition to
12 that, I'm looking at the effect of spending over and
13 above the effect of poverty on achievement.

14 Q. On the vertical side you have score compared
15 to state average, and here is the zero. What does
16 this scale tell us that we're looking at?

17 A. These are in percent meeting the standards
18 for -- this is 4th grade math, so that the zero is
19 what you would expect the performance of a school to
20 be, given their poverty level.

21 Q. So this axis talks about the difference
22 between the state average, so something that's 20
23 below, or ten above, so zero would be the state
24 average?

25 A. Yes.

1 Q. On the bottom here you have spending
2 compared to state average. What is that?

3 A. It's the same thing where we've looked at
4 differences of spending above and below the state
5 average, and we're going to try to relate that to
6 whether performance is above or below the state
7 average.

8 Q. So if we wanted to look at the state average
9 of test scores, we'd look at those that are above
10 this line?

11 A. Those are all the districts whose
12 performance is above what you'd expect, given their
13 poverty level.

14 Q. And if we wanted to look at schools that
15 spent more than the state average, we'd look at the
16 school districts who fall on the other side of that
17 line?

18 A. That's right.

19 Q. So we have to look at two different -- we
20 have to segregate a group by both, it's where it's
21 performed and how much is spent?

22 A. Yes.

23 Q. So tell us what looking at the scatter graph
24 tells us.

25 A. Well, what you'd expect by conventional

1 wisdom on this matter is that as a district spent
2 above the state average, their performance would also
3 rise above the state average.

4 Q. Okay. So let's look at this graph. For the
5 people who spent above the state average and whose
6 performance was above the state average, would that
7 be these schools in this top quadrant?

8 A. Yes, it would be.

9 Q. And so for those who spent above the state
10 average, then those in the middle quadrant would have
11 had --

12 A. Performance that is below the state average,
13 so that even though they're spending more, they're
14 not getting as much as you would expect out of a
15 performance.

16 Q. And the school districts that are here by
17 these three small dots at the bottom, they spent more
18 than the state average, but the results were
19 considerably less than the state average?

20 A. Yes.

21 Q. Is that fair? If we look at the other part
22 of the graph, is it accurate that those schools that
23 are depicted by those dots are those who spent less
24 than the state average?

25 A. That's correct.

1 Q. And so, if we intercept with our state
2 average score, kind of roughly, those that are on
3 this side of the pen are those who spent less than
4 the state average and whose scores were less than the
5 state average?

6 A. Correct.

7 Q. What about those that are above the pen?

8 A. Just the opposite, those who spent little
9 compared to the state average but, in fact, got
10 superior performance.

11 Q. Now, there's a line in this graph. Is that
12 a line that you added?

13 A. That is a line.

14 Q. How did you know where to draw that line?

15 A. That line, like the other lines that I had
16 between poverty and spending, is the best line by
17 statistical measures that falls between those
18 points. The fact that it's almost perfectly flat
19 means that there's no relationship across the 283
20 districts or so in Kansas, no relationship between
21 their spending and the student performance after we
22 allow for differences in poverty. So it's the
23 marginal effect or added effect of spending on
24 performance after we allow for how difficult the
25 population is to educate.

1 Q. So that if there were above-average spending
2 that resulted in above-average performance, what
3 would that line look like?

4 A. It would be tipped up to the right. It
5 would be something like that.

6 Q. Like this?

7 A. That's correct. You could think of a
8 45-degree line. It doesn't have to be 45 degrees,
9 but it just has to be going up to the right.

10 Q. Okay. And this is for 4th grade math?

11 A. Right. And the second thing that you ought
12 to notice is that that flat line really means that
13 there's just a cloud of points with no tendency
14 within that cloud for any systematic relationship
15 across the districts of Kansas for spending to equate
16 to higher achievement.

17 Q. So when I said that the line would tip up,
18 would it be true then that the points for the various
19 districts would follow that line?

20 A. That's correct. I mean, you should see the
21 points closer to that line and tipping up if, in
22 fact, the conventional story of just providing more
23 money would, in fact, equate into better performance.

24 Q. Because that would mean that those folks who
25 are here out and spent more money would have their

1 results here in this top part of the graph?

2 A. That's correct. And you might expect them
3 to be even much higher if you get out to spending
4 \$10,000 more than the state average.

5 JUDGE BURR: Before you take that
6 off there --

7 MS. TIBBETS: Sure.

8 JUDGE BURR: -- the far right, the
9 two dots on the upper far right, are we still
10 talking -- is that still Kansas City, Kansas and
11 Dodge City, or is this a totally different deal?

12 THE WITNESS: No. This is a
13 different view of that. That's probably the two
14 small districts that I identified before that are
15 spending so much more money.

16 MR. RUPE: And if I may, just so
17 I'm on track, this says, "adjusted for poverty."
18 That's the one you handed me today. The one that you
19 have as part of his report does not say, "adjusted
20 for poverty."

21 MS. TIBBETS: It does not have that
22 label, but it was adjusted for poverty and he
23 testified about that in his deposition. The data did
24 not change at all. He just clarified the labels, in
25 part to assist counsel who was struggling.

1 Q. (By Ms. Tibbets) So in the 4th grade on the
2 math performance, you found no correlation between
3 the two, right?

4 A. Absolutely; a flat line.

5 Q. And by the way this testing, are we doing
6 national testing now, or are we doing Kansas testing?

7 A. No. For this we've gone to the Kansas
8 testing because you can't use the NAEP for Kansas
9 school districts because it's just a sample of kids
10 from around the state. We've gone to the state test
11 and used the performance on the state tests and the
12 spending.

13 Q. And the year that you used, 2011, is that
14 the most recent data?

15 A. It is.

16 Q. So now we have 6th grade math. That's two
17 years -- the next two years of school, and
18 essentially is this graph the same comparison as the
19 last one we looked at?

20 A. It is, except you now notice the line tips
21 downward; that says that the districts that are
22 spending more tend to get lower performance. And
23 it's statistically significant in the statistical
24 jargon. That means that we're pretty sure that that
25 line is not flat but, in fact, tips down.

1 Now, I don't think you should take that too
2 seriously, frankly. It's not that if you put more
3 money into the schools, you're going to hurt
4 performance. What it does say is that there's no
5 reason to expect better performance simply by adding
6 more money.

7 Q. And you adjusted these for poverty. Tell us
8 why you did that.

9 A. For exactly the same reason that we provide
10 extra funding for poverty students. We think that
11 they are more disadvantaged when they come to school
12 because, on average, they are not getting as much
13 education in the home, and that this affects how much
14 they achieve, and so the schools have to work harder
15 for them. So what I've tried to do is take that out
16 of the equation, take that out of the picture so that
17 we can look at what is the added effect of providing
18 more funds to these schools.

19 Q. You did a similar chart for 6th grade
20 reading. When you look at that as a statistician, do
21 those results have any pattern?

22 A. Well, we're going to find -- you mean the
23 school districts have no pattern, that's just a
24 cloud. What we're going to see is always the same
25 picture, that there's no reason, looking across

1 districts in Kansas, to think that just providing
2 more funds is going to lead to higher achievement.

3 Q. So this one is particularly striking, and it
4 could be the way that the graph is, that for those
5 who had higher achievements and spent less, it looks
6 like there are many districts in that category?

7 A. There are quite a few. What we're seeing is
8 that what has been found nationally. It's not how
9 much is spent, it's how it's spent. And each of
10 these districts is spending their money in different
11 ways, some more effective than others, and that's
12 what's showing through in the picture.

13 Q. So we've looked at now three graphs with
14 three lines and none of the three lines look
15 similar. Is the dissimilarity between the three
16 lines indicative of anything to you?

17 A. Not to me. You would get the same picture
18 if you had 5th grade reading or 8th grade or 9th
19 grade math. I've actually done it for the different
20 grade levels in different tests and you get exactly
21 the same picture. There's a little bit of change
22 when you go from one sample of tests to the other,
23 but none of it makes any difference in the policy
24 sense.

25 Q. Let's just buzz through the rest of the ones

1 that you've done. That 8th grade math, similar
2 analysis?

3 A. Yes.

4 Q. 8th grade reading --

5 A. Yes.

6 Q. -- similar analysis? So the disparity from
7 graph to graph, is that what makes you concerned
8 about whether there is a correlation?

9 A. No. I mean, the pictures, to me, look the
10 same. I should also add that all of these analyses
11 are weighted for district size, because there's a
12 fear that the rural districts are dominating it or
13 the urban districts. Weighting by school size or
14 excluding the top -- the largest districts or
15 excluding the smallest districts doesn't change the
16 picture at all. You get the same picture no matter
17 how you take care of the size of the district.

18 Q. Some people have characterized your position
19 that there is not a correlation between spending and
20 student achievement as an indication that you think
21 money does not matter in education. Is that an
22 accurate representation of your position?

23 A. No. I mean, that's a straw man that people
24 like to throw up there to try to distract from the
25 overall picture. The money is obviously important at

1 some level. You have to have funds to have teachers
2 in schools. But how you spend any given amount of
3 money makes a huge difference. That's why you get
4 these pictures of districts spending exactly the same
5 that are different by 20 or 30 points on the tests.

6 Q. So looking to see in this case, let's say
7 from the average spending to those who spend \$5,000
8 above the average spending, we would look from the
9 top to the bottom of that graph to see the results
10 that their kids get?

11 A. No. I just looked at any point. So just
12 take the left-hand picture, take the blue one off,
13 and if you look along the left-hand picture, you see
14 that at that level of spending, which is at the
15 average.

16 Q. Here?

17 A. At that average.

18 Q. Mm-hmm.

19 A. You say districts arrayed from a very wide
20 difference in performance, even though they're
21 spending the same, even though we've adjusted for
22 poverty, even though we've weighted for the fact that
23 some districts are smaller or larger, you see this
24 very different outcome for students. And that's what
25 I think is important. It's how the money is spent --

1 it turns out to be much, much more important than how
2 much is spent.

3 Q. Okay. Well, let me ask you one more
4 question. So the state average here is the line that
5 we see with my pen. And if each school district were
6 given another \$3,000 per pupil, would you just expect
7 that cloud of districts to move right over here?

8 A. If we gave every district another 3,000, I
9 would expect that cloud to just migrate to the right
10 like a storm cloud moving to the east.

11 Q. We're familiar with those in this part of
12 the country. Okay. Let's move to another topic.

13 How much does it cost to raise student's
14 level of achievement?

15 A. We don't know the answer to that, just for
16 the reasons that's in that picture. If there's no
17 relationship between the money that's spent and what
18 we can expect in terms of performance, we can't turn
19 that around and say, if we want to increase
20 performance, how much do we have to spend?

21 Q. Okay.

22 A. Because we get the same answer, that we
23 don't know. It depends on how the money is spent.
24 If money is spent well, we could calculate that. If
25 all districts were going to spend the money in the

1 most productive manner, we could answer that
2 question. But what we're seeing here is that across
3 the districts in Kansas in 2011, there is no common
4 pattern of spending the money in a very productive
5 way.

6 Q. So I'll just pick a point. This district,
7 this represents the amount of money it costs to hit
8 the average score. But in this district, this is how
9 much it costs. Is that a fair --

10 A. That's how much they're spending.

11 Q. How much they're spending, right.

12 A. How much they're spending on it. What it
13 would cost? An economist would generally say what it
14 would cost is the least amount that you have to spend
15 to get it.

16 Q. Okay.

17 A. And that's often what people hint that
18 they're trying to project; that they're trying to
19 project out what it would cost if money was spent in
20 a productive manner. But, in fact, we can't get
21 that, at all, from this picture. There is no
22 scientific way to answer your question. There are
23 political ways, which is the way we normally do it,
24 but there's not a scientific way to do that.

25 Q. That's what I want to talk to you about,

1 because we've had some testimony. We had testimony
2 from Dr. Myers and from Dr. Baker about how some
3 outfits say that they conclude you can raise
4 achievement scores with certain amounts of spending.
5 You're familiar with that?

6 A. I am very familiar with that.

7 Q. Okay. Now, Mr. Myers talked to us about the
8 Augenblick & Myers report that was done back in 2001,
9 and he said that they used two different models. And
10 one was of them, which I think he said that he named,
11 was called the successful schools model. Are you
12 familiar with that methodology of trying to come up
13 with the cost of a child's education?

14 A. I am.

15 Q. Okay. And do you find that method reliable?

16 A. No. It does not answer the basic question,
17 how much does it cost to achieve some given level of
18 achievement.

19 Q. Okay. Explain to us the philosophy behind
20 the successful schools model.

21 A. The successful schools model looks across
22 the districts, say in 2011 --

23 Q. Sure.

24 A. -- and chooses the districts that are
25 performing the best --

1 Q. Okay.

2 A. -- in the state.

3 Q. So in our graph, would that be those that
4 are above the --

5 A. It's not according to this graph.

6 Q. Okay.

7 A. It's in terms of the first graphs that I
8 gave you originally, in a sense that it's not
9 adjusted for poverty.

10 Q. Ah.

11 A. What they do in general is to choose
12 districts that are performing well --

13 Q. Okay.

14 A. -- and call them successful.

15 Q. All right.

16 A. Then, there's some little minor changes in
17 that, but they then try to figure out what is the
18 base spending in those districts, by backing out any
19 spending on special ed or on disadvantaged
20 populations to get a base spending.

21 Q. Okay.

22 A. And they'll do this for some portion of the
23 district, maybe 20 percent of the districts that are
24 in the top 20 percent.

25 Q. Okay.

1 A. They then calculate for each district in the
2 state, based upon the special ed and the
3 disadvantaged students, what is the base -- which is
4 the average spending of these districts -- plus some
5 add-on for these populations, and say, that's what it
6 should cost all districts.

7 Q. Okay. So the assumption is that if all
8 districts were spending what those successful schools
9 were spending, if you adjusted it, then all districts
10 would be successful?

11 A. That's correct.

12 Q. Okay. And then Mr. Myers talked about,
13 also, that in his report in 2002 that he used as a
14 second method of evaluating the costs, the
15 professional judgment model. Are you familiar with
16 that model?

17 A. Yes, I am.

18 Q. And do you find that model reliable?

19 A. No. It's no better, maybe even more biased
20 for some reasons.

21 Q. Explain to us briefly what the professional
22 judgment model is.

23 A. In the professional judgment model, we get a
24 group of people involved in the schools -- usually a
25 collection of principals and teachers and often

1 business managers -- to get together in small groups,
2 eight to 12 people in a panel. This panel is then
3 instructed to design a model school that will meet
4 the state standards. And they're also instructed
5 along the way: Pay no attention to how much it costs
6 or any other rules.

7 Q. Let me ask you a question: Are the people
8 on the panel all from schools that meet the state
9 standards?

10 A. No, usually they are not. Usually, they are
11 a selection that's been suggested by various groups.
12 The Department of Education probably suggested some
13 people, the teachers union probably suggested some
14 people, the administrators associations and school
15 boards association.

16 Q. And so with input from those teachers and
17 administrators, then how does that translate to a
18 number?

19 A. Well, they create a model school. So they
20 say --

21 Q. They literally create a model school or --

22 A. No. It's not a physical --

23 Q. Okay.

24 A. -- model. This is sort of a Star Trek model
25 that's a virtual model in which they define, well, a

1 good school, to meet the standards, if it has 400
2 students in it should have class sizes of X. And
3 they should have a principal and an administrator and
4 a librarian, and you get an array of inputs to that
5 school.

6 Then, the firm doing this, Augenblick &
7 Myers or whatever firm is doing it, takes and adds a
8 price. They say, the average principal cost \$75,000,
9 the average teacher cost \$48,000; they multiply the
10 them out, and they get a total amount that has to be
11 spent for each school, which they call the
12 professional judgment on what a school should look
13 like.

14 Q. Okay. And so in this case, we know that
15 they came up with numbers for both. I'm putting on
16 the screen, from Exhibit 203 which is in the Augen-
17 Myers (sic) report, the instructions to one of these
18 professional judgments panels that says, "You should
19 not be concerned about where revenues will come from
20 to pay for the program you design. Don't worry about
21 federal or state requirements that may be associated
22 with some kinds of funding. You should not think
23 about whatever revenues might be available to the
24 school or district in which you work, or about any of
25 the revenue constraints that might exist on those

1 revenues."

2 Is that the kind of instructions you were
3 talking about?

4 A. Yes. They almost always give instructions
5 of that type.

6 Q. From your experience, which method yields
7 the highest number for school per pupil
8 recommendations?

9 A. Well, of the two methods, this almost
10 invariably gives a larger number because this is just
11 a wish list unconstrained by any funding decisions.

12 And on top of that, then you have educators
13 from the schools in your own state, and they're told
14 that they're doing this as an exercise to, in fact,
15 inform the Legislature of what they need, there's a
16 little bit of a conflict of interest, because, in
17 fact, they might have in the back of their mind that
18 if they had big numbers, the Legislature would fund
19 more.

20 Q. But who knows better than our state's
21 teachers and administrators what it costs to get
22 students up to the testing level?

23 A. Well, as a general rule, the teachers know
24 nothing about that.

25 Q. Why do you say that?

1 A. Because that's not their job. Their job is
2 to figure out, for a given group of students, how do
3 I give them the best education possible. How do I
4 improve their learning the most. And that's very
5 different than knowing what it costs, either for
6 themselves or for running a school in general,
7 because they have no experience in budgeting matters
8 and making decisions about how to fund or use funds
9 in schools. That's not their job.

10 Q. Well, did you talk to any Kansas teachers or
11 administrators before you formed the opinions that
12 you've offered here today?

13 A. I did not.

14 Q. And why not?

15 A. Because my exercise here was to try to look
16 across all the districts, look at the decisions
17 they're making and trying to make inferences about
18 what we could get for more funding in Kansas. And
19 for that I had to look across districts that were
20 spending different amounts to see if districts
21 spending different amounts, in fact, were getting
22 better results.

23 Q. And if you had anecdotal information from
24 the teachers like, say, I feel that if I had a lower
25 class size, I would have achievement scores go up,

1 would that have been helpful? Would that have
2 informed your opinions?

3 A. Well, I don't think so, because what we
4 found, and I was suggesting before, from my days at
5 the National Board for Education Sciences, is we
6 found that lots of the conventional wisdom just does
7 not hold up when we look at it in the data. Class
8 size is one of those examples.

9 There have been innumerable studies of class
10 size. Very few have suggested that there's much
11 systematic relationship, if any, between class size
12 and performance. And they're always swamped by the
13 quality of the teacher, so that if you think of
14 asking teachers, what does it take, you know, a good
15 teacher might say, well, I don't need a small class,
16 I can handle a larger class. And a bad teacher might
17 say, we need very small classes. But none of them
18 carries through in any systemic weight in the
19 performance in the schools.

20 Q. I want to put up on the screen another part
21 of Exhibit 203, which is from the Augenblick & Myers
22 report where they talk about the two conclusions they
23 reached using the successful school models and the
24 professional judgment approach.

25 And it says that in the professional

1 judgment approach, they came up with \$5,811 per pupil
2 that they recommended be spent in the 2002 time
3 frame, but in the successful school district
4 approach, it was 4,547. So doing my math on my feet,
5 about a \$1,300 difference. Is that a consistent
6 discrepancy in using those two methods?

7 JUDGE FLEMING: It's 1,100, not 13.

8 MS. TIBBETS: That's why you're the
9 Judge and I'm just ...

10 JUDGE BURR: We only have to give
11 50 percent.

12 Q. Is that discrepancy common?

13 A. You see that similar discrepancy. In fact,
14 what I admire about, at least the early Augenblick
15 and Myers reports, is that they were very open about
16 the biases that existed and they point out
17 themselves.

18 Q. Yeah. Let's look at that, because here in
19 their report they note that's a \$1,264 per student
20 difference. It says, "The professional judgment
21 approach assumes people can be reasonably precise in
22 specifying the resources schools need if they're
23 expected to meet a particular set of objections,
24 however, our experience contradicts that
25 assumption."

1 So their experience contradicts the
2 assumption that people can assume what it would take
3 to raise expectations?

4 A. Yes.

5 Q. That's the way you read this? And it says,
6 "Also, people tend to over-estimate the resources
7 that schools need."

8 Is that something you've seen?

9 A. Oh, absolutely. And you see not only
10 systematic differences between successful schools and
11 professional judgment, but you see even larger
12 differences if you look across states. Differences
13 that can't be explained at all by cost of living
14 differences, but in fact, are some states spend more
15 than others.

16 Q. So if these models, the successful school
17 model or the professional judgment model, had some
18 scientific validity, you would expect them to be
19 similar across states, as well?

20 A. That's true.

21 Q. And with one another?

22 A. Yes.

23 Q. All right. Then it says, "The professional
24 judgment approach may yield a figure that is somewhat
25 higher than what is necessary, which reflects the

1 fact that people have identified more resources than
2 are actually required."

3 And is that something that you've seen in
4 the professional judgment studies?

5 A. Oh, absolutely. In fact, it's even worse
6 than that. As I said, I've read a lot of Augenblick
7 & Myers studies of costing out, one of them which
8 they did in North Dakota at almost the same time that
9 they did this study. And in North Dakota in 2002,
10 they decided how much each district in the state
11 should be spending according to the professional
12 judgment model.

13 Well, at the end of 2002, you could look
14 down and see that about 25 districts in North Dakota
15 were actually spending more than was called for by
16 the professional judgment model, and the remaining
17 districts were spending less.

18 But when you look at the performance over
19 the year, the ones that were spending more than
20 what's was required were, in fact, doing worse than
21 the ones that were spending less than was required
22 according to the professional judgment model.

23 Q. But when you know that, does that make us
24 conclude that spending less would be better?

25 A. Not at all. It just says that these

1 estimates bear no reality -- no relationship to
2 reality in the schools because again, it depends on
3 how you spend the money, not how much. And that's
4 what you see across the districts in North Dakota or,
5 by inference, the districts in Kansas.

6 Q. Okay. And back to Exhibit 203, I'm on page
7 1396. When Augenblick & Myers presented their
8 findings, they said, "The successful school district
9 approach assumes if a district spent the same amount
10 as the average basic spending of the districts who
11 actually do meet expectations, it should be able to
12 meet the standards."

13 Do you find that plausible?

14 A. That's not reality at all, because when
15 districts are chosen by their absolute performance
16 level, they often ignore the fact that the high-
17 performing districts are the high-income, suburban
18 districts that have better parents. And just
19 providing the same amount of funding is not going to
20 give the same opportunities for achievement in the
21 more disadvantaged schools.

22 Q. And then the report goes on to say that the
23 districts that are successful, the range in their
24 expenditures between those districts has is --
25 there's quite a range. I think it says from 3,112 to

1 5,351. I want to ask you about these numbers. These
2 are per pupil numbers?

3 A. Yes.

4 Q. So a difference of 1,100 per pupil. To
5 figure out the real difference, we'd have to multiply
6 that by the full-time equivalent students, right?

7 A. Well, they figure it in a different manner
8 because they don't use the weighted student funding
9 that you tend to use in Kansas.

10 Q. So we'd have to multiply by the number of
11 students?

12 A. You'd multiply by the number of students and
13 you would add in some factor for special ed and
14 disadvantaged to get to the full number.

15 Q. To understand the difference between the
16 numbers, you'd have to use multipliers?

17 A. That's correct. But notice that they
18 declare all of those schools successful, even though
19 there's this wide range of funding differences within
20 their category of successful schools.

21 Q. Sure.

22 A. So even there, they're not getting to any
23 real relationship between spending and performance.

24 Q. So explain what you just said. Then if
25 there was a relationship between spending and

1 performance, what would you expect the cost per pupil
2 of successful schools to look like between those
3 schools that have been designated as successful?

4 A. Well, if they're all performing at about the
5 same level, I'd expect them to be spending about the
6 same amount. But instead, there's this wide range,
7 and they average across that range.

8 Q. Okay. All right. And then you mentioned
9 earlier that Augenblick & Myers qualify the opinions
10 that they give. And in Exhibit 1010, which is a
11 chapter out of your book, you quote Augenblick &
12 Myers on the reliability of their costing methods,
13 right?

14 A. Yes.

15 Q. Will you read that quote to us? Do you have
16 it typed?

17 A. I'd be happy to.

18 They really explain this, why they do these
19 different costing out methods. They say they readily
20 acknowledge that resource allocation tends to reflect
21 current practice, and there is only an assumption
22 with little evidence that the provision of money at
23 the designated level will produce the anticipated
24 results.

25 In other words, they've made up these

1 numbers because there's no empirical basis for them
2 that you can find in the data.

3 Q. And is that consistent with the way that you
4 view the professional judgment method and the
5 successful school method of creating a number of what
6 it takes to educate a student?

7 A. Absolutely.

8 Q. So if those are not reliable, how is it that
9 one can figure out what it would take to spend to
10 bring a certain level of achievement?

11 A. Well, right now we have no way of
12 guaranteeing any level of achievement through just
13 spending. We can think of providing base funding and
14 also trying to guide people to make better use of
15 that funding. And that's one of the roles that the
16 Legislature and the State Department take on, of
17 trying to help districts to improve how they spend
18 their money.

19 MS. TIBBETS: I don't have anything
20 further.

21 CROSS-EXAMINATION

22 BY MR. RUPE:

23 Q. In terms of what you did in this case, did
24 you look at anything along the lines of what
25 Augenblick & Myers looked at, and that is determining

1 the actual cost of any strategies that might affect
2 student achievement?

3 A. I just said, that in the aggregate, there's
4 no way to do that. I believe that the most important
5 factor influencing student achievement is the quality
6 of the teacher. And I've spent a lot of time doing
7 that, not specifically for this case, but I've spent
8 a lot of time thinking about quality of teachers.

9 Q. So the answer with regard to Kansas is no,
10 you didn't?

11 A. That's correct.

12 Q. All right. And in terms of teacher quality,
13 we'll talk about that in little bit, but you have
14 done a lot of work. And you are not here to say that
15 money does not matter. You, in fact, the last time
16 we talked, when you were sitting in the witness chair
17 and I was cross-examining you, you agreed with the
18 statement, only a fool would say money doesn't
19 matter?

20 A. That's right. In fact, I was quoted by
21 Judge Bullock in the original case for that. What he
22 left out was the second part of my statement.

23 Q. Hold on. Let me do my job here and I'll ask
24 the questions.

25 A. Okay.

1 Q. You agreed with that the last time we
2 talked, and you're agreeing with that today, right?

3 A. Yeah, I think that that's -- I qualified it
4 in that trial and I'd qualify here. I'm not going to
5 say that is an absolute statement, because it depends
6 on how you spend the money, and that is not certain.

7 Q. Sure. And you know that teacher quality is
8 an important factor in affecting student achievement,
9 right?

10 A. Absolutely.

11 Q. You know that teachers cost money, right?

12 A. I do.

13 Q. And you believe that there are
14 inefficiencies that are built into the system that
15 promote inefficient teachers that we end up spending
16 money on, true?

17 A. I'm trying to parse your question. But I
18 think the gist of it is, yes, we have rules and
19 regulations that prohibit us from spending money
20 effectively to ensure that we have high-quality
21 teachers.

22 Q. And some of those rules have to do with
23 teacher tenure and promoting teachers that may not be
24 the quality teachers you want in the classroom, but
25 we still spend money on them?

1 A. Absolutely.

2 Q. All right. And did you do anything in your
3 analysis to cost out what it would take to remove,
4 under Kansas tenure teacher laws, what you consider
5 to be ineffective teachers? Did you do that?

6 A. I did not.

7 Q. Let me show you what is Exhibit --

8 MR. RUPE: Let's give him
9 Exhibit 1.

10 Q. And I'd like you to turn in the bottom left-
11 hand corner -- I'm sorry, right-hand corner is
12 Primer, and it says, 00 -- and I would you like to
13 turn to -- 234. And I'm going to put this on the
14 screen, as well.

15 This is from the Supreme Court's decision in
16 the case you mentioned that you testified in. This
17 is not Judge Bullock's decision. But I want to ask
18 you about -- I'm going to read three quotes to you
19 and then ask you about them.

20 First, I want to call your attention to the
21 paragraph that starts on the left-hand column of 234,
22 which is page 2:

23 "We did make it clear that the actual cost
24 of providing a constitutionally suitable education
25 and the equity with which the funds are distributed

1 are critical factors for the Legislature to consider
2 in crafting a suitable formula for financing public
3 education."

4 And then the Court goes on to say:

5 "The parties were directed to address
6 whether the actual costs of providing a suitable
7 education were considered with respect to each
8 component of the formula, as well as the formula as a
9 whole."

10 And then it goes on to say:

11 "It still failed to provide constitutionally
12 suitable funding for public education because the
13 changes were not based on considerations of the
14 actual costs of providing a constitutionally adequate
15 education and exacerbated existing funding
16 inequities.

17 So here's my question to you with regard to
18 the Montoy decision that brings you back here today,
19 and that is: Did you do anything in your analysis in
20 which you looked at the actual costs?

21 A. I looked at the actual costs of teacher
22 quality in my analysis in terms of the incomes to
23 society.

24 Q. And can you tell us the actual costs of
25 delivering quality teachers to the Kansas classrooms?

1 A. I do not know the complete supply function
2 for quality teachers. Nobody has estimated that at
3 all. There's no evidence on that in the academic
4 literature. What I did do was to quantify the cost
5 of having poor teachers and having good teachers for
6 the Kansas society.

7 Q. And where is that cost found in your report?

8 A. It's one of the last two slides.

9 Q. So if I look at your last two slides, I will
10 see what the costs of providing a quality teacher in
11 Kansas are?

12 A. You'll see the cost of providing an
13 inadequate teacher and the cost of a providing high-
14 quality teacher.

15 Q. And which slide shows the cost of providing
16 a high-quality teacher?

17 A. The one in your hand does.

18 Q. So it's page 49, the top line. This is
19 based on class size, and the other chart is on impact
20 on student lifetime earnings.

21 A. Yes.

22 Q. Is that the one you're talking to us about?

23 A. Correct.

24 Q. And what would be the cost of delivering to
25 a Kansas classroom the 90th percentile teacher?

1 A. I have the cost of not delivering it by
2 having that. So it's the reverse of that.

3 Q. Okay. So you didn't do a cost study on the
4 cost of that teacher. You did a consequence of not
5 having that teacher?

6 A. If I could say one thing. The word cost --

7 Q. I'm sorry. That was a fairly clear
8 question.

9 A. No, it's not.

10 Q. Even I understood it

11 A. It's not to an economist, because the term
12 "cost," as you're using it, is not something that
13 anybody has ever estimated for schools, as you're
14 using it. And I am providing you a --

15 Q. I appreciate that, but I think our Court is
16 giving us direction to look at the actual costs of
17 education. And my question to you is with regard to
18 the actual costs of delivering those teachers, your
19 chart shows the consequences of not having those
20 teachers. But do you cost out what that teacher will
21 cost to Kansas schools?

22 A. I can't parse your sentence. Do you mean if
23 I offered some salary, would I -- could I guarantee
24 that I get a 90 percent teacher? Is that what you're
25 saying?

1 Q. Well, we'll start there.

2 A. What I have been arguing in all the work
3 that I've done that forms the basis of this is that
4 we cannot predict, before they're in the classroom,
5 who will be that 90 percent teacher.

6 Q. I appreciate that. So you're not providing
7 information to us on what that teacher that is in the
8 90th percentile on page 49 of your slides, what that
9 teacher costs?

10 A. The best answer is that this is what it
11 costs to the State of Kansas of not having that
12 teacher. And so what I have provided you is a much
13 more accurate statement of the cost of teacher
14 quality than exists in any other study.

15 Q. But in terms of our ability to agree on
16 something, you and I can both agree, along with the
17 educators in Kansas, that a quality teacher impacts
18 student achievement, right?

19 A. That's absolutely true.

20 Q. And we can agree that that happens right
21 here in Kansas, right?

22 A. Absolutely.

23 Q. And with regard to what we can agree on, we
24 can agree that those teachers cost money?

25 A. Absolutely.

1 Q. And so the statement, only a fool would say
2 money does not make a difference, is true, because in
3 at least one area we can agree on, teachers make a
4 difference?

5 A. What that statement doesn't imply is that if
6 we spent any amount of money, we could guarantee a
7 given quality teacher, if we increased salaries by
8 any amount, that we could guarantee a teacher.

9 Q. I'd like to focus, if I could, on Wyoming
10 just for a minute and looking to the -- too bad our
11 person from the Department of Commerce that testified
12 earlier isn't here, because I think what you're
13 saying is, welcome to Kansas, our kids do better than
14 Wyoming. Is that what you're saying?

15 A. No. What I'm saying is that the very large
16 increases in funding for Wyoming do not lead to
17 substantial increases in performance. And the Kansas
18 schools are doing better at a lower level of spending
19 than Wyoming with their court ordered high spending.

20 Q. And did you control for sparsity in any of
21 your analysis in comparing Wyoming to Kansas?

22 A. I did not.

23 Q. In terms of Wyoming -- and I'm putting up
24 one of your charts that shows Kansas school
25 districts. And we know according to what you said

1 that this little dot up here is Healy, Kansas?

2 A. That's correct.

3 Q. And Healy is out in Western Kansas, isn't
4 it?

5 A. I frankly don't have my Kansas geography in
6 intact here.

7 Q. Take my word for it. And I've driven
8 through Western Kansas and a lot of Western Kansas
9 looks like Wyoming. And in terms of whether or not
10 Healy spends a lot of money, because it happens to be
11 small, did you control for that sparsity in looking
12 at Kansas as compared to Wyoming?

13 A. I controlled for the size of schools in all
14 my previous analyses. I did not in the average
15 comparison. I'm not trying to make a one-for-one
16 comparison. I'm just trying to show you the overall
17 picture.

18 Q. I'll take that as you didn't do it, right?
19 You didn't control for sparsity --

20 A. That's correct.

21 Q. -- in your comparison of Kansas and Wyoming?

22 A. That's correct.

23 Q. And are you familiar with how the
24 demographics in Kansas have changed since 2008?

25 A. Not at all.

1 Q. I'm going to show you what is Exhibit 107.
2 And I think if you see 2008, you can see there's been
3 an increase in both students with disabilities, ELL,
4 and free and reduced lunch. Do you agree with that?

5 A. That's what the chart says.

6 Q. All right. Have you indicated that, at any
7 time and any place, that you thought that Kansas has
8 set the standards so high that no legislature could
9 comply with?

10 A. Not that I know of.

11 Q. Well, let me read from a book you wrote
12 called, Courting Failure, and I want to turn to the
13 discussion of Kansas --

14 MS. TIBBETS: Is this an exhibit?

15 Q. -- and ask you if you wrote these words?

16 MS. TIBBETS: Is this an exhibit?

17 MR. RUPE: No.

18 MS. TIBBETS: Can we follow along?

19 MR. RUPE: You can buy the book or
20 I can show it to you.

21 JUDGE THEIS: Get it autographed
22 today, too.

23 Q. (By Mr. Rupe) Have you said on page 53:
24 "The Kansas Courts have also suggested a standard so
25 high that the Legislature is unlikely to satisfy it

1 no matter what it does or how much money it spends."

2 Have you said that?

3 A. I don't think so.

4 Q. Is that what that first sentence says under
5 Kansas?

6 A. That's precisely what it says, but I didn't
7 write that.

8 Q. Oh. Who did?

9 A. That's a chapter in the book by Alfred
10 Lindseth, and it's not me. I'm the editor of that
11 book and I provided the introduction and the --

12 Q. You're right.

13 A. -- discussion of costing out methods, but
14 that's not mine.

15 Q. You're right. So it comes in a book that
16 you have recognized as authoritative?

17 A. I have recognized all of the people having
18 valid points. I have not fact checked or taken their
19 opinions as whether their opinions are the same as
20 mine.

21 Q. Would you agree with that or not?

22 A. I don't think so.

23 Q. Okay. In terms of your resumé, is it
24 accurate that under government experience, you have
25 no government experience with advising anybody in

1 Kansas in terms of the Kansas Legislature or any
2 committee of the Kansas Legislature?

3 A. That's correct.

4 Q. In terms of what we've heard in this
5 courtroom from the Legislative Post Audit group, did
6 you offer any information to the Legislative Post
7 Audit team when they were doing the cost study?

8 A. I was never asked to do that.

9 Q. In terms of whether you've testified before
10 the legislative committees in Kansas, have you done
11 that?

12 A. No.

13 Q. And I think you've already touched on this,
14 but is it accurate that you have not talked to any
15 Kansas teacher as part of what you're testifying here
16 today about?

17 A. That's correct.

18 Q. And have you ever held a teaching
19 certificate?

20 A. No.

21 Q. Have you ever testified for any plaintiff --

22 A. No.

23 Q. -- in any of these cases? So I'm on track
24 the cases that you have testified to, you've
25 testified in California -- you testified in

1 California, New Jersey, Colorado, New York, Missouri,
2 North Carolina, Texas, South Dakota. Did I miss any?

3 A. You got too many.

4 Q. Okay. Which ones did you not testify in?

5 A. Texas.

6 Q. Texas. You were called in to consult in
7 Texas?

8 A. I don't know what you're talking about.

9 Q. Well, I was talking about what you testified
10 to in direct examination about being consulted in
11 Texas.

12 A. No. I was asked to be part of the
13 Governor's Commission on a College Ready Texas, and I
14 was one of members of his commission appointed to
15 advise him on that. I did not consult or testify. I
16 was just on the commission.

17 Q. Did you conduct any analysis of any specific
18 education programs offered in Kansas schools?

19 A. No.

20 Q. For example, something like MTSS, did you
21 conduct an analysis of those?

22 A. No.

23 Q. Was the last time you were in Kansas, other
24 than flying over it, when you were in the courthouse
25 in June of 2003 in the Montoy case?

1 A. Perhaps. I don't know.

2 Q. Are you of the opinion that all children can
3 learn?

4 A. I am.

5 Q. And can we agree that equally important in
6 any discussion of education is both the notion of
7 inputs and outputs? Can we agree on that?

8 A. Both of them come into discussions. I mean,
9 equally important, I don't know what the metric is of
10 importance.

11 Q. I'll take the equally out. And can we agree
12 that they're both important?

13 A. They are.

14 Q. And we've talked about quality teachers.
15 Can we also agree that there is evidence that in the
16 early years, kindergarten, 1st grade, class size can
17 make a difference?

18 A. It may. It may make a difference at any
19 grade. It's just whether or not it systematically
20 leads to any improvements.

21 Q. And I think you've talked about in some of
22 your other cases a study in Tennessee, where it did
23 show that that had a positive effect in the early
24 grades?

25 A. Yeah. The best interpretation or the most

1 liberal interpretation in some sense is that class
2 size made a difference in kindergarten. The problem
3 with that is that the study was not a very good
4 study.

5 Q. I understand that's what you've testified in
6 other cases, you didn't think it was a very good
7 study. My question is just there's some evidence of
8 it?

9 A. That's correct, uncertain evidence.

10 Q. Did you do any analysis of class size in
11 Kansas?

12 A. Not, per se. It figures in, obviously, to
13 all the spending.

14 Q. Have you said that in terms of the best
15 practice for determining if money is being
16 appropriately spent is to array the achievement of
17 different school districts against the amount they
18 are spending after allowing for differences in the
19 characterization of the children. Have you said
20 that?

21 A. I probably have. It sounds like something I
22 would say, and I'll agree to it at this point.

23 Q. My question is did you do that with regard
24 to Kansas school districts?

25 A. I just presented exactly that evidence.

1 Q. Well, you presented a graph that shows that
2 it was controlled for poverty, and we'll talk about
3 that in just a minute. But did you array the school
4 districts in a ranking as part of your analysis here?

5 A. I did. That's what that graph has, is the
6 summary of that.

7 Q. Okay. We'll get to that in a minute then.

8 Have you said that a production function
9 analysis is one that, by design, looks at multiple
10 variables?

11 A. I presume at some point I've said something
12 like that.

13 Q. And have you testified that, "Almost all of
14 the studies that I have done or reviewed in my
15 analysis, in fact, look at multiple inputs." Have
16 you said that?

17 A. It sounds like something I've said. Are you
18 asking about specific words, or do I agree with the
19 concept?

20 Q. Well, let's talk first the specific words.

21 A. I don't know where I would have said that
22 but ...

23 Q. You said it on page 1343 in the Montoy trial
24 at line 10.

25 A. I accept that.

1 Q. And in terms of what you accept, do you
2 agree with what you testified to?

3 A. Could you repeat what I said?

4 Q. Sure. "Almost all of the studies that I
5 have done or reviewed in my analysis, in fact, look
6 at multiple inputs."

7 A. Yes.

8 Q. And have you said that a multiple variable
9 analysis should not look simply at two variables?

10 A. Well, by definition it doesn't.

11 Q. And we'll talk about your graph in a minute
12 on controlling for free and reduced lunch. But did
13 you do any controlling for teacher quality,
14 minorities, bilingual, district wealth, salaries of
15 teachers, district inefficiencies? Did you have any
16 controls for that?

17 A. No.

18 Q. And if I'm understanding your testimony, you
19 don't put any stock in asking a classroom teacher to
20 say whether or not money they spent or get from
21 whatever source affects student achievement when they
22 make their observations about the classroom?

23 A. Most teachers don't get money to spend.
24 Most teachers get a salary but they don't get money
25 to spend.

1 Q. Would you trust a teacher's observations
2 about strategies that were used in the classroom that
3 could move the needle on student achievement?

4 A. I trust some teachers and not others,
5 because we see there's a wide variation in
6 effectiveness of teachers, and every one of these
7 teachers has a strategy.

8 Q. And I think you've indicated that you would
9 say the same thing with regard to principals or
10 superintendents, that in terms of their ability to
11 speak to the strategies that prove effective in
12 moving the needle on student achievement, you can't
13 rely on them?

14 A. They have a better chance at it, but they
15 don't look outside of their current structures of
16 their schools.

17 Q. And in your analysis here, did you consider
18 any constitutional standard?

19 A. I don't even know what that question applies
20 to. Did I analyze the Constitution?

21 Q. Did you look at the notion of what is a
22 suitable education in Kansas? Did you analyze what
23 is suitable?

24 A. No, I did not.

25 Q. And in terms of suitable financing, did you

1 have any analysis as to what was suitable financing?

2 A. I don't know what suitable means.

3 Q. All right. We have a statute in Kansas that
4 we called the Rose Factors. You know what the Rose
5 Factors are, don't you?

6 A. I know from the original Rose decision in
7 Kentucky, what they said.

8 Q. Well, then you can tell me how close the
9 Kansas Legislature got to the original language in
10 Kentucky, because let me hand you what is marked as
11 Exhibit 39. And take a look at these factors and
12 tell me if you can recognize those as the Rose
13 Factors.

14 A. I can't compare them directly, but they look
15 quite close. There was seven of them in the Rose
16 decision and there's seven here.

17 Q. In terms of your analysis here, did you
18 consider the Rose Factors?

19 A. Not explicitly. I considered them in terms
20 of measures of performance that cover several of
21 those areas.

22 Q. But in terms of costing out what it would
23 cost the State of Kansas to attain those factors, did
24 you do any work in that regard?

25 A. The Rose Factors are no different than the

1 others. I don't think you can scientifically cost
2 out what any level of achievement costs or what it
3 takes.

4 Q. Did you look at the cost of teachers'
5 salaries in Kansas, buying out contracts, or
6 liquidated damage and breaking contracts, did you do
7 any analysis of that?

8 A. Of what you'd have to spend to break a
9 contract?

10 Q. Yes.

11 A. No.

12 Q. In your report you mentioned information
13 about New Jersey, and you criticized the spending in
14 New Jersey. Do you recall writing that in your
15 report?

16 A. I don't remember criticizing it. I said
17 that they spent a lot of money and hadn't gotten any
18 results from it that you could see from the NAEP.

19 Q. Piece of paper I'm looking for. I'll find
20 it here in a second.

21 MR. RUPE: I'll just put it on the
22 overhead. I want to hand you 11 -- put on the
23 overhead, 1171.

24 Q. And this is NAEP increases versus marginal
25 spending, and it is a report you generated and

1 supplemented. And I just want to focus on what this
2 shows -- by the way, you testified in the Abbott case
3 in New Jersey a couple times, didn't you?

4 A. I did.

5 Q. And the New Jersey case, for those
6 interested in school finance, has lasted for
7 generations, hasn't it?

8 A. The New Jersey case started in the early
9 '70s, and it's still in the Courts so ...

10 Q. And this chart shows New Jersey with
11 increased spending, and then it shows its position
12 relative to what you call the average annual NAEP
13 gain?

14 A. I'm not sure where that chart comes from.
15 What's the source of that?

16 Q. You. This is a supplemental chart that
17 you're -- that the attorneys gave to us and said that
18 you had generated it.

19 A. Okay. It is one I generated. I just didn't
20 know that it was publicly available.

21 Q. So I'm on track, New Jersey is shown on your
22 legend here at above three on the average annual NAEP
23 gain?

24 A. That's correct.

25 Q. And explain to the Judges what the one, two,

1 three, four, five is.

2 A. These are points on NAEP per year. They're
3 calculated by taking all of the NAEP scores that you
4 can find for each state and, in fact, finding out how
5 much, on average, they increase after you allowed for
6 the subject matter and other things. And so those
7 are point increases per year on the NAEP.

8 Q. So if I'm reading your graph right,
9 New Jersey has increased its spending and it has
10 increased its performance on NAEP?

11 A. That's correct. That's correct.

12 Q. Okay. While we're talking about statistics,
13 do you agree that when scores are standardized, they
14 suggest that a one standard deviation increase in
15 mathematics performance at the end of high school
16 translates into a 12 percent higher annual earning?

17 A. Roughly that. It would be similar between
18 12 and 20 percent actually.

19 Q. I want to make sure that you wrote this
20 because it may be somebody else did. But I'm going
21 to hand you an article called, School Accountability
22 and Student Performance, by you and Margaret Raymond,
23 and call your attention to what is highlighted
24 there. Does that indicate what I just read?

25 A. It does. What I gave you was an extension

1 of that. This is an article that was published in --
2 sometime in 2006. There have been subsequent studies
3 and I've expanded on that, so I gave you a number
4 that went from 12 to 20 percent.

5 Q. Okay. And then you also say in this
6 article, "Note also that the other side of increases
7 in school attainment from quality improvements is a
8 decrease in the dropout rates. Specifically, higher
9 student achievement keeps students in school longer,
10 which will lead to, among other things, higher
11 graduation rates at all the levels of schooling."

12 Do you agree with that?

13 A. Absolutely. That's one of those things
14 that's motivated a lot of my work.

15 Q. And in terms of your beliefs concerning the
16 value of an educated work force, I think we can agree
17 that you attach great value to an educated work
18 force?

19 A. I do.

20 Q. In fact, I think in your deposition you said
21 something like, that's what it's all about?

22 A. And it's one of the major reasons why we
23 invest so much in schools, is to try to improve the
24 skills of our children, so when they get out in the
25 labor force, they do well.

1 Q. Did you do any examination of -- other than
2 your controlling for poverty in the charts you
3 showed, did you do any examination of the weightings
4 in Kansas?

5 A. This is the school finance funding weights?

6 Q. Yes.

7 A. No. That's included in the expenditures.

8 Q. And let's talk about, if we could, the -- at
9 least one part of your report for a minute.

10 MR. RUPE: And I'd like to get
11 Exhibit 1187 in front of him and Exhibit 1169, page
12 22.

13 MR. ROBB: There's a big one.

14 MR. RUPE: Yeah. We'll come to
15 1187 in just a minute.

16 Q. Let's start with 1169, page 22. That's your
17 bubble chart.

18 MR. RUPE: Give me one to put on
19 the overhead of page 22.

20 Q. That's your bubble chart and this is the one
21 that shows, spending by district poverty rate on
22 one -- on page 23, sorry. I got two versions here
23 that I was -- I'm putting page 23 from Exhibit 1169
24 up.

25 And if I'm on track, I just want to identify

1 Wichita, if I could. Is this Wichita?

2 A. It is.

3 Q. All right. So Wichita is right at, oh,
4 about 13,069 in terms of the spending that you have
5 as the amount of money spent per pupil, expenditure
6 per pupil?

7 A. Yes.

8 Q. Is what you said?

9 A. Yes.

10 Q. Do you draw a distinction between spending
11 and expenditures?

12 A. No.

13 Q. Okay. So in terms of what was spent, where
14 did you get the number of expenditures? What
15 information did you access to get that?

16 A. That was from the State Department website.

17 Q. And was that total spending?

18 A. I believe it was current expenditures per
19 student.

20 Q. All expenditures per student from whatever
21 source?

22 A. I said, "current expenditures per student";
23 not "all expenditures."

24 Q. Current as of when?

25 A. As of 2011.

1 Q. Okay. For all students. All right. This
2 is 11 -- what is it? 1187. And is it accurate that
3 1187 shows, in '08/'09, 58,211,744 in federal aid?

4 A. That's what that chart says, yes.

5 Q. And then in '10, it says, 98,392,647, true?

6 A. True.

7 Q. And in 2011, it says, 98,179,700; for total
8 expenditures of 604,537,689 in 2011?

9 A. Yes.

10 Q. If you divide that by the number of kids,
11 you get, for 2010, 13,069.

12 A. That looks correct.

13 Q. That's what you put on your chart when you
14 arrayed where Wichita was, right, just above 13,000?

15 A. Yup.

16 Q. What's ARRA money?

17 A. It's commonly called the stimulus money.
18 It's federal funds that was used to help make sure
19 that states in localities could maintain their
20 private -- their previous spending.

21 Q. And if that money disappeared, I will
22 represent to you that that's what that federal aid
23 column is. If the federal money disappeared, your
24 number for Wichita would be 12,204?

25 MS. TIBBETS: I'm just going to

1 object because that's -- that number is not AARP
2 so --

3 MR. RUPE: It's not AARP anyway.

4 MS. TIBBETS: It's 3:00.

5 MR. RUPE: You just said that
6 because it's me, didn't you?

7 JUDGE THEIS: All members, please
8 raise your hand.

9 MR. RUPE: I'll wait for a ruling.

10 JUDGE THEIS: Go ahead.

11 MR. RUPE: All right.

12 Q. (By Mr. Rupe) If Wichita was at 12,004, its
13 bubble would drop somewhat, wouldn't it?

14 A. If it was 12,004. But this has got all the
15 Title I money, and it's got stimulus money, it's got
16 the special ed money, it's got other things that are
17 not time-dependent.

18 Q. If you're looking at the State's obligation
19 as opposed to federal dollars, you would subtract out
20 federal aid, wouldn't you?

21 A. No, not at all. You can't subtract it out
22 of expenses. Dollars are dollars.

23 Q. Do you know how much ARRA money USD 259
24 received?

25 A. I have no idea.

1 Q. So in terms of whether that money is gone or
2 not, can you tell us how much is going to disappear?

3 A. I have no idea what's going to disappear or
4 what the federal aid will be in the future. I've
5 just taken the current spending.

6 Q. And what you got was current spending
7 through 2011?

8 A. That's correct.

9 Q. And why did you pick 2011?

10 A. Because it's the latest data that I had.

11 Q. And with regard to current data, is that
12 important in your analysis, having current data?

13 A. I thought it would be useful to have the
14 most recent data that was possible.

15 Q. Okay.

16 A. We can look at historically, but it's not
17 going to change the picture.

18 Q. Has Kansas -- by the way, in the NAEP test
19 are --

20 MR. RUPE: We can take that down.
21 Thank you.

22 Q. In the NAEP test, are all Kansas kids
23 tested?

24 A. No.

25 Q. How does NAEP work in terms of who they

1 test?

2 A. NAEP is designed to get a representative
3 sample from each state.

4 Q. Do you know how it works in Kansas?

5 A. This is the national way that NAEP is
6 produced. I don't know that Kansas gets an asterisk
7 for doing something different.

8 Q. Do you know how the kids are picked in
9 Kansas? And go ahead and explain how they are
10 nationally.

11 A. Nationally, there are certain rules about
12 selecting schools randomly. They have an elaborate
13 algorithm that chooses the schools. And then, they
14 test all the kids in given grades, I believe.

15 Q. Do you know whether that's a voluntary test
16 among students in Kansas?

17 A. It is not a voluntary test. It is mandatory
18 that they take it.

19 Q. Thank you. If you were measuring student
20 performance, would you rely -- in Kansas would you
21 rely on the Kansas assessments?

22 A. For some purposes I probably would, and for
23 other purposes I wouldn't.

24 Q. Would you look to college readiness in terms
25 of whether Kansas kids are achieving what they need

1 to achieve in the 21st century?

2 A. I have not looked at the details of the
3 Kansas test to know what it says about college
4 readiness. I looked at alternative measures of
5 college readiness of Kansas and other states.

6 Q. Would your answer be the same with regard to
7 vocational readiness in Kansas, being able to go out
8 and be productive in the world?

9 A. My answer is the same to what question?

10 Q. Did you measure that in Kansas?

11 A. No.

12 Q. Did you look at anything having to do with
13 income as you did in that article that I showed you
14 as it applies to Kansas?

15 A. Well, the estimates I gave you of teacher
16 quality used exactly those same estimates of income.

17 Q. Did you look at it specifically for Kansas?

18 A. I think Kansas is part of a national
19 market. Those are numbers that look at the national
20 market.

21 Q. I'll take that as a you didn't look at it
22 specifically in Kansas?

23 A. I don't know how you think one could do
24 that. It's national data that has Kansas
25 observations along with other observations.

1 Q. Did you look at crime rates in Kansas?

2 A. I did not.

3 Q. And you did not look at buying power of
4 different districts across the state? In other
5 words, did you look at the relative wealth of
6 different districts in Kansas?

7 A. I'm not sure why that's -- buying power? Is
8 that ...

9 Q. Well, I changed it to wealth. I'll come to
10 buying power in just a minute.

11 A. I did not look at wealth differences, no.

12 Q. Did you look at any equity issues in terms
13 of the ability of districts to purchase strategies?
14 Did you look at buying power differences across the
15 state?

16 A. Are you asking me do some districts have to
17 spend more to buy textbooks than others?

18 Q. I'm asking you if you looked at those
19 differences.

20 A. I'm trying to figure out what I should have
21 looked at. I didn't look at any cost of living
22 differences. But is that what you're asking about,
23 is cost of living differences?

24 Q. Well, for example, we have equalization
25 within the Kansas formula in some respects. Have you

1 run into that across the country?

2 A. Of course. Almost every state has
3 equalization.

4 Q. And the purpose of equalization in some
5 areas is to boost the buying power of the school
6 districts. Do you agree with that?

7 A. I've never heard it phrased in terms of
8 buying power. I've heard it phrased in terms of
9 equalizing the wealth differences so that different
10 districts have an equal choice when they make
11 decisions about how much to spend.

12 Q. I'll use your words. Did you look at
13 equalized wealth differences across the state?

14 A. I did not.

15 Q. Did you look at any issues concerning
16 teacher migration?

17 A. No.

18 Q. And did you look at any -- let me phrase it
19 another way.

20 Are you able to say that Kansas funding that
21 has increased after the Montoy case did not cause an
22 increase in student performance?

23 A. I'd say that the increase in student
24 performance in Kansas, from the picture you showed,
25 is less in Kansas than all but a third of the

1 states. Kansas is in the bottom third of getting
2 money for its increased spending in 2000 after Montoy
3 in terms of achievement.

4 Q. Are you saying that the money that came
5 about as a result of Montoy did not increase student
6 performance in Kansas? Is that what your testimony
7 is?

8 A. I am testifying that Kansas had above-
9 average increases in spending, which I attribute, in
10 part, to Montoy over the decade of the 2000s, and
11 that led to lower average increases in NAEP than all
12 but 35 states.

13 Q. Did you look at that issue --

14 A. All but 15 states.

15 Q. -- in view of Kansas assessments?

16 A. No. I looked at that issue using the NAEP
17 so I could compare it to what other states got from
18 their spending.

19 Q. But we can agree, can't we, that each state
20 has a different constitutional provision with
21 different wording on what the measuring stick is for
22 education, true?

23 A. Well, the Constitution differs across
24 states. Whether that's a measuring stick or not,
25 most states don't have a measuring stick in their

1 Constitution.

2 Q. Well, I think you've been critical of
3 Wyoming because it uses a measuring stick of best
4 education, haven't you?

5 A. That was the Court decision, not in the
6 Constitution.

7 Q. They were interpreting the Constitution?

8 A. Well, maybe.

9 Q. And in terms of the different standards,
10 different states have different standards on what
11 they hold the legislatures to in terms of those
12 constitutional standards? They're different?

13 A. Courts have litigated -- courts in 45 states
14 have had litigation, and they've all had different
15 reactions to it.

16 Q. We can agree Kansas is below the national
17 average in grading of standards?

18 A. In grading. Not that Kansas grades
19 standards, but the grades given to Kansas standards?

20 Q. Yes.

21 A. Yes.

22 Q. And I think you've testified to it, and you
23 have that information in your report, that Kansas is
24 below the national average?

25 A. I did.

1 Q. Now, what does that mean?

2 A. To me, it means nothing, because standards,
3 as they differ across states, are unrelated to
4 student performance, and what really matters is
5 student performance.

6 Q. Okay. And your belief is that you should
7 not look to the courts, to the teachers, to the state
8 board, but you should look to the legislature to
9 determine whether students are achieving what they
10 should be achieving?

11 A. No, I've never said that.

12 MR. RUPE: Let's get his deposition
13 out. Now is probably a good time to take a break and
14 I'll find his deposition, if you want to take a break
15 right now.

16 JUDGE THEIS: Good with you?

17 THE WITNESS: I'm at your mercy
18 here.

19 MR. RUPE: I can keep going if you
20 want to go for a little while longer but ...

21 JUDGE THEIS: Makes no real
22 difference.

23 MR. RUPE: Huh?

24 JUDGE THEIS: This is fine as any.

25 MR. RUPE: Then we'll come back and

1 I'll talk to him about his deposition.

2 JUDGE THEIS: About 3:20 then.

3 (A recess was taken.)

4 JUDGE THEIS: Be seated. Thank
5 you.

6 MR. ROBB: Sorry.

7 MR. RUPE: Apologize.

8 Q. (By Mr. Rupe) Let's go back to your -- the
9 question with regard to your deposition. And I want
10 to call your attention to the question and answer on
11 pages 115 and 116. Here's the question that I asked:

12 "I understand that but -- and we're not
13 relying on cut scores, and we're not relying on
14 assessments, and we're not relying on standards. And
15 I'm getting from you, and grab me by the back and
16 say, you got it all wrong, Rupe. And if I'm wrong --
17 what I'm getting at is the accountability piece, in
18 determining whether we have arrived at that educated
19 work force, is one the Legislature makes."

20 And your answer: "At some level, they're
21 going to be the primary determiner of that. The
22 Legislature is, of course, accountable to their
23 citizens in Kansas. They would, I presume, use data
24 that providing them information on how students were
25 doing. It's not just holding their finger up in the

1 air and seeing if the wind is blowing in Kansas.

2 It's a matter of whether students are learning more."

3 Was that your testimony?

4 A. I agree with that statement.

5 Q. Okay. That's what I wanted to know. You
6 think the primary determining factor on whether we're
7 achieving what we need to achieve or not is the
8 Legislature?

9 A. I think that they are the normal place where
10 these decisions are made, but in conjunction with the
11 governor and in conjunction with the people, and on
12 the basis of hearings so ...

13 Q. And your testimony here is that since there
14 is no statistical relationship between spending and
15 performance, you cannot say that an increase in
16 spending in Kansas has resulted in increased
17 performance. Am I understanding your testimony?

18 A. That's one way of looking at it. I'm
19 saying, if I look across different spending levels,
20 and use that as a way to judge what would happen if
21 we provided more spending for all districts, I would
22 not predict that it led to higher achievement.

23 Q. And in your deposition I asked -- well, let
24 me ask you this: If you were asked how you could go
25 about that, how you could determine if there was a

1 positive impact on student achievement from
2 additional spending, your explanation is, well, you
3 could do an experiment. You could keep all the
4 circumstances the same and inject new money and
5 determine if that new money caused an increase in
6 student performance?

7 A. That would be one way to approach it, yes.

8 Q. Okay. And in terms of you doing that in
9 Kansas, you didn't do that, did you?

10 A. No, of course not.

11 Q. Okay. Is there a value to school districts
12 to maintain cash reserves?

13 A. I think so.

14 Q. In fact, you would expect them to have that
15 as part of good fiscal management?

16 A. Most businesses do it and I would expect
17 districts, to allow for unforeseen things, to have
18 some cash reserves.

19 Q. Is it possible to make a determination of
20 the effect of resources -- I'm talking spending. I'm
21 talking about things like strategies that you might
22 use, quality teachers, those things that you think
23 have an impact on education. Is it possible to look
24 at those strategies, as they're implemented,
25 immediately, or is it important in looking at, say,

1 teacher quality, to look at the effect of teacher
2 quality over time?

3 A. Well, there's different ways to do it. But
4 almost certainly you can't look at student
5 performance before the teachers had any time in the
6 classroom.

7 Q. Okay. And in terms of the analysis of the
8 impact of say teacher quality on student performance,
9 you need to look at it over a period of time?

10 A. Presuming you can look after a year, which
11 is what people often do.

12 Q. So a year?

13 A. Yes.

14 Q. And the reason for that is that you don't
15 see the impact of what the teacher does until a year
16 of teaching?

17 A. That's generally the case. I mean, you
18 could measure performance along the way, but it is
19 typically done at a year interval.

20 Q. And I know you talked about the professional
21 judgment and the successful schools. And do you have
22 any method that you think is appropriate to determine
23 the actual costs of delivering education?

24 A. I still am confused by what actual cost
25 means. If you're saying, to determine how much has

1 to be spent to achieve some given level -- is that
2 what you're saying?

3 Q. Yes.

4 A. No. I've studied this extensively and find
5 that there is no scientifically valid method of doing
6 that, given our current knowledge and our current
7 data.

8 Q. And so I'm on track with the graphs that you
9 put up that showed the spending and achievement, you
10 looked at spending as opposed to any other input?

11 A. I think spending is the aggregation of all
12 the inputs, and that's what I looked at.

13 Q. Thanks for answering the next question,
14 because my question was, the spending would be an
15 aggregation of all other inputs, true?

16 A. That's right. That's what people spent to
17 get the inputs.

18 Q. On page 1 of your report you say, Kansas
19 schools are doing quite well. And you made that
20 determination based on NAEP, is that right?

21 A. Yes.

22 Q. And did you look at how many of the -- let
23 me see the chart on -- these are NAEP scores and I'm
24 going to put Exhibit 122 in front of you. This is
25 Kansas kids who are, in NAEP, all students sampled.

1 And this is below basic, so we have 21 percent;
2 white, 16 percent; black, 42 percent; Hispanic, 34
3 percent; free and reduced lunch, 32 percent; and ELL
4 students, 51 percent. Is your testimony that we are
5 serving those kids well?

6 A. I think we should be doing better with
7 them. There's no doubt about it.

8 Q. And go through the same analysis on 8th
9 grade math, with those percentages and the
10 disaggregated groups that include black and Hispanic,
11 free and reduced lunch, ELL, is your agreement the
12 same that we should be doing better with those kids?

13 A. Yes, it is. I spent a lot of time trying to
14 convince them that we have to improve on those.

15 Q. Okay. I've got some questions about your
16 overheads, and I think some of these we've already
17 covered, so I'll try not to, as we say in Kansas,
18 plow ground we've plowed before.

19 In terms of what you looked at of
20 expenditures per pupil, and I'm looking at page 9 of
21 your chart -- of your exhibit --

22 MR. RUPE: What's the exhibit
23 number for the record?

24 MR. JERRY HAWKINS: 1169.

25 MR. RUPE: 11 what?

1 Ms. TIBBETS: 69.

2 Q. Let's look at that for a minute,
3 expenditures per pupil. And this was over time, but
4 your most recent data here was 2009?

5 A. That's correct.

6 Q. And did you have expenditure per pupil data
7 for Kansas for 2011?

8 A. Not from this source, not that gave me
9 national data.

10 Q. Okay. So this was national data that you
11 found the most recent source of being 2009?

12 A. Correct.

13 Q. And you didn't have more current data
14 available from that source. Am I right?

15 A. Yes.

16 Q. So the same would be true on page 10, that
17 data is through 2009?

18 A. That's correct.

19 Q. Okay. What I'd like you to get is page 23
20 and 24 of your report in front of you.

21 MS. GARNER: 23 is his report. 24
22 is what he handed to us today.

23 MR. RUPE: Where is 23? I'll show
24 you both of these on the overhead.

25 Q. I'm going to show you what was handed to us

1 before, which is this chart, 23, and then show you
2 24. And what I'd like you to do is explain what's
3 the difference between those two.

4 A. They've been labeled differently.

5 Q. I'm sorry?

6 A. They've been labeled differently to be more
7 descriptive of the contents.

8 Q. So the content of the chart is the same, you
9 just changed the labels?

10 A. Correct.

11 Q. Then, on 29, this is a chart that shows
12 public school resources in the United States, 1960 to
13 2009. What does this mean, real expenditure per
14 student?

15 A. Means it's been adjusted for inflation.

16 Q. Okay. So you adjusted for inflation since
17 1960 through 2009. Am I on track?

18 A. Yes.

19 Q. Okay. And you used the CPI?

20 A. Yes.

21 Q. Is that the way you adjust for inflation?

22 A. That's the most common way to do it, yes.

23 Q. So if somebody adjusted for inflation with
24 the CPI, you wouldn't have any disagreement that they
25 used the adjustment by using the CPI?

1 A. It's the most standard.

2 Q. All right. Then, on your page 30 -- and
3 I'll cover 31, as well -- this is the NAEP scores.
4 On page 30, that was data current to 2008?

5 A. I believe it's 2009, but -- yeah, I guess
6 it's 2008.

7 Q. Okay. On the top it says 2008.

8 A. 2008.

9 Q. So although you've got 2010 out here, the
10 data is just to 2008?

11 A. Yes.

12 Q. All right. And then with regard to 31, the
13 same?

14 A. Yes.

15 Q. Okay. And the chart that says best economic
16 evidence for real resources, I just want to make sure
17 these are not -- this is not a study you did. This
18 is your study of the studies. Is that a fair way to
19 say it?

20 A. Well, that's my study, yes.

21 Q. Your study is a study of the studies?

22 A. That's correct.

23 Q. Okay. Are there studies that look at
24 these -- is it fair to call teacher/pupil ratio an
25 input?

1 A. I think so.

2 Q. Are there studies that look at these inputs
3 of teacher education, teacher experience,
4 teacher/pupil ratio, with regard to education of the
5 various subgroups?

6 A. There are.

7 Q. And do you have any study of those studies?

8 A. Do you mean, have I ever broken it down
9 by -- no, not in terms of -- these are the best
10 quality studies, and it would be impossible to break
11 them down by subgroups.

12 Q. Okay. But there are studies of subgroups,
13 but you haven't broken those down?

14 A. I have in other contexts, but I've never
15 been able to do it for the best studies, because
16 these are not a large enough sample of the best
17 studies.

18 Q. I've been asking you a lot of what you
19 haven't done, so I'll ask it here. You didn't do
20 that in Kansas for the subgroups?

21 A. No.

22 Q. And in your Wyoming comparison on page 44,
23 we talked about the sparsity factor. But in terms of
24 your comparison, you based your comparison of
25 population characteristics through 2008, is that

1 right?

2 A. That's correct.

3 Q. Was that the most current data you had
4 available?

5 A. Yes, it was.

6 Q. And the same with the chart -- I don't need
7 to put it up there -- same with the chart on
8 preparation for college comparison of Wyoming, 2008
9 would be the most current?

10 A. I'm not sure that they're all 2008. I don't
11 remember precisely, but ...

12 Q. Well, then maybe I --

13 A. Those are the most current data, yes.

14 Q. I think it does show 2008, but let's make
15 sure we're on track. The most current data you had
16 was 2008?

17 A. What I'm referring to is the middle column,
18 which is for 2007. So that was the most current data
19 that was available, was only through 2007.

20 Q. Okay. Then you had a slide -- I'm not sure
21 we saw it, but I just want to make sure that this is
22 part of your testimony here. You have teacher
23 effectiveness. "Research shows that teacher
24 effectiveness is the most important aspect of
25 schools." And you've testified to that?

1 A. I have.

2 Q. And, "economic value is seen from individual
3 student outcomes and from impact on national growth
4 by class size and internationally"?

5 A. Yes.

6 Q. What do you mean by class size?

7 A. That's the chart that you introduced from my
8 testimony that shows that an effective teacher has a
9 much bigger impact when she has a larger class
10 because there are more kids that are able to have the
11 effective teacher. Similarly, an ineffective teacher
12 has a much larger impact when there's a large class
13 because the poorer education is given to a larger
14 number of people.

15 Q. Right. And with regard to that, that is an
16 aggregate number, true? I mean, it's not broken down
17 by subgroups, is it?

18 A. Subgroups, no.

19 Q. And, page 49 is the one you're talking
20 about?

21 A. That's correct.

22 Q. Okay. So in terms of this business of
23 student achievement and what inputs may affect
24 student achievement, can we also agree that there are
25 pretty good divergence of opinions out there on that

1 issue?

2 A. Could you ask that once more?

3 Q. Sure. Are there people out there, for
4 example, Bill Duncombe from Syracuse and others, a
5 fellow by the name of Greenwald that may have
6 differing views on that very topic?

7 A. On the topic of teacher quality?

8 Q. No. On the topic of inputs affecting
9 student achievement.

10 A. Lots of people have nuances of opinion.

11 Q. And we've seen this exhibit before in the
12 this courtroom. I don't know if you have or not, but
13 it is from Exhibit 199, and it's Bates number USD 443
14 001659. And I want to ask you about this. This is a
15 study of studies. And --

16 A. Could I say that I can't read a thing on
17 that chart, so if I'm supposed to respond to it, I
18 should look at it.

19 Q. Let me get you a copy of it.

20 MR. RUPE: It's 1659.

21 Q. Do you have it in front of you?

22 A. I do have this chart. I don't know where it
23 came from, though.

24 Q. I'll tell you this is from something called
25 the LPA study that you have not addressed in this

1 case, but let me just ask you about the study of the
2 studies they did and see if this is accurate.

3 And you see the column that says, input
4 analyzed and original published studies; and then the
5 next column talks about researchers' overall
6 conclusions regarding relationships found in those
7 published studies. And you see your name down the
8 column, Hanushek, Hanushek, Hanushek?

9 A. I see that.

10 Q. So they characterize you as having said that
11 increasing basic expenditures per pupil, that there's
12 no relationship. And I think that is what you said
13 in this courtroom, isn't it?

14 A. I said that there's no consistent
15 relationship.

16 Q. Okay.

17 A. Which is what I still believe.

18 Q. And they say that you say, when it comes to
19 smaller classes, there's no relationship. Is that
20 accurate?

21 A. Yes, it is.

22 Q. And then --

23 A. Precisely.

24 Q. When it talks about increased teacher
25 experience -- now, this isn't quality teacher, this

1 is increased teacher experience -- it says "no
2 relationship." Is that accurate?

3 A. That was accurate at the time. I've changed
4 my opinion on that.

5 Q. Have you? Increased teacher experience,
6 does that impact student performance?

7 A. The first year or two of it, increased
8 teacher experience does, and that's what shows up in
9 these larger estimates. After the first couple of
10 years, there's no difference, so that between a
11 5th-year teacher and 25th-year teacher, there's no
12 average difference in performance.

13 Q. Okay. And so we're on the same page, you're
14 not talking about kindergarten and 1st grade. You're
15 talking about the first or second year of the
16 teacher?

17 A. That's right. It was about teaching, of
18 teaching experience. So rookie teachers don't do as
19 well as they will after a couple of years of
20 experience. But after that, it didn't have any
21 impact on performance.

22 Q. And in terms of what we talked about here,
23 whether there are districts that are losing teachers
24 and having to rely on brand new teachers, did you
25 look at that in Kansas?

1 A. Not specifically. Every district loses
2 teachers.

3 Q. Do you know if some districts in Kansas lose
4 teachers at higher rates than other districts?

5 A. Typically, there's a slightly higher rate of
6 teacher loss from urban districts that have
7 concentrated poverty. It's not a doubling. It's a
8 larger increase.

9 Q. So we can agree that a large urban district
10 would lose teachers to -- I mean, it makes sense if
11 you stand in front of a room of 99 percent at-risk
12 kids versus a room of 1 percent at-risk kids, that
13 may be more attractive to some folks?

14 A. I've written on that very subject and so you
15 can find my article on it, yes.

16 Q. And we agree?

17 A. Yes, we do.

18 Q. All right. Then it characterizes you as --
19 higher scores for teachers on own college entrance
20 exam, no relationship. Is that an accurate
21 characterization to your belief?

22 A. Well, my normal statement is that that has
23 the strongest of any of the characteristics, but
24 still the majority of the studies do not find any
25 significant impact.

1 Q. So I'm not clear on what you just said. Do
2 you agree with that?

3 A. So, I never said it, in terms of
4 relationship, one or zero. I have always described
5 the answer and so I -- this is not my description of
6 this.

7 Q. And increased teacher salaries, no
8 relationship?

9 A. Well, that's true. I mean, again, where it
10 says, "no relationship," I have uniformly said that
11 there is not a systematic and consistent relationship
12 that a majority of the studies find statistically
13 insignificant results, which imply that we have no
14 confidence that there's any relationship. I have
15 never said that particular studies have not found it
16 or that in some cases more experienced teachers
17 aren't better than less.

18 Q. I understand. Then I think you testified
19 about this in New Jersey, but in terms of improved
20 facilities, there's no relationship to student
21 performance?

22 A. In New Jersey. I'm not sure when I would
23 have --

24 Q. I'm not going to dig out your deposition or
25 trial testimony in New Jersey. Take the New Jersey

1 out of it.

2 In terms of improved facilities, do you
3 believe that there is no relationship between
4 improved facilities and student performance?

5 A. The studies that are available here are very
6 few and they're not very good. But of those, they
7 suggested that there's no consistent impact on
8 achievement of facilities.

9 Q. And increased administration, no
10 relationship?

11 A. Again, the studies that were reviewed here,
12 which is -- this is now, I should say, 15 years old,
13 this comparison. The studies reviewed here suggest
14 that. I've recently done work to suggest that, in
15 fact, principals and administrators are
16 extraordinarily important in terms of achievements,
17 my own studies.

18 Q. So we can put an asterisk on that one, along
19 with the increased teacher experience, and those
20 would be areas where you think those inputs may have
21 a positive impact on student performance?

22 A. Specified in the way I did, yes.

23 Q. Okay. I started with this but I'll wrap up
24 with this, is there anything that you can give us as
25 part of your testimony on what the actual costs of

1 providing a suitable education in Kansas are?

2 A. I really don't know what a suitable
3 education -- how that's defined. That's a Kansas-
4 specific term. And I cannot tell you how you could
5 achieve any given level of achievement, because the
6 data do not support any such statement.

7 Q. And Bruce Baker and others disagree with
8 you, true?

9 A. I suspect he does. His report suggested
10 that he did.

11 MR. RUPE: All right. That's all I
12 have.

13 THE WITNESS: It's inaccurate.

14 MR. RUPE: That's all I have.

15 Thank you.

16 MS. TIBBETS: I don't have any
17 redirect. I ask the witness be excused.

18 EXAMINATION

19 BY THE PANEL:

20 JUDGE THEIS: You're dealing with
21 statistics in the aggregate, aren't you?

22 THE WITNESS: Well, it's at the
23 level of individual students on a lot of these
24 studies and looking at them --

25 JUDGE THEIS: Well, aggregate tests

1 and aggregate performance and ...

2 THE WITNESS: I think, Your Honor,
3 the information I gave here was of districts
4 aggregated to districts. The underlying research
5 that I spoke about and that's been most of my career
6 has actually looked at individual students of
7 different types, poor, rich, black, white, and tried
8 to look at how schools affect them.

9 JUDGE THEIS: You're not saying
10 that spending doesn't affect performance, per se,
11 you're saying why spending affects performance?

12 THE WITNESS: Your Honor, that's
13 correct. That was the statement that was left out of
14 my other testimony, which said, Dr. Hanushek agrees
15 that spending money wisely yields good results. And
16 the part that was left out is, that we've had a hard
17 time figuring out how to spend money wisely on a
18 consistent basis. Some districts do it, but many
19 others don't do it, and that's what we see in those
20 diagrams.

21 JUDGE THEIS: Is that an indictment
22 of a system that just throws money out in the
23 aggregate, you know, fixes a sum for a student and
24 then throws it out to somebody else to spend? Is
25 that a systemic problem?

1 THE WITNESS: It is rather systemic
2 in my view. We currently don't have very strong
3 incentives to make sure that those moneys that are
4 put out are spent wisely. And to me, the big change
5 that we need in our schools, Kansas and the nation,
6 is to improve the incentives so that the money is
7 spent wisely.

8 I think money might be more
9 important if we could ensure it was spent wisely.
10 But without changing the system, we can't, by all of
11 our evidence, predict that we'll improve student
12 performance.

13 JUDGE THEIS: If you had a system
14 where the one that decided what the money to be spent
15 didn't pay much attention to the costs and the
16 performance statistics, then it kind of violates your
17 principles of looking at empirical evidence?

18 THE WITNESS: It does, Your Honor.
19 Now, the witness before me made a very important
20 point that I have been making all along. And that is
21 we are starting to get to a point where Kansas and
22 all the states have the data to allow them to
23 evaluate how well money is being spent.

24 Kansas isn't there yet. It's a
25 little behind some of the other states in terms of

1 developing the data systems and the methodologies to
2 do that. But I think in the next few years, Kansas
3 will have the ability to, in fact, at the school
4 level, the classroom level, or the district level, or
5 the state level, to make some judgments about where
6 funds are being used wisely and where they aren't,
7 and then, to make some decisions on that; to stop
8 spending on bad things, and start spending more on
9 the things that matter.

10 JUDGE THEIS: Do you do any
11 hunting?

12 THE WITNESS: Pardon?

13 JUDGE THEIS: Do you do any
14 hunting?

15 THE WITNESS: Not very much.

16 JUDGE THEIS: You don't shoot quail
17 with a rifle, you agree with that, don't you?

18 THE WITNESS: Yes.

19 JUDGE THEIS: And you use a
20 shotgun, right? You would?

21 THE WITNESS: I'm sure I would.

22 JUDGE THEIS: And the reason for
23 that is because it's a bigger pattern and allows them
24 to catch something in the fire rather than with the
25 single bullet.

1 THE WITNESS: I understand that
2 principle.

3 JUDGE THEIS: So sometimes it's
4 better to shoot the shotgun, at least to get some
5 part of it rather than none.

6 THE WITNESS: Your Honor, I think
7 that's not the way I would look at it, if I may
8 disagree a little bit, because that's what we've done
9 for 40 years. We have shot a much larger shotgun,
10 four times as much spending, and we haven't hit very
11 much. We haven't hit any more than we hit with the
12 small gauge shotgun that we had in 1960, with the
13 large gauge that we have in 2009, 2010, 2012.

14 And that's the problem that I have,
15 that as a nation it is extraordinarily important for
16 us to improve our performance. And part of that
17 means, particularly in tough economic times, that we
18 make sure that our money is spent well.

19 JUDGE THEIS: But if we don't have
20 the sophistication to do it or the firearms to get
21 the quail, and you need to accomplish something,
22 you've got to keep shooting, right?

23 THE WITNESS: We've been shooting
24 for a long time, and I think that that's gotten us
25 into trouble. Because people say, well, instead of

1 figuring out how we can find those quail and get them
2 more into our sights, let's just keep shooting.

3 JUDGE THEIS: In this case, if you
4 don't shoot -- we're not shooting students, but if --

5 THE WITNESS: They're only a few in
6 my lifetime that I would like to shoot.

7 JUDGE THEIS: Students are
8 perishable. I mean, they're here one minute and
9 they're gone the next, and if you don't catch them
10 now, we're not going to be able to get them later, so
11 you better employ what you have, rather than let them
12 go on through without anything.

13 THE WITNESS: Your Honor, I
14 completely agree with that. And my problem is that
15 we knowingly harm some of these students. We
16 knowingly allow them to have classes with teachers
17 that are harming them by being completely
18 ineffectual.

19 And that is an indictment for all
20 of us, that we allow this to continue, and know that
21 these kids are going to be hurt and the nation is
22 going to be terribly hurt, because nationally, the
23 U.S. doesn't compete well with the other developed
24 countries in terms of performance.

25 JUDGE THEIS: But the risk of

1 reforming the system while the kids are still there
2 where you get none, sounds like a bad tradeoff.

3 THE WITNESS: Your Honor, these are
4 all individual choices to make. That's my opinion
5 after a long period of study.

6 JUDGE THEIS: Thank you.

7 Any questions based on mine?

8 MR. RUPE: No, Your Honor.

9 JUDGE THEIS: Ms. Tibbets?

10 MS. TIBBETS: No.

11 JUDGE THEIS: Thank you.

12 JUDGE FLEMING: Thank you.

13 (Witness excused.)

14 MS. TIBBETS: Do you want me to
15 call my next witness?

16 JUDGE THEIS: We're ready.

17 MS. TIBBETS: Okay. The defense
18 would call Michael Podgursky.

19 MICHAEL PODGURSKY

20 Called as a witness for the
21 Defendant, was duly sworn by the reporter and
22 testified under oath as follows:

23 DIRECT EXAMINATION

24 BY MS. TIBBETS:

25 Q. Dr. Podgursky, tell the court about where

1 you're employed and how long you've been employed
2 there.

3 A. I'm a Professor of Economics at the
4 University of Missouri in Columbia, and I've been
5 there since the fall of 2005 -- excuse me, 1995.
6 Sorry.

7 Q. Okay. Do you teach there?

8 A. Yes.

9 Q. And what do you teach?

10 A. Economics.

11 Q. Tell us about your academic background.

12 A. Well, I was actually an undergraduate at
13 University of Missouri. Got a Bachelor's Degree in
14 Economics. Then I went to the University of
15 Wisconsin and got a Ph.D., and that's about it, in
16 Economics.

17 Q. Tell us, in a concise way, what is it that
18 the field of economics does? What does an economist
19 do?

20 A. We study markets. We look at how people
21 make decisions in markets and how organizations --
22 the effect of incentives and how that induces firms,
23 people, and so on, to make decisions.

24 Q. Okay. And have you been using that kind of
25 economical analysis to aid in making decisions about

1 education?

2 A. Yes.

3 Q. Okay. I've got your CV here and I'm just
4 going to ask you about some professional associations
5 you belong to. You're a co-investigator for
6 C-A-L-D-E-R, Urban Institute in Washington, D.C.

7 What is that?

8 A. That's the Center for the Analysis of
9 Longitudinal Data and Education Research. So it's a
10 group of researchers in different states -- in North
11 Carolina, Florida, Illinois, couple of other
12 states -- who use the student-level data to -- on
13 growth in student achievement where you follow kids,
14 that's what we mean by longitudinal data. We follow
15 kids or we follow teachers to analyze the effects of
16 different policies.

17 Q. How is it that you were selected to be a
18 co-investigator for that study?

19 A. It was a -- you heard about this earlier, so
20 that's the center that's funded by the Institute on
21 Education Sciences of the U.S. Department of
22 Education. There's a national competition. Other
23 research groups competed to win these contracts, and
24 CALDER had won a five-year competition and then
25 recently was re-funded for another five years.

1 Q. And did you say you track individual student
2 data?

3 A. Yes.

4 Q. And data on teachers, as well?

5 A. Teachers, principals.

6 Q. Okay.

7 A. Using these state data systems that you all
8 have developed in Kansas, and Missouri has developed,
9 and other states.

10 Q. Kansas has a data system that would track
11 individual students?

12 A. Yes.

13 Q. And is it in use now?

14 A. Yes.

15 Q. We talked a little bit about inputs and
16 outputs. Can you briefly explain to me how you, as
17 an economist, would define inputs?

18 A. Well, in general inputs would be, you know,
19 if I were studying ball bearings, it would be steel
20 and labor inputs and so on. In the context of
21 education, what people mean is teachers, class size,
22 curriculum, facilities, things like that.

23 Q. And when we talk about outputs, what do you
24 mean by outputs?

25 A. Again, in the -- I might as well stick with

1 K-12, right. So typically, people look at test
2 scores or graduation rates, matriculation rates to
3 college. And if you've got long enough longitudinal
4 data, you can actually look at labor market earnings,
5 the effect of school inputs on labor market earnings,
6 downstream.

7 Q. Outside of the education world, how is it
8 that you could analyze what kind of inputs you would
9 need to reach a certain output?

10 A. Collect data. And economists and engineers
11 do this. I mean, they do cost studies or production
12 function studies to establish -- you know, if I want
13 to produce more kilowatt hours of electricity, in the
14 short run, it'll cost this much, in the long run
15 it'll cost this much, based on existing capacity or
16 adding new capacity. So that's just kind of
17 routinely done in other sectors of the economy.

18 Q. What about for education, can you do that
19 for education?

20 A. Not very well. And I might as well just
21 say, here, I don't -- based on my own research and
22 reading professionally, I don't think you can say
23 with any reliability that if I spend this much money
24 I'll get this outcome, or if I want this outcome, I
25 need to spend this much money.

1 Q. And why not?

2 A. Because there's -- we can't find data that
3 will provide a foundation for those conclusions in a
4 way you can in other sectors. So you can estimate
5 cost functions for telecommunications or electric
6 power generation that will be statistically
7 reliable. It's very difficult to find that
8 statistical foundation in K-12.

9 Q. What kind of data is missing that would
10 allow us to do that?

11 A. Well, for one thing we haven't been using
12 the longitudinal data except in limited cases. It
13 hasn't been available in most states in most
14 districts.

15 Q. By longitudinal data, you're talking about
16 where we can track one student or one teacher?

17 A. Student achievement growth, yes. And by the
18 way, let me just, on that point, note that to really
19 figure out in K-12 this relationship between inputs
20 and is outputs, you really need to be testing the
21 kids every year. Now, that's only a fairly new
22 phenomenon. Both in Missouri and in Kansas, we only
23 started doing that in 2006.

24 Q. Only started testing on a yearly basis?

25 A. On a yearly basis. Prior to that, in both

1 of our states, kids were tested -- I think in math,
2 you tested them here in Kansas at five, eight and
3 11. And Missouri was something like that.

4 So the problem is if you're only testing the
5 kids every few years, it's hard to link inputs to
6 outputs because they've had different teachers,
7 different curricula. They may have gone from one
8 school to another. So it's hard to pin down a
9 relationship between a particular set of treatments
10 or inputs and the outcome.

11 When you go over to annual testing, then you
12 can more closely tie it; well, what happened this
13 year, and how much growth occurred in this year.

14 Q. What happened in 2006 that led to states to
15 start adopting annual testing?

16 A. It's my understanding that was required
17 under No Child Left Behind.

18 Q. And what is done with the data that's
19 produced by the annual testing?

20 A. Well, that's the first step, you need to
21 start testing the kids annually. And when we say
22 that, actually No Child Left Behind requires three
23 through eight, and then there'll be the high school
24 assessment. Some states push it a little wider.

25 But then you need to be able to establish a

1 student ID, universal student ID, that let's you
2 track the kids. Missouri and Kansas both went --
3 actually went to the same vendor to develop such an
4 ID. And then, you know, get the districts to start
5 using it and incorporating it into their data systems
6 so that you can then start tracking the kids from
7 place to place and through, you know, through the
8 grades and watch changes in their achievement.

9 And so this was -- and particularly for
10 states like Missouri and Kansas that have a lot of
11 school districts, we have 521, you have
12 780-something, and a lot of small ones. You had to
13 re-structure their data systems to get them on board,
14 and it's taken some time.

15 And both of our states got federal grants to
16 put that kind of data system in place. And so
17 they're learning and they're figuring out how to do
18 this, refine the data and how to make use of it.

19 Q. How is it that the state will be able to
20 make use of this individual data to be able to
21 scientifically figure out what costs or what inputs
22 will reach what outputs?

23 A. Well, in my opinion, it's a huge step
24 forward for the states because what you -- the other,
25 kind of, No Child Left Behind sort of view just sort

1 of looks at snapshots of kids; you know, little Suzy
2 is proficient this year or she's not.

3 She's proficient or not in 8th grade, or she
4 gets some score in 8th grade, let's say in math, but
5 that's the result of accumulation of inputs over many
6 years. You know, maybe she got a good score in 8th
7 grade because she had a good teacher in 5th grade or
8 a good curriculum in 5th grade, or she did badly in
9 8th grade because she had a bad curriculum in 7th
10 grade. So by just looking at that snapshot, you
11 can't very well establish, at the kid level or any
12 other level of aggregation, what inputs are actually
13 at work.

14 If you go down to the kid level and track
15 that growth, then you can look at the contemporaneous
16 things that are going on and -- and this is a big
17 one -- you can come up with a control group. So see,
18 like, school districts, some of the more cutting-edge
19 school districts -- there's a few in both our
20 states -- were doing some of this before you had
21 these statewide systems -- but basically, they can
22 only look at what they're doing.

23 So if, you know, a particular school
24 district uses a curriculum, say a math curriculum,
25 and they see their test scores go up, well, they

1 might have gone up anyhow with or without the new
2 curriculum. So what you need is a comparison group
3 because, for example, in your state and our state,
4 the scores are rising, generally, over time.

5 So what you want to be able to do is come up
6 with the comparison group that, you know, uses
7 different curriculum and sort of set up a horse race
8 and see -- and you can match it the kid level. I
9 mean, you could -- if I had 100 kids exposed to this
10 curriculum in a particular school district, you could
11 actually go out and find 100 kids statewide who
12 matched every one of those treatment kids, in terms
13 of baseline test scores and demographics and so on,
14 and see how what you're doing, you know, your
15 performance, stacks up against, you know, an apples-
16 to-apples comparison group.

17 And that's what's really been lacking in
18 K-12, is people are looking at what they're doing,
19 but they don't have got external benchmarks, or I
20 would say, a control group to see what's working and
21 what isn't.

22 Q. And so you're saying that through this data
23 that they'll be able to compare the results from say,
24 either teacher or curriculum or program with other
25 similar students and see which yields the best

1 results?

2 A. Yes.

3 Q. Haven't they been able to do that sort of
4 informally through conversations or conferences or
5 something like that before now?

6 A. Well, in my experience, you talk to people
7 and they have a lot of opinions about what works and
8 what doesn't, but it was not grounded in evidence.
9 And I think that very often we find that what people
10 think is working often isn't working when you look at
11 it in a more rigorous way.

12 Q. For example, the teacher/pupil ratio?

13 A. The student/teacher ratio. Some of these
14 studies on induction for young teachers -- you've
15 heard earlier about some of these randomized studies
16 that the federal government supported. And in many
17 of those cases, they went out and implemented some of
18 these reforms that proponents had said were convinced
19 would work. Oh, we just need good teacher
20 professional induction, and that'll lower teacher
21 turnover and raise student achievement.

22 Well, the feds spent -- they, you know, put
23 in place a very expensive, randomized control trial,
24 where you had a treatment group, control group,
25 random assignment, implemented the best that

1 proponents could lay out in terms of this new teacher
2 induction, and it didn't have an effect on either
3 teacher retention or on student achievement.

4 Q. So these studies that you're talking about
5 where they can take the data and compare like groups,
6 and that they've been doing nationally, are you
7 saying we're going to be able to do those in Kansas?

8 A. Yes.

9 Q. And in what time frame?

10 A. Soon. Well, you know, you've got this
11 student -- the annual testing's been in place.
12 You've got longitudinal data now. You've got a
13 statewide student ID. What's a challenge in both of
14 our states is drilling down to the classroom and
15 carefully linking teachers to students.

16 The current data -- essentially, what you
17 have to do is attach a teacher to a kid and in a
18 consistent way. And, you know, with pull-out
19 classes -- and let me expand on that.

20 You need to assign credit, say, for little
21 Suzy in math in 4th grade. So maybe that's a self-
22 contained classroom, maybe it's a pull-out class,
23 maybe there's team teaching. So maybe the regular
24 classroom teacher doesn't do the math, maybe another
25 teacher does. Maybe they have team teaching.

1 So these are things that'll get fixed. But
2 it's a new frontier for the data systems, and a lot
3 of states are moving ahead on this. And you are, and
4 we are in Missouri, and I think it holds enormous
5 promise for figuring out what works and what
6 doesn't.

7 Q. And then, when states figure it out what
8 works and what doesn't, what should that do to the
9 efficiency of delivering academic achievement?

10 A. Well, then what you -- you know, in the
11 business world they call this continuous quality
12 improvement. You know, our data-driven decision
13 making, you try to move resources away from things
14 that aren't working to things that are working.

15 Q. How are they doing that now? Anecdotally?

16 A. Well, yeah. I think a lot of it is
17 anecdotal. I mean, and people attempt to rely on
18 whatever research is available. But, for example, I
19 mean, if you're picking a new curriculum, you'll have
20 a bunch of vendors that say, hey, my curriculum
21 works; mine is research-based and it works, you
22 know. It turns out, when you set up the studies,
23 often that you don't find that it works when you
24 implement it. So there's a lot of noise out there in
25 terms of what works and what doesn't, and this will

1 give them data on what works in their context.

2 And by the way, I mean, that curriculum
3 might well work in this context where it's been
4 applied but, you know, in a rural school or
5 something, maybe it doesn't work as well. So some of
6 these things might work better in some context than
7 others.

8 Q. You presented a report in this case, and I
9 think it is Exhibit 1170, and I want to talk to you a
10 little bit about your conclusions there. But first I
11 want to show what is Slide 6. Sadly, it's a little
12 difficult to read.

13 But Slide 6 says, "90 percent confidence
14 intervals for U.S. and Kansas, 2011 NAEP scores by
15 grade, group, and subject." And then you have shaded
16 some particular numbers.

17 Let's start. We have some numbers here.
18 First one I'll read is 219 to 221. What do the
19 numbers in this chart represent?

20 A. Okay. So one of the questions that -- I
21 sort of had a menu of things that I could look at.
22 And one issue that came up was, well, how does Kansas
23 stack up vis-a-vis other states in the nation? And
24 you've heard, you know, the standard yardstick for
25 comparing one state to another is NAEP, the National

1 Assessment of Education Progress, N-A-E-P. And
2 because you can't -- currently, you basically can't
3 compare state assessments to one another, so this is
4 focused on NAEP data.

5 So the question is how Kansas stacks up
6 vis-a-vis the nation. And then I also looked at
7 surrounding states, as well -- or the states that
8 touch Kansas. And so what I looked at here was
9 overall -- so the reading and math scores, so that's
10 the two big columns there, and the most recent --
11 that's 2011 data. It doesn't say that. And then I
12 have the U.S. and Kansas.

13 Now, again, you heard something about this,
14 but NAEP is based on what we call a stratified random
15 sample. It is based on a sample. It's not all kids
16 in Kansas or all kids in Missouri are tested, but
17 it's a random sample of kids; actually, schools, and
18 then kids within the schools.

19 So you have what we call sampling error.
20 It's just, if I did the sample again, I'd get a
21 little bit different number. If I did the sample
22 again, I'd get a little bit different number. So
23 that's the idea. If I reach back into the urn, drew
24 out a group of kids, I get a little different number
25 each time, and that's what we call a standard error.

1 And this is a confidence interval, a 90
2 percent confidence interval around the U.S. score and
3 the Kansas score. And you have to worry -- the U.S.
4 score is a narrow band because it's based on a lot of
5 kids. Kansas is a little wider band because it's
6 based on fewer kids. And then we're looking --

7 Q. What are these bands of?

8 A. I'm sorry.

9 Q. Why do you have this band? This 219 to 229,
10 223 to --

11 A. Yeah. So that's if you think about like
12 national polls, you would think of this band as
13 here's the average -- and this is based on the
14 average plus or minus, it's 1.96 standard deviation.
15 So it's a 90 percent confidence interval around -- so
16 what it's telling you is if I did the procedure over
17 and over again, 90 percent of the time that band
18 would include the true value. That's what that
19 means.

20 And when you start looking at subgroups --
21 like in Kansas, you've got all Kansas kids, and then
22 you've got free and reduced price lunch eligible, and
23 then you've got black and then you've got Hispanic --
24 the bands get a little bigger. And so what we -- so
25 let me give you the point here, or why I'm doing it

1 or you want to ...

2 Q. I guess I want to ask you what these scores
3 represent? I mean, to those of us who are not
4 familiar with NAEP or with your methodology, what is
5 it that a score of 219 to 221, or 206 to 207 -- what
6 does that represent?

7 A. Okay. Actually, that's good. So as I tell
8 my students, there are no natural units for test
9 scores. It's not like money. We can measure things
10 in dollars or Euros or something. There are no
11 natural units for test scores.

12 So these are called scale scores and the
13 NAEP -- I don't remember what the mean and the range
14 is. But this is the mean scale score on NAEP, and
15 then for Kansas, and for the U.S. And so what we're
16 testing here is whether the average for Kansas is
17 above the U.S. as a whole.

18 Q. So you would take all of the students, and
19 you're going to try to figure out what their average
20 score is?

21 A. That's correct. And I think that's better
22 than doing percent proficient for -- a way I could
23 explain to you, in a flip chart, if you want, but we
24 can do it later. But the point is you're looking at
25 all the kids. So if you just look at percent

1 proficient, if you have a --

2 Q. Would you like a flip chart?

3 A. Yeah.

4 Q. I just happen to have one.

5 A. I realize it's kind of a cluttered
6 environment here.

7 So you can get NAEP data that's percent
8 proficient or percent below basic or something like
9 that, but this particular one, I prefer the average
10 scale score. And I think it's just useful to kind of
11 draw this up here and keep it in our mind, the old
12 bell curve here.

13 So basically, all of these test scores
14 follow a normal distribution of bell-shaped
15 distribution. And with these state tests and with
16 NAEP, often they report the result and they'll say --
17 they have a cut score. So this is a percent of the
18 kids here and this is your score, right?

19 Q. Mm-hmm.

20 A. And often, we report these things, and we
21 say, okay, at cut score, so the cut score might be --
22 I'll just make up a number here, 370. And, you know,
23 if you're above 370, you're proficient. If you're
24 below 370, you're not proficient. So that's how a
25 lot of these state assessments in NAEP get reported.

1 Now, from a statistical point of view,
2 that's fine. But the problem with that is, if you're
3 trying to look at something like improvement -- see,
4 suppose we take a kid here and this kid, you know,
5 improves from here to here; and then we take a kid
6 and this kid improves from here to here; and then we
7 take another high achieving kid who improves from
8 here to here; well, the problem with just looking at
9 percent proficient is, see the average -- if you take
10 the average, it picks up all of these; this would
11 raise the average, this improvement would raise the
12 average, this improvement would raise the average,
13 and that improvement would raise the average.

14 But if you just look at percent proficient,
15 only this would count. Only if you cross that line
16 does your percent proficient go up. These other
17 things won't add. You know, kids are learning. I
18 mean, learning is learning, right? This kid knows
19 more and this kid knows more, but they don't count.
20 Only the kid who crosses that threshold counts. And
21 that's why a lot of us are not so crazy about the
22 percent proficient business and prefer to look at an
23 average, and that's what I did here.

24 Sorry about the distraction.

25 Q. That's okay. So tell us what you found in

1 your chart as to how Kansas average scores stack up
2 with the nation's scores.

3 A. Okay. So because NAEP is based on a sample
4 and because there's sampling error, and we're looking
5 at these subgroups, what I wanted to do is -- because
6 you're going to see a bunch of charts that I did in
7 the report. But this one, I just wanted to say,
8 okay, what is the difference between Kansas and the
9 U.S. statistically significant? And the way you
10 would establish that is, if the lower bound of the
11 Kansas score is above the upper bound of the U.S.
12 score.

13 Q. So right here, if 22 is above 21, that's
14 what you're looking for?

15 A. Yeah, that's right. And I actually can't
16 see. It's blacked out. Is that 222?

17 Q. Yes.

18 A. Yeah. So Kansas, the lower bound was 222 on
19 a competency interval Kansas, the upper bound for the
20 U.S. at 221. So we can conclude that Kansas was
21 significantly above the U.S. average, overall, in 4th
22 grade reading. And then the next one -- and the poor
23 kids were significantly above the U.S. average on
24 NAEP for 4th grade reading, and so on.

25 So if you look, the overall conclusion is,

1 in no case is Kansas, overall or for any of these
2 subgroups, significantly below the U.S. average. And
3 in four of eight cases there, you guys, Kansas, are
4 above the U.S. average in reading and in math. It's
5 seven of eight cases you're significantly above the
6 U.S. average. So, you know, my commissioner would
7 love to have that record in Missouri.

8 Q. And why is it that the good scores in math
9 in the 8th grade -- or I'm sorry, the good scores in
10 reading in the 8th grade are more impressive to you
11 than the good scores in reading in the 4th grade?

12 A. Well, couple of points here. Yeah, the 4th
13 grade reading, if you look at that, reading is
14 something kids -- a lot of kids, particularly higher
15 SES kids pick up at home.

16 Q. SES meaning?

17 A. Social economic status.

18 Q. Thank you.

19 A. So if the parents are more educated, the
20 kids are picking up a lot of those skills at home.
21 And so, if you look at that at 4th grade, you're
22 really picking up a lot more of what the kids have at
23 home than what they got at school. Now, math, you
24 learn relatively more of your math at school or doing
25 your homework. But families provide a lot of input

1 on reading.

2 By the time you get to 8th grade, the
3 contribution of the school has become greater. And
4 if I could just say a note on this, when you look at
5 studies, you know, these kids -- kids come into
6 the -- now that we're testing these kids, 3 through
7 8, you see the kids come into the system with, like,
8 huge gaps. When you first test them in 3rd grade,
9 they're, like, very large gaps, you know, by
10 demographic groups and so on.

11 And there's been some studies in other
12 states -- and you'll be able to do them now in Kansas
13 and Missouri as well -- is that these things tend to
14 narrow during the school year, but then during the
15 summer they widen again.

16 So, you know, it's a real -- all the kids
17 are growing. They're learning more because you can
18 see those scores at 8th grade are higher than in 4th
19 grade, but, you know, it's hard to narrow these gaps
20 when they're getting resources from home and in the
21 summer. So you see this narrowing that occurs during
22 the school year but then you get into this, what they
23 call the summer melt; it will kind of widen in the
24 summer.

25 Q. Okay. We already talked with Dr. Hanushek

1 about several of the groups, but you did some
2 analysis about how Kansas was performing in the
3 subgroups. So here we have 4th grade -- whoops. We
4 have 4th grade, you have FRL, that's free and reduced
5 lunch?

6 A. Yes.

7 Q. And so that would be a subgroup and can you
8 tell us -- first off, I want to point out that, on
9 your chart, the highest is on the right-hand side?

10 A. Right-hand side, that is correct.

11 Q. It's the opposite of Dr. Hanushek's charts.
12 So what does this chart show?

13 A. Well, what I did with every one of the
14 groups is, you know, plotted all the states and then
15 plotted the U.S. average in Kansas. So Kansas is the
16 red bar over to the right.

17 Q. Right here?

18 A. Yeah. And then I put in all the surrounding
19 states that touch Kansas, so that's Colorado,
20 Missouri, Nebraska, and Oklahoma, because that's
21 often -- you know, everything's relative. So, you
22 know, you want to compare yourself to the U.S., but
23 then there's a tendency to look at the region, as
24 well.

25 Q. Okay.

1 A. So I put both of those in there.

2 Q. This is obvious, but how did the Kansas kids
3 who are on free and reduced lunch stack up on 4th
4 grade math results?

5 A. They're well above the U.S. average and
6 above the other states.

7 Q. Okay. What about the subgroups though,
8 because we've talked a lot, a lot about subgroups in
9 this trial. How are the 4th grade black students in
10 Kansas doing when you compare them to national?

11 A. Yeah. So that's black students. Well, you
12 can see the black bar, which I can't see. It's there
13 somewhere.

14 Q. The Kansas bar?

15 A. There's the U.S. average over there.

16 Q. This is the U.S. average?

17 A. Yeah. And then there's the black students
18 in Kansas over to the right.

19 Q. Right here?

20 A. Yeah. Now, at this point, as a useful
21 proviso, I noticed in a couple of the charts, I
22 inadvertently lopped off the very highest or lowest.
23 We'll fix that and I'll get that back to you.

24 Q. Which states were they, because we might not
25 care if you lopped them off.

1 A. Well, Massachusetts is the highest on a
2 couple of these. And somehow, when it got taken to
3 Excel and put into these documents, it got lopped
4 off, and I apologize.

5 Q. But it's fair in this to say that Kansas is
6 ahead of all of its neighbors and well ahead of
7 its --

8 A. Right, the general pattern is there that
9 doesn't affect it.

10 Q. How about Hispanic students? We've talked a
11 whole lot about Hispanic students here in Kansas in
12 this trial. How did the Hispanic students perform on
13 the national test?

14 A. Well, you saw in the earlier table that they
15 were significantly above on the math assessment; and
16 I can't remember if it was significant or not, but
17 they're point -- they're above the U.S. average,
18 above the surrounding states, as well. And that's
19 your biggest minority group. In Missouri, it's
20 reversed for African Americans versus Hispanic.

21 Q. We have 8th grade math, pattern still
22 holds. Colorado maybe slipped ahead.

23 A. Yeah, Colorado is ahead there.

24 Q. But still ahead of everybody else in the
25 national average. 9th grade Hispanic students, how

1 do we look there?

2 A. Yes, you're very high compared to other
3 states in the U.S.

4 Q. Okay. Let's talk about reading. 4th grade
5 reading, in that subgroup, how does Kansas compare?

6 A. Kansas is the -- that's overall. Oh, that's
7 black students.

8 Q. Black students.

9 A. So they're a little below the U.S. average
10 at 4th grade.

11 Q. Hispanic students --

12 A. And again, now, when I say, a little below,
13 that's why I had the other chart. That may not be --
14 that's not a statistically significant difference.
15 So the point estimate is a little lower, but you saw
16 in that earlier chart, it's not statistically
17 significant.

18 Q. Okay. How do Kansas 4th graders in reading
19 rank for Hispanic students?

20 A. You can see they're above the average. The
21 point estimate is above the average.

22 Q. And all of our surrounding states, as well?

23 A. Yes, as well.

24 Q. Let's do 8th grade reading for Hispanic
25 students.

1 A. Yeah. You can see that they're above the
2 average and sort of in between there with the
3 surrounding states. And Missouri -- by the way,
4 Missouri has very few Hispanic students, so it's a
5 very small sample in Missouri.

6 Q. Okay. And why did you compare Kansas to the
7 neighboring states when you made your charts?

8 A. Because that's what people look at. You
9 know, there's a tendency -- well, I mean, in a sense
10 you look more like Colorado and Missouri than you
11 look like Rhode Island or Florida.

12 Q. You being the State of Kansas?

13 A. Yeah, Kansas. So, you know, I think there's
14 that sense that you -- where both states, say
15 Missouri and Kansas, that have lots of school
16 districts, lots of them are rural, demographics are
17 broadly similar, so that's why I think people like to
18 see regional comparisons as well the whole U.S.

19 Q. Let's look at some of those regional
20 comparisons. We talked about expenditures per
21 student.

22 A. Well -- I'm sorry. Go ahead.

23 Q. No, that's fine. Go ahead.

24 A. Well, this is from a different data source.
25 So the other charts were from the Nation's Report

1 Card, NAEP. Now, these are data from the U.S.
2 Department of Education, and it's called the common
3 core of data.

4 So every State Department of Education
5 reports spending current spending per student, so
6 they report it in a consistent way. So the
7 Department of Ed gives them a set of rules for
8 reporting, and they report their spending data up to
9 the U.S. Department of Ed, and the U.S. Department of
10 Ed publishes that.

11 Now, this came up in the last round. The
12 U.S. Department of Ed is slow, and it takes them a
13 while -- so this is the most recent data. So they're
14 always a few years behind, because there's -- they're
15 very careful and, you know, you can only put this out
16 when the last state gets their numbers in.

17 Q. Sure.

18 A. So that's the most recent data on current
19 expenditure per student for all the states; actually,
20 for the territories, as well.

21 Q. So it looks like Kansas is a little below
22 the U.S. average, but above most of neighboring
23 states, is that right?

24 A. Yeah, I guess that's -- who's that over
25 there? That's Nebraska? Yeah.

1 So you're a little below the U.S. average
2 and above three of the four neighbors.

3 Q. So -- well, in this -- let me go back. In
4 this 2008/2009 year, would the numbers that have been
5 provided by the U.S. government there, would those
6 reflect expenditures after the recession began?

7 A. A little. I think by that point, you were
8 just hitting, you know, you were -- it was coming on
9 and revenues were falling.

10 Q. Then you made a chart where you said the
11 real current expenditures per student, and can you
12 explain what information is contained here?

13 A. Well, so the previous chart is just
14 dollars. So there's a sense that a dollar buys more
15 in Kansas than it buys in New York City or Rhode
16 Island, but that's kind of hard to measure. And, in
17 fact, there's no -- the U.S. government -- well, the
18 people that -- the people in the U.S. Department of
19 Labor who measure the current Consumer Price Index
20 and measure inflation and so on, they actually don't
21 have what we call a cross section measure of cost to
22 say, basically, it costs this much more to live in
23 Wyoming versus New Jersey.

24 Because that's a problem. I mean,
25 there's -- and I won't go into it unless someone

1 wants to talk about that, but they don't -- it's a
2 hard thing to measure.

3 Q. Okay.

4 A. Now, what the labor -- excuse me, the
5 Department of Education produced an experimental
6 index called the current -- CWI -- I think it's
7 Current Wage Index, something like that. But it's
8 wage index, and the idea is this: It's meant to
9 measure at least part of the cost of running a K-12
10 school across states.

11 Q. Okay.

12 A. And what that is, is the measure of
13 non-teacher earnings. And the idea being that if,
14 you know, accountants and nurses and real estate
15 agents make more money, college-educated people make
16 more money, then it will cost you more to hire
17 teachers. And so that's what embedded in this index.

18 Q. Why did you --

19 A. It doesn't look at the cost of light bulbs
20 or electricity or gasoline. It's just looking at
21 human resources, or at least professional human
22 resources.

23 Q. What's useful in this chart to your
24 analysis?

25 A. Well, so using that which is available --

1 and Dr. Baker used this and some others have used
2 it -- you know, it makes Kansas and all the
3 surrounding states, Missouri, it moves us up, because
4 all our wages are lower, including teacher wages, but
5 including, you know, accounting wages and lawyers'
6 earnings and so on.

7 So Kansas moves up in the ranking based on
8 this CWI index from, you know, the middle to a little
9 above the middle.

10 Q. Okay. And it reflects more of what you get
11 for your money, is that a fair characterization --

12 A. Well, it's the idea of, in real dollars,
13 your capacity to buy people, basically. You look a
14 little more competitive by that measure.

15 Q. Okay. Let's talk about teacher salaries.
16 One of the things that you looked at in your report
17 was where Kansas ranks as teacher salaries against
18 its neighbors and against the U.S. average. And
19 looking at this chart, since it reads low to high, it
20 looks like Kansas teachers are paid less than the
21 average, and maybe more than the surrounding -- most
22 of the surrounding states, is that accurate?

23 A. Yes. And so this, on the face of it, seems
24 to be a bit of an anomaly, because you're sort of in
25 the middle in terms of spending per student, but

1 teacher salaries are relatively low.

2 The similar phenomenon occurs in Missouri.
3 We're a little below the middle, a little below you
4 on spending per student, but even further below you
5 on teacher salaries. And the explanation for that
6 will be in the next slide, I'm sure.

7 Q. All right.

8 A. And that's -- so what I looked at is why,
9 why did that happen.

10 Q. Sure.

11 A. And the answer is that your -- both of our
12 states have relatively low student/teacher ratio.

13 Q. What does that mean, student/teacher ratio?

14 A. It means you take the total number of
15 students in the state, public school students and
16 divide by the total number of public school teachers,
17 and that's the student/teacher ratio.

18 So both Kansas -- there's Kansas -- is, you
19 know, well below the U.S. average, so ...

20 Q. So Kansas teacher -- there are fewer
21 students for each Kansas teacher in Kansas?

22 A. That's correct. I mean, here -- the way I
23 meant to say it in the report, and the way I like to
24 describe it is, you know, both of our states, and
25 nationally, we provide more real dollars per

1 districts over time to spend on students.

2 So suppose I increase the budget for a
3 school by 5 percent. Well, then the school can hold
4 staffing ratios constant and raise pay by 5 percent.
5 Or they can hold pay constant and lower staffing
6 ratios by 5 percent, lower the student/teacher ratio,
7 or any combination of the two that adds up to
8 5 percent.

9 And so Kansas has put a little more of its
10 resources, over time, in having low student/teacher
11 ratio, and so has Missouri, relative to the U.S.
12 average.

13 Q. And so is that why Kansas and Missouri's
14 positions on these two charts -- you can at least see
15 Kansas -- they're both on the low end, low
16 student/teacher ratio to lower salaries?

17 A. Yes. And so in the report, I note that if
18 Kansas moved from its current student/teacher ratio,
19 which I think it's like 13-point-something. I
20 can't --

21 Q. Right. Just a little over 13.

22 A. Yeah, 13.3, I think -- up to the U.S.
23 average, you could raise pay across the board by 17
24 percent. And if you did that, then suddenly, your
25 pay -- you would be well above the U.S. average in

1 terms of average teacher pay. So it's a tradeoff
2 you've made, and it explains the different between
3 spending per student and teacher salaries.

4 Q. Well, let's talk about, kind of, the trend
5 there, because there's a trend that you've documented
6 both nationally and in Kansas. And this has --

7 A. So the upper line is the U.S.
8 student/teacher ratio. So you can see that it's --
9 and I just went back to 2000 there. And again, this
10 is the most recent data. Again, this is from the
11 U.S. Department of Education.

12 Q. Okay.

13 A. And the average for the U.S. fell from
14 little over 16 to about 15.4, I think, by the end of
15 that period.

16 Q. So approximately a unit of one?

17 A. Yeah, about one kid per teacher.

18 Q. What about the Kansas --

19 A. So, the units are clear. It's not like test
20 scores. There's natural units here, kids.

21 And here, you guys are a couple of students
22 below the U.S. average, and then you've fallen over
23 time.

24 Q. How much is the fall? Is that, say, 14 and
25 a half --

1 A. Yeah, down to about 13. So that's about one
2 and a half kids per teacher. And again, just since
3 2000. So your districts have -- I mean, essentially,
4 you've invested in -- and as I show in the report,
5 it's not just smaller class sizes. You do have
6 smaller class sizes, but this also means more prep
7 time. You know, it could be spent that way.

8 Anything that has a teacher out of the
9 class, more pull-out classes, more prep time,
10 whatever, but you've just -- you've invested in more
11 teachers per -- and, you know, maybe more course
12 offerings, too.

13 Q. If we look here when the Montoy money was
14 paid, and it was, kind of, '05/'06 through 2008, that
15 would be the time during which -- I mean, is there
16 correlation between the decline --

17 A. Well, it looks like you spent some of it on
18 adding more teachers to the payroll, which again, is
19 what -- I mean, basically, when you give school
20 districts more money, they raise teacher pay and they
21 hire more teachers. I mean, that's sort of the first
22 action.

23 Q. You said, they raise teacher pay and they
24 hire more teachers. They do -- with the same amount
25 of money they do one or the other --

1 A. They do both.

2 Q. They do both?

3 A. They do both. I mean, they tend to spend
4 some on raising -- not just teachers. It's staff,
5 and then adding more staff in ways they think are --
6 undoubtedly they think are useful, more pull-out
7 classes or whatever.

8 In Columbia we had -- we were paying
9 teachers to teach other teachers at one point. So
10 there was a math curriculum that none of the teachers
11 could figure out. So we were paying teachers to
12 teach teachers instead of teaching kids at one
13 point. And that costs money and adds staff to the
14 payroll.

15 Q. We've talked -- you were here when I was
16 talking to Dr. Hanushek about professional judgment
17 study and about successful school studies and in
18 terms of costing studies. There's also a way of
19 costing studies that's called the cost function
20 studies.

21 And as I understand it, an evaluator sets a
22 goal and then estimates it, what it will cost to get
23 to that goal. Can you give me an example of a
24 situation outside of education where a cost function
25 study would be appropriate?

1 A. Sure. If you were running, you know, a
2 fabrication facility for computer memory chips and
3 you wanted to ramp up production by 20 percent, then
4 undoubtedly, one of your engineers would be able to
5 tell you what that would cost in terms of, here's my
6 total cost at this level of production. If I ramp it
7 up by 20 percent, here's how much cost will go up.

8 This is quite routine in manufacturing and
9 other sectors of the economy.

10 Q. Does it translate into education?

11 A. Well, as I said earlier, I don't believe
12 it's possible if you measure outcomes by student
13 achievement. Yeah -- and by the way, if you measure
14 outcomes by seat time, sure, you can --

15 Q. What do you mean by that?

16 A. Well, or just how many, you know, contact
17 hours or something like that, how many -- how many
18 kids were exposed to -- if I want to double the
19 number of kids exposed to algebra, I can cost that
20 out fairly direct: I need this many more classrooms,
21 this many more teachers.

22 But in the context of this case, the cost
23 functions are meant to be not contact hours or seat
24 time or something like that, but actual student
25 achievement. And in my opinion, we just don't have a

1 reliable body of research that can say, if want you
2 want this level of student achievement, it will cost
3 you this much.

4 Q. Did you create some charts, too?

5 A. Yes. If I may -- so you want me to answer?

6 Q. Yeah, sure.

7 A. Okay. So before I describe those dots, let
8 me just say that I asked the State Department of
9 Education for student level data. In my opinion,
10 instead of looking at dots that are school districts,
11 we should be looking at data at the kid level --

12 Q. Okay.

13 A. -- in looking at district spending and
14 student level achievement, where we can plot all
15 kinds of students. And if all of us arguing about
16 this had access to the student -- de-identified
17 student data, then we could look at Hispanic females
18 in big districts and spending per student. And we
19 could cut it any way we wanted and look at the
20 dispersion of achievement within these districts.

21 And let me emphasize, that within each of
22 those dots -- I can tell you in Missouri we have 520
23 school districts -- 21 -- about 85 percent of the
24 student achievement, the variation in student
25 achievement, as measured by our state assessment, is

1 within the districts rather than between the
2 districts. And what that means is, if you were
3 looking at those levels of spending, you would see a
4 dispersion around that.

5 So you're just looking at the median in
6 those dots, but you, in fact -- I'm sure if we had
7 the data -- although, I'm nearly -- it's conjecture,
8 but it's true in Missouri, that you'd see a wide
9 dispersion within each of these districts within
10 every one of the subgroups.

11 Q. So I think what you're saying is for each of
12 these dots that represents a school district, there's
13 a wide range of performance that we can't really
14 capture?

15 A. We can capture it but it wasn't given to us.

16 Q. Right.

17 A. Someone captured it. I didn't capture it.

18 So I requested the data at the student
19 level. And again, the Kansas Department of Ed,
20 citing FERPA concerns, wouldn't give that out.

21 Q. What's FERPA? Somebody talked about FERPA.

22 A. I don't know what the acronym stands for.
23 It's a federal law that's meant for student privacy
24 and it's been aggressively interpreted by the
25 department of ed.

1 So what they gave me is overall achievement
2 in the most recent of assessments, that's 2011, and
3 the most recent data on current expenditure per
4 student for all students by district, and then for
5 subgroups of students.

6 Q. Okay.

7 A. And if a cell, that is, if a district had
8 fewer than ten kids in a cell, in a minority cell, if
9 you will, the data were suppressed.

10 Q. Okay.

11 A. So that should be all your district dots
12 there, but then subsequent charts are going to have
13 fewer dots because the Kansas Department of Ed
14 suppressed the data.

15 Q. What about on the left side there, 70, 75,
16 80, 85, what is that?

17 A. These are the median scale scores. So what
18 was given to me, in lieu of individual level data,
19 was test scores for elementary, middle, and high
20 school.

21 Q. Okay.

22 A. The two assessments, math and English.
23 Maybe you call it comma arts; I don't remember what
24 you call it. And then also, the same scores for
25 black --

1 Q. Sure.

2 A. -- students, Hispanic students, and so on.

3 So what's there, that's the median scale
4 score, so it's not percent proficient. It's the
5 median scale score at the elementary level for every
6 school district in Kansas. And then that's the Y
7 axis. And on the X axis is current expenditure per
8 student. And this is 2011 data -- or 2010/'11 data.

9 Q. Okay.

10 A. Kids were tested in the spring of 2011.

11 Q. And in looking at the scatter of graphs that
12 we've done a lot of today, what conclusion do you
13 draw?

14 A. Well, what I -- this is one of many, many,
15 many graphs you're going to see. But there's no
16 relationship -- or excuse me, there's a wide scatter
17 and no obvious relationship between spending and
18 student achievement. And the line there is just a
19 regression line. You've seen these before, so it's
20 the least squares regression line that minimizes the
21 square difference between any point in the line.

22 Q. Thank you. And so you looked at this --
23 Dr. Hanushek looked at some of these that include all
24 students, but you looked at these for subgroups as
25 well, right?

1 A. Right. It's another way to come at this.

2 Q. Okay.

3 A. Which I think --

4 JUDGE THEIS: Is this all going to
5 be the same?

6 MS. TIBBETS: A lot of it is very
7 similar.

8 THE WITNESS: The subgroups won't
9 be the same.

10 MS. TIBBETS: The subgroups are
11 different. He looked at all students, at free and
12 reduced lunch.

13 Q. (By Ms. Tibbets) And you looked at the --

14 A. Well, he controlled for free -- this is an
15 important difference between -- see, he looked at
16 overall test scores and controlled for the percent of
17 students who were free and reduced lunch. He did not
18 have access to the scores of the actual free and
19 reduced lunch students.

20 Q. Okay.

21 A. So these dots here are only looking at kids
22 who are eligible for free and reduced priced lunches
23 in the school districts, so that's different from
24 what you saw before. So all the students aren't
25 entering that test score, only the poor students are.

1 Q. And you had the same conclusion with those
2 students?

3 A. Well, you just don't see -- you know, you
4 just don't see a systematic, positive relationship.
5 So here you have black students and it's elementary
6 math. Now, again, notice that we're not observing
7 some of the high-spending districts, because their
8 cells were suppressed because they had fewer than ten
9 black students, and so they weren't reported. But
10 again, you see this same kind of scatter that there
11 just doesn't seem to be a systematic relationship.

12 Q. Okay. And you looked at -- to kind of sum
13 it up, you looked at across all grade levels?

14 A. Well, the elementary, middle, and high
15 school for all students, black students, Hispanic
16 students, poor students, ELL students, and students
17 with disabilities. So that's a lot of charts.

18 Q. And you had similar conclusions after
19 looking at all of them?

20 A. Well, the point I'm -- the point that
21 emerges to me isn't that there's a negative
22 relationship. It's just to reinforce this point,
23 that you can't say, if I spend this much money, I'm
24 going to get this level of student achievement. If
25 that were true, I'd see it in these kinds of data,

1 but we don't see it. There's not a stable,
2 statistical relationship you can hang your hat on.

3 Q. Are there others who have looked at the same
4 types of statistical or these same types of graphs
5 and reached similar conclusions?

6 A. Well, there's others who've -- obviously,
7 Dr. Hanushek reached a similar conclusion. Dr. Baker
8 reached a different conclusion. Dr. Duncombe and
9 Yinger reached a different conclusion.

10 Q. Have you reviewed Dr. Baker's critique of
11 your conclusions?

12 A. Yes.

13 Q. And you had some problems with his
14 methodology that had to do with his comparisons of
15 testing from, I think, 2000 to 2008. Can you just
16 briefly explain your concern as a statistician with
17 his analysis?

18 A. Well, the problem is you had a break in
19 regimes. So, remember I told you a second ago that
20 prior to 2006, both in Kansas and Missouri and quite
21 a few other states, kids weren't tested every year?
22 So -- and again, so I think in math -- I could be
23 wrong on the years, but the main point is there. I
24 think in the math you tested the kids at five, eight
25 and 11.

1 So prior to 2006 then, the 8th grade test
2 was a test -- was intended and was designed as a test
3 to look at what kids were supposed to have learned in
4 math in six, seven, and eight. Okay? So that's what
5 the 8th grade assessment measured. It didn't measure
6 just 8th grade math.

7 Q. Sure.

8 A. It measured seven and six, as well as
9 eight.

10 Now, after 2006, the 8th grade assessment
11 was only designed to measure 8th grade math. So
12 imagine -- now, this over simplifies but, you know,
13 suppose, you know, in 6th grade you learn fractions,
14 and in 7th grade you did graphs, and in 8th grade you
15 did algebra.

16 Well, then the old assessment would cover
17 all of those -- that domain. The new assessment
18 would only look at algebra, what you're supposed to
19 be learning in 8th grade. I mean, maybe a little of
20 the other stuff. Actually, very little of it in your
21 assessment. Now, what Dr. Baker did is he just
22 averaged all of those.

23 Q. And you have a problem with that?

24 A. I have a problem with that.

25 Q. Explain what your problem is.

1 A. That's not what you should do. I mean, I
2 think you should have taken account of the fact that
3 the testing regime changed in your statistical
4 analysis. And what you really would want to do is
5 look at longitudinal data.

6 You would want to look at year-by-year
7 scores within a district, control for year-by-year
8 spending within the district and the other stuff, and
9 then take account of that structural break in the
10 testing regime.

11 That's how I would have done it and
12 that's -- you know, if I were commenting on a paper
13 or something, I'd say, well, that's the way I think
14 most econometricians would say to do it.

15 Q. So the significance of that to you -- the
16 significance of what I'll call kind of lumping
17 everything together without being specific, what's
18 the significance of that to you vis-a-vis Dr. Baker's
19 opinion?

20 A. Well, look, I don't know. That might not
21 matter. I'm just saying that we got one number. And
22 you also had that with Duncombe Yinger. We need to
23 see robustness. And in fact, even in his report, he
24 shows that that's coefficient of change; if you
25 change a model, you get a different coefficient on

1 spending. But I think that's -- I don't think that
2 these models are robust, statistically.

3 Q. What does that mean?

4 A. It means if you change the assumptions of
5 the model a little bit, your outcome stays the same.

6 If I were going to have a drive school
7 funding by an equation, I'd want to be kind of
8 confident that if I make little changes in the
9 equation, I don't get big changes in my outcome. And
10 I don't believe that's the case. I haven't seen it
11 demonstrated that these relationships are robust and
12 reliable.

13 MS. TIBBETS: I don't have anything
14 further.

15 MR. RUPE: We pick up tomorrow
16 morning?

17 JUDGE THEIS: Are you going to be
18 long?

19 MR. RUPE: Yeah. And I'll be
20 shorter if I start in the morning rather than
21 wondering around tonight.

22 JUDGE FLEMING: That is pretty
23 persuasive.

24 JUDGE THEIS: Is your witness
25 available tomorrow?

1 MS. TIBBETS: He is, yes, sir.

2 JUDGE THEIS: Okay. Nine o'clock.

3 Please have a good evening.

4 (Thereupon, the proceedings were
5 adjourned to June 21, 2012, at 9:00 a.m.)

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CERTIFICATE

STATE OF KANSAS)
) ss:
 COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 20, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 254 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

 LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 11)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 21st day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

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EXAMINATION INDEX

MICHAEL PODGURSKY		
CROSS BY MR. RUPE		2394
ARTHUR HALL		
DIRECT BY MS. TIBBETS		2404
CROSS BY MR. RUPE		2415
REDIRECT BY MS. TIBBETS		2419
RE CROSS BY MR. RUPE		2420

EXHIBIT INDEX

	MAR	/	ADM
In Camera			
1	2392		2392
2	2392		2392

(In Camera Exhibits 1 and 2 sealed
and retained by the court reporter.)

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 P R O C E E D I N G S

2 JUDGE THEIS: You can be seated.

3 Thank you. Housekeeping, those emails you we talked
4 about yesterday in regard to the witnesses, they've
5 been marked as In Camera Exhibits 1 and 2 and given
6 to the court reporter and they'll be sealed. Okay?

7 MR. RUPE: Thank you, Your Honor.

8 (In Camera Exhibit Numbers 1 and 2
9 were marked for identification and admitted into
10 evidence.)

11 MR. CHALMERS: Before we leave the
12 housekeeping, just to give you heads up, Counsel has
13 been discussing, and we think today's going to be a
14 short day. Next week, we're thinking that the
15 evidence will all be in by the end of Thursday. The
16 question I think I have is what the expectation the
17 Panel has concerning closing arguments. Most trials
18 to the bench is just do findings of fact and
19 conclusions of law in place of closing arguments, but
20 I don't know what your preference is, and when we
21 would want to schedule that.

22 JUDGE BURR: We discussed it a
23 little bit yesterday.

24 JUDGE THEIS: What's counsels'
25 preference?

1 MR. CHALMERS: I hadn't talked
2 to -- I should probably talk

3 JUDGE THEIS: Why don't you see
4 what you want to do, and then we'll see what we want
5 to do.

6 MR. RUPE: I think we probably can
7 reach an agreement, because I think what makes the
8 most sense, because we stipulated to the all the
9 exhibits, and you've got some depositions to read
10 that we're going to get to you, maybe it makes the
11 most sense to submit findings of fact, conclusions of
12 law, and then do closing arguments --

13 MR. CHALMERS: Fine with me.

14 MR. RUPE: -- is my suggestion.

15 JUDGE THEIS: That's generally the
16 way I work.

17 JUDGE BURR: That was the nature of
18 our discussion, so I don't know that we would
19 disagree a whole lot.

20 JUDGE FLEMING: You know, I told
21 you the other day that calculated on reading 250
22 pages a day, we'll be finished with those exhibits in
23 8.8 years.

24 MR. CHALMERS: That's why I thought
25 the findings might be helpful.

1 JUDGE BURR: Which, of course, is
2 approximately the same as our life expectancy.

3 MR. RUPE: Speak for yourself,
4 Judge.

5 JUDGE BURR: I'm talking about us
6 three. I'm not including you.

7 JUDGE THEIS: We'll discuss it and
8 we'll take that up before we leave.

9 MR. RUPE: Thank you.

10 MICHAEL PODGURSKY, having been
11 previously sworn was examined and testified as
12 follows:

13 CROSS-EXAMINATION

14 BY MR. RUPE:

15 Q. Good morning.

16 A. Morning.

17 Q. As I was setting here, before we got started
18 this morning, I heard you say something about
19 Dr. Hanushek, and he clearly was a bigger draw
20 because of the folks in the courtroom, and you
21 characterized him as a rock star, didn't you?

22 A. Well, yes, I did. That was I'm not sure --
23 okay, go ahead. Yes, I did, I characterized him as a
24 rock star.

25 Q. That's kind of a segue to my first question

1 to you.

2 A. Okay. I don't know where you're going with
3 this.

4 Q. Let me show you where I'm going.

5 A. Okay.

6 Q. My question to you is, clearly, you
7 recognize him as an authority in the area of school
8 finance economy?

9 A. Yes, sir.

10 Q. And would you agree with the statement he
11 wrote in his book, not as editor, but as the writer,
12 when he said, fortunately, there is mounting evidence
13 that money, if spent appropriately, can have a
14 significant effect on education?

15 A. I'd notch that down a couple of notches, but
16 I'd agree that there's evidence that some things
17 matter and they do cost money.

18 Q. And do you agree with the mounting evidence
19 portion that he wrote on page 57 of his book
20 Schoolhouses, Courthouses and Statehouses?

21 A. Yes, I'd agree that there's -- evidence is
22 accumulating.

23 Q. Now, are you strictly a researcher, or do
24 you teach?

25 A. I teach as well as do research.

1 Q. And what level courses do you teach?

2 A. I've been teaching for 30 years and I've
3 taught at every level, but right now I teach a
4 freshman course on principles of economics, along
5 with a course on the economics of education.

6 Q. This would be freshmen in college?

7 A. Freshmen, sophomores.

8 Q. All right. And in terms of freshmen,
9 sophomores, are you able to, say, assign grades to
10 them?

11 A. I'm able and required to assign grades to
12 them, yes, sir.

13 Q. I mean, is it something you're, as a
14 teacher, used to doing, and that is assessing the
15 performance of your students?

16 A. Yes, sir.

17 Q. And you know how to do that as a teacher
18 with 30 years experience?

19 A. Yes, sir.

20 Q. So in terms of asking you, for example, to
21 give an assessment of how the kids in your class are
22 doing, you'd be able to do that, right?

23 A. The students might not agree with my
24 assessment, but yes, I think I'm qualified to do
25 that.

1 Q. Sure. I want to ask you about the exhibit
2 you started off with yesterday, and let me put it on
3 the Elmo. And this was the one that kind of sets the
4 stage for your entire discussion. And I want to
5 ask -- so we're on track, do you have that? It's in
6 your report.

7 A. I don't have my report in front of me.

8 Q. I'm sorry, let me get it in front of you.

9 MR. ROBB: What number is it, Alan?

10 MR. RUPE: It is Exhibit 1170.

11 A. Okay. I have it.

12 Q. And turn to page 6 in your report. And I
13 just want to make sure that we have these numbers
14 because they're shaded. Kansas is 222-226?

15 A. On the grade 4, all reading, yes, sir -- oh,
16 yeah, I'm sorry, you're pointing at it.

17 Q. Then free and reduced lunch is 209 to 214?

18 A. Yes, sir.

19 Q. And 265, down here, all, 265, 269?

20 A. Yes, sir.

21 Q. And then 254, 258?

22 A. Yes, sir.

23 Q. Now, we've seen data, and this is 2011 NEAP
24 scores by grade, and this is grade 4, reading and
25 math? Am I on track?

1 A. Yes, sir.

2 Q. We've seen some of this data in the
3 courtroom. And does it seem odd to you that the
4 number for the blacks is higher scores than the
5 number for the all?

6 A. There may be a typo. I can't explain that
7 right now.

8 Q. You've represented in this, haven't you,
9 that African Americans -- and I think the testimony
10 was -- it may be from you -- that they do quite well
11 compared to nationally. And it looks like the Kansas
12 African Americans are higher than the Kansas all,
13 doesn't it?

14 A. There's -- I -- it's I think there's a typo
15 here and --

16 Q. Well, we've looked at data that shows that
17 in terms of free and reduced lunch and African
18 American kids, I think Dr. Hanushek even acknowledged
19 we could do better with those groups, and we're
20 leaving them behind. And in terms of the
21 Exhibit 122, that shows that blacks are below basic
22 42 percent of the time; Hispanics, 34 percent; free
23 and reduced lunch, 32 percent; and ELL students, 51
24 percent?

25 A. These are Kansas data?

1 Q. Yes.

2 A. I agree that everywhere else the black
3 scores are lower. And I think there's a typo in
4 there, so I'll correct it or I'll check it.

5 Q. When you do the other part of your
6 corrections that you mentioned yesterday?

7 A. Yes. Well, those are already done.

8 Q. You would have to probably go back and
9 compare the numbers you reported to this Court in
10 your testimony yesterday and look at the actual raw
11 data from NEAP, wouldn't you?

12 A. To check that point you just mentioned
13 there, yes, sir.

14 Q. Well, the point being that you show that
15 African Americans are doing better than all kids in
16 both U.S. and in Kansas, don't you?

17 A. Yes.

18 Q. And we know that's not true?

19 A. Yes.

20 Q. Then, you talked a little bit yesterday
21 about the Kansas Department of Education did not
22 respond to your request or provide you information on
23 all student data. Do you remember testifying to
24 that?

25 A. Yes, sir.

1 Q. And isn't it accurate that you were told
2 that FERPA, the federal laws, only allow disclosure
3 of personally identified information in two
4 circumstances. One, upon receipt of parent or
5 eligible student consent; and then, if that consent
6 is not obtained, there are a number of exceptions.
7 Do you remember them telling you that?

8 A. Well, I'm familiar with FERPA, and we had a
9 variety of conversations, but I know that FERPA says
10 that, yes, sir.

11 Q. And they told you the only exception would
12 be from a judicial order or lawfully issued
13 subpoena. And then they told you that even in that
14 instance, it was going to be necessary to notify the
15 parents of the subpoena in advance to they could
16 object to it?

17 A. Well, okay, I --

18 Q. My question is, you were told that, weren't
19 you?

20 A. That -- that wasn't the exact conversation
21 because I didn't ask for individually identified
22 data. I asked for de-identified data, and I asked
23 for it -- I asked for de-identified data. At no
24 point did I ever ask for any student identifiers.

25 Q. And I didn't say that you did. But they are

1 required under FERPA to notify those students if they
2 get a subpoena, and you requested data on 250,000
3 kids?

4 A. No, but I didn't ask for individually
5 identified data. I asked for de-identified data.
6 All I needed was the test scores and a couple of
7 student characteristics.

8 Q. And you were told that if they presented the
9 data, it would be on an individual basis and they
10 would have to comply with FERPA?

11 A. Well, data from -- I work with exactly these
12 same data in Missouri.

13 Q. I understand that --

14 A. It's provided to me under the same federal
15 law, FERPA.

16 Q. Thank you. I understand. I'm asking what
17 you were told. And you were told that because of
18 FERPA, you could not get the data, true?

19 A. I didn't have -- no one said -- may I tell
20 you my recollection of the sequence of events?

21 Q. I want to move on.

22 A. I didn't know -- no one said, we're not
23 giving you this. I said what I wanted and they gave
24 me something different. Early on, we had
25 conversations about what would work under FERPA and

1 what wouldn't, but we didn't have the kind of
2 definitive conversation you're describing.

3 Q. Then you asked for teacher data from the
4 plaintiff districts, didn't you?

5 A. Yes, sir.

6 Q. And the plaintiff districts, I will tell
7 you -- because you know -- marshaled together
8 thousands and thousands and thousands of pages and
9 provided you access to a website where you could get
10 that data. And you didn't use it, did you?

11 A. No, I did not.

12 Q. Now, the analysis that you did in this case,
13 tell me what the two sides of the equation were when
14 you did your analysis. You've given the opinion that
15 there isn't any robust correlation between spending
16 and outcomes, haven't you?

17 A. Yes, sir.

18 Q. Now, when you did your analysis, what did
19 you look at?

20 A. In the report, I looked at student median
21 scale scores by district for all students and for
22 certain subgroups of students.

23 Q. Okay. You looked at spending and then you
24 looked at achievement?

25 A. Yes, sir.

1 Q. And achievement by subgroups that you've
2 talked about?

3 A. Yes, sir.

4 Q. Did you control for any variables beyond
5 having the two sides to the equation? In other
6 words, did you do a multiple regression analysis?

7 A. No, sir.

8 Q. So if you wanted to distill the variables on
9 the achievement side, it is possible to control for
10 those variables, say teachers or teacher experience
11 or -- you were trying to figure out whether one group
12 of teachers is more effective in improving student
13 outcome than another, you could control for that?
14 You could control for the student populations for
15 class sizes, couldn't you?

16 A. Yes, sir.

17 Q. Just out of curiosity, if you wanted to
18 determine whether differences in funding were
19 associated with differences in student outcomes,
20 would it be useful to control for some of those to
21 find out what that noise was?

22 A. Yes, it would.

23 Q. I assume, like Dr. Hanushek, you didn't keep
24 in mind any constitutional standard of what is
25 required by Article 6 of the Kansas Constitution in

1 determining anything in this case, did you?

2 A. No, sir.

3 MR. RUPE: That's all I have.

4 MS. TIBBETS: I don't have anything
5 further.

6 JUDGE THEIS: Thank you very much.
7 You can step down.

8 THE WITNESS: Do you have
9 questions? No.

10 JUDGE THEIS: Free to step down and
11 leave.

12 THE WITNESS: Okay. Thank you.
13 (Witness excused.)

14 MS. TIBBETS: Your Honor, at this
15 time the defense would call Art Hall.

16 ARTHUR HALL

17 Called as a witness for the
18 Defendants, was duly sworn by the reporter and
19 testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MS. TIBBETS:

22 Q. Mr. Hall, tell the judges your name and
23 where you're employed.

24 A. My name is Arthur Hall. I'm employed at the
25 University of Kansas School of Business, and

1 specifically I direct the Center for Applied
2 Economics.

3 Q. And tell us about your educational
4 background.

5 A. I have a Ph.D. in Economics from the
6 University of Georgia, BA in Economics from Emory
7 University in Atlanta, Georgia.

8 Q. How long have you been at the center at KU?

9 A. Since 2004.

10 Q. And where were you employed before that?

11 A. I was employed at Koch Industries in
12 Wichita, Kansas.

13 Q. For how long?

14 A. About seven years.

15 Q. What did you do there?

16 A. I was a policy analyst. I worked with
17 business leaders to work through policy analysis and
18 how those policies may affect businesses.

19 Q. What kind of work do you do in your present
20 position?

21 A. Primary policy analysis. I also --

22 Q. What does that mean?

23 A. Well, I look at economic policies and I
24 assess the incentive alignments, whether or not their
25 doing their job, whether they could be done more cost

1 effectively, whether they're achieving prosperity,
2 things of that nature.

3 Q. You were asked to look at a few different
4 scenarios, and one of them was what would happen in
5 the Kansas economy if \$1.2 billion were placed in
6 public education?

7 A. Yes, that is correct.

8 Q. A \$1.2 billion increase?

9 A. Correct.

10 Q. Did you write a report that expressed your
11 opinion on that?

12 A. I did.

13 Q. And that report is marked at Exhibit 1170.
14 In Exhibit 1170, at Table 1, did you create a table
15 that explained how the tax rate might be affected by
16 \$1.2 billion increase in K through 12 funding?

17 MR. RUPE: I want to interpose an
18 objection as to the relevance of this entire line of
19 testimony. He's going to talk about the consequences
20 of an increase to the public -- I mean, it's in his
21 report -- an increase at \$1.2 billion for education,
22 and I don't see that that's relevant to the inquiry.

23 It's not relevant at all because it
24 doesn't have anything -- number one, speculative as
25 to what the Court does. And number two, it's not

1 relevant -- there's no constitutional requirement
2 that says that education is paid for only if we can
3 afford it; it's suitably funded. And the case law is
4 pretty clear that the Legislature has an obligation
5 to fund it.

6 In terms of, well, gee, if we don't
7 have the money, we can't do it, I put education in
8 the Kansas Constitution in the same category as I put
9 the courts and as I put the Governor's Office, and as
10 I put the Legislature. And that is, there is an
11 obligation to do it, regardless of whether there are
12 funds available.

13 And this is based on the assumption
14 that if that kind of money was awarded \$1.2 billion,
15 it would have an effect on the economy. I think we
16 can argue that all day long, but fact is it's not
17 relevant to what we're doing here.

18 JUDGE THEIS: You've had an
19 opportunity to take his deposition, I assume?

20 MR. RUPE: Yeah, I'm not feigning
21 surprise here. I know what he's going to say, and
22 that's why I'm making the objection because it's not
23 relevant.

24 MS. TIBBETS: Would you like me to
25 respond? I have a couple of reasons. First, one of

1 the things you're going to have to decide is whether
2 the Legislature's actions were arbitrary because
3 that's part of the constitutional standard of
4 review. And part of what's helpful in that decision
5 is knowing what the Legislature knows about the
6 decisions that they make.

7 Second, Mr. Rupe has put into
8 evidence and brought up with various witnesses, well,
9 what if these tax cuts were made, what if these tax
10 credits weren't given, and wouldn't there be more
11 money available if this and if that. So this is just
12 a response to that sort of testimony, and he's opened
13 the door to it.

14 And third, it will be more quick if
15 we put him on for 15 minutes than if we spend a lot
16 of time arguing this. It's a very brief
17 introduction. There's two tables that I want to talk
18 about. That third reason is not a legal reason, it's
19 more aligned with practical reason.

20 MR. RUPE: And if I could -- and
21 I'm not going to challenge anything she just said
22 except when she says that you are to look to decide
23 whether it is arbitrary or not by reason of the
24 legislative action, that's not the standard. This is
25 an Article 6 analysis. The arbitrary would be

1 applicable in Equal Protection-type argument, and we
2 do have Equal Protection-type claims.

3 So I guess to that extent, there's
4 a sense of arbitrary there. But if you read the
5 Montoy decisions -- and this is going to be apparent
6 when we file our conclusions of law -- but there's
7 not a sense of arbitrary. I don't think that word
8 was ever used in Montoy. The question is, is it
9 constitutional or not, have they funded to the level
10 that the Constitution requires or not. It's not a
11 question of arbitrariness in their action.

12 JUDGE THEIS: My view -- and if
13 either of you have any different view, let me know --
14 would be to admit it. It's not prejudicial, per se.
15 I mean, so, allow it in and we'll decide whether it's
16 relevant to what degree it may or may not, depending
17 on what the Court does, and I can't predict, might be
18 relevant to a remedy. So I think we'll hear it and
19 evaluate it at a later time.

20 Q. (By Ms. Tibbets) So Dr. Hall, back to the
21 question, did you create a table that explained the
22 effect on tax rates if \$1.2 billion were added for
23 education?

24 A. I did, and on page 3 of my testimony,
25 Table 1 --

1 Q. Just hang on one second. Let's get your
2 table up here.

3 Now that we have it in front of us, will you
4 explain what it says?

5 A. Yes. Again, in order for precision, we
6 specified 1.2 billion, and we have three columns
7 there.

8 Q. 1.2 billion is a number that we gave you to
9 assume, correct?

10 A. That's correct. Right. Yes. So on the
11 left-hand side we have different types of tax
12 instruments, individual income tax, corporate income
13 tax, retail sales tax.

14 Q. Can you speak a little more slowly?

15 A. Yes.

16 Q. Thank you.

17 A. So we have different types of tax
18 instruments. Those four types are the major revenue-
19 raising tax instruments in the state; property tax,
20 of course, being more local. The first column are
21 the current rates, and that was actually prior to new
22 law, but those are the rates that were standing at
23 the time.

24 Q. So stop right there.

25 A. Okay.

1 Q. We should put an asterisk on those rates at
2 this point?

3 A. The income tax rates, yes.

4 Q. Why? Briefly, why?

5 A. Because the Legislature and the Governor
6 signed a bill that significantly changed those
7 individual income tax rates.

8 Q. All right.

9 A. So we have the corporate income tax rate at
10 seven. We have the retail sales tax at 6.3. That
11 actually -- another asterisk -- that is now going to
12 drop.

13 Q. To what?

14 A. To, I believe, 5.9 percent.

15 Q. All right?

16 A. Then, the property tax. And that 2 percent
17 is actually equivalent to the State's 20 mills.

18 Q. That's the 20 mills that comes from the
19 property tax that go to the schools to go into the
20 general fund?

21 A. That's correct.

22 Q. We have talked about that a lot. Okay.
23 What's your next column?

24 A. The middle column is, if the Legislature
25 chose to raise all 1.2 billion through the single,

1 specific tax instrument on the left -- so if you had
2 all of that money were to be raised by the individual
3 income tax, you would have a uniform tax rate
4 increase across the three brackets as shown.

5 Q. Okay. And that would have an asterisk on
6 it, and those would be different numbers. Could you
7 tell us if the proportion would remain the same?

8 A. The proportion would remain the same --
9 well, in effect, the top rate is now gone, so it
10 would change, but the proportions, if you had to get
11 to the 1.2 billion from the current revenue base
12 line, those would be the numbers. If you have a
13 lower revenue base line, then the numbers will be
14 proportionately greater.

15 Q. Okay.

16 A. If you chose to raise all of the money
17 through the corporate income tax, there would have to
18 be a corporate income tax rate of 61 percent.

19 Q. Why is that number so out of center --

20 A. Because the corporate income tax base, the
21 amount of money you would tax is so small relative to
22 the amount of money in the individual income tax.

23 Q. All right.

24 A. If it were a retail sales tax, you go to 9.6
25 percent. And then, if it was a property tax, you go

1 to 3.6 percent; or in effect, 36 mills instead of 20
2 mills.

3 Q. That would be 36 mills on every school
4 district?

5 A. So instead of there being the 20 mill rate,
6 it would go to a 36 mill rate.

7 Q. What's the third column?

8 A. The third column is -- well, the Legislature
9 could choose to raise revenue from every one of those
10 instruments. And if they chose to do that in
11 proportion, then the rates would appear as they
12 appear on the right-hand side. So you see that,
13 across the board, the rates are all lower than the
14 middle column, because you're spreading it across
15 much more money.

16 Q. So raising taxes would be one way to raise
17 1.2 billion. Did you analyze another way that --

18 A. You could also reduce spending by
19 1.2 billion, and of course, anything in between.

20 Q. You made a table for that, as well?

21 A. I did.

22 Q. Table 5, is that correct?

23 A. Yes, that is correct.

24 Q. And will you explain to us what you conveyed
25 here in Table 5?

1 A. Right. First, there are probably countless
2 number of combinations that could have been put out,
3 so what I chose to do is take the major spending
4 categories, and rather than guess what the budget
5 might be a few years hence, we took the actual budget
6 numbers for 2012.

7 Q. All right.

8 A. And we -- I basically picked the largest
9 items from the budget. I could have put more line
10 items in, but I just chose, essentially, the major
11 portions of spending.

12 Q. Okay.

13 A. So you'll see in the left-hand column, or
14 the second column to the right, those are the
15 current -- those were the current budget numbers for
16 this past fiscal year.

17 Q. Okay.

18 A. For those items listed.

19 Q. Okay.

20 A. If you wanted to raise \$1.2 billion solely
21 from spending cuts from those, and you chose to do it
22 uniformly, 38 percent roughly, across the board to
23 raise \$1.2 billion, the middle column -- or the third
24 column shows what the amount of cuts would have to be
25 to the second column.

1 Q. Okay.

2 A. And so the final budget for those agencies
3 would be on the far-right column.

4 Q. So the budgeted number, and then the middle
5 column there is what you would subtract --

6 A. Correct.

7 Q. -- and then the --

8 A. That's correct.

9 Q. Okay. And that would be to raise 1.2
10 billion in one year?

11 A. In one year.

12 MS. TIBBETS: I don't have any
13 further questions.

14 CROSS-EXAMINATION

15 BY MR. RUPE:

16 Q. What is your current title?

17 A. Executive director.

18 Q. And executive director of?

19 A. Center for Applied Economics.

20 Q. Is that a teaching position?

21 A. It is not explicitly a teaching position.

22 I'm also a lecturer in the school of business, which
23 is a teaching position.

24 Q. So you lecture in the school of business.

25 At Koch Industries, you were Director of Applied

1 Economics?

2 A. No, I was the chief economist in their
3 government affairs group, which they call their
4 public sector group.

5 Q. And at Koch Industries, the government
6 affairs group, public sector group, what was your job
7 responsibility?

8 A. I was responsible for evaluating public
9 policies, working with business leaders to help them
10 understand those policies, and quantifying the
11 potential market impact of those policies.

12 Q. Was part of your work, then, communicating
13 to governmental entities these policy ideas you had
14 concerning economics?

15 A. While I was at Koch Industries, I did not
16 talk to public officials. I talked to internal
17 people, business leaders.

18 Q. Okay. And the internal business leaders you
19 apprised of these matters, who were they?

20 A. It would all depend on the issue involved,
21 but the executives or the presidents or the top
22 managers of the various business divisions.

23 Q. So Charles Koch and the management team?

24 A. Yeah, very rarely did I speak with Mr. Koch
25 directly, but yes.

1 Q. Is it possible to do a regression analysis
2 on education spending and achievement outcomes?

3 A. Yes, it is.

4 Q. And have you done multiple variable analysis
5 yourself before?

6 A. Yes, I do.

7 Q. In your work that you did in this case, you
8 were instructed to figure out what kind of government
9 money would be necessary and where it would come from
10 to raise \$1.2 billion?

11 A. If we needed to raise \$1.2 billion, could we
12 get there through taxes, could we get there through
13 expense reductions. I analyzed the extreme cases.

14 Q. And so I'm clear and there's no mistake
15 later on, the \$1.2 billion statement that -- well,
16 let me ask you another question first. Were you told
17 that was to go to education?

18 A. The hypothetical was if the State
19 Legislature need to put \$1.2 billion towards
20 education; that was the number I was given by counsel
21 to frame the analysis.

22 Q. So in terms of what you were instructed to
23 do, you were told that the state -- if the
24 Legislature had to put \$1.2 billion into education?

25 A. That's correct, K-12 education.

1 Q. And this is the part I want to make sure I'm
2 on track with, that was from the defendant's lawyer,
3 the State of Kansas' lawyer, that said that to you?

4 A. That was the request from the defendant's
5 lawyer.

6 Q. In your report you talk about -- find where
7 it is -- you talk about a time lag?

8 A. Yes, sir.

9 Q. Is that an economic term?

10 A. Yes, it is.

11 Q. Explain to the Judges what that means.

12 A. Public policies often are not immediate.
13 They take time to work. People adjust their
14 expectations to the policy framework at hand. Often,
15 they must learn what those are in sort of a trial and
16 error process.

17 So in a context of tax policy, for example,
18 a tax increase or a tax cut might not work
19 immediately, but it might take folks a while to
20 re-evaluate their business propositions, for example,
21 in light of a new law.

22 Q. Sure. Any time there's a change, it takes
23 time for that change to sink in --

24 A. Correct.

25 Q. -- and see the effects?

1 A. Yes, sir, correct.

2 Q. That's actually -- I've been accused of
3 making that name up, but that's actually an economic
4 term?

5 A. A time lag, I mean, it boundaries, but the
6 idea in statistics is, if there's an amount of time
7 that must take place before you see the statistical
8 correlations, then that's often referred to as a time
9 lag.

10 Q. On your mill levy, do you know what the mill
11 levy was in 1992?

12 A. The State's -- the state portion of the mill
13 levy?

14 Q. Yes.

15 A. I do not recall that number, no.

16 Q. If I told you it was 36, would you have any
17 reason to dispute that?

18 A. I have no reason to comment on any number.
19 I really don't remember.

20 MR. RUPE: That's all I have.

21 Thank you.

22 REDIRECT EXAMINATION

23 BY MS. TIBBETS:

24 Q. I just have one question for you. You were
25 asked about whether you could do a regression

1 analysis on education spending and outcomes. Do you
2 have any sort of opinion about whether you would
3 reach any conclusion that those two would correlate
4 with one another?

5 A. That would be a hypothesis, but that's why
6 you do that type of analysis to see if, in fact, that
7 type of hypothesis holds up.

8 Q. When you say you could do it, you weren't
9 suggesting that you could find a correlation?

10 A. No, you can regress anything on anything.

11 MS. TIBBETS: Nothing further.

12 RECROSS-EXAMINATION

13 BY MR. RUPE:

14 Q. And you can control for variables that in
15 multiple regression analysis?

16 A. In effect, what the regression analysis is
17 doing is controlling for variables.

18 Q. Have you ever seen a regression analysis
19 done with two sides of the equation, just two sides,
20 and not controlling for variables?

21 A. That often happens, yes.

22 MR. RUPE: Okay. Thank you.

23 JUDGE THEIS: Can I ask him a
24 question?

25 MS. TIBBETS: Sure.

1 EXAMINATION

2 BY THE PANEL:

3 JUDGE THEIS: This is if everything
4 was done for one year?

5 THE WITNESS: Yes, sir, they're
6 one-year snapshots.

7 JUDGE THEIS: But the tax increase
8 would be for how long?

9 THE WITNESS: You would have to
10 continue them on in order to raise that much money
11 every single year.

12 JUDGE THEIS: And are you familiar
13 with the rates under the tax decrease?

14 THE WITNESS: Yes, sir, the bottom
15 rate went from 3.5 to three. The two top rates, the
16 ones that are sixes, went to 4.9. So there's only
17 two rates. Under the new law, there will only be two
18 brackets, two rates.

19 JUDGE THEIS: 4.9?

20 THE WITNESS: Yes, sir.

21 JUDGE THEIS: Do you know the
22 revenue, the cumulative effect of the tax increase --

23 THE WITNESS: The Department of
24 Revenue has scored that, but I don't recall those
25 numbers right off. A general ballpark is that in the

1 first year -- well, generally speaking, the tax cuts
2 themselves will be between 800 million to a billion
3 dollars in revenue loss. And that that number,
4 again, from memory, is the sales tax reduction --
5 sales tax rate reduction, and income tax rate
6 reductions.

7 The budget effects are different
8 because there's leftover balances and whatnot.
9 That's what I'm trying to remember and sort out in my
10 head.

11 JUDGE THEIS: For some reason,
12 those tax cuts didn't go into effect, there would be
13 a billion dollars?

14 THE WITNESS: There would be. And
15 we would, actually, in effect, be back to the
16 analysis that was presented earlier, Table 1.

17 JUDGE THEIS: I'm not sure --

18 THE WITNESS: So again, Table 1
19 presumed the existing law, or the law prior to the
20 new laws.

21 JUDGE THEIS: So we'd be right back
22 where we were?

23 THE WITNESS: Yes, sir, and the
24 analysis would continue on. So now, in effect --

25 JUDGE THEIS: No change?

1 THE WITNESS: Right. So the
2 analysis really holds up, you're just using different
3 base lines, if that makes sense. Well, I'm sorry,
4 let me be clear -- or let me be careful here.

5 So the analysis that I did, which
6 was on Table 1, that was before the income tax rates
7 were reduced. So if you wanted to raise a billion
8 dollars, you would have the tax rates that I posted.
9 If you assume you needed to still get back to that
10 1.2 billion level -- but from the new rates, you're
11 actually having to raise \$2 billion almost.

12 JUDGE THEIS: But if their rates
13 didn't go into effect, just be exactly like it was?

14 THE WITNESS: That is correct, yes,
15 sir.

16 JUDGE THEIS: You'd have the
17 money?

18 THE WITNESS: You'd have instead
19 of -- well ...

20 JUDGE THEIS: So you had 1 billion
21 instead of 1 billion-two.

22 THE WITNESS: You'd have -- what
23 I'm trying to get at is, suppose we have to spend a
24 billion dollars from a \$2 billion base, let's say,
25 right? So in other words, prior to tax cut, you had

1 more money than you have with the tax cut, right? So
2 the question is, are you trying to get to a very
3 specific spending mark, or are you just trying to
4 come up with the billion dollars?

5 JUDGE THEIS: I'm not trying to
6 come up with anything. I'm just asking.

7 THE WITNESS: Yes, sir. So the
8 income tax rates cut, the new law, will actually
9 reduce, you know, on a budget basis, the revenue from
10 income tax by a billion dollars. So if you didn't
11 have those tax cuts, you wouldn't lose that billion
12 dollars. But, if you wanted to get another billion,
13 you would still have to raise the tax rates as per
14 Table 1.

15 JUDGE THEIS: Why would you need
16 another billion?

17 THE WITNESS: I guess that was the
18 point of, if last year the proposition was you needed
19 1.2 billion more in education than you had the year
20 before, and now you are just --

21 JUDGE THEIS: Wouldn't it be equal
22 to the tax cut?

23 THE WITNESS: Yes. Yes, let's go
24 with that.

25 JUDGE THEIS: No questions.

1 MR. RUPE: Nothing. I don't have
2 anything further. Do you have?

3 JUDGE THEIS: Can he go back to
4 KU?

5 JUDGE FLEMING: Thank you.

6 THE WITNESS: Thank you very much.

7 MS. TIBBETS: Thank you.

8 (Witness excused.)

9 MS. TIBBETS: We don't have any
10 more witnesses today.

11 MR. RUPE: Well, this was their two
12 days, so I think we're --

13 MS. TIBBETS: It was our two days
14 for experts because our experts had to fly in. We
15 didn't know if it was going to take one day, two
16 days --

17 MR. RUPE: I think we alerted you
18 this might be a short day based on our discussions.

19 JUDGE BURR: Did you indicate you
20 thought you'd be through -- I'm just trying to figure
21 out how to plan for next week -- you thought you'd be
22 through Thursday evening?

23 MR. RUPE: We have talked and
24 there's two witnesses on Thursday. We think we can
25 get them both on and off and maybe even have a little

1 time left over next Thursday, so I think you can plan
2 and I'm -- keep me to the 15 minutes on the --

3 JUDGE BURR: That's fine.

4 MR. RUPE: -- on the folks from USD
5 259 and from Hutchinson, because I'll put them on
6 pretty quick.

7 JUDGE THEIS: Who's going to show
8 up next week for your witnesses?

9 MR. RUPE: I have a calendar I'll
10 be glad to give you.

11 JUDGE BURR: Here it is

12 MR. ROBB: It's not changed since
13 the last when was gave you, Your Honors.

14 JUDGE BURR: Has it changed any?

15 MR. ROBB: No.

16 JUDGE THEIS: Those are the from
17 Hutchinson and --

18 JUDGE BURR: Couple from Wichita?

19 MR. RUPE: Yes.

20 JUDGE FLEMING: 9:30 Monday.

21 JUDGE THEIS: One other question.

22 If you were going to do the findings of fact and
23 conclusions of law, what kind of time frame would you
24 like to do that in?

25 MR. RUPE: A lot of that depends on

1 the transcript, and I think because we want to get a
2 transcript that we could, you know, have as the
3 official transcript.

4 JUDGE THEIS: Let's say from the
5 time you got the transcript.

6 MS. TIBBETS: Jessica?

7 JUDGE THEIS: I'm going to go
8 fishing in August, whatever you do.

9 JUDGE BURR: Yeah.

10 MR. RUPE: I'd say six weeks is
11 probably a good guess.

12 JUDGE THEIS: Think those would be
13 simultaneous, maybe, and with a little add-on reply?

14 MR. RUPE: That makes sense to me.

15 JUDGE THEIS: And then, once that
16 was in and we had the opportunity to read it, then
17 we'd have the arguments and ...

18 MR. RUPE: That's the way I was
19 thinking we'd do it.

20 JUDGE THEIS: Could you do us one
21 favor? I assume the court reporter might be able to
22 do the list, but the exhibits that you've got in or
23 anticipate getting in, you know, that we've discussed
24 in court, a list of those with just a synopsis of
25 what they say?

1 MR. RUPE: Sure.

2 JUDGE THEIS: That way whenever we
3 do break here, before we get your stuff, we could at
4 least read the things that maybe perhaps we should
5 have read before.

6 MR. RUPE: Okay.

7 MR. CHALMERS: I think the good
8 news, you'll find, because we did the marking of the
9 exhibits at the same time, there's quite a bit of
10 overlap.

11 JUDGE BURR: Yeah.

12 MR. CHALMERS: And so the volume
13 isn't as much as maybe -- it's not quite as scary as
14 you might think.

15 JUDGE FLEMING: Won't take quite
16 eight years.

17 JUDGE THEIS: General rule of thumb
18 is, if you haven't talked too much about it or didn't
19 argue too much about it, you don't think it's
20 important --

21 MR. CHALMERS: Also, some of it's
22 voluminous; it's just data that goes to support
23 things. So I think it makes sense, if Plaintiffs'
24 counsel agrees, that we provide you a summary of what
25 the exhibits are and a list, maybe within a week

1 after. If we can't do it by the end of next week,
2 maybe the week afterwards, if that's acceptable.

3 MR. RUPE: I think we're both going
4 to be busy with getting the witnesses on and off, so
5 if we could get that to you, like, the week after?

6 JUDGE THEIS: That's fine, just at
7 some point so that six-week period, or whatever it's
8 going to be, isn't dead time.

9 JUDGE BURR: Something tells me it
10 might take a week or so to get the transcript.

11 JUDGE THEIS: 9:30, Monday is
12 good?

13 MR. RUPE: That's fine. We'll be
14 ready to go.

15 JUDGE FLEMING: Not that I want to
16 go home and read deposition transcripts, but have you
17 got copies for us of Goossen and ...

18 MR. RUPE: And Olson?

19 MS. GARNER: Andrew's picking them
20 up at from FedEx.

21 MR. ROBB: They're at FedEx as we
22 speak.

23 JUDGE BURR: 9:30 is about what
24 we're looking at Monday?

25 MR. RUPE: Yeah, those depositions

1 are probably within -- if we make a phone call,
2 within ten minutes of being here, 15; because they
3 were ready, he just ran over to pick them up.

4 JUDGE THEIS: I don't think I need
5 one.

6 JUDGE FLEMING: Realistically, I'm
7 not going to go home and sit on the front porch and
8 read depositions.

9 (Thereupon, the proceedings were
10 adjourned to June 25, 2012, at 9:30 a.m.)

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CERTIFICATE

STATE OF KANSAS)
) ss:
 COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 21, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 42 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

 LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 12)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 25th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

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EXAMINATION INDEX

ANTHONY HENSLEY		
	DIRECT BY MR. RUPE	2443
	CROSS BY MR. CHALMERS	2470
	REDIRECT BY MR. RUPE	2489
JOHN ALLISON		
	DIRECT BY MR. RUPE	2492
	CROSS BY MR. CHALMERS	2560
	REDIRECT BY MR. RUPE	2635
	RECROSS BY MR. CHALMERS	2650
	BY THE PANEL	2652
	BY THE PANEL	2657

EXHIBIT INDEX

		MAR	/	ADM
	Plaintiffs' Exhibit			
	214-A	2647		
	417	Wichita School District	2589	2593
		Preliminary 2012 State		
		Assessment Results		

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

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3
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P R O C E E D I N G S

JUDGE THEIS: You can be seated.

Thank you. Morning.

MR. RUPE: Good morning.

Ready for us to proceed?

JUDGE THEIS: Yes, sir.

MR. RUPE: Before we call Senator Anthony Hensley to the stand I want to anticipate what the day is going to bring and then a probable objection, and I want to be heard on it before Senator Hensley gets on the stand.

We have today Senator Hensley. And he is going to be testifying briefly about the history of school finance and the adoption of the SDFQPA and operation of that statute.

He will further testify about what the funding has been for that statute and also talk about the cuts that have occurred.

He will be followed by Superintendent John Allison, the business manager. And I may have these titles wrong, so bear with me. Linda Jones, from USD 259, Wichita; Lori Doyle, who's a former principal at West High School in Wichita; and Amy Hungria, who is at Hamilton in Wichita.

We have already heard from two

1 Wichita teachers, so I think we're going to try to
2 keep -- and other superintendents, so as promised,
3 we're going to try to keep their testimony fairly
4 narrow and move right along today. I'm anticipating
5 we'll get all these folks in today.

6 So first off, on Senator Hensley,
7 and I know there will be an objection that goes to
8 legislative intent, and the Court has indicated a
9 ruling on that.

10 If I may approach the bench, I put
11 a short little brief up here.

12 Judge, you actually have my copy,
13 which just has yellow highlight on it, but I want to
14 make sure I got a copy to Art.

15 But here's where I think we are on
16 the issue of legislative intent. The Montoy Court
17 requires that this -- analysis in this trial and in
18 the Montoy case, the analysis was that the
19 Legislature needed to consider the actual cost of
20 providing a constitutional and suitable education.

21 Montoy found state educational
22 financing measures unconstitutional because they
23 weren't based on a cost analysis but rather on
24 political and other factors not related to education.

25 The legislative considerations

1 underlying the funding decreases, as well as the
2 factors that motivated those decreases, we think, are
3 relevant in this present trial.

4 In short, you can't look at whether
5 or not the Legislature considered something until and
6 unless I can ask somebody from the Legislature, did
7 you have it in front of you, and did you consider it.

8 And so I think in terms of
9 legislative intent, I'm not going there. Not what
10 was your purpose in adopting the statute to
11 accomplish this. I'm not moving into the area of
12 intent at all. But I am asking and I think I should
13 be entitled to ask whether or not it was considered.
14 What was considered.

15 And I think Senator Hensley is
16 probably in the best position of the witnesses so far
17 to indicate what the Legislature considered.

18 And so my hope would be that
19 because the charge to the parties in this litigation,
20 as it was in Montoy, is to look at what the
21 Legislature considered by way of actual costs and
22 other factors that -- that we hear some evidence on
23 that.

24 So I anticipate that objection. I
25 wanted to get it up front before we actually got into

1 the questioning of the witness.

2 I do have a suggestion, for what
3 it's worth. And that is that you take this motion
4 under consideration, take this ruling under
5 consideration. Listen to the evidence on what was
6 considered. And then determine whether or not that
7 testimony is relevant or satisfies your previous
8 ruling or should be allowed for some other reason.

9 So that's my anticipating and
10 trying to avoid breaking up the testimony once
11 Senator Hensley gets on the stand.

12 JUDGE THEIS: All right.

13 MR. CHALMERS: Just about two
14 minutes before you walked in I got a copy of
15 Mr. Rupe's brief, which is unfortunate, because the
16 case law that's on point in Kansas I left in a
17 briefcase back at the hotel room.

18 The Kansas law is that this is
19 not -- Kansas Supreme Court law is that this is not
20 admissible. It's not relevant.

21 I, like Mr. Rupe, think the best
22 procedure is to allow him to proffer the testimony
23 and I accept if he just describes what it is that
24 Senator Hensley would say as a proffer of evidence.

25 And that I think protects the

1 record in terms of where we go.

2 But I will object to testimony that
3 talks about what the Legislature as a body
4 considered.

5 I think what this Court has ruled,
6 and properly so, is that you can talk about what was
7 before the Legislature.

8 JUDGE BURR: Is there a distinction
9 about asking the question about what the Legislature
10 as a whole considered and what a particular
11 legislator considered?

12 MR. CHALMERS: There is a
13 distinction on that --

14 JUDGE BURR: Okay.

15 MR. CHALMERS: -- although a
16 particular legislator's opinion on what he considered
17 isn't relevant.

18 JUDGE BURR: I guess, you know,
19 that we'll determine, but, yeah, okay.

20 MR. CHALMERS: So that will be my
21 position.

22 Also by way of forecasting where
23 we're going on this, I mentioned to Mr. Rupe I
24 learned after Court recessed last week that the
25 commissioner of the Kansas Department of Education,

1 Ms. DeBacker, will have a telephone conference on
2 Thursday. We don't know the time or at least when we
3 last talked with her with the federal government as
4 to the waiver request the state has put in place.

5 It was my suggestion then that
6 instead of calling her on Thursday we would call her
7 on Friday. I understand Mr. Rupe objects to that,
8 but I want to -- I don't know of any good reason why
9 we can't take testimony that would be relevant that
10 is not going to be available until after Thursday on
11 Friday, so.

12 MR. RUPE: If I sound like I'm
13 whining, please stop me, when I talk about not having
14 to go Friday. I think we can get all the evidence in
15 on Thursday.

16 I've indicated to Mr. Chalmers that
17 in terms of the lineup we've committed to the
18 schedule and we told you that we would be done on
19 Thursday. And, frankly, I would like to be done on
20 Thursday.

21 In terms of a phone conference, as
22 I understand it, and Mr. Chalmers can correct me if I
23 am wrong, but he indicated there would be no decision
24 on the waiver as a result of the Friday call. There
25 would simply be a discussion of whether or not the

1 waiver would be recommended.

2 We're still in the speculation
3 category in terms of the waiver. And if he -- if he
4 can have Ms. DeBacker here on Thursday afternoon
5 after her call, I think that works.

6 And I just don't see any reason to
7 hold the evidence open until he has a call on
8 Thursday. That would probably mean on Thursday we
9 work a couple hours in the morning and then take off
10 the rest of the day until Friday.

11 JUDGE BURR: Well, the phone call
12 is supposed to be when?

13 MR. RUPE: Thursday some time is
14 all I know.

15 JUDGE BURR: You don't know what
16 time?

17 MR. CHALMERS: She didn't know.
18 The feds said they wanted a conference call on
19 Thursday and then had not told her exactly when. It
20 could be that it is in the morning. She'll be here
21 in either event. I mean, she'll have --

22 JUDGE BURR: We would surely
23 know -- we don't have to rule today, I don't think,
24 do we?

25 MR. CHALMERS: We'll be able to

1 find out today when it is.

2 JUDGE BURR: As soon as you know
3 and then we'll go from there.

4 MR. RUPE: That makes the most
5 sense.

6 JUDGE BURR: Okay.

7 JUDGE FLEMING: Mr. Chalmers,
8 what's wrong with Mr. Rupe's suggestion that we go
9 ahead and hear Senator Hensley's testimony, take
10 under advisement the objection that you haven't made
11 yet, you know? We're used to this. We can -- we
12 can -- I assume you'll want to respond to his little
13 brief. If we think you're right, we can disregard
14 it.

15 MR. CHALMERS: I don't disagree
16 with that. I think it's more expedient for him to
17 simply tell you by way of proffer what he plans on
18 presenting. I think it'll probably be quicker. But
19 probably the time we spend arguing about it we could
20 probably get it done. Either way I'll make my
21 objection.

22 I'd just as soon you hold your
23 ruling or sustain it would be the appropriate course
24 and hear the testimony, and then, if after you read
25 Mr. Rupe's brief and mine decide that your previous

1 ruling was wrong, reconsider it and accept the
2 evidence.

3 JUDGE BURR: Okay.

4 JUDGE THEIS: Let's start with it.
5 If there's some specific question, give us an idea,
6 Mr. Chalmers, by going ahead and objecting to a
7 particular question, and that way we can at least see
8 whether we decide it or see what context it's in.

9 About Thursday, I would suggest
10 that maybe, I don't know if what she had testified to
11 as a waiver isn't going to be granted, if that were
12 material and she was unavailable, that there's going
13 to be a gap here between when we quit the live
14 testimony and when you probably come back for an oral
15 argument or whatever. And then you could submit it
16 in the form of deposition, because I don't think the
17 truth of what she'd be saying would be an actual
18 issue.

19 So I don't know if it would be
20 necessary to view the witness in order to determine.

21 MR. RUPE: That makes sense. I
22 know she's going to be testifying to other matters
23 and we could get her time on Thursday. We'd be
24 willing to move things so we could get her here and
25 get everything she had to say except for that and do

1 a telephone deposition, a short deposition.

2 MR. CHALMERS: I think that makes
3 sense, because then we would have something concrete
4 and you would know what it is that the state is
5 required to do before you rule. So I think that's a
6 logical way to handle it.

7 JUDGE THEIS: Let's just proceed
8 and see what happens here.

9 MR. RUPE: Okay.

10 Senator Anthony Hensley is our next
11 witness.

12 ANTHONY HENSLEY,

13 Called as a witness for the
14 Plaintiffs, was duly sworn by the reporter and
15 testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. RUPE:

18 Q. Tell the Court your name and the city in
19 which you live.

20 A. Anthony Hensley. I live in Topeka, Kansas.

21 Q. And I know you wear a couple of hats. Would
22 you describe for the Court what your positions are?

23 A. Well, I've been a public school teacher for
24 37 years and I've served in the Kansas Legislature.
25 I've actually served in the Legislature for 36 years.

1 I was in the Kansas House of Representatives for 16
2 and I just finished my 20th session in the Kansas
3 Senate. I'm also the Senate minority leader.

4 Q. All right. And tell us a little bit about
5 your educational background, please.

6 A. Well, I graduated from Washburn University
7 in 1975, and I have a Master's Degree from Kansas
8 State University in Special Education.

9 Q. And you began teaching when?

10 A. In 1975.

11 Q. And where did you begin teaching?

12 A. I actually taught in USD 490 in the El
13 Dorado School District for a year. And then I
14 returned and continued my teaching career in USD 501,
15 the Topeka public schools.

16 Q. In terms of the Legislature, when did you
17 first get elected to the Kansas House?

18 A. In 1976.

19 Q. And what was the area of Topeka that you
20 represented?

21 A. I represent the eastern part of Topeka and
22 eastern Shawnee County.

23 Q. In terms of your service in the Kansas
24 House, how long did you serve in the house before you
25 became a member of the Senate?

1 A. Sixteen years.

2 Q. And the year that you became a senator was
3 what year?

4 A. 1992.

5 Q. Tell us what positions you've held within
6 the Senate other than minority leader?

7 A. Well, I've served on numerous committees. I
8 currently serve on the Transportation Committee. I
9 serve on the Post Audit Joint Committee. Also serve
10 on the Committee on Pensions, Investments and
11 Benefits. And then I also serve on the Senate
12 Education Committee.

13 Q. Were you on the Post Audit Committee at the
14 time the LPA study was done?

15 A. Yes, I was.

16 Q. You have been on the Senate Ed Committee
17 since 1993?

18 A. Yes.

19 Q. And in terms of Legislative Post Audit we'll
20 get there in a minute, but you were on that committee
21 at the time the Post Audit Committee reported to your
22 committee concerning the findings on the costs of
23 providing a suitable education in Kansas?

24 A. That's correct.

25 Q. With that background, I'd like to move, if

1 we could, to a little history, if we could. Let's go
2 back to the early '90s, and this is an exhibit in
3 this case. I want to refer you to Plaintiffs' 173
4 and 174, if I could.

5 And from a case that I call the 29 case,
6 which was Newton Unified School District, Number 373
7 versus the State of Kansas and a whole series of
8 other folks, and this was a trial that occurred in
9 this courthouse in 1993.

10 There was testimony from a Senator August
11 Bogina, Jr., and he was testifying about how the base
12 budget per pupil was determined in that era. And he
13 indicated that -- and I just want you to tell me if
14 this is consistent with your recollection, he
15 indicated that the \$3600 base was determined, quote,
16 "In my opinion it was an auction," period, unquote.

17 Do you agree with that?

18 A. I do agree with that.

19 Q. Explain to the Court how that auction worked
20 in the Legislature when they came up with the base
21 state aid per pupil back in 1993.

22 A. Well, basically it was an arbitrary figure
23 and what we decided to do in 1992, and I was actually
24 in the House at the time, we decided to set the base
25 state aid per pupil at \$3600.

1 It really wasn't based on any sort of cost
2 analysis. It was a figure that I think was intended
3 to get enough votes to pass the bill.

4 Q. And then ten years later in 2003, in the
5 Montoy case, Senator Christine Downey Schmidt
6 testified for the plaintiffs in that matter. And I
7 asked her the same question I just asked you about
8 Senator Bogina's testimony as it applied to the
9 setting of the base in 2003. And she indicated that
10 she agreed with that, that it was an auction.

11 In 2003, how did the base get determined, in
12 the 2002/2003 time frame?

13 A. Pretty much the same way. I mean, it was an
14 arbitrary figure that the Legislature passed based
15 on, you know, political considerations. We needed
16 enough votes in order to pass the bill.

17 Q. In terms of actual costs in 2003, when the
18 base was determined, was there any consideration of
19 actual cost by the Legislature?

20 A. As I recall there really wasn't.

21 Q. All right. Now, let's move to Exhibit 175,
22 if we could. And Exhibit 175 is a letter that you
23 wrote, and this is in evidence, April 11, 2005; is
24 that correct?

25 A. That's correct.

1 Q. Explain what your purpose was in writing
2 this letter.

3 A. Well, this letter was basically drafted in
4 collaboration with the House minority leader at that
5 time, Representative Dennis McKinney. And for all
6 practical purposes, while this was not an amicus
7 brief, we felt it was important that we send a letter
8 to then the Chief Justice of the Supreme Court, Kay
9 McFarland, to outline our objections to 2005 House
10 Bill 2247, which was the school finance bill that was
11 passed by the Legislature in the 2005 session.

12 And we basically went back to the Montoy
13 decision to point out that the bill that was passed
14 in the 2005 session did not take into consideration a
15 number of admonitions that the Supreme Court had
16 imposed upon the Legislature, and in particular
17 whether we were making our decisions based on actual
18 cost or whether there were -- whether there was more
19 of a political consideration in the passage of the
20 bill.

21 So there were a number of different issues
22 contained in this letter that we felt compelled we
23 needed to bring to the attention of the Supreme
24 Court.

25 Q. And I want to focus on one of those, which

1 you talk about on the first page of Exhibit 175, and
2 that is the survey that was conducted by Dale
3 Dennis. Explain how that came about and what that
4 survey was.

5 A. The survey conducted by Mr. Dennis was at
6 the request of the Senate Education Committee. As
7 indicated in the letter, Mr. Dennis surveyed 55
8 school districts of varying size and location on the
9 actual cost of educating children in each district
10 and we examined those findings -- the findings
11 within that survey, but chose not to use those actual
12 costs in the development of the school finance plan
13 which passed the 2005 Kansas Legislature.

14 Q. And on the first page, let's see, one, two,
15 three, four, fifth paragraph down, you indicate in
16 this letter many legislators either discredited or
17 ignored the survey. The House Education Committee
18 never examined the survey's findings nor did they
19 pursue any additional data on actual cost.

20 A. That's correct.

21 Q. Is that an accurate statement?

22 A. That is an accurate statement.

23 Q. Okay. And now I want to group together some
24 exhibits for you just to ask about your familiarity
25 with them, and then a general question, but I want to

1 hand you 318, 311, 323, and 308.

2 And the question is, who is John Wong?

3 A. John Wong is an economist. I'm familiar
4 with Mr. Wong. He has on various occasions appeared
5 before legislative committees and has been under
6 contract with an organization that's known as the
7 Kansas Economic Progress Council. He has presented
8 information to the Legislature with regard to the tax
9 base in Kansas.

10 And the studies that you've referred me to
11 deal specifically with those kinds of issues.

12 Q. Okay. So the three exhibits that I
13 mentioned, 318, 308 and 311, are all studies
14 concerning the erosion of the tax base per Dr. Wong?

15 A. That's correct.

16 Q. And if I understand your testimony, this
17 information was provided to the Legislature by
18 Dr. Wong?

19 A. Yes, it was.

20 Q. And now what I'd like to ask you about is in
21 terms of your presence in the Legislature going back
22 to 1970 -- what was your first year you were in the
23 House?

24 A. 1977.

25 Q. Drive a stake in the ground in '77 and then

1 drive a stake in the ground today. And I want to ask
2 you about the changes in the state sales tax
3 exemptions in that time frame.

4 A. When I first came to the Legislature, when
5 you think in terms of the alphabet, 26 letters in the
6 alphabet, we were actually at paragraph F, A through
7 F is the number of exemptions we had on the books.
8 And today I went back to look at the sales tax
9 exemption statute and we're actually up to quadruple
10 F in that amount of time. That accounts for about 84
11 exemptions that have been passed by the Legislature
12 over that period of time.

13 There are other exemptions and other
14 statutes, but I'm referring primarily to the main
15 statute that deals with sales tax exemptions.

16 There's no question in my mind, in my
17 opinion, that the Legislature has systematically
18 eroded the tax base -- the sales tax base over time.

19 Q. Thank you. Now, let's talk about the
20 knowledge of the Legislature in terms of some
21 specific items that occurred in the budget over a
22 period of time. I want you to look at Plaintiffs'
23 Exhibit 303 for a minute.

24 Are you familiar with Plaintiffs'
25 Exhibit 303?

1 A. Yes, I am.

2 Q. And walk back in time to the 2004 session
3 and tell me if at the time of the 2004 session when
4 the increases of the Montoy case were being adopted
5 whether there was a projected shortfall.

6 A. There was a projected shortfall in Fiscal
7 Year 2005. We had an ending balance of approximately
8 \$480 million, and projected ending balance in Fiscal
9 Year 2009 was negative 426 million.

10 Q. And this is pre-recession era, but let me
11 show you what is 203.

12 MR. RUPE: Thank you.

13 MS. GARNER: It's 303.

14 MR. RUPE: I'm sorry, 303.

15 Q. (By Mr. Rupe) In that session at the time
16 the school funding plan was adopted it was known that
17 the state's expenditures would exceed the state's
18 revenue in 2007, '08 and '09. There had been a
19 surplus in 2005 and 2006.

20 Is that an accurate statement?

21 A. Yes, it is.

22 Q. Then take a look, if you would, at
23 Exhibit 301. Are you familiar with this publication
24 from the Kansas Legislative Research Department,
25 Exhibit 301?

1 A. Yes, I am.

2 Q. The Exhibit 301 is for Fiscal Years 2009
3 through 2011, correct?

4 A. That's correct.

5 Q. And in terms of the projected shortfall
6 during that period of time, is it accurate that 358.7
7 million was the size of the cut needed for fiscal
8 year -- as it was projected back then for Fiscal Year
9 2011 unless revenues were increased?

10 A. That's correct.

11 Q. All right. So if I'm on track, at the time
12 this was put together, there was a projected
13 shortfall of 358.7 million?

14 A. That's correct.

15 Q. Then take a look at Exhibit 302, which is
16 another publication from the Kansas Legislative
17 Research Department projecting Fiscal Years '08 to
18 '12. And is it accurate that based on Plaintiffs'
19 Exhibit 302 -- let me see if I can focus this a
20 little better.

21 Well, that number is hard to read from the
22 screen. I shouldn't complain. I'm borrowing this
23 Elmo from opposing counsel, so I won't. But is it
24 accurate that the shortfall was 855.5 million?

25 A. That's accurate.

1 Q. For Fiscal Year 2012?

2 A. Yes, that's correct.

3 Q. So this number is this number?

4 A. (Nodding head.)

5 Q. Okay.

6 So in terms of the Montoy funding, let me
7 get some dates in front of you that we've all agreed
8 on here, but in terms of the Montoy funding, the
9 special session of the Legislature where there was
10 some money put into public education as a result of
11 the Montoy case was in 2005/2006?

12 A. I believe that was about a little over \$250
13 million.

14 Q. All right. Then in '06/'07 was the first
15 year of the three-year plan and '07/'08 was the
16 second year of the three-year plan. And '08/'09 was
17 to be the third year of the plan?

18 A. That's correct.

19 Q. Prior to the December cuts?

20 A. That's correct.

21 Q. And in terms of what you've just testified
22 to with regard to those increases is it fair to say
23 that the Legislature at the time of those increases
24 knew that there would be substantial budget
25 shortfalls?

1 MR. CHALMERS: A, it's not
2 relevant; but B, he's now asking for an expressed
3 opinion as to what the Legislature knew or didn't
4 know, and I think it's not a proper subject for this
5 witness to express an opinion on and I object.

6 JUDGE THEIS: I sustain it to the
7 form of the question. The question is whether there
8 was anything that -- what he had in front of him and
9 whether there was anything contrary to that.

10 Q. (By Mr. Rupe) The information you have seen
11 in the legislative research department's budget
12 projections was that there would be a substantial
13 shortfall?

14 A. That's correct.

15 Q. When they addressed it in '05/'06 and
16 '07/'08?

17 A. That's correct.

18 Q. All right.

19 And in terms of the economy at the time they
20 produced the numbers that showed a substantial
21 shortfall, had the recession started?

22 A. It had.

23 Q. It started when?

24 A. Basically in the early 2000s.

25 Q. And in terms of the state -- in terms of the

1 money that the state had available in 2005, when it
2 set about funding the Montoy money, they had a
3 projected shortfall for each of the following years?

4 A. That's correct.

5 Q. Okay.

6 MR. CHALMERS: Well, it's a little
7 late, but I was going to object to the form. He's
8 been leading the witness.

9 JUDGE THEIS: We'll treat it as
10 late.

11 Q. (By Mr. Rupe) And did the Legislature -- the
12 three exhibits I mentioned that had to do with the
13 Legislative Research Department projections, 309 --
14 301, 302, and 303, my question is, did the
15 Legislature have this information in front of it when
16 it made its decisions?

17 A. Yes.

18 Q. And in terms of the chart that shows the
19 cuts, we have marked that as Plaintiffs' 411. And
20 that shows the years that the Montoy money was
21 instituted and then starts the cuts in '08/'09?

22 A. That's correct.

23 Q. And let's focus on the cuts for a minute.
24 The cuts in '08/'09 occurred at the end of the year?

25 A. Yes.

1 Q. All right. At the end of the year in '08?

2 A. That is correct.

3 Q. And then there were substantial cuts in
4 '09/'10, '10/'11, '11/'12. And then this year there
5 was a modest increase?

6 A. Right, we put this year about \$40 on the
7 base.

8 Q. And in terms of information that the
9 Legislature had before it when it adopted the
10 increases, you've talked about the Dale Dennis study
11 and what the Legislature did with that.

12 Was there information by way of the LPA
13 study during this time frame?

14 A. Yes.

15 Q. And what did the Legislature do with the LPA
16 study information?

17 MR. CHALMERS: I think he's calling
18 for a conclusion by one legislator as to what the
19 Legislature in general did with that, and I object to
20 the form of the question, as well as it is improper
21 opinion and subject for testimony by a witness.

22 JUDGE THEIS: I think you can ask
23 him what was in front of the Legislature and what was
24 not in front of the Legislature.

25 MR. RUPE: And I think --

1 JUDGE THEIS: But when he says the
2 Legislature, when the answer requires for him to
3 pronounce a judgment on what the Legislature did, I
4 think you start getting in a little trouble.

5 MR. RUPE: And in terms of what we
6 talked about earlier in my brief, I think I'm going
7 to proffer that testimony and then let you consider
8 it.

9 No pun intended, I guess.

10 JUDGE THEIS: You may be able to
11 get the information you want by a proper question.
12 The way you ask your question you ask him to speak
13 for the Legislature. He's not competent under any
14 circumstances to speak for the Legislature as an
15 individual.

16 Q. (By Mr. Rupe) Let me ask you whether the LPA
17 study was in front of the Legislature after it came
18 out in the first days of the session in 2006, during
19 the period of time of these increases?

20 A. It was. And if I may be so bold as to
21 express my own opinion as one of 165 legislators, we
22 typically ignore --

23 MR. CHALMERS: It's not -- a
24 question has not been asked. And I think I respect
25 he has an opinion. It's not a proper subject for

1 this proceeding. I object and ask that he just
2 answer the question.

3 MR. RUPE: I think he can give his
4 own opinion as long as he qualifies it as his own.

5 MR. CHALMERS: I think the question
6 ought to be asked, so I can object.

7 JUDGE THEIS: I think it needs to
8 be rephrased by a question.

9 MR. RUPE: Okay.

10 JUDGE THEIS: So he has a right to
11 object.

12 Q. (By Mr. Rupe) So what is your opinion?

13 A. My opinion is --

14 MR. RUPE: Hang on.

15 MR. CHALMERS: I object that it's
16 not relevant. I object that it's not a proper
17 subject for one legislator's opinion, particularly if
18 it's a legislator's opinion concerning what the
19 Legislature intended or didn't intend isn't proper.

20 If it's opinion as to what he would
21 have done or thought should have been done, again, I
22 don't know that an adequate foundation's been laid.
23 I don't know exactly what the opinion would be to
24 know if it was relevant or not.

25 But I'm inclined to think that as

1 it's phrased it's not relevant to anything in this
2 case.

3 MR. RUPE: Again, it doesn't go to
4 motivation, it goes to consideration. And that's the
5 key here.

6 JUDGE THEIS: Who is doing the
7 considering?

8 MR. RUPE: He's giving his opinion
9 on what they considered. And then I'm going to ask
10 him -- it'll be a proffer, but I'm going to ask him
11 what did the Legislature consider.

12 So first up is --

13 JUDGE THEIS: You make them both
14 proffers.

15 Q. (BY MR. RUPE: Tell us as a proffer what
16 your opinion is.

17 A. In terms of the studies that we conduct, my
18 opinion is that we conduct studies and then routinely
19 ignore them.

20 Q. In terms of the Legislature's opinion or
21 your opinion of the legislative action, again as a
22 proffer subject to counsel's objection, is your
23 opinion the same?

24 A. It is.

25 Q. Okay.

1 Now, let's talk about what was in front of
2 the Legislature during the period of time that -- and
3 I'm going to put up Exhibit 241, which is the cuts
4 that occurred that you've mentioned, and you see the
5 cuts occurring in February of '09, March of '09, May
6 of '09, July of '09, November of '09, March of '11,
7 May of '11, and a total amount of cuts, including a
8 one percent special ed cut, a one percent special ed
9 cut again, a capital outlay equalization elimination
10 or absence, and an LOB equalization aid reduction,
11 for a total of \$511 million.

12 First of all, you agree that those were the
13 cuts?

14 A. Yes, I do.

15 Q. Second, what did the Court -- what did the
16 Legislature have in front of it by way of costs when
17 they made those cuts? And by costs I mean actual
18 costs of education.

19 A. We didn't have any analysis of actual cost
20 in front of us at the time.

21 Q. In terms of your own knowledge from being a
22 teacher, has the cost of educating kids in this time
23 frame gone down?

24 A. It has.

25 Q. No, has the cost of educating kids gone

1 down?

2 A. Yes, it has.

3 Q. All right. In terms of how has it gone
4 down?

5 A. Well, I mean, I can speak for the school
6 district that I work for. They've had to lay off
7 teachers and they've had to increase class sizes
8 primarily.

9 Q. I asked you a poor question. Have the needs
10 of kids in this era gone down?

11 A. I think the needs have actually gone up.

12 Q. Okay.

13 Take a look, if you would, at Plaintiffs'
14 Exhibit 298. Just to talk about what was available
15 in the most recent session, so I want -- let's get
16 298 and 299 in front of him.

17 Andrew, I've got them here on blow-ups. I
18 can show it to him.

19 At the -- in the last legislative session
20 that was just concluded, was there a -- were there
21 excess funds in the state general fund?

22 A. Yes. We had a fairly significant ending
23 balance, and as a result we were able to increase the
24 state base aid per pupil.

25 Q. All right. Would you agree that it was a

1 modest increase?

2 A. It was a modest increase.

3 Q. Then let me show you what -- and you're
4 familiar with the tax cuts that the Legislature
5 adopted?

6 A. Yes, I am.

7 Q. In terms of the tax cuts, explain the
8 consequences of that with regard to that excess in
9 the state general fund.

10 MR. CHALMERS: Lack of foundation.

11 JUDGE THEIS: Well, I assume
12 legislators would be aware of budgeting matters like
13 that. Overruled.

14 THE WITNESS: The tax cut bill,
15 House Bill 2117, passed the Legislature and was
16 signed into law by the Governor. And it, in my
17 opinion, is going to cause a devastating impact on
18 the state general fund in the future, particularly in
19 the out years up until Fiscal Year 2018, which I
20 think the projected deficit in the general fund will
21 be \$2.5 billion.

22 Q. (By Mr. Rupe) And take a look at
23 Exhibit 327, if you would, which is in evidence.
24 It's a transcript of a presentation by then Governor
25 Parkinson and he was talking about events up to that

1 time and talking about the state's budget, and I just
2 want to see if you agree with what he said at that
3 time.

4 He said the second reason that this is
5 particularly bad for the average person is that this
6 tax-cutting binge has impacted the integrity of the
7 very programs that Kansans want and need. We aren't
8 able to spend the money that we need to spend on
9 education.

10 So my question to you is, with regard to
11 exhibit -- the comments by then Governor Parkinson
12 and the projections you've just described in
13 Exhibit 299, is it accurate that the state knew that
14 those cuts would affect public education?

15 MR. CHALMERS: Well, let me object
16 to the question. Now he's trying to have this
17 witness testify to what the state knew and also
18 mixing his time frames. I object to the form, as
19 well as I object to lack of foundation and not a
20 proper subject for the witness to testify as well.

21 JUDGE THEIS: The question is
22 whether the budget projections were in front of the
23 Legislature.

24 Q. (By Mr. Rupe) Were the budget projections in
25 front of the Legislature at the time?

1 A. Yes.

2 Q. Do you agree with what is in evidence by way
3 of Governor Parkinson's comments in 2010, that those
4 budget cuts affect public education?

5 A. Yes, I do.

6 Q. And this probably goes without saying, but
7 they sure affect them in a negative way, don't they?

8 A. That's correct.

9 Q. Do you receive -- does the Legislature
10 receive recommendations from the state Board of
11 Education concerning increases in public education
12 each year?

13 A. Yes, we do.

14 Q. And is it accurate that -- and I can go
15 through the exhibits if you want me to refresh your
16 recollection, but is it accurate that in 2008/'09,
17 '10/'11, and '11/'12, there were increases
18 recommended by the state board?

19 A. That's correct.

20 Q. And in 1213, is it accurate they recommended
21 that the funding be to the statutory stated level?

22 A. Yes.

23 Q. What is the 2010 Commission?

24 A. 2010 Commission was established by the
25 Kansas Legislature in the session of 2005. And it

1 was to remain in existence, actually expire on
2 June 30th of 2010. We established the 2010
3 Commission to basically conduct an ongoing monitoring
4 of the implementation of our school finance law. And
5 they have a number of other responsibilities under
6 the statute.

7 But their primary purpose was to advise the
8 Legislature, make recommendations as to necessary
9 changes we might need in the future of the school
10 finance law.

11 Q. Did those recommendations include funding
12 increases?

13 A. Yes, they did.

14 Q. Did the Legislature have in front of them in
15 the years 2008/'09, '09/'10, '10/'11, '11/'12 those
16 recommendations from the 2010 Commission?

17 A. Under the statute the 2010 Commission was to
18 make an annual report to the Legislature on or prior
19 to December 31st of each year.

20 Q. And we've talked about the Legislative Post
21 Audit. I want to ask you if you recall the
22 Augenblick Myers study that the Legislature
23 commissioned on the determination of the costs of
24 education?

25 A. I do.

1 Q. And with that what I want to focus on is
2 this Exhibit 233 again, because I want to ask
3 about --

4 MS. GARNER: Alan, I think you
5 wanted this one.

6 MR. RUPE: I'm sorry.

7 Q. (By Mr. Rupe) I'm sorry, let me look at 236.
8 When this modest increase occurred this year along
9 with the tax cuts you talked about in Exhibit 299, my
10 question is, did the Legislature have in front of it
11 the cost study in Augenblick Myers, the cost study in
12 the Legislative Post Audit, five years of
13 recommendations of increases from the Kansas State
14 Board of Education, the recommended increases from
15 the 2010 Commission? My question is did they have
16 those in front of them when they substituted the tax
17 cuts?

18 A. None of that was taken into consideration.

19 MR. CHALMERS: Move to strike the
20 last answer as being non-responsive and expressing an
21 opinion is not relevant.

22 JUDGE THEIS: I strike it as
23 non-responsive.

24 Q. (By Mr. Rupe) In terms of did they have it
25 in front of them? In other words, was it available

1 to them?

2 A. Yeah, it was up on the shelf.

3 Q. Did they consider it in making the tax cuts?

4 MR. CHALMERS: Same objections as
5 before.

6 JUDGE THEIS: Sustained.

7 MR. RUPE: I would ask it as a
8 proffer.

9 JUDGE THEIS: Okay.

10 MR. RUPE: Answer the question as a
11 proffered testimony.

12 THE WITNESS: I don't -- you know,
13 in my opinion none of that was taken into
14 consideration.

15 Q. (By Mr. Rupe) Okay. And now separate your
16 opinion from what you remember. Do you remember
17 anybody in the Legislature considering it at the time
18 the tax cuts were adopted?

19 MR. CHALMERS: Either hearsay or
20 it's the same objection as before. Objection.

21 JUDGE THEIS: What was your
22 objection?

23 MR. CHALMERS: Well, it would be on
24 the basis as the same basis before, all he's done is
25 rephrase it and now I think what he's talking about

1 is potentially what may be some hearsay comments he
2 may have seen or heard. Unless there's a foundation
3 laid that he talked to everyone in trying to secure
4 what it is that they said or believed or relied on or
5 knew and then fit that into some sort of hearsay
6 exception. I don't know what that would be, because
7 it seems to be offered for the truth of the matter
8 asserted. It would not be proper testimony.

9 And then what I think is simply his
10 opinion over again, which I object on the previous
11 basis, which is one individual legislator cannot
12 testify to what the body believed or thought or knew.

13 JUDGE THEIS: The question would be
14 did he hear discussed SDFQPA?

15 MR. RUPE: No. Based on your
16 recollection was it considered? Were those cost
17 studies considered? And that goes to the issue that
18 we've briefed. And I would -- if you don't
19 sustain -- if you sustain his objection, I would
20 proffer his answer.

21 MR. CHALMERS: I make the same
22 objections for the record.

23 JUDGE THEIS: Sustained.

24 MR. RUPE: Okay. I would proffer
25 his answer then.

1 Q. (By Mr. Rupe) So the question is, at the
2 time of the tax cuts, did the Legislature consider
3 any of those cost studies?

4 A. No.

5 Q. Did the Legislature take any action to
6 increase -- strike that.

7 Did the Legislature have in front of it in the
8 most recent session any information that the actual
9 costs of educating kids to a suitable level had gone
10 down?

11 A. No.

12 MR. RUPE: That's all I have.

13 Thank you.

14 CROSS-EXAMINATION

15 BY MR. CHALMERS:

16 Q. This year an appropriation bill passed and
17 the appropriation bill increased the general state
18 aid to \$1.961339680. Does that sound about right?

19 A. You'll have to repeat that.

20 Q. Sure. This year there was an appropriation
21 act passed by the Legislature, is that correct?

22 A. That's correct.

23 Q. Approved by the Governor, is that correct?

24 A. That's correct.

25 Q. It included what was to be the funding or is

1 to be the funding provided by the state to education
2 this year, is that correct?

3 A. That's correct.

4 Q. This year that number for the general state
5 aid, and I'm sorry, you know, I think I read the
6 wrong number, Senate Bill 294, the House Substitute
7 that was passed, is that correct?

8 A. That sounds correct, yeah.

9 Q. And the general aid for under that bill was
10 1.957322270, which was an increase of approximately
11 \$55 million over the previous year.

12 Is that consistent with your understanding?

13 A. Yes.

14 Q. Now, the amount that is funded in total for
15 special ed, general state aid, supplemental general,
16 discretionary grants, KPERS, pre-K, parent ed and
17 miscellaneous items, so I'm not talking about the
18 Department of Ed's budget, but everything else, came
19 to \$3.08 billion. Is that consistent with your
20 memory?

21 A. That sounds correct.

22 Q. And when that bill was presented you voted
23 against it?

24 A. I did.

25 Q. And you voted against it because it was your

1 opinion based on your knowledge of what the costs
2 were to educate kids in this state that more money
3 needed to be provided?

4 A. I voted against it because we had an
5 alternative plan that we'd introduced into the Senate
6 Education Committee that the Senate approved, which I
7 voted for earlier in the session, that would have
8 substantially increased and restored the cuts to
9 public education.

10 Q. It would have been an additional what, about
11 30 to \$40 million?

12 A. All total as I recall it would have been
13 about \$150 million over a three-year period of time.

14 Q. And on an annual basis for this next year,
15 because you worried about this year?

16 A. Right.

17 Q. It would have been what, an increase of
18 about, did it end up 30 or 40 million on top?

19 A. It actually would have about \$50 million.
20 Yeah, \$70 on the base.

21 Q. Getting back to my question, you voted
22 against this last bill because it was your opinion
23 that it did not provide enough money based on your
24 knowledge and information concerning the cost to
25 educate kids in our state?

1 A. It was based upon my feeling that we needed
2 to begin restoring the cuts that had occurred to
3 public schools over time, and I felt like we needed
4 to take a first step in restoring those cuts.

5 Q. And you have, you've testified, knowledge
6 about what the costs are to educate the kids in our
7 state?

8 A. We didn't have any information with regard
9 to the cost.

10 Q. I'm asking about you personally?

11 A. No, I didn't have any information in terms
12 of the cost.

13 Q. You know nothing about what it costs to
14 educate the kids in the state? Because I thought you
15 indicated to Mr. Rupe that you felt the costs were
16 going up?

17 A. Based upon what we've had in terms of
18 studies in the past, if you rely upon the Post Audit
19 study and the Augenblick Myers study, it's very
20 apparent that the information is available to the
21 Legislature.

22 Q. I appreciate that answer, but I may be
23 asking a slightly different question. In that you
24 personally, I think, had expressed an opinion to
25 Mr. Rupe that the cost of education has gone up since

1 the Montoy case. Is that your opinion?

2 A. It did for, you know, a couple of years.

3 Q. And when I say cost, I'm talking about what
4 it costs to educate the kids. I'm not talking about
5 the costs to the state, to clarify. The cost to
6 educate the kids, the money that the Legislature
7 needs to spend, it's been your opinion that it's gone
8 up over the last several years since the Montoy
9 case? Is that your opinion or maybe I misunderstood?

10 A. That's my opinion.

11 Q. You are not the only one in the Legislature
12 that has that opinion, there are others that voted
13 with you?

14 A. Yes.

15 Q. And you are not the only one in the
16 Legislature that has information either through the
17 LPA study, the Augenblick Myers study, concerning
18 what has been reported to be the cost to educate kids
19 in this state, is that correct?

20 A. That's correct.

21 Q. Now, there is information provided to the
22 Legislature, Exhibit 1017 is Kansas Legislature
23 briefing book for 2012. Is that something that's
24 available and circulated?

25 A. It is.

1 Q. Exhibit 1016 is the Legislature briefing
2 book for 2012 concerning education. Is that
3 something that's circulated?

4 A. Yes.

5 Q. You have been on the Education Committee and
6 you were there when individuals testified about the
7 cost to educate our kids, is that correct?

8 A. Yes.

9 Q. You were on that committee when Mike O'Neal
10 provided his testimony for the purposes of the
11 legislation that was considered this year, is that
12 correct?

13 A. I don't recall Mr. O'Neal appearing before
14 the Senate Education Committee.

15 Q. Well, I think that there is some written
16 testimony from Mr. -- well, from the former Speaker
17 O'Neal to your committee, in which he discusses cash
18 reserves, in his view that there is money that school
19 districts are not spending. Do you remember that?

20 A. I don't recall that we had received that.

21 Q. You were there when there was testimony
22 being provided by individuals who are from the Kansas
23 State Department, is that correct?

24 A. Yes.

25 Q. And that testimony included how the kids in

1 Kansas were doing, that is how they were succeeding
2 on assessment tests and how they were progressing, is
3 that correct?

4 A. That's correct.

5 Q. And when you were at these committee
6 meetings, did you have the opportunity to express, if
7 you had wanted to, your views on the costs that are
8 present to educate our kids in this state?

9 A. Yes, I would have had that opportunity.

10 Q. Did you?

11 A. Pardon me?

12 Q. Did you keep that secret? You expressed
13 that to your colleagues, didn't you?

14 A. No, I don't recall that I really expressed
15 that to my colleagues.

16 Q. Now, I want to talk to you about a few
17 things Mr. Rupe raised real quickly. One of them has
18 to do with a survey that Dale Dennis of the Kansas
19 Department of Education did. That survey was in
20 April of 2005, according to Exhibit 175.

21 Is that your memory, that the survey was
22 done and presented to you before the LPA study?

23 A. I don't recall the exact timing of that. I
24 do know that it was during the session of 2005,
25 because the Senate Education Committee had requested

1 Mr. Dennis to conduct the survey.

2 Q. The LPA study was first presented to the
3 Legislature, the testimony had been at the very
4 beginning of its session in 2006. Is that consistent
5 with your memory?

6 A. Yeah, that sounds right.

7 Q. If that's right, then the LPA study and that
8 information would have been provided after
9 Mr. Dennis's survey?

10 A. That's correct.

11 Q. You testified about a series of projections
12 by John Wong or exhibits by John Wong, one of which I
13 guess is Exhibit 318. Those documents did not show
14 that they were presented to the Legislature. Are you
15 talking about information like that was presented to
16 the Legislature? Or are you indicating that those
17 exhibits themselves were presented to the
18 Legislature?

19 A. I don't have 318 in front of me, so I'm
20 not --

21 Q. You provided testimony when you looked at
22 those exhibits that they were provided to the
23 Legislature. Do you have memory of, in sessions,
24 receiving information from Mr. Wong?

25 A. I have 308, 311 and 323.

1 Q. 318 I think is the one that Mr. Rupe
2 mentioned. It's entitled Comparative Analysis of
3 Economic Impact on Kansas of Its Sales Tax Increase
4 or State Spending Reductions Prepared For the Kansas
5 Economic Progress Council by Dr. Wong, April 2010.
6 Do you have that in front of you?

7 A. Yes, I do.

8 Q. I was unclear. Is it your testimony that
9 that document was presented to a legislative
10 committee?

11 A. I don't recall if this particular document
12 was presented to a legislative committee. The other
13 documents that I have in front of me, I know were. I
14 neglected to point out that I do serve on the Senate
15 Tax Committee and we received this testimony in the
16 Tax Committee.

17 Q. Hold on to that document for a moment,
18 because I want to come back to it. Every year --

19 MR. RUPE: Which one are you
20 talking about?

21 MR. CHALMERS: That's the document
22 318.

23 MR. RUPE: Okay.

24 Q. (By Mr. Chalmers) Every year there are
25 projections presented to the Legislature as to what

1 the likely tax receipts are for the state, is that
2 correct?

3 A. That's correct.

4 Q. Projections come from a variety of different
5 sources, one of which is the Department of Revenue?

6 A. Yes, that's correct.

7 Q. But there are other projections that are
8 provided oftentimes from private sources, for
9 instance, or from testimony like Dr. Wong's, is that
10 correct?

11 A. That's correct.

12 Q. There was a projection at the beginning of
13 this year before last, that suggested a number of
14 revenues that ended up being less than what we
15 actually were able to obtain, is that correct?

16 A. As far as I know, yes.

17 Q. I mean, projections are just that, they're
18 projections?

19 A. That's correct.

20 Q. You looked at with Mr. Rupe a series of
21 objections -- or projections, and I was a little
22 unclear as to what your testimony was, so I want to
23 clarify that. In 309 is a projection that was
24 presented in front of you or by Mr. Rupe. Could you
25 find that?

1 A. I've got 301, 302, and 303.

2 MR. RUPE: I didn't do 309.

3 MR. CHALMERS: I might have written
4 it down correctly -- or incorrectly.

5 MR. RUPE: 301, 302, 303.

6 Q. (By Mr. Chalmers) 309 I think is the one
7 you did mention. You don't have that in front of
8 you? That's okay. We'll talk about 301 first.

9 A. Okay.

10 Q. 301 is a projection that was done when? Has
11 a date of November 30, 2009, is that right?

12 A. Yes.

13 Q. So that wouldn't have been a projection that
14 was done at the time decisions were made on whether
15 to implement the remedies under the Montoy decision,
16 would it?

17 A. No, that would have been what we refer to as
18 a consensus revenue estimate that's done in November
19 of each year.

20 Q. It would have been done years after the
21 decisions were made on the financing of Montoy?

22 A. Yes.

23 Q. Then 302, if we look at that for a second,
24 what's the date on it? I think that's another one of
25 those projections we talked about, and what's the

1 date?

2 A. Looks like July 20th of 2009.

3 Q. That's years after the decision on the
4 Montoy money?

5 A. Yes, that's right.

6 Q. Then we've got the other one I think
7 Mr. Rupe mentioned just a moment ago was 303. And I
8 think that is one that was done in 2006, right?

9 A. I don't see that it has a date on it.

10 Q. I was looking down at the very bottom where
11 it says, profile 2006.

12 A. Oh, yeah, 2006.

13 Q. Back to the one I asked you to hold on to,
14 and that was about the sales tax. It was in 2010
15 that a decision was made to increase the sales tax,
16 was it not, to try to fill in some of the budget
17 problems that have developed as a result of the
18 recession?

19 A. Yes.

20 Q. And Dr. Wong's report was one and there were
21 others, I think, that were talking about the
22 potential consequences of increasing the sales tax,
23 is that correct?

24 A. I believe that's what his analysis dealt
25 with.

1 Q. And with the increase in the sales tax then
2 in 2010, that affected the revenue stream in our
3 state, is that correct?

4 A. Yes, it did.

5 Q. Now, you talked about with Mr. Rupe about
6 sales tax exemptions. Just in a nutshell, how does a
7 sales tax exemption come to be in place?

8 A. Well, it's passed by the Kansas Legislature
9 majority in both houses and signed into law by the
10 Governor.

11 Q. The majority thinks it was a good idea to
12 have that exemption?

13 A. Yes.

14 Q. There are exemptions that apply to the
15 folks, for lack of better description, that are poor,
16 is that correct?

17 A. There are some exemptions that apply to low
18 income people, yes.

19 Q. There are exemptions that the majority felt
20 are appropriate because they thought they might
21 stimulate the economy or have some other positive
22 impact?

23 A. Yes.

24 Q. Is that right?

25 Your discussion with Mr. Rupe of Governor

1 Parkinson's or former Governor Parkinson's memo,
2 Exhibit 327, that was a March 5, 2010 memo. Do you
3 find that?

4 A. Yes.

5 Q. So that would have been a memo where the
6 then governor was promoting the idea that we need to
7 have a sales tax to try to respond to some of the
8 financial problems in our state, is that correct?

9 A. Well, not entirely. One of the things that
10 he discussed in this memo is how we have eroded the
11 tax base over time, which has caused our general fund
12 budget to go underwater. But he was advocating that
13 we should increase the sales tax by one cent. That's
14 what he proposed to the 2010 legislature.

15 Q. All right.

16 It was in that time frame that he was
17 arguing that we need to generate more revenue and a
18 decision was made that more revenue needed to be
19 generated?

20 A. That's correct.

21 Q. Now, the LPA study, I'm going to focus on it
22 for a moment. I think you were on the LPA
23 Commission?

24 A. Yes.

25 Q. And the LPA study then was designed to try

1 to provide information that would cost out what was
2 the foundation amount of spending for our kids in
3 Kansas, is that right?

4 A. Yeah, I think that's a fair summary of it.

5 Q. And it came up with numbers saying here's by
6 how much that if the state were paying for this all
7 by itself, plus a little bit of federal money, you'd
8 need to have to be able to provide the education that
9 we'd want for our kids in our state or the
10 opportunity for that education; is that what it did?

11 MR. RUPE: Objection. Compound.

12 MR. CHALMERS: I'll rephrase it.

13 I'm not sure what part was the problem, but let me
14 back it out.

15 Q. (By Mr. Chalmers) You remember that in the
16 study what it did is it came one up with the proposed
17 base number that then with additional weightings
18 would generate what the state's portion would be as
19 to the foundation amount required for education in
20 the state?

21 A. As I recall, yes, that's what it did.

22 Q. And in doing that you remember that what
23 they did is they took off from what the consultants
24 had studied and had come up with a number, some money
25 for federal funds, saying, well, that money is

1 already there for federal funds, so we'll reduce what
2 we provide the state. You remember that, don't you?

3 A. I don't recall that that was their
4 conclusion.

5 Q. Well, the study, unfortunately, is in
6 evidence. But for the purposes of our questions,
7 let's just pretend that all the money was to come
8 from the state. That was your understanding, is that
9 right?

10 A. Well, that's our constitutional obligation,
11 that's correct.

12 Q. There was no consideration in the LPA study
13 for the moneys from the federal government either at
14 all, as you remember it, or above what was assumed by
15 the study, if that's the case, is that correct?

16 A. I think the study primarily focused on the
17 state spending on education.

18 Q. The study focused on what was necessary to
19 produce funds at a certain level to educate our kids
20 at the foundation amount, that's what the study
21 required, that's what you asked it to do?

22 A. That's correct.

23 Q. And the study did not include or put into
24 play how much money was being spent locally through
25 the local option budgets either, did it?

1 A. I don't recall that it did.

2 Q. Now, I don't know if you've ever done it. I
3 have, but have you sat down and calculated how much
4 Kansas has, over the years, provided to districts for
5 them to educate our kids if you include state money,
6 local money, and federal money?

7 A. What's your question?

8 Q. Have you ever done that?

9 A. I've never taken into consideration terms of
10 the federal money, necessarily. I do know that the
11 feds have committed, that one time, that they were
12 going to fund special education by 40 percent and
13 they're currently up to about 14 percent. That's one
14 thing that we talk about in the Legislature quite
15 often.

16 But what I've taken into account more often
17 than not is what we do at the state level. And I've
18 always believed that it's the time honored fact in
19 school finance that the more that we can invest in
20 schools at the state level the less reliance we have
21 on the LOB and the local property tax at the local
22 level.

23 Q. You advocate trying to have the spending
24 more so at the state level rather than the local
25 level because of your concerns about inequities in

1 property tax?

2 A. That's exactly right.

3 Q. I appreciate that answer. My question is
4 whether you have ever or had anyone look at how much
5 money comes from local money, how much money comes
6 from state money, how much money comes from federal
7 money, total that together and then compare it to
8 what the LPA study says we needed to provide in base
9 amount?

10 A. I've never dealt with that comparison.

11 Q. You'd be surprised to find that the money
12 provided by all those sources either equal or exceed
13 what the LPA study suggested, is that correct?

14 MR. RUPE: I'm going to object as
15 irrelevant, number one. And number two, calls for
16 speculation. He said he's never done it. So Art,
17 Mr. Chalmers, is basically testifying and saying do
18 you agree with me. That's not relevant, number one;
19 and number two, it calls for speculation.

20 JUDGE THEIS: You can ask him what
21 he knows. I'll sustain the objection.

22 Q. (By Mr. Chalmers) I was trying to do that.
23 I think maybe I misstated the question. What you --
24 what I've asked was whether you had ever looked at or
25 had someone look at for your benefit and then

1 communicated to you how much money was provided from
2 all sources of revenue, how much money was then spent
3 by these districts, and compared that to what the LPA
4 said you needed to spend to provide the required
5 foundation financing for our kids?

6 A. I've never done that comparison.

7 Q. And then the question was whether you
8 personally would be surprised to know then that when
9 you do that calculation that the amounts spent from
10 all sources equal or -- well, early years exceeded
11 what the LPA study suggested was the required
12 foundation amount?

13 MR. RUPE: Objection. Calls for
14 speculation.

15 JUDGE THEIS: The question is
16 whether he'd be surprised. He can answer that.

17 THE WITNESS: Yeah, I might be
18 surprised, but I think that basically begs the
19 question as to what my responsibility is as an
20 individual member of the Legislature. I have a
21 constitutional duty to fund schools at the state
22 level, so my focus is what the State of Kansas does
23 to support public education at the state level.

24 Q. (By Mr. Chalmers) I appreciate that. The
25 state of Kansas passes laws through the Legislature

1 approved by the Governor, right?

2 A. Yes.

3 Q. Individual districts have no taxing
4 authority outside of what the Legislature has
5 provided, is that correct?

6 A. Individual districts can levy a local option
7 budget through their property tax mill levy.

8 Q. They can do that because of a statute passed
9 by the Legislature?

10 A. That's correct.

11 MR. CHALMERS: I don't have
12 anything else. Thanks.

13 REDIRECT EXAMINATION

14 BY MR. RUPE:

15 Q. I'm glad Mr. Chalmers wanted to know your
16 opinion, because I have some questions about your
17 opinions now that he has opened that door.

18 In terms of your opinion concerning what the
19 Legislature considered when the cuts began in
20 December of '08, give us your opinion on when those
21 cuts occurred, what the Legislature considered by way
22 of the actual costs of educating kids based on needs
23 at that time?

24 MR. CHALMERS: First, it's been
25 asked and answered. Secondly, I didn't open the

1 door. I didn't ask his opinion on that sort of
2 topic. And for those reasons the same objections
3 that were made before apply.

4 MR. RUPE: He was asked his opinion
5 with regard to information that he had in front of
6 him and what was your decision based on, and you made
7 recommendations concerning costs of education.
8 That's what counsel opened the door on. So in terms
9 of the question --

10 MR. CHALMERS: You must have
11 misheard my examination, Counsel. I don't think I
12 opened the door. And I object.

13 JUDGE THEIS: Sustain the
14 objection.

15 MR. RUPE: I'm sorry?

16 JUDGE THEIS: Sustain his
17 objection.

18 MR. RUPE: Okay.

19 JUDGE THEIS: You can make the
20 proffer if you want to.

21 Q. (By Mr. Rupe) All right. In terms of
22 actual costs based on kids' needs at the time the
23 cuts began in '08/'09, was there any consideration of
24 those actual costs?

25 A. No.

1 Q. And as a proffer, I would say that's your
2 individual opinion, is that correct?

3 A. Yes.

4 Q. And that is your observation of the
5 legislative process at that time, is that correct?

6 A. My observation based upon the fact that I
7 serve on the Senate Education Committee and sat
8 through all the hearings.

9 Q. After the Legislative Post Audit that you
10 were examined about, after that was reported to the
11 Legislature in 2006, was there ever again a
12 determination by the Legislature or a study as to the
13 actual costs of educating Kansas kids?

14 A. Well, the only thing that followed as I
15 recall -- well, actually, no, no, that I recall there
16 wasn't.

17 Q. And the Exhibit 303, if you have that in
18 front of you, that's the one that Mr. Chalmers
19 mentioned happened in the summer of 2006, that's the
20 one that projected a budget shortfall by Fiscal Year
21 2009 of 426.6 million, is that right?

22 A. That's right.

23 Q. And the general fund profile was prepared in
24 the summer of 2006 after the Montoy three-year plan
25 was adopted?

1 A. Yes.

2 Q. Can we agree that the budget shortfall was
3 projected before the events of 2008 that started the
4 recession?

5 A. Yes.

6 MR. RUPE: That's all I have.

7 MR. CHALMERS: I don't have
8 anything else. Thanks.

9 JUDGE THEIS: You can step down,
10 Senator. Thank you.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 JUDGE THEIS: We'll take a break
14 until about 11:15 and then go to about 12:30, if
15 that's all right.

16 MR. RUPE: That's fine.

17 (A recess was taken.)

18 MR. RUPE: Our next witness is John
19 Allison.

20 JOHN ALLISON

21 Called as a witness for the
22 Plaintiffs, was duly sworn by the reporter and
23 testified under oath as follows:

24 DIRECT EXAMINATION

25 BY MR. RUPE:

1 Q. Tell the Judges your name and city in which
2 you live.

3 A. John Allison, Wichita, Kansas.

4 Q. And your current title and position is what?

5 A. Superintendent of schools for Wichita Public
6 Schools.

7 Q. All right. And let's cover some background
8 information for a minute. Tell the Judges what your
9 educational background is.

10 A. My undergraduate is from the University of
11 Kansas, Master's from Emporia State, and all but my
12 dissertation is complete at St. Louis University in
13 Educational Leadership.

14 Q. Working backwards from your superintendent
15 position in Wichita, walk us back through your job
16 history, please.

17 A. Prior to being superintendent at Wichita, I
18 was superintendent of the Mount Lebanon School
19 District just outside of Pittsburgh, Pennsylvania.
20 Prior to that I was the deputy superintendent for
21 Grapevine Colleyville School District just outside of
22 Dallas.

23 I was prior to that assistant superintendent
24 for educational services for the Shawnee Mission
25 School District. I was also a building administrator

1 and teacher in Shawnee Mission.

2 A year as an administrator in the De Soto
3 School District. And then I began my teaching career
4 as a teacher in the Spring Hill School District just
5 outside of Kansas City.

6 Q. Is Spring Hill in Kansas?

7 A. Yes.

8 Q. Now, tell us a little something personal
9 about yourself.

10 A. Since it's on the record I have to be
11 careful here, I guess. In college, before common
12 sense kicked in, I became interested in rodeo and for
13 a number of years attempted, and that's the correct
14 word, attempted, to ride bulls and broncs.

15 Q. Well, welcome to school finance.

16 JUDGE BURR: Where you get more
17 beat up, I'm sure.

18 Q. (By Mr. Rupe) Let's talk a little bit about
19 Wichita public schools. And let's start with handing
20 you Exhibit 119, which has been admitted into
21 evidence. And this is the Kansas State Department of
22 Education's report card for 2010/2011; is that right?

23 A. That's correct.

24 Q. To the extent you need to look at this to
25 help with the answer to the question I'm about to ask

1 you, what I'd like for you to do is describe for the
2 Judges the demographics of the Wichita 259 School
3 District.

4 A. We are the largest school district in the
5 State of Kansas, just under 50,000 students. We're
6 the largest school district between St. Louis and
7 Denver, Dallas and the Canadian border. We educate
8 about 10 percent of the students in the State of
9 Kansas.

10 We're a diverse urban school district. As
11 you can see, the ethnic breakout of our students, we
12 have about 19 percent African Americans; 29, almost
13 30 percent Hispanics; and 36.9 whites and others.

14 So we really are a very diverse school
15 district. We tend to see those trends becoming more
16 diverse each year, as we see, in particular, our
17 Hispanic population growing.

18 We're in the mid-70s on free and reduced
19 lunch. And that again is an area we continue to see
20 grow, as well as with that diversity each year we're
21 seeing more homeless students and other students
22 coming to our district.

23 Q. So on the exhibit I have, which is 119, the
24 district numbers for African Americans is what
25 percentage?

1 A. 19 percent.

2 Q. And for Hispanics is?

3 A. 29.6.

4 Q. And whites?

5 A. 36.9.

6 Q. And then the other, let's talk about that
7 for a minute, how many -- close to 50,000 kids, how
8 many different foreign languages does the USD 259
9 have among the student population?

10 A. This past year we recorded over 80.

11 Q. Eighty?

12 A. Eighty.

13 Q. Okay. Then let's look at the economically
14 disadvantaged kids. And by the way, in Wichita in
15 private schools how many kids are there?

16 A. Around 20,000 plus --

17 Q. Okay.

18 A. -- in the metropolitan area.

19 Q. And we've got 50,000, close to 50,000 in the
20 public schools?

21 A. Correct.

22 Q. Let's talk about the economically
23 disadvantaged. The state is 47.6 percent and in
24 Wichita it's what?

25 A. 74 percent.

1 Q. And then non-economic disadvantaged, state
2 is 52.4 percent and Wichita is what?

3 A. 26 percent.

4 Q. And then migrant students, you have .6
5 percent?

6 A. Correct.

7 Q. And non-migrant 99.4 percent. ELL students
8 are what percentage in Wichita?

9 A. 18.9.

10 Q. And students with disabilities are what?

11 A. 13.1.

12 Q. Okay. We'll come back to graduation rates
13 in a minute. What percentage of the total state
14 enrollment is Wichita?

15 A. About 10 percent.

16 Q. And let's talk a little bit about the number
17 of children living in poverty, and let's define that
18 as less than 22 percent or \$22,000 a year per
19 family. And tell us what has happened with regard to
20 the demographics of that population in Wichita as of
21 June 2012.

22 A. We've seen a -- each year growth of a couple
23 percentage points typically of those students that
24 would be coming from homes of poverty.

25 Q. So is that population growing?

1 A. It is.

2 Q. And I think we've seen this exhibit, Exhibit
3 107, but it shows the kids that are free and reduced
4 lunch statewide; and the kids who are English limited
5 learners, English language learners, they were upward
6 trending across the state. Is that what's going on
7 in Wichita?

8 A. Yes.

9 Q. Out of ten kids, how many of kids in the
10 Wichita public schools are in extreme poverty?

11 A. When we think of extreme poverty these are
12 students that are -- their parents are struggling
13 just on basic subsistence. We see high mobility, just
14 the bare necessities of attempting to get food on the
15 table, and that's going to be three students out of
16 ten.

17 Q. So about 30 percent?

18 A. Correct.

19 Q. Okay. Let's talk about some terms here.
20 What does a district on corrective action mean?

21 A. It means that we have moved beyond being a
22 district on improvement in that you are required by
23 the state to take specific actions to increase
24 student achievement.

25 Q. Okay. What does on improvement mean?

1 A. On improvement would have been as a district
2 not meeting adequate yearly progress. We were on
3 improvement for five years and we just completed our
4 third year on corrective action.

5 Q. So Wichita is a district that is on
6 corrective action?

7 A. Yes.

8 Q. And what are the -- how do you move off of a
9 corrective -- district on corrective action?

10 A. We would have to meet the district criteria
11 for adequate yearly progress, which means your
12 schools would all have to meet that standard.
13 There's a standard for the individual school and then
14 for the district as a whole.

15 Q. What are the prospects if you don't meet the
16 state and federal AYP targets?

17 A. There are accountability measures, actions
18 we have to take. Once we became a district on
19 corrective action, the state is also required to
20 provide intervention and resources to help us. That
21 was through the Kansas Learning Network. And we have
22 to continue working very closely with them on actions
23 we take in efforts toward increasing student
24 performance.

25 Q. You may have just answered this, but how

1 many years has Wichita not made AYP?

2 A. Eight, if I'm counting that correctly.

3 Q. And in terms of what the requirements are by
4 way of standards, have those increased for Wichita
5 even though you've not been able to meet them for the
6 last several years?

7 A. That's correct, the AYP standards increased
8 about four to five percent each year for reading and
9 math in the State of Kansas.

10 As we move toward that 2014, where it's
11 supposed to be 100 percent proficiency.

12 Q. And then does the proficiency just stop and
13 nothing more is required after 2014?

14 A. My understanding is that until No Child Left
15 Behind or the Education Act as re-authorized at the
16 federal level, that would be the benchmark which we
17 would be held accountable until there's a new
18 standard put in place.

19 Q. Now, talk to me a little bit about what --
20 and we'll call this suitable education or adequate
21 education. But tell the Judges what it is that USD
22 259 attempts to do for those kids that are in the
23 public schools to prepare them for later life.

24 A. It's -- it's a comprehensive approach. We
25 know that we have the statutory requirements when we

1 think about what students are supposed to have in
2 communication skills, oral, written, what they're
3 supposed to have from a knowledge standpoint, that
4 they are career or college ready.

5 When you look at the requirement it
6 addresses mental as well as physical health. It
7 addresses fine arts.

8 So it's really a very broad approach to what
9 is -- what is required for education in the State of
10 Kansas.

11 I think the next step within each community,
12 as it would be in Wichita, is what are those
13 community expectations, what do our parents and our
14 citizens expect from a Wichita public schools
15 graduate.

16 And they expect them to be able to compete
17 in the job market. They expect them to be well
18 rounded. Expect them to have the basic components
19 and understanding of good citizenship. And all those
20 pieces come into what our community and through the
21 expectations established not only by the state but by
22 our local school board as to what we're trying to
23 provide students in Wichita.

24 Q. Let me hand you what's in evidence or hold
25 up what's in evidence in this case by way of

1 Exhibit 39. And we have shown this to witnesses, but
2 in terms of this statute, is it accurate that these
3 items are required by the State of Kansas?

4 MR. CHALMERS: I renew my
5 continuing objection, having him testify to the mean
6 interpretation of law. And I understand the Judge's
7 ruling. I'm just making it for the record.

8 MR. RUPE: Go ahead and answer.

9 JUDGE THEIS: We've talked about
10 this. He's deemed to know the law, I assume, if he
11 operates a school district, but you can ask him.

12 MR. RUPE: Okay.

13 THE WITNESS: Could you repeat the
14 question.

15 Q. (By Mr. Rupe) Sure. Do you understand these
16 to be required by Kansas statute?

17 A. That is my understanding and reflected in
18 the standards that we have from the KSDE as well.

19 Q. And what I want to ask you with regard to
20 these standards, and particularly things like
21 Number 5, training or preparation for advanced
22 training in either academic or vocational fields so
23 as to enable students to choose and pursue life work
24 intelligently, my question is, do these factors in
25 this statute sync with what you want for the kids

1 that come out of the Wichita public schools?

2 A. Yes.

3 Q. In addition to factors that we just covered,
4 are there AYP targets that are required by both the
5 state and the federal government as part of the
6 federal funding?

7 A. Yes, there are.

8 Q. And with regard to the AYP targets, they're
9 part of the QPA consideration, correct?

10 A. Correct.

11 Q. Well, let's cut to the chase here. Does
12 Wichita have the resources to provide that suitable
13 education?

14 A. We do not, not for all of our students.

15 Q. When you say "not for all of our students,"
16 explain to the Judges what you mean.

17 A. Well, we've had success in meeting those
18 expectations for some of our students, but definitely
19 not all of our students, particularly when you look
20 at the diverse nature of Wichita, that presents some
21 unique challenges.

22 Q. We know from previous exhibits and testimony
23 in this case that the state, and I can show you the
24 exhibit if you want to see it, but the state has said
25 that a suitable education must be, quote, "Based upon

1 an improvement and performance that reflects high
2 academic standards and is measurable."

3 Are Wichita test scores reflecting an
4 improvement in test scores on the Kansas assessments
5 for all students?

6 A. No, we're not showing improvement for all
7 students. We have made improvement but not to the
8 manner that we're meeting the -- the standards.

9 Q. And that inability to provide that for all
10 students explains in part the fact that you're a
11 district on corrective action?

12 A. Exactly.

13 Q. Let me hand you Exhibit 118. And what is
14 118, please?

15 A. 118 is the 2010 -- Kansas Department of
16 Education report card for the district, and it looks
17 as though it has reading assessments for all students
18 and subgroups, as I look back through, and the same
19 for math assessments.

20 Q. All right. Let's just briefly walk through
21 this if we could. The first page, reading
22 assessments for all students, is that correct?

23 A. That's correct.

24 Q. And so we're on track. The year is
25 indicated, and the top of the bar shows the score and

1 the line here drawn shows the AYP targets. Do you
2 understand that?

3 A. Yes.

4 Q. So for 2011 in Wichita School District, the
5 reading assessment for all kids was 74.8. Am I
6 reading that right?

7 A. Yes.

8 Q. And by the way, what grades are the
9 assessments given?

10 A. They're going to vary based on the
11 assessment. I always have to click down through.
12 Third, fifth, six, seven, eight, ten, nine and
13 eleven.

14 Q. All right. And then it looks like white
15 kids approach the target; is that right?

16 A. Yes.

17 Q. And that's on ACHIEVEMENT 000030. And then
18 we go to Hispanics. And how did the Hispanics
19 perform in reading?

20 A. Hispanics we -- we have a much wider
21 performance gap. We are 69.8 percent for 2011. The
22 target was 86.

23 Q. Then in terms of all students, the all
24 students performed better than Hispanics and white
25 students performed better than Hispanics?

1 A. Correct.

2 Q. Are you familiar with the term "achievement
3 gap"?

4 A. Yes.

5 Q. Would that be the achievement gap?

6 A. That would be an example of the achievement
7 gap.

8 Q. All right. Then let's look at reading
9 assessments for African Americans. And the target is
10 8.6. And how did the African Americans do on the
11 assessment tests in '10/'11?

12 A. 64.6 percent.

13 Q. Let's go to math assessments, for all
14 students at 70.2, with a target of 82.3?

15 A. Correct.

16 Q. So that was short. In terms of white
17 students, it was short, as well, 78 percent on a
18 target of 82.3?

19 A. Yes.

20 Q. And then let's go to the free and reduced
21 lunch, 82.3 target, the kids in poverty did 65.5
22 percent?

23 A. Yes.

24 Q. And then Hispanics did 66.5 percent on a
25 target of 82.3?

1 A. That's correct.

2 Q. By the way, that target doesn't change for
3 subgroups; does it?

4 A. It does not.

5 Q. And ELL, 82.3 percent. ELL students did
6 63.8 percent?

7 A. Yes.

8 Q. Then on the math assessments for African
9 Americans, it looks like with the target of 82.3
10 African Americans did 56.7 percent?

11 A. Correct.

12 Q. I understand the preliminary results are in
13 for 2012. In terms of you're familiar with the 2012
14 results?

15 A. We have preliminary results back. We won't
16 have official results from the state until after
17 July 1st.

18 Q. In terms of your experience with the
19 preliminary results, are they going to be fairly
20 consistent with or have they been historically
21 consistent with the final results?

22 A. They've been close enough that we have a
23 pretty good snapshot of district performance.

24 Q. Is the district's status on improvement
25 going to change?

1 A. The district will not make AYP.

2 Q. Will the district meet the QPA criteria?

3 A. The district will not.

4 Q. And that would include reading, mathematics
5 and science?

6 A. And science.

7 Q. Will there be more or less -- sorry, more or
8 fewer schools that attain AYP in 2012 when the
9 results are compared to 2011?

10 A. There will be fewer schools that will make
11 adequate yearly progress.

12 Q. What will be the results for reading and
13 mathematics in 2012 compared to 2011?

14 A. We're projecting a decline.

15 Q. Reading decline?

16 A. Reading and math.

17 Q. What about science?

18 A. Science, that declined as well.

19 Q. Well, let's go to the subgroups. In terms
20 of the performance of subgroups, will that improve
21 over 2011?

22 A. It will not.

23 Q. Will you see a decrease in the performance
24 by the subgroups in 2012?

25 A. Yes, that's what we're projecting.

1 Q. Let me single out the Asian subgroup and ask
2 you about that one in particular. The Asian subgroup
3 actually is going to show an increase; is that right?

4 A. Correct, that would be our one subgroup
5 where we would see a slight increase.

6 Q. But in terms of American Indian, African
7 American, ELL, free and reduced lunch, Hispanic,
8 multi-racial, special education and white, are those
9 subgroups showing a decrease in performance in 2012?

10 A. We anticipate a decrease.

11 Q. In mathematics, the Asian subgroup showed an
12 increase, but the other subgroups, African American,
13 ELL, free and reduced lunch, Hispanic, multi-racial,
14 special education and white did not meet the AYP
15 criteria in math?

16 A. That's correct.

17 Q. And I think based on preliminary results the
18 district was 10.5 percent below the annual math
19 target of 82.3 proficient?

20 A. Yes, that sounds correct.

21 Q. Are those assessment scores consistent with
22 your belief that you've expressed to the Court that
23 259 is not providing a suitable education to all its
24 kids?

25 A. I think without question when we look at

1 state assessments and other measures what we see is
2 some students having success, but obviously we're not
3 making the standard for the state. We're not able to
4 provide that success for all of our students.

5 Q. Let me turn to go back to Exhibit 119. I
6 said I'd come back to graduation rates. I always
7 thought this was easier than it really is, but I'd
8 like you to explain the different cohort rates and
9 dropout rates.

10 A. And when you refer to cohort, are you
11 referring to graduation rates?

12 Q. I'm sorry, yes.

13 A. Okay.

14 Q. Thank you.

15 A. They're two very different measures. When
16 we look at dropout, we're talking a grade span of 7
17 to 12. And when we talk about graduation we're
18 talking grades 9 through 12. And that they also will
19 cover a single year versus multiple years.

20 The state changed the graduation
21 computation. Also has increased when we take a look
22 and think of cohorts, did a student graduate on time
23 with the cohorts that they started. And that's --
24 that's been a change from past years.

25 Q. Okay. And then let's explain to the Judges

1 what dropout rate means.

2 A. Dropout would be when you look at that
3 group, 7 through 12 are the grade spans in which it's
4 calculated, and the students that would not be moving
5 with -- with their peers. And there are a number of
6 codes that the state uses. It may be a student moved
7 and you have no record of or request for records and
8 where they may have been.

9 It's a whole list of reasons that they might
10 be considered a dropout not just they've quit
11 attending school.

12 Q. Let's take just by way of example a kid that
13 leaves school and then comes back to school. That is
14 not a dropout?

15 A. The student may have been considered a
16 dropout in previous calculations and they would
17 unless they take -- really work at it, if they don't
18 graduate with their cohort group, even if they
19 graduate a semester later, they would not be counted
20 within the cohort calculations.

21 Q. Okay. Would they be --

22 A. It's based on peers.

23 Q. If they didn't officially withdraw from
24 school and sign the form, would they be considered a
25 dropout?

1 A. If we cannot show one of the reasons for
2 leaving, they would be.

3 Q. Okay.

4 And if one of reasons is they transferred to
5 another school, is that a dropout?

6 A. If we can't account for where that student
7 is it would be considered a dropout.

8 Q. All right. But you assume if they go to
9 another school you get a request for records and have
10 an idea where the kid goes?

11 A. In most cases.

12 Q. You say that with a smile on your face. Are
13 there situations where you just simply lose track of
14 kids?

15 A. Yes. You'll have a student that'll leave,
16 particularly if they go out of state, depending on
17 what the state requires for students to enroll,
18 oftentimes we may not get a request for records.

19 Q. What's the dropout rate for 259?

20 A. Dropout rate is about 3 percent.

21 Q. Okay. And in terms of the cohort graduation
22 rate for 2010, what does this show it was?

23 A. For the four-year adjusted it would be 63.1
24 percent.

25 Q. And for the five-year?

1 A. 60.2.

2 Q. Okay. Now, let's disaggregate these into
3 subgroups for free and reduced lunch. What is it in
4 259?

5 A. 61.6 percent in the four-year.

6 Q. So that's the number, that's the percentage
7 of kids that are eligible for free and reduced lunch
8 that you graduate in four years?

9 A. Correct.

10 Q. All right. Then students with disabilities?

11 A. 56.7 percent.

12 Q. ELL?

13 A. 61.1 percent.

14 Q. African American?

15 A. 57.9.

16 Q. Hispanic?

17 A. 59.3.

18 Q. Whites?

19 A. 65.5.

20 Q. Asian?

21 A. 79.9.

22 Q. American Indian?

23 A. 51.2.

24 Q. Pacific Islander?

25 A. 50 percent.

1 Q. And multi-racial?

2 A. 71.1.

3 Q. Okay. And then on the five-year cohort
4 rate, I won't go through those, but that's the
5 percentage you graduate in five years among those
6 disaggregated subgroups?

7 A. Correct.

8 Q. And when you talk about 259 is not able to
9 provide a suitable education to all kids, are you
10 considering what the cohort graduation rate is and
11 what the dropout rate is?

12 A. Absolutely. That has to be a factor we
13 consider.

14 Q. And incidentally, Exhibit 135, I won't plow
15 this ground again, but Exhibit 135 shows the dropout
16 rates and graduation rates for school districts in
17 Kansas, including USD 259 Wichita; is that right?

18 A. Correct.

19 Q. Okay. Talk to the Judges about strategies
20 that you are familiar with that work to keep these
21 subgroup kids that we've described in school and
22 improving in their performance.

23 A. Well, the greatest success comes when we can
24 identify students that more likely to drop out, the
25 earlier the better, so that we can get interventions

1 in place not only academically. When you look at our
2 research, and it's very similar to the rest of the
3 country, even starting with retaining students in
4 elementary school has a real impact on the likelihood
5 of those students eventually dropping out.

6 So we try to look at not only the academic
7 interventions, giving students an opportunity to
8 continue to grow to be successful. We look at
9 behavioral interventions. You really have to look at
10 what are the whole child, as well as the causes that
11 may be influencing their ability to drop out.

12 For example, North High School has a fairly
13 sizable Hispanic population. And a number of years
14 back we realized that that Hispanic dropout rate and
15 non-graduation rate was higher than we would like.

16 We weren't getting enough students
17 graduating. One of those aspects is then working
18 with families where culturally, when the student
19 turns, particularly male, 15 or 16, the expectation
20 of that student then going out to help support the
21 family. And that beginning to work with the Hispanic
22 community, Hispanic students, bringing in role models
23 to talk to students and getting the families to
24 understand what some of those expectations are and
25 how much advantage their child has by having that

1 high school diploma.

2 So it's really a varied approach trying to
3 address all those aspects that would leave a student
4 -- that would influence them to leave school.

5 Q. In terms of some particular programs, I want
6 to ask you about them in terms of whether or not they
7 serve to keep kids in school and keep those kids in
8 the subgroups performing.

9 What about quality teachers?

10 A. The engagement in the classroom is key. If
11 students are engaged, if they feel welcomed, if
12 they're challenged, those are reasons that students
13 tell us over and over again on what draws them to
14 particular classes. Content areas and teachers.
15 That's a huge key.

16 Q. Okay. What about school resource officers
17 or truancy officers, as they called them in my day?

18 A. School resource officers are an important
19 connection for our students. For many of them that's
20 the first time they've seen a positive legal
21 influence. More importantly, when we think of our
22 counselors we think of our assistant principals and
23 social workers that are working diligently to contact
24 parents, home visits to work with parents and
25 students to try to keep them in school.

1 Q. What about extra-curricular activities,
2 sports, drama, orchestra, band, debate, what about
3 those?

4 A. I'm going to give it from the students'
5 perspective. I have representatives from each of our
6 high schools, as well as our alternative high schools
7 and our E school, that one or two from each of those
8 schools that I meet with on a monthly basis. And we
9 talk about issues that they want to discuss, as well
10 as we want input from them. Those are our
11 customers. That's who we serve. That's who we need
12 to listen to.

13 Both in the fall and the spring, we bring
14 together what we call -- that group is -- we call it
15 the Super-SAC, the superintendent's student advisory
16 group. We have them each invite up to ten other
17 students that will attend in the fall and the
18 spring. So we have a real cross section of our
19 entire student body.

20 And what we've asked them in our last
21 session was talking about what do you value most?
22 What do we do well? Where do we need to improve as a
23 school district?

24 And what they valued overwhelmingly, quality
25 teachers. But then it got into the extra-curricular

1 activities, sports, fine arts, yearbook, the clubs,
2 the pieces that allowed them to connect to their
3 school they put at the top of the list of what they
4 valued and what they felt was very important.

5 So from the student perspective they've
6 overwhelmingly given us that message.

7 Q. What about things like social -- not things,
8 what about personnel, like social workers, parent
9 educators, do they serve a purpose of keeping the
10 subgroup kids in school and moving on improvement?

11 A. Absolutely. All of those people play a
12 strong role in connecting students to school. Where
13 they feel valued, opportunity for success, helping
14 them overcome some of those obstacles and in many
15 cases working with the parents, making sure they
16 understand the importance of their student staying in
17 school and helping support the school efforts.

18 So all of those individuals have an
19 important role to play.

20 Q. What about extended learning opportunities?

21 A. Oh, there are a number. In our traditional
22 high schools we have learning centers in which
23 students have the opportunity to do some credit
24 recovery based on computer, E school-type
25 activities. We have E school. We have some

1 alternative locations.

2 We're also the district of choice. So we
3 have a magnet high school, as well as at the middle
4 and elementary. We have two metros, which are
5 alternative schools for students which allow them to
6 move at a self-pace program and accelerate.

7 There are just a number of opportunities
8 that if a student wants to achieve that we'll try to
9 provide the avenue by which they can do that.

10 Q. In terms of extended learning opportunities,
11 do things like tutoring, pre-kindergarten, all-day
12 kindergarten, summer school, do they serve a purpose
13 of keeping kids engaged and improving in performance?

14 A. They do. Summer school, predominantly we've
15 had to scale that back to the point where it's at the
16 high school level.

17 Q. We're going to get to the cuts in a
18 minute.

19 A. Yes. They do. We've got credit recovery.
20 You mentioned all-day kindergarten, pre-K, tutoring,
21 the earlier we can engage students, particularly
22 coming from homes of poverty, the better our chances
23 are of success.

24 We know that that is vitally important. If
25 a student in a third grade is not proficient on the

1 state reading assessment we have about a one in three
2 chance of getting them proficient by 12th grade.

3 So it's key that those early interventions,
4 particularly when you look at the gap for students
5 coming from homes of poverty say compared to their
6 suburban counterparts, the day they enter
7 kindergarten.

8 The oral and visual vocabulary, there are
9 millions of word gaps that, you know, we earlier
10 looked at the standards, it doesn't change between
11 student subpopulations or between free and reduced
12 lunch and others, so that bar is still set at that
13 same level. And we know the minute they enter
14 kindergarten we've got an uphill battle to get them
15 there.

16 Q. Okay. A few other strategies I want to ask
17 you about. What about class size, what role does
18 that play in keeping kids engaged in school and
19 moving them upward on the performance criterion?

20 A. Class size definitely has an impact. When
21 you take a look again at student engagement, when you
22 look at the diverse needs of a class, particularly
23 when you're looking at more ELL students, special
24 education students, coming from homes of poverty, the
25 class size, the interventions that are necessary are

1 more intense.

2 When we just think of primary grades and
3 reading interventions, the best success is in small
4 group work and very intense focus. And the larger
5 the class size the more difficult it is to actually
6 accomplish that.

7 Q. And a couple of others. Talk to us about
8 buildings and safety.

9 A. I'm going to assume that when you're talking
10 about building what we're really talking about is the
11 educational learning environment, that, you know, we
12 have -- we have heat, we have light, we have a
13 facility that best allows students to learn and that
14 doesn't become a distraction because of the facility
15 itself.

16 That it allows the incorporation of
17 technology. That we're safe. That when a parent
18 sends their student to school, they know and can
19 count on that their child will be in a safe and
20 caring environment.

21 And those are key not only to the students
22 knowing it when they come in the door. I've got one
23 thing to focus on and that's why I'm there, to learn
24 today. As well as a parent when I send my daughter
25 off to school each day I don't have to think twice

1 about the environment in which she'll be attending
2 school.

3 Q. And would you repeat those same remarks as
4 part of an answer with regard to safety and security
5 in the environment?

6 A. Absolutely.

7 Q. All these strategies that we have talked
8 about, do they come with an associated cost?

9 A. Cost of doing business. They all have a
10 cost both in human physical -- you know, there's
11 absolutely a dollar affixed to each of those areas.

12 Q. In terms of what we've heard in this
13 courtroom, we've heard some testimony about the
14 effect of resources on student achievement. And I
15 just want to ask what your opinion is.

16 Discuss with us what role money makes in
17 terms of a student's engagement and performance.

18 A. First, schools are heavily people driven. I
19 mean, that's -- that's over three-quarters of our
20 budget is tied up in people.

21 So when we look at teachers, at counselors,
22 at school nurses, you look at librarians, at
23 paraprofessionals, all of those individuals play a
24 role in student achievement.

25 When we look at specialists, students that

1 have tremendous gaps in reading are going to need
2 more intense interventions. Those all have a cost
3 associated with it.

4 Without the resources, both people,
5 technology, textbooks, you look at districts that are
6 on -- used to be four- or five-year cycles of
7 replacing materials and that's double or nonexistent
8 on replacement, all of those factors influence
9 student achievement. They influence the ability to
10 deliver a quality education. And they're all tied to
11 dollars.

12 Q. Okay. Now, let's talk about -- shift gears
13 a little bit. I want to talk about the resources
14 that have been available in 259 Wichita. And I think
15 we've got this well-embedded in everybody's mind, but
16 the Montoy first phase was in 2005/'06; '06/'07, was
17 the first year of the three-year plan; '07/'08 the
18 second year; '08/'09, I think the end of '08 was the
19 first round of cuts. And then there were cuts in
20 '09/'10, '10/'11, '11/'12, and a modest increase in
21 '12/'13. Are you with me?

22 A. Correct, yes, I am.

23 Q. Just for point of reference, when did you
24 come to Wichita?

25 A. Unfortunately, it was '09/'10.

1 Q. So you arrived after the first cuts and when
2 the next round of cuts began?

3 A. Right.

4 Q. And I think this is clear, but we'll just
5 make sure that you're on track, the budget cuts that
6 happened over that period of time resulted in total
7 cuts statewide of \$511,020,560 over a period of time
8 starting in the last part of '08, which is actually
9 this 2-12-09 cut, and ending in the most recent
10 session?

11 A. Yes, sir.

12 Q. Okay. When did Wichita begin to experience
13 any decrease in resources as a result of those cuts I
14 just described?

15 A. I started in the district in 2009, so my
16 experience within the district has been strictly from
17 a cut perspective. We've been in cutting mode since
18 I arrived.

19 My understanding would be it would have been
20 the year prior to that that we would have seen the
21 first of the significant district cuts.

22 Q. Before we walk through the cuts and the
23 consequences in 259, I want to hand you Exhibit 282.

24 And I think this would have been available
25 to you when you arrived, but I want you to discuss

1 with the Judges looking at Exhibit 282 where the
2 additional funding you received from Montoy, where
3 that was applied, how it was spent.

4 In other words, in the years '07/'08 and
5 then up to the time the cuts began, where was that
6 money spent in USD 259?

7 A. Predominantly that money was going to be
8 spent in new teachers, paraprofessionals, support
9 staff. It was putting those resources and targeting
10 intervention to those students that were in greatest
11 need.

12 Q. When you arrived, in terms of the
13 consequences of those resources and the way the money
14 was invested, did you notice any uptick in student
15 performance during that period of time?

16 A. Yes, we did.

17 Q. For example, we looked at 118, and we'll
18 just look at all students, in the years where the
19 money came from Montoy, is it accurate that there was
20 an increase in the student performance of the
21 subgroups?

22 For example, free and reduced lunch?

23 A. Yes, there was.

24 Q. And Hispanics?

25 A. Yes.

1 Q. And African Americans?

2 A. Yes.

3 Q. All right.

4 Well, now the question I asked you a moment
5 ago, in terms of the cuts, let's talk about the
6 consequences of those cuts to Wichita. And I'll hand
7 you a couple of exhibits to look at if you need to
8 refresh your recollection, they're in evidence, that
9 delineate the cuts in Wichita. I'm going to hand you
10 Exhibits 283 and 279.

11 And although those -- well, let me ask you
12 the question this way. Were the reductions and the
13 cuts that were instituted at the district level in
14 phases?

15 A. For the most part.

16 Q. Okay. And explain to the Judges how that
17 worked.

18 A. I don't mean to be long-winded, if it's all
19 right to talk about how we developed our budget.

20 Q. Sure.

21 A. Knowing that we were going to have to make
22 significant cuts, this was beyond saying, look, we're
23 going to cut two percent across the board, that we
24 also wanted to make sure that we could target those
25 cuts, like I think all school districts did, as far

1 away from the classroom as possible.

2 We started with a very public process. We
3 laid out what we thought those reductions would be.
4 We explained to our community where we receive our
5 revenues, what the difference is between restricted
6 and unrestricted; meaning that when we had to make
7 cuts it was the smallest portion of our budget that
8 we actually have discretion over compared to the
9 restricted, when we think of title funds, special ed
10 fund, some of those areas.

11 Then we asked our community not what do you
12 want to cut, but much like we did with our students,
13 we went out and said what do you value the most?
14 Where are we -- what are we doing well, what can we
15 improve? But a key question was, what do you value
16 most?

17 With the idea that those would be the areas
18 that we would try to focus on last as we began to
19 look at our budget.

20 So that feedback was done in a number of
21 public sessions. We had feedback online. We really
22 took that out to our community.

23 It's from that standpoint we began to work
24 on our reductions. And that was the direction that
25 the board gave us.

1 So when we approached phases, in the early
2 phases as a budget manager within the district, I may
3 be able to find, say in our technology department,
4 our staff was able to look at Microsoft licensing and
5 actually went to Microsoft and began to work on
6 trying to get pricing like universities get versus
7 K-12, because it's much less expensive for university
8 pricing. And because of our size we felt like that
9 was a logical argument.

10 So those were some of the internal.

11 And as we looked through other phases, we
12 began to look, when you are talking about that many
13 dollars, at programs, at people, and that's what
14 you'll see reflected in the various phases as we
15 approached it.

16 The other aspect is outside of the large
17 community input there was a budget stakeholders
18 group. And those were individuals at my invitation
19 or board invitation in which we had members from our
20 teaching staff, our clerical, custodial staff,
21 parents, civic leaders, and members of the business
22 community that helped us walk through. As we would
23 narrow down and look at the next phase, they would
24 ask questions, they would look at the numbers, they
25 would talk about impact.

1 And it was after their conversations then
2 that that phase would be taken to the school board
3 for their approval.

4 So we tried to look at this very carefully
5 in a very systemic approach in bringing our community
6 input in, with the reality of they all understood we
7 were going to have to make tens of millions of
8 dollars of cuts and there wasn't a tweak here or
9 there that could be made to reach those types of
10 numbers.

11 Q. Give us a global number if you can, and we
12 may have to get this from Linda Jones, but give us a
13 global number if you can on the reduction in state
14 funding that 259 experienced from the time right
15 before you came to today.

16 A. Well, if you look at the difference in
17 '08/'09, the base was 4433. As we developed our
18 budget for '11/'12 it was 3708.

19 So, you know, the difference in that, we are
20 talking tens of millions. Linda would be able to
21 give you a specific breakout.

22 Q. But your weighted enrollment -- your
23 enrollment is about 50,000 and your weighted
24 enrollment is about 75,000?

25 A. In that range, yes.

1 Q. So if we multiply that difference in the
2 base times 75,000, we could get kind of a rough idea
3 of where the funding was cut?

4 A. Correct. And you could see that over time,
5 you know, 19 million, 16-plus million, those were the
6 types of cuts that we were actually having to
7 implement that are reflected in 283.

8 Q. Okay. Let's, if we could, focus on the
9 listings in 283 and 279 and walk us through, if you
10 would, what the cuts were. Let's first talk about
11 teachers. In terms of teachers, did you eliminate
12 teaching positions?

13 A. We eliminated teaching positions, but that,
14 as I said earlier, was the main goal of not having to
15 do that as we worked through budget. And when I
16 say -- we did that through attrition. We were able
17 to handle the teacher cuts through attrition
18 retirements, those types of areas for the most part.

19 It was in the other areas, administration,
20 classified, certified that individuals lost -- lost
21 jobs, lost paychecks.

22 Q. Okay. In terms of personnel, what was the
23 amount of reduction in personnel as a result of the
24 cuts?

25 A. Eliminated about 280 positions.

1 Q. And those included what kinds of jobs?

2 A. We eliminated 33, 35 percent roughly of our
3 central administration and support. Then you look at
4 other programs and positions. Drivers' education was
5 eliminated. Parents As Teachers Program.
6 Counselors. Learning coaches. And that's an example
7 of where the structure had been built up with the
8 Montoy money to provide the learning coaches at the
9 buildings and those were some of the early cuts.

10 Family engagement, those were individuals
11 that helped buildings work with reaching out to their
12 community, providing that resource and connectivity.
13 Librarians, middle school resource officers, clerical
14 positions. It really runs the whole gamut of areas
15 across the district.

16 Q. And in that process you eliminated --
17 explain what the learning coach is, if you would.

18 A. Learning coach was a master teacher that
19 worked at the building level helping provide
20 professional development, going into classrooms,
21 working with teachers as they continued to be trained
22 for implementing best practices, to look at those
23 interventions that were very important to move
24 students so that we could reach those AYP
25 objectives. And they were really working in

1 developing the skill set for our teachers and
2 implementation of those programs so we could be
3 successful for our students.

4 Q. And in terms of resource officers, you
5 mentioned resource officers, are those the truancy
6 officers you talked about earlier?

7 A. School resource officers at the middle
8 school level and the high school level were Wichita
9 police officers that are assigned to work in the
10 school buildings. They help do special programs,
11 provide that connectivity between the police
12 department and other resources and students within
13 the schools.

14 Q. The Exhibit 279 shows a cost savings of how
15 much, please, of total one, two, and three phases?

16 A. When we look at cost savings there was 17
17 million, and then because of the loss of the stimulus
18 RF fund, an additional ten million in title, so from
19 those two sources about 27 million.

20 Q. All right.

21 Weren't these all efficiency measures that
22 just made the district more efficient?

23 A. No, they were not. These were, as you take
24 a look, Parents As Teachers Programs, you look at the
25 National Academic League, eliminating support --

1 large amounts of support for that activity for our
2 middle school students. Family engagements, library,
3 these were not just efficiencies.

4 The district worked hard to find
5 efficiencies early on in that process. We engaged
6 the business community and continue to work on those
7 efforts as we're trying to find greater efficiencies,
8 but we were done with the real efficiency piece.
9 When we have to start cutting this type of money,
10 you're getting into programs, you're getting into
11 people and you're getting into support for students.

12 Q. And it looks like you moved the start time
13 for school back in order to save some money?

14 A. Yes. As I said earlier, we offer magnet
15 school programs in the district. We run -- transport
16 about 19 to 20,000 students a day, and we run that on
17 a three-tiered system. So what we pay for is the bus
18 for that day. And then when they run more
19 efficiently, we can be, if that bus will run an
20 elementary, a middle and high school route, we get
21 much greater efficiency compared to if they run an
22 elementary or high school.

23 So we have a three-tiered system. In this
24 case we were able to move nine early start elementary
25 schools and move them to a tier where we had -- our

1 second tier is when we'll have 490-plus buses on the
2 roads, so we could move them to a tier where we
3 didn't have as many and be able to reduce the number
4 of total buses we would need to contract for.

5 Q. What about some of these extended learning
6 opportunities we talked about, like summer school,
7 pre-K, after-school programs, were these affected in
8 the reductions?

9 A. Those were affected. Our summer school
10 program we scaled back to predominately credit
11 recovery. We'll have about 600 students roughly in
12 the a.m. and p.m. session. We've scaled that back to
13 the minimum number of hours that are necessary for
14 the state. That's about 12 school days. It's about
15 seat time, clocks. And we've scaled that back.

16 After-school programs of course had to be
17 scaled back. One of the cuts that we made eliminated
18 the 5th grade strings program, which impacted our
19 fine arts area.

20 So all of them felt some impact. Number of
21 field trips cut because of the cost of
22 transportation.

23 Q. You've used the phrase a couple times
24 "credit recovery." And by that you mean the ability
25 to regain a credit you may have lost --

1 A. Correct.

2 Q. -- because you didn't pass a course? Do you
3 charge for summer school?

4 A. We do charge. It's about \$90. Our intent
5 is try to make it as close as we can get to a break-
6 even. But when you have the number of students that
7 we have that qualify for free and reduced lunch, that
8 \$90 for some of them is pretty much impossible to
9 make that payment. So we do a sliding scale for
10 those students.

11 Q. Well, how's this running? Is it a break-
12 even proposition today?

13 A. It is not.

14 MR. RUPE: This is probably a good
15 time to take a break.

16 JUDGE THEIS: 1:45 good?

17 MR. RUPE: That's fine.

18 JUDGE THEIS: Okay.

19 (A lunch recess was taken.)

20 JUDGE THEIS: Be seated. Thank
21 you.

22 MR. RUPE: Good afternoon.

23 JUDGE THEIS: Cooler in here, I'll
24 say that.

25 Q. (By Mr. Rupe) When we concluded we were

1 talking about the summer school program and you said
2 that it was not breaking even. I probably should ask
3 the question, is it losing money?

4 A. It's requiring general fund support.

5 Q. Okay. So it's not self-sustainable?

6 A. It's not self-sustainable.

7 Q. The general fund has to be tapped to keep it
8 going?

9 A. Correct.

10 Q. And it's a significantly scaled-back
11 program?

12 A. It is.

13 Q. Let me hand you Exhibit 287, please.

14 And I want to ask you as a preliminary
15 question before you look at this exhibit, when was
16 the last increase in teachers' salaries that USD 259
17 Wichita gave to its teachers?

18 A. We're now on the fourth year of a freeze for
19 all employees.

20 Q. So all employees have gone four years
21 without receiving an increase?

22 A. Correct.

23 Q. What is 287?

24 A. 287 looks like the cost proposal for the
25 Wichita UTW, which would be our teachers'

1 association's contract proposal for this year's
2 negotiations.

3 Q. And the number there that is shown for --
4 well, why don't you just explain what this is to the
5 Judges, please.

6 A. I can try. Tracks are the educational
7 compensation teachers receive when they increase,
8 say, a bachelor's plus 15 hours, a bachelor's, a
9 master's degree, so they get tracks. They get steps
10 for years.

11 So in a year in which steps are awarded, if
12 you've been teaching three years you'd move to the
13 fourth step. So what our teachers ask for in tracks
14 is that we would not only make them whole for any
15 education that they've received over the last four
16 years, but we would also pay the back pay that would
17 be associated with it. Had they gotten it in year
18 two of the freeze, they would have in some years then
19 received those tracks.

20 The same with steps and a three percent
21 salary increase.

22 Then they ask for cost of living increases,
23 longevity, which the steps don't go indefinitely, so
24 you reach a point where you've maxxed out on the
25 steps and a longevity is a portion of that and back

1 pay and some others regarding sabbaticals and some
2 addendums.

3 Q. I call Plaintiffs' Exhibit 287 the catchup
4 exhibit, but is it accurate to say that 287 reflects
5 the amount of money that the teachers have indicated
6 would be necessary to bring them current in terms of
7 the pay freeze?

8 A. Correct. The number here would be the
9 district's costing of that proposal.

10 Q. And so we're on track, that number is?

11 A. \$48,099,458.

12 Q. So that number is 48,099,458 to essentially
13 bring the teachers current. And that computation was
14 done by the district or by the teachers?

15 A. By the district.

16 Q. And I know a lot of us in the courtroom have
17 not seen increases in salaries, but that number would
18 also constitute the loss to the teachers during that
19 period of time, right?

20 A. That is their perspective, yes.

21 Q. Okay. Have you lost teachers to other jobs
22 and other school districts?

23 A. We have. When you're in a metropolitan
24 area, oftentimes there will be some movement between
25 school districts. This year in particular we've had

1 a much higher number of teachers that have moved
2 districts. Many of those were within, I'm going to
3 say a 4 to about a 14-year experience range is my
4 recollection.

5 And the reason they're giving us for moving
6 is that because of the four-year freeze, that teacher
7 may have been teaching with us four years, by now
8 moving to another district they'll get eight years of
9 credit, plus they've completed, say, a master's
10 degree in that time period and they'll get credit for
11 the master's.

12 Q. And in terms of this pay freeze do you
13 attribute the pay freeze to losing those teachers
14 that you just described?

15 A. Yes. You know, we'll lose teachers for
16 various reasons. Spouse may be transferred or
17 others. But this year as we talked to teachers in
18 that exit process we're seeing a much higher number
19 that are moving to area school districts in order to
20 take advantage of the steps and tracks.

21 Q. And describe for us a little bit about who
22 these districts are that you're losing teachers to.

23 A. Andover, Goddard, Maize, Haysville, some of
24 them have been pretty aggressive about advertising
25 and making sure that teachers understand what

1 advantage they would have financially by moving
2 districts.

3 Q. And talk to the Judges, just explain that
4 situation that you explained to me where you had
5 scheduled interviews at one of the universities and
6 what these competing school districts did by way of
7 preempting you.

8 A. Competition can be pretty tough for
9 teachers.

10 MR. CHALMERS: Wait, wait, wait.
11 Let me object. I think we're getting into hearsay at
12 this point unless he's going to lay a foundation as
13 to what he saw as opposed to what someone else told
14 him, and I think the answers started to be
15 non-responsive to the question, anyway. I object.

16 Q. Do you have knowledge of these?

17 A. Yes, sir.

18 Q. Explain to the Judges how you have knowledge
19 of it.

20 A. When a teacher leaves the district, our
21 human resource department attempts to, one, when we
22 get a letter of resignation tries to follow up with
23 the reasons why a teacher will leave the district.
24 And that is specifically some of the reasons that
25 have been provided this year in greater numbers than

1 we've seen over the last couple years is the ability
2 to move districts and gain full benefit of their
3 years of experience and their education.

4 Q. And from those business records have you
5 gained knowledge as to why these teachers are leaving
6 and where they're going?

7 A. Yes. We track when we know where they're
8 going. And as I said, they are area Wichita
9 metropolitan school districts predominantly.

10 Q. Did you have -- what are your observations
11 about where they've gone?

12 A. Haysville, Maize, Goddard, Derby and Andover
13 seem to be the predominant districts at this point.

14 Q. You talked earlier in an answer to a
15 question that some of those districts have been
16 aggressive in their recruiting efforts. Give us an
17 example of that.

18 MR. CHALMERS: I don't know that
19 the foundation has been laid for this part, other
20 than perhaps hearsay. And I think he needs to ask
21 him how he may know first and see whether I have an
22 objection.

23 MR. RUPE: I've --

24 JUDGE THEIS: Best evidence
25 objection it sounds like in a way, but.

1 MR. RUPE: I've laid the
2 foundation. He's got this information from business
3 records. So if it's hearsay he still has the
4 information.

5 JUDGE THEIS: Did he read it or?

6 Q. (By Mr. Rupe) Where did you get your
7 information on the recruiting situation?

8 A. On wherever we're losing teachers, because
9 teachers tell us what district they're going to when
10 they leave the district, so we do track that.

11 Q. We covered that and that's in evidence.
12 What I'm asking you about now is the situation in
13 which the other districts preempted your interviews.
14 Did you have personnel knowledge of that?

15 A. Through our human resource department and
16 their conversations with the other districts.

17 MR. CHALMERS: I move to strike,
18 and particularly the suggested nature of counsel's
19 question. And I think it's accomplished he doesn't
20 have foundation to answer the question. I object.

21 JUDGE THEIS: If it's coming from
22 his HR department or they track it that's one thing,
23 but I'm not sure what the source of the information
24 is. I'm not sure where you're trying to go. Why
25 don't you make a proffer and we'll see.

1 MR. RUPE: Okay. The only proffer
2 was, and I didn't know it was going to be this big of
3 a deal, but the proffer is that when they scheduled
4 interviews at the university, the neighboring
5 districts moved their time up considerably so they
6 could be before 259 in the interviews.

7 And I was using that as an example
8 of how aggressive these competing districts are and
9 how they're losing teachers.

10 JUDGE THEIS: I think that's an
11 observation of the business. I'll permit it.

12 Q. (By Mr. Rupe) Explain what I just
13 explained.

14 A. As we schedule interview days, our teacher
15 days, what we found is once our notice had been
16 provided, area districts either waited or rescheduled
17 to be able to preempt 259 in making those offers.

18 For some of those districts that are
19 growing, they had the ability in the growth knowledge
20 that they can hire X number of teachers. As we've
21 gone through freezes and cuts, in that area they've
22 figured out pretty competitively if they can beat us
23 to the punch in the offer that it makes it more
24 difficult for us to maintain our teachers.

25 MR. CHALMERS: I move to strike the

1 last part as being a non-responsive speech and
2 speculative.

3 JUDGE THEIS: It's his
4 understanding by reason. Overruled.

5 Q. (By Mr. Rupe) Let's talk about Common Core
6 Standards. Have you looked at or is Wichita in the
7 process of implementing Common Core Standards?

8 A. I think, yes, we are. We're looking at what
9 that will take from a curricular standpoint attending
10 what has been provided by KSDE as we look at that
11 shift that appears that some point in time in the
12 future will occur.

13 Q. Have you looked at how Wichita will perform
14 under the Common Core?

15 A. Yes. We had some information analysis
16 provided by a scholastic that took a look at where
17 our students are currently performing, looked at the
18 projection of how many point growth it would be
19 necessary for Wichita students to be able to then
20 meet the proficiency standard that's projected under
21 the Common Core. And that's about a 50-plus point
22 differential.

23 Q. Explain what that means.

24 A. If you take a look at where Wichita students
25 are now, where they'll need to be in order to be

1 proficient with the Common Core. And the way they
2 calculated that they did that across all states.
3 They looked at state standards. It's some work that
4 was done by Dr. Bill Daggett.

5 So you can see states along the continuum
6 looking at NEAP scores and some other criteria and
7 then saying, okay, if Common Core is here and the
8 state is here, what's it going to take to meet that
9 Common Core expectancy?

10 And then, they were able to take once you've
11 established that for the state, then you were able to
12 look at where the district is in regards to the state
13 and reach that projection.

14 We're going to have a lot of work to do for
15 the Common Core.

16 JUDGE THEIS: Fifty points
17 percentage? What's 50 points?

18 Q. (By Mr. Rupe) Is 50 points a percentage or
19 what?

20 A. They do it on a standard of achievement.
21 And to be honest, without that right in front of me,
22 I would hate to try to give a description that would
23 be inaccurate.

24 Q. Well, give us a breakdown of who will meet
25 the Common Core Standards.

1 A. Well, as you look across the country, you
2 know, it's going to be a higher bar for everyone, but
3 the gap, Kansas was toward the tail end or the
4 largest of the gaps versus some of the other states.

5 So they had a continuum line and say Kansas,
6 Texas was at the far, far end of the spectrum. And
7 Texas is kind of hard to put into any of them,
8 because they do their own thing and don't necessarily
9 participate in different ways.

10 And then they had the other states as you
11 moved across the continuum line. The farther you
12 were to the left the greater the gap.

13 So as you moved, Massachusetts and other
14 states toward the right, as I remember, you know,
15 their gap was 10, 12 points.

16 Q. Okay, and Kansas was what?

17 A. It was 50, 52, as I remember.

18 Q. And now you've talked about the impact of --
19 let me ask you again, what has been the impact of the
20 cuts on the 259 student population?

21 A. The impact in increased class size, less
22 opportunity for intervention activities for students.
23 We've seen extra-curriculars impacted and
24 pupil/counselor ratios have been altered.
25 Administrative ratios have all increased. Librarians

1 at the secondary level replaced librarians with
2 clerks.

3 I think those are some of those off the cut
4 list that directly have impact daily to students at
5 their building level.

6 Q. And how have the program cuts that you've
7 described affected student achievement?

8 A. As we look at comparison over the last two
9 years to what we're projecting for this year, we've
10 seen a decrease in this year's projections.

11 Q. Is this true in the subgroups?

12 A. Yes, it is.

13 Q. That would apply to the plaintiffs in this
14 case?

15 A. It would.

16 Q. With regard to the cash balances, I want to
17 switch gears and talk about cash balances.

18 Before we do that, have you received
19 information on the NCLB waiver application?

20 A. What we've received is the draft that was
21 submitted. Since then, the waiver was denied and the
22 subsequent conversations with the commissioner and
23 KSDE, I'm not aware of where we are in the
24 negotiation process. But I did see the original
25 waiver.

1 Q. The state has suggested it might obtain a
2 waiver from the NCLB requirements for the upcoming
3 school year. My question to you is, with regard to
4 259, if they get that waiver will it fix all the
5 district's achievement problems?

6 A. Absolutely not.

7 Q. Explain to the Court why that's not the
8 case.

9 A. Well, the waiver is over 150-some pages, as
10 I recall. It uses a new growth model, which still,
11 details are not at a point where we'd really be able
12 to do a comparative. It does include a shift in just
13 as under NCLB focusing on schools that are struggling
14 and I believe they refer to them as priority and
15 focus schools.

16 We were given an estimate of our buildings
17 that potentially could fall into those categories.
18 With that, many of the same requirements under No
19 Child Left Behind are part of that process,
20 particularly for priority and focus schools.
21 Districts tried to look at the federal turnaround
22 models. That includes changing of principal and
23 staff.

24 One, in particular that we looked at and
25 talked about, if you don't make a change in a

1 building that would be identified, for what we think
2 of as No Child Left Behind, as improvement, under the
3 focus and priority you have to demonstrate that that
4 principal has the ability and the skills to actually
5 put a turnaround model in place.

6 That was one of the questions I asked KSDE
7 at the time that they were going to submit the
8 draft. What does that mean? What does that mean
9 when I know I can have 17 buildings, 19 buildings,
10 whatever, that would fall into a category, what am I
11 going to be asked to prove in regards to building
12 leadership?

13 At that point in time we were unable to get
14 an answer.

15 Knowing that that was a potential, we looked
16 at and researched what are some of the top turnaround
17 programs in the country that help build leadership
18 for a principal, to take on the challenge of taking a
19 low performing school and moving them towards
20 standard.

21 We identified a couple and sent 20 of our
22 administrators this summer to Harvard Institute,
23 because it was one that came very highly recommended
24 specifically geared towards turnaround. Because I
25 don't know what that skill level or proving that it

1 exists as the waiver detailed.

2 Q. Why did you pick the Harvard Institute?

3 A. Well, we looked at a number of different
4 programs. We wanted something that had a proven
5 track record. We wanted something that was not just
6 a year to year and it needed to not be state
7 specific.

8 Texas has a turnaround model, but it's very
9 specific to the state of Texas. So when we looked,
10 there are really just a couple. And that was one
11 that not only with the timing were we able to get our
12 folks enrolled, but it also came highly recommended.

13 Q. Did you have federal money to pay for this
14 or where did the money come from?

15 A. For this we were able to use -- we focused
16 on our title schools and were able to use some Title
17 I funds to accomplish that.

18 Q. And in terms of the cost of complying with
19 the waiver, are there increased costs to the district
20 associated with that?

21 MR. CHALMERS: Lack of foundation.

22 Q. (BY MR RUPE) If you know.

23 A. It would --

24 MR. CHALMERS: Lack of foundation.

25 I don't think saying "if you know" establishes a

1 foundation. Objection.

2 MR. RUPE: All right.

3 JUDGE THEIS: He wants to know how
4 he knows.

5 Q. (By Mr. Rupe) How do you know there's going
6 to be an increase in costs?

7 A. You're looking at a new assessment model,
8 which absolutely will have costs. You're looking at
9 still needing to follow the federal turnaround model
10 of which they give four options. We know what costs
11 are associated with that because that's currently
12 under No Child Left Behind. That doesn't change
13 significantly under the waiver, at least under the
14 draft.

15 So given that, I would have to extrapolate
16 that there would be similar costs associated.

17 MR. CHALMERS: Excuse me. Excuse
18 me. Let me make an objection. He's not laid the
19 foundation and the witness is now offering or
20 volunteering an answer before the question's been
21 asked and I've had an opportunity to object.

22 I object to the lack to foundation
23 as to the speculation of this witness's testimony of
24 what the cost of Common Core would be.

25 MR. RUPE: I don't want to quarrel

1 with counsel, but the witness indicated he knew the
2 cost because he knows what those costs are and they
3 haven't changed and they're going to be more.

4 MR. CHALMERS: Talked about four
5 options that he knows. If he wants to talk about
6 those, that's fine.

7 JUDGE THEIS: He knows what he does
8 know and it costs and he's got to do something else,
9 extrapolate one to the other, I suppose, but he has
10 to do it, A, B, you know.

11 Q. (By Mr. Rupe) What's your knowledge of the
12 increase in costs?

13 A. Maybe I wasn't clear. When I focus on and
14 know the cost for turnaround models under No Child
15 Left Behind, those are carried over as it appears in
16 the draft to the waiver.

17 So, for example, if I have to replace
18 building leadership, if I have to replace teachers,
19 there is a cost associated with each of those.

20 We also must show that the instructional
21 model being implemented is different and targeted
22 compared to what would be done across the district in
23 other buildings.

24 So we know that there's a curricular
25 implementation.

1 Those I know what those costs are as we've
2 had to do it currently under No Child Left Behind.
3 Since that carries over and the draft show that we
4 would have more schools potentially in that category,
5 I have to assume that those costs will be similar and
6 would be prevalent for more buildings.

7 Q. In other words, with more buildings in the
8 mix the costs of doing those four items goes up?

9 A. Correct.

10 Q. Does the waiver do anything about teacher
11 evaluations?

12 A. The requirements from the federal government
13 regarding the waiver includes a component that
14 originally said for states to receive the waiver they
15 needed to show that there was a teacher evaluation
16 system that included student performance as a key
17 component to the evaluation.

18 Q. Evaluation of the teachers?

19 A. Of the teachers.

20 Q. In terms of any cost associated with that,
21 that is different than it is currently, does that
22 cost go up?

23 MR. CHALMERS: Objection. I think
24 it's lack of foundation. And I think the question is
25 kind of circular. It says in terms of cost -- well,

1 I object for lack of foundation.

2 MR. RUPE: My question is what is
3 his knowledge.

4 THE WITNESS: Not knowing where --

5 MR. RUPE: Hang on.

6 THE WITNESS: I'm sorry.

7 JUDGE THEIS: Well, I think it's
8 okay.

9 Q. (By Mr. Rupe) Go ahead and answer now.

10 A. I'm sorry. Not knowing where we are in the
11 negotiation aspect with the Department of Education,
12 Kansas -- one of the mandatory required negotiated
13 items in the teacher contract is teacher evaluation.
14 So it is very district specific.

15 The state has run a pilot KEEP around a
16 model state teacher evaluation system, but it
17 currently does not include student performance.

18 So in looking at the waiver requirements, if
19 that is a component that it will be required to
20 receive the waiver, it would mean that there would
21 need to be a change to Wichita's teacher evaluation
22 system, which is currently a negotiated item, which
23 either we would have to negotiate out, where there
24 would have to be some statute change requiring a
25 state teacher evaluation system.

1 So if we have to make a transition to a new
2 system, there's training aspects and all of that for
3 both teachers and our administrators that would have
4 to take place.

5 Q. Without a change in the teacher contract
6 law, that would require you to negotiate a provision
7 in the contract with the teacher regarding student
8 improvement?

9 A. Yes, sir, that's my understanding.

10 Q. Now, let's go to Exhibit 336. What is
11 Exhibit 336?

12 A. 336 was a presentation made to the Board of
13 Education July 11th of 2011, regarding year-end cash
14 balances. Let me --

15 Q. And this was in July of 2011?

16 A. Yes.

17 Q. Does the district have cash balances?

18 A. Yes, we do.

19 Q. Is it extra money?

20 A. No, it is not.

21 Q. Explain to the Court what this bullet point
22 says to your board, "Critical to cash flow throughout
23 the year." Explain that to the Judges, please.

24 A. Just like any business enterprise you have
25 to have cash flow throughout the year. When we

1 receive our revenue, be it from property tax, from
2 state payments, and that's been over the past couple
3 years late more often than not, when we have our
4 expenses, like any business, you need to have the
5 revenues to cover your expenditures.

6 So as you look at that ebb and flow
7 throughout the year it's important that you have cash
8 balances to meet those business expenses.

9 Q. Okay. And in terms of the -- turn if you
10 would to the slide on Bates KSDE 137677 and explain,
11 if you would, the situation with special education
12 fund balances.

13 A. I'm sorry, I'm not following you on which
14 slide.

15 Oh, the --

16 Q. The one --

17 A. The chart, okay, fund balances for special
18 education.

19 Oftentimes there tends to be used a snapshot
20 of June 30 as cash balance. And that's a topic that
21 our board has discussed, as well as we've had
22 conversations with our public, because what happens,
23 when you look at the end of June balances, it's much
24 like somebody looking at, as I've tried to describe
25 it in our community budget meetings, as somebody

1 looking at the escrow account for your home mortgage,
2 when you've built up the escrow prior to payments for
3 your insurance and your property taxes and those
4 types of things. If you look just prior, it looks as
5 though that fund is flush. If you look just after
6 the payment you get something completely different.

7 And that's what you see in looking from June
8 to December, when you take a look at our special
9 education fund balances, because of when we're paid
10 for special education, because of it's not until
11 October, I believe, on transportation and some of
12 those others, we have to have balances to cover
13 extended school year, which is required for some of
14 our special education students, the cost of those
15 employees and all those expenses up until December
16 when we get the next influx of the payments.

17 So you could see there's a huge swing in
18 that period of time just for the special education
19 fund balance, which is why you have to have those
20 balances in the cash flow.

21 Q. Is there a situation involving KPERS where
22 KPERS is currently accounted for as part of the cash
23 balance momentarily?

24 A. Yes. And Ms. Jones would be able to give
25 you better dates, but to show the KPERS flow for the

1 districts, the KPERS, state KPERS piece is sent to
2 school districts. It arrives in the morning. It's
3 typically gone by noon. So that it runs through the
4 district books, so you see an amount that is booked.
5 And then it's back to the state level.

6 So those are not actual dollars that are
7 available for districts to use toward instruction,
8 though oftentimes those dollars are lumped into that
9 discussion.

10 Q. Okay. So let me put, from Exhibit 346,
11 Bates Number USD 259 391640 on the screen, and just
12 kind of run through this with you.

13 This says the first misconception is what
14 district year-end balances actually are. For the
15 past ten years, the June payment has been paid in
16 July. This means school district's general fund
17 budgets begin the fiscal year, July 1, with a
18 negative balance. Do you agree with that?

19 A. I do.

20 Q. However, the state requires districts to
21 book the money to June even though the money is not
22 in the district's account, is that correct?

23 A. That is correct.

24 Q. Wichita's June 30th balances, unencumbered
25 cash balances, this year are overstated by 30 million

1 of delinquent state aid payment. Because the general
2 fund is negative 30 million, the remaining funds are
3 critical to cover the financial obligations. Is that
4 an accurate statement?

5 A. That would be accurate.

6 Q. And an accountant by the name of Mark Dick
7 did a study of this in a white paper and you're
8 familiar with this, aren't you?

9 A. I am.

10 Q. That has been admitted into evidence, but
11 I'm going to quote it on Exhibit 346. It's quoted
12 here, and what CPA Mark Dick said is making sure you
13 have enough cash on hand to pay your bills and keep
14 the doors open in between revenue inflows is sound
15 cash management. Do you agree with that?

16 A. I do.

17 Q. And it says the government Finance Officers
18 Association best practices document recommends that
19 the entities maintain at a minimum an unrestricted
20 fund balance of no less than two months of general
21 fund operating revenues. Do you see that?

22 A. I do.

23 Q. Do you agree with that?

24 A. That's their recommendation.

25 Q. If 259 received no funding today, as of

1 today the funding stopped completely, how long could
2 the district run?

3 A. Our contingency reserve would allow us to
4 operate eight to ten days.

5 JUDGE FLEMING: I see people
6 fanning themselves.

7 THE WITNESS: Thank you.

8 JUDGE THEIS: We can go outside for
9 a break later and have a comparison.

10 MR. RUPE: That's what they did at
11 the Scopes Monkey Trial.

12 Q. (By Mr. Rupe) Let me end with where we kind
13 of started. Can you provide students, including the
14 individual student plaintiffs, with a suitable
15 education with the resources you have?

16 A. At this point in time we cannot.

17 Q. Could you do it with more resources?

18 A. More resources would definitely allow us to
19 provide what our students need to achieve.

20 MR. RUPE: That's all I have.

21 CROSS-EXAMINATION

22 BY MR. CHALMERS:

23 Q. So we have a clear record, you were last in
24 the classroom when you were a high school teacher at
25 Shawnee Mission South?

1 A. That would be correct.

2 Q. That would have been in 2004?

3 A. That would be close, yes.

4 Q. I want to talk to you just a second about a
5 comment you made in response to questions by
6 Mr. Rupe. I think you indicated that cuts, as you
7 have described them, have impacted student
8 achievement in your district, and that's the position
9 you take; isn't it?

10 A. Yes.

11 Q. And what that means, I presume, is that as a
12 result of the cuts as you have described them student
13 achievement is lower than it would have been
14 otherwise?

15 A. Yes, that's my belief.

16 Q. Now, the reality of it in your district is
17 that student achievement has been on a steady
18 increase; hasn't it?

19 A. We have seen incremental increase, yes.

20 Q. Mr. Rupe showed what was Plaintiffs'
21 Exhibit 36. That's a budget update from July of
22 2011. Is that something you had involvement with?

23 A. 336?

24 Q. 336, thank you.

25 A. Yes.

1 Q. Is that something you would have had
2 involvement?

3 A. Yes.

4 Q. Did you make this presentation?

5 A. No. Not individually.

6 Q. Materials are accurate to the best of your
7 knowledge?

8 A. To the best of my knowledge, yes.

9 Q. The last page of the document there's what's
10 referred to as deaggregated data?

11 MR. RUPE: Disaggregated.

12 Q. (By Mr. Chalmers) Disaggregated, thank you,
13 that is intended to show in some measure the increase
14 in proficiency over time, is that correct?

15 A. Yes, it is.

16 Q. Now, you testified that the plaintiffs in
17 this case -- that these cuts that have affected
18 student achievement have affected the plaintiffs in
19 this case. What plaintiffs are you talking about?

20 A. The students of Wichita.

21 Q. Students of Wichita aren't all plaintiffs in
22 this case, you understand that, don't you?

23 A. As named plaintiffs, yes, it's my
24 understanding, I believe.

25 Q. And in terms of those students that are in

1 Wichita that are named plaintiffs, you don't have any
2 idea whether their academic achievement has gone up
3 or down as a result of these cuts, do you?

4 MR. RUPE: Object to that. That's
5 just purely argumentative. The Montoy case makes it
6 clear that representative plaintiffs are allowed in
7 these cases and the school district includes all the
8 kids in Kansas school districts as the plaintiff.

9 MR. CHALMERS: If counsel is
10 arguing that the question was asked only to talk
11 about representative plaintiffs, that's fine. If
12 he's suggesting that this witness has testified in
13 his leading question that the plaintiffs who were
14 named parties have suffered decreased academic
15 achievement, I need to find out and that's why I've
16 asked the question.

17 MR. RUPE: I asked him in the
18 representative capacity.

19 Q. (By Mr. Chalmers) Then you don't have any
20 opinion one way or the other as to their personal, as
21 to these personal plaintiffs of whether their
22 achievement has been affected one way or the other by
23 the cuts?

24 A. Let me make sure I'm understanding your
25 question. The named students are the ones you're

1 referring to?

2 Q. Yes.

3 A. My answer to the question was as plaintiffs
4 being Wichita school children, so if --

5 Q. Appreciate that clarification. That's what
6 I wanted to get at.

7 Now, when your district receives money from
8 the state, from the local taxes and collects the
9 money from the federal government, which as I
10 understand flows through the state, your district
11 controls how the money is spent; is that right?

12 A. It controls up to a certain extent how that
13 money is spent.

14 Q. There are strings attached to some of the
15 federal moneys?

16 A. Almost all the federal moneys, yes, sir.

17 Q. There are strings attached to some of the
18 state moneys in terms of whether it needs to go to
19 kids that have been generally described as at-risk
20 kids; is that right?

21 A. That is correct.

22 Q. Those strings that we talk about are that
23 there are designated areas of money, there are
24 federal moneys or certain state moneys that have to
25 be spent, but they're still spent on kids in your

1 district; is that right?

2 A. There are specific designations on how the
3 dollars may be spent and, of course, if we receive it
4 it's going to be spent on our students.

5 Q. Setting aside those moneys that have the
6 strings we talked about, your district controls how
7 the general fund and the LOB funds are allocated to
8 individual schools; isn't that right?

9 A. In those areas that would not have
10 restrictions, yes, sir.

11 Q. Again, if it's an area that does not have a
12 restriction, that's part of the general fund, or the
13 LOB fund. The LOB fund won't have any restrictions,
14 will it?

15 A. Capital portion would.

16 Q. The LOB is a fund that doesn't have anything
17 to do with capital expenditures, you understand that,
18 don't you?

19 A. On the local option budget?

20 Q. Yes.

21 A. Yes.

22 Q. So the LOB money would not have any strings,
23 a portion of the general funds wouldn't have any
24 strings and your district decides how to spend that
25 money, right?

1 A. We would have more latitude, yes, sir.

2 Q. Now, your district also controls how much it
3 wants to tax to fund the LOB up to 30 percent of the
4 general fund as it's calculated under the law; is
5 that right?

6 A. They have -- the school board has the
7 ability to tax under the LOB statute.

8 Q. And it controls what sort of capital outlay
9 levy it will issue, doesn't it?

10 A. Up to the state cap, yes.

11 Q. Up to eight mill levy subject to a voter
12 protest?

13 A. That's my understanding.

14 Q. There's no voter protest for the LOB money,
15 if you stay under the 30 percent calculated off of
16 the higher base plus the special ed?

17 A. As long as you stay within the 30 percent.

18 Q. Your district, I think you indicate, has
19 contacts with the community and contacts with parents
20 that you used to get input on what should be the full
21 amount of your LOB, what should be the full amount of
22 you capital outlay bond levies, is that correct?

23 A. I'm not sure I understand the question.

24 Q. I thought maybe I had understood that as
25 part of your program you would get together with

1 community members and parents and try to get input
2 from them on what's important in our schools for the
3 purposes of budgeting.

4 A. Yes.

5 Q. And your -- obviously your community members
6 are voters, they vote for the local board, so they
7 have at least in that fashion some connection with
8 the board and getting input to the board, is that
9 correct?

10 A. Yes.

11 Q. Now, beyond that isn't it true that there
12 are methods that your administration reaches out to
13 parents and people in the community in order to sort
14 out what they see are the needs for your school
15 district?

16 A. As I stated, we worked with the community to
17 determine what they valued, to gain input, and then
18 the board during budget discussions, that's done in
19 open public meetings in which the public has the
20 opportunity to provide input.

21 Q. And the public then has the opportunity to
22 provide input as to what levies your district will
23 choose for the purposes of the LOB or for the
24 purposes of the capital outlay funds; is that right?

25 A. What our community provides input is

1 regarding value program expectations. The board
2 ultimately makes the decision regarding the levy.

3 Q. I get that. But the board takes input from
4 the community as to what they think is appropriate in
5 terms of the needs of the district and, therefore,
6 the needs of the appropriate levy, don't they?

7 A. The needs of the district, yes.

8 Q. Now, there have been a number of public
9 hearings or meetings, I'm not sure how you describe
10 that, over the last several years when you've been
11 the superintendent in the Wichita School District in
12 which the subject of school finance has come up; is
13 that right?

14 A. Yes.

15 Q. In fact, I think some of the meetings were
16 specifically for the subject of school finance;
17 weren't they?

18 A. We talk about budget. We talk about, you
19 know, our school programs, if that's what you're
20 referring to.

21 Q. I had kind of thought that there were some
22 special meetings that just the subject of the budget
23 and the finances that applied to the budget were all
24 that were discussed, but maybe I'm mistaken.

25 A. No, we have budget meetings.

1 Q. There were --

2 A. Not just tracking with you there.

3 Q. And, okay, actually, they are televised,
4 aren't they, by the TV station that your school
5 district sponsors?

6 A. Some of them. If they're at a formal board
7 meeting they would.

8 Q. Some of the charts we've seen here in the
9 courtroom are charts that made it into those
10 meetings; is that right?

11 A. The 336, I would -- since it was presented
12 at a board meeting would be -- would have been
13 televised.

14 Q. The issue of a contingency fund and how much
15 the district should have on hand if there are
16 unexpected needs for a particular year, that's
17 something the school board decides; isn't it? They
18 decide whether to spend down that budget or that fund
19 or keep it intact; isn't that correct?

20 A. Correct.

21 Q. Or they decide whether to increase it?

22 A. It would all be part of their budget
23 decision.

24 Q. Now, the district for the 2010/'11 year
25 chose not to increase any local taxes; is that

1 correct?

2 A. It did not increase the mill levy.

3 Q. In order to do that, it had to reduce the
4 LOB levy some, is that correct?

5 A. No, I don't believe so.

6 Q. Maybe it was the percentage that had to be
7 reduced. Let's see.

8 Well, maybe I'll just ask you the question
9 while I'm looking for it. Your recollection is that
10 the mill levy money for LOB, is it at the maximum
11 that is now allowed under the law in your district?

12 A. It is not.

13 Q. Saves me a little bit of time. In a
14 document entitled the 2011/'12 Profile Information,
15 Exhibit 1024, that's isn't a color copy, but you're
16 familiar with this document. It's one that's
17 provided to the public and filed with the state each
18 year?

19 A. From the cover I'd need to take a look at
20 the inside to --

21 Q. The first page of the exhibit -- you've got
22 a copy of it now?

23 A. I do.

24 Q. It's Page 1, the cover page. And going a
25 little past that, it says, "The key issues

1 influencing 2011/'12 budget development through
2 property tax collections are expected to be down for
3 a third year in a row. The district proposes no
4 increase to local taxes, instead the district will
5 cut to avoid raising taxes." Do you see what I've
6 read?

7 A. Yes.

8 Q. That was the decision that your district
9 board made, is that correct?

10 A. That's correct.

11 Q. There's an Exhibit 1106, that comes from a
12 presentation that your district made and this relates
13 to the 2009 property tax comparisons. I think it was
14 in 2010. And I just want to know if you can update
15 this for me. This shows the actual annual property
16 tax on a \$100,000 house in terms of showing how much
17 the tax would be to the owner for Wichita and
18 surrounding communities.

19 And is that consistent with how it's pretty
20 much still aligned as of today?

21 A. As far as I know.

22 Q. And it would indicate that Wichita would be,
23 on this particular chart, what, the third lowest, and
24 Derby and Maize being a little bit lower for those
25 couple of houses?

1 A. Yes.

2 Q. Now, the district did vote -- well, we
3 includes me, I guess, the voters in Wichita did vote
4 for a capital improvement bond issuance. When was
5 that?

6 A. 2008.

7 Q. And the amount in total that was authorized
8 by that bond issuance was what?

9 A. For the actual bond, 350 million, 370
10 million.

11 Q. And that included projects like putting in a
12 stadium, well, a couple of new football stadiums,
13 didn't it?

14 A. Under the bond plan, those would have been
15 associated with the new high schools.

16 Q. Well, see, Wichita North is not a new high
17 school.

18 A. That would involve adding a field, not --
19 I'm interpreting a stadium as in full seats,
20 bleachers, Friday night-type stadium.

21 Q. Well, maybe I'm confused. I thought maybe
22 at North you went ahead and you folks used eminent
23 domain and took some the houses north of North High.
24 I thought you were putting a stadium in there?

25 A. Adding fields.

1 Q. Fields and tennis courts?

2 A. North is one of the largest high schools in
3 the State of Kansas and sat on some of the smallest
4 acreage. They were not able to hold student athletic
5 activities, even practices, at the site.

6 So, yes, property was part of that plan, to
7 be able to add some of those practice fields.

8 Q. On your website, it lists some of your
9 district's achievements, and I just want to go
10 through some of those quickly and confirm that they
11 are, in fact, achievements for this last year. It
12 says 45 schools received 164 standard of excellence
13 awards in reading, math and science from the Kansas
14 Department of Education for their performance on 2011
15 state assessments.

16 Does that sound right?

17 A. Forty-five out of about 100, yes, that
18 sounds about right.

19 Q. Well, it says that 45 schools received 164
20 standard of excellence awards. And the standard of
21 excellence awards, a building can receive more than
22 one?

23 A. Correct.

24 Q. What is a standard of excellence award?

25 A. Standard of excellence would be for

1 attainment on the state -- state assessment.

2 Q. Sixty schools met the 2011 AYP assessment
3 targets in both reading and math; 20 schools met the
4 AYP target in either reading or math, measuring 87
5 percent of all schools meeting AYP targets in one or
6 both subjects.

7 Is that what happened for the 2010/2011
8 year?

9 A. That sounds accurate.

10 Q. Clark, Coleman, Dodge, Woodland, Horace
11 Mann, Metro Meridian High School received the 2011
12 challenge awards from the Confidence in Kansas Public
13 Education Task Force.

14 What is that and did they receive that
15 award?

16 A. They did and off the cuff I don't remember
17 the specific criteria for that award.

18 Q. It says the award recognizes schools for
19 outstanding achievement and accomplishment in reading
20 and/or mathematics based on the 2011 state assessment
21 results despite facing significant challenges in the
22 student population.

23 A. Typically those are Title I schools, yes,
24 sir.

25 Q. Dodge would be a Title I?

1 A. Dodge is a Title I.

2 Q. And Wichita public and Title I schools, I
3 think we all know that means they have a certain
4 concentration of poverty; is that right?

5 A. That's correct.

6 Q. The Wichita public schools received the
7 healthiest employers award by the Wichita Business
8 Journal in 2011 and 2012; is that right?

9 A. We did.

10 Q. The district has more than 3600 registered
11 mentors and tutors who volunteered more than 18,000
12 hours to support students, and there are 22,000
13 registered volunteers that provide more than 116,000
14 hours of service to Wichita schools each year.

15 Does that sound about right?

16 A. We're fortunate that we have a community
17 that's involved in our schools.

18 Q. In that connection, I think that one of the
19 things that you indicated were cut, was that there
20 was no more funding from some of these, and I'm
21 sorry, it's service operation officer or service
22 what's the name of the officer that comes in?

23 A. School resource officers.

24 Q. School resource officers. And what some of
25 the community members did, actually, was raise money

1 so some of the school resource officers could remain
2 in the schools; isn't that correct?

3 A. No. When we cut those from the middle
4 school they were not -- we didn't receive --

5 Q. Is this just a middle school then, I'm
6 sorry?

7 A. Middle schools.

8 Q. It says, "On November 4, 2008, voters
9 approved the 370 million bond that will add schools
10 and classrooms to reduce the class sizes, addressed
11 overcrowding and growth, build 60 safe rooms, support
12 the end of forced busing, upgrade technical education
13 programs and renovate or rebuild aging physical
14 education, athletic and fine arts facilities."

15 We talked about that, didn't we?

16 A. That was the original bond plan.

17 Q. Now, your district this last year completed
18 a quality performance accreditation summary, did it
19 not, summary report?

20 A. Yes.

21 Q. In fact, did you complete that or did you
22 have someone do that for you?

23 A. It's done by staff.

24 Q. And that report shows that your district
25 satisfied the 11 quality requirements of QPA; is that

1 correct?

2 A. Yes.

3 Q. And so that we have a quick review of what
4 those are, if we look at Exhibit 126 or, excuse me,
5 1126, that's the quality performance accreditation
6 manual. I think I can go through these real quickly,
7 so we don't have to do them again. The first quality
8 criteria is that there will be in place for each
9 school a school improvement plan that includes a
10 results-based staff development plan.

11 And you have one of those at your district,
12 do you not?

13 A. We do. Do you mind -- which page? I'm
14 struggling to see what's up there.

15 Q. Page 11.

16 A. Thank you.

17 Q. And I should know, my eyes can't be any
18 better than yours. Apologize. The exhibit on Page
19 13 talks about the quality criteria that exists which
20 shall require to be in place for each school an
21 external technical assistance team.

22 And you have one of those; is that right?

23 A. We do.

24 Q. What is an external technical assistance
25 team?

1 A. My interpretation of the external technical
2 assistance team is you're looking at -- used to be
3 the old QPA. I'm going back a few years.

4 Q. Basically what you have to have is
5 consultants that are outside the district itself
6 providing you support?

7 A. You have to have an external source, yes.

8 Q. Moving on to the next couple of pages, where
9 it's under Page 16.

10 You have to have locally determined
11 assessments that are in line with the state
12 standards. And you have those?

13 A. Yes.

14 Q. Then under four, which is at Page 18, you
15 have to have formal training for teachers regarding
16 the state assessments and curriculum standards. And
17 there have to be professional development logs
18 showing that that's taking place.

19 You have those logs and you have that
20 professional developing going on in your district; is
21 that correct?

22 A. We provide professional development.

23 Q. Five, at Page 20, that 100 percent of the
24 teachers assigned to teach in those areas assessed by
25 the state are described as core academic centers --

1 academic subjects, rather, by the U.S. Department of
2 Education and 90 percent or more in other faculty are
3 fully certified for the positions they hold.

4 And you certified that you satisfy that
5 criteria; is that correct?

6 A. We satisfy it.

7 Q. Six, on Page 26, you have to have policies
8 in place to meet those requirements of the state
9 concerning, and we can go through them, but I think
10 it has to do with the curriculum licenses for
11 positions held, and you have all those policies in
12 place?

13 A. Just give me a second. I'm just looking at
14 the requirements to make sure I understand. Yes, I
15 believe so.

16 Q. Seven, local graduation requirements, you
17 have those in place?

18 A. We do.

19 Q. Eight, on Page 26, there must be a
20 curriculum that allows a student to meet the Regents
21 qualified admissions requirements and state
22 scholarship programs. And you have that curriculum
23 and those classes available to students in your
24 school district, don't you?

25 A. Yes.

1 Q. The opportunity is present to a student to
2 take the classes in front of qualified teachers to be
3 qualified for admissions in a state Regents school;
4 is that correct?

5 A. The opportunity is present.

6 Q. Now, Number 9, the programs and services to
7 support a student, and they include kind of a subset
8 of computer literacy, counseling services, fine arts,
9 language arts, library services -- court reporter is
10 going to be mad at me -- goes on for the rest of the
11 list. But look through that in the exhibit at
12 Page 27 and confirm that, in fact, that those
13 programs that are required to be in place, are
14 available in your district.

15 A. Yes.

16 Q. Ten, at Page 30, there has to be in place
17 programs and services to support student learning and
18 growth at the secondary level. And then it lists
19 business, family, consumer science, foreign language,
20 industry and technical education. And those are
21 available in your district as well; is that correct?

22 A. Yes.

23 Q. And Page 33, that's kind of a catch-all,
24 that you have to have everything in place with local
25 policies to be able to be in compliance with the

1 accreditation regulations and state laws. And you've
2 certified that you have those and you are in
3 compliance; is that true?

4 A. That is true.

5 Q. And, in fact, the schools in the Wichita
6 district are accredited, is that correct?

7 A. They are accredited.

8 Q. You testified that at present funding levels
9 that the QPA is not being reached in your district.
10 And we went through the quality portion of it, so I'm
11 assuming that your testimony is based on the idea
12 that there are schools and students that are not
13 testing at proficiency levels set by the No Child
14 Left Behind statute; is that correct?

15 A. If I'm understanding your question
16 correctly, our schools are accredited. They meet
17 these basic components. There are additional
18 standards which we are required to meet under No
19 Child Left Behind, which would be reflective of state
20 assessments. The QPA is one component. We have No
21 Child Left Behind. We have the expectation of the
22 college and career readiness aspects.

23 Did I follow the question correctly?

24 Q. I think so. When you said, however, in your
25 testimony that you are not satisfying QPA, what you

1 were focusing on were the No Child Left Behind
2 assessment test aspects?

3 A. I don't honestly remember responding to QPA
4 as much as --

5 Q. Maybe I misunderstood then.

6 A. -- the No Child Left Behind standards.

7 Q. I want to talk to you then about the
8 standards for a second and sometimes we've been
9 referring to those as AYP. Is that a suitable way
10 for you and for us to talk about it?

11 A. They're confusing enough, so if we can stick
12 with one, that is probably --

13 Q. Take your choice, No Child Left Behind or
14 AYP?

15 A. Well --

16 Q. Let's use AYP because it says that on this.

17 A. Okay. Yes. But No Child Left Behind
18 contains so many more components, highly qualified, I
19 mean, there are other factors to it.

20 Q. Yes. Exhibit 74, this happens to be the AYP
21 goals for mathematics. And you understand and agree
22 that under the present partial waiver that the
23 standards shown for 2012 are actually those that were
24 for '10/'11?

25 A. The '11 and the '12 are the same.

1 Q. So our chart would kind of go down and then
2 potentially back up, right? I just want to make sure
3 we're clear on that.

4 A. It'll be flat.

5 Q. It'll be flat here and then potentially back
6 up unless the waiver is granted, correct?

7 A. Correct.

8 Q. Your district has been either on improvement
9 or -- well, what is the status of the district now, I
10 guess, is a better way to ask the question?

11 A. Correction.

12 Q. So it's either been on improvement or in
13 correction since 2003, is that correct?

14 A. Yes, sir.

15 Q. The problem this last year, and that is the
16 reason that it didn't make AYP, and when I say last
17 year, let's be clear, we're talking about the last
18 formally reported, that would be '10/'11 school year;
19 is that correct?

20 A. Yes.

21 Q. We'll talk about the '11/'12 in a moment.
22 There's no report card that's been issued on the
23 '11/'12 as of yet?

24 A. As of yet.

25 Q. The fact -- the reason that you don't make

1 AYP on the last reported go-round was that all
2 students did not reach the required proficiency
3 levels in math. Free and reduced students didn't
4 reach the proficiency level in math. Students with
5 disabilities did not reach the proficiency level with
6 reading and math. African Americans did not reach
7 the level with math. American Indians in reading and
8 math. Hawaiian Pacific Islanders reading and math.
9 Checked that on the website. Does that sound right?

10 A. Without looking at the report card it sounds
11 correct.

12 Q. I can't think that there are many Hawaiian
13 Pacific Islanders in our district, are there, the
14 Wichita district, I'm sorry?

15 A. Enough that they're a countable
16 subpopulation.

17 Q. Meaning more than ten?

18 A. For the --

19 MR. CHALMERS: More than 30.

20 THE WITNESS: For the district
21 aggregate it's going to be more than that.

22 Q. (By Mr. Chalmers) Now, the students that did
23 make AYP the last published round were all students
24 in reading and all students in free and reduced
25 math. You remember that, don't you?

1 MR. RUPE: Objection. Confusing.

2 MS. TIBBETS: You said free and
3 reduced math.

4 MR. CHALMERS: It is confusing.

5 Q. (By Mr. Chalmers) Free and reduced lunch.

6 JUDGE THEIS: I'll take that, free
7 and reduced math.

8 JUDGE BURR: That's what I needed.

9 MR. CHALMERS: It would have been
10 easier.

11 JUDGE THEIS: Count me in.

12 Q. (By Mr. Chalmers) I probably ought to ask a
13 question that almost makes sense.

14 A. You lost me on that one.

15 Q. Yeah. The kids that made AYP in reading
16 assessments were all students and those in the free
17 and reduced lunch category, perhaps others, but they
18 made the proficiency AYP standards this last
19 go-round?

20 A. I would need to look at this report card --

21 Q. Well --

22 A. -- to be able to answer.

23 Q. I could show you Exhibit 118, which I think
24 Mr. Rupe put up, and this was the root source of my
25 question.

1 On this exhibit, the red numbers would
2 reflect as you interpreted the scores on average for
3 all the kids in the different grade levels in your
4 district that were at or above proficiency and the
5 blue line would be the target numbers; is that right?

6 A. Would you repeat that.

7 Q. Sure. The red numbers are what you scored
8 on average, the blue are the target numbers, AYP?

9 A. Yes.

10 Q. With the caveat that this 2012 number really
11 ought to be 86 instead of 90.7?

12 A. We have a flat ...

13 Q. I want you to assume that the records show
14 and we've got a copy of it in here, we can show it to
15 you, I suppose, that your district made AYP on
16 reading. This is for all students in this year. And
17 I'm trying to understand how that's possible given
18 Exhibit 18, and I'm wondering if it is because this
19 shows sufficient improvement that it satisfies the
20 Safe Harbor provisions?

21 A. I'm sorry, repeat that one more time.

22 Q. If this shows, or if the record shows that
23 your district made AYP in reading for the year
24 2010/'11 for all students, then it would have been
25 because it satisfied the Safe Harbor provisions of

1 AYP statutes; is that right?

2 A. In computing the final determination if a
3 building or district would make AYP, it would use the
4 confidence intervals or the Safe Harbor would be
5 calculated in there as well, yes.

6 Q. This could be the confidence interval in
7 there as well?

8 A. Could be.

9 Q. A confidence interval is what, for the
10 record?

11 A. I knew you were going to ask me that
12 question. Confidence interval is a -- it's a
13 statistical that they look at, basically, that says,
14 when we think of confidence, how likely; and there's
15 a factor they use from year to year, so it will -- it
16 will fluctuate the scores.

17 Q. The theory I suppose could be that the 74.8
18 could be a higher, lower number depending on
19 confidence rates given that we're taking a test on
20 any given day and we're trying to measure what
21 somebody knows up to that point, and so latitude is
22 given within a certain range as a confidence
23 interval; is that correct?

24 A. Correct.

25 Q. Given the difference between the 86 and

1 74.8, this is probably Safe Harbor, if that's -- if
2 that's the explanation for why we have in this
3 instance AYP, if it is as I've suggested it was,
4 right?

5 A. That would be required for AYP if the
6 standard had not been met.

7 Q. Now, you testified that you have looked at
8 some of the numbers for this year's testing. And
9 where was it that you saw this information?

10 A. Information was provided by our assessment
11 analyst.

12 Q. When did you last look at this?

13 A. Yesterday.

14 Q. And had you looked at it before then?

15 A. Yes.

16 Q. Was it pretty stable? Was it trending up,
17 down, staying the same?

18 MR. RUPE: Objection. Confusing.
19 What do you mean was it?

20 THE WITNESS: I'm not sure what
21 you're referring to.

22 BY MR. CHALMERS: The proficiency
23 level that he looked at.

24 MR. RUPE: We have a copy of it.

25 MR. CHALMERS: Okay.

1 MR. RUPE: Do you want it?

2 MR. CHALMERS: I'd like to see it.
3 It would have been nice if it would have been
4 produced.

5 MR. RUPE: That one's mine. You
6 can have this one. Let's go ahead and mark it.

7 MR. CHALMERS: I'd like that marked
8 as 417.

9 (Plaintiffs' Exhibit Number 417 was
10 marked for identification.)

11 JUDGE THEIS: Is that the
12 preliminaries for this year?

13 MR. RUPE: Yeah.

14 MR. CHALMERS: I don't know what it
15 is, Your Honor. This is the first time I've seen it.

16 MR. RUPE: I saw it yesterday. I
17 asked him about it and he testified to it because he
18 has knowledge of it. If counsel wants to see it,
19 it's here and it's marked 417.

20 MR. CHALMERS: I don't know what it
21 is, that's what I'm saying, Counsel.

22 JUDGE THEIS: You can go ahead with
23 your questions. We'll probably take a break in a
24 little bit and you can take a look at it.

25 MR. CHALMERS: Okay. I'll take a

1 look at it.

2 Q. (By Mr. Chalmers) The document that you
3 looked at, 417, do you know when the data was
4 collected to be included in this document?

5 A. The data would have been the end of May, I
6 believe. I believe it's noted in there.

7 Q. I mean, the exhibit that has now been marked
8 417 has a date of 6-14-12, so I guess I would assume
9 -- well, I don't know, what does that mean, 6-14-12
10 would be --

11 MR. RUPE: It's 6-7-12.

12 MR. CHALMERS: I've got 6-14-12.

13 Q. (By Mr. Chalmers) Do you have a copy of it
14 in front of you?

15 A. I don't.

16 Q. I'm going to be looking over your shoulder
17 here for a second, so just before we take a break I
18 can understand. It's got the date of June 7, 2012,
19 and then internally it's got a 6-14-12 number. And
20 I'm trying to get a handle on when the data in the
21 report -- what the date of the data is.

22 A. This would have been at the conclusion of
23 May when the preliminary AYP reports were posted on
24 the KSDE website, so our data analyst -- we actually
25 work in conjunction with the Topeka public school

1 system. Our assessment groups are one and the same.
2 And this is their analysis based on the preliminary
3 data of what we would anticipate after July.

4 And as I said, it gives us a snapshot based
5 on that preliminary data.

6 Q. Concerning preliminary data, I don't know,
7 maybe this has been explained or not, but has there
8 been any disclaimer provided to you that the data
9 provided on these assessment scores over time becomes
10 more and more statistically accurate?

11 A. Yes.

12 Q. And so that in other words data provided
13 from, say, last Friday would be more accurate than
14 data that you're looking at in May?

15 A. If there have been changes to the data, from
16 the preliminary to the July time period, districts
17 are allowed to look at the preliminary data to see if
18 there are any corrections that need to be made.

19 Our decision-making around data is taking
20 the best data we have at the time, so that we're not
21 waiting until October to make decisions about fall
22 academic year. So this is -- this is what our
23 assessment team puts together as we plan for next
24 fall.

25 Q. Appreciate that. I'll tell you that we

1 issued a subpoena and we anticipate a production of
2 records, actually we provided a copy of records that
3 we got on Sunday to counsel electronically this
4 morning. But we anticipate having records that would
5 be current at least as of last Friday.

6 Would you expect that those records from the
7 state would be more reliable statistically than
8 whatever your records show in Exhibit 417?

9 A. Not knowing what data you're going to have,
10 I'm going to assume that corrections may have been
11 made and that is a possibility. But without seeing
12 the data sets, I don't know.

13 Q. Now, based on your review of the preliminary
14 state assessment results, you concluded, did you not,
15 that in Wichita the testing results, let's say in
16 reading, were relatively stable, if not a little bit
17 up, in terms of number of kids, all students that
18 were passing?

19 A. From the assessment report?

20 Q. Well, I don't know. Isn't that your
21 understanding, that for the all students in Wichita
22 for this year's -- this year's testing, that they
23 scored -- well, is it slightly higher or slightly
24 lower than last year?

25 A. Our preliminary would show that they scored,

1 as we look across the district -- will have fewer schools
2 make AYP, and that both our reading and our math we will
3 have some decline.

4 Q. Okay. And so on Page 10, I guess, of your
5 exhibit, it shows when we talk about some decline, it
6 shows a 74.8 in 2011 and a 74.3 in 2012, and I guess
7 because we're going to be talking about it anyway, I'll
8 move for admission of 417.

9 I assume you have no objection.

10 MR. RUPE: No objection.

11 JUDGE THEIS: It's admitted.

12 (Plaintiffs' Exhibit Number 417 was admitted.)

13 Q. (By Mr. Chalmers) At Page 10 of 417 it shows
14 that the all student amount went down what, .5?

15 A. .5.

16 Q. Okay. And then it shows the other changes, and
17 we've got a .7 down in African American, 1.6 down in
18 American Indian, .4 up in Asian, 1 up in ELL students, a
19 little bit down in free and reduced lunch, that's .5, a
20 4.1 down in multi-racial and, actually, I don't know why
21 I'm not doing it without showing it to everybody else,
22 and our Hawaiian Pacific Islanders did well. They were
23 up 11.9. Students with disabilities up 1.6. Whites up
24 .4. Overall everything was about the same in 2012 as it
25 was in 2011; isn't that right?

1 MR. RUPE: Well, I object to the
2 last remark. That's argumentative in terms of about
3 the same. But I don't object to the compound rest of
4 the question.

5 MR. CHALMERS: I'll withdraw the
6 compound rest of the question.

7 JUDGE THEIS: It says what it
8 says. I'm going to overrule that.

9 Q. (By Mr. Chalmers) Exhibit 417, we look at
10 the math results. How long have you had this report?

11 A. About ten days.

12 Q. June 7 is the date. Did you have it on
13 June 7?

14 A. It was completed and vetted. I've had it to
15 be able to analyze since about probably the 10th, the
16 14th of June, roughly.

17 Q. We look at reading. We look at the math
18 scores in terms of their difference. You're more
19 familiar with the document. You've had it since
20 shortly after June 7. Where's the math page?
21 Page 14 maybe?

22 A. This copy doesn't look like it has the
23 break.

24 Q. There we go, Page 14?

25 A. Page 14.

1 Q. Yeah. Math score, as the Judge points out,
2 it kind of reads for itself, but with the exception
3 of students with disabilities is down 2.5, everything
4 else is in the black this year in terms of
5 improvement for your students; is that right?

6 A. Well, I guess we would differ on terminology
7 around being in the black --

8 Q. All pluses?

9 A. -- when only one subgroup met the AYP
10 target. That's our goal is the AYP target.

11 Q. Well, first of all, let's get this straight,
12 for the record, these are all increases in the
13 aggregate test scores from 2011 into 2012, correct?

14 A. Yes.

15 Q. Now, that having been said, whether you made
16 AYP or not may depend on whether or not you get that
17 degree of coefficient of confidence or the Safe
18 Harbor, right?

19 A. Well, the scores also have to be within that
20 interval, so an exceptionally low score, say, student
21 with disabilities with math is -- is not going to
22 qualify for the Safe Harbor aspect as well.

23 Q. I think you were asked by Mr. Rupe whether
24 or not you saw some relationship between test scores
25 in terms of improvement and the increased funding

1 that was received under the Montoy case.

2 Do you remember giving testimony to that
3 effect?

4 A. I do.

5 Q. And so that we're clear on that, we have a
6 popular chart here, Exhibit 411. You're talking
7 about seeing improvement in 2005/2006; is that right,
8 when you looked back at the data?

9 A. When I look back at the data, as you look at
10 over time projections, you begin to see changes
11 really in the '06/'07, '07/'08.

12 Q. So you don't remember changes in '05/'06.
13 '07/'08 is what you're starting to see?

14 A. When you look at the longitudinal, at the
15 longitudinal piece.

16 Q. I thought you testified that what you saw
17 were improvements immediately in '05/'06. Is that
18 what you said?

19 MR. RUPE: I object. That's
20 argumentative. He wasn't even there. He didn't
21 testify --

22 MR. CHALMERS: I'd like to finish
23 my question.

24 MR. RUPE: Okay. I'll come back.

25 Q. (By Mr. Chalmers) What I thought I heard you

1 say, where there was an immediate increase in student
2 performance in '05 and '06 with the Montoy money --
3 but if I misunderstood or if you misspoke, that's not
4 what you meant to say; is that right?

5 A. No. I don't believe I ever used the word
6 "immediate," because there's no such thing as
7 immediacy in one dollar this year equates to that the
8 next year, not when it comes to education of
9 students.

10 Q. Because we know one of biggest increases in
11 student performance was in the '10/'11 year when
12 there was a time period of cuts; is that right?

13 A. As I said, when you're implementing change
14 for students, it's not going to be immediate.

15 Also, when we look at '10/'11 and the payoff
16 of teacher training and those aspects in those
17 previous years, we would not expect to see immediate
18 results. It's going to be over time. So when you
19 look at the role of learning coaches, you look at
20 those aspects were in previous years and the student
21 results, I believe, are contingent upon -- upon that
22 investment in previous years as well.

23 Q. 2010/'11 was one year when there was one of
24 the biggest improvements of student performance on
25 tests, is that correct?

1 A. Yes.

2 Q. Now, 2011 and '12 -- or 2011 and '12, I
3 think is one of the biggest improvements. 2012/'13,
4 we know in math there was an improvement and in
5 reading it was pretty stable?

6 A. Based on our projection.

7 Q. And you have a hypothesis that there's a
8 phase-in, a lag time, between when the money first
9 starts before you start seeing outputs, is that
10 correct?

11 A. Absolutely.

12 Q. So in '05/'06, if there's any improvement in
13 performance that year it had to be from something
14 other than the increase in money?

15 A. No.

16 Q. So you think there's no lag time if it
17 increases performance, but if it doesn't then there's
18 a lag time?

19 A. No, sir. What you're trying to, I believe,
20 state is that it equates dollar in and input in and a
21 direct output immediately. Children are not
22 widgets. So when I as a teacher learn a new reading
23 intervention, I may get training in year one where
24 that expenditure is made but my development and
25 ability to use it with students improves in year two

1 and year three.

2 When we revamped our assessment program and
3 those investments were made, the ability of teachers
4 and principals to analyze that data and then put the
5 correct interventions in place, it's not an immediate
6 one in, one out.

7 Q. I hear that. What I'm trying to have a
8 handle on is your testimony. And that is that if we
9 saw improvements in '05/'06 it wouldn't have been
10 because of the Montoy money?

11 A. I don't believe I testified to '05/'06. I
12 believe what I testified to was the fact that the
13 increase in funding had a relation to increased
14 student achievement in other years.

15 Q. Well, let me talk to you about '05/'06, if
16 we saw an increase in performance in '05 and 06, it
17 wouldn't have been because of the Montoy money,
18 according to you?

19 A. I'm still not tracking on that aspect.

20 Q. You just told me there's a lag. So if we
21 saw an increase in performance in '05/'06, it would
22 have nothing to do with the Montoy money?

23 MR. RUPE: I think it is
24 speculative and argumentative at this point.

25 JUDGE THEIS: He's trying to --

1 MR. RUPE: I know he's trying to
2 make his point. I think he's made his point.

3 JUDGE THEIS: The witness, if he
4 can explain the difference, that's what he's asking.

5 THE WITNESS: If I'm understanding
6 your question correctly, what you're stating is if
7 dollars aren't there achievement isn't there.

8 Q. (By Mr. Chalmers) That's not what I'm
9 asking.

10 A. Or the other way around.

11 Q. Let me rephrase it. I apologize for not
12 getting it straight.

13 I'm just asking you about 2005 and 2006, and
14 this chart, Exhibit 411, and I think you responded to
15 Mr. Rupe saying in that year there was an increase in
16 some Montoy money, so more money made it into the
17 school districts that year.

18 And if there was an increase in student
19 performance, that is people doing better on their
20 tests, it's your testimony that that improvement had
21 nothing to do with the money because of this lag
22 time?

23 A. I'm not trying to be argumentative here. My
24 agreement to this is to the sequence to which money
25 was there. I don't believe I've ever testified

1 '05/'06. I don't have the student data in front of
2 me. I was not in the district at that point in time.

3 Q. I'm now talking to you about your lag
4 theory. I'm now talking about at this point what you
5 saw. You have this lag theory that says, there's no
6 immediate -- student's not a widget sort of thing.
7 And if in '05/'06, if there's an increase in money
8 and student performance, what you're saying is that
9 student performance is increases for other reasons
10 than the money?

11 A. There will be a number of factors increasing
12 student performance. In years where there are
13 greater resources for teacher training, for new
14 modalities for interventions. We've seen -- just in
15 implementation of our primary focus on literacy, we
16 see a little bit of a lift at implementation.

17 As it progresses, you begin to see greater
18 use of those modalities. You begin to see teachers
19 more comfortable, and the ability to hone in on those
20 particular students increases effectively.

21 It's like saying a surgeon goes and sees a
22 demonstration of a surgery technique and then they
23 wouldn't utilize it immediately on a patient with 100
24 percent success. And that's going to be with --

25 Q. I really don't want to beat a dead horse

1 here, but are you now saying that in 2005/'06 if
2 there was an increase in money and there was an
3 increase in performance, it was in part because of
4 the increase in money?

5 A. You've still lost me on the 2005/2006.

6 Q. If you increase money this year and the kids
7 do better on their test scores this year, are you now
8 saying it had something to do with the money?

9 A. Increase in test scores say in '05/'06 or
10 '06/'07, based on actions that you would take, you
11 would hope to see continual student achievement.
12 That's what we're all about. That's why the goals
13 continue to go up.

14 Q. Try to answer my question. Would you see an
15 increase? I just want to know if you have an opinion
16 one way or the other. Maybe you'll say I don't
17 know. But you seem to be saying on one occasion that
18 an increase this year doesn't increase academic --
19 increase in money doesn't increase academic
20 performance. Then you seem to be saying that it
21 does. And I'm just trying to figure out which side
22 of the fence you're on.

23 A. I'm on the side of the practicality of
24 instructing students. It's not an either/or.

25 Q. Let's talk to you down here on 2012/'13 for

1 a moment.

2 A. Mm-hmm.

3 Q. We saw a -- '11/'12, this year. We saw an
4 increase in math, not much in your district. We saw
5 pretty stable in reading. Is it your testimony that
6 that has anything to do with money?

7 A. It's absolutely been part of previous years'
8 investments as we move forward. It's got to be a
9 component of that as well.

10 Q. You're saying that the improvement that we
11 saw in math has to do with the previous investment?

12 A. It's going to be previous investment as well
13 as in general where we've been forced to make these
14 cuts.

15 Q. And as it relates to the reading where it
16 was slightly down in some, you are saying that has
17 something to do with money?

18 A. Yes.

19 Q. Well, how about in '10/'11, when it went up
20 a whole bunch, but the money was down? That is the
21 performance went up but the moneys went down. Now
22 you're saying that money doesn't have any connection
23 with the performance?

24 A. No, sir, exactly what I said before. It's
25 long-term investment, that you don't suddenly just

1 overnight go up or down. It's going to be that long-
2 term investment.

3 Q. I've heard that. But there's no study
4 anywhere that tells us how long this alleged lag
5 would be or how long this effect by increasing money
6 would provide increased performance, if any, is
7 there?

8 MR. RUPE: I object to that. That
9 is argumentative. There has been a study. Dr. Baker
10 testified to it and he used the phrase "sustained and
11 continuous improvement."

12 JUDGE THEIS: Form of the question,
13 is that the objection?

14 MR. RUPE: Yup. My objection is
15 it's argumentative.

16 JUDGE THEIS: Rephrase your
17 question if you would.

18 MR. CHALMERS: I'll try to rephrase
19 my question.

20 Q. (By Mr. Chalmers) You're familiar with the
21 LPA study. Have you ever read it?

22 A. I'm familiar with it.

23 Q. You know that the LPA study looked at
24 performance back on tests starting in 1999 through
25 2004, and then compared that spending during that

1 same time frame; is that right?

2 A. That's my understanding.

3 Q. Trying to find a relationship?

4 A. Limitedly familiar with it.

5 Q. They tried to find a relationship between
6 spending and performance during the same time frame,
7 didn't they?

8 A. I'm not -- I'm not super familiar --

9 Q. That's fine.

10 A. -- with the LPA study.

11 Q. Let me talk to you about summer school for
12 just a second. And I don't know why I have that on
13 there. No, I know what, I want to talk to you about
14 changes in demographics.

15 JUDGE THEIS: Take a break some
16 time.

17 MR. CHALMERS: Sure, this is fine.

18 JUDGE THEIS: 'Til about quarter
19 'til.

20 (A recess was taken.)

21 JUDGE THEIS: Be seated. Thank
22 you.

23 Q. (By Mr. Chalmers) Mr. Allison, Exhibit 241
24 is a blow-up that counsel showed you entitled, Basic
25 and Cuts. Do you know how that number at the bottom

1 was calculated?

2 A. My understanding is that's -- my
3 interpretation is it was the cuts from each year's
4 aggregate there.

5 Q. Well, you've got the reductions in the base
6 and then there's weightings that apply to that. What
7 I'm trying to figure out is how they got to that
8 number of half a billion dollars. Do you know?

9 A. Not for sure, no, sir.

10 Q. Now, when the weightings were reduced or
11 excuse me, when there were reductions in the base
12 there was other money other than the state general
13 fund available to your district, and those moneys
14 included federal moneys, they included money that you
15 raised in LOB, the money that you raised in taxes
16 under capital outlay; is that correct?

17 A. That's correct.

18 Q. And Exhibit 1187 is a blow-up that shows for
19 the years '01 through '10 the basic revenue sources
20 and expenditures, and it shows that the expenditures
21 in your district were increasing from 2001 to through
22 the '10/'11 school year, does it not? It would be
23 this number here.

24 A. Based on the numbers on the chart you have
25 in front of me, that's what it appears. Is that

1 expenditures or budget authority?

2 Q. Well, that's -- this is total expenditures.

3 A. Okay.

4 Q. Now, when you look at those expenditures and
5 remove from it the capital outlay, the capital
6 expense, the -- I believe this removes food,
7 transportation, this chart, which is Exhibit 1197,
8 would reflect that you were spending approximately
9 \$10,000 per pupil in the year '10/'11 for what I will
10 call operational expenditures.

11 Does that seem about right to you?

12 A. Not knowing what all is included in that
13 number, I would really hesitate to say.

14 Q. Let's look at what's up on the bullet -- or
15 on the screen, which comes from Exhibit 1024, which
16 is your 2011/'12 profile information for your
17 district.

18 A. I'm sorry, which page again?

19 Q. This would be Page 1 of 19. Looks like
20 about almost a dozen pages in.

21 A. Okay.

22 Q. That shows, by certain categories,
23 instruction; that actually has capital improvement
24 and some other debt expenditure and so forth. But
25 there, you're reporting that your per pupil

1 expenditures in '09/'10 increased in '10/'11. Is
2 that consistent with your memory?

3 A. Could you repeat that question.

4 Q. Sure. This report from your district,
5 Exhibit 1024, shows that the amount per pupil
6 increased in actual dollars from 2009 to 2010/'11,
7 doesn't it?

8 A. Looking down -- down through the chart and
9 this doesn't seem to indicate student -- student
10 population increases, which would be reflected
11 between those two years, as well. Am I reading that
12 correctly? I don't see a student number.

13 Q. If it's amount per pupil, then I would
14 assume that what you folks did is took your aggregate
15 amount and reduced it by the actual number of full-
16 time enrollment of pupils?

17 A. I'm sorry, I can't read the bottom line.
18 Amount per pupil on the bottom line. That's what
19 you're asking about?

20 Q. Right. And just so the record is straight,
21 it went up from '09/'10 to '10/'11. And my question
22 really is, is we have it budgeted for about the same
23 in '11/'12 is that how it worked out?

24 A. Will you repeat that one again? I'm sorry,
25 I'm getting slow as the afternoon is moving along.

1 Q. It happens to all of us, believe me. What
2 I'm curious is, this is a budgeted amount for
3 '11/'12, and it shows it was budgeted per pupil to be
4 approximately what it was the preceding year. And
5 I'm asking you based on your general recollection if
6 the spending this last year ended up being about the
7 same per pupil as it was the previous year?

8 MR. RUPE: Well, I think we have to
9 be careful. I'm going to object to that question.
10 He's asked him budgeted and expenditure. And I think
11 we need to make sure of his question, so I would
12 object on the grounds that his question is confusing.

13 JUDGE THEIS: What do you say,
14 Mr. Chalmers?

15 MR. CHALMERS: I don't understand
16 Mr. Rupe's confusion. If the witness doesn't
17 understand, I'd be happy to rephrase.

18 JUDGE THEIS: If you don't
19 understand, you can say, I don't understand the
20 question.

21 THE WITNESS: I don't understand
22 the question.

23 MR. CHALMERS: There we go.

24 JUDGE FLEMING: That doesn't work
25 every time.

1 THE WITNESS: How many times can I
2 try that?

3 MR. CHALMERS: Three.

4 THE WITNESS: Three. All right.

5 MR. CHALMERS: You got two more.

6 THE WITNESS: I've got to use my
7 life lines carefully.

8 JUDGE BURR: Sort of like a
9 re-ride.

10 Q. (By Mr. Chalmers) What I'm trying to get at
11 is, if this is the budgeted amount, that's an actual
12 amount. They're about the same. And what I want to
13 know in this year, I don't have the actual amount,
14 whether the budgeted amount is pretty close to what
15 the actual amount was?

16 A. It's going to be pretty close. I'm just
17 trying to look at the funds in the included
18 categories down below. So it also includes the
19 KPERS, special retirement, flow through, contingency.
20 And I would say in general without looking at this
21 more carefully.

22 Q. And if we look at, gosh, I believe this is
23 1098, I'll have to verify that, this is part of an
24 exhibit. It's the current operating expenditures and
25 where that's -- for this last year. And where that's

1 different than Exhibit 1024. And I think that's what
2 you were getting at is this removes such things as
3 capital outlay. It removes the capital bond and
4 interest expenses.

5 A. Okay.

6 Q. All right. And you don't quarrel with this
7 number as it's reported in the state's documents as
8 the current operating expenses -- expenditures per
9 pupil for the '10/'11 school year of being \$11,098,
10 do you?

11 A. If that's based on the report, with the
12 caveat I'm not the accountant and the background ones
13 reported to each of these areas.

14 Q. There were cuts I think you testified about;
15 quickly, on those, I think as kind of an overreaching
16 comment you said -- overreaching is not the word, I
17 mean overarching comment was that you attempted to
18 keep your cuts out of the classroom; is that correct?

19 A. As much as directly impacting teachers in
20 the classroom, yes.

21 Q. And what I think I mean by that is that you
22 tried to the extent you can where you were reducing
23 spending, tried to maintain the number of teachers
24 providing instructions to the kids; is that right?

25 A. Correct.

1 Q. You were trying to keep this line up,
2 instruction up, and as consistently as you could?

3 A. Our attempt was to not increase more than
4 was occurring in pupil/teacher ratio, as well as not
5 potentially facing any type of rift situation with
6 our teaching staff.

7 JUDGE THEIS: What number is that,
8 Mr. Chalmers, this one we're looking at on the
9 screen?

10 MR. CHALMERS: Let me --
11 Your Honor, the current operating expenditures are --
12 I want to say it's 1098, but I won't find that in
13 just a hair's-breadth here. It's 1037. It's part of
14 1037.

15 THE WITNESS: Is that part of the
16 CAFA (phonetic) report?

17 MR. CHALMERS: No.

18 Q. (By Mr. Chalmers) Talking about your cuts,
19 you talked about Exhibits 279 and 283. 279 I think
20 are what were described as '11/'12 cuts. 283 is a
21 spreadsheet that was put together that is purporting
22 to show -- I think, well, the last couple of pages
23 purport to show what I think you described to
24 Mr. Rupe as some of the cuts. And I want to talk to
25 you about that.

1 On these lists you're not saying that all
2 the things described in the list were actually cuts,
3 were actually cut, were you?

4 A. This list are the cuts that we made, yes.

5 Q. My recollection was, maybe I'm
6 misunderstanding, talking about Exhibit 279, for
7 instance, I thought some of these when we got down to
8 Phase 2 and Phase 3 were just things that were under
9 consideration?

10 A. On 279?

11 Q. Yes, sir. And I'm --

12 A. No.

13 Q. I'm not trying to represent one way or the
14 other. I'm just asking.

15 A. These were actual cuts.

16 Q. Now, when we talk about actual cuts here, I
17 want to visit with you about 279 for a second. I
18 have some highlighted. You've got learning coaches,
19 MTSS coaches, and then there's a number under cost
20 savings, probably can't read it, it's about \$3.2
21 million, it says 48 coaches. What is that intended
22 to reflect?

23 A. I'm not sure I understand the question.
24 What are learning MTSS coaches?

25 Q. Well, is that what that is? Those are the

1 actual coaches, these master level teachers that are
2 cut?

3 A. Yes.

4 Q. These master level -- when these teachers
5 are cut, I assume they're put back in the classrooms,
6 aren't they?

7 A. They were placed back in vacant positions
8 within the classrooms.

9 Q. Now, then you've got in Exhibit 283, there's
10 a category and I wasn't sure whether this was part of
11 your cuts or not, you've got Title I per pupil
12 building allocation reduced title schools. And it's
13 got a grant funded for about \$6.3 million. What is
14 that?

15 A. Let me find that one.

16 Q. It's Bates number that ends 624 at the
17 bottom right.

18 A. Let me go one more page here. Title I per
19 building allocation reduced. That's reflective of
20 cuts that were made based on loss of the -- our
21 stimulus funds. So when you take a look at that, our
22 title schools and -- title is not one size fits all.
23 There's a requirement for building-wide. Most of our
24 buildings could technically qualify for building-
25 wide, but we go from the highest percentage of free

1 and reduced lunch down. So it's roughly in the, I
2 want to say during this year it was probably the
3 building had 60 percent or better that qualified for
4 free and reduced lunch and they have the ability
5 through the Title I dollars to be able to purchase
6 allocations, so additional reading support or para
7 support based on the needs of the buildings.

8 When we received the RF funding we knew, and
9 that was the stimulus funding which was geared toward
10 title and special ed, we knew that that was just a
11 couple years of funding, so we tried to stay away
12 from actually adding staff with much of that funding
13 so that we wouldn't be where we were in '11/'12 and
14 moving forward with needing to reduce huge numbers of
15 staff.

16 But this equates to the aggregate of what
17 those allocations were that the title buildings have
18 been able to purchase. With the amount then issued
19 per title building, that was a reduction that had to
20 be made because of the loss of those title funds out
21 of our budget.

22 Q. That was a long explanation that made sense
23 probably, but I just wasn't tracking. This is a cut?

24 A. Yes.

25 Q. This is fewer staff?

1 A. That would be fewer staff.

2 Q. It says grant funded at the top.

3 A. Federal.

4 Q. Yeah. And it says Title I, which is not
5 stimulus money, doesn't it?

6 A. Well, our Title I, that's where we received
7 the stimulus money. So when we looked at it, Title I
8 would equate to the inclusion of that stimulus fund
9 in that area, as the way this chart lays it out.

10 Q. The exhibit also says grant funded, and
11 there it talks about those learning coaches we just
12 talked about a moment ago.

13 A. Yes. A portion of those were covered out of
14 title funds. What we were actually able to do with
15 the increased stimulus funds is instead of drawing
16 that line at 70 or 75 percent, we were able to push
17 that down to, say, 65 and include for that short
18 period of time some additional schools and giving
19 them some additional resources until the funding ran
20 out.

21 Q. Looking at Exhibit 283 then, the next-to-
22 the-last page, where it's got potential cost savings,
23 it shows learning services staffing. And there it
24 talks about positions and it has five of them are
25 restricted positions.

1 What are restricted positions?

2 A. Restricted would be those coming out of
3 restricted funding, title, ELL, special education.

4 Q. Unrestricted would be those that are not in
5 that area; is that right?

6 A. That's correct.

7 Q. When you talk about staffing, though, that
8 staffing could be teachers, it could be other staff;
9 is that right?

10 A. Learning services is the curriculum
11 instruction area, so it's predominantly going to be
12 instructional staff or support.

13 Q. It could be a teacher's aide, it could be a
14 secretary, it could be a teacher in a classroom?

15 A. Yes, potentially.

16 Q. The cuts that you made in Exhibits 83 and
17 279 then are described in those exhibits?

18 MR. RUPE: 283.

19 Q. (By Mr. Chalmers) 283 and 279, if I said
20 something different, thank you, Counsel.

21 They list some reductions as far as teacher
22 staff; is that right?

23 A. Yes.

24 Q. Now, when they list teacher staff
25 reductions, it's important for us to understand that

1 we're talking about a cut from a budgeted position as
2 opposed to a reduction from prior year staffing?

3 A. No. If you look at the totals, the total
4 number of staff decreased. On a given year we'll
5 have 200 to 250 instructional positions through
6 retirements, attrition and others. So when we say
7 eliminated coaches, there were a portion of those
8 positions then that filled that number.

9 But at the same time we left -- implemented
10 a hiring freeze and left positions vacant and then
11 eliminated those in the next budget year.

12 So if -- as you talked to our principals, if
13 I was given an FTE reduction of three, say, at North
14 High School and I had two English teachers retire,
15 odds were those were two positions that I was not
16 allowed to fill, but I may have received one of the
17 coaches in that third position.

18 I don't know if that made -- made sense or
19 not, but total -- the total number of staff declined.

20 Q. Here's what I can't reconcile, and you can
21 probably help me out. Let's see here, what exhibit
22 number?

23 I'll find this in a second and speed it up.
24 This is from a 2011 Budget at a Glance at Page 8,
25 from your district. That reflected, in actual terms,

1 that there were more teachers full-time FTE in 2010
2 than there were in '09/'10. It also shows that there
3 were more Class 5 personnel, reduction in
4 administrators and reduction in other certified
5 licensed personnel. I'll talk about the next year in
6 a moment.

7 MR. RUPE: What exhibit number is
8 that, I'm sorry?

9 MR. CHALMERS: I'll find it real
10 fast.

11 It's the profile.

12 MS. GARNER: 104?

13 MR. RUPE: 1024?

14 MR. CHALMERS: No, no, I'm sorry,
15 it's the budget summary.

16 MR. RUPE: This one has been
17 revised.

18 MR. CHALMERS: Budget at a Glance,
19 1025.

20 MR. RUPE: I'm going to object.
21 That's not the updated revised version.

22 MR. CHALMERS: If you got an
23 updated revised version it sure would be nice if you
24 share it with us.

25 MR. RUPE: Okay. I'll find it.

1 Q. (By Mr. Chalmers) Let me ask you this, as to
2 this updated revised version, this is Exhibit 1024,
3 your Budget at a Glance is published in year 2012.
4 '11/'12 would have been published sometime in 2011,
5 is that right?

6 A. Would you state that again.

7 Q. Well, this document, which is Exhibit 1025,
8 '11/'12 Budget at a Glance that is filed with the
9 state, that document shows numbers for what the 2010
10 and '11 actual employment numbers were in your
11 district, so it would have had to have been published
12 sometime after the actual numbers, right?

13 A. I don't know when the report is submitted or
14 published.

15 Q. Maybe I can talk to somebody else about it,
16 but so I'm clear here, this number then shows the
17 contracted number for '11/'12 year, and suggests that
18 there will be a reduction in staff, and now if we
19 talk about full-time teachers, down from about 30,340
20 (sic) to about 3,269. And did that reduction take
21 place, to your knowledge?

22 A. Your question did we -- did we reduce
23 teaching positions?

24 Q. Yeah.

25 A. Well --

1 Q. What I'm trying to get at, this would
2 reflect that you first reduced teaching positions
3 since after the 2009/'10 school year this last school
4 year, is that accurate?

5 A. Say that again, please.

6 Q. This exhibit reflects that you first reduced
7 teaching positions, that's 1025, from the '09 --
8 '10/'11 year for the first time into the '11/'12
9 year. And I'm trying to see is that accurate?

10 A. Based on the information there, yes.

11 Q. Now, what I'm trying to get at then, so I
12 make sure we're communicating, because I don't know
13 that I did understand your answer and it's my fault,
14 I'm sure, if I didn't, but were the cuts shown in the
15 exhibits we talked about in positions, cuts from
16 positions that were budgeted, cuts from positions you
17 desired rather than actual reduction in full-time
18 employment staffing numbers?

19 A. Well, they're going to be both, because we
20 can't have a position unless there's a budget
21 authority for that position. So were there positions
22 that had been filled with a breathing human prior to
23 and that position is not filled? Yes, if I'm
24 understanding.

25 Q. Let me ask you a final question about cuts.

1 Summer school, this is mostly for Ms Tibbets'
2 interest, her daughter is in summer school, are you
3 saying that summer school is only now for kids that
4 are in kind of remediation?

5 A. No, summer school is predominantly credit
6 recovery. We do offer PE and just a few other
7 courses that would be acceleration.

8 Q. I feel better about that.

9 A. And that's specifically geared toward some
10 of those advance placement students.

11 Q. Talking about teachers in your district, we
12 met and I took your deposition on April 30th of last
13 year in connection with whatever opinions you were
14 going to express here today, didn't we?

15 A. Yes.

16 Q. At the time of that deposition you really
17 didn't have the information available to you to
18 analyze if the teachers that were leaving your
19 district were going to competing districts; is that
20 right?

21 A. When the question was asked, I did not have
22 that information off the cuff, no.

23 Q. Sometime between April 30th and today's date
24 you've gone back and talked to some people to gather
25 that information, is that what you're saying?

1 A. Yes. Our human resource department had been
2 tracking that.

3 Q. You also at that point were not aware if the
4 salary structures and benefits and the salary amounts
5 in surrounding areas, say, Andover and Derby or
6 Goddard, were significantly different than Wichita's.
7 And do you now know or think that they are?

8 A. Again, at the time of that question, that
9 was not an area that I felt comfortable being able to
10 respond to that aspect. That's a function that our
11 human resource office performs and they try to
12 compare those as close as they can. And they're
13 never quite apples to apples, but it's something
14 that's done with our teacher negotiations each year,
15 because they, of course, like to show who's higher
16 and we try to balance.

17 Q. And you were asked if there was one
18 particular district in the area that seems to be
19 paying teachers substantially more than others, and
20 your answer was "Not that I'd be able to answer at
21 this point," is what you said back on April 30, 2012,
22 right?

23 A. (Nodding head.)

24 Q. Is that correct?

25 A. That's sounds correct.

1 Q. But what you did affirmatively state is that
2 Wichita has been competitive in its salaries and
3 benefits in recent years; isn't that true?

4 A. We are competitive when you look at the pay
5 scales, in my opinion. The difference is the impact
6 our freeze has had for four years. And that does
7 create a difference when a teacher leaves us and goes
8 to another district. When we look at a teacher
9 coming in we will be competitive with other districts
10 on their placement and education scale. If that
11 makes sense.

12 Q. And you're not prepared today to be able to
13 give us the competing salaries for districts around
14 your community or the competing benefits?

15 A. Not off the top of my head, no.

16 Q. The students in your district, there are
17 students that have received an adequate education, is
18 that true?

19 A. That's correct.

20 Q. There are students in your district that
21 received an adequate education this last year?

22 A. Some.

23 Q. There are students in your district from
24 poverty who have received an adequate education just
25 this last year?

1 A. Some.

2 Q. There are minority students in your district
3 who received an adequate education just this last
4 year, isn't that right?

5 A. Again, some of them would have, yes.

6 Q. Dodge City is an elementary school that at
7 least, at the time of your deposition -- this would
8 have been last month, tail end of the month?

9 MS. TIBBETS: Dodge Elementary.

10 THE WITNESS: Dodge Elementary?

11 Q. (By Mr. Chalmers) Dodge Elementary.

12 A. Okay.

13 Q. You said that that was a successful school
14 that you were particularly proud of. Are you still
15 proud of that school?

16 A. I am.

17 Q. Is it still in your view a successful
18 school?

19 A. It has had success with its students, yes.

20 Q. When you look at success talking about a
21 school, you look at where and how students are moving
22 along during -- along an achievement continuum, isn't
23 that correct?

24 A. It's going to be one of the facets. We're
25 going to look at how they're moving along in the

1 continuum, where did they fall in, say, the AYP
2 standards, as well as other measures. From
3 elementary to middle to high, it would be a little
4 different. When we talk at high, we're going to look
5 at college and career readiness, we're going to be
6 looking at the vocational aspects, as well. So
7 there's multiple measures that I would look at.

8 Q. As you indicated, students are children and
9 students are not widgets, is that correct?

10 A. That's correct.

11 Q. You can't follow a checklist for
12 manufacturing and turn out student after student with
13 the same results, true?

14 A. Having a teenage daughter at home, I wish
15 that was true, but it is not.

16 Q. There is no clear-cut formula for education,
17 for educating every student, is there?

18 A. What we do know are the best practices. We
19 know through research what interventions and aspects
20 give a child the best opportunities to learn to meet
21 their individual needs. So is there a magic -- if
22 you do A, B and C you automatically get D? No. We
23 know if we do A with fidelity and B and C that the
24 likelihood is increased, yes.

25 Q. There's a sequence of questions and I'm

1 trying to see a logical place to ask and start in
2 your deposition, Page 54, Line 19 reads, "We agree
3 that science has not come up with a clear defined
4 recipe on how you shall teach, reach kids for them to
5 have their best education.

6 Mr. Rupe objects.

7 Question: "Do you understand the
8 question?"

9 You answered, "Well, I'm going to take your
10 last statement in regards to science, my
11 interpretation of your question would be, is there or
12 will there be a scientific methodology, or this exact
13 approach to educate every student to a certain
14 level."

15 And the question is, "That's not what I
16 meant."

17 Answer: "Okay."

18 The question is, "What I want to know is
19 whether, in your understanding, science has come up
20 with a recipe to educate kids, give them an adequate
21 education so we know exactly for each kid this is
22 what you do."

23 And then Mr. Rupe objected.

24 I said, "You can go ahead and answer."

25 Your answer began, "There is no clear cut --

1 MR. RUPE: I'm going -- hang on, I
2 want to object to that question because it's
3 compound, number one; and number two, it's not proper
4 impeachment. It's not saying anything different than
5 he said in this courtroom. I think it's cumulative
6 and it's just we need to move on.

7 JUDGE THEIS: Let's go ahead and
8 hear it. I'll take the easy path on that one.

9 Q. (By Mr. Chalmers) The answer was, "There is
10 no clear-cut formula for educating every student."

11 And the answer goes on. And that's what I'm
12 trying to get at, there's no clear-cut formula for
13 educating every student, isn't that true?

14 A. As I stated, the idea of knowing best
15 practice, research-based approach to instruction,
16 every student will be a little different. Approach A
17 may work with these ten students with the same
18 efficiency. But Approach B may be necessary with the
19 next ten. So is there absolute if you do A, B and C
20 equals D? Again, no.

21 Q. There will never, in education, in your
22 opinion, be a set formula that if you do A, B and C,
23 you will always get as a result a student D?

24 A. If I'm understanding the question correct,
25 no, there is not a one size fits all with the same

1 outcome for those students.

2 Q. And so with Dodge Elementary, the successful
3 school we talked about, even with that school, there
4 are 13 last year -- year before last -- last
5 published data. 13 percent of the kids were not
6 proficient, all students, in reading; and about 14
7 percent were not proficient who were in the poverty
8 level in reading.

9 You understand that, don't you?

10 A. Yes.

11 Q. Now, as you've defined education, the
12 adequacy of education and financing for it back when
13 you were at Shawnee Mission District, it was never
14 adequately or suitably funded, isn't that right?

15 A. Would you rephrase the question, please.

16 Q. When you were back in Shawnee Mission
17 District back in 2004, in the high school, even back
18 then as you've defined what is suitable funding for
19 education, Shawnee Mission District was never
20 adequately funded, isn't that right?

21 A. You're asking the question as a teacher in
22 the Shawnee Mission School District? I'm just not
23 following the question, I'm sorry.

24 Q. Was there one school at any time in the
25 history of the Shawnee Mission District to your

1 knowledge that was ever adequately funded?

2 A. If you look at the outcomes that you want
3 with students and you look at it as though there are
4 no throw-away students and that we're going to move
5 all of our students toward be it proficiency,
6 whatever the standard is at that point in time, it
7 would be difficult tracking Kansas' history of
8 funding education to say that those buildings were
9 adequately funded.

10 Q. Your answer in the deposition April 30, 2012
11 was ultimately, no. You don't think of one school in
12 the history of Shawnee Mission School District that
13 was ever adequately funded. That's true, isn't it?

14 A. Yes, as I stated, looking at all students
15 success.

16 Q. I want to talk to you about the waiver for a
17 second. The specific part of the waiver I'm
18 interested in is the teacher evaluation part. It's
19 your understanding that the federal government, that
20 is the United States Department of Education, is at
21 least suggesting that it wants as part of the system
22 in place that would determine whether and how Kansas
23 gets federal funds assurance that there is a tying of
24 teachers' evaluations to the performance of those
25 teachers' kids on academic tests. Isn't that your

1 understanding?

2 A. Yes.

3 Q. And your point is that that might be
4 something different, that to date, that when you make
5 a decision on whether to discipline or terminate or
6 retain a teacher, that there is no exact linkage
7 between performance of kids to -- in a teacher's
8 class under academic tests with a teacher, is that
9 right?

10 A. The linkage will vary from district to
11 district. Kansas with the local control, you'll find
12 the evaluation system from one district to the next
13 look quite a bit different, if I'm understanding the
14 question correctly.

15 Q. And you make an important point, which is
16 where I was headed is that the individual district
17 makes the decision on how to evaluate its teachers
18 and what importance to place on student performance
19 of the teachers' kids, right?

20 A. It is a negotiated item and a mandatorily
21 negotiated item.

22 Q. And in this district, your district, there
23 is no direct linkage between the performance of
24 teachers as it relates to the performance of their
25 kids on standardized tests, is that right?

1 A. Within the negotiated teacher evaluation
2 system there is -- there is not a student performance
3 component.

4 Q. Now, the No Child Left Behind, waiver or
5 not, has an accountability piece, doesn't it? The
6 concept is that we want to know how children are
7 getting along so we can look at if there's a problem
8 with either the school or the teachers involved.
9 Isn't that part of the No Child Left Behind?

10 A. The No Child Left Behind is looking at the
11 building aggregate and then the district aggregate.

12 Q. There's an accountability piece that says
13 that if your district or your building is not making
14 AYP or some of the other requirements that you
15 mentioned concerning the qualifications of teaching
16 staff and the like, that there can be sanctions
17 imposed, right?

18 A. If a building does not meet AYP, yes, there
19 are consequences.

20 Q. That's the accountability piece, right?

21 A. That is part of the accountability piece.

22 Q. And the way that No Child Left Behind is
23 supposed to function is when you are not reaching
24 AYP, then you get more attention both in terms of
25 more money, as well as more attention from those who

1 can help you reform your school to make AYP. That's
2 the concept, isn't it?

3 A. With No Child Left Behind, the schools that
4 are on improvement or correction definitely have a
5 specific prescribed set of consequences, such as in
6 what happens in year one, what happens in year two,
7 what happens in year three and beyond.

8 Q. And at some point the concept is that after
9 we've given you more attention, after we've given you
10 an opportunity to improve and then after we've given
11 you more money, then what we do is we look to
12 reorganize your school. That's the concept, isn't
13 it?

14 A. Eventually there's the consequence of
15 potential reorganization.

16 Q. And that's accountability aspect of the
17 statute, is that right?

18 A. I think the accountability comes with the
19 assessments to start with.

20 Q. Well, now does No Child Left Behind then
21 assume that at some point it's not about giving more
22 money, it's not about giving more aid, it's about
23 districts and schools maybe not performing as well as
24 they need to perform?

25 A. Would you rephrase that question.

1 Q. Does No Child Left Behind presume that at
2 some point it is no longer about giving more money to
3 help improve performance? It's no longer about
4 giving more assistance, telling you how to teach,
5 it's no longer about providing more staff and more
6 intervention. At some point it says, we need to move
7 on and get a new principal and new staff?

8 A. Yes. But let me -- let me clarify a comment
9 that you've made. As you progress through those
10 steps, it doesn't necessarily equate to more revenue.
11 If I have a building that goes on improvement, there
12 may be specific grant opportunities that are
13 available.

14 You look at 1003 G and some of those for the
15 state for the most low performing. But as that
16 progresses, I have to use within generally the
17 allocation that I have, say for Title I, and have to
18 make sure that that building on improvement's needs
19 are met first and foremost.

20 So there's not the additional check that
21 you're handed once a building goes into that. Then
22 you do get into, right or wrong, the concept of
23 re-structuring, that by moving building leadership or
24 removing some of the teaching staff that that may
25 change the culture and performance of the building.

1 Q. In Wichita, when you have had buildings
2 where there's been a re-structure, have the teachers
3 been left out?

4 A. No. Under our negotiated evaluation system,
5 they are -- if they're on a reoccurring contract we
6 have to place them in a different position, but we
7 have to reconstitute that particular building.

8 MR. CHALMERS: Thank you. I don't
9 have any further questions.

10 MR. RUPE: With regard to -- oh,
11 and the new exhibit.

12 Okay, you've got the exhibit.
13 What's the number of this, Jessica?

14 MS. GARNER: I don't know. It's
15 written on your copy 217, I think.

16 MR. RUPE: 217 or 417?

17 MS. GARNER: 417, sorry.

18 MR. RUPE: 417.

19 REDIRECT EXAMINATION

20 BY MR. RUPE:

21 Q. Okay. We've marked and defense counsel
22 moved and it was admitted, 417. And I want to get
23 that in front of you. I also want to get Exhibit 118
24 in front of you. Those are the scores from 2011 and
25 then the scores that you talked about from 2012,

1 right?

2 A. Yes, sir.

3 Q. And now, let's look at 2011, in reading all
4 students in 2011 were 74.8 and in 2012 74.3
5 proficient, correct?

6 A. Let me get those two next to each other.
7 Yes.

8 Q. Whites in 2011 were 83.1 and in '12 were
9 83.5?

10 A. Correct.

11 Q. Correct? Free and reduced lunch in '11 were
12 69.8 in '12 69.3?

13 A. Yes.

14 Q. Hispanics 68 percent or 68 percent
15 proficient both years?

16 A. Yes.

17 Q. ELL, 60.7 in '11; in '12 61.7?

18 A. Yes.

19 Q. African Americans 64.6 in '11; '12 63.8?

20 A. .9.

21 Q. 63.9?

22 A. (Nodding head.)

23 Q. All right.

24 Then math '11, all students 70.2. '12 71.8,
25 correct?

1 A. Yes.

2 Q. Whites 78, 2012, 79.9, correct?

3 A. Showing 79.7.

4 Q. .7, all right. Then free and reduced lunch,
5 65.5 in '11; 63 in '12?

6 A. Yes.

7 Q. Hispanics 66.5 in math; 67.9 in '12?

8 A. Correct.

9 Q. 63.8.ELL in '11; 65.9 in '12?

10 A. Yes.

11 Q. African Americans 56.6 in math, 2011; 58.5
12 in 2012; is that right?

13 A. Six.

14 Q. 58.6?

15 A. (Nodding head.)

16 Is that what I'm seeing here?

17 Q. Now, the target for reading, 86 percent in
18 2012?

19 A. Yes.

20 Q. And target for math is 82.3?

21 A. Correct.

22 Q. So those subgroups still have not met
23 target, any one of those that I read, have they?

24 A. No.

25 Q. Now, the diagram you were shown in 1024, I

1 think you were starting to read some of the
2 information about what was in the chart and I want to
3 make sure we're on the same page. This is the one
4 where Mr. Chalmers talked about the budgeted amount
5 and the actual expenditures. Do you see that?

6 A. That was the summary of total expenditures
7 by function, yes.

8 Q. So we're all on the same page, it's one of
9 19 in Exhibit 1024. You with me?

10 A. Yes.

11 Q. Now, read if you would for the Court the
12 funds that are included in the categories above.

13 A. All right.

14 Q. Let me ask you this way, rather than reading
15 all that, do the funds listed in the categories above
16 according to the text under the chart include federal
17 funds?

18 A. They do.

19 Q. And what's the deal with federal funds in
20 terms of ARRA money?

21 A. We had influx of those dollars for
22 approximately two years. And we still saw in this
23 year's budget some carryover reflective of some
24 additional latitude they gave school districts.

25 Q. When you say "this year's budget," what are

1 you talking about?

2 A. It would be the '11/'12.

3 Q. What about that money in '12/'13?

4 A. It will not be there.

5 Q. And how much ARRA money, which was
6 distributed through Title I, was available to
7 Wichita?

8 A. Ms. Jones would be better able to give you
9 the specific numbers, but it's mills.

10 JUDGE THEIS: Refresh me on ARRA.

11 Q. (By Mr. Rupe) That's the stimulus money --

12 A. Stimulus dollars that Congress passed, it
13 came through districts, flowed through the state in
14 two areas, title and special education, so two very
15 restricted areas with quite a bit of strings.

16 Q. And that money has this year disappeared?

17 A. It has.

18 Q. And speaking of disappearing funds, the
19 numbers on this chart include KPERS, special
20 retirement, is that right?

21 A. They do.

22 Q. And you explained how that money is captured
23 for a moment, right?

24 A. Yes.

25 Q. So it's an in and out?

1 A. It's my understanding.

2 Q. That money disappears as soon as it's logged
3 in, is that right?

4 A. That's correct.

5 Q. And what's special education co-op fund,
6 what's that?

7 A. Without looking in greater detail in what's
8 included in that fund, I would hate to say and be
9 inaccurate.

10 Q. All right. Then let's move on. What about
11 Exhibit 54? That's the QPA manual.

12 A. Okay.

13 Q. And I'll not go through this completely, but
14 you were asked about all these --

15 A. This?

16 Q. -- eleven factors.

17 A. This one?

18 Q. Yeah. I'm on, sorry, it's Exhibit 54, Page
19 KSDE 002862.

20 A. Okay.

21 Q. What Mr. Chalmers asked you and what you
22 certified to the state has to do with those items
23 listed on that page, right?

24 A. Yes.

25 Q. And those items, do they include outputs?

1 A. They do not.

2 Q. And outputs include what?

3 A. Let me ask you to define outputs to make
4 sure I'm understanding.

5 Q. Let's use the word "achievement." And maybe
6 I can bring it down to even my level. I would put
7 inputs in the you can lead a horse to water category.
8 And I would put outputs in the what you want to
9 achieve category to making them drink category.

10 Does this list include those outputs?

11 A. These are the structural components that are
12 required, but they are not reflective of the
13 expectations on student achievements, college career
14 readiness, things of those aspects.

15 Q. The state statutes that we covered?

16 A. Correct.

17 Q. What you determined and defined for the
18 Court as suitable, those are not included in this,
19 are they?

20 A. These are more structural frameworks.

21 Q. In terms of what you explained was suitable,
22 that's what you've explained you're not making in
23 259, is that right?

24 A. Yes.

25 Q. For all students?

1 A. For all students. For some but not all.

2 Q. You were questioned about the bond issue.
3 When did that bond issue pass, what year?

4 A. 2008.

5 Q. And in 2008, when the bond issue passed, you
6 mentioned in response to Mr. Chalmers that it was
7 the -- you explained it was the original bond plan in
8 2007 and 2008. What did you mean by original bond
9 plan? Has that bond plan changed?

10 A. Yes. We had to look at a pause and study;
11 in particular, in the bond plan were designed
12 additional classrooms for class size reduction. When
13 we were unable to hire the additional teachers, it
14 didn't make sense to add classrooms that we couldn't
15 staff with teachers.

16 At the same time we had to look at there
17 were five new buildings slated to open. Handling
18 areas of growth as we looked out at our demographics.
19 Again, a similar situation, without being able to add
20 the additional staff, in this past spring we closed
21 buildings, consolidated buildings, so we could
22 utilize existing staff and move those to new
23 facilities.

24 We've also got over 30 projects that are
25 still on pause, because we're waiting and analyzing

1 those on needs and ability to sustain teachers and
2 how our shifting demographics may have an impact.

3 Q. Why did you hit the pause button and channel
4 changer on the bond issue?

5 A. Predominantly because of budget cuts and
6 inability to add additional staff for those
7 additional classrooms, as well as when we knew we
8 were going to have to consolidate, that meant looking
9 at our boundaries. And never a fun process, by any
10 means, always difficult for a community, but how do
11 we leverage the best educational facilities for our
12 students and place them in those facilities.

13 Q. Did you find yourself in a situation of
14 somebody who had convinced the voters to pass a bond
15 issue to put in new facilities and rework existing
16 facilities and then not having the money to maintain
17 them?

18 A. It was a difficult conversation within our
19 community, a number of folks saying you promised one
20 thing and now you're doing something else. And that
21 really took a concerted effort to try to inform the
22 community of reasons why, though, there were still
23 aspects that we continued to move forward on, that
24 aren't on pause, putting a FEMA shelter, a storm
25 shelter, at each of our attendance centers. We

1 continue to move forward with that.

2 Our overall bond plan included the portion
3 that our citizens approved in the election and then
4 additional capital expenses. And with the
5 elimination of the capital equalization, that was
6 also a reason, about four and a half million per year
7 for Wichita. So you look at over a five- or six-year
8 bond plan, that's some pretty significant dollars.
9 And that had to be taken into account as we
10 reconsidered the bond plan as well.

11 Q. Let's shift to another topic in terms of
12 what has been referred to as the lag effect in this
13 courtroom. And by the way, do you realize that is an
14 economic term that economists use to describe the
15 delayed process in investment?

16 A. I'm learning something new every day.

17 Q. Okay. In terms of what you talked about,
18 let's focus on what you know, and that is when you
19 use extended learning opportunities with preschool
20 kids and kindergartners and you have the resources to
21 spend, the time and the money to reach those kids,
22 when are they tested for the first time in state
23 assessments?

24 A. Third grade.

25 So the focus, as we know, as I stated

1 earlier this morning, those students that come to our
2 door at kindergarten, the learning gap already
3 exists. And focusing on that primary education with
4 all-day K or first and second grade investments, we
5 don't actually begin to see how that impacts on state
6 assessment until they hit third grade and beyond.

7 Q. Is the other side of that accurate, as well,
8 when you have teachers who through professional
9 development learn new strategies that can reach kids
10 and move them upward on the proficiency scale and the
11 funding is cut, do you automatically see a decrease
12 in performance?

13 A. You won't automatically, because some of
14 that training is there. As teachers move buildings,
15 grade levels, retirements and without the ability to
16 continue to sustain that and move it forward, then
17 we'll begin to see the potential impact on the
18 opposite side.

19 Q. You were asked about the MTSS cuts and we've
20 heard about MTSS, but is MTSS -- and that's multiple
21 tier --

22 A. System of supports.

23 Q. -- system of supports, is that a program
24 that is considered an intervention that is required
25 by the state when a school is on improvement?

1 A. The state uses the MTSS model as what they
2 recommend as a structure for school districts,
3 particularly those on improvement.

4 As a district we've elected to use that
5 model in our entire re-structuring. One of the
6 issues we have when you have students coming from
7 homes of poverty is great mobility. So we've had to
8 look at how do we transform ourselves to meet the
9 expectations and the outcomes for our students and
10 how do we do that system-wide.

11 We've got awards of excellence, but how do
12 we do that systemwide. And the MTSS structure is
13 what we've adopted as a complete district to try to
14 move that.

15 We've got students that, in particular
16 elementaries, 80-plus percent of them will start the
17 school year, they won't be there when the school year
18 ends. They'll be someplace else in our district.
19 Maybe they've been in two or three other buildings.

20 So maintaining on being able to provide a
21 common bridge from building to building and pick the
22 kid up where they left this building and not have
23 them start over, be it academically, behaviorally, in
24 the next building is key. And MTSS has helped us
25 with that.

1 Q. So if I understand your testimony, there's a
2 lag effect when that -- when those resources are cut
3 with regard to the teachers that still have those
4 strategies in place?

5 A. Yes, if I'm understanding your question
6 correctly.

7 Q. All right.

8 A. We're not going to see necessarily an
9 immediate payoff and you won't see immediate decline.

10 Q. All right. Now, Mr. Chalmers showed you
11 Exhibit 1025, and I would -- here's the revised one
12 you asked for. And it's the same as Plaintiffs'
13 Exhibit 214. I would hand you what has been marked
14 as 214-A.

15 (Plaintiffs' Exhibit Number 214-A
16 was marked for identification.)

17 Q. (By Mr. Rupe) And simply ask you if that's a
18 revision to the Budget at a Glance 2011/2012?

19 MR. CHALMERS: This is part of
20 214?

21 MR. RUPE: Yeah, it's the 214 and
22 your Exhibit 1024 are the same thing. So I've made
23 the revision 214-A.

24 THE WITNESS: It would appear so.
25 But if I could use one of my -- I don't know, this is

1 probably a question I would have to defer to our
2 chief financial officer.

3 Q. (By Mr. Rupe) I've given it to Mr. Chalmers
4 and we'll talk to Ms. Jones about it in a little
5 bit.

6 You were asked about the average income --
7 I'm sorry, you were asked about the Plaintiffs' --
8 sorry, Defense Exhibit 1106. It talks about the
9 actual property tax on a \$100,000 home or \$100,000
10 business. Do you see that Exhibit 1106?

11 A. Yes.

12 Q. My question is simply, can you tell the
13 Court what the -- do you know what the average income
14 is in Maize or Haysville or Rose Hill or Andover,
15 Valley Center or Goddard?

16 A. I do not know what the average income is
17 for --

18 Q. Take a look at Exhibit 163. And I want to
19 call your attention to a particular line, Butler
20 County. And do you know that Butler County includes
21 Andover and Rose Hill?

22 A. I believe so.

23 Q. And is the income in Butler County, which
24 some people call Johnson County West, more than in
25 Sedgwick County?

1 A. The median household income for 2009 on this
2 chart for Butler County is 54,165 and for Sedgwick
3 it's 48,071.

4 Q. I'll take that as a yes. Oh, by the way,
5 you were asked about Shawnee Mission and the funding
6 in 2004. And you said that there wasn't adequate
7 funding in 2004, is that what you said?

8 A. I believe my recollection was I was asked
9 about was there a building in Shawnee Mission that I
10 was aware of that had had adequate funding.

11 Q. When you were there?

12 A. When I was there.

13 Q. And that was 2004?

14 A. 2004.

15 Q. And it was those circumstances that existed
16 in Kansas in 2004 that resulted in the Montoy case?

17 A. That would appear so, yes.

18 Q. Were you in Shawnee Mission during the years
19 of 2007 to 2009?

20 A. I was not.

21 Q. So what do you say to somebody that says to
22 you, when is enough enough, when do we have adequate
23 funding? What's your answer?

24 A. When we've got our students meeting the
25 goals, the expectations and the accountability

1 measures that they're being held accountable for. So
2 if you ask me that today, part of that answer would
3 be, you know, are students meeting the proficiency,
4 which is the low end of the bar, unfortunately. And
5 the answer is they're not.

6 MR. RUPE: That's all I have.

7 Thank you.

8 MR. CHALMERS: Just real quick.

9 RECROSS-EXAMINATION

10 BY MR. CHALMERS:

11 Q. Under that last definition, Dodge Elementary
12 is not adequately funded because it's not meeting the
13 proficiency requirements?

14 A. Yes, Dodge is not adequately funded.

15 Q. Now, I think when I asked the question I
16 asked you if there was any time in history where
17 there was a Shawnee Mission District School that was
18 adequately funded. And I don't know, were you
19 meaning to restrict that back to 2004 and before?

20 A. I don't recall that it was any time in
21 history.

22 Q. Let's be clear, let's talk about present day
23 and somewhere in Shawnee Mission there's a test score
24 result somewhere in there that we've been talking
25 about and somewhere in Shawnee Mission District there

1 are a group of kids that did not make proficiency
2 under the test. And that means to you that Shawnee
3 Mission School District and school still is not
4 adequately funded?

5 A. Yes.

6 Q. Now, when we talk about outputs, what does
7 output mean to you?

8 A. As we were -- to Mr. Rupe's question, that's
9 why I asked him to clarify his definition of output,
10 is the idea of student outcomes. So with school
11 business I think of what are the outputs we want,
12 it's the student outcomes. It's state assessments.
13 It's ACT. It's college and career readiness. It may
14 be a particular vocational standard. It's graduation
15 rate. It's dropout rate. It's all of those factors.

16 Q. Lastly, Mr. Rupe talked to you about the
17 ARRA, the stimulus money, and the stimulus money has
18 not always been around?

19 A. No, it has not.

20 Q. And I don't know if you meant to imply this,
21 but stimulus money was provided for a relatively
22 short period of time over a couple years and then I
23 think you still have some this last year, to try to
24 make up for the recessionary area, that we're making
25 it difficult for states to meet their obligations, is

1 that right?

2 A. Yes. And for us in Kansas it helped provide
3 some soft -- kind of a softer fall from some of the
4 cuts we would have faced without it.

5 Q. And your budget numbers show that before the
6 stimulus money your district receives substantial
7 federal money and then at least it was budgeted for
8 2011/'12 that you would receive substantial federal
9 money even after the stimulus money was no longer
10 available, isn't that right?

11 A. Based on our student population we will
12 receive federal dollars, yes.

13 MR. CHALMERS: I don't have
14 anything else. Thanks.

15 MR. RUPE: Nothing further. Thank
16 you.

17 EXAMINATION

18 BY THE PANEL:

19 JUDGE THEIS: I've got one brief.
20 When you used your statistics, you have 50,000
21 students, right, and you've got, say, 20 percent
22 African Americans, so you'd have about 10,000?

23 THE WITNESS: (Nodding head.)

24 JUDGE THEIS: If you look at your
25 ones that qualify on a test, say there's 64 percent,

1 that means there's 3,600 African American students
2 that aren't making a 68 on a test?

3 THE WITNESS: Based on your math,
4 yes, yes, sir, that would be.

5 JUDGE THEIS: So that you could
6 apply that to all those statistics and figure out the
7 percentages into number of students?

8 THE WITNESS: Yes. And that's
9 where some of the data will even show you the number
10 of students, in each of those categories, tested at
11 that grade level, as well when we look at the data,
12 so we can even break that down to third grade, fifth
13 grade, ninth grade on the state SE assessments.

14 JUDGE THEIS: Right. And do you
15 have actual yearly student performance statistics or
16 are they someplace?

17 THE WITNESS: For state assessment
18 in particular or --

19 JUDGE THEIS: I heard you talking
20 about the lag. Do you keep annual statistics?

21 THE WITNESS: Yes, we do.

22 JUDGE THEIS: Okay. And I want to
23 ask the attorney a question here. There was an
24 exhibit in Kansas City when the Kansas City people
25 were here that showed those that were doing excellent

1 and those that were doing next and then those that
2 were doing poor and those that were doing woe is me.
3 Is there an exhibit that applies to Wichita?

4 MR. RUPE: We don't have this
5 exhibit as it applies to Wichita. You're talking
6 about 106, I believe. This is 11th grade math
7 statewide, but if you look at Exhibit 111.

8 MS. GARNER: 119.

9 MR. RUPE: I'm sorry, 118, if you
10 look at Exhibit 118, and then the one we just
11 admitted into evidence.

12 MS. GARNER: 417.

13 MR. RUPE: 417, you get the picture
14 for Wichita.

15 JUDGE THEIS: Does it break it down
16 into those categories?

17 MR. RUPE: Yeah, and subgroups,
18 yeah. It's just not --

19 JUDGE THEIS: Not subgroups. It
20 wasn't subgroups.

21 MS. GARNER: He wants academic
22 warnings --

23 JUDGE THEIS: It was those that
24 were doing well, the next level and another level and
25 it seems to me there was about four levels.

1 JUDGE BURR: I want the exemplary
2 on down.

3 JUDGE THEIS: You're right. That's
4 the key. That's the word.

5 MR. RUPE: We can produce that for
6 Wichita, but we don't currently have it for Wichita.
7 We just have it for state.

8 JUDGE THEIS: I thought we had one
9 for Kansas City too.

10 MR. CHALMERS: Your Honor, those in
11 terms of graphs, I don't think we have it, but we
12 have the report cards that are in evidence for each
13 one of the districts.

14 JUDGE THEIS: Does it break it into
15 exemplary?

16 MR. CHALMERS: It breaks it into
17 each category.

18 JUDGE THEIS: Okay.

19 MR. CHALMERS: Tomorrow will be
20 Mr. Tom Foster.

21 JUDGE THEIS: So I can make my own
22 graphs if I want.

23 MR. CHALMERS: You can do that, but
24 Mr. Tom Foster is the statistician or the head of the
25 statisticians with the Department of Ed. He'll be

1 here tomorrow. And they have done a study that shows
2 that distribution as it relates to both the kids on
3 the approaching, meeting, exceeding and how that has
4 moved as a group to the right and clustered. So
5 that's something that we'll have by way of testimony
6 tomorrow.

7 JUDGE THEIS: I've got a couple
8 questions that can't be answered because we don't
9 have the exhibits. You were talking about Defense
10 Exhibit 1037, and at the bottom of it, it had an FTE
11 of 46,256 with at-risk students included. And I
12 didn't understand that relation to Wichita, because I
13 thought it had 50,000 students, and I thought it had
14 75,000 when you added that at-risk.

15 MS. GARNER: I think he's talking
16 about --

17 MR. RUPE: Just address it.

18 MS. GARNER: I think that you're
19 talking 1037 --

20 MR. RUPE: Stand up.

21 MS. GARNER: The FTE showing
22 46,256.

23 JUDGE THEIS: That's it. And I
24 didn't have a --

25 MS. GARNER: Including the four-

1 year at-risk.

2 JUDGE THEIS: I don't know what it
3 related to.

4 MS. GARNER: That's just the FTE
5 enrollment and not the weighted enrollment that we
6 talked about.

7 JUDGE THEIS: Okay.

8 MS. GARNER: That includes the
9 weightings in the Kansas statutes.

10 And I think it says kindergarten
11 students are counted as .5, so .5.

12 JUDGE FLEMING: You can step down.

13 JUDGE THEIS: Half a kid.

14 MR. ROBB: Half a day, half a kid.

15 MR. RUPE: Half a day, half a kid.

16 JUDGE THEIS: All right.

17 MR. RUPE: So I think that
18 clarifies it. That would be the difference between
19 the two numbers.

20 JUDGE THEIS: Okay.

21 And I had one more of the witness.
22 When he was -- when you were -- when you said --

23 THE WITNESS: I'm sorry?

24 EXAMINATION

25 BY THE PANEL:

1 JUDGE THEIS: That it wasn't
2 necessarily new money when you went on improvement,
3 the help came and that means the reallocation of your
4 own money or what?

5 THE WITNESS: For example, under
6 Title I funds, when we have certain accountability
7 measures at Middle School A, we're now going to have
8 to look at re-structuring or we have to put some
9 other pieces in place. There's not, once you reach
10 there, here's an extra couple thousand for you. It
11 is reorganizing within our existing resources.

12 If they're in the bottom five
13 percent then there's some additional grant
14 opportunities that we can apply for, but that doesn't
15 guarantee receiving.

16 JUDGE THEIS: Take money out of
17 something to repair that?

18 THE WITNESS: Within our title
19 funds with the at-risk funds we receive, so we have
20 to reallocate. General fund, neediest schools need
21 the most resources and that's where we try to
22 allocate those resources as best as possible.

23 JUDGE THEIS: Any questions based
24 on mine?

25 MR. CHALMERS: No, Your Honor.

1 JUDGE THEIS: Mr. Rupe?

2 MR. RUPE: Hang on.

3 MS. GARNER: You had asked a
4 question about -- sorry.

5 JUDGE THEIS: I've forgotten it
6 too, so.

7 MS. GARNER: Well, I wanted to
8 point out that the report card that had all the data
9 with the exemplary, the subgroups, for Wichita,
10 that's Exhibit 119 that all of that data is broken
11 into.

12 JUDGE THEIS: Thank you. I'm
13 through.

14 THE WITNESS: Okay.

15 (Witness excused.)

16 MR. RUPE: Do you want us to put on
17 another witness now?

18 JUDGE THEIS: Do I want you to?

19 JUDGE BURR: Can we vote?

20 MR. RUPE: It's like talking to my
21 kids.

22 JUDGE THEIS: You have somebody
23 you're going to drag up tomorrow if they don't
24 testify tonight?

25 MR. RUPE: I think we're now a

1 little behind. The three other Wichita folks are
2 probably going to have to stay over until tomorrow,
3 anyway. Our next witness is Linda Jones, and she's
4 going to be a little bit, so.

5 JUDGE THEIS: She's from Wichita.

6 MR. RUPE: She's from Wichita.

7 JUDGE THEIS: And she was going to
8 be here tomorrow. She will be here tomorrow?

9 MR. ROBB: Yes.

10 MR. RUPE: And the two folks that
11 are principals from West and Hamilton will be here
12 tomorrow too.

13 JUDGE THEIS: I won't ask questions
14 tomorrow.

15 MR. CHALMERS: Tom Foster, who's
16 from the state, was especially scheduled to be on
17 tomorrow, because he has some out-of-state conference
18 that he leaves for Wednesday morning. I think that's
19 what his flight is, late in the morning.

20 JUDGE BURR: Is he going to be
21 somewhat lengthy?

22 MR. CHALMERS: I think he is
23 someone who might take not the whole morning but half
24 a morning, but we could put him on first and get him
25 out of here and then move on, if counsel doesn't have

1 a problem with that.

2 MR. RUPE: That's okay.

3 JUDGE BURR: Mr. Dennis is kind of
4 a continuation of them, so we've got a lot of them
5 already on, I assume.

6 MR. RUPE: So we can put on Foster
7 and then the Wichita people tomorrow and then I don't
8 have my list in front of me.

9 MR. ROBB: Your Honors, I think
10 we're going to move Mr. Dennis to Thursday. He's
11 available later in the week, so I think we're going
12 to bump him off of tomorrow to Thursday and that
13 should make this work.

14 JUDGE THEIS: Okay. Do I want
15 another witness tonight? No.

16 MR. RUPE: We'll have Hammond
17 tomorrow, as well. So tomorrow is going to be
18 Foster, the three Wichita folks we've been talking
19 about, and Bill Hammond, who's the business director
20 at Dodge.

21 JUDGE BURR: To those of us, and
22 I'm specifically talking about Judge Fleming and
23 Feist, who are somewhat a distance away from home,
24 what's your best guess now on Thursday? You think
25 we'll take all day on Thursday or not?

1 MR. RUPE: I think we'll -- if Dale
2 Dennis is on Thursday, we'll probably go pretty much
3 the day on Thursday.

4 JUDGE BURR: Okay. I just
5 wondered. All right.

6 JUDGE THEIS: All right. Have a
7 nice evening then.

8 MR. RUPE: Thank you.

9 MS. TIBBETS: Thank you.

10 (Thereupon, the proceedings were
11 adjourned to June 26, 2012, at 9:00 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 25th, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 232 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 13)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 26th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

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EXAMINATION INDEX

TOM FOSTER	
DIRECT BY MR. CHALMERS	2671
CROSS BY MR. RUPE	2726
REDIRECT BY MR. CHALMERS	2754
RECROSS BY MR. RUPE	2759
BY THE PANEL	2760
REDIRECT BY MR. CHALMERS	2768
RECROSS BY MR. RUPE	2771
LINDA JONES	
DIRECT BY MR. RUPE	2774
CROSS BY MR. CHALMERS	2802
REDIRECT BY MR. RUPE	2830
RECROSS BY MR. CHALMERS	2832
LORI DOYLE	
DIRECT BY MR. RUPE	2837
CROSS BY MS. TIBBETS	2858
REDIRECT BY MR. RUPE	2870
BY THE PANEL	2874
AMY HUNGRIA	
DIRECT BY MR. RUPE	2877
CROSS BY MS. TIBBETS	2900
REDIRECT BY MR. RUPE	2908
BY THE PANEL	2910

EXHIBIT INDEX

	MAR	/	ADM
Plaintiffs' Exhibit			
214-A			2781
418	2668		2749
Defendant's Exhibit			
1229	2693		2694
1230	2693		2694
1231	2704		2705
1232	2713		2726

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

P R O C E E D I N G S

1
2 JUDGE THEIS: Be seated. Thank
3 you.

4 MR. RUPE: Morning.

5 JUDGE THEIS: We're here.

6 JUDGE BURR: Morning.

7 MR. RUPE: Today's lineup to remind
8 the Court is, I think, the State's going to put on
9 Dr. Foster, and then our lineup will complete the
10 Wichita folks, Jones Doyle Hungria and then Bill
11 Hammond from Dodge City later today. We have the
12 videotaped deposition, or the deposition transcripts,
13 for you of Goossen and Olson that we've talked about,
14 and we have also synced those depositions with the
15 actual trial exhibits and are submitting the exhibits
16 that were attached to their depositions along with
17 the depositions to you, but you'll see as you read
18 the deposition like Deposition Exhibit 2 is crossed
19 out, and then the actual trial exhibit number is
20 written in, so we did that in notebooks, and we have
21 those for you and along with Exhibits 395 to 411,
22 which are the deposition exhibits in their
23 depositions. And then we also have this morning the
24 preliminary assessment data that we're going to
25 submit to you that's marked as 412 to 418.

1 (Plaintiffs' Exhibit Number 418 was
2 marked for identification.)

3 A word concerning 418, Plaintiffs' 418
4 is what Judge Theis asked about yesterday in terms of
5 information broken down by category for each of the
6 plaintiff school districts. But to save some trees, we
7 gave you the assessment scores for grade 11 disaggregated
8 to various different ways and along the performance
9 categories as well. Mr. Chalmers has seen this and he's
10 indicated that they are going to give you the rest of the
11 story with all the other grades as well, but to get you
12 started, 418 Plaintiffs' is 11th grade.

13 JUDGE THEIS: Okay. Thank you.

14 MR. RUPE: So I think with that the
15 paperwork is out of the way, and if you want the
16 notebooks right now, or you want to do it later, we've
17 got them right here.

18 JUDGE THEIS: The notebooks, are they
19 just going to mark -- are they marked as -- is this the
20 depo here?

21 MR. RUPE: Yes, that's the depo.

22 JUDGE THEIS: Mark them as exhibits,
23 and how are we going to submit them as joint deals to the
24 witnesses? On paper, I guess.

25 MR. RUPE: I don't know whether

1 Mr. Chalmers wants to join in that or not, but we
2 would submit as agreed the deposition of Goossen and
3 Olson and Exhibits 395 to 411, which are the
4 deposition exhibit that go with those.

5 JUDGE THEIS: You want it marked,
6 or how do you want it?

7 MR. CHALMERS: I think that what I
8 was provided this morning was marked with an exhibit
9 number, and I think that's an appropriate way to
10 present them, so.

11 JUDGE THEIS: An exhibit number --
12 appropriate time to get an exhibit number on them,
13 and they'll be admitted.

14 MR. RUPE: They've already got the
15 exhibit numbers on them.

16 MR. CHALMERS: 409 is the
17 deposition transcript of Mr. Goossen. 410 is the
18 deposition transcript of Kent Olson. And I think
19 I've not had an opportunity to look through these,
20 but Mr. Rupe has represented that the attachments
21 through, I think he said, 411.

22 MR. RUPE: Yes.

23 MS. GARNER: Actually, I think 411
24 might be the small version of this.

25 MR. RUPE: 411 is actually that, so

1 and that's one we've been referring to throughout.

2 MR. CHALMERS: So it looks like 408
3 and --

4 MS. GARNER: 409 and 410.

5 MR. CHALMERS: And 409, 410 with
6 the exhibits that seem to be attached to them. We
7 don't have objection to their admission.

8 MR. RUPE: So 395 to -- Art --
9 Mr. Chalmers, do you have an objection to the 411?

10 MR. CHALMERS: No, I don't have an
11 objection to 411. Then 395 to 411 I think is it.

12 MR. RUPE: Okay. Then 395 to 411
13 is it. Back to the question. Do you want the
14 notebooks now or --

15 JUDGE THEIS: We'll hold off,
16 okay?

17 MR. RUPE: Okay.

18 JUDGE THEIS: In the event of an
19 earthquake, you know.

20 MR. RUPE: Andrew, let's put them
21 down under here, and that way we know where they are.

22 Thank you, Your Honor.

23 MR. ROBB: What was admitted?

24 MR. RUPE: Yes. So far 395 to 411.

25 MR. ROBB: Okay.

1 MR. CHALMERS: Ready to call
2 Dr. Foster with -- if it pleases the Court.
3 Dr. Foster, would you please take the stand?

4 TOM FOSTER,
5 Called as a witness for the
6 Defendant, was duly sworn by the reporter and
7 testified under oath as follows:

8 DIRECT EXAMINATION

9 BY MR. CHALMERS:

10 Q. Would you briefly introduce yourself to the
11 panel?

12 A. Hello, my name's Tom Foster. I work for the
13 Kansas State Department of Education. I'm the
14 director of career standards and assessment services,
15 and we're responsible for implementing the state
16 assessments and also for developing and implementing
17 the state standards in all of the tested areas and in
18 all of the non-tested areas that we have standards
19 for like dance and drivers ed and things like that,
20 and also in all of the career and technical education
21 areas. That all falls under my purview.

22 Q. How long have you had that position?

23 A. Two or three years, something like that.

24 Q. And before those last two or three years,
25 what was your --

1 A. I was deputy of the learning services
2 division.

3 Q. What is the learning services division?

4 A. It's one of the three divisions in the
5 Department of Education that's responsible for teams
6 like mine. There's five of them. That includes
7 teacher licensure, special education, and then my
8 team and title services, which is all the federal
9 programs.

10 Q. How long have you been employed by the
11 Department of Education?

12 A. Since April of 2004.

13 Q. Tell us a little bit about your employment
14 background before you got to the Department of
15 Education.

16 A. For the Department of Education I worked for
17 Auburn-Washburn School District. I was the central
18 office curriculum director. Before that I was a
19 classroom teacher.

20 Q. When did you last teach?

21 A. At the -- in the public high school, I last
22 taught in '92/'93 school year.

23 Q. What's your formal education?

24 A. I have a Bachelor's Degree in English
25 Literature and Classics, a Master's Degree in

1 Educational Administration, licensure in several
2 areas to teach, and I have a Ph.D. in Educational
3 Foundations.

4 Q. What is Ph.D. in Educational Foundations?
5 What does that entail?

6 A. It's a -- what they call terminal degree,
7 perhaps an unfortunate word, that in study in
8 education foundation sometimes called policy and
9 leadership is directed towards the philosophical side
10 of education and leadership as opposed to curriculum
11 or some other area.

12 Q. What study have you done either formally or
13 through your occupation of assessment tests for
14 school kids? Just summarize it.

15 A. Most of my study is -- centers around the
16 Kansas assessments and federal assessments in
17 general. So, for example, I serve on a committee for
18 the NEAP. I work with a number of states and my
19 lateral colleagues in the states.

20 Q. What committee do you serve on with NEAP?

21 A. It's called the policy advisory committee,
22 something like that.

23 Q. What is NEAP? We've heard discussion.

24 A. National assessment of educational progress.

25 Q. What does that organization do?

1 A. They administer nationwide assessments in
2 states to try to determine progress students are
3 making over time often called The Nation's Report
4 Card.

5 Q. You say you worked with other colleagues in
6 states in committees. Could you expound on that a
7 little bit?

8 A. Good example would be Council of Chief State
9 School Officers otherwise known as CCSO. They have
10 numerous committees. I've served on multiple ones.
11 They bring together people like me for various
12 activities. Sometimes those might be to develop a --
13 they would call it instrument guidance, a document on
14 how to do something in the assessment work standards
15 realm. Sometimes we provide professional advice to
16 the chiefs. The chief of each state is the highest,
17 sometimes elected, sometimes appointed, educational
18 officer in the state.

19 Q. So?

20 A. So we would provide technical advice for
21 them, that kind of thing.

22 Q. Honing in on Kansas assessment, and starting
23 out, you set that out pretty quickly. What is your
24 role with the Kansas assessments now within the
25 department?

1 A. We are responsible for developing the
2 assessments, for implementing the assessments, and
3 for providing feedback to schools about those
4 assessments. So we work with a vendor that actually
5 does the basic work, and we collect the data around
6 it and aggregate the data for accountability
7 purposes.

8 Q. How are Kansas assessments and when are they
9 administered?

10 A. There's a fairly large window for the
11 assessments. Depending on the type of assessment
12 you're talking about, the window starts the 1st of
13 October and ends, depends on the years, sometime in
14 May, near the 1st of May.

15 Q. Is it then left to each individual district
16 to decide when they'll have their test?

17 A. Yes, there's -- there's some elements of
18 that window that are restricted, but generally
19 speaking, a district can administer the test any time
20 they want to during that window.

21 Q. Take us through a test taking a kid in
22 Wichita, Kansas. What's the procedure for taking a
23 Kansas assessment test?

24 A. If they're a high school student, they might
25 take the test early in their high school career,

1 maybe as a sophomore. Say, use math as an example.
2 They might take that as a sophomore, and then,
3 depending on whether they meet the standard or not,
4 they would have another opportunity to test again in
5 their junior year. So that would be fairly typically
6 in Wichita because they work that way quite a bit.

7 They'll use the first application of this
8 test to figure out which kids have already passed the
9 test and which need more work. If it's an elementary
10 student, Wichita tends to wait later in the
11 window, so they would work with their individual
12 building.

13 The tests that we're talking about are all
14 computerized, so they have to determine whether -- or
15 how they want to use the resources that they have in
16 the building. Some buildings have computer labs.
17 Some have computers that move to the individual
18 rooms. And so they would develop a plan, and then
19 they like to test the kids early in the morning, not
20 on Monday and not on Friday.

21 Q. Are they tested on all subjects, the math,
22 the reading, the science, social studies, I don't
23 know what else, at the same time?

24 A. No.

25 Q. No. So they are separate testing days,

1 right?

2 A. Right.

3 Q. Are the kids all tested at once, ideally, or
4 does everybody come in and does the reading tests on
5 one day for a particular grade?

6 A. Probably not. Depends mostly just how the
7 counselor wants to set it up or something like that.

8 Q. Who administers the test?

9 A. Teachers generally.

10 Q. And the test data you say is computerized.
11 How is that information -- if it is communicated back
12 to the State, how do you get those numbers?

13 A. When the student clicks done on the test,
14 it's automatically scored, and the data resides at
15 the Center for Educational Testing and Evaluation at
16 the University of Kansas. Then in a 48 hour
17 rotational download, they send the data to our data
18 systems at the State Department of Education.

19 Q. When does the Department of Education then
20 have all the test scores for a particular year?

21 A. They wouldn't have them all until the window
22 closes. I think it was May 2nd, or something like
23 this, this year.

24 Q. By way of illustration, this last year,
25 May 2nd, would be when you have access to all the

1 data; is that right?

2 A. Yes.

3 Q. What is done with the data once it is
4 communicated or transferred to your department?

5 A. It's aggregated into a data warehouse, and a
6 report is produced. That is what we call
7 authenticated. That means that the local educational
8 authority, LEA, has a representative, and that is
9 generally the superintendent.

10 Q. Let me stop you one second, and I apologize
11 for interrupting. LEA, is that the local district?

12 A. Local Education Authority is the school
13 district.

14 Q. The school district? Okay. I interrupted
15 you. Go ahead.

16 A. So the superintendent generally has the
17 authority, and he may pass that on to others in the
18 district depending on his preferences, but that's the
19 locals for us, and they can open that authenticated
20 application. They can see all their preliminary
21 data. And then we start a process we call data
22 cleaning. And --

23 Q. What is that?

24 A. We ask them to look at their data and
25 determine whether they feel that it accurately

1 represents the situation in the school district. An
2 example of that would be, they look at a subgroup,
3 and it might show that a particular school has 250
4 African-American students, but the entire population
5 of school is only 160. So everybody goes, woops,
6 there's a problem, and then they'll call us, or we'll
7 try to figure out why that data is not accurately
8 reflecting what they think it should. So we go
9 through that process of cleaning the data.

10 An example is yesterday a school called us,
11 and they weren't making AYP based on participation.
12 The school clerk had miscoded the grade level of
13 every high school student. It's an uncommon error,
14 but they didn't discover it until the 25th of June.

15 Q. When do these numbers become final?

16 A. We publish them, and publish, I would put
17 quotations around because that's kind of a technical
18 term. When we publish, it's considered a snapshot of
19 the data, and we present it to the board. And we are
20 scheduled to do it in September.

21 Q. Before the final snapshot in September, is
22 there a point where we can be confident that we have
23 data that reflects what the final snapshot will be?

24 A. Depends on what you mean by confident.

25 Q. Well --

1 A. The data becomes increasingly more accurate,
2 or more stable we like to say, as we move towards
3 that.

4 Q. And what is it that makes the data unstable
5 before --

6 A. There are multiple considerations. One is
7 because we're talking about hundreds of thousands of
8 students, there are just coding errors that happen
9 and districts start to find those, and we correct
10 them.

11 There is also an opportunity for school
12 districts to reposition students to some extent.
13 I'll use just one example because it's a little
14 technical, but the federal government allows
15 districts to assign the alternate assessment to
16 special education students only up to one percent of
17 the district population. If they test more than one
18 percent of the district population, some of those
19 students have to be reassigned, and they're
20 reassigned as not meeting the standard, and then
21 they're assigned to schools.

22 So where you assign the students makes a
23 difference in whether the school meets the standard
24 in that subgroup. So that's a process that we don't
25 allow until they sign off on their data and so on,

1 and then they can do reassignment of students.

2 There's also an opportunity for districts to
3 present a waiver, and the waiver is some kind of
4 evidence they have that there was some
5 irregularity -- maybe not an irregularity, but some
6 condition that they think needs to have special
7 attention. An example might be, if a teacher in a
8 classroom was killed in an automobile accident in the
9 middle of a testing window, and the students have a
10 great deal of trauma, the school building burns
11 down. A more common example might be a school
12 district like Wichita has a larger than expected
13 population of students with disabilities, and so they
14 petition for an increase in the percent of students
15 allowed under the federal regulations to be counted
16 in that group.

17 So there's a waiver process, and that then
18 goes through department review and so on, and there's
19 a number of factors like that.

20 There's an internal factor that causes the
21 numbers to change. Sometimes we'll have
22 conversations with our vendor about a problem for
23 some reason really fairly invisible to everybody
24 else. Some particular type of student is not being
25 accurately reported and transmitted to us, and we

1 have to look at the code and figure out why this
2 student has a minus two when they should have some
3 other number in the calculation. Sometimes the
4 calculation isn't working like we'd like it to work,
5 so it requires some assistance. Multiple things that
6 might happen before we finally get to that point
7 where we feel the data accurately reflects the
8 situation.

9 Q. Back up and ask you to expound a little bit
10 on tests. You mentioned that there are different
11 tests that kids will take in some circumstances.

12 A. In each area there are four different tests.
13 So there's the general assessment. There's the
14 general assessment with accommodations. There's the
15 Kansas assessment of multiple measures called the
16 KAMM, and there's the alternate assessment.

17 Going backwards, the alternate assessment is
18 designed for students with the most severe cognitive
19 disabilities. The KAMM is designed for students,
20 you'd say the next level up students with
21 disabilities significant enough that they're unable
22 to show what they know and aren't able to do on the
23 general assessment. And the general assessment with
24 accommodations are for students, an example would be
25 blind. A Braille test is a general -- and then the

1 general assessment. Those four are the types of
2 assessments that exist for every grade level and
3 every content.

4 So every grade level test is also separate.
5 And within that, each one of those tests have
6 multiple forms. The forms vary from three to five.
7 So if you just take 5th grade math, there might be
8 four different general assessments, and the KAMM,
9 though, we don't have that many. If you actually ask
10 me how many different assessments are there, it's a
11 lot.

12 Q. Same assessment test, talking about the
13 general assessment, is the same assessment test given
14 every year?

15 A. Yes, since 2006.

16 Q. This test that was given this last year, it
17 would have been the one then that was developed in
18 2006?

19 A. Right, developed prior to that, but given
20 first in 2006, yes.

21 Q. How was that test developed?

22 A. There's -- we contracted with two different
23 contractors. One contractor was asked to create the
24 items, and another contractor was asked to create the
25 assessment itself, take the item and put them

1 together into a test and deliver the assessment.

2 There's a different process for each one of
3 those two activities. In developing the items, the
4 vendor will take the specifications that we give
5 them, create items, and we will take them to
6 committees, groups of people that represent various
7 constituencies in the field, grade-level educators,
8 principals, that kind of thing, and we'll vet those
9 items. Then we'll also get committees of people that
10 represent various interest groups, ethnicities,
11 English language learners, special education experts,
12 and we'll look at those items for bias. And once
13 they've been vetted, they'll be piloted, and the
14 pilot information is used by the vendor to create the
15 final form of the assessment.

16 It can take two years from very start to
17 very finish for the whole process. When the test is
18 done, it's administered for the first time, and then
19 the data is used to set the cut scores for the
20 assessment. And then there's a number, a various
21 number of studies that are done to make sure that
22 bias doesn't enter into the assessment. For example,
23 do we see that girls are answering certain questions
24 differently than boys, that kind of thing, and then
25 that information is all submitted to the federal peer

1 review. The federal peer review certifies the
2 assessment.

3 Q. So if we talk about the present assessment
4 test, the one that was -- the 2006 one, for lack of a
5 better way to describe it, it's gone through this
6 whole process?

7 A. Yes.

8 Q. What is the cut score? I think you
9 mentioned that.

10 A. There are actually multiple cut scores and
11 in some cases, there'll be called standards. You
12 have to be kind of careful. It depends on what
13 population you are speaking to, but the cut score is
14 the score at which the student meets the standard.
15 There's actually -- there are five performance
16 categories, and they are academic warning, approaches
17 standards, meets standards, exceeds standards, and
18 exemplary. There's a cut score at each one of those,
19 so literally a range of scores a student can score.

20 Q. Let me show you what's been marked as
21 Exhibit 76 into evidence. It may help explain -- and
22 I interrupted, but those are the cut scores for
23 general mathematics and for general reading
24 assessment, and you were explaining there's a range
25 of those cut scores, and please continue.

1 A. All right, so for example, in general
2 mathematics, 3rd grade meets standards is 70 to 84.
3 Students have to score an equated percent of 70
4 points to meet the standard on the assessment. If
5 they score above 84, they're exceed standards. If
6 they score below 70, they're approaches standards.

7 Q. There's some highlighted ones here. I think
8 the Plaintiffs' counsel has highlighted those on high
9 school for math. The cut scores are 50 to 67 if I'm
10 reading them correctly.

11 A. Yes.

12 Q. The high school in reading is 68 to 80. Why
13 50 percent, why is that sufficient in math?

14 A. Well, I think your question indicates a
15 general layman's approach to assessment. Most of us
16 are used to the classroom. So 50 on this doesn't
17 represent what 50 percent would be in the classroom,
18 which we would consider a low score, unlike my
19 classroom for example. 50 here represents a very
20 specific approach to how students do on an
21 assessment. And so the two concepts, the lenses that
22 we view them are not the same.

23 In the judgmental standard setting process
24 that is used to set cut scores, a group -- a fairly
25 large group of people determine that to be the

1 appropriate line in the program, and the federal
2 government said that was appropriate.

3 Q. When these scores are provided, and then
4 finally authenticated, you said there is a report
5 that comes out. Is that the report card?

6 A. No.

7 Q. What's the report card?

8 A. The report card is the public side of the
9 report, and that is a -- the report card is usually
10 not up until October, generally.

11 Q. And what is the public side -- in other
12 words, it's disclosing to the public what is already
13 in the report that you had some time in September?

14 A. Yes, it's disclosing to the public what the
15 superintendents can see in the authenticated site,
16 but it's also restricted for FERPA, and FERPA is the
17 Federal Protection -- Privacy Protection Act. So
18 cell sizes that are smaller than a certain size are
19 eliminated. The ability to see individual student
20 scores is removed, that kind of thing.

21 Q. We've heard a little bit about that. That
22 is, if you've got a group of kids that is by
23 illustration ten or less, the concern is, if you
24 report that group, it may be identifiable to that
25 kid, so --

1 A. Correct.

2 Q. -- the report card won't record that?

3 A. Right.

4 Q. Let me show you what's been marked as
5 Plaintiffs' Exhibit 118 and Defendant's Exhibit 1154,
6 and I don't know that we've ever gone through one of
7 these, so I want to go through it real quickly with
8 you. This is a report card for -- actually, this is
9 for Wichita for the year '10/'11, and the report card
10 will have information that shows these -- the goals,
11 or rather, the percentage proficient or above, by all
12 students and groups, and math for reading and math,
13 and then there's other data. That information, I
14 think as you'd indicated, would come from the report
15 every year when it's provided, right?

16 A. Yes.

17 Q. Now, what I don't think we've looked at is
18 the report card also then for each grade and for each
19 subgroup unless we've got a number that is small
20 enough that we can't report that's ten and under.
21 It's going to show by way of illustration that there
22 were 19.3 percent that were exemplary on the 3rd
23 grade reading for the year '10/'11. Is that how we
24 read that?

25 A. You probably have two years there.

1 Q. Yeah, I was focusing on one of the eleven,
2 but explain that to me. When the Court goes back, if
3 it's inclined to do so to read through this, they
4 need to understand how this works, and so if you
5 could just give a description of how it works, and
6 then they'll -- if they choose to go back, they'll be
7 able to understand.

8 A. The line you were pointing to, the 2010
9 results are there and then the 2011. So 2010 results
10 would be the '09/'10 school year, and 2011 results
11 would be the 2010/'11 school year, and those are all
12 percentages, probably another column there to the
13 right.

14 Q. It's been cut off.

15 A. Yeah.

16 Q. And these percentages reflect the kids that
17 are exemplary. These are the exceeds standards.
18 These are meets standards. So everybody to the left
19 of this 32.1 would be focused as met or exceeded
20 standards?

21 A. Yes.

22 Q. Then there's a not tested category, and how
23 is that handled in the reporting?

24 A. School districts are required to test at
25 least 95 percent of their students, or they don't

1 meet AYP. So sometimes, you have students that for
2 one reason or another aren't tested. They may get
3 sick. They may be absent. A parent may opt out,
4 various things.

5 Q. So when we look at the first page of the
6 exhibit where it shows the percentage above for all
7 students, that doesn't have 3rd grade. How do we
8 blend in all the grades then?

9 A. All the grades would be aggregated to the
10 district.

11 Q. And to my -- I think that means that you
12 just take all the grades, and then this is the
13 average from the grades; is that right?

14 A. Right, they do it at performance category.

15 Q. So now, this was for 3rd grade reading.
16 There's one for 4th grade reading, 5th grade
17 reading. Actually, it goes all the way through to
18 8th grade reading, and we'll talk about 11th for a
19 moment, and those grades are for kids that actually
20 are in that grade that took the test that year; is
21 that right?

22 A. Yes.

23 Q. The 11th grade, you mentioned that quickly.
24 When did the kids take the 11th grade test?

25 A. We report on a cohort. We report on the

1 11th grade cohort. The students in that cohort may
2 have taken the test in the 9th grade or the 10th
3 grade or the 11th. If they take it before the 11th
4 grade, their score is saved, banked, and it's then
5 used as part of the 11th grade cohort.

6 Q. You call that banked?

7 A. Uh-huh, nodding.

8 Q. And you're nodding your head, and she has a
9 hard time taking that down.

10 A. Yes, yes.

11 Q. If you got a banked number -- let's say you
12 got a 9th grader that scores meets standard, does the
13 9th grader get to take the test again?

14 A. No.

15 Q. Well, if kids are learning in high school as
16 we hoped, does that mean that as a result of the
17 banked scores that probably this testing result
18 understates what their knowledge base is?

19 MR. RUPE: Object. Leading
20 question. I think let the witness explain what the
21 situation is and not lead him through it. He's your
22 witness.

23 JUDGE THEIS: I don't really have a
24 problem with that. I mean, he seems qualified to
25 answer it however it's asked.

1 THE WITNESS: What was the
2 question?

3 Q. (By Mr. Chalmers) Well, I'll try to
4 rephrase it. I'm just trying to understand, if as a
5 result of the banking, are the numbers reported for
6 the 11th grade whether it's reading or math? Do they
7 understate the level of performance that you would
8 expect if everyone was tested, say, in the 11th
9 grade?

10 A. It's possible they do.

11 Q. So in addition to mathematics and reading,
12 because we've talked about those, there are also
13 tests that are given on science; is that correct?

14 A. Yes.

15 Q. Is there another test that I'm overlooking
16 here, or is that it, those three that are reported on
17 the report card?

18 A. Writing.

19 Q. Writing, okay.

20 A. And history, government, or social studies
21 some people would call it.

22 Q. You were asked by way of subpoena, I guess,
23 that's more than asked, to collect and produce the
24 preliminary data for the 2010 -- excuse me, 2011/2012
25 school year both by Plaintiffs' counsel and by

1 defense counsel; is that correct?

2 A. Yes.

3 Q. And you have produced that information?

4 A. Yes.

5 Q. And so that we're clear, this information is
6 not final data. It is preliminary data; is that
7 correct?

8 A. Yes.

9 Q. How confident are we in that data in the
10 fashion that it's been produced?

11 A. Depends on how you're going to use it.

12 Q. Well --

13 A. The student's score won't change. The right
14 answers and the wrong answers are the answers.
15 They're not going to change. If you're going to make
16 instructional decisions based upon that, then it's
17 fine to do that. The accountability portion of it
18 changes quite a bit. We tell people, don't buy the
19 banner until we release the data.

20 Q. Let me offer into evidence Exhibits 129 --
21 excuse me, 1229 and 1230.

22 (Defendant's Exhibit Numbers 1229
23 and 1230 were marked for identification.)

24 Q. (By Mr. Chalmers) 1229 are the documents
25 that I've marked that were provided to me yesterday

1 and produced by Plaintiffs' counsel. 1230 are the
2 documents that were produced to me and I provided to
3 Plaintiffs' counsel. So that we confirm that, could you
4 look at these documents 1229 and 1230 and confirm those
5 documents that you provided to counsel in response to the
6 subpoena.

7 A. 1230 appears to be correct.

8 And 1229 also appears to be correct.

9 MR. CHALMERS: I move for admissions of
10 1229 and 1230.

11 MR. RUPE: No objection.

12 JUDGE THEIS: Admitted.

13 (Defendant's Exhibit Numbers 1229 and
14 1230 were admitted.)

15 Q. (By Mr. Chalmers) So that when these are shown
16 we'll have an understanding of how to read them, if you
17 look at Exhibit 1229 first, the first page of it where it
18 says, subgroup by select schools, would you describe what
19 that is showing?

20 A. For each of the indicated schools, it first
21 shows the all student group, and then it shows the
22 various subgroups, and it shows the percent proficient in
23 each case.

24 Q. So those percent proficient would have been one
25 of those three categories?

1 A. Actually, it should be -- when we say that,
2 we would mean a student's meeting the standard or
3 exceeding the standard. In the case of all students
4 for Hamilton Middle, it would be 54.4 percent of the
5 students in that school met or exceeded the standards
6 on the reading.

7 Q. And we've got for the Hawaiian & Pacific
8 Islander a negative ten and that means -

9 A. I don't know why they even showed the number
10 because they don't have enough.

11 Q. That's for purposes we can't tell you what
12 the number is?

13 A. There's only three hundred and some in the
14 whole state.

15 Q. This particular one is for Wichita Hamilton
16 Middle, and then we've got East High, West High,
17 Morgan Elementary, Avenue A. In essence what we have
18 is for a variety of schools is what this exhibit, the
19 first couple of pages of 1229 are; is that correct?

20 A. Yes.

21 Q. Then, if we go to -- there's a second
22 grouping in Exhibit 1229, and it is the state
23 subgroup percentage proficient subgroup by -- well,
24 for state and could you --

25 MR. CHALMERS: I think that's

1 telling me I'm supposed to be in court.

2 MR. RUPE: I think its time is up.

3 MR. CHALMERS: Yeah.

4 Q. (By Mr. Chalmers) If you could explain what
5 that is, please.

6 A. It's the same situation as what the
7 individual schools. It's all students. So for the
8 state, all students in reading, 87.6 percent of them
9 met or exceeded the standard and the various
10 subgroups by performance. It also gives the total
11 end size or the number of students that were tested.

12 Q. That's what I was going to ask you about.
13 Where it says, state pool, what does state pool mean?

14 A. It means that 234,641 students had valid
15 assessments so far this year.

16 Q. I want you to take my word for it. It's not
17 a big deal, but there are some slight differences
18 between some of the numbers in 1230 and 1229 that I
19 found. Why would that be?

20 A. Depends in each case upon what the
21 difference might be. If you're aggregating the
22 subgroups up, like if you're trying to add all these
23 subgroups together to get the total, students are in
24 multiple subgroups, so it doesn't work that way. And
25 in some cases, you'll have students in various,

1 unique situations.

2 So if you're trying to add all the schools
3 together in a district, you won't necessarily get the
4 district total because students will be allocated
5 differently, or sometimes assigned to different
6 places, and it depends upon each case. In the case of
7 KCK, Kansas City, Kansas, school system, they have a
8 federal waiver that means some of their students
9 didn't take the state assessment. Instead, they took
10 the ACT product appropriate for their grade level.

11 Q. Well, now let's talk about that for just a
12 moment. See if I can find a -- on Exhibit 1229, next
13 to the last page, there is a report -- didn't print
14 out very well on my copy -- for Wyandotte High
15 School, and it has certain numbers. What do those
16 numbers reflect?

17 A. Well, for reported students for Wyandotte
18 High would be 66.7 percent of them were proficient.
19 However, that doesn't represent the -- probably
20 doesn't represent the total population of students
21 used for accountability at Wyandotte High because a
22 number of their 11th graders took the ACT, and we
23 don't have that data in here yet.

24 Q. So this is data that only applies to kids at
25 Wyandotte County that had taken the Kansas assessment

1 before this last year?

2 A. Yes, in part.

3 Q. Does this include 2000 -- go ahead. I'm
4 sorry.

5 A. So for Wyandotte High, it would include
6 students that had previously tested in the cohort in
7 grade 11 as freshmen or sophomores. It would also
8 include students that took one of the other forms of
9 the assessment, the alternative or the KAMM, and it
10 would possibly include some other students that for
11 some reason a local decision was made to have them
12 take the state assessment instead of the ACT.

13 Q. So you could have kids that -- where their
14 scores were banked because they had taken it before
15 this last year, so it would apply to this year, but
16 that would be one category?

17 A. Yes.

18 Q. Then you said you could have kids that took
19 one of the alternate tests that we talked about by
20 way of illustration was the --

21 A. Yes.

22 Q. -- test that might be available for a
23 special ed kid, right?

24 A. Yes.

25 Q. These numbers, would it be possible then to

1 compare these numbers without the kids that took the
2 ACT test to previous years' test where everything was
3 Kansas assessment tests?

4 A. I wouldn't feel comfortable making that
5 comparison with any valid inference.

6 Q. And I was talking about the state tests. I
7 think you probably know how this works, but so that
8 we go through it real quickly, we've been looking at
9 pretty much the first pages of these. They go for
10 3rd grade, 4th grade, and we have the data,
11 aggregated data, through all grades plus high school;
12 is that right?

13 A. Yes.

14 Q. Once again, KCK, where we got the ACT test,
15 how did it work for the middle school in KCK?

16 A. They take the EXPLORE. The 8th graders
17 took -- the prop to the ACT called the EXPLORE.

18 Q. Same issue then for KCK -- trying to find it
19 here. We got KCK subgroup reading. I think this is
20 statewide. How do we have numbers reported then in
21 8th grade for KCK?

22 A. Once again, students may have taken the
23 alternate or the KAMM assessment, and for some
24 reason, they may have taken another assessment or the
25 state assessment for some reason.

1 Q. Again, if we're looking at the 8th grade,
2 will that also be the same for the 7th grade, 7th and
3 8th?

4 A. No.

5 Q. Where is there a cutoff in terms of middle
6 school when they start using the ACT EXPLORE?

7 A. 8th grade.

8 Q. So 7th grade down, it's the Kansas
9 Assessment Test, 8th grade up, it's something else?

10 A. Yes.

11 Q. So when we look at these 8th grade scores,
12 is there any way to reliably compare the 8th grade
13 scores of this last year to the preceding years in
14 KCK?

15 A. No.

16 Q. Then in Exhibit 1230, and I think Exhibit
17 1230 is percentage proficient by subgroup by grade,
18 state, and that seems to duplicate some of the
19 material that we had before, and that's why I think I
20 saw some slight difference. So again, this would
21 read the same way. It tells us the number of kids,
22 the percentages of the kids that pass the -- whether
23 it's a reading or passed the scores on the kids for
24 proficient or above on the reading and math tests and
25 then by subgroups?

1 A. Yes.

2 Q. And there's also a slightly different
3 looking version. It's not a very good picture of
4 this. Got a better copy over there, but we've also
5 looked at it by just showing the grade levels, the
6 totals taken, and the percentages in a different
7 format?

8 A. Yes.

9 Q. Exhibit 1211 is an attempt to pull
10 together the -- this one's for Wichita -- the scores
11 from 2003 through 2011 in the various grades, and I'm
12 going to ask you to verify this, but I just want you
13 to explain what would we look to if we wanted to pull
14 this together? Would we look to the report cards?

15 A. Yes.

16 Q. So you'd take the report cards, and the
17 report cards existed as far back as 2002, 2003?

18 A. I think before that, actually.

19 Q. Yeah, so you could take those report cards
20 and say, everyone that meets or exceeds, and record
21 those numbers, and then over time for those different
22 grades, you'd be able to see how the tests have
23 progressed, but there was a change in 2006; is that
24 right?

25 A. Right, a different test in 2006.

1 Q. And what was the change in 2006? You say
2 there's a different test, but what was the change?

3 A. Multiple changes.

4 Q. Okay.

5 A. One is that we started testing more students
6 in multiple grades. Previous to 2006, we tested
7 reading in 5th grade, 8th grade and 11th, and math in
8 4th grade, 7th grade and 10th grade. We were
9 required then to expand testing 3 through 8 and once
10 in high school, which we did. We're also new
11 standards. So we had new standards that had been
12 developed and were used to construct the test. The
13 test model was different, also, so it's a different
14 type of assessment.

15 Q. How was it worked out to try to compare then
16 what the kids were doing in the test they took in
17 2005 as opposed to the test in 2006?

18 A. So for in 2005, you aggregate the scores
19 that you have. In reading that would have been all
20 5th graders, all 8th graders, and all 11th graders.
21 In 2006 you have a larger pool, which would represent
22 3 through 8 and 11th grade. So in 2006 the 3rd
23 graders and 4th graders and 6th graders and 7th
24 graders are all thrown in with the others.

25 Q. Are they being tested under -- over

1 different standards in 2006 than they were in 2005?

2 A. Yes.

3 Q. Well, how is that accounted for, the change
4 in standards as far as the testing goes?

5 A. Well, what we did in the report card is we
6 actually visually created a break in the timeline to
7 remind people that there were different tests that
8 were given.

9 Q. At its core, these standards are designed to
10 test what -- or these tests rather?

11 A. Test the standard.

12 Q. The tests you're trying to design to test
13 what?

14 A. Depending on the standard, that particular
15 content. You have a group of content experts in the
16 field. These would be classroom teachers, curriculum
17 experts, principals, superintendents, college
18 professors, those kinds of people who are recognized
19 statewide as being content experts. They decide what
20 out of standards is most important knowledge to --
21 for a student to have, and then the test focuses on
22 that. Otherwise it would be way too long.

23 Q. What was the, if you know, the big change
24 between '05 and '06 in terms of what they were trying
25 to test for?

1 A. The biggest change was in specificity.
2 Previous to '06, it was difficult for a teacher to
3 understand exactly what was being tested. They had
4 the standards, but the standards were somewhat
5 general in the terms of reading.

6 With '06, we actually became very
7 transparent so that a teacher knew that comprehension
8 was being tested, and comprehension meant, among
9 other things, the ability to understand main ideas as
10 opposed to supporting details, and they would even
11 understand exactly how those questions looked to
12 students, so the transparency and the clarity of
13 those questions. And then we organized the tests so
14 there was enough information around each tested
15 indicator, so the teacher could make instruction
16 decisions about the student.

17 So for an example I was using, a main idea
18 and supporting detail, if a student missed all four
19 of the questions on that test form on that, the
20 teacher could then understand that that student
21 didn't have that concept and needed to be re-taught.
22 That was a huge difference between those two tests.

23 Q. I want to show you what I'll mark as
24 Exhibit 1231.

25 (Defendant's Exhibit Number 1231

1 was marked for identification.)

2 MR. CHALMERS: I'll show it to
3 Mr. Rupe first.

4 Q. (By Mr. Chalmers) Which adds the last
5 column for 2012, this preliminary data to the chart
6 that is already in evidence showing the test scores
7 proficient above 2003 through 2011.

8 MR. CHALMERS: Do you have any
9 objection to this?

10 MR. RUPE: Can I have a copy of it?
11 There's your original. I'll take your word for it
12 that you got the -- didn't do any transposition
13 error, so I don't have a problem -- sorry, I don't
14 have a problem with 1231.

15 JUDGE THEIS: Is that something
16 newly marked?

17 MR. CHALMERS: Yeah, it's newly
18 marked, Your Honor.

19 JUDGE THEIS: It's admitted.

20 (Defendant's Exhibit Number 1231
21 was admitted.)

22 Q. (By Mr. Chalmers) I'm going to put it up on
23 the screen, 1231. Figure out how to zoom in. We
24 talked a moment ago about how we could take over time
25 and look at the proficiency level and see how it has

1 changed, and what this does is simply adds those
2 numbers for the year 1212 (sic). And then there's an
3 average, and I want to talk to you about it in a
4 second. And these are for 4th grade math, 7th grade
5 math, and high school, reading, 5, 8, and high
6 school. Those are the tests that are used for the
7 purposes of calculating AYP; is that right.

8 A. Yes.

9 Q. I mean, there are other tests. Well,
10 actually, I guess we used more back before the change
11 in 2006 when we added a number of different tests.

12 Those were the tests that were used for AYP?

13 A. Before 2006, we didn't calculate AYP.

14 Q. My mistake. Before 2006 --

15 A. Those were the grades.

16 Q. -- these were the grades that were
17 administered?

18 A. Yes.

19 Q. You're familiar -- just generally familiar
20 with the LPA study that was done concerning the cost
21 of education and provided to the legislature in 2006?

22 A. Yeah, vaguely.

23 Q. At the time that was prepared in 2006, the
24 tests that were being administered in the state were
25 these tests, the three in math, the three in reading,

1 and of course, there was a graduation rate; is that
2 your understanding?

3 A. Yes.

4 Q. And based on your review and analysis of the
5 Kansas test scores, has there been a progressive
6 improvement on kids meeting proficiency in the
7 state --

8 A. Yes.

9 Q. -- over the years? The present test, is it
10 being redesigned?

11 A. Yes.

12 Q. What is the purpose of the redesign, and
13 what's being done?

14 A. The board adopted new standards, and so a
15 redesigned test is necessary to test the standards.

16 Q. What are the new standards that were
17 adopted?

18 A. The Kansas Common Core Standards generally
19 called in English language arts and mathematics.

20 Q. When did the redesign work start on the test
21 for the Common Core Standards?

22 A. Last year some time.

23 Q. What's been done as far as designing a test
24 for the Common Core Standards?

25 A. Kansas has joined a regional consortium of

1 states called Smarter Balanced Assessment Consortium
2 funded by a federal grant to design an assessment.
3 Since we have common standards, we can use common
4 assessments.

5 Q. Have the tests been issued yet?

6 A. No.

7 Q. Well, what will be the -- what's the
8 timeline, and what's the expectation as to how those
9 tests will then be developed?

10 A. We expect to have items to pilot next year.
11 We expect to have a test -- we call it a drafting, to
12 pilot in 2014, and we expect full implementation of a
13 mature instrument in 2015.

14 Q. So the first test you expect for the Common
15 Core Standards will be 2015?

16 A. Yes.

17 Q. Before 2015, will the test -- will there be
18 multiple tests provided then during the pilot time
19 period?

20 A. That still hasn't actually been determined
21 how they'll do the pilot. Looks like in '13 they'll
22 be taking volunteers and offering just items to be
23 piloted. In '14 we hope that there is a legitimate
24 pilot test, and we've requested from the federal
25 government to use that pilot test for accountability

1 rather than force everybody to take two tests.

2 Q. The pilot test results, will that go through
3 the same vetting process that the test went through
4 when it was last put in place back in 2006?

5 A. Yes.

6 Q. So that will include what process again and
7 just in summary?

8 A. There's a federally designed peer review.
9 That is a group of nationally recognized assessment
10 experts who will look at the psychometric form of the
11 test and determine whether it meets the nationally
12 accepted standards for test development and whether
13 appropriate processes were used to achieve that end.

14 Q. What does psychometric mean?

15 A. It's the study of assessment.

16 Q. What's a mapping test?

17 A. I assume you mean a test that it's actually
18 a mapping study.

19 Q. Mapping study, I'm sorry. What's a mapping
20 study?

21 A. That would show you how one assessment
22 relates to another.

23 Q. Has there been a mapping study done to your
24 knowledge to the Kansas -- the present Kansas
25 assessment test to what a Common Core test would look

1 like?

2 A. No.

3 Q. Would it be possible to do such a mapping
4 test?

5 A. Yes.

6 Q. Well, before the test, the Kansas test, is
7 designed?

8 A. The current Kansas test could be mapped to
9 another test. Before the Smarter Balanced test was
10 designed, it wouldn't be possible

11 Q. What is the Smarter Balanced test?

12 A. That's the test that the Smarter Balanced
13 Assessment Test Consortium is building that Kansas
14 has decided to use for their new assessment.

15 Q. So that would be the test used to test the
16 Common Core Standards?

17 A. Yes.

18 Q. Well, this Smarter -- I'm sorry, I wrote it
19 down. I can't read my own writing -- Balanced test,
20 is there a way to map the Smarter Balanced test to
21 the Kansas assessment test that's presently in place
22 until the Smarter Balanced test is completed?

23 A. No.

24 Q. There has been discussion in some testimony
25 about comparison of the Kansas assessment tests to

1 NEAP. You said NEAP was The Nation's Report Card.
2 Are you familiar with the discussion of attempts to
3 map or to study the relationship between the Kansas
4 assessments and the NEAP tests?

5 A. I am.

6 Q. Is that a valid comparison? Can those two
7 tests be compared?

8 A. Not in my opinion.

9 Q. Why not?

10 A. They test different constructs.

11 Q. What does that mean?

12 A. When I was giving the example of how you
13 test comprehension in reading, and one way to do it
14 is to see whether a student can understand the
15 difference between the main idea of a passage that
16 they read and supporting detail. That's what we mean
17 by a construct. We're actually looking to see if a
18 student knows that.

19 When the NEAP tests comprehension in reading
20 in some say cases, not in all cases, they test
21 different constructs within the reading domain.
22 That's one reason.

23 The second reason is the Kansas assessment
24 is designed as the special tool to use for
25 accountability, and the NEAP test is designed

1 differently as a tool -- aspirational tool for -- to
2 provide information to the legislatures.

3 Q. What does aspirational tool mean?

4 A. Where we'd like people to be.

5 Q. And in the Kansas test, it's designed to
6 say, are you at where we decided you need to be?

7 A. Are you high enough that we can certify that
8 your educational program is at least adequate to meet
9 the needs of Kansas kids.

10 Q. While we're on the topic of NEAP, that the
11 Center for Educational Statistics will gather data,
12 and they'll report that data, and it is that data
13 that is relied upon in the educational field?

14 A. I guess I don't know how to answer that. We
15 don't rely on it.

16 Q. Well, those people that are involved in the
17 study of education looking at aspirational goals, is
18 the NEAP data something that is relied upon?

19 MR. RUPE: That's leading, and he's
20 already answered that they don't rely on it. I would
21 object.

22 JUDGE THEIS: Overruled. You can
23 answer.

24 A. Yes, people use that data for various
25 purposes.

1 Q. (By Mr. Chalmers) I have marked Exhibit
2 1232, which I'll --
3 (Exhibit Number 1232 was marked for
4 identification.)

5 MR. RUPE: Is this new
6 information?

7 MR. CHALMERS: Show the witness. I
8 don't think it's new information, but it's a new
9 marked exhibit.

10 Q. (By Mr. Chalmers) Can you identify that as
11 data from NEAP concerning its test scores?

12 A. It appears to be the case.

13 Q. In Dr. Podgursky's testimony, there was a
14 mistake counsel pointed out in the data, and this
15 would include the Kansas information in providing
16 both the Kansas scores as well as the deaggregated
17 numbers that would give the correct number, so I move
18 for admission of exhibit.

19 MR. RUPE: I'd ask permission to
20 voir dire the witness.

21 JUDGE THEIS: Go ahead.

22 Q. (By Mr. Rupe) You indicated that NEAP
23 information is used by various entities for various
24 reasons in terms of what you rely on. Do you rely on
25 NEAP data?

1 A. No.

2 MR. RUPE: I would object to the
3 brand new exhibit and object to the foundation for
4 the exhibit from this witness.

5 JUDGE BURR: Let me ask you a
6 question. Does this have something to do with the
7 error -- there apparently was an error in the
8 African-American --

9 MR. CHALMERS: Yeah.

10 JUDGE BURR: -- indication that
11 they were doing higher on the test that you pointed
12 out, Mr. Rupe.

13 MR. RUPE: I did.

14 JUDGE BURR: Is that what we're
15 talking about here?

16 MR. CHALMERS: I didn't plan on
17 visiting with this witness. I'm just laying the
18 foundation, which I think I have to get past the
19 hearsay objection. That it's something that is a
20 commercial document that's relied on by people in the
21 industry, and I think he's said that. And then it
22 has the corrected number that for whatever it's
23 worth, that's all it is.

24 JUDGE THEIS: It's essentially in,
25 in another form, and I think you can cross-examine

1 him as to why it's not relevant or reliable.

2 MR. RUPE: And I would add hearsay
3 to it because I don't think I can cross-examine him
4 on it because he doesn't rely on it.

5 JUDGE THEIS: You can certainly
6 about the principles, about NEAP, and the assessment.

7 MR. RUPE: Thank you, Your Honor.

8 Q. (By Mr. Chalmers) You are on a committee
9 with NEAP, I think you indicated. Are you familiar
10 with how kids are selected for a testing in NEAP?

11 A. Yes.

12 Q. How are they selected?

13 A. It's a stratified random sample.

14 Q. Can the system be gamed? That is, can
15 districts kind of select the kids they want and say,
16 here you go take the test?

17 A. No.

18 Q. How is that prevented?

19 A. There's a pool of students that they're
20 giving -- in a small number of cases, they can ask
21 that the student not be tested if the student has
22 some reason for that. Illness could be a reason.
23 Disability, lack of appropriate accommodations,
24 parent objection, if that happens, that's noted as
25 part of exceptions.

1 And so the data of when states exempt
2 students is also part of the NEAP information that's
3 out. So you know not only the information that
4 you're presenting, but you also know inclusion and
5 exclusion rate for states.

6 Q. I want to switch gears with you and talk to
7 you about Exhibit 1129. Let me give you a copy of
8 it. It's a thick exhibit, but I don't want to talk
9 to you about all of it. The exhibit is the Kansas
10 ESEA Flexibility Request dated February 27, 2012.
11 What is the Kansas ESEA Flexibility Request?

12 A. The Elementary and Secondary Education Act,
13 Flexibility is an opportunity for states to request
14 changes in the accountability structure first
15 implemented Under No Child Left Behind legislation.
16 Kansas took advantage of the opportunity and
17 presented a plan to the federal government to do just
18 that.

19 Q. I want to focus on a few parts of this
20 document and talk to you first of all about page 18,
21 if you could turn to that?

22 At page 18 there's a paragraph that starts,
23 overall, Kansans do well on accountability measures.
24 It says of 1,367 public schools in Kansas in '10/'11,
25 11 -- or 1,150 made adequate yearly progress and 217

1 did not. It then proceeds to go ahead and have a
2 discussion of those, and I don't want to spend your
3 time or the Court's time reading it, but do you agree
4 with the proposition from your study and your
5 involvement in your position that overall, Kansas
6 students do well on the accountability measures that
7 we have in place?

8 A. Yes.

9 Q. And that they have actually been improving
10 in terms of their performance on those accountability
11 measures over the years?

12 A. Yes.

13 Q. What is the Assessment Performance Index?

14 A. The Assessment Performance Index is a
15 calculation that Kansas is proposing to the federal
16 government to get a better look at how students
17 perform across the entire spectrum of the assessments
18 rather than just at the needs standards area. What
19 it's designed to do is to give schools credit for
20 students moving between exceeds standards and
21 exemplary, or moving from academic warning to
22 approaches standards.

23 The current system really only gives schools
24 credit as the student moves across the meets
25 standards threshold. So API gives kind of like a

1 chart that -- there's a certain number of points for
2 each kid, and if a student moves from exceeds
3 standards to exemplary, you get some additional
4 credit. You wouldn't get that now.

5 Q. By way of illustration, if we look at
6 Exhibits 118 and 1154, they're both in evidence.
7 Right now, the AYP looks only at whether you cross
8 proficiency level, right?

9 A. Yes, needs standards and above.

10 Q. So we don't know if there are kids that are
11 at the academic warning category and how many of them
12 are moving up to approaches standards, and we also
13 don't know how many of these kids are in the exceeds
14 standards or exemplary and how that's doing, is
15 that --

16 A. Well, we know.

17 Q. But we don't --

18 A. We don't credit schools for it.

19 Q. And we don't analyze it for purposes of AYP?

20 A. No.

21 Q. Let me show you what's been marked in the --
22 or page 40, rather, of Exhibit 1129. There's an
23 Assessment Performance Index, and I think you
24 mentioned that again. Is this figure or table
25 describe how that -- how there's an attempt to try to

1 bring into play all categories of performance?

2 A. Yes.

3 Q. And that -- well, if you could just maybe
4 work through that real quickly, so since we've
5 already discussed it, the Court will understand how
6 it will work.

7 A. This is an example where using a school of
8 66 students, an assessment pool, 15 of them are
9 exemplary. 22 are at exceeds standards. 20 at meets
10 standards, seven and two. You see the corresponding
11 point assigned to each standard and then a total. If
12 you just assigned -- of the 57 students at or above
13 standard, if you gave them all the same number of
14 points, the school would look exactly the same as the
15 school who had 57 students that meet standards and 0
16 at exceeds and 0 at exemplary.

17 So this table shows a finer tuning of the
18 accountability spectrum for schools that are moving
19 students not just above the minimal proficiency but
20 higher up into exemplary categories.

21 Q. There are -- at page 36 of the exhibit --
22 some samples, and I want you to describe for the
23 panel what these might reflect.

24 A. The ESEA Flexibility Request that Kansas
25 submitted has three areas. It actually has four

1 now. They're just not represented on this paper, but
2 three areas of annual targets. One target is around
3 achievement, and you can see there.

4 Q. This first one. Yeah.

5 A. Second one is around the growth or gain of
6 students over time, and the third one is about
7 reducing the gap between the lowest and the highest
8 performing student groups.

9 Q. And it is proposed, or is it proposed that
10 these will be the sort of reports that will be made
11 in place of, or in addition to, the information on
12 the report card that will allow people to see how all
13 groups are moving over time?

14 A. Yes.

15 Q. You talked about this gain or growth real
16 quickly. What -- this isn't the best blow-up,
17 obviously, but what will that show, or how will we
18 interpret that?

19 A. That particular chart shows the growth of --
20 I think that's actually an example for a school
21 district, so each dot represents a school, and as
22 they're growing, that's the correct direction is up
23 and to the right.

24 Q. We want to have as many here as we can?

25 A. Yeah. So without getting very technical

1 about it, it shows you how your buildings in this
2 case are growing.

3 Q. Now, using the API, there has been an
4 analysis, has there not been done, of historical
5 Kansas data?

6 A. Yes.

7 Q. And if we turn to page 42, what is that?

8 A. That's a bar chart that shows the
9 distribution of student scores for each of the
10 various years that are indicated there next to them.
11 The significance of the chart is that as you go from
12 top to bottom, you see the curve become higher. So
13 students are concentrating, and you see the center
14 move to the right. This is designed to show the
15 intended function of the accountability system to
16 move a student population from left to right and
17 grouping them closer to the mean.

18 Q. So this would have been back in 2000, and it
19 would have shown -- these little bars would have
20 shown what? Would those reflect the number of kids
21 that tested around under your API index, that area?

22 A. Each bar is a score report. Without seeing
23 the background data to it, I can't tell you the
24 disaggregation, but whatever the researcher thought
25 was appropriate.

1 Q. What this would reflect is, you say, when it
2 gets higher, what does that mean?

3 A. See how there's fewer students to the left?

4 Q. Mm-hmm.

5 A. That means more students are doing better.

6 Q. Fewer students here, the more collected the
7 graph, more kids are doing better?

8 A. Okay. See how few students in 2000 are on
9 the right? Just follow straight down, see how many
10 more students are on the lineup under that? So what
11 we've done is we've shifted the entire population to
12 the right. That's the intended purpose of
13 educational reform.

14 Q. And would this then reflect that for the
15 years from 2000 to 2011, that in addition to
16 proficiency, the kids, more kids being more
17 proficient, that there's also a positive movement for
18 all kids across all levels of the spectrum of the
19 test?

20 A. Generally all, yes.

21 Q. Would you look at page 31 of the waiver, and
22 there's the category, component one achievement
23 measures. There's a paragraph that begins, since the
24 enactment of No Child Left Behind, Kansas schools
25 have made significant progress in the advancing of

1 students not only across the proficiency line but
2 into the highest two performance levels. And there's
3 more information that goes after that. Is that a
4 statement that you agree with?

5 A. Yes.

6 Q. Since 2006 Kansas has been collecting data
7 from these tests. Is the data collected -- is it
8 actually drilled down so it can be student specific?

9 A. Yes.

10 Q. Now, I know that it's not reported. We've
11 talked about that. But as part of the waivers, is
12 there discussion of how student specific data might
13 be used?

14 A. Yes.

15 Q. And what is that discussion?

16 A. For most of the calculations, four years of
17 student data is the preferred way to do the
18 calculation because it provides more stable numbers.

19 Q. Has that been done before? Have they looked
20 at student data with the student over time as opposed
21 to just separately?

22 A. Not for purposes of accountability.

23 Q. Why would it be, again, desirable to look at
24 student performance over time?

25 A. Partly political. People feel that the

1 assessment is -- doesn't -- doesn't provide a true
2 picture of what's going on in the classroom.

3 Q. Now, is there also discussion of how this
4 individual data may be used by teachers in
5 classrooms?

6 A. Yes.

7 Q. And what's that discussion?

8 A. To make instructional decisions.

9 Q. Well, how would they make instructional
10 decisions using that data?

11 A. If you know that a student is weak in a
12 particular area, you can use that information to
13 modify your instruction. If you know a student has
14 not responded to a particular kind of instruction,
15 you can use that information to modify your pedagogy.

16 Q. Is this something new? Haven't teachers
17 been putting in individual data now for kids for a
18 long time?

19 A. Yes.

20 Q. But it's now -- was it available before
21 2006, though?

22 A. Not in the format you were showing on the
23 screen.

24 Q. And so would the format have been available
25 back before 2006?

1 A. Teachers would have had to construct their
2 own.

3 Q. As we see students improving on Kansas
4 assessments, since we looked at the data under this
5 Assessment Performance Index, do you see any
6 correlation between the improvement that we've
7 discussed and the availability of individual student
8 data to teachers?

9 A. Yes, I think there's a connection.

10 MR. CHALMERS: I don't have any
11 other questions. Thank you.

12 MR. RUPE: We can take our morning
13 break, and then I'll do cross.

14 JUDGE THEIS: Okay.

15 About ten till.

16 (A recess was taken.)

17 JUDGE THEIS: Be seated. Thank
18 you.

19 MR. CHALMERS: Your Honor, the
20 court reporter points out that if there was a ruling
21 on the admissibility of 1232, that maybe she didn't
22 hear it. That's the --

23 JUDGE THEIS: I didn't. I don't
24 recall someone asking, but --

25 MR. CHALMERS: That's the exhibit

1 that deals with the NEAP data. I think Mr. Rupe had
2 objected and --

3 JUDGE THEIS: I thought I admitted
4 that.

5 MR. CHALMERS: That was my
6 understanding, too. I just need to have a record.

7 (Defendant's Exhibit Number 1232 was admitted.)

8 JUDGE THEIS: I wasn't sure what we
9 were talking about when we were talking about the ESEA,
10 what number that was.

11 MR. RUPE: 1129. 1129, that's where
12 we're going to start.

13 JUDGE THEIS: Okay.

14 CROSS-EXAMINATION

15 BY MR. RUPE:

16 Q. Dr. Foster, in 1129, would you turn to page 18?
17 And maybe the best way to do this is -- because I got a
18 couple of questions about this page. This is from -- is
19 this the waiver, is that what this is called, the
20 application for the waiver?

21 A. Yes, although there are multiple waivers, you
22 have to kind of be a little careful, but that's what we
23 say generally speaking.

24 Q. And what was the application for the waiver
25 from?

1 A. Say ...

2 Q. What were we trying to get a waiver from?

3 A. The current NCLB accountability rules.

4 Q. And those are the rules that have the annual
5 yearly progress --

6 A. Yes.

7 Q. -- contained within them?

8 A. Yes.

9 Q. All right. And those same rules are
10 embedded in the QPA standards, true?

11 A. Yes.

12 Q. Now we come to 18. Page 18, and this says
13 in the introductory paragraph, I think, so this is
14 early on. It says, overall, Kansas students do well
15 on accountability measures. And then it says, of the
16 1,367 public schools in Kansas in 2010/'11, 1150 made
17 adequate yearly progress, and only 217 did not. Of
18 the 286 districts that year, 211 made AYP, and 78 did
19 not; is that accurate?

20 A. Yes.

21 Q. And then it's got what the disaggregated
22 assessment scores are, which we've gone over, and
23 then, I want to ask you about the next sentence there
24 that I have highlighted. Poverty in Kansas ranges
25 from 0 to 100 percent with the average at 48.69

1 percent. There are approximately 34,000 licensed
2 teachers in Kansas. Both rural and urban districts
3 face unique challenges relating to poverty and
4 retaining high quality educators.

5 In terms of unique challenges relating to
6 poverty, does that have anything to do with the
7 increase in the number of at-risk free and reduced
8 lunch kids that has occurred over time in Kansas?

9 A. Yes, that's how they determine poverty.

10 Q. In terms of the -- it doesn't mention the
11 challenge of ELL students, but can we agree from
12 looking at Exhibit 107 that there has been an
13 increase in Kansas in the ELL population?

14 A. Yes.

15 Q. And then it mentions increasing the number
16 of students who are college and career ready as the
17 driving force to the systemic changes that are
18 occurring. And what I'd like to ask you is, explain
19 to the Judges what that means, increasing the number
20 of students who are college and career ready is the
21 driving force to the systemic changes that are
22 occurring.

23 A. There's been a shift in focus of the
24 accountability systems from having students competent
25 to move on to the next level in school. That is,

1 what does a 4th grader need to know and be able to do
2 to become a 5th grader? And this focus has shifted
3 to, what do students need to be able to do to be
4 college and career ready, to be ready for a career
5 and ready to succeed in college? And to the average
6 person, that may not seem like a big shift in focus,
7 but it turns out it's a big shift in focus for
8 curriculum standards and accountability systems.

9 Q. Is this any way connected to Common Core?

10 A. Yes.

11 Q. Explain to the Judges how it's connected to
12 Common Core.

13 A. It was the fundamental base for creating the
14 vertical and horizontal alignments that make up the
15 Common Core Standards.

16 Q. I want to draw your attention to my high-
17 tech visual over here because if this purple square
18 is grade level progress, can we agree that Common
19 Core is a more rigorous standard?

20 A. Yes, I always have a little problem with the
21 word rigorous, but it's certainly a different
22 standard that will require more apt students as they
23 move forward through the system.

24 Q. While you may not be comfortable with the
25 term rigorous, can we agree it's a higher bar?

1 A. Yes.

2 Q. Then turn to page 19 in 1129, and it said
3 previously, in 2008 -- I'm after the numbered
4 paragraphs there. Previously in 2008, the Kansas
5 State Board of Education had adopted initiatives
6 integrating academic context -- content, I apologize,
7 and career/technical education standards and
8 requiring career planning and awareness. The intent
9 was to address workforce development, career
10 education preparation, and student acquisition of
11 21st century skills.

12 Would you explain what that means to the
13 Judges, please?

14 A. Yes, in 2008 the state board adopted a
15 series of initiatives that were designed to bring
16 academic standards and current technical competencies
17 together in a unified system. And the idea was to
18 get students to turn their attention towards the
19 purpose of their education and increase not only
20 student awareness of how education impacts their
21 ability to succeed in college and pursue a career,
22 but also increases student engagement in the whole
23 educational process. So there are really three areas
24 there that you're talking about 21st century skills.
25 It is kind of shorthand information for the kinds of

1 skills that business and industry leaders are saying
2 are necessary for America to be competitive in the
3 economic marketplace now.

4 Those skills would be such as creativity,
5 critical thinking, problem solving, the ability to
6 work in teams, communications skills.

7 So that's a whole different skill set than
8 we've been talking about before, a much higher
9 cognitive level set of skills. And to bring those
10 together with the basic academic skills in reading,
11 math, and science, and so on together with career and
12 technical education competencies provides an
13 authentic application of an academic skill leading to
14 a 21st century competency.

15 Q. And then on page 20, I think it states in
16 the second paragraph, now that Kansas is moving to
17 more rigorous college and career ready standards with
18 the Kansas State Board of Education adopting the
19 Kansas Common Core Standards in the English language
20 and mathematics and the next generation of
21 assessments, the call from the field and various
22 stakeholders to change the accreditation system has
23 been heard. I take it you didn't use the word
24 rigorous in that sentence?

25 A. I didn't write that paragraph.

1 Q. Do you agree with it?

2 A. Yes.

3 MR. RUPE: Okay, now, Mr. Chalmers,
4 on 1029, could I borrow your page 36 and 42 because
5 mine is not easily put on the Elmo? No, 1129, page
6 36 and 42.

7 MR. CHALMERS: 36?

8 MR. RUPE: And 42.

9 MR. CHALMERS: Here's 36.

10 Q. (By Mr. Rupe) And Dr. Foster, if you would
11 turn in your Exhibit 1129 to those two pages, I've
12 got a few questions about this. First of all, to
13 just get a context of the years -- and these are not
14 assessment scores. These are dollars. But during
15 the time frame after 2005, do you recall that the
16 Kansas Legislature had a substantial investment in
17 education for about three years before they began
18 making some cuts?

19 A. Yes.

20 Q. And based on this, I think we've agreed that
21 the first year of the three-year -- or the first year
22 of the actual money was in '05/'06. '06/'07 was the
23 first year of the three-year plan, and then '07/'08
24 was the second year of the legislature's three-year
25 plan. Third year was '08/'09. Then a series of cuts

1 began the end of '08. They became effective in
2 February of '09, and then '10, '11, '12, there were
3 cuts followed by a modest increase in '13. Do you
4 see this?

5 A. Yes.

6 Q. And I'm looking at Exhibit 233. So I want
7 to concentrate on these years when there was funding
8 and then into the current situation.

9 And I want to ask you in terms of your
10 document on page 42 if we see a shift to the right
11 during those years when the legislature was investing
12 money in education?

13 A. Yes.

14 Q. Now, if the Court wants to look at
15 information on the achievement gap, what is that?

16 A. That's a term that's used generally to talk
17 about the difference in achievement between two
18 groups. One group almost always being the general
19 population of non-free and reduced white students,
20 and the other group depending upon what the topic.
21 It might be Hispanics. It might be African
22 Americans. It might be students in poverty, so the
23 gap, academic gap, refers to that. If you're
24 referring to this page, it's slightly different.

25 Q. That's where I was going. Thank you. What

1 does it talk about in terms of gap reduction on page
2 36?

3 A. Gap reduction there refers to reducing the
4 difference between your lowest performing 30 percent
5 of the student population and the highest performing
6 30 percent of the state average.

7 Q. And because it's not clear on the years
8 here, let's get the years of these bars here. On
9 page 36 of 1129, what's the first bar year?

10 A. Those are made up numbers for purpose of
11 display.

12 Q. Well, what years do those represent?

13 A. Looks like they go '08, '09, '10, and '11.
14 They're showing how a gap reduction would work over
15 time. Under federal accountability, the waiver
16 process, we would be required -- schools would have a
17 target to reduce their gap in half by six years.

18 Q. I guess I'm not on track, and help me
19 because are these actual numbers showing the actual
20 closing of the gap?

21 A. No, this is just a display page to show the
22 federal government how we were intending to display
23 and report out to people in a way they could
24 understand gap reduction.

25 Q. Is that the same with the other two charts?

1 A. Yes.

2 Q. Okay. Let me just show you, so I think I
3 understand the achievement gap I was talking about in
4 terms of what you explained by way of subgroups, but
5 would Exhibit 106 where it shows the folks that are
6 below standard in the various subgroups, is that what
7 you mean by achievement gap?

8 A. Yes.

9 JUDGE THEIS: What's that number
10 again that you just held up?

11 MR. RUPE: 233.

12 MR. ROBB: 106.

13 JUDGE FLEMING: 106.

14 MS. GARNER: 106.

15 MR. RUPE: Talk about an
16 achievement gap. Sorry, Your Honor.

17 Q. (By Mr. Rupe) Let me move to some -- well, I
18 want to see 103 which is -- if we wanted to see for
19 example --

20 MR. RUPE: Would you hand him 103?

21 Q. (By Mr. Rupe) Just so I'm on track with what
22 we're talking about in terms of achievement gap. If
23 we wanted to see -- look at the assessments for
24 African American, on down at the right-hand corner
25 are Bates numbers achievement 000012, and I will

1 represent to you that the blue is AYP and the yellow
2 bar is the score for that year, the percentage score
3 for that year. If we were looking at the achievement
4 gap for African Americans, we'd want to compare what
5 this score was with all students?

6 A. Yes.

7 Q. Okay. And then certainly, we can look to
8 what this score was in terms of what AYP requires?

9 A. Yes.

10 Q. Let me look at some of the current
11 assessment data we asked you to bring here, and I
12 want to hand you Exhibits 412 through 416.

13 And incidentally, when we talked about the
14 preliminary assessment data, you talked about the
15 reliability or the -- I think your word was stability
16 of the numbers. In terms of looking at those numbers
17 on a district-wide basis compared to a building
18 basis, what's the stability comparison in the numbers
19 on the preliminary?

20 A. The larger the number the more stable the
21 result becomes, so larger districts would be less
22 likely to change.

23 Q. So if we're looking at somebody like Wichita
24 or Kansas City or a district that has a good number
25 of kids, we have a little more stability confidence

1 than if we drill down and look at individual
2 buildings?

3 A. Yes, Kansas City represents a unique
4 situation, though, because of their waiver.

5 MR. RUPE: Okay, then move for the
6 admission of 412, 413, 414, and 415, and 416, which
7 are excerpts from what Mr. Chalmers has already
8 introduced and from the data the witness produced.

9 MR. CHALMERS: Well, I don't know
10 that they're excerpts from the data the witness
11 produced and had 412 and '13. I think these are kind
12 of demonstrative aids. Is that what you're --

13 MR. RUPE: Sure, and I've pulled
14 the pages out of here to ask the witness questions
15 about it, and I've highlighted them so I could --

16 MR. CHALMERS: We've been letting
17 demonstrative aids in, Your Honor, and I don't have
18 any objections to 412 or 416.

19 JUDGE THEIS: Which exhibit did you
20 pull these out of? What exhibit did you pull them
21 out of?

22 MR. RUPE: It's from the data he
23 produced to us pursuant to his subpoena.

24 JUDGE THEIS: Does that have some
25 other markings?

1 MR. CHALMERS: 412 and 414,
2 Your Honor, come from the exhibits that were
3 introduced today, I think, as 1229 and 1230, plus --

4 JUDGE THEIS: 412 and 4 '16 will be
5 admitted then.

6 MR. RUPE: Okay. Thank you.

7 MR. CHALMERS: The others,
8 however, are from other exhibits and his
9 demonstrative. I don't object to them.

10 JUDGE THEIS: I'd kind of like to
11 know where they came from.

12 Q. (By Mr. Rupe) Okay. If we could, let's go
13 through Exhibit 412, and this is -- I'll represent to
14 you from the data that was produced as the
15 preliminary information, the 2011 preliminary
16 assessment data by state with subgroups and the date
17 of the run was June 22.

18 A. Yes.

19 Q. All right. Does this show in green who
20 makes the AYP target so all students at 87.6 percent,
21 white and Asian, in reading make AYP?

22 A. Yes.

23 Q. And does it show in red the subgroups, for
24 example, African Americans, 71.1, would not have made
25 AYP?

1 A. Yes.

2 Q. Okay, so on 412, the -- then we go to
3 reading the same information. The greens are making
4 AYP, and the reds are not?

5 A. Yes.

6 Q. Okay. And then we have Exhibit 413, which
7 is the preliminary assessment data by state with
8 subgroups for 2011/'12, as of 6-22-12, correct?

9 A. Yes.

10 Q. And this would have the reading and math
11 with the AYP one year waiver target, 8.6 percent, the
12 original being 90.7. So 413 is with the waiver.
13 Should the waiver be granted or with the waiver that
14 has been granted. Are you tracking with me?

15 A. No. Could you repeat that?

16 Q. Sure. Was there a one-year waiver granted?

17 A. Yes.

18 Q. For what?

19 A. For AYP targets.

20 Q. Okay, and the one-year waiver target is 86?

21 A. Yes, for that particular area. The original
22 would have been 90.7 for reading.

23 Q. And that's what this says.

24 A. Yes.

25 Q. I'm sorry. I was confusing. AYP one-year

1 waiver target of 86. The original target was 90.7?

2 A. Yes.

3 Q. So this is with the waiver that has been
4 granted, and again, the reds don't make it, and the
5 green do?

6 A. It looks like with the red you're talking
7 about the original target.

8 Q. Well, let's go through this because the
9 target is -- well, you may be right because here's
10 one that's 89.1, and the original target was 90.7,
11 but in terms of comparison, who made the target of
12 86? Let's identify those. Did all students?

13 A. Last chart.

14 Q. I'm sorry?

15 A. 412, I think, is the chart that does that.

16 MS. GARNER: 412 shows who made it
17 with the waiver. 413 is what made it with the ...

18 MR. RUPE: I got my charts mixed
19 up.

20 THE WITNESS: Yeah.

21 Q. (By Mr. Rupe) Let's go back and start over.

22 A. Okay.

23 Q. On 412, that is who made it with the waiver
24 target of 86?

25 A. Right, and that's currently in place.

1 Q. Right. And who did not, and the red being
2 who did not?

3 A. Correct.

4 Q. And then had the waiver not been granted, we
5 look at 413, and what's in red is, who did -- would
6 not make it based on the original target, and the
7 green is who would have?

8 A. Correct.

9 Q. I apologize for the confusion.

10 Now, what I've done on this chart, 416, is,
11 we have the regular AYP target in blue. Do you see
12 that?

13 A. Yes.

14 Q. And here, for example, in reading is the
15 90.7 target. But there was a waiver granted for one
16 year, and that waiver dropped the target to the same
17 as the previous year, 86?

18 A. Yes.

19 Q. And what this graph shows is what the
20 percentage of achievement was for reading assessments
21 for African Americans in the year 2012, see that?

22 A. Yes.

23 Q. And that chart I showed you earlier on the
24 funding, just for your information, the dollars that
25 came about as Montoy, and the cuts we talked about

1 are shown in red?

2 A. Yes.

3 Q. Do you see that? Okay. Now look at 414 if
4 you would. 414 is for all students' math
5 assessments. In terms of all students on math
6 assessments, did we reach the one-year AYP target of
7 82.3?

8 A. Yes.

9 Q. Okay. And then for white students, did we
10 make the AYP target for 2012?

11 A. Yes, if by 2012 you mean the waived?

12 Q. Yeah, the preliminary results we talked
13 about.

14 A. Yes.

15 Q. And in terms of free and reduced lunch, did
16 we meet the AYP one-year target?

17 A. No.

18 Q. In math assessments for Hispanics, did we?

19 A. No.

20 Q. In math assessments for African Americans,
21 did we?

22 A. No.

23 Q. Now, let's look at reading and reading
24 assessments, all students, did we make the AYP
25 target?

1 A. Yes.

2 Q. What about free and reduced lunch?

3 A. No.

4 Q. What about Hispanics?

5 A. No.

6 Q. And ELL learners?

7 A. Nope.

8 Q. And African Americans?

9 A. No.

10 Q. And that was from 415. So, I mean, even
11 with the waiver, it looks like we did not meet with
12 those subgroups other than whites and all the AYP
13 target?

14 A. Yes.

15 Q. Are assessments the only measure of student
16 achievement in Kansas?

17 A. You mean, are the state assessments the only
18 measure or just assessments in general?

19 Q. Yeah, state assessments --

20 A. No.

21 Q. -- is that the only measure of student
22 achievement?

23 A. No.

24 Q. Are there other measures of student
25 achievement?

1 A. Yes.

2 Q. Give me those other factors that are
3 measures of student achievement besides the
4 assessment.

5 A. Well, there are other assessments besides
6 the state.

7 Q. Okay.

8 A. And of course, our classroom assessments of
9 student achievement. And there are performance
10 assessments of student achievement.

11 Q. Explain what those are.

12 A. Those would be things students do as
13 opposed -- essays, for example, would be an example
14 of a performance.

15 Q. And I think we talked about this at one
16 point in your deposition, but in terms of information
17 by a classroom teacher as far as how they assess the
18 student's performance, the classroom teacher is in a
19 good position to do that, aren't they?

20 A. Yes.

21 Q. Are there things like graduation rates and
22 participation rates and attendance rates?

23 A. Yes.

24 Q. Let me look at Exhibit 101.

25 The score card where we talk about academic

1 indicators on the report card. There is information
2 about graduation rate and attendance rate that are
3 additional academic indicators; is that right?

4 A. Yes.

5 Q. And state assessments, by the way, do they
6 measure all factors of a complete education?

7 A. No.

8 Q. Are there factors that are both qualitative
9 and quantitative measures to determine information
10 about education?

11 A. Yes.

12 Q. What's the role -- explain to the Judges
13 what the role of a highly qualified teacher is in
14 NCLB.

15 A. NCLB requires all schools to have highly
16 qualified teachers according to -- there's different
17 levels, and so in the core content areas as they're
18 defined in the guidance, schools are required to have
19 100 percent of their teachers teaching those core
20 content areas highly qualified. And then there's
21 different scales for other content areas, and it
22 changes a little bit depending on the grade level of
23 the school. If they don't have 100 percent of their
24 teachers highly qualified, they have to begin -- they
25 have to create a plan and so on. There's some

1 consequences for them.

2 Q. Does the State of Kansas use any of your
3 assessment data in any way in determining the funding
4 of Kansas schools?

5 A. Not that I'm aware of. It's not really my
6 area.

7 Q. In terms of the Common Core, can we agree
8 that that is a seat change?

9 A. It'll be a significant shift for educators
10 in almost every area of education.

11 Q. Just so we identify it, by the way,
12 Exhibit 418, you have in front of you. I will tell
13 you that -- here, take mine. 418 is information
14 published from the web page of the Department of
15 Education. This was information that was requested
16 by one of the Judges, but just kind of walk through
17 that exhibit, would you, in terms of what it shows
18 and it's for 11th grade.

19 A. This is the report card, and you would --
20 somebody comes on the web site, and they would have a
21 number of options to pick to select the kind of
22 information they would want. For example, if you
23 selected the year 2010/'11 in this particular one,
24 you haven't -- at least on this first page, you
25 haven't identified the district. Later, you have

1 state results.

2 So this can go right down to the school or
3 district, in this case, the state. So then you
4 select the type of information you're interested in
5 looking at, all students in reading in 2010/'11. And
6 then you're shown a series of bar charts that show
7 different performance categories by color in the
8 selected grades, in this case, 11, and for various
9 student populations as indicated there next to each
10 bar chart.

11 Q. And I think, if you look back far enough,
12 you see that we have included district data in there
13 for the plaintiff districts, which would be Dodge
14 City, Wichita, Kansas City, Kansas, and Hutchinson?

15 A. Yes.

16 Q. All right. So let's just pull USD 259 and
17 look at the Bates number at the bottom right-hand
18 corner, 990147.

19 MR. CHALMERS: Those are all the
20 same.

21 MS. GARNER: It's like the seventh
22 page back.

23 THE WITNESS: I have it.

24 MS. GARNER: Okay.

25 MR. RUPE: Yeah, but help the lost

1 lawyer. What page are you on?

2 MS. GARNER: They don't have page
3 numbers.

4 MR. RUPE: Oh, they don't? Okay.

5 Q. (By Mr. Rupe) Try not to leave any lawyer
6 behind on this, so let me put up the page that is USD
7 259, the reading assessment results, and I just want
8 to -- since this bar chart is throughout, I just want
9 to walk through what the district is and then what
10 the state information is. So in the yellow, we have
11 what?

12 A. Academic warning.

13 Q. Okay, and the 90.8, that's a percentage?

14 A. Yes.

15 Q. And then in the purple?

16 A. Approaches standard.

17 Q. Okay. And then 43 percent in the green is
18 what?

19 A. Meets standards.

20 Q. All right. So the break line between
21 approaches standard and below and meets standard and
22 above is between the purple and the green?

23 A. Yes.

24 Q. And then you have the same information --
25 you being the department, has the same information

1 for the state for 2010 and 2011?

2 A. Yes.

3 MR. RUPE: Move to admit 418. I think
4 it was in that group, but if it wasn't.

5 JUDGE FLEMING: It was.

6 MR. RUPE: All right. Thank you.

7 JUDGE THEIS: If it's not, it is now.

8 (Plaintiffs' Exhibit Number 418 was admitted.)

9 Q. (By Mr. Rupe) By the way, we've talked about
10 this before, but do you agree that there is a
11 relationship between funding and achievement?

12 A. Yes.

13 Q. And I want to ask you about something else we
14 heard from one of the State's expert witnesses in this
15 case. He said that neither cut scores nor standards have
16 anything to do with actual student performance; do you
17 agree with that?

18 A. No.

19 Q. Why do you disagree with that?

20 A. Well, student performance on the assessment is
21 directly related to the cut score.

22 Q. A few last questions. Oh, who is the vendor
23 that you worked with to develop the assessments?

24 A. The Center For Educational Testing and
25 Evaluation at the University of Kansas is one of the

1 vendors.

2 Q. Okay.

3 A. The other vendor is WestEd from California.
4 WestEd developed the items and CETE put them together
5 into assessment forms and delivers them online to
6 school districts.

7 Q. And who is John Poggio?

8 A. John Poggio was the director for the Center
9 of Educational Testing and Evaluation at the time
10 when the assessments were developed.

11 Q. So he would know something about
12 assessments?

13 A. Yes.

14 Q. In terms of the timeline of the data, and I
15 think you said it was a period of time for school
16 districts to close the data, when does that window
17 close for the school districts to have any say-so in
18 the data?

19 A. I'd have to look on our latest. We've made
20 some modifications of the actual date because we've
21 had some trouble with the calculation. Sometime in
22 July, middle of July. It'll be later because of the
23 situation in three school districts that have the
24 federal waiver to use ACT. So it'll push that date
25 back. We're hoping -- we're hoping it's in July.

1 Q. And the districts that use the ACT, I think
2 there are three of them --

3 A. Yes.

4 Q. -- in the state? And Kansas City, Kansas,
5 is one of those?

6 A. Yes.

7 Q. And they had to get state board or
8 Department of Education approval in order to use that
9 as a measuring stick?

10 A. It was the Federal Department of Education
11 approval.

12 Q. Federal approval. But did the state board
13 have any say-so in that?

14 A. We -- we supported their application.

15 Q. Oh, on these different kinds of assessment
16 tests, you mentioned accommodation and then a couple
17 of others. How many of those statewide are actually
18 given of the others?

19 A. Five thousand, maybe.

20 Q. Out of how many?

21 A. Out of 240-plus thousand.

22 Q. Do you know -- does the department or your
23 group track on the 11th grade test who has taken the
24 test that has been banked?

25 A. Yes.

1 Q. What's that number?

2 A. I don't have that.

3 Q. Would it be a small percentage, or would it
4 be a huge amount?

5 A. It would be substantial. Many schools test
6 math in the 10th grade.

7 Q. Okay, so it would include 10th grade scores
8 and 9th grade scores?

9 A. Yes.

10 Q. Oh, we talked about this, but I just want to
11 make sure. In terms of actual student scores on the
12 assessments that were taken this year, those scores
13 don't change, do they?

14 A. Right, very, very rarely.

15 Q. What changes are things like the miscoding
16 that you talked about, or do you look at
17 participation rates, too --

18 A. Yes.

19 Q. -- in terms of whether those scores stay or
20 not?

21 A. Yes.

22 Q. And explain to the Judges what that means.

23 A. Schools are required to test at least 95
24 percent of their students, so that's called a
25 participation rate. It's very high in Kansas. But

1 schools still have to meet that requirement, and
2 sometimes they have to re-code. There's coding
3 errors. I used an example this morning where a
4 school had miscoded the grade level of all their
5 students in one grade, and so they were showing up as
6 not making participation.

7 Q. You have some interesting numbers on
8 professional development and amount of money spent on
9 professional development by education. Would you
10 share that information with the Court?

11 A. My understanding --

12 MR. CHALMERS: I'm not sure that
13 this is within the scope of direct.

14 MR. RUPE: Well, I'll call him as
15 my witness for the purpose of this question.

16 JUDGE THEIS: It isn't within the
17 scope, but the question is whether he's going to get
18 it conveniently or not conveniently.

19 MR. CHALMERS: Yeah, I really
20 wasn't going to object on that basis. My problem was
21 that I think he probably hasn't laid a foundation for
22 the question the way it's been phrased.

23 JUDGE THEIS: You might ask him his
24 source.

25 Q. (By Mr. Rupe) What's your source of

1 information?

2 A. There have been a number of studies done on
3 professional development and the cost associated with
4 them. Now, the studies include the relative amounts
5 of money spent for professional development for
6 private industry versus education.

7 Q. Okay, and as part of your responsibility and
8 what you do in your job, do you keep track of those
9 studies?

10 A. To some extent, yes.

11 Q. Explain to the Court what the comparison
12 is.

13 A. The amount of money expended by private
14 companies for professional development is
15 substantially higher than that expended for
16 professional development by school districts.

17 MR. RUPE: That's all I have.

18 Thank you, Dr. Foster.

19 REDIRECT EXAMINATION

20 BY MR. CHALMERS:

21 Q. I want you to clear up just a few things and
22 clarify them, I guess, for me. In Exhibit 1129, we
23 showed a blow-up, and I think it was clear. I hope
24 it was clear. This is what the reports would look
25 like if the waiver is granted trying to show how

1 using the assessment performance index approach kids
2 are getting along; is that right?

3 A. Yes.

4 Q. These are demonstratives. They're not --

5 A. Right, correct.

6 Q. By contrast in exhibit -- maybe by contrast,
7 in Exhibit 1129, you had mentioned that under
8 page 42, you had mentioned under the API system that
9 we would start talking about gaps. And would you
10 describe what is Figure 3 on page 44 of 1129?

11 A. That is a visual way to show how we would
12 set annual targets for schools using the API. So it
13 depends on where your school falls. So if you're in
14 the fifth percentile, a 20 point yearly gain would be
15 required. So the lower the school, the higher the
16 requirement for the school. The higher the school --
17 so if you're above a certain percent, then only a
18 much smaller gain is required.

19 That makes -- that is -- that's a
20 reasonable, statistical model because as you move
21 students to the top of the curve, it becomes
22 increasingly difficult to make the gain. So a five
23 percent gain when most of your students are already
24 scoring high is probably more difficult than a 20
25 percent gain when a lot of your students are low.

1 Q. This is just representative. It doesn't
2 show, in fact, what the movement is over time, does
3 it? Maybe it does?

4 A. Correct. That's a demonstration of how we
5 would -- how we would determine targets.

6 Q. Now, Exhibit 11 -- or excuse me, 1222 by
7 contrast is kind of the old way, just using who's
8 proficient and not over time starting 2000 to 2010,
9 the difference between paid lunch, reduced lunch, and
10 free lunch, and that's a way to representatively
11 show -- and this is for math -- whether there's a
12 closing gap, but we're now talking about looking a
13 little bit broader way through the API; is that
14 right?

15 A. Yes, this is an actual gap reduction chart
16 using real numbers.

17 Q. By contrast, if you look at Exhibit 106,
18 which has been entitled, The Achievement Gap, this
19 really doesn't tell us too much as to what happened
20 over time because it justice reflects 8th -- well,
21 11th grade mathematics, and then just for one
22 particular time, it says the '10/'11 time frame?

23 A. Yes.

24 Q. So whether we want to look at it the old
25 way, Exhibit --

1 MR. CHALMERS: I'm sorry.

2 MR. RUPE: Glad you had high heels
3 on, you'd have missed it.

4 Q. (By Mr. Chalmers) The old way, Exhibit 1222
5 or what might be a new way which is shown up on the
6 screen, we have to see what the gap is and see how
7 it's closing, we'd want to look at it differently
8 than what is shown on the exhibit that I dropped and
9 knocked over.

10 A. What's on the screen is not a gap
11 reduction --

12 Q. Oh, I'm sorry.

13 A. -- chart. It's a student achievement
14 target.

15 Q. The gap reduction, I guess, really would be
16 36. That's how we try to look at it graphically?

17 A. Yes.

18 Q. Then there's the chart that I threw on the
19 ground a moment ago -- apologize about that -- which
20 is Exhibit 416. That's for reading assessments, and
21 I've got a few questions for you about this. First,
22 this would be for the African Americans in the state,
23 and it would show that in the year of '10/'12,
24 '10/'11 rather, that there was a meeting or above of
25 73 percent; is that right?

1 A. Yes.

2 Q. Did I read that correctly? Which obviously
3 is some number below the 86. What I'm struggling
4 with is in exhibit -- in the exhibits that Mr. Rupe
5 has marked as 8 -- 418, you can go to the website,
6 and you can click down on the second page on
7 requirements of AP -- or AYP, and it will tell you
8 whether -- in what areas you've met AYP and what
9 areas you haven't; isn't that right?

10 A. Yes.

11 Q. Doing that for the year '10/'11, is it your
12 recollection that the only areas the state did not
13 make AYP in were students with disabilities, reading,
14 and students with disability math and reading
15 assessments, native Hawaiian or Pacific Islander?

16 A. I don't recall, really.

17 Q. Well, the records will show what they show,
18 but what I'm trying to get an understanding on is,
19 you went through with Mr. Rupe Exhibits 412 and
20 Exhibits 413, and agreed with him that for this last
21 year, there are a number of groups that did not make
22 AYP. Those numbers, we've talked about them already,
23 I think, from your testimony, have increased a little
24 bit?

25 MR. RUPE: Well, I'm going to

1 object. I think what I said was AYP target.

2 MR. CHALMERS: Okay. Well, maybe
3 that will correct it.

4 Q. (By Mr. Chalmers) Just so that we're clear
5 then, there's a distinction between making AYP and
6 making AYP target; is there not?

7 A. Yes.

8 Q. And so if it was implied, did not make by
9 AYP target, that doesn't necessarily mean it didn't
10 make AYP or it did make AYP?

11 A. Correct.

12 Q. And it would not imply that this year that
13 we're going to have anything different perhaps than
14 what we had last year. That is the state not making
15 AYP only on special ed or Native Pacific Islanders or
16 Native Hawaiian. By the way, what is the difference
17 between a Pacific Islander and a Native Hawaiian?

18 A. You might have to ask one of them. It must
19 be substantial.

20 MR. CHALMERS: I don't have
21 anything else. Thanks.

22 RE-CROSS-EXAMINATION

23 BY MR. RUPE:

24 Q. Just so I'm on track with AYP target,
25 doesn't mean necessarily that you make AYP. There

1 are safe harbor provisions that you can apply for?

2 A. Yes.

3 Q. You can be on improvement and under some
4 circumstances not be characterized as not making AYP
5 because of previous progress?

6 A. Yes.

7 Q. You could go get a waiver. I mean, a waiver
8 is one way to do it, too?

9 A. Yes.

10 Q. There's a lot of ways that you can get
11 relief temporarily from the AYP target?

12 A. AYP is more than just the student
13 achievement, so there's other factors that enter into
14 whether or not you make AYP.

15 Q. Okay.

16 A. That's simply student achievement as a raw
17 number.

18 MR. RUPE: Okay. Thank you.

19 MR. CHALMERS: I don't have
20 anything else.

21 EXAMINATION

22 BY THE PANEL:

23 JUDGE THEIS: I might have one or
24 two just because I don't understand some stuff. I'm
25 not sure I understood the difference between making

1 the AYP target and AYP.

2 THE WITNESS: So if you're a
3 school, and you have all of your student subgroups
4 made the target, but your graduation rate was too
5 low, you wouldn't make AYP, or if your participation
6 or your attendance, those would be factors that might
7 not make AYP, but you might have had student
8 achievement high enough to hit the target.

9 There's a couple of other factors
10 that enter into it. One is safe harbor. Safe harbor
11 is the reduction by 10 percent in the number of
12 students not meeting the standard from the previous
13 year. So you might have only, say, 50 percent of
14 your students meeting the target, but you reduce the
15 number not making the standard by at least 10
16 percent, so you make AYP.

17 There's several calculations like
18 that that are around the number. It's a lot more than
19 just that raw number I had, 86.7 percent of my
20 students meeting or exceeding the target. So then
21 that number simply is the raw input that goes into
22 the sausage machine and eventually cranks out those
23 numbers if they all work out one way or another.

24 JUDGE THEIS: I was a little lost.
25 The different -- I'm not sure -- you know, we talked

1 about so many tests. Before 2006, what were the
2 tests?

3 THE WITNESS: There were really the
4 same number of tests in the sense that there was a
5 math test for --

6 JUDGE THEIS: For three grades.

7 THE WITNESS: Right. Except the
8 difference was which grades they were tested in.

9 JUDGE THEIS: Right. Okay, and
10 then after 2006, same three tests but different
11 grades?

12 THE WITNESS: More grades, yes.

13 JUDGE THEIS: More grades? And how
14 many more grades? That's what I need to know before
15 and after.

16 THE WITNESS: Before 2006, we
17 tested in bands, once in elementary, once in middle,
18 and once in high. In reading it was 5, 8, and 11.
19 In math it was 4, 7, and 10.

20 JUDGE THEIS: Okay.

21 THE WITNESS: Once in elementary,
22 once in middle, once in high. NCLB requires us to
23 test all grades, 3 through 8, plus once in high
24 school. So four additional grades were now tested.

25 JUDGE THEIS: So it went from -- so

1 you tested every year from three through eight?

2 THE WITNESS: Actually, we
3 tested -- there was a little schedule of different
4 testing depending on the content issue which try and
5 reduce the number of tests students actually took.
6 So science, for example, was tested every other
7 year. Now, it's required to be tested every year.
8 But reading and math every year 3 through 8 and once
9 in high school under the new system.

10 JUDGE THEIS: And high school was
11 in the 11th grade?

12 THE WITNESS: We use an 11th grade
13 cohort.

14 JUDGE THEIS: That was for both
15 math and reading?

16 THE WITNESS: Yes.

17 JUDGE THEIS: What about science?

18 THE WITNESS: Same for science.

19 JUDGE THEIS: Okay. And the
20 comparison between the AYP and the API, when you said
21 you wanted a waiver to get away from accountability,
22 what accountability did you want to get away from?
23 Some mechanism in the No Child Left Behind law that
24 made you re-structure or something like that?

25 THE WITNESS: Yes, what I probably

1 should have said is we wanted to waiver from what we
2 believed were inappropriate federal rules around
3 accountability to a more appropriate Kansas based
4 approach to accountability. No one wants to be no
5 accountability.

6 JUDGE THEIS: Inappropriate --

7 THE WITNESS: Yes, exactly.

8 JUDGE THEIS: -- refers to what?

9 THE WITNESS: Probably save me from
10 getting in trouble when I get back to the office by
11 letting me correct that statement. So the NCLB
12 accountability rules required that we used a one
13 point and time single number on an assessment, so the
14 math score, the reading score, that was used for
15 accountability. What we're asking them to do is to
16 look at a larger array of data for a school. So now
17 we have those three -- it's actually four --
18 different -- so they can look at achievement. They
19 can look at growth. They can look at gap reduction.

20 So that gives us a much better
21 picture of how a school district is doing rather than
22 this one point in time single number that NCLB has us
23 use. So we're actually asking to expand the
24 accountability to cover multiple areas of education
25 not just reading and math one-time achievement.

1 JUDGE THEIS: What happens to
2 accountability? That's where I get lost. I mean,
3 what's the accountability? I understand that if
4 you're going to Common Core and you're going to look
5 more at college entrance and workforce readiness and
6 things of that nature, then if you have a broad
7 picture, it shows how many students might be
8 approaching the Common Core Standards, which would
9 probably more likely be higher. But where does
10 accountability come in for some like -- who aren't
11 really -- who under the old AYP wouldn't be, you
12 know, proficient? Where does that reflect? Does
13 that still reflect?

14 THE WITNESS: Yes, that's still
15 reflected in the data, but now it'll be reflected in
16 multiple ways.

17 JUDGE THEIS: AYP would still be
18 there essentially showing who was proficient and who
19 wasn't?

20 THE WITNESS: Yes.

21 JUDGE THEIS: But it would be
22 against the Common Core Standards rather than these
23 tests they've been given?

24 THE WITNESS: Well, yes, except
25 that if the waiver is granted, it would start

1 immediately. So it would be against the current
2 assessments or the Common Core assessments which will
3 start in 2014, '15.

4 JUDGE THEIS: But if you get the
5 waiver -- tell me again how it would be reflected.
6 If the accountability would be reflected, the
7 proficiency would be reflected?

8 THE WITNESS: We'll still be able
9 the see how many students were proficient or meets
10 standards or above, or you'll still be able the see
11 the performance categories for all students. We'll
12 still report that data. The difference is, right
13 now, schools are being asked to meet this target that
14 we've seen a lot of here. So there's different
15 set -- we're asking for a different set of targets.

16 JUDGE THEIS: Have I seen those any
17 place?

18 THE WITNESS: No, but you saw an
19 example of how we would report them. The achievement
20 one with the API, that one page that had the three
21 different -- the gap reduction, the growth model.

22 JUDGE THEIS: Right, but they
23 didn't have any minimum standards, at least I can
24 read from my scans.

25 THE WITNESS: Right, so they didn't

1 show them there, but there would be a target for each
2 one of them.

3 JUDGE THEIS: Which would come from
4 where?

5 THE WITNESS: From our
6 calculations.

7 JUDGE THEIS: So could you assume
8 it would be similar to the one now?

9 THE WITNESS: Similar in the sense
10 that it uses student achievement for accountability.
11 Different in that it uses growth or gap reduction as
12 a look into how a school's doing rather than just
13 simply how many students are here.

14 JUDGE THEIS: And it would reflect
15 the progress or lack of progress of subgroups?

16 THE WITNESS: Yes.

17 JUDGE THEIS: Individually --

18 THE WITNESS: Yes.

19 JUDGE THEIS: -- as opposed to
20 comparatively?

21 THE WITNESS: Both actually.

22 JUDGE THEIS: I'm better than I
23 was, but I'm not sure I'm there. Okay. Any
24 questions?

25 JUDGE BURR: No.

1 JUDGE FLEMING: No.

2 JUDGE THEIS: Thank you.

3 MR. CHALMERS: I think I can follow
4 up real quickly and help clarify, but you won't know
5 everything yet.

6 REDIRECT EXAMINATION

7 BY MR. CHALMERS:

8 Q. The waiver that has been discussed is still
9 in the works; that is, that no final decision has
10 been made; is that right?

11 A. Yes.

12 Q. And I think what we've seen in some of the
13 documents is an early iteration of the waiver. That
14 is, there has been amendments recently, a couple
15 weeks ago; is that right?

16 A. Yes.

17 Q. That if the waiver is granted then there'll
18 still be accountability targets, but there'll be a
19 different type of target?

20 A. Yes.

21 Q. And it won't be based on just a cut score or
22 on an individual test. It will use that API index
23 and the other factors you talked about?

24 A. Yes.

25 Q. Now, if the waiver is not granted, then

1 we're in an area where we don't know what will happen
2 at 2014. We're going to have to wait for direction
3 from whoever is in control of the Department of
4 Education at the federal level at that point, is that
5 right?

6 A. If the waiver is not granted, we would be
7 back with the current rules.

8 Q. They would remain in place?

9 A. Right.

10 Q. Until there's a change made in 2014, by
11 whatever --

12 A. Until the re-authorization of ESEA.

13 Q. And that would be up for re-authorization in
14 2014?

15 A. It's up for re-authorization now, but they
16 don't anticipate it being re-authorized until after
17 the election.

18 Q. So to try to answer the Judge's question, is
19 there a way to say precisely today what the targets
20 would be for next year?

21 A. You'd have to say, since the waiver hasn't
22 been granted, that the targets for next year will be
23 the targets we're currently operating under.

24 Q. Absent the waiver. Now, then I think the
25 next question the Judge asked, or maybe he didn't and

1 it's my question, it gets to whether we have targets
2 in place as they are presently or under the waiver.
3 What are the consequences of not reaching those
4 targets?

5 A. The consequences vary depending on the type
6 of school. So if the school is a Title I school, it
7 has some consequences. If it's not a Title I school,
8 the consequences are up to the local school district.

9 Q. So the consequences will still be those that
10 are in place under the present accreditation system.
11 That might include school on improvement, all the way
12 to reorganizing the school, is that right?

13 A. More or less, yes.

14 Q. Well, I want to try to be as precise as we
15 can, so can you explain to the Judge -- I think what
16 we're grappling with is whether we have a waiver or
17 don't have a waiver there's still an accountability
18 element to the districts. What is that
19 accountability element?

20 A. Yes, there will be an accountability element
21 either way.

22 Q. And it will be?

23 A. So without the waiver, it's the current one.
24 With the waiver there's an entirely different model
25 that goes into place. For example, there's no

1 schools on improvement, that goes away.

2 Q. But what is the -- in less than a paragraph,
3 if it can be done --

4 A. Sure.

5 Q. -- could you describe what the proposed
6 accountability model would be under the waiver?

7 A. We will report the information on all
8 schools, which is what we have been doing. AYP, for
9 example, has no consequences for many schools in
10 terms of federal accountability, but it's taken on a
11 life of its own. So we'll still report that data.

12 Now, if we get the waiver, rather than
13 identifying schools for improvement, we'll be
14 identifying priority schools and focus schools, and
15 those schools will receive money and also
16 responsibility to show improvement over time, or face
17 the consequences that you mentioned that are
18 generally already in place, re-organization, that
19 kind of thing.

20 MR. CHALMERS: Thank you.

21 MR. RUPE: I'm sorry. May I ask a
22 question?

23 RECROSS-EXAMINATION

24 BY MR. RUPE:

25 Q. Even with the waiver, will you still be able

1 to view the performance of subgroups?

2 A. Yes.

3 MR. RUPE: That's all I have.

4 JUDGE THEIS: Thank you.

5 (Witness excused.)

6 JUDGE THEIS: What do you have
7 next?

8 MR. RUPE: Linda Jones, the CFO of
9 Wichita. We can get her started for a half hour or
10 we can stop now and come back, whatever your --
11 obviously, it's your preference.

12 JUDGE THEIS: You have now the CFO,
13 and who?

14 MR. RUPE: And two teachers from
15 Wichita, and then we have Bill Hammond coming in from
16 Dodge City.

17 JUDGE THEIS: Okay. How long do
18 you think these witnesses are going to be?

19 MR. RUPE: A lot of that depends,
20 but I'm going to be fairly short with them.

21 JUDGE THEIS: Entirely new
22 information we've never heard before, right?

23 MR. RUPE: As it applies to
24 Wichita, yes, but we're going to move it along very
25 quickly. I just don't know how long cross-

1 examination is going to be.

2 JUDGE BURR: I think some of it can
3 be moved. As an example, you know, we're fairly
4 familiar now with the fact that KPERS funds come in
5 and go immediately out and those kinds of things, so
6 I think we can move through a lot of that stuff a
7 little quicker.

8 MR. RUPE: All right.

9 JUDGE BURR: And contingency funds
10 and why they need them, you know what I'm talking
11 about.

12 MR. RUPE: I do. What I'll try to
13 do is just get the data in front of you, and then
14 move through the rest of this fairly quickly.

15 JUDGE THEIS: How about 1:15, is
16 that good?

17 MR. RUPE: If you want to stop.

18 JUDGE THEIS: 1:20, let's just
19 start there, that way just run with it then.

20 MR. RUPE: 1:20 we'll be here.

21 (A recess was taken.)

22 MR. RUPE: Ready. We're calling
23 Linda Jones, the Chief Financial Officer from USD 259
24 Wichita. Swear her in, please.

25 LINDA JONES

1 Called as a witness for the
2 Plaintiffs, was duly sworn by the reporter and
3 testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. RUPE:

6 Q. Tell the Judges your name and the city in
7 which you live.

8 A. My name is Linda Jones, and I live in
9 Wichita.

10 Q. Tell us a little bit about your educational
11 background.

12 A. I went to school in Wichita and graduated
13 from Wichita State University.

14 Q. What high school did you graduate from?

15 A. West High School.

16 Q. And in terms of your employment background,
17 talk to the Judges about that, please.

18 A. Out of college -- the year I graduated, I
19 earned my CPA certificate and I went to work in
20 public accounting. And then I went to work in
21 banking and did auditing for a bank holding company.
22 And then I came to Wichita Public Schools as the
23 supervisor for the accounting, which is now called
24 the controller, back in 1989. And a year later, I
25 was promoted to the director of finance, and then I

1 think in '99, I was promoted to the chief financial
2 officer, which is what I am today.

3 Q. So you started in 259, 20 -- how many years
4 ago?

5 A. 23 years ago.

6 Q. What I'd like is for you to tell us a little
7 something personnel about yourself.

8 A. Okay. I told you that I went to Wichita
9 Public Schools. I actually was born in Wichita and
10 lived in Wichita all my life. My parents were born
11 in 1920 and were high school dropouts. And I was
12 educated in Wichita and I was always encouraged to
13 learn. And it was due to a college scholarship that
14 I got in high school that I was able to go to Wichita
15 State, and I was the first one in my family to
16 graduate from college.

17 Q. Well, you'd be a good person to ask this
18 question, because we've tracked, with the
19 superintendent, demographics of Wichita. But he came
20 later in this process. Would you drive a stake in
21 the ground, the day you started with USD 259 through
22 today, and give the Judges an idea of what the change
23 in demographics of that district has been.

24 A. Okay. I remember shortly after I started
25 seeing a report on the demographics. And it showed

1 that there was 31 percent that were of poverty. And
2 at that time I thought, oh, my gosh, I grew up in
3 Wichita, that seems like a big number. And today
4 it's about 75 percent. So it's gone from less than
5 one in three to three out of four students that come
6 from homes of poverty.

7 Q. Let's talk about a couple of exhibits
8 because I want to get right to the money information
9 since we have you on the stand. And I want to give
10 you Exhibit 215, 214, and 213. And while everybody's
11 doing that and getting those to you, I want to
12 respond to a little bit of a question that came up
13 yesterday.

14 And I'm putting up Exhibit 20. But Exhibit
15 20 is the way Wichita's legal general fund plus legal
16 LOB is computed, and I want to call your attention to
17 two numbers. What is number one on Exhibit 20 in
18 terms of enrollment, what is that number, 44,797.8?

19 A. That's the full-time equivalency. It's not
20 a head count. Our current head count is around
21 50,000 students, but I believe it was testified to
22 yesterday that our 4-year-old -- not 4-year-olds --
23 well, 4-year-olds and our kindergartners are counted
24 as half-time. So even though our kindergartens go to
25 school all day, they only count as half a student.

1 And you will get some seniors, for instance, that may
2 not go to class a full day. And so if they don't go
3 a full day, they'll count less than one.

4 Q. So that's why we have a .8 is because of
5 seniors?

6 A. Yes.

7 Q. And those would be seniors that aren't a
8 full-time student? They're less than full-time?

9 A. Right.

10 Q. But the head count is 50,000 and that's not
11 on this exhibit?

12 A. Correct.

13 Q. Then, let's explain, because I said
14 something about 50,000 and a weighted enrollment that
15 would be 75,000. I want you to explain what this
16 total weighted enrollment number 18 is on
17 Exhibit 20.

18 A. We get additional funds for high-cost
19 students such as non-English speaking students. We
20 also get additional funds for special education
21 students and high-poverty students, students that
22 qualified to receive free lunches. And those are
23 listed individually on that list and converted to an
24 FTE basis to represent that additional funding. We
25 also get money for transportation for the students

1 that we transport over two-and-a-half miles.

2 And you total all of those weighting factors
3 up to get a total weighted enrollment, which then you
4 use to multiply against the base state aid per pupil
5 to determine how much money we're permitted to spend
6 in our general fund.

7 Q. So the total weighted enrollment would be
8 82,595?

9 A. Correct.

10 Q. Now, let's go to the exhibits that they put
11 in front of you so we can address those. First of
12 all, what is 215?

13 A. Exhibit 215 is the state budget forms that
14 we file with Topeka -- with the State Department of
15 Education and with the county when we levy our taxes.

16 Q. And 214 is what?

17 A. 214 is part of the state budget forms. A
18 number of years ago, we were doing a Budget at a
19 Glance, trying to graphically represent our financial
20 condition to our taxpayers in our community because
21 they didn't understand all the numbers by
22 themselves. And many legislators saw the charts that
23 we produced and liked them.

24 And there was a task force put together, and
25 I served on that task force, helping give the State

1 feedback on ideas for graphically representing our
2 budget. And they incorporated those in this section
3 of state budget forms called the Budget at a Glance.

4 Q. Let me call your attention to 213, and
5 explain what this is, please.

6 A. 213 is Budget Form 150, which is part of the
7 budget forms and that's what I was going over on that
8 chart a moment ago that computes each weighting
9 factor, such as the weighting factors for the
10 non-English speaking students, the bilingual factor,
11 as well as the at-risk factor for low-income
12 students, transportation, vocational, 4-year-olds,
13 and virtual.

14 Q. And you fill this form out?

15 A. Correct.

16 Q. And what do you do with it when you get it
17 done?

18 A. I fill the form out. It computes our
19 general fund budget, and then that is what we balance
20 to when we adopt our budget.

21 Q. And I want to drop back to 214 just for a
22 second because this came up yesterday. Turn to Bates
23 number USD 259 000287?

24 MS. GARNER: Tell her where.

25 Q. (By Mr. Rupe) In Exhibit 214.

1 A. What page is that?

2 Q. It's page 8. It's clear at the back.

3 A. Okay. It would be nice if it was
4 sequentially numbered, then you could find things
5 easier, but they keep starting over with number one,
6 so there's multiple page 8.

7 Q. We Bates numbered these, so look down at the
8 lower right-hand corner.

9 A. What's the number?

10 Q. 287 USD --

11 A. I found it.

12 Q. Now, when this came up yesterday, I think
13 you indicated that that page had been revised?

14 A. Correct.

15 Q. And I'm going to hand you 214-A and ask if
16 that's the revision of that page?

17 A. It is. There was a misunderstanding on how
18 to fill out one of the cells, and I'll try to explain
19 that to you. The bottom row of the table says,
20 substitutes and temporary help. And the row above it
21 is classified personnel, which was primarily hourly-
22 type employees. And we had some hourly-type
23 employees that were temporary and realized that we
24 had reported the dollars on the temporary help line,
25 but the people on the line above it, and so we

1 corrected that and filed that with the State May 17th I
2 believe that was.

3 Q. Of this year?

4 A. Yes.

5 MR. RUPE: Move for admission of 214-A.

6 MR. CHALMERS: No objection.

7 JUDGE THEIS: It's admitted.

8 (Plaintiffs' Exhibit Number 214-A was admitted.)

9 Q. (By Mr. Rupe) So in terms of the revision -- you
10 can use my blow-ups, too.

11 Okay. In terms of the revision, the number that
12 has been revised from 214 are these numbers that I've
13 just indicated.

14 A. Correct. I'm looking confused because what I'm
15 shown as Bates Exhibit 287 actually is three different
16 years of data, so I think that's the wrong Bates number.

17 Q. It's this page here. Trade me.

18 A. Because see, this shows '08/'09.

19 Q. Okay. And what does that show? That shows
20 '09/'10, '10/'11, and '11/'12?

21 A. Correct, this is a different set of state budget
22 forms, an older version --

23 Q. Okay.

24 A. -- on this Bates exhibit.

25 Q. Go to 12389, Bates number. Here, trade me.

1 A. Okay.

2 MR. CHALMERS: What's the exhibit
3 number, I'm sorry?

4 MR. RUPE: 12389 Bates number.

5 THE WITNESS: That's the correct
6 year.

7 MR. CHALMERS: The exhibit number?

8 JUDGE FLEMING: 214-A.

9 MR. RUPE: 214, and 214-A is on the
10 overhead, which is the update.

11 Q. (By Mr. Rupe) Let's do it this way, and do
12 it as quickly as you can: Explain the difference
13 between 12389 Bates number and 214, and 214-A.

14 A. Well, the one cell that says, classified
15 personnel in the year of '10/'11 had showed 2,253.5
16 and is actually 2,070.7, and those are the temporary
17 employees that should have been not included because
18 their amount is listed on the line below where you
19 don't report a position count on a temporary
20 employee.

21 Q. So that's down, what, 265? 265?

22 A. Yes. Well, no, I think that figure is not
23 down 265. I think the confusion over this report
24 yesterday pertained to the right column where it
25 says, contracted. And the issue with contracted is a

1 lot of those employees really aren't contracted.

2 You file this report early October, and yes,
3 you've got some teachers' contracts, but it's really
4 how many positions you have budgeted. And what
5 happens is, the next year you file this report, you
6 file the actual people you filled, and so that's
7 confusing because the column on the right is a
8 budget, the other two columns are filled.

9 Q. Let's get to the bottom line --

10 A. Okay.

11 Q. -- in terms of overall how many positions
12 are down.

13 A. If you look at how many positions were on
14 the payroll over that period of time, we're down 265
15 people on the payroll.

16 Q. Thank you. Now, let's move to the
17 Exhibit 282, please, because we know that Wichita got
18 substantial resources as a result of the Montoy case,
19 and we've seen the chart on that. But what I want to
20 ask you with regard to 282 is to explain to the
21 Judges what Wichita did with those additional
22 resources.

23 A. Okay. First of all, we bought teacher time.
24 We added four days to the teacher contract. We also
25 added 40 minutes a week to the teacher contract, and

1 that 40 minutes a week was designed to have some time
2 with the teachers to go over the test data of their
3 students so that we could work with them on how to
4 improve student achievement using their test data.

5 We also added teachers to lower class sizes
6 primarily in the early grades, kindergarten through
7 3rd grade, because we felt like that was the age
8 where we can have the most impact on students, if we
9 can get them in smaller classes, where we can get
10 them all to read.

11 We added some support teachers. We added
12 people that know how to read the test data and
13 evaluate it and explain it to the teachers. We added
14 all-day kindergarten across our district. Up until
15 this point in time we only had some sites that had
16 all-day kindergarten. We made that a district-wide
17 standard.

18 We added some more 4-year-old programs to
19 catch students earlier. We expanded our bilingual
20 program because we were experiencing about a
21 9 percent per year growth in non-English speaking
22 students, so we needed to expand the sites where we
23 offered those services.

24 We also had to expand special education
25 services. One of the mandates that was changed at

1 the federal level was you need to serve children in
2 the least restrictive environment. And as a result,
3 you can't pool as many special ed children as would
4 be economically efficient. You're supposed to
5 integrate special ed children with regular ed
6 children. And when you do that, it costs more
7 because instead of having 12 special ed students in
8 one classroom with a teacher and a para, you may have
9 those children in multiple classrooms that each need
10 a para-professional and a teacher supervisor.

11 So we added special education positions,
12 some extra curricular activities to engage our
13 students, some additional computerized instruction at
14 the middle school level. We didn't, I believe, at
15 that time have computer labs at all sites. We were
16 very behind on our technology and so we worked on
17 that.

18 We also gave salary increases to be more
19 competitive with our neighbors in our community. In
20 Wichita, we compete with the aircraft industry for
21 labor and Koch Industries, some of the other big
22 employers, and so we gave salary increases to compete
23 with those other employers.

24 We also added teacher training. We added
25 instructional or teacher coaches to work with our

1 teachers, especially our new teachers, because
2 statistically, many new teachers aren't successful
3 and drop out of teaching. And we want to retain our
4 teachers by making them successful, so we added
5 coaches to work with them and teach them how to be
6 effective in the classroom and to give them tools to
7 help their children be successful.

8 We also had transportation increases. As
9 you know, the cost of fuel and other things has gone
10 up. And we added some custodians. Our buildings
11 were rather old. I think at one time, when I
12 started, one in four buildings was over 70 years old,
13 or something like that. We have very old buildings.
14 And we added some custodial staff because we had
15 added square footage with our 2000 bond issue. And
16 some security to make our schools more safe.

17 Q. And this probably goes without saying, but
18 the column then to the right talks about the cost of
19 a suitable education, and that would be the amounts
20 assigned to these items, is that right?

21 A. Right, in 2005, senior leadership of the
22 district sat down and brainstormed and discussed what
23 we thought it would take to enable our students to be
24 successful, and we identified those for our district,
25 you can see at the bottom, \$137 million.

1 Q. All right. And then the next column is the
2 positions needed. The increase --

3 A. Correct.

4 Q. -- in '05/'06, the positions added. Then,
5 the increase in '06/'07, the positions added. And it
6 continues on through a four-year total?

7 A. Correct. As we received additional
8 funding --

9 MR. RUPE: I thought the lights
10 were off.

11 A. -- we tried to address the areas that we had
12 identified as in-need, and then we developed this
13 chart, which I believe was in the budget book to
14 share with our community, to show our progress
15 towards our goal.

16 Q. (By Mr. Rupe) Were you efficient in how you
17 used that money?

18 A. I believe we were.

19 Q. With regard to the cuts we've heard about in
20 this trial, there's an exhibit here that is 241, and
21 this shows all the budget cuts in a total of 511-some
22 million. My question to you is, what was the total
23 amount of the cuts that Wichita experienced beginning
24 February '09 through May 2011?

25 A. I believe there's an exhibit on that which I

1 don't have in front of me, but we were cut, I
2 believe, \$653 a student, which is about \$50 million.
3 And then, we were also cut another 4.7 million in
4 capital outlay state aid, since February of 2009.

5 Q. I have 30 million.

6 A. Can I get a copy of the exhibit?

7 MS. GARNER: 283.

8 Q. (By Mr. Rupe) 283? 279?

9 A. Maybe I misunderstood your question.

10 Q. I just want to know the global number from
11 the budget cuts that started in February of --

12 A. I still don't have the exhibit.

13 Q. I'm not sure what exhibit you're looking
14 for.

15 A. The one that had all three years of cuts and
16 the total.

17 Q. Oh, give her 283.

18 MR. RUPE: I apologize,
19 Your Honors, we're looking for the exhibit that will
20 refresh her recollection.

21 A. I think I can speak to it but I'd like to
22 have it. We were cut \$653 million a student. That
23 is the cut from the 4,433 amount per student we
24 received in 2009.

25 Q. (By Mr. Rupe) 653?

1 A. What did I ...

2 Q. You said 653 million.

3 A. I'm sorry, \$653.

4 JUDGE FLEMING: That would be
5 substantial.

6 A. I apologize. I have millions on the brain.
7 I'm sorry, we were cut \$653 per student from 2009 to
8 last year, when it was lowered to \$3,780 a student.
9 So if you figure the \$653 a student times our
10 students, it's about \$47 million. And then we were
11 also cut 4.7 million in capital outlay aid.

12 Over that period of time, we had growth of
13 enrollment and growth in poverty and non-English
14 speaking students. And because of those increased
15 costs, we received some additional weighting factors
16 which helped offset some of the cuts we had to make.
17 That was about \$27 million in weighting factors, and
18 I believe that's the \$30 million you were referring
19 to that --

20 Q. (By Mr. Rupe) So the total is what?

21 A. Well, we cut -- we had to cut about \$50
22 million plus the capital outlay, which was the 4.7
23 million.

24 Q. Okay. All right. What is LOB equalization
25 aid?

1 A. LOB equalization aid is state aid on the
2 supplemental general fund.

3 Q. And when you received that money, what did
4 you use it for?

5 A. We used that money to help fund our
6 supplemental general fund, our local option budget.
7 And one of biggest costs we have in that local option
8 budget is special education. As I believe the Court
9 has heard previously, the federal government does not
10 fund the full cost or even the 40 percent that
11 they're supposed to fund.

12 And the State does not fund 100 percent of
13 the cost, so we have to subsidize that program
14 substantially, and I believe there's about \$30
15 million we use in the local option budget towards the
16 special education program.

17 Q. So and you computed what you were entitled
18 to receive and then what you actually received, and
19 the amount you were entitled to receive was how much?

20 A. 43.7 million in state aid on the local
21 option budget.

22 Q. And what did you actually receive?

23 A. 37 million -- I believe 37.4 million. We
24 were 6.4 million short this year.

25 Q. And what happens when you're short on that

1 money that you designated to use as you explained you
2 were going to use it? Where does the money come in
3 to fill in the difference?

4 A. You have a choice. One is you spend less
5 because the State didn't fund the formula that's in
6 law, or you raise your local property taxes to make
7 up the difference.

8 Q. Which did Wichita 259 do?

9 A. Wichita did a combination. This past year
10 we raised one mill levy -- one mill in that local
11 option budget, and we cut the local option budget by
12 six million to balance it.

13 Q. What's capital outlay equalization?

14 A. Capital outlay equalization used to be state
15 aid that we got on the capital outlay fund, and it
16 was -- because one mill in Wichita doesn't generate
17 the same amount of money that one mill in, say,
18 Johnson County generates, or Galena, or Burlington.
19 Those are vastly different amounts depending on the
20 buildings on your property in your district.

21 And so, the State developed an equalization
22 aid that was supposed to equalize the amount of money
23 you generate from a mill based on that state matching
24 of your local dollars. And for three years now, they
25 didn't appropriate the money to fund it, so we no

1 longer get equalization aid on the capital outlay
2 fund.

3 Q. Let me hand you 350. In the '09/'10 time
4 frame, did you contact the State Department of
5 Education and ask them why the capital outlay state
6 aid or equalization money had stopped?

7 A. Yes, I did contact the State Department of
8 Ed and was told that we weren't receiving it because
9 the governor had cut it with an allotment.

10 Q. Made last December?

11 A. Made December of '09.

12 Q. Okay. When these cuts occurred, did anyone
13 from the State of Kansas ask you what it actually
14 cost to provide an education in Wichita?

15 A. No.

16 Q. Let's talk a little bit about some of the
17 costs that you've mentioned. You've talked about
18 increasing cost. Does a quality teacher have a cost?

19 A. It does.

20 MR. CHALMERS: Your Honor, excuse
21 me, I'm sure she's a qualified accountant, but I
22 don't know that getting into these sorts of issues a
23 foundation has been laid and I object.

24 JUDGE THEIS: Referring to a
25 classification or general citation?

1 MR. RUPE: No, it has to do with
2 what the district pays for the category of quality
3 teachers.

4 JUDGE THEIS: Overruled.

5 Q. (By Mr. Rupe) How do you know what quality
6 teachers cost?

7 A. Well, our salary schedule pays more for
8 teachers that have a higher education, such as
9 Master's degree or a Ph.D., and for teachers that
10 have more experience in the classroom.

11 Q. Explain the salary schedule, please.

12 A. The teachers' salary schedule has movement
13 in two directions; down, for years of service, so
14 there's a small increase in salary as a teacher gets
15 another year of service up to a maximum. And then
16 there's movement across that salary schedule based on
17 number of college hours they have after their
18 bachelor's degree.

19 So if they get ten years -- or ten hours of
20 graduate classes, then they would move across and get
21 some additional pay. They get significantly more pay
22 when they reach a major threshold like a master's
23 degree or a Ph.D.

24 Q. And this is a yes or no question: Are you
25 aware of any losses of teachers because of wage

1 differentials with other districts?

2 A. Yes.

3 Q. And how are you aware of that?

4 A. From talking with an administrator in the
5 human resource department, I believe last week, I was
6 told that we had --

7 MR. CHALMERS: She's going beyond
8 the question and I was going to object that it would
9 be based on hearsay.

10 JUDGE THEIS: Well, if it's
11 information her organization has -- is that it?

12 MR. RUPE: Yes.

13 JUDGE THEIS: Why don't you lay a
14 little foundation.

15 MR. RUPE: Okay.

16 Q. (By Mr. Rupe) Explain how the process works
17 and your involvement in the process when you lose a
18 teacher to another district because of wages.
19 Explain why you would be involved in that process and
20 what your involvement is.

21 A. Well, I know that I'm involved with
22 developing the budget and with tracking teacher
23 turnover because of movement to other districts.

24 Q. All right. And do you work with human
25 resources in that process?

1 A. I do.

2 Q. Okay. Explain to the Court what your
3 knowledge is concerning losing teachers to other
4 districts because of wage difference.

5 MR. CHALMERS: My concern is, is
6 that she now has information that I still think is
7 probably hearsay and would be better off from the HR
8 director or someone there. But then, that
9 information sounds like it's hearsay, as she's trying
10 to discuss it, because it's trying to express, I
11 guess, some statement made by the teacher that's
12 leaving, however credible that might be.

13 So I object that it's a hearsay
14 statement. Foundation has not been laid for her to
15 provide the testimony.

16 MR. RUPE: She's indicated that
17 she's part of the process, she keeps track of the
18 budget, she has to pay the money because of this, and
19 she works with HR. I don't know what more foundation
20 can be laid.

21 JUDGE THEIS: What information she
22 tracks, and we've already discussed this, that it's
23 not the truth -- they may have said why they left --
24 just that's what was reported, so you can go ahead.

25 Q. (By Mr. Rupe) Go ahead and explain.

1 A. Well, I know that we've had to set up an
2 additional account where we can deposit moneys that
3 we've received from teachers that have broke their
4 contract because they've gone to other districts.

5 Q. And that would be the liquidated damages?

6 A. Yes.

7 Q. And in terms of the occasions in which you
8 have lost teachers to competing districts and had to
9 collect those liquidated damages, can you quantify
10 that for us?

11 A. I don't have that off the top of my head.

12 Q. Okay. Has it happened enough that you had
13 to take action as the CFO on it?

14 A. Well, it happens enough that we set up a
15 separate account just to track it. It's no longer a
16 rare occurrence.

17 Q. Is there a cost associated with retaining
18 teachers?

19 MR. CHALMERS: Same objection as
20 before, lack of foundation. She's a CPA. As it was
21 phrased I think the question would imply that she
22 should express some sort of opinion as to from an
23 educational standpoint of what it is that you need to
24 have to retain a quality teacher. You already had
25 expert testimony that there's a big dispute on that,

1 and I don't think that a CPA is qualified to express
2 an opinion on that, and I object.

3 JUDGE THEIS: Assume there's a
4 budget item for recruitment and she can say whether
5 it's gone up or down.

6 Q. (By Mr. Rupe) Is there a budget item for
7 recruitment and has it gone up or down and why?

8 A. There is a budget item for recruitment. We
9 added two people to do that for us, especially to
10 hire teachers in the highly sought after areas such
11 as special education, math, and language arts.

12 Q. Take a look at 287, please. What is 287?

13 A. 287 is a spreadsheet that I produced in
14 response to the union's request for wage increase
15 this year. And the left column represents the cost,
16 the direct cost that they requested, which included
17 movement on the salary schedule for teachers that
18 received additional graduate hours.

19 Q. See if I can move this along. I call this
20 the catch-up memo. Is this the amount of money that
21 would be needed to bring those teachers who haven't
22 had a raise in four years to current?

23 A. It brings them up to current plus 3 percent
24 salary increase.

25 Q. Okay.

1 A. For the four-year period.

2 Q. For the four-year period. So in terms of
3 quantifying what the teachers have lost over that
4 period of time they didn't get increases, that would
5 be the number, plus the 3 percent?

6 A. Plus the 3 percent, and I want to make sure
7 I clarify. It's not 3 percent for all the back
8 years, but it's for next year, 3 percent.

9 JUDGE THEIS: I think that's old
10 news, isn't it, Mr. Rupe?

11 MR. RUPE: Huh?

12 JUDGE THEIS: Isn't that old news?

13 MR. RUPE: That's why it's moving
14 along.

15 JUDGE THEIS: Okay.

16 Q. (By Mr. Rupe) In terms of the LOB, did
17 Wichita increase it's LOB?

18 A. We decreased our LOB this year by 6 million,
19 because of the loss of state aid.

20 Q. All right. And then look at 283 and 279
21 that we've handed you. Do those list the program
22 cuts?

23 A. Yes.

24 Q. And you arrived at those cuts, as John
25 Allison testified to, through community groups and

1 administration?

2 A. Yes, we did.

3 MR. RUPE: And I won't go through
4 those, Your Honor, I'll leave those exhibits.
5 They've been touched on before.

6 Q. (By Mr. Rupe) But I want to ask from the
7 standpoint of the chief financial officer if there
8 are increased costs associated with NCLB?

9 A. Yes, there is. We have to set aside a
10 certain amount, it's about \$5 million, out of our
11 Title funds for NCLB transportation, because students
12 have a choice when they are assigned to a school that
13 is not meeting the standards, then we have to give
14 them a choice of attending another school, and Title
15 I pays for that if their home school is a Title I
16 school.

17 Q. What about special ed, can you --

18 A. Can I add the couple things on the NCLB?

19 Q. Yes.

20 A. We also have to do tutoring and some
21 supplemental services for students that are in Title
22 schools that are not meeting proficiency, and that is
23 about \$1.4 million.

24 Q. Does all that money come from federal funds,
25 or does it come from the general fund, as well?

1 A. That money comes from federal funds. The
2 problem is you have the federal funds. And then,
3 because your school is not meeting the standards, you
4 have to take a portion of that federal funds and use
5 it for this purpose, and you don't get to choose what
6 you use it for, so it's very restricted.

7 Like the transportation, we could have
8 before bought tutors or paras or other things. And
9 now, because we're not meeting the standards in those
10 Title I sites, we have to take money off the top for
11 transportation and give them the option of attending
12 another site.

13 Q. What about special ed, are there associated
14 costs, increased demands in special ed?

15 A. Yes, there is.

16 Q. Explain that to the Judges.

17 A. Special ed students tend to have a lower
18 student/teacher ratio. If they're severely
19 handicapped students, then you could have a student
20 that can't feed itself -- or his or herself, and you
21 may have two people assigned to that student because
22 they're so severely handicapped they need to be
23 worked with that closely.

24 In other cases, it might be a student with
25 less severe needs, and they would be in 3rd grade,

1 but they're pulled out for so many minutes of speech
2 therapy a week, so that's an additional cost for that
3 student above and beyond that 3rd grade teacher, and
4 a cost that you wouldn't have with another student.

5 Q. Let me lump these together in terms of
6 health insurance, utilities, property insurance,
7 those kinds of costs, have they gone up?

8 A. Yes, they have. Like any business, our
9 costs are going up.

10 Q. In fact, since the end of December '08 to
11 today, has there been any costs to operate the
12 Wichita School District to educate its kids that have
13 gone down?

14 A. I really can't think of any.

15 Q. We've talked about this, but let me just
16 touch on it, in terms of the reduction in the funds
17 in Wichita, you froze salaries, reduced positions,
18 eliminated programs. My question to you is, did this
19 cause any morale problems?

20 A. It really causes morale problems when you're
21 doing that. I think the worst thing on morale is
22 when you're cutting people and people fear for their
23 jobs. And I suspect that some of our teachers that
24 have left because they're not sure they have a job,
25 and they know the suburban districts are growing

1 enrollment and are more likely to have funds to keep
2 all their teachers. And when you have a teacher
3 that's, say, started at the district four years ago
4 with no experience --

5 MR. CHALMERS: Excuse me,
6 Your Honor, I think we're well past the question,
7 which is whether it's affected morale problems. I'm
8 not sure really what foundation she had for that, but
9 now we're getting into a lecture that goes beyond the
10 question.

11 MR. RUPE: I think she's giving an
12 example of how the morale is affected.

13 JUDGE FLEMING: She's not answering
14 your yes or no question. She has, like the guy did
15 last week, she has a story to tell with each yes or
16 no question you ask.

17 MR. RUPE: Well, I've been trying
18 to move things along, Your Honor. I apologize, I'll
19 sit down.

20 CROSS-EXAMINATION

21 BY MR. CHALMERS:

22 Q. I want to talk to you about the budgeting
23 process. Individual schools are given a staffing
24 budget based on their full-time enrollment in their
25 school, is that right?

1 A. Could you repeat the question?

2 Q. Individual schools are giving the staffing
3 budget based on the full-time enrollment in their
4 school, and then a separate budget for supplies and
5 materials, is that right?

6 A. Yes.

7 Q. And the separate budget for supplies and
8 materials is provided on a weighted students basis,
9 is that correct?

10 A. Yes.

11 Q. And then, they are able to allocate, those
12 being the individual principals, how they want to use
13 those funds within their building, is that correct?

14 A. Yes.

15 Q. Now, individual principals have discretion
16 on how to spend with respect to the staffing budgets,
17 that is they can decide to have more or less staff
18 for their buildings, is that correct?

19 A. Individual principal could, for instance,
20 decide to have one less teacher and two para-
21 professionals because, for example, the 3rd grade
22 class might be 35, and they don't have room to have
23 two separate classes of 3rd grade, so they might put
24 a para-professional in that room to help the teacher
25 with 35 kids.

1 Q. There have been instances where the building
2 principal requires more funds. And if so, they come
3 to you, and that's handled through your office as to
4 whether they'll get more funds, is that correct?

5 A. Yes.

6 Q. Now, a principal is given a monthly report
7 of their spending against their budgets, is that
8 right?

9 A. They run their own reports off our system.

10 Q. There's a report available under their
11 system that allows them to track monthly where they
12 are on their budget, is that right?

13 A. Yes.

14 Q. And it's been your experience that these
15 principals will spend down their budget; they don't
16 leave anything unspent at the end of the year?

17 A. They do leave funds unspent at the end of
18 year.

19 Q. How much is left unspent?

20 A. It varies. I can't say exactly, but not
21 every school zeros out the balance at the end.

22 Q. Are we talking about hundreds of dollars?
23 Thousands of dollars? Millions of dollars?

24 A. It could be a million dollars.

25 Q. So there's a million dollars that is

1 allocated somewhere during the course of this year
2 that is unspent because individual principals find
3 that they don't need to spend that money?

4 A. No, let me correct that. Million is too
5 high. I haven't looked at that lately. But we
6 allocate about 4 or 5 million to schools so there's
7 no way there's a million left. It's probably a
8 couple hundred thousand across our 100 buildings.

9 Q. There's been some testimony, occasionally,
10 about teachers who have no supplies for their
11 students. If you've got buildings that have hundreds
12 of thousands that are unspent at the end of the year,
13 what effort is made to try to redirect that money so
14 folks have more money for supplies? Maybe that's not
15 been a problem?

16 A. No, we redirect all the money. Generally,
17 it's redirected to special education where there's
18 the most need.

19 Q. In this last go-around, there was a -- last
20 year or was it the year before last, under a senate
21 bill that was referred to as Senate Bill 111, there
22 was an ability to transfer funds from the different
23 silos to be used for other purposes, where otherwise
24 they would have been frozen. You know what I'm
25 talking about, don't you?

1 A. Yes.

2 Q. One of the funds that had money in the silo
3 that your district used to access to be able to spend
4 on other matters was the special education fund,
5 isn't that true?

6 A. Yes.

7 Q. Let me hand you or let me show you what's
8 been marked -- a portion of what's been marked as
9 Exhibit 125. At page 5 of that exhibit, this is the
10 Budget at a Glance that I think you said that your
11 office prepares and then files with the State, is
12 that right?

13 A. Yes.

14 Q. At page 5, there are some numbers about
15 full-time enrollment, and then it breaks it out into
16 the number of students with free meals, the number of
17 students with reduced meals. And --

18 MR. RUPE: She doesn't have the
19 exhibit, Counsel.

20 A. I think I have it.

21 MR. ANDREW ROSE: 1125 or 125?

22 MR. CHALMERS: I might have
23 misspoken. It was 1025.

24 Q. (By Mr. Chalmers) Now that we put that up in
25 front of you, maybe it will refresh your

1 recollection; I don't know. Maybe it's just a
2 difference. You testified that three-quarters of
3 students in your district are in poverty. How do you
4 define poverty?

5 A. Free and reduced lunches.

6 Q. Well --

7 A. Which is the Title I criteria.

8 Q. I don't know that my math is that great, but
9 we can agree, can't we, that it's not three-quarters
10 shown on this exhibit, is it?

11 JUDGE THEIS: Pretty close.

12 MR. CHALMERS: Pretty close.

13 Q. (By Mr. Chalmers) By the time we get up to
14 '11/'12?

15 A. I still don't have that exhibit. It's not
16 1025.

17 Q. It's the fifth to the last page of
18 Exhibit 1025. Budget at a Glance.

19 A. Okay, I think that's 214.

20 Q. Well, I think it's been marked as 214, as
21 well.

22 A. Okay.

23 MR. ANDREW ROSE: This is 1025.

24 MR. RUPE: Give her 1025.

25 MS. GARNER: That's proposed Budget

1 at a Glance.

2 THE WITNESS: That's not it.

3 MR. RUPE: 1025?

4 MR. CHALMERS: '11/'12, Budget at a
5 Glance, 29.

6 JUDGE THEIS: Just give her that.
7 Find the number later.

8 MR. RUPE: Our number is not the
9 same as yours. Ours is the proposed budget.

10 MR. CHALMERS: Might have written
11 it down wrong.

12 MS. TIBBETS: No, you didn't. It's
13 on our list. It's correct.

14 THE WITNESS: What's the page
15 number of that?

16 MR. CHALMERS: That's the fifth
17 page from the back. It has a 5 at the bottom.

18 THE WITNESS: Okay.

19 Q. (By Mr. Chalmers) And here's what I was
20 really interested in, is this bottom line, number of
21 students reduced meals. In 2008/'09 there was an
22 increase from the previous year of 22 percent, and
23 then there was a decrease the following year of 20
24 percent. Do you have any recollection as to why that
25 happened?

1 A. Could you scoot over so I could see it since
2 I don't have it?

3 MR. RUPE: Show her the column on
4 the left, too, because it's not -- you don't have it
5 all on.

6 A. I can tell. I think the issue here is
7 there's two lines. You're pointing to the bottom
8 line, which is reduced meals. The line right above
9 it is free meals. And you can see reduced went down
10 slightly, but free went up, which means the kids had
11 more poverty and they moved from just a reduced price
12 meal to a completely free meal.

13 Q. (By Mr. Chalmers) You're talking about this
14 year, '08/'09?

15 A. I thought you were pointing to '10/'11. As
16 you look across that middle row of free lunches, you
17 can see that going up; and the bottom row reduced
18 lunches, you can see it going down. And that's
19 because more kids are qualifying for free lunch.

20 Q. I'll tell you how I interpret, you tell me
21 if it's right, maybe that'll speed it up. It seemed
22 to me that what happened is we had basically the same
23 number of kids, maybe a little bit more, in '09/'10,
24 but we had some of the kids that moved up from the
25 reduced meals into the free meals category, is that

1 right?

2 A. There were more free, and less reduced,
3 which means they were higher poverty.

4 Q. When we deal with the weightings, I don't
5 know if I have it here or not, there's a chart --
6 here we go. There's an enrollment weighting that is
7 tied to poverty. And is it tied to free and reduced
8 meals or reduced meal -- or free meals?

9 A. The state weighting factor is tied to free
10 meals. The federal Title I is tied to free and
11 reduced meals.

12 Q. So as it related to the year '09/'10, as far
13 as the State is concerned, there was an increase,
14 then, in the number of kids that would be entitled to
15 weightings with the reduction, both gross increase as
16 well as the reduction of the kids that were at the
17 reduced amounts?

18 A. There was an increase in the free lunch,
19 which generated increased weighting.

20 Q. Now, as to the number of kids that is the
21 enrollment full-time -- the FTE number, rather, we
22 had a number that went down from -- it shows we have
23 numbers that show actual, and then we have another
24 number that shows budget. And so that we're clear on
25 that, the actual numbers are what -- at the time this

1 document was published and filed with the State,
2 that's what was showing in your system as the actual
3 numbers of full-time enrolled kids, right?

4 A. That's the full-time equivalency.

5 Q. Yeah, full-time equivalency kids. So that's
6 the number, right?

7 A. Yes.

8 Q. Then, we've got the budgeted number, which
9 is at the time this is prepared what we might think
10 this is the number, correct?

11 A. Yes, that's the estimate. It isn't
12 finalized until September 20th. That's how the State
13 pays.

14 Q. Now, I don't know if we don't already have
15 it in evidence -- we probably do -- but do you have
16 an idea or memory as to what the actual '11/'12 full-
17 time enrollment number was in your district?

18 A. I think we were -- it was really close. We
19 were paid for about the same. I can't remember the
20 exact figure off the top of my head.

21 Q. Is it fair to say that your memory is that
22 the enrollment stayed about the same?

23 A. Yes.

24 Q. Now, as to this last column, it shows the
25 budgeted numbers on the free and reduced meals, and

1 shows that it was expected that those would remain
2 the same as the previous year. Is that your memory,
3 as well?

4 A. That's how it was budgeted, but the actual
5 was higher.

6 Q. So you think that there were higher numbers
7 for either the free and reduced -- well, combined?

8 A. Yes.

9 Q. Do you have any memory right now as to what
10 that would be?

11 A. Not off the top of my head.

12 Q. The weighting system, you talked about that,
13 I think, with Mr. Rupe, and he showed you or
14 discussed Form 150, which is Exhibit 213; not going
15 to pull that out, but it shows for '11/'12 year, we
16 estimated this 44,963.3 full-time enrollment kids,
17 and that generated 81,677, as far as once the
18 weightings were put in place. And that would be from
19 about the 4,500, the weightings would have increased,
20 in essence, what your district would received by a
21 little bit more than 80 percent?

22 A. Not 80 percent.

23 Q. That's about a bump of about 81 percent --
24 actually, it's 81.7 percent, but about 80 percent?

25 A. Well, the State converts the special ed

1 funding to an FTE, but it isn't actually computed
2 that way. You're paid by teacher. So the change in
3 the base state aid generates more based on the other
4 weights, but not the special ed weight.

5 Q. If I look at Exhibit 20, it has a number of
6 82,559.

7 A. Mm-hmm.

8 Q. You've got a special ed number, is that what
9 you're talking about?

10 A. Yes.

11 Q. Now, I think that maybe it's -- I'm not
12 sure, you can tell me, but I think as this
13 progression goes forward, for the purposes of general
14 fund, the special ed is pulled out and --

15 A. Yes.

16 Q. -- that's the weighting then, right?

17 A. Right. For purposes of the base state aid
18 per pupil, you pull out the special ed to compute.

19 Q. So we're on the same page, when someone goes
20 back and looks at Exhibit 30, we know that in
21 Wichita, based on the weightings, excluding the
22 special ed --

23 A. Mm-hmm.

24 Q. -- we've got about 45,000 full-time
25 enrollment for the purposes of calculating the

1 general fund, and the weightings will bump it up
2 about an additional 80 percent?

3 A. I think that's a little high, but it puts it
4 at about 71,000, so probably closer to 75 percent.

5 Q. You think maybe another three-quarters of a
6 kid in terms of weighting?

7 A. Correct.

8 Q. Now, in your district, Exhibit 1187 --

9 MR. RUPE: Well, I'm going to
10 object. This is outside the scope. It's also what I
11 would call old news. We've been through this before.

12 JUDGE THEIS: Let's hear the
13 question first, please.

14 Q. (By Mr. Chalmers) 1187 shows the total
15 expenditures within your district, and I think no one
16 quarrels with that, but it shows that the
17 expenditures have gone up each year as it's recorded
18 in the document. See that, don't you?

19 A. Well, I should point out a couple of the
20 causes.

21 Q. You'll have that opportunity. We want to
22 agree that it's gone up each one of these years,
23 isn't it?

24 A. It's gone up due to KPERS, bond payments.

25 Q. Here's what I want to go to. I want to talk

1 to you about your cuts. Exhibit 83 -- 283, I'm
2 sorry. 283, on the front page, is a document that
3 has been referenced describing cuts. And I take it
4 this is a document that you put together?

5 A. Yes.

6 Q. Now, when you talked about this document,
7 there's a category here that is total change in
8 general and state aid, there's a series of numbers
9 there, is that right?

10 A. Yes.

11 Q. And the change you were trying to reference
12 is what?

13 A. I was trying to show what -- it's actually
14 not a change -- in those columns on the right, it's
15 the change. Those columns are just the total.

16 Q. These are what the general and capital aid,
17 the general fund and the capital aid coming from the
18 State, that's what they totaled for the years?

19 A. That's the totals in this column, not the
20 change.

21 Q. To get to my point, that would be only part
22 of all the funding and the expenditures of your
23 district in any particular year, is that right?

24 A. Yes.

25 Q. Now, in that exhibit, third page -- that

1 exhibit, for the record is 283 -- I think Mr. Rupe
2 wanted you to try to quantify what you had identified
3 as cuts for the three years involved. And see, the
4 first -- this year is '11/'12 cuts. Are those cuts
5 that are actually made?

6 A. I believe that was the document -- that
7 total was a different exhibit yesterday. That's 17
8 million that we made in '11/'12.

9 Q. So this would show that there was
10 anticipated cuts of about 19 million, but ended up
11 being about 17 million, best of your recollection?

12 A. Yes. Yes, because of the time. That was
13 prepared prior to the decision.

14 Q. Now, if we compare those cuts in 2011/'12,
15 to the total expenditures in -- well, tell you what,
16 probably ought to look at '10/'11 number, and that's
17 about 14 million. 14.3 million that would be -- were
18 those cuts actually made?

19 A. Yes.

20 Q. So if we compare that 14.3 million against
21 the data that we have at the State, the most current
22 spending data, which would be the 604,537,689, about
23 what percent of the total expenditures were cut or
24 reduced in the year '10/'11?

25 A. Well, it's probably about 3 percent. Which

1 year?

2 Q. Would be '10/'11.

3 A. Okay.

4 Q. We know that 1 percent would be 6 million --

5 A. Right.

6 Q. -- 2 percent, 12 million, so somewhere over
7 2 percent?

8 A. Right, because it's 14 million.

9 Q. In the exhibit -- actually, it's another
10 exhibit I want to show you. Exhibit 279, this is
11 another exhibit that you prepared, is that correct?
12 This is one that talks about the '11/'12 cuts?

13 A. Yes.

14 Q. In that exhibit there, listed under FTE, and
15 in the first line opposite to where it says, learning
16 coaches, family engagement, learning centers, there
17 are a number of positions that looks like the
18 subtotal was -- this subtotal is 93. I think it
19 also -- this includes this 98 up above. Is that how
20 that's intended to be read?

21 A. That's 92.3 at that --

22 Q. I'm sorry, that goes to Phase 2, doesn't
23 it? I'm sorry.

24 A. That top number, the 9.8, not 98.

25 Q. Would we be able to add then -- well, let's

1 not take parents as teachers. Let's take these
2 positions. Would we be able to add those positions,
3 and then, in Phase 2 and Phase 3, would come up with
4 these numbers -- should those numbers correspond to
5 the reductions in staffing as is reported in the
6 profile information, and in particular, as you
7 amended it, what, last month?

8 A. Those are budgeted. And if you're looking
9 at '10/'11, the profile in the current year's budget
10 is going to be actuals. If you went back to look at
11 the '10/'11 budget that was filed, it would be on a
12 budgetary basis. It's a difference between the
13 positions you budgeted and the positions you filled.

14 Q. It's a difference between the positions that
15 you would like to fill and actually having to tell
16 people that you no longer have a job, or not filling
17 a job if someone retires?

18 A. Well, it happens when we're looking for
19 special ed teachers and we can't find them, and we
20 have to put a long-term sub in the classroom because
21 we can't find a teacher for autistic students, then
22 you put a sub in the classroom. And we had 72
23 teachers this year that we couldn't fill.

24 Q. 72 positions you couldn't fill, and what you
25 did is you got a substitute to do the job for them?

1 A. In many cases.

2 Q. You're saying that there are instances where
3 kids showed up, they're sitting in a classroom, and
4 there's no teacher?

5 A. I'm saying in some cases, if they're a
6 special ed student, you're going to get a substitute
7 teacher for them. In another case, if you can't find
8 a social studies teacher, you could have fewer
9 sections of social studies.

10 Q. But what I want to get back to, so we're
11 clear on this point, and we're looking at
12 Exhibit 279, these are budgeted positions, which
13 doesn't mean necessarily that you have someone who's
14 told, you no longer have a position?

15 A. I'm saying that some people were told, you
16 don't have a position, some people retired, and their
17 position wasn't re-filled and it was cut; that
18 happened a lot in the case of teachers. But if you
19 look at how many -- how many staff we had employed
20 this year versus two years ago, we had 265 less
21 people on our payroll. Those were real people.

22 Q. Now, we have here a number of 238.2 from
23 those cuts. What's the additional kid -- or the
24 additional teachers that are not filled -- or
25 additional, I should say, staff that's not filled?

1 A. I don't understand your question.

2 Q. Well, in your cuts, the document that you
3 folks introduced as Exhibit 279, that show cuts in
4 three phases through '10/'11, it shows a reduction --
5 at least that's what I understand this to mean --
6 full-time equivalent in staff of 238.2, and I thought
7 you indicated that there was a bigger number that had
8 been reduced in staff?

9 A. That's one year, and I said over a two-year
10 period since 2009, when we started being cut on our
11 base state aid, that we have employed 265 fewer
12 people.

13 Q. You've employed 265 fewer people over what
14 time frame, so we're clear on the record?

15 A. Two years.

16 Q. What two years?

17 A. That would be '09 -- '09/'10 to '11/'12.

18 Q. That would be three years?

19 A. Well, we made the cuts -- hold on, let me
20 look at this. That would be from the '09/'10 year to
21 the '11/'12 year.

22 Q. So three years of cuts, you'd have
23 approximately 265 -- or 265 fewer employees?

24 A. Two years, you have February of '10 to
25 February of '12, that's 24 months, 265 people less.

1 Q. You didn't reduce anybody in '09/'10?

2 A. I'm saying I compared February of '10 to
3 February of '12.

4 Q. Let's look at Exhibit 1025 again. At least
5 that's how I call it. It's the Budget at a Glance
6 and --

7 MR. RUPE: Your Honor, that is
8 1024, and it's the same thing as 214. And I think on
9 your index and on the copy you produced to us, it's
10 1024, not 1025.

11 MR. CHALMERS: I appreciate the
12 help.

13 MR. RUPE: And we've used it quite
14 a bit here, but I just want to make sure the record's
15 clear. The budget '11 and '12 is 1024, and
16 Plaintiffs' 214.

17 JUDGE BURR: All right.

18 MS. TIBBETS: Is that Budget at a
19 Glance?

20 MR. CHALMERS: Budget at a Glance.

21 MS. GARNER: 1025 is the proposed.

22 MR. RUPE: 1025 is a proposed one
23 in your exhibits that you gave us.

24 MR. CHALMERS: We can clear it up
25 one way or another. Our records show it's 1025.

1 It's 1024.

2 JUDGE THEIS: It's Budget at a
3 Glance.

4 Q. (By Mr. Chalmers)) Now, this is what you
5 went through with Mr. Rupe. This is what was
6 originally filed by the State, and it would have been
7 filed with the State back some time in 2011, is that
8 right?

9 A. That would be October of 2011.

10 Q. And then we've got a document that, what,
11 just this last month is the amendment to that, which
12 is Exhibit 214-A, and that amendment was prepared as
13 a result of, well, preparation for trial, wasn't it?

14 A. It was a result of you asking me a question
15 about that table, and I looked at it and realized
16 that one of the numbers was misstated.

17 Q. I think I asked you a question about that
18 nearly, what, six months ago in a deposition, and
19 what, just last month you've amended the table? I'm
20 just trying to --

21 A. I don't recall if you asked me that question
22 in April, because you deposed me in April.

23 Q. So that we clear this up, it's not a big
24 deal, I don't think, but what you did is you moved
25 from the category which was certified personnel,

1 folks that totaled 2,253.5 -- that number was moved,
2 because it was in the wrong place, in essence, into
3 the substitutes and temporary help category?

4 A. Not the whole number, but some of the folks
5 that were temporaries were reflected in the dollar
6 amount on the following row that was temporaries.

7 Q. I had thought I had understood your
8 testimony to be that the discrepancy between what you
9 reported to the State back in 2011 of 2,253 and 2,070
10 was because it was miscoded -- some of these folks
11 were miscoded as classified personnel, when in fact,
12 they were substitute or temporary help?

13 A. Let me clarify an inaccuracy that you just
14 made. The '10/'11 figure in that column wasn't
15 reported until October because that's an actual. In
16 '10, in October of '10, we would have filed a budget
17 number. So that wasn't filed incorrectly in '10. It
18 was --

19 Q. I think you misunderstood or maybe I
20 misspoke. It was filed in 2011, with the State in
21 October of 2011, right?

22 A. Yes, it was filed in October 2011. And when
23 we produced the '11/'12 numbers, in reviewing those,
24 I saw the discrepancy on the '10/'11, because I knew
25 it was not in line.

1 Q. But the question, and I don't want to
2 quibble with you when it was, you say it was October
3 2011 -- that's fine -- when this was reported. Some
4 time after this it was reduced.

5 And your explanation, unless I heard
6 something wrong, was that these people that were
7 included as classified personnel in that portion,
8 about 200-and-some-odd people, little less than 200
9 people, that they should have been in the substitute
10 and temporary help category?

11 A. Yes, the salaries are in the other category
12 and the FTE should be there.

13 Q. In your cuts, Exhibit 283, Exhibit 279, I
14 don't remember seeing -- perhaps I overlooked it --
15 do you show the increases, the corresponding
16 increases to substitutes and temporary help?

17 A. I don't know to what you're referring.
18 There is no increase to substitutes and temporary
19 help.

20 Q. Got just a couple other questions, I think.
21 In Exhibit -- and it's been marked as 215, as well as
22 1032, I'll put it up here so you can see it. This is
23 part of the budget form that you folks file with the
24 State each year. This happens to be Form 211 -- or
25 year '11/'12, this last year.

1 And what I'm looking at is Code 26
2 concerning professional development. My question is,
3 you've got a transfer from the general fund and a
4 transfer from the supplemental general fund of
5 approximately a million dollars that were budgeted in
6 '11/'12. Did those transfers take place?

7 A. Could you scoot over so I can see it?

8 Q. Yeah, I'll stand over here. Maybe that's
9 better.

10 A. Yes.

11 Q. Okay. And so that we talked about this
12 maybe, I'm not sure, but the money will come in
13 either from the general account or from the LOB or
14 from the contingency reserve, and then it will be
15 transferred into one of these silos. And in this
16 instance, what this would reflect is that a million
17 dollars was transferred in for the professional
18 development silo, is that right?

19 A. Well, the State doesn't fund the
20 professional development aid, so the only way to pay
21 for professional development is to transfer the money
22 from the general fund or the supplemental general
23 fund.

24 Q. It started the year with a balance of about
25 380,000, and it is scheduled -- or was scheduled to

1 end with a balance of about \$1.4 million. Is that
2 where it ended this last year?

3 A. You're actually referring to a line that
4 says, total revenue available, not the balance that's
5 at the bottom of the page, which is much different.
6 That's 276,344 --

7 Q. So did it end up with the balance, cash
8 balance being around the 276,000 at the end of the
9 year?

10 A. We don't -- we haven't finished the year;
11 it's not until the end of the week, so I can't say
12 for sure.

13 Q. We're pretty close. We've got what the
14 expenditures were expected to be. To the best of
15 your knowledge, were the expenditures on professional
16 development about what it was expected to be?

17 A. I think they were less because we've really
18 reduced training.

19 Q. And then, the money that was used for
20 recruits training, if we transferred it in, it's
21 still then sitting in the professional development
22 silo?

23 A. Well, it was just transferred in there.
24 It's not like it's been sitting there all year.

25 Q. Let me ask you about the same exhibit, page

1 59, which is Code 29, summer school. And this isn't
2 working for me. Let me get this lined up and then
3 I'll ...

4 It shows that there are transfers -- well,
5 actually, it doesn't show any transfers in for summer
6 school, does it? It shows there was a starting
7 balance of about 109,000, and then there's tuition
8 that is earned from the individuals that go to the
9 school, with the expectancy that that would be the
10 revenue for this last summer school year. Is that
11 basically what happened, is that those were the
12 revenue sources?

13 A. That's correct. We cut transfers with our
14 budget cuts, and so we no longer support summer
15 school. The only program we offer is paid for from
16 the fees that the parents pay.

17 Q. And it looks like the transfers in that you
18 talked about as having been cut -- well, looks like
19 they were some time -- we don't show any transfer in
20 for the '09/'10 year, is that right? So we would cut
21 that back, apparently, back before '09/'10?

22 A. It was probably cut in '09/'10, and
23 therefore, you can't see it.

24 Q. Well, '09/'10, in any event, doesn't show
25 that any money was transferred in for summer school

1 that summer, is that correct?

2 A. No, because we had three or four state cuts
3 in 2009, starting in February.

4 Q. And then in terms of summer school
5 expenditures, looking at a couple pages down, 61 of
6 the exhibit, it reflects that this last year we
7 expected to spend about 100,000 more on summer school
8 than we did the previous year. Is that what
9 happened?

10 A. No, I think we spent closer to the 150,000
11 that we actually charged in fees, so that we can --
12 we're trying to break even and spend what we get in
13 fees from the parents.

14 Q. Lastly, you testified about No Child Left
15 Behind, and how, as a result, there can be
16 requirements for more tutoring, more support
17 services, and I gave a number to it. Those are all
18 funded through Title I, is that correct?

19 A. Yes.

20 Q. And so if there's an increase as a result of
21 a school going on improvement or a Title I school
22 going on improvement or otherwise, then those
23 increased costs for tutors for supplemental services,
24 those sorts of things, are funded by the federal
25 government?

1 A. There's a fixed amount of money we get from
2 the federal government for Title. And with those
3 required costs, we have to take that money off the
4 top for the transportation and the tutoring and the
5 parent involvement. That comes off the top, and then
6 what's left of the Title money, we can spend on other
7 things.

8 Q. The transportation and the tutoring costs,
9 then, they have to be picked up as part of the
10 general fund, which would include both, kind of, a
11 head count, a full-time enrollment, as well as the
12 weightings that would apply to kids that are at-risk
13 or high-density at-risk, is that correct?

14 A. The Title I transportation comes out of the
15 Title I fund, which is part of the 604 million on
16 your other chart that you were showing me --

17 Q. I think you misunderstood my question.

18 A. I guess I did.

19 Q. My question was that those kids in Title I
20 are the ones that are normally in the at-risk
21 weighting category, high-density at-risk, as far as
22 at-risk, so there's the additional amount through the
23 general fund available for those kids?

24 A. Yes.

25 MR. CHALMERS: I don't have any

1 other questions.

2 MR. RUPE: I just have one.

3 REDIRECT EXAMINATION

4 BY MR. RUPE:

5 Q. On 1187, and that's the chart that has to do
6 with what appears to be increasing expenditures by
7 USD 259 at a time they're having substantial cuts.
8 Explain to the Judges how that is.

9 A. This is very confusing because it's all
10 funds. And over the last couple years, in 2008,
11 actually, we passed a bond issue before the 2009 cuts
12 and the reductions in state aid. And as a part of
13 that bond issue, we increased our millage on our bond
14 payments, and that raised our budget about \$20
15 million for bond payments, and so that's going to be
16 included in that 604 million. So if you took that
17 off, that would be down.

18 And then the other thing that happened is
19 KPERS expenditures have gone up substantially. And
20 in fact, in that year with the 604 million, we were
21 told to budget 36 million for KPERS payments,
22 6 million of which belonged in the previous year, but
23 the legislature didn't fund it. And so they said
24 re-budget that 6 million on top of the 30 million you
25 should budget. And so that's an artificial increase

1 to the budget. It's not money to us. It's just
2 flow-through money.

3 And now, this year, which isn't reflected on
4 that chart, our KPERS payments were 23 million, but
5 we had to budget substantially -- I'm sorry, I can't
6 think of the number, but it was less. We had to
7 budget less on KPERS this year because they caught up
8 and they're paying us on time now.

9 Q. In terms of federal dollars, ARRA money, is
10 that available this year?

11 A. Very little is carried over, just because we
12 have until September to spend the last of the money.
13 The ARRA money is on a different fiscal year. It
14 goes through September. But in comparison, in
15 2010/'11, that last year with the 604 million, that
16 included 104 million of federal money. This year we
17 are getting 64 million of federal money.

18 So the numbers are inflated because of the
19 ARRA money, which went -- 13 million into Title that
20 year, which went away, and we received, I believe,
21 6 million in special ed aid through ARRA, the federal
22 stimulus money, as well as 15 million in general and
23 supplemental general to supplant the State's
24 contribution to our base state aid.

25 But definitely, those two bottom years are

1 inflated because of the federal stimulus money, which
2 is now gone.

3 Q. Along with the KPERS and the bond and
4 interest that you've explained?

5 A. Yes.

6 MR. RUPE: No other questions.

7 RECROSS-EXAMINATION

8 BY MR. CHALMERS:

9 Q. Well, let me show you what's been marked,
10 and the reason I chuckle is that I call it 1025, and
11 it's either 1025, 1024; Exhibit 214, page 1, so that
12 we don't get into a hang-up on KPERS, and we don't
13 get a hang-up on federal money, let's just talk about
14 what money's been spent on instruction. And it shows
15 that the money spent on instruction in '09, '10, '11,
16 went up in the '10/'11 year in your district, and
17 that it was budgeted to go up in the '11/'12 year,
18 isn't that correct?

19 A. If you went back and looked at the '10/'11
20 budget and not the actual, then the budget would be
21 down. But you're comparing actuals for last year to
22 budget for this year. And when you see the actuals
23 for this year, you'll actually see that down some,
24 but again, the federal money paid for much of that
25 cost.

1 Q. Ma'am, this number is higher than that
2 number, and they're both declared by your office as
3 actual expenditures, or is this another deal that you
4 need to amend?

5 A. No, those are actual expenditures, and the
6 '10/'11 expenditures include the federal --

7 Q. '10/'11 is what --

8 A. -- ARRA money.

9 Q. -- you folks budgeted knowing that the ARRA
10 money wouldn't be available, right?

11 A. In '11/'12.

12 Q. Yeah, and knowing that the ARRA money was
13 simply a substitute. What the legislature did is
14 said, look, we'll reduce what we're going to provide
15 in our fundings for a short period of time and
16 replace it with the ARRA money. And now we're into
17 2011/'12, and at this point, you budgeted to spend
18 that amount, didn't you?

19 A. The ARRA money was not all a substitute. We
20 got significant Title dollars. And some of those
21 went to instruction, which would be reflected in that
22 number, as well the KPERS money, which I just
23 explained was artificially budgeted high because the
24 State didn't pay it the year before, that that's
25 included in there --

1 Q. The KPERS fund that you want to talk about
2 would have been in all three of these years?

3 A. The additional amount was in '11/'12.

4 Q. The additional amount you talk about another
5 6 million?

6 A. Yes, that was --

7 Q. And the portion of that attributed to
8 instruction is a fraction of KPERS money?

9 A. Say that again.

10 Q. The portion of KPERS that goes into the
11 sub-category, the function category, instruction
12 1,000, is a fraction of the KPERS money?

13 A. It would be a big fraction.

14 Q. Less than half?

15 A. We spend 69 percent of our salaries on
16 certified teachers.

17 Q. This number, you say, is smaller this year.
18 Now, we don't have your numbers because they're not
19 reported to the State, yet. How much lower is the
20 instruction this year?

21 A. I don't know because the year's not over and
22 I don't have the reports.

23 Q. You have not seen those numbers?

24 A. No.

25 Q. And when we talk about the cuts in the

1 '10/'11 year -- well, let me see if I can't find
2 that. When this budget would have been completed, I
3 think you said was in October of 2011?

4 A. It's filed with the State in October -- not
5 the budget ...

6 Q. Well, this is -- it's not the budget, you're
7 right, it's the Budget at a Glance?

8 A. Actually, that one is filed in August. I
9 was mixing it up with the S066, which is filed in
10 October, so my mistake.

11 Q. The document that we looked at earlier,
12 sometimes referred to as the Form 150, Exhibit 215,
13 is that the one that's filed in October?

14 A. No, that one's filed in August, but it is
15 then adjusted based on the actual enrollment, which
16 is driven off the September 20th enrollment, which is
17 after the August date.

18 Q. And when I look what's on the system now, in
19 June of 2012, as the 259 USD budget form, when would
20 that form have been provided?

21 A. Which form?

22 Q. Well, it's actually all part of Form 150.
23 But this particular form is the State Kansas Budget
24 Form USDE, just for illustration purposes.

25 A. Okay.

1 Q. That's the Code 6?

2 A. The preliminary one was filed in June -- not
3 June -- August, by August 25th. And then based on
4 enrollment and based on the legislature, who recently
5 concluded their work and chose to fund the full
6 3,780, which we didn't know if they were going to
7 fund it until the very end of the session, then we
8 actually had to re-publish and file that again last
9 week.

10 Q. So what we could look at on the internet
11 today as your Form 150 would be what you provided as
12 your budget for last year, this week?

13 A. We provided -- probably what's on the
14 internet was the one we provided August. I don't
15 know that the State has updated it for the
16 re-publication, which was due to the increased
17 poverty.

18 MR. CHALMERS: Thank you, ma'am. I
19 don't have any other questions.

20 MR. RUPE: No further questions.

21 JUDGE THEIS: You can step down,
22 thank you.

23 (Witness excused.)

24 JUDGE THEIS: 3:15, please.

25 (A recess was taken.)

1 JUDGE THEIS: You can be seated.
2 Thank you.

3 MR. RUPE: Next witness is Lori
4 Doyle from Wichita. You swear her in, please.

5 LORI DOYLE

6 Called as a witness for the
7 Plaintiffs, was duly sworn by the reporter and
8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Tell the Judges your name and the city in
12 which you live.

13 A. My name is Lori Doyle. I live in Garden
14 Plain, Kansas.

15 Q. Are you employed in the USD 259?

16 A. Yes.

17 Q. What's your current title?

18 A. I'm currently the Executive Director of
19 Secondary Schools.

20 Q. Before that, what were you?

21 A. Previously, for the prior six years, I was a
22 principal at Wichita West High School.

23 Q. And prior to that?

24 A. For two years before that, I was a principal
25 at Boulevard -- Metro-Boulevard Alternative High

1 School in Wichita.

2 Q. And before that?

3 A. I was the assistant principal at Wichita
4 South High School for six years, and I was a teacher
5 for one year at South High, right before that.

6 Q. And when did you start teaching in 259
7 School District?

8 A. I began teaching in 1989.

9 Q. And you were principal for the immediately
10 preceding six years before this year?

11 A. Say that again, please.

12 Q. Give me the bookends on when you were a
13 principal of West High.

14 A. I began in 2005.

15 Q. Through?

16 A. Through 2011.

17 Q. Okay.

18 JUDGE BURR: I'm sorry, what did
19 you say your title is now, executive director?

20 THE WITNESS: Of secondary schools.

21 JUDGE BURR: Okay.

22 Q. (By Mr. Rupe) Did you have a work history
23 before you started teaching in 259?

24 A. Yes, I did.

25 Q. Where were you employed?

1 A. I was employed at Dillard's. I was also
2 employed for the Coleman company. I was also
3 employed by Farmers Insurance.

4 Q. Okay. Talk to us about your educational
5 background.

6 A. I'm a product of the Wichita Public School
7 system. I graduated from Wichita South High School.
8 I then went to Kansas Newman in Wichita, and
9 graduated there with a Bachelor's in Science and
10 Secondary Education. I went on from there and had a
11 Master's in the Arts of Teaching from Friends
12 University in Wichita. And I also have a Master's in
13 School Leadership from Wichita, from Friends
14 University in Wichita.

15 Q. Give us a short personal glimpse, a little
16 personal information.

17 A. I am a huge NASCAR fan.

18 Q. Let's go to talking about the West High
19 School, which brings you here. Would you explain to
20 the Judges what the demographics of the children,
21 students at West High School is? What are those
22 demographics?

23 A. Wichita West is the smallest comprehensive
24 high school in Wichita. There's an enrollment of
25 1,281 students. Approximately 40 percent are

1 Caucasian, 32 Hispanic, about 16 percent African
2 American. There's a 21 percent population of
3 students receiving special education services, about
4 an 8 percent of ELL students. The free and reduced
5 population is 86 percent, and there's an average
6 daily attendance rate of anywhere between 86 to 88
7 percent.

8 Q. I'm sorry, I was jotting that down as fast
9 as I could. 86 percent free and reduced lunch?

10 A. Actually, I think it's like 86.6 percent.

11 JUDGE BURR: I mean, my mother sort
12 of insisted I go to school. Is that way low?
13 Average?

14 THE WITNESS: That's high. 86
15 percent --

16 JUDGE BURR: Yeah.

17 THE WITNESS: -- that's probably,
18 if I remember right, for free, that's like around
19 900-plus students out of 1,200 students in the
20 school --

21 JUDGE BURR: Okay.

22 THE WITNESS: -- that are free, and
23 there's probably another 100 that are reduced.

24 Q. (By Mr. Rupe) And I think we've seen numbers
25 on that for the district, so I won't compare with the

1 district numbers, but just generally, how does that
2 compare district-wide?

3 A. I believe we're the highest free and reduced
4 of all the comprehensive high schools.

5 Q. In Wichita, where is it located?

6 A. We're really centrally located, not very
7 far --

8 JUDGE BURR: Between Seneca Street
9 and the river.

10 THE WITNESS: Yes, absolutely.

11 JUDGE BURR: I'm an old South High
12 graduate, by the way.

13 THE WITNESS: Awesome.

14 JUDGE BURR: The first year it was
15 open. I won't tell you how long that is.

16 MR. RUPE: I think that's former
17 South.

18 JUDGE BURR: They were the
19 Colonels, rather than the Titans, I'll tell you.

20 THE WITNESS: That's true.

21 Q. (By Mr. Rupe) If you would, please explain
22 to us whether you instituted cuts at West High as a
23 result of diminished resources in the school
24 district?

25 A. Yes. Yes, I did.

1 Q. When did those occur?

2 A. Two years ago, we eliminated driver's
3 education, so we lost -- there were two teachers that
4 were in that program. Also, this past year, coming
5 into the 2011/'12 school year, there was a cut of a
6 counselor, a librarian, an instructional coach, and
7 two teachers.

8 Q. Okay. And the two teachers were in what
9 subjects?

10 A. Math and language arts.

11 Q. Okay. And with regard to the two teachers,
12 how did you reduce those positions? Did you do it by
13 attrition or some other way?

14 A. Retirement and attrition.

15 Q. And in terms of the instructional coach,
16 explain to the Court what an instructional coach is.

17 A. That was a building-based instructional
18 coach. That individual worked directly with teachers
19 in the classroom, also provided professional
20 development for them; worked directly on my
21 leadership team to assist us with professional
22 development on our inservice days, help teachers with
23 their licensures.

24 Q. Okay. And in terms of the instructional
25 coach, you said, worked with the teachers in the

1 classroom?

2 A. Mm-hmm.

3 Q. Why would that be necessary?

4 A. That's necessary when you have a struggling
5 teacher who maybe is struggling with instructional
6 strategies that are effective for the students; or a
7 struggling teacher maybe that's struggling with
8 classroom management. That coach can come in and
9 help them with techniques. A lot of times the coach
10 could also model for the classroom teacher, while
11 they're in there, these different instructional
12 strategies or techniques for effective classroom
13 management.

14 Q. If you have an ineffective teacher in the
15 classroom, why don't you just fire them and get
16 somebody else?

17 A. Well, we have a process that we have to go
18 through when we have a struggling teacher. It's
19 really our goal to give them assistance and tools so
20 we can have a win-win situation for the teacher as
21 well as the students in the classroom. So we provide
22 assisted services with the teachers that are
23 struggling.

24 Q. In a lot of situations, employees are
25 at-will, but teachers at West High and throughout the

1 district, and at state have teacher contracts, don't
2 they?

3 A. That's correct.

4 Q. Do those contracts, to your knowledge, have
5 provisions on how they can be separated from their
6 employment?

7 A. Yes.

8 Q. With regard to those teacher contracts, have
9 you, in the time you were at West High, ever been
10 involved in the termination of a teacher?

11 A. Yes.

12 Q. Is it an easy process?

13 A. No.

14 Q. With regard to those teacher contracts, are
15 there mini trials and hearings when there are
16 disputes?

17 A. Yes.

18 Q. In terms of the professional development,
19 these teacher instructional coaches, are they in the
20 category of professional development, or is that
21 something different?

22 A. Can you restate that?

23 Q. Do you consider the instructional coach to
24 be somebody that provides professional development?

25 A. Yes.

1 Q. Okay. And how so?

2 A. For example, at West High, they would
3 conduct hourly professional development sessions. So
4 when the teachers had their extra time that they had
5 available, they would come in during the workday and
6 receive professional development. The instructional
7 coach professional development on our inservice days,
8 they would help plan those, facilitate those. And
9 then the individual classroom, what I would call
10 professional development, helping the teachers
11 one-on-one and the coach.

12 Q. And are they paid out of the professional
13 development budget money you receive, or how are they
14 paid, the instructional coaches?

15 A. They are paid out of learning services.

16 Q. Okay. Now, the number of instructional
17 coaches that you reduced in the last three years was
18 how many? One?

19 A. At West High, one.

20 Q. At West High, in terms of how many are left,
21 how many instructional coaches remain?

22 A. Are you asking in the district?

23 Q. No.

24 A. At West High?

25 Q. Yeah.

1 A. It's my understanding that this year they
2 share a -- they have one coach that they share among
3 more than one high school.

4 Q. Okay. So --

5 A. But they're not --

6 Q. So the instructional coach that was at West
7 now is gone and West splits its time with another
8 high school and an instructional coach?

9 A. Yes.

10 Q. The librarian, was that a reduction or was
11 that an attrition?

12 A. That was a reduction.

13 Q. The counselor, was that a reduction or
14 attrition?

15 A. That actually was a retirement.

16 Q. And does West High still have a counselor?

17 A. Yes.

18 Q. And how many did they have before the
19 retirement?

20 A. We had five, and we're down to four.

21 Q. And in terms of the allotment of the work of
22 those four counselors, how does that work?

23 A. Repeat that for me.

24 Q. Sure. With one less counselor, how do the
25 counselors divide up the work?

1 A. Okay. At West High, we're a High Schools at
2 Work school, and we have five different academies.
3 So where we had a counselor for each academy, now we
4 have -- it was reduced to one counselor having to
5 pick up two academies. So besides that one counselor
6 picking up two academies, then anything else the
7 other counselor that we lost, duties they had, they
8 were pretty much distributed out amongst the other
9 four.

10 Q. Does the instructional coach, the counselor,
11 the librarian, the other positions that you
12 eliminated, are they helpful in reaching these kids,
13 free and reduced lunch, 86.6 percent, that are
14 at-risk and helping them improve in proficiency?

15 A. Yes.

16 Q. Explain how they are to the Judges.

17 A. Well, counselors talk to students about a
18 variety of issues. A lot of time they talk to them
19 about academics. They also talk to them about
20 personal and social needs that they have. They help
21 them with college information, career information.
22 They help them with getting them associated with
23 different services that are available; not just them,
24 but also, you know, their parents that come in.

25 The counselors help the students with

1 mediation of conflicts because we need their minds
2 clear so they can focus on their academics and not be
3 worrying about an issue that they're having.

4 Q. Give us an idea of issues that you have
5 within the school. Don't name any names, but let's
6 get a sense of West High with 86.6 percent of
7 poverty, what kind of issues do counselors deal
8 with?

9 A. All types of -- they could be dealing with
10 abuse situations, child in need of care situations.
11 They could be dealing with students that need food,
12 need shelter. We have homeless students that we need
13 to assist. Transportation, seeing if they have maybe
14 a city bus pass to get them to and from school.

15 Q. Well, aren't you able to -- isn't West High
16 able to handle the counseling situation with four
17 counselors as opposed to five?

18 A. No.

19 Q. Well, explain why not.

20 A. Well, four counselors with 1,281 students is
21 a ratio of 320 to one. That's an awful lot of kids
22 with a variety of different, you know, issues or
23 items to talk to them about.

24 Q. What happened with the driver's education
25 teachers, was that retirement?

1 A. In my building, no.

2 Q. What happened to those driver's education
3 teachers?

4 A. One of the teachers was assigned to a
5 vacancy that was in a middle school, and he happened
6 to be certified in social studies, so he was placed,
7 I believe, in a social studies middle school
8 classroom.

9 Q. How long had he been teaching driver's ed?

10 A. Well, he was teaching them ever since I
11 arrived in 2005, and I believe he taught for several
12 years prior to that in driver's ed.

13 Q. He's now teaching social studies in the
14 middle school?

15 A. That is correct.

16 Q. What about the other driver's ed teacher?

17 A. I believe he was assigned to a vacancy at
18 the juvenile detention facility where we have
19 students at. And he was certified in physical
20 education, I believe.

21 Q. All right. And was the teacher contract one
22 of the reasons these teachers just weren't rified,
23 reduction in force and eliminated? Was it necessary
24 to re-assign them?

25 A. Right, we had to follow our policy, our

1 procedures that we have through our HR department.

2 Q. In terms of the other cuts besides staffing,
3 what other cuts did West High experience?

4 A. There was a reduction in our supply budget.
5 Another cut that happened was teachers that worked at
6 West High received a \$1,500 bonus for teaching in an
7 at-risk -- or at-risk school, and that was
8 eliminated.

9 Q. In terms of the \$1,500 bonus to teach
10 at-risk, what was the rationale behind that bonus?

11 A. As an incentive, but also as a way to
12 attract teachers to teach in an at-risk school.

13 Q. Well, I'm sure you're going to be asked this
14 question, but as a result of these cuts, did you
15 still have teachers available to stand in front of
16 the classrooms?

17 A. Yes.

18 Q. What other cuts did you have with regard to
19 the budget cuts?

20 A. It wasn't necessarily a cut, but we had to
21 increase by a dollar the ticket prices for adults
22 into our athletic events, and that impacted parents
23 coming to our different events.

24 Q. Okay. You mean the number of parents
25 showing up went down?

1 A. Yes, and we also struggled because it was
2 already low to begin with.

3 Q. What was it when you added a dollar?

4 A. What was?

5 Q. What was the amount for sporting events?

6 A. I believe it was five dollars.

7 Q. If you want to achieve outputs with the kids
8 that are non-proficient and move them toward
9 improvement in the West High high school, do you do
10 that with just anybody standing in front of a
11 classroom?

12 A. No.

13 Q. What does it take?

14 A. Highly qualified. They also need to want to
15 be there. I also look for people that are going to
16 be able to build relationships with students, have a
17 passion for what they do.

18 Q. Is money involved in this process?

19 A. Can you --

20 Q. Do you understand the question?

21 A. No.

22 Q. Does it cost -- like, the \$1,500 bonus to
23 get teachers, is that a factor in getting highly-
24 qualified teachers?

25 A. I believe when it was there, it helped.

1 Q. What other cuts were instituted? Did you
2 have salary freezes?

3 A. Yes.

4 Q. On everybody or just some?

5 A. Everybody.

6 Q. When was the last time you had a raise?

7 A. It would have been four years ago.

8 Q. And in terms of the teachers in the
9 building, when was the last time they had a raise?

10 A. Four years ago.

11 Q. And in terms of attracting high-quality
12 teachers, has salary been an issue?

13 A. Yes.

14 Q. We've heard some testimony about teachers
15 leaving positions because with the freeze in the
16 tracks they're able to get more money going somewhere
17 else. Any of those instances at West?

18 A. Because I've been gone a year from there,
19 nothing -- I don't remember any specific --

20 Q. Your current position, are you aware of
21 situations like that?

22 A. I know of teachers leaving to go to other
23 smaller districts outside of Wichita.

24 Q. Is that a prevalent problem, or once in a
25 while, or how would you characterize it?

1 A. I believe I've heard more of them this year.

2 Q. What about the class sizes at West High, is
3 the population at West High trending upwards?

4 A. There were, from this past school year to
5 the year when I was there, they had an increase this
6 year of 96 students.

7 Q. And in terms of the reductions, did they add
8 any teachers?

9 A. No.

10 Q. So how do they handle additional kids with
11 diminished number of teachers?

12 MS. TIBBETS: Object. Foundation.
13 She just said she wasn't there.

14 MR. RUPE: Well, she knows.

15 JUDGE THEIS: If she knows.

16 Q. (By Mr. Rupe) Go ahead.

17 A. If you eliminate a teacher at West, you
18 eliminate six classes. So that amount of students
19 that would have been in those six classes would have
20 to be re-distributed to other teachers in that
21 particular content area, so that would increase class
22 size some.

23 Q. When you were at West, did class size
24 increase in the last year you were there?

25 A. Trying to remember what the enrollment was

1 the year before. It would have increased when we
2 eliminated driver's education. When you eliminate a
3 complete program, anyone that would have taken that
4 elective would have to select another elective or
5 another course. So that would have impacted whatever
6 other subject that they selected, so yeah, there
7 would have been, slight.

8 Q. What about summer school at West, did that
9 change?

10 A. Our district has reduced summer school to
11 two sites. This past summer West High was not one of
12 the sites for summer school. They were the previous
13 summer, though.

14 Q. And in terms of extended learning
15 opportunities for high school kids, were there any
16 extended learning opportunities that were cut?

17 A. No.

18 Q. In terms of the hours that the school was
19 open, did those hours change?

20 A. Yes.

21 Q. How did they change?

22 A. We went to a four-day workweek in the
23 summer; so Fridays, the buildings were closed. We
24 also had a winter shut-down, so our buildings were
25 closed during the winter.

1 Q. And in terms of the hours of the school day,
2 I saw somewhere that the times the building was
3 opened changed. Did that happen at West?

4 A. No.

5 Q. What about administration, were there
6 changes at West?

7 A. Yes.

8 Q. What were those?

9 A. Over my six years there?

10 Q. Let's talk about as a result of the cuts.

11 A. Oh, no.

12 Q. Okay. Did the number of days that the kids
13 are in school change, 230, 260?

14 A. Not kids, no.

15 Q. But administrators?

16 A. Clerical.

17 Q. Clerical?

18 A. Security.

19 Q. Explain that.

20 A. Okay. We reduced several clerical positions
21 or security positions that were building-based from
22 those people having a 260 contract to 230 contract,
23 which means that they probably ended middle of June,
24 and they wouldn't come back until late July. In the
25 high school, all that was left, like in our office

1 area, would be the building secretary for the
2 principal, the registrar, and also the bookkeeper.
3 And all those three people would have to take a
4 vacation in that period of time, as well.

5 Q. What was the security position that was
6 eliminated?

7 A. It wasn't eliminated. They were reduced six
8 weeks.

9 Q. Reduced in time?

10 A. Mm-hmm.

11 Q. Okay. Any changes in professional
12 development as a result of the cuts?

13 A. Just what I've stated with the MTSS
14 instructor coach leaving.

15 Q. Tell me about MTSS, multiple tier -- what
16 does it stand for?

17 A. Multi-Tier System of Support.

18 Q. And one of the people reduced was with the
19 MTSS program?

20 A. That was the instructional coach.

21 Q. What happened with that reduction?

22 A. That's where we, West High, would have been
23 sharing an instructional coach with another high
24 school.

25 Q. And is MTSS a strategy that you have used to

1 reach those kids that are of poverty in moving them
2 upward in performance?

3 A. Yes.

4 Q. And did the elimination of that position
5 affect that?

6 A. Yes.

7 Q. How?

8 A. If you look at preliminary data for West
9 High, you'll see a decrease in their reading, but
10 also, the fact that that coach is not there in the
11 building helping those teachers that might be
12 struggling or assisting their coach -- or those
13 teachers.

14 Q. What has gone on in terms of West High in
15 terms of Common Core Standards?

16 A. There's been an awareness to our teachers
17 about the Common Core Standards. At our district,
18 there's a little preliminary work being done as far
19 as changing our pacing guides to the standards. Our
20 district has provided some math clinics that teachers
21 can go to, to learn more about the Common Core
22 Standards.

23 Q. What about NCLB in terms of are there
24 increasing demands from NCLB?

25 A. Yes.

1 Q. Special ed?

2 A. Yes.

3 Q. College readiness, career readiness?

4 A. Yes.

5 Q. Compare these increasing demands with the
6 resources available.

7 A. Well, it was hard to lose a math and
8 language arts teacher when our scores were -- what
9 they are at West High. Our scores are low in math
10 and low in reading, and that was two areas that, you
11 know, we lost -- we lost teachers in. That's going
12 to impact.

13 Q. Has West High made AYP?

14 A. West High made AYP last school year, in the
15 2010/'11 school year.

16 Q. With the preliminary results, are they going
17 to do it this year?

18 A. No.

19 MR. RUPE: That's all I have.

20 CROSS-EXAMINATION

21 BY MS. TIBBETS:

22 Q. Ms. Doyle, I want to be sure we got the
23 chronology. You left for the '11/'12 school year?

24 A. Yes.

25 Q. These cuts that we talked about, you said

1 driver's ed was cut in 2009, right?

2 A. Two years ago.

3 Q. Okay. And then, the counselor that was cut,
4 that was for the two-thousand ...

5 A. They had one less counselor this school
6 year, the '11/'12.

7 Q. So when Mr. Rupe asked you how four
8 counselors did the work of five, the answer that you
9 gave was not from being in the building, was it?

10 A. No.

11 Q. And the same thing, when he just asked you
12 how the school would have been affected by the loss
13 of the instructional coach, you weren't there
14 personally to observe it, were you?

15 A. I'm in the buildings.

16 Q. Right, you were not there as the principal
17 to observe it?

18 A. Correct.

19 Q. Okay. And when you just talked about how
20 difficult it was to do without two of the teachers,
21 that again, was not from your experience as a
22 principal, was it?

23 A. Correct.

24 Q. Okay. When you left, there was a new
25 principal put in. And is that principal going to be

1 the principal again this year?

2 A. Yes.

3 Q. Okay. Also, about the \$1,500, the \$1,500
4 incentive cut, was that in effect while you were the
5 principal at West High?

6 A. Yes.

7 Q. When you said that supplies were reduced,
8 did that happen while you were still the principal?

9 A. Yes.

10 Q. The budget for the supplies?

11 A. Yes.

12 Q. Okay. West High School is not a Title I
13 school, is it?

14 A. No.

15 Q. A minute ago when we talked about
16 instructional coaches, I think he asked you how they
17 were paid for, and you said through learning
18 services?

19 A. Mm-hmm.

20 Q. Is that a yes?

21 A. Yes, I'm sorry.

22 Q. No problem. Happens all the time. But
23 learning services is funded with federal dollars,
24 right?

25 A. I believe so.

1 Q. Okay. Now, West High School was started
2 back in the '50s, right?

3 A. Correct.

4 Q. And originally, it was a vo-tech school, or
5 it was created that way, is that right?

6 A. When I read the history, it was --
7 originally they wanted to create a vocation school.
8 But when it was built in 1953, it was built as a
9 comprehensive high school.

10 Q. Well, they had classes, though, in things
11 like food preparation and stenography and secretarial
12 training and mechanical drawing and auto mechanics
13 and woodworking and building trades when they first
14 started the high school, right?

15 JUDGE THEIS: You have your own
16 witness.

17 MR. RUPE: That's when you were in
18 2nd grade, as I recall.

19 MS. TIBBETS: In 1953? My parents
20 were marrying.

21 Q. (By Ms. Tibbets) But now, it is a
22 comprehensive high school, right?

23 A. Yes.

24 Q. And you've got some good things happening at
25 West High, recently. Last night, the Wichita School

1 Board approved a \$12.7 million addition and
2 renovation?

3 A. Yes.

4 Q. And last year you got new tennis courts,
5 right?

6 A. Yes.

7 Q. In this renovation, the high school's going
8 to get a new gym, a new swimming pool, a music suite,
9 and a modern culinary arts lab, right?

10 A. Yes.

11 Q. And that culinary arts lab is part of that
12 continuing training that the high school does to help
13 kids work toward a profession in culinary arts or
14 food service, right?

15 A. Yes.

16 Q. And that's a big part of the curricula
17 there, right?

18 A. Yes, it is.

19 Q. Your addition's also going to have a 2,400-
20 seat gym with a walking track, swimming pool, locker
21 rooms, wrestling room, and re-model some classrooms,
22 and get you a storm shelter, right?

23 A. Yes.

24 Q. Last year, your library got re-vamped and
25 you got \$10,000 worth of new books. Do you know

1 about that?

2 A. When you say last year, are you talking --

3 Q. The last school year.

4 A. The '11/'12 school year?

5 Q. Yes, ma'am.

6 A. Because I wasn't there ...

7 Q. Okay, you don't know about that?

8 A. Hmm-mm.

9 Q. When you mentioned a minute ago that your
10 librarian was no longer employed, there was some
11 other employees who handled librarian duties, right?

12 A. The librarian was replaced with two library
13 clerks.

14 Q. Sure. And so it's not like because the
15 librarian was gone that the library was no longer
16 existent, was it?

17 A. No, it was open.

18 Q. Okay. And in terms of professional
19 development, your school has, each week, professional
20 development that your teachers -- or West High has
21 each week professional development that the teachers
22 are required to attend, right?

23 A. Can you rephrase that for me?

24 Q. Sure. Sure. Let me go back then.

25 Mr. Hudson is the current principal, right?

1 A. Yes.

2 Q. Mr. Hudson puts out on the web his
3 newsletter that he distributed to the teachers on a
4 weekly -- on a weekly basis, right?

5 A. Mm-hmm.

6 Q. And in that letter, he tells the teachers
7 that he expects them to attend professional
8 development at least once a week. Does that sound
9 right to you?

10 A. It does. I read that on -- I read one of
11 those.

12 Q. That would have been during the year after
13 you'd even lost an instructional coach, right?

14 A. Yes.

15 Q. Now, you mentioned that your school is
16 divided into academies, and that's so that the
17 students will have a smaller community than your
18 1,500 students that they can belong to, right?

19 A. The academies are to support the High
20 Schools That Work initiative, reform initiative that
21 was brought into the school several years ago.

22 Q. To help make the students be career ready?

23 A. Yes.

24 Q. For your freshmen. You have something
25 called -- or the high school has Freshmen Success

1 Academy?

2 A. Yes.

3 Q. And one of the things that Freshmen Success
4 Academy provides is to give students tutoring if they
5 are failing one of their courses, right?

6 A. Yes.

7 Q. And they can do something that we've heard
8 here called credit recovery, which I assume means,
9 you fail, and then you take it again, and you pass,
10 you can get a passing grade, is that right?

11 A. That's correct.

12 Q. Is that what credit recovery is?

13 A. Yes.

14 Q. And tutoring is available in your school for
15 that?

16 A. Yes.

17 Q. So I want to talk to you just a minute about
18 the scores at West. You did make AYP -- you said
19 that last year West High School made AYP. And you
20 didn't make the AYP goal, but you made AYP because
21 you were having consistent improvement, right?

22 A. Through safe harbor, yes.

23 Q. Through safe harbor, all right. And you've
24 been there since 2005?

25 A. Yes.

1 Q. And when you look at what students are
2 measured on, it's what we've been talking about,
3 which is that 11th test, right?

4 A. Yes.

5 Q. In the high schools, right? So when you got
6 there -- let's just talk about reading -- their
7 reading scores. I have in 2006 it was 39.9, so they
8 were in the 30s, is that fair?

9 A. Reading, yes.

10 Q. And that number went down a little bit in
11 2007, then by 2008 was up to 52. Does that sound
12 right to you, in reading?

13 A. In what year?

14 Q. In 2008.

15 A. I can tell you what it was in 2010/'11.

16 Q. Okay, tell us about that.

17 A. I believe it was 70 percent in --

18 Q. In 2010/'11?

19 A. Mm-hmm, where we made AYP.

20 Q. Well, so over the years, between 2005 to
21 2011, it increased almost 40 percent, does that sound
22 right?

23 A. Not quite 40, but ...

24 Q. Little more than 30?

25 A. Mm-hmm.

1 Q. In math in 2006, it was at 21.8 percent.
2 And then, do you remember what it was by the time you
3 left?

4 A. I believe it was at 52 percent.

5 Q. So a 30 percent increase over those years
6 that you were there?

7 A. Yes.

8 Q. I would assume, as a principal, that you --
9 well, let me ask you this, was the increase, was it a
10 straight increase every year, or did you have some
11 years that you went up and some years you went down
12 slightly?

13 A. As best as I can remember, there was a
14 variance.

15 Q. Okay. And then you said, just now, that you
16 had looked at the preliminary results, which I think
17 have been marked as Exhibit 417?

18 A. Yes.

19 Q. And you said that you didn't think that West
20 High was going to make AYP this year?

21 A. Correct.

22 Q. I'll show you up here what has been marked
23 Exhibit 1229. And I've got West High School here.
24 So your memory is that in reading, which is on the
25 left-hand column here, by the time you left, it was

1 right around 70. So it's at 67 now. And math, by
2 the time you left was the 50s and it's 54.9 this
3 year?

4 A. Yeah, I believe when I left it was 52, if I
5 remember right.

6 Q. So in your memory, it's a little bit of a
7 climb?

8 A. Mm-hmm.

9 Q. All right. But the one I wanted to show you
10 and talk to you about, you said 19 percent of your
11 students were African American? 19 percent of the
12 population at East -- I mean, at West was African
13 American?

14 A. I believe this year's enrollment was 16
15 percent.

16 Q. Okay. 16 percent. So if last year the
17 African-American population in math had a 33.3 and
18 this year they have 53.8, that would be a substantial
19 increase, wouldn't it?

20 You see 53.8 in math over here on the right?

21 A. Uh-huh.

22 Q. It was the math scores last year were 33.3
23 for the African-American students?

24 A. Okay.

25 Q. Okay. So that would be a pretty substantial

1 jump for African-American students, correct?

2 A. If you're asking me if going from 33 to 53,
3 that's a jump, yes.

4 Q. Do you have a memory of what African-
5 American students were when you were there? Of what
6 their math scores were?

7 A. I believe it was in the -- I believe it was
8 in the 30s, yes.

9 Q. Sure, because if all students were in the
10 50s, the African-American number in the 30s, that
11 sounds right to you?

12 A. As best I can remember.

13 Q. Okay. And the same way, the African-
14 American students in reading, if we look at last
15 year's, were at 52, and this year they're at 62.2.
16 Does 52 sound close to what you remember African=
17 American students being in reading when you were
18 there?

19 A. I don't remember the specific -- I mean, the
20 specifics on it.

21 Q. But that's something you would have looked
22 at, right?

23 A. Yes.

24 Q. And a substantial increase in one of those
25 subsections is something you're looking for at West

1 High School, right?

2 A. Yes.

3 Q. And a group like that can make AYP when the
4 entire school does not, right?

5 A. Well, subgroups -- each subgroup needs to
6 make AYP.

7 MS. TIBBETS: Sure. Right.

8 Okay. I don't have anything further.

9 REDIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. So if one subgroup, like African Americans,
12 in one year makes AYP, but the others don't, then it
13 doesn't happen?

14 A. Correct.

15 Q. And in terms of the facilities that are
16 going on, we heard Ms. Jones talk about -- at West,
17 we heard Ms. Jones talk about and John Allison talk
18 about the bond issue. Is the facilities, the
19 expansion that was described at West High part of the
20 bond issue that was issued, if you know?

21 A. Yes.

22 Q. It was?

23 A. (Nodding head.)

24 Q. All right.

25 A. Yes.

1 Q. And in terms of the money from learning
2 services used for the learning coaches, do you know
3 if that is federal fund money, or is it state money
4 that is administered through Title I?

5 A. I do not know exactly how that position was
6 funded. What I do know is it was not part of my
7 general fund budget.

8 Q. Okay, but in terms of whether that was money
9 from the district or federal money, you don't know
10 the answer to that?

11 A. West High was not a Title I school, so I
12 would not have received Title I funds through West
13 High --

14 Q. The reason I've heard this is -- from every
15 witness we've heard that if there's federal funds
16 involved, they can't be used for non- --

17 A. Right.

18 Q. -- federal programs, and since you're not a
19 Title I school at West High, my question was, do you
20 know whether it was federal money or not that paid
21 for those learning coaches?

22 A. My answer would be no because we're not a
23 Title I school so we would not have received federal.

24 Q. And then, let's just ask the question with
25 regard to -- by the way, you physically are at West

1 High, aren't you?

2 A. Yes.

3 Q. And your job that you've described and gave
4 a title to is at West, true?

5 A. In my current position?

6 Q. Yes.

7 A. I'm in and out of all schools.

8 Q. So you've gone into West High and you've
9 seen what counsel has described?

10 A. Yes.

11 Q. In terms of something that we heard about in
12 talking about the 11th grade scores, why would a high
13 school bank its assessment scores?

14 MS. TIBBETS: Objection. Outside
15 the scope.

16 JUDGE THEIS: Something new?

17 MR. RUPE: Huh? I'm sorry?

18 JUDGE THEIS: They bank them
19 because they took them in the 9th, 10th, or 11th
20 grade.

21 MR. RUPE: Yeah, and she's going to
22 explain the circumstances. I should have asked her
23 this in direct. I'll ask it now with the Court's
24 indulgence, but I want her, because she knows, to
25 explain why -- how that happens.

1 JUDGE THEIS: Go ahead.

2 Q. (By Mr. Rupe) Go ahead explain it to the
3 Judges.

4 A. Okay. Schools make a variety of decisions
5 regarding what we call opportunity to learn. If you
6 have maybe a freshman that comes into your school
7 that already has a higher skill level, for example,
8 maybe already taking geometry as a freshman, and
9 we've looked at their algebra score in 8th grade, we
10 looked at what they scored on the 8th grade
11 assessment, it's possible that we'd go ahead and give
12 them the state assessment. And if they score
13 proficient or higher, then that score is banked.

14 If they didn't pass it, they still have
15 another opportunity to take it. If they didn't pass
16 it, that gives us information on what we can do to
17 provide interventions between that time and the time
18 that they take the test. Some schools have the
19 philosophy of we're going to test everybody maybe the
20 sophomore year, and those students that aren't
21 proficient, then again, we have the whole
22 intervention, we know what their skills are lacking
23 in, and then what can we do to help them before they
24 take it again their junior year.

25 Q. In terms of West High this year based on

1 preliminary assessments, they're not going to make
2 AYP?

3 A. Just from me looking at the preliminary
4 data, I don't believe they are.

5 Q. And by the way, do you know where 53.8 -- on
6 this chart on the overhead, do you know where 53.8 is
7 in terms of the AYP targets?

8 A. It's below the target.

9 Q. How much below?

10 A. Are we looking at math or reading?

11 Q. We're looking on the one on the right, which
12 I believe is the math.

13 A. If I remember right, I think it's -- the
14 target is 82 percent.

15 Q. Yeah. So is West High providing a suitable
16 education to all its kids?

17 A. No.

18 MR. RUPE: That's all I have.

19 MS. TIBBETS: I don't have anything
20 further.

21 EXAMINATION

22 BY THE PANEL:

23 JUDGE THEIS: If somebody passes
24 the 11th grade equivalent in math when they're a
25 freshman.

1 THE WITNESS: Uh-huh.

2 JUDGE THEIS: Do they get a pass?

3 THE WITNESS: I mean, they pass the
4 test.

5 JUDGE THEIS: Still have to take --

6 THE WITNESS: They still have to
7 take their three math credits.

8 JUDGE THEIS: A High School At
9 Work, what's that mean?

10 THE WITNESS: High Schools at Work
11 is a school reform model that is recognized by KSDE.
12 And what that does is it helps prepare students for
13 beyond high school, whether they're going to two-year
14 college, a four-year college, or right into a career.

15 What we offer them at West High is
16 real world experiences to help them make a decision
17 on where they might go after high school. For
18 example, we offer certified nursing assistant. We
19 have a medical program. We have EMT. We have kids
20 that go out into the hospitals or out and do work
21 experience shadowing.

22 We have Project Lead the Way, which
23 is an engineering component. We have a business
24 hospitality academy, that's where the culinary
25 career -- we have students that go out and they

1 assist chefs in our city. So we're giving them real
2 world experience while they're still in high school,
3 while they're still taking their courses that they
4 need to graduate, but they're also getting these
5 little experiences.

6 JUDGE THEIS: That's what the
7 academy has referred to --

8 THE WITNESS: Yes.

9 JUDGE THEIS: -- as different
10 career opportunities?

11 THE WITNESS: Four are career-based
12 and one is our Freshman Success Academy.

13 JUDGE THEIS: Thank you.

14 MR. RUPE: Anything further?

15 JUDGE THEIS: You can step down.

16 Thank you.

17 (Witness excused.)

18 MR. RUPE: Thank you. Amy Hungria.

19 JUDGE THEIS: 55 minutes for two
20 witnesses.

21 MR. RUPE: See if I can do it.

22 Your Honor, by way of Bill Hammond,
23 he's here tonight anyway, because he's not driving
24 back to Dodge City tonight, he drove in this morning
25 and he's available in the morning. And I think with

1 the Hutchinson people, if I go through and do what
2 I've been doing with the crew, we'll be back on
3 schedule by the end of tomorrow.

4 JUDGE BURR: Sounds good to me.

5 JUDGE THEIS: We'll hold you to
6 it.

7 AMY HUNGRIA

8 Called as a witness for the
9 Plaintiffs, was duly sworn by the reporter and
10 testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. RUPE:

13 Q. Tell us your name and the city in which you
14 live.

15 A. Amy Hungria, and I live in Wichita, Kansas.

16 Q. And what is your title, please?

17 A. I am currently the principal at Hamilton
18 Middle School.

19 Q. Let's learn about you. Talk about your
20 educational background, please.

21 A. I graduated from WSU with a Master's in
22 Leadership in Education. I also graduated from WSU
23 with a Bachelor's Degree in Secondary Language Arts.
24 In there are a few endorsements for English language
25 learners as well as middle school level. And I

1 started at Penn State; unfortunately, at the moment.

2 Q. In terms of your time at Hamilton, when did
3 you start as principal?

4 A. This is going to be -- I've completed four
5 years at Hamilton as the principal at Hamilton, so
6 I'm going into my fifth year.

7 Q. And we're starting year five at Hamilton?

8 A. Yes.

9 Q. And when we talk about years, this is a
10 school year?

11 A. Yes. So I actually, I was assigned there in
12 the 2008/2009 school year.

13 Q. Okay. So let's just get it down so I'm
14 clear, your first year at Hamilton was what school
15 year?

16 A. 2008/2009.

17 Q. Okay. And then, you've been there for the
18 years after that?

19 A. Yes.

20 Q. Prior to Hamilton, where were you?

21 A. I served as an assistant principal at Brooks
22 Middle School for two years. I served as an
23 assistant principal at Marshall Middle School for two
24 years. I was a teacher at North High School for five
25 years, and my first teaching job was three years at

1 Hamilton Middle School.

2 Q. So you've been in the Wichita USD 259 your
3 entire career?

4 A. Yes.

5 Q. Let's talk a little bit about Hamilton, if
6 we could. In terms of -- well, let me ask you to
7 give us a little snippet of personal information
8 about you.

9 A. Well, I'm an avid Pittsburgh Steelers fan
10 and a mom of a middle-schooler who loves the New York
11 Giants, so we have a lot of bantering going back and
12 forth during football season.

13 Q. And then, let's talk about Hamilton, give us
14 the demographics of Hamilton, please.

15 A. Hamilton --

16 Q. Hang on. First of all, where is it located
17 in Wichita?

18 A. Hamilton is located on South Broadway
19 between Lincoln and Pawnee, so we are an inner city
20 middle school. We are a neighborhood school, so we
21 are essentially landlocked within a chain link fence
22 because we have a lot of traffic on the Broadway
23 side. But then we also have some community
24 businesses, as well as residences on the all changing
25 sides of -- of the actual facility.

1 Hamilton is a unique middle school within
2 our district. It is a small school. We serve -- we
3 ended the school year with about 525 students. We
4 have about 96 percent free and reduced, is our
5 population that we serve, of which 90 percent of our
6 students are actually considered free, so a small
7 percentage of the students qualify for reduced. And
8 then an even smaller number of students, a handful of
9 families, do not actually either submit paperwork or
10 qualify for the free and reduced population and the
11 benefits of that.

12 Q. What's the difference between free and then
13 reduced?

14 A. That goes back to the severity of the
15 poverty. And so 90 percent of our students would be
16 considered in that severe poverty range and having --
17 having been a teacher at Hamilton and now the
18 principal at Hamilton, a lot of it is due to
19 generational poverty there within that community and
20 they continue to be in the community, and just never
21 seem to get out of that cycle.

22 Q. Explain the economic conditions on South
23 Broadway in Wichita, Kansas.

24 A. It would not be uncommon for where we're
25 located at for us to have the police or fire or EMS

1 sirens going up and down the street because of a
2 local drug bust, because of activity that is taking
3 place within the neighborhood, because of a john
4 sting that is occurring within our area.

5 There's a church directly across the street
6 from us on Broadway, and oftentimes you can watch
7 some inappropriate and illegal activity taking place
8 right there on the sidewalk. It is not uncommon for
9 myself and a janitor to go ask a vagrant to leave our
10 school property during the school day so that they're
11 not interacting with our students.

12 JUDGE BURR: Can I ask a question,
13 where do your students -- where do they go to West,
14 or South or both?

15 THE WITNESS: We are primary feeder
16 to West High.

17 JUDGE BURR: Okay.

18 Q. (By Mr. Rupe) Compare the 96 percent at-risk
19 to the rest of the district.

20 A. Well, comparatively speaking, we are much
21 higher than what the rest of the district serves in
22 regards to the socioeconomic status for the district.
23 There's one other middle school, and we kind of
24 flip-flop back and forth, in regards to typically who
25 has the highest amount of free and reduced.

1 One of the dynamics with the poverty issue
2 that we deal with is a high rate of mobility of our
3 students moving in and out of our area. I have come
4 to learn very quickly that it takes about three
5 months for families to get evicted out of the home.

6 So although they may start with us, they may
7 transfer in and out of other schools within the
8 district, and may or may not end up with us at the
9 end of the school year, just based off of that
10 socioeconomic piece and where they're living, if
11 they're moving in and out with other family members,
12 or they considered homeless at that point.

13 Q. Are you able to tell us the percentage of
14 kids that are homeless?

15 A. I don't know off the top of my head, but I
16 do know it has continued to increase year after year
17 since I've been there.

18 Q. Give us a ballpark in terms of is it two or
19 three kids, or is it --

20 A. I'm going to say it's -- it's more than ten
21 students. But it has continued to increase. And we
22 do try to keep students that we know are homeless
23 within a stable setting. And so, if we are aware, we
24 do try to help and provide additional resources for
25 them.

1 Q. And talk to us about the subgroups other
2 than at-risk in Hamilton.

3 A. Demographically, we serve -- we have about
4 30 percent of our students are Caucasian, about 40
5 percent, little bit higher, of our students are
6 Hispanic, and about 15 percent of our students are
7 African American, with a small mixture of everybody
8 else.

9 But we do also have a special ed population
10 in our building that is unique. About one in four
11 students are served through special education needs,
12 as well as one in four students are receiving ESL
13 services within our building, and some of those
14 students are receiving dual services.

15 Q. So special ed is about 25 percent and ESL is
16 about 25 percent?

17 A. Yeah, and it fluctuates with that mobility
18 piece, so it could increase one week, and the next
19 week, it could decrease.

20 Q. All right. Using your background at Brooks
21 and Marshall, talk to us about the challenges with a
22 96 percent at-risk population in terms of educating
23 them as opposed to other situations you've taught.

24 A. Reality of it is, is that we not only focus
25 on the educational aspect of it, the academic piece

1 of making sure our students are working on reading,
2 writing, math, as well as their exploratory
3 offerings, but we are also clothing our students, we
4 are feeding our students.

5 I refer to our nurse's office as a clinic
6 because it would not be uncommon to walk down the
7 hall, past the nurse's office, and have a student in
8 the nurse and have the parent on the next cot next to
9 them in our nurse's office, because we truly become a
10 community center. And so that that takes a lot of
11 time and energy and a lot of resources in order to
12 meet those basic needs first.

13 And as well as if we don't necessarily have
14 the resources available to us to have somebody that
15 we can contact or refer parents to in order to meet
16 those needs so that we can deal with the academics,
17 which is our primary job. Unfortunately, we also
18 have to serve -- I serve -- as a principal I also
19 serve as a parent, I also serve as advocates for my
20 students, as well as my parents because they don't
21 necessarily know the rules and the system of how to
22 function.

23 Q. Why is it necessary in educating those kids
24 to -- why don't you just go right to the learning and
25 step over this basic needs issue?

1 A. Unfortunately, we have a lot of gap, and not
2 only in values and what is provided for them at
3 home. Those things have to be provided in order for
4 them to be successful academically, so we become that
5 surrogate family and parent for our students.

6 Q. And in your experience when you become the
7 surrogate family, as you've explained, and addressed
8 those basic needs, do those kids learn?

9 A. Yes. Unfortunately, as to what we're held
10 accountable to, and what we -- what is published
11 about us and what we're held to that standard, we are
12 not doing a very good job of that.

13 Q. Well, let me ask you whether you believe, as
14 some folks have said in this courtroom, that all
15 children can learn?

16 A. Absolutely.

17 Q. In terms of the performance of the Hamilton
18 Middle School over the last two or three years, talk
19 to us about where Hamilton is in state assessments
20 during that period of time.

21 A. Over the last four years, we have shown some
22 growth, however, not enough. This year preliminary
23 results show that our math scores have increased .5.
24 Well, .5 isn't going to get you anywhere when only 48
25 percent of your students are making -- are achieving

1 what the standard is. And so that means over 50
2 percent of our students are not where they are
3 expected to be, at this point in time.

4 When it comes to reading, our reading
5 dropped a little bit from last year to this year, so
6 the 54 percent of our students that met standard,
7 we're still losing -- 50 percent of our students
8 still aren't achieving the standard that's set forth
9 for us.

10 Q. What have been the diminished resources at
11 Hamilton? In other words, what have you done as
12 principal by way of the cuts, in the last few years?

13 A. Some of the cuts were imposed for us by some
14 district level staff. So, for example, middle
15 schools used to have SRO, school resource officers,
16 in their buildings. That was a cut that was made,
17 that as a building principal, I didn't have a say in.

18 As a building principal, I used to have --
19 as a building principal of a Title building, I -- who
20 also re-structured that building and went through a
21 re-structuring process because we have not made AYP,
22 I had a math instructional coach as well as a
23 literacy instructional coach, both full-time, five
24 days a week. And that has been cut down to one
25 instructional coach -- we're now calling them MTSS

1 facilitators -- two days a week. So I essentially
2 went ten days a week, essentially, to two days a week
3 of service of additional support for my teachers as
4 well as students.

5 Although I did not lose a librarian, my
6 librarian is not a full-time librarian. He also
7 teaches two class sections in order to attempt to be
8 able to offer enough sections of language arts and/or
9 social studies classes, depending on what I need at
10 that time.

11 I lost two special ed teachers. I lost a
12 math teacher, as well as a language arts teacher.
13 And I had a truancy clerk that was a classified staff
14 person that would help with attendance issues. That
15 position was cut. And I also cut a clerical position
16 that helped in our front office with answering phones
17 and customer service.

18 Q. Let's go through these. What's the school
19 resource officer, what's that?

20 A. That is the Wichita Police Department
21 officer that was assigned to our school at that point
22 to help serve as a mentor, help work with students,
23 help establish some safe and civil environment within
24 our school building, as well as help serve some of
25 our community and family that came into our building

1 for help and assistance.

2 Q. And the school resource officer was paid by
3 the district?

4 A. I believe there was a partnership between
5 the Wichita Police Department and the school
6 district.

7 Q. Was that position reduced or eliminated?

8 A. Middle school SROs were eliminated.

9 Q. So you don't have that person in the
10 building anymore?

11 A. That is correct.

12 Q. What about band and orchestra?

13 A. I did have to cut my band and orchestra
14 position .33 FTE, so that what ended up doing was
15 forcing me to create some cross grade level classes.
16 I didn't -- my enrollment numbers in there didn't
17 justify keeping a full-time band and orchestra
18 teacher. However, with some of the policies that are
19 written, 6th graders will have band every day, if
20 they choose to.

21 So what I did, in order to be crafty and
22 keep a teacher cut away from a core classroom, was
23 I've combined my 7th and 8th grade band students
24 together, and I've combined my 7th and 8th grade
25 orchestra students together. So although there is a

1 difference in ability level instrumentally, they were
2 still able to have the opportunity, but it created
3 larger class sizes for other exploratory teachers.
4 That person was actually no longer funded full-time
5 and -- in an attempt to continue to support the areas
6 of language arts and math, since I'd already cut a
7 language arts and math teacher.

8 Q. You talked about the MTSS person going from
9 ten days to two days, and was that in math and
10 literacy?

11 A. Yes. At that point, I had had a full-time
12 math coach as well as a full-time literacy coach.

13 Q. And when you cut the two special ed, were
14 those teachers?

15 A. Those were teachers. They were teachers --
16 I just did not fill those positions.

17 Q. How many special ed teachers did you have
18 left after you cut two?

19 A. I have seven special education teachers
20 left.

21 Q. If I remember the demographics, you have
22 about 25 percent of your kids are special ed?

23 A. That is correct.

24 Q. And give the Court an idea of what issues
25 you have with a 25 percent special education

1 population.

2 A. We service special education students. We
3 have a large variety of students that we work with.
4 And we have an autism program in our building, so
5 some of those autism students require a lot of
6 individual need and service. Some of those students
7 are self-contained the entire day, and literally, are
8 still learning letters and numbers, counting change
9 at 12, 13, and 14 years of age.

10 I also have a unique situation where I have
11 some higher-functioning autism students, that that
12 transition if they are able to receive core
13 instruction with one-on-one support with a para, we
14 try to meet those students' needs and help them.

15 I also have a self-contained
16 autism/emotionally disturbed classroom. Without
17 having a lot of special education background, I would
18 describe those students as truly being mentally
19 fragile. They require a lot of support. Although
20 they are -- they can be academically successful on
21 grade level and core curriculum, there are a lot of
22 mental illness issues that we deal with, with those
23 students that are very explosive, and we try as much
24 as possible to have those students out amongst the
25 population of regular students.

1 We also serve our regular special education
2 students, so our students who have a learning
3 disability or they have -- there's another health
4 impaired issue or they -- and that ranges. That
5 ranges anywhere from students that are just four or
6 more year grade level below, to they just have
7 processing issues. And so all those students require
8 different strategies, require different amounts of
9 time.

10 We have students that literally we have to
11 escort from one class to the next to make sure that
12 they don't get lost within the building, and that
13 they are safe throughout the school day, as well as
14 the other students being safe throughout the school
15 day. So there's a wide range of students that we
16 serve.

17 Q. Do you have any kids identified as gifted?

18 A. We have two students at our building that
19 have gifted IEPs, however, their families have
20 decided to put them on consult instead of them going
21 to another school, because we do not offer gifted
22 services at Hamilton.

23 Q. What does the phrase "processing issues"
24 mean? What does that mean?

25 A. There may be an auditory issue, so as we're

1 looking at individual students, we know that may be
2 this student doesn't process as quickly verbally as
3 they would visually. So the expectation, then, is
4 that teachers will make sure that they're planning
5 appropriately for those students, creating visuals
6 for them, making sure that they're seated in an
7 appropriate place within the classroom; may buddy
8 them up with a higher-level student so that there
9 is -- you're not just leaving them and missing out on
10 learning opportunities.

11 Q. When it comes to the standards that you're
12 required to follow, in order to educate kids, are
13 there different standards for kids that are in the
14 special education program?

15 A. No.

16 Q. Were you able to absorb those two special ed
17 reductions without any difficulty?

18 A. Our class sizes increased.

19 Q. And my question was, did that create any
20 difficulty?

21 A. Yes, it created difficulty.

22 Q. Explain to the Judges how.

23 A. Well, when you are taking -- when you're
24 removing sections of classes out of your schedule and
25 your offerings, then, essentially, you are increasing

1 your other class sizes. So, with our schedule, one
2 teacher at Hamilton teaches five classes. So if I'm
3 removing two special education teachers, that's
4 ten extra classes that are disappearing out of the
5 variety of classes that students can take.

6 And the other piece that we are required and
7 obligated is to make sure that whatever is written in
8 the student's IEP we are meeting. So you have to
9 meet those requirements, and it becomes very
10 difficult when the staff isn't there to do that.

11 Q. In terms of what we've heard in this
12 courtroom, because you weren't here, we've heard some
13 economists from the State and statisticians talk
14 about there's no relationship statistically between
15 smaller class size and increased student
16 achievement. And what I want to ask you is about
17 Hamilton and about the special ed kids and about the
18 class size, in your experience has that made a
19 difference in student achievement?

20 A. Yes, as class sizes continues to increase,
21 students are getting less and less one-on-one
22 attention or assistance or help.

23 Q. Where does Hamilton fall in assessments this
24 year?

25 A. We made a point -- preliminary results show

1 that our math scores as a whole will increase .5, and
2 reading assessments have decreased a little bit.

3 Q. Is Hamilton making AYP?

4 A. Hamilton will not make AYP.

5 Q. Is it on a status of on improvement or ...

6 A. Hamilton has continued to be on
7 improvement. We re-structured three years ago,
8 already, because of not making AYP for several years.

9 Q. So three years ago was the re-structure and
10 you've been on improvement every year since?

11 A. Yes.

12 Q. And you're going to be on improvement again
13 this year?

14 A. Yes.

15 Q. Is attendance an issue at Hamilton?

16 A. Attendance is a huge issue at Hamilton.

17 Q. The elimination of the truancy clerk have
18 any effect on attendance?

19 A. Yes.

20 Q. Explain that to the Judges.

21 A. Actually, both positions, our SRO, as well
22 as our truancy officer, both used to be additional
23 resources that could go and literally knock on
24 people's doors and bring students to school when they
25 did not come to school. And so those positions do

1 not exist anymore, so it is becoming more and more
2 difficult to go get the students.

3 We expect students to attend. It is a state
4 requirement that students attend school.

5 Unfortunately, there will be times when students just
6 don't come to school and parents don't make them come
7 to school. Or they will just go on a trip for two
8 weeks and disappear, and they may or may not come
9 back.

10 Q. In terms of the Caucasian subgroup, was
11 there an occasion where you did not make AYP although
12 they scored high enough to do it, but you didn't have
13 the required attendance?

14 A. It could have been possible for our subgroup
15 of Caucasian this year to possibly make safe harbor.
16 However, since we did not meet the attendance
17 requirement of average daily attendance of 90
18 percent, that subgroup wasn't even considered for
19 safe harbor.

20 Q. What is an AVID class?

21 A. AVID, AVID stands for Advancement Via
22 Individual Determination. And it essentially takes a
23 middle-level student that has the ability to be in
24 higher-level classes, but typically doesn't have the
25 self-motivation and they just kind of do enough to

1 get by.

2 So AVID takes a student and puts them in a
3 more rigorous classroom, a higher-level class than
4 what they would typically take, and also provides
5 support to them for them to be successful. Because
6 oftentimes, they are lacking study skills,
7 organizational skills, and so we provide -- through
8 AVID elective, we provide tutoring, mentors, and a
9 networking system for those students so that they can
10 take higher-level classes and be successful.

11 Q. And in terms of the reductions, did you have
12 any cuts that affected the AVID classes?

13 A. Yes. I went from two sections of AVID
14 elective at 7th grade and two sections of AVID
15 elective at 8th grade, to one at each grade level.

16 Q. What did that do to the class size?

17 A. It makes those class sizes much larger. So
18 it just every time -- every time you take sections
19 out, you increase your other classes.

20 Q. In terms of what you've observed with the
21 kids that are at Hamilton, do smaller class sizes
22 work to improve performance?

23 A. The smaller the class size, the more
24 individualized instruction students can receive.

25 Q. And this may be an over-simplification, but

1 with the kids in poverty that are at Hamilton, is it
2 a fair statement that time and attention are
3 important strategies in dealing with those kids?

4 A. It's very important, as well as
5 relationships with students.

6 Q. What about the reductions in administrative
7 positions you mentioned, is there a registrar that
8 you reduced?

9 A. My registrar who, essentially, she records
10 the student attendance and does the attendance
11 reports, her position was cut from a 260-day position
12 to 230-day position. And I also lost an assistant
13 principal through cuts.

14 Q. And what effect has that had?

15 A. From the registrar position, an example
16 would be, we just learned recently of the possible
17 safe harbor consideration for our Caucasian subgroup
18 for AYP, however, there is nobody at the building
19 now, because of the reduction in number of days that
20 the registrar works, in order for us to sit and go
21 through each student's attendance records to see if
22 there are any errors that we could probably report
23 for us to be considered for safe harbor.

24 The assistant principal cut means that I
25 spend -- instead of spending my time as an

1 instructional leader as a principal of a building, I
2 now spend some of my time dealing with student
3 discipline.

4 Q. There's no assistant principle?

5 A. I had two assistant principals and one got
6 cut.

7 Q. What is PLC time?

8 A. PLC is Professional Learning Communities,
9 and that is a contractual time built into the
10 teacher's schedule, and we meet 17 days during the
11 contractual year for 40 minutes.

12 Q. And has that been affected by the cuts?

13 A. It actually was cut in half. The previous
14 year it was 32 days, I believe, roughly, and it got
15 cut down to 17 days.

16 Q. Explain the consequences of that.

17 A. That's additional professional learning time
18 for our teachers. And so, although our teachers do
19 receive professional learning opportunities, when you
20 cut your instructional coaches from, essentially, ten
21 days a week with two coaches, to one coach, two days
22 a week, and you cut your number of PLC days, you are
23 losing, again, some additional opportunities for
24 teachers to grow and continue or maintain, you know,
25 their professionalism and what we expect them to do

1 in the classroom instructionally.

2 Q. Have you lost teachers from Hamilton to
3 other districts?

4 A. Yes, this year I have.

5 Q. And is that because of money?

6 A. Yes.

7 Q. Explain what happened.

8 A. Having been a re-structured school, I
9 hired -- I want to say, in 2009/2010, I hired --
10 after going through the interview process, I hired
11 about 30 new teachers that year through
12 re-structuring. And so those teachers now would be
13 fourth-year teachers going -- fourth-year teachers,
14 and they are still working on a first-year teacher
15 salary.

16 So I lost one language arts teacher to Maize
17 District, because they were going to put him on the
18 fourth-year teacher salary, and it was an increase
19 for him. During this time, he also was going to
20 school and earning college credit, so they were able
21 to give him that salary increase, as well, that we
22 weren't able to offer him.

23 Q. And that was a math teacher?

24 A. That was a 7th grade language arts teacher.

25 Q. Oh, language arts teacher. Do you have

1 increasing demands at Hamilton along the lines of
2 what we've heard in the courtroom concerning Common
3 Core, NCLB, special ed, college and vocational
4 readiness?

5 A. Absolutely. In addition to those increased
6 demands that we're expected to meet, as of Thursday,
7 my numbers are projected to be 663 students for next
8 year -- I ended the school year at 524 -- and I'm not
9 seeing any additional allocation with those students
10 either.

11 Q. That number was how much?

12 A. 663, that was as of Thursday.

13 Q. From 500 and what?

14 A. We ended the school year at 524. We ended
15 the '11/'12 school year at 524, and my projection
16 from Thursday was 663 students.

17 Q. With the resources you have, are you
18 providing a suitable education to all your kids?

19 A. Unfortunately, 50 percent of my students,
20 based off of what we're held accountable to, are not
21 being served appropriately.

22 MR. RUPE: No other questions.

23 CROSS-EXAMINATION

24 BY MS. TIBBETS:

25 Q. You said you got a projection of 663

1 students?

2 A. Yes.

3 Q. You never had that many students at the
4 school, though?

5 A. It has been years since we had -- when I
6 taught there, we had numbers of students like that.

7 Q. Did you have a principal and two assistant
8 principals back then?

9 A. Yes, and we also open -- the school district
10 also opened Longfellow as an additional site to serve
11 those number of students.

12 Q. So those students were not housed in the
13 building as you have it now?

14 A. No, however, there's no plan to increase or
15 open another facility. We will serve whatever
16 students arrive at our door.

17 Q. Sure. And just like they did the last time,
18 the school district will have to accommodate whoever
19 shows up by doing whatever they need to do, like,
20 perhaps serving them in another location, correct?

21 A. That is correct.

22 Q. Okay. You talked about having looked at the
23 preliminary results and compared them to last year,
24 and you talked a lot about your special ed students.
25 And your special ed students did quite well this year

1 on assessments as compared to last year, is that
2 true?

3 A. They made growth.

4 Q. Sure. They made four points growth in
5 reading, right?

6 A. If --

7 Q. Approximately?

8 A. I don't have the numbers right in front of
9 me. If you have those numbers right in front of me,
10 I'd be happy to ...

11 Q. Well, if last year they were at 38.9 and
12 this year they were at 43.3, does that sound right?

13 A. I know special education improved.

14 Q. Sure. In math, though, they improved 14
15 percentage points. That was significant to you,
16 wasn't it?

17 A. Okay. They improved in math, as well. I
18 don't know what the specific numbers are.

19 Q. You realized it was a pretty good size
20 improvement, didn't you?

21 A. They improved, yes.

22 Q. More than any other subgroup they improved,
23 correct?

24 A. Yes.

25 Q. Okay.

1 A. They also made -- they also made safe
2 harbor.

3 Q. Sure.

4 A. Mm-hmm.

5 Q. Okay. So you have been back at Hamilton for
6 how many years?

7 A. This is -- I just finished my fourth year
8 there.

9 Q. All right. And the school had already been
10 on improvement for four years before that?

11 A. That's possible.

12 Q. You know your school's been on improvement
13 for eight years?

14 A. Yes.

15 Q. On improvement means -- first off, you're a
16 Title I school, right?

17 A. Yes.

18 Q. So on improvement means that there are
19 additional things that you have to offer to the
20 families in your school, right?

21 A. Yes.

22 Q. One of those things is transportation to
23 another school if they want to move to a different
24 school, right?

25 A. If they choose choice.

1 Q. Well, I don't think anybody has explained to
2 us what choice is. Tell us what that means.

3 A. Choice is part of the No Child Left Behind,
4 that if a Title school is not making the AYP
5 requirements, the families are offered the
6 opportunity to go to another school that has been
7 determined.

8 Q. And that's required, that if you remain on
9 improvement, the parents can ask that their child go
10 to a school, a different school, and you have to
11 provide -- the school district has to provide them
12 transportation to the other school, right?

13 A. Yes.

14 Q. Also, as part of the on improvement, you
15 have to offer tutoring --

16 A. Yes.

17 Q. -- correct? And this tutoring has to be
18 offered by an outside agency, right?

19 A. Yes.

20 Q. Not your teachers, but an outside agency
21 that the district has a contract with?

22 A. The -- yeah. Yes.

23 Q. And has to be offered during a time that's
24 not school hours, right?

25 A. Yes.

1 Q. And it can be one-on-one, right?

2 A. Yes.

3 Q. It can be in the home?

4 A. Yes.

5 Q. It can be in a small group?

6 A. Yes.

7 Q. It can be computerized, right?

8 A. Yes.

9 Q. And each child is eligible for over \$1,800
10 worth of this kind of personal tutoring, right?

11 A. I don't know what the money figure is, but
12 they are offered opportunity for tutoring, yes.

13 Q. And this is available to a number of the
14 students that you serve, correct?

15 A. Yes.

16 Q. But not all the students take advantage, do
17 they?

18 A. That's correct.

19 Q. In fact, probably half or less take
20 advantage?

21 A. I don't know what the exact number is, but
22 we have quite a few students that do not take -- or
23 families that don't take advantage of that.

24 Q. The \$1,800 worth of free treatment?

25 A. I don't know what the total is of the SES --

1 we refer to it as SES tutoring.

2 Q. Also in your school you have Communities in
3 Schools?

4 A. Yes.

5 Q. And that's a local operation that helps with
6 those things that you talk about like clothing and
7 food and connection to social services?

8 A. Yes.

9 Q. I just want to talk to you really briefly
10 about how your kids have done on assessment. So you
11 came in -- did you say 2008?

12 A. 2008 was my first year.

13 Q. So let's just talk about 8th grade reading.
14 That, since 2008, has been relatively flat, is that
15 fair, their performance on exams?

16 A. Yes.

17 Q. And despite having tried a number of
18 different strategies, you haven't really seen a
19 significant increase, is that fair?

20 A. Yes.

21 Q. If we talked about 8th grade math, you had
22 it pretty flat, then quite a nice jump in 2010,
23 right?

24 A. Yes.

25 Q. Okay. And then 2011 -- I'm sorry, I should

1 have said between 2010 and 2011, you had a nice jump,
2 right, from 41 --

3 A. There was some growth.

4 Q. Okay. But for the years before that, it
5 remained in the 40s, right?

6 A. Yes.

7 Q. And if we talked about 7th grade reading,
8 that remained relatively flat, but you had kind of a
9 nice jump in 2010 in 7th grade reading, didn't you?

10 A. Yes.

11 Q. And it decreased again in 2011, right?

12 A. Yes.

13 Q. And then, 7th grade math is probably very
14 frustrating to you, isn't it?

15 A. Absolutely.

16 Q. It's just been a downward trend from the 40s
17 to down now, I think, maybe in the low 30s.

18 A. I don't know what the numbers are but 7th
19 grade math is -- every year it's always interesting
20 to look at those results.

21 Q. Not just interesting, but disappointing and
22 frustrating, I would imagine as a principal --

23 A. It's all very frustrating, that we have 50
24 percent of our students not meeting standard. It's
25 very frustrating.

1 Q. In 7th grade math you have right around 30
2 percent -- only about 30 percent making the standard,
3 right --

4 A. (Nodding head.)

5 Q. -- despite all of extra things that you've
6 received as the Title I school on improvement?

7 A. Absolutely.

8 MS. TIBBETS: I don't have anything
9 further.

10 REDIRECT EXAMINATION

11 BY MR. RUPE:

12 Q. So do we just throw away those kids?

13 A. That's not what we want to do as educators,
14 absolutely not. We want to be able to provide the
15 support and the resources for students to be
16 successful.

17 Q. Is Communities in Schools a non-profit
18 organization?

19 A. Yes, it does not have to do with school. We
20 provide -- I mean, we provide -- we're a
21 partnership. I provide office space.

22 Q. In terms of the funding Communities in
23 Schools, 259 doesn't fund Communities in Schools;
24 that's a separate organization?

25 A. I do not fund communities in schools.

1 Q. The tutoring that was mentioned, those are
2 Title I federal dollars?

3 A. Yes.

4 Q. And why don't the families take advantage of
5 this tutoring money?

6 MS. TIBBETS: Objection. Lack of
7 foundation.

8 Q. (By Mr. Rupe) Do you know why they don't?

9 A. Oftentimes --

10 MR. RUPE: Hang on, we got a
11 technical issue here. So if I may --

12 JUDGE THEIS: Yes, no, or maybe.

13 Q. (By Mr. Rupe) Do you know the reasons the
14 families don't take advantage of tutoring?

15 A. Yes.

16 Q. How do you know?

17 A. From my years of experience working at
18 Hamilton and working with our community.

19 Q. Now, tell the Court what the reasons are.

20 A. One, oftentimes our families do not live in
21 suitable homes, so they don't necessarily want
22 someone, a stranger, an outsider, coming into their
23 home. Oftentimes, the tutoring is offered through
24 computer systems. Our families do not have
25 electricity, much less computers or internet

1 service. Oftentimes, do not have running water, so
2 that's typically not an option for them. It all
3 cycles around the poverty issue.

4 Although transportation is provided for our
5 families from the tutoring services, they would
6 prefer, oftentimes, that the older students are at
7 home because they are taking care of the younger
8 siblings or they have responsibilities to go get
9 their younger siblings from nearby elementary
10 schools. It's factor upon factor. It is truly
11 families just trying to survive and not just seeing
12 it as an opportunity for their students to improve
13 academically.

14 MR. RUPE: That's all I have.

15 MS. TIBBETS: I don't have
16 anything.

17 EXAMINATION

18 BY THE PANEL:

19 JUDGE THEIS: Your school is 7th
20 and 8th grade?

21 THE WITNESS: 6th, 7th, and 8th
22 graders.

23 JUDGE THEIS: 6th, 7th, and 8th.
24 Okay. And do you have certain elementary schools
25 that feed your middle school?

1 THE WITNESS: One of our feeder
2 elementary schools was closed down this year as part
3 of the boundary changes and the schools that shut
4 down. Harry Street Elementary School, Gardner
5 Elementary School, and Stanley Elementary School are
6 our primary feeders.

7 JUDGE THEIS: Do you know or not
8 know whether their scores are -- I mean, are you
9 inheriting what you're getting? Is it a continuing
10 problem?

11 THE WITNESS: We --

12 JUDGE THEIS: Coming from
13 elementary school unprepared, as well?

14 THE WITNESS: Harry Street is our
15 primary feeder and sometimes they do make AYP.
16 They're making it through safe harbor. And there are
17 some differences between the assessments through the
18 elementary level, and then how the assessments are
19 administered and how successful they are at the
20 middle school level.

21 But the same issues that we deal
22 with at Hamilton regarding poverty and attendance are
23 very similar issues that our main feeder, Harry
24 Street, is receiving, and that they deal with on a
25 daily basis, as well.

1 JUDGE BURR: I have a question. I
2 think you indicated 25 percent of your students were
3 special ed?

4 THE WITNESS: Mm-hmm.

5 JUDGE BURR: Is that because
6 there's a program at your school and they're brought
7 in, or is that just a result of neighborhood itself?

8 THE WITNESS: It's part both. Our
9 autism program is a unique program. There are two in
10 our Wichita schools -- in the Wichita Public School
11 District for middle school autism program. So
12 that -- we have some students that are assigned to us
13 because of the program that we offer. But our
14 regular special education students that we serve that
15 are in interrelated pull-out classes or in our CWC
16 classes where they're receiving the core curriculum
17 with support, those are just our neighborhood
18 students that come to us.

19 And part of it is, is that we deal
20 with a lot of mental health issues with our students,
21 that it's part of that generational piece. The
22 families have mental health issues, and then it just
23 kind of continues down with their children.

24 JUDGE BURR: Do you ever feel
25 like -- I mean, you're asked to meet the same

1 standards as all the other schools.

2 THE WITNESS: Absolutely.

3 JUDGE BURR: I mean, it seems to me
4 you're asked to meet those standards, it's like
5 everybody is going over the same high jump only
6 they're asking you to wear a 25-pound weight belt or
7 something.

8 THE WITNESS: Absolutely. And so
9 we spend a lot of time because when we look at our
10 state assessment results, our staff, knowing the
11 amount of work that they have done and the intense
12 support that we have received through Title I
13 funding, it is very frustrating to come back and see
14 the results of their work and their efforts, knowing
15 the type of instruction that is taking place, knowing
16 that there are some things that -- class sizes, that
17 they have increased over time.

18 But we still come to work every day
19 to do our job and to do the best that we can. And so
20 knowing what we're faced with every day and what
21 we're doing and then seeing the results is very
22 frustrating for everybody involved.

23 JUDGE BURR: Well, if it's any
24 assistance, and it has nothing to do with the case or
25 what we're -- but I'll vote for you for administrator

1 of the year.

2 THE WITNESS: I just want another
3 assistant principal. Can I say that on record?

4 JUDGE THEIS: Thank you very much.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 MR. RUPE: Do you want us to stop
8 for this evening, or do you want us to get started
9 with Bill Hammond?

10 JUDGE THEIS: I'm going to hold you
11 to what you said and see Mr. Hammond in the morning.

12 MR. RUPE: Perfect.

13 MR. CHALMERS: Time, Your Honor,
14 for tomorrow?

15 JUDGE THEIS: Nine.

16 (Thereupon, the proceedings were
17 adjourned to June 27, 2012, at 9:00 a.m.)

18

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CERTIFICATE

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 26, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 252 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 14)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 27th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

	EXAMINATION INDEX	
1		
2	WILLIAM R. HAMMOND	
	DIRECT BY MR. RUPE	2922
3	CROSS BY MR. CHALMERS	2939
	REDIRECT BY MR. RUPE	2968
4	RECROSS BY MR. CHALMERS	2972
	BY THE PANEL	2974
5	REDIRECT BY MR. RUPE	2980
	RECROSS BY MR. CHALMERS	2982
6		
	LORI BLAKESLEY	
7	DIRECT BY MR. RUPE	2986
	CROSS BY MR. CHALMERS	3001
8	REDIRECT BY MR. RUPE	3029
	RECROSS BY MR. CHALMERS	3034
9		
	DONNA DAVIS	
10	DIRECT BY MR. RUPE	3036
	CROSS BY MS. TIBBETS	3047
11	REDIRECT BY MR. RUPE	3055
12		
	RONN ROEHM	
	DIRECT BY MR. RUPE	3058
13	CROSS BY MS. TIBBETS	3067
	REDIRECT BY MR. RUPE	3082
14	BY THE PANEL	3086
	REDIRECT BY MR. RUPE	3088
15	BY THE PANEL	3089
16		
	JEANNE STROH	
	DIRECT BY MR. RUPE	3090
17	CROSS BY MS. TIBBETS	3098
	REDIRECT BY MR. RUPE	3104
18		
	RODNEY A. RATHBUN	
19	DIRECT BY MR. RUPE	3106
	CROSS BY MS. TIBBETS	3113
20	REDIRECT BY MR. RUPE	3118
21		
	MICHAEL ELLEGOOD	
	DIRECT BY MR. RUPE	3120
22	CROSS BY MS. TIBBETS	3124
	REDIRECT BY MR. RUPE	3128
23		
	SHELLY KIBLINGER	
24	DIRECT BY MR. RUPE	3130
	CROSS BY MR. CHALMERS	3162
25	REDIRECT BY MR. RUPE	3208
	BY THE PANEL	3213

EXHIBIT INDEX

	MAR	/	ADM
Plaintiffs' Exhibit 419	3140		
Defendant's Exhibit 1215A	3163		
1233			3084
1234			3113
1235			3125
1236			3102

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

P R O C E E D I N G S

1 MR. RUPE: Morning.

2 JUDGE THEIS: How you doing?

3 JUDGE BURR: Morning.

4 JUDGE FLEMING: Morning.

5 MR. RUPE: You have the deposition
6 Goossen and Olson notebooks, that's what the new
7 paper on your --

8 JUDGE FLEMING: What's this?

9 MR. RUPE: -- bench is. Don't know
10 what that is.

11 MS. GARNER: We printed out a new
12 index that identifies what --

13 JUDGE FLEMING: Each exhibit is?

14 MS. GARNER: -- each exhibit and
15 there's also one that cross-references the exhibit
16 number with the exhibit number it was in the
17 deposition.

18 JUDGE FLEMING: Okay.

19 MR. RUPE: And we want to run a
20 witness issue by you to see if you're in agreement
21 with what Mr. Chalmers and I are in agreement on.

22 JUDGE THEIS: Okay.

23 MR. RUPE: The line-up for today is
24 Hammond and then Hutchinson folks. And I remember
25

1 what we said yesterday, so we'll be done with them by
2 the end of today, and I wrote that down, so I'm going
3 to be held to it.

4 Tomorrow, we have Michelle
5 Chronister and Dale Dennis scheduled. We talked
6 about Diane DeBacker coming in, in the afternoon.
7 Apparently, that's when her telephone call is.

8 JUDGE BURR: I should know who she
9 is.

10 MR. RUPE: Commissioner of
11 education.

12 JUDGE BURR: Okay.

13 MR. RUPE: And what Mr. Chalmers
14 and I have agreed to subject to your approval is
15 coming back and doing a deposition of her sometime
16 next week or the week after that. And then
17 submitting the deposition to you as opposed to having
18 her live. And if you're in agreement with that, then
19 I think we'll be done tomorrow as soon as we're
20 finished with Dale Dennis.

21 JUDGE BURR: I don't have any
22 problem with it.

23 JUDGE FLEMING: Sounds like a plan.

24 JUDGE BURR: Couple other
25 depositions we'll be looking at, also.

1 MR. CHALMERS: What I anticipate
2 doing is taking a videotape deposition so you can see
3 her and we'll put it on whatever format is
4 appropriate, probably digitally so you can watch it
5 on your computer.

6 When I visit with Mr. Rupe about
7 it, I don't know that we talked necessarily would be
8 in the next week or two weeks. If it can work out
9 that's great. My concern is, is that she'll want to
10 do it after we have some final word from the federal
11 government. We are to know, preliminarily, tomorrow
12 afternoon.

13 JUDGE BURR: This will have to do
14 with a waiver, right?

15 MR. CHALMERS: Yes, she would say
16 other things as well, but the waiver it may be three
17 weeks, whatever, but we're working on that.

18 JUDGE THEIS: As long as it's in
19 and readable before we have closing type ...

20 MR. CHALMERS: I think we can have
21 it in and readable before we have the final.

22 JUDGE BURR: I think it's probably
23 going to take at least a couple of days to read
24 through the exhibits.

25 JUDGE FLEMING: 8.8 years.

1 JUDGE THEIS: Kindergarten through
2 8th grade.

3 MR. RUPE: If that's agreeable
4 we'll proceed with Bill Hammond from Dodge City.

5 WILLIAM R. HAMMOND

6 Called as a witness for the
7 Plaintiffs, was duly sworn by the reporter and
8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Tell the Judges your name and the city in
12 which you live.

13 A. My name is William R. Hammond, commonly
14 referred to as Bill. I live in Dodge City, Kansas.

15 Q. Tell us about your educational background
16 and your work history.

17 A. I have an undergraduate in speech and
18 theater from Missouri Western State, now University,
19 in St. Joseph, Missouri, which, when I attended was
20 the newest state college in Missouri along with
21 Joplin. I actually attended the second oldest high
22 school west of the Mississippi, which was Central
23 School in St. Joe.

24 I went on to complete a Master's of
25 Divinity. I attended a couple years at St. Paul

1 school of theology in Kansas City and finished that
2 degree at Midwestern Baptist. Went back later in my
3 career and picked up accounting and business classes
4 and I passed the CPA exam. I am not licensed because
5 I never did the practice requirement of that. But I
6 did actually pass the exam and have the license from
7 that.

8 Q. How long have you been in Dodge City?

9 A. Going on seven years, sir.

10 Q. And your title is executive director of
11 business and operations?

12 A. Yes, sir.

13 Q. I want to quickly move through some exhibits
14 to have you give us a picture of the financial
15 situation of the Dodge City School District. We've
16 heard from others from Dodge City, but let me hand
17 you Plaintiffs' Exhibit 225 and 224. And what is
18 225?

19 A. 225 appears to be the budget that we filed
20 with the State Department of Education last year for
21 the current year.

22 Q. So that's last year's budget for this year?

23 A. Yes, sir.

24 Q. Okay.

25 A. That would be unamended as a result of any

1 enrollment increases or decreases and other items,
2 but this is basically what we started off the year
3 with.

4 Q. And do you update these with the State
5 department?

6 A. The process is that when you publish your
7 budget, you cannot exceed it. And there's certain
8 funds -- for example, in the general fund if your
9 enrollment goes up, then you have to re-publish the
10 budget so you access the additional revenue from
11 State.

12 There's others funds such as the LOB fund,
13 that once you publish it you're maxxed. And if you
14 have a additional enrollment above what you
15 published, then you can cannot access those funds
16 from the LOB. So there are requirements; for
17 example, even if KPERS came in higher than the State
18 told us to publish, we would have to go back and
19 re-publish that in the newspaper. So there are some
20 technical things that has to be done, yes, that's
21 correct.

22 Just as a point of clarification, we just
23 received, probably within the last ten days, our
24 final numbers on what we're going to get from the
25 State on special ed on this year's budget, which ends

1 the end of June. So even we've been working with the
2 budget the entire year, we've just now received the
3 final, actual numbers from the State of what we'll
4 get from that fund.

5 Q. What is 224, please?

6 A. 224 is basically -- you complete your
7 budget, you send it to the State of Kansas, now in
8 digital format. And what they do is they have a
9 program that puts all that information which they
10 refer to as Budget at a Glance. It's supposed to be
11 a way to make it a little simpler and easier for
12 people to understand. I'm not sure that it
13 accomplishes that, but that's the purpose of it. So
14 in a way, we prepare this because we put the numbers
15 in, but actually it's all electronically done by the
16 State after we send the numbers to them.

17 Q. Explain to the Court what 223 is.

18 A. I don't have 223. Okay.

19 Q. It's the Form 150.

20 A. Okay.

21 Q. And by the way, the Judges have gone through
22 a Form 150, so just give us the highlights, please.

23 A. You want 10,000 feet?

24 Q. Right.

25 A. Right. Basically, when we prepare a budget

1 there's a number of weightings and this form,
2 basically, as we prepare the budget, we have to
3 anticipate what we think enrollment's going to be and
4 use those numbers. I'm usually rather conservative.
5 I'll usually use the prior year's numbers.

6 In other words, whenever we end this year,
7 those are the numbers that I'll use from the various
8 numbers of students, weightings, and so forth. And
9 from those numbers that are put in, then the budget
10 itself actually calculates the amount of revenue
11 available under the current state funding.

12 Q. Okay. Talk to us about what the estimated
13 general fund budget is according to Exhibit 223.

14 A. You would look at -- well, there's actually
15 two different general fund budgets on this form. One
16 general fund budget would actually be the actual
17 general fund budget, which is on line 21 of this
18 form, which shows \$44,252,460.

19 The second general fund budget, which is a
20 result of the cuts that we've had in recent years,
21 and an ability of districts to still maximize the LOB
22 is found on line 22, which shows the general fund.
23 If it were figured at 4,433 instead of the 3,780, it
24 would be \$50,851,133.

25 Q. We've heard about this, but let me just put

1 it up so we can see the real number here. On 223
2 what you were talking about is the actual number on
3 the budget is the 44 million number, and to compute
4 the LOB, you go to the statutory amount, and that is
5 the 50 million?

6 A. Right. And the other change in that, just
7 to be completely transparent on that, we also have a
8 number in this budget for special ed. Special ed was
9 the number that -- traditionally, this was kind of
10 our high mark in special ed. But then with the ARRA
11 money that came through, at one point, instead of the
12 money flowing through the districts, it flowed
13 directly to special ed.

14 So the State, by statute, changed special ed
15 where it was a historic number instead of the actual
16 number that was budgeted within this year to
17 calculate the LOB and number on.

18 I might say that has changed for next year.
19 We now have another -- now we get to choose either
20 this year that is reflected here, the 4,812,211, are
21 what we anticipate special ed to be next year. And
22 then it goes from there, so it's another
23 complication.

24 Q. In terms of the district enrollment, is it
25 growing or declining?

1 A. Our district enrollments had its ups and
2 downs over the last 12 years. We're up 894.6
3 students.

4 Q. This year?

5 A. Over the last 12 years. 894.6 students over
6 the last 12 years.

7 Q. Now, in terms of, and I think we've heard
8 this, but the kindergarten class each year is bigger
9 than the kindergarten class before?

10 A. Our kindergarten classes, there have been
11 some ups and downs but on the average, our
12 kindergarten classes are increasing and are a larger
13 number of students. There is concern this year we
14 may need to add additional sections of kindergarten
15 based on their pre-enrollment.

16 Q. Let's talk a little bit about LOB
17 equalization aid, and tell me what you received by
18 way of LOB equalization aid.

19 A. Well, the LOB equalization -- and I don't
20 know that I have the exact numbers on this -- that's
21 in front of me -- but as I'm sure the Court's aware
22 that all counties do not produce the same assessed
23 valuation per pupil. For example, the richest county
24 right now on an assessed valuation per pupil, what it
25 would take to do on a per-pupil basis in that county

1 for one mill would take Dodge City over 17 mills to
2 do.

3 So the State has equalization. And if the
4 district accesses LOB, the State will match it and
5 basically there's a formula to help the local
6 district out. So it's somewhat more equalized than,
7 say, well, gee, you can do whatever you can do but
8 it's always based on your local assessed valuation
9 per pupil.

10 So over the last several years with the
11 budget cuts, we have had to tax more of our local
12 taxpayers than we have been able -- we would have had
13 to if the State was fully funding the equalization
14 formula. So because they have prorated what they're
15 paying us last year, our local tax on property tax
16 owners was \$1.7 million higher than it would have had
17 to have been if the State was fully funding the
18 current statute on equalization.

19 I anticipate this coming year as I've looked
20 at projected numbers, the local support will be \$2
21 million additional because the State's not fully
22 funding LOB equalization.

23 Q. What's your LOB set at, just remind us?

24 A. It is at 30 percent. Our district, we have
25 always gone with the statewide average. The view of

1 our board has been that our kids deserve as good
2 education as any other child in the State of Kansas,
3 and to do that, we want to provide the resources to
4 the best of our ability. So we've always been at the
5 statewide average, at least since I've been with the
6 district.

7 Q. That is 30?

8 A. That is currently 30.

9 Q. And talk to us about capital outlay
10 equalization aid -- one other question, what did you
11 use the LOB equalization aid money for?

12 A. Well, the LOB equalization aid basically
13 goes in the LOB account. And really, the LOB
14 account, by statute, can be used for almost anything
15 that general fund can be used for. So basically,
16 what we've done, we've paid a lot of teachers'
17 salaries out of it, paid maintenance facilities out
18 of it. We've done the same kinds of things we do out
19 of the general fund. It's just trying to keep the
20 district where it needs to be.

21 Q. Now, talk to us about capital outlay
22 equalization. Do you receive that?

23 A. We have not received capital outlay
24 equalization since the cuts. We used to get about a
25 50 percent. For whatever the local district raised

1 from ad valorem taxes, the State would match about 50
2 percent. That percentage changes each year on a
3 formula. But that's been cut off and that cut-off to
4 our district is about 350,000 to 370,000 a year, and
5 we've not received that the last couple of years.

6 Q. You say the last couple of years. Was the
7 first year that it was not received '08/'09 -- I'm
8 sorry, '09/'10?

9 A. I'd have to go back and review that. I
10 don't have that in front of me.

11 Q. It's in the record, so let's move on.

12 A. Okay.

13 Q. Let's hand him 264 and 268. And I'm not
14 going to plow this ground that's been plowed before,
15 but 264 and 268 are the cuts that Dodge City
16 instituted as a result of reductions in state
17 funding?

18 A. That's correct.

19 Q. And we're not going to go back through
20 these, but I do want you to explain what the
21 situation has been with regard to Ross Elementary.

22 A. Well, Ross Elementary was a school that when
23 we received money from the Montoy, part of the
24 discussion at Montoy was that we needed to reduce
25 class size. We did not have the physical facilities

1 to reduce class size, so what we determined as a
2 district to make good utilization of the funds we
3 received from Montoy, we determined we would build a
4 new elementary school, basically on a lease basis as
5 opposed to going to bond issues.

6 Bond issues are extremely difficult to pass
7 in Ford County. Part of that reason is we're also
8 the home to a community college and the 18 counties
9 that have community colleges also have the community
10 college mill levy. I completely support community
11 colleges, but it makes it more difficult for the USDs
12 to pass bond issues.

13 So we did a lease/purchase on that
14 building. And basically, we did a total study with
15 our architect of what needs our kids would have in
16 that building. And one of the discussions that we
17 had was, because our children, a lot of them, are
18 EEL (sic) learners, because we have a large number of
19 at-risk students, we recognize that many times it's
20 not -- you can't just take those kids and put them in
21 a normal classroom and have it work the way you'd
22 like to. They need to have extra help, so we may
23 have paras to help them.

24 We need a place for those paras to work with
25 them. When we constructed Ross Elementary, we did it

1 in pods, which means that each pod has a 1st grade
2 pod, a 2nd grade pod, a 3rd grade pod, and a 4th
3 grade pod. And the middle of those four classrooms,
4 that was the four section school, we had what we
5 refer to as a discovery center, where the teachers
6 could send a para and some students who might need
7 extra help into that area to learn. It might be a
8 collaborate effort, because these teachers do work
9 together where there could be teachers from two or
10 three or four 1st grade classes working together.

11 As a result of a reorganization that we're
12 undertaking and the need for more classroom space,
13 we're currently remodeling Ross Elementary, and we're
14 taking out the pods; we're putting 5th grade
15 classrooms in most of them, reconfiguring some
16 computer labs. So instead of having that as the
17 standard for future education in Dodge City, because
18 we just don't -- we didn't feel like we had the
19 funding to add onto the building, which would have
20 been more money, we're having to kind of change the
21 building and make do and put more kids in less space
22 and remove that space that was there for those kids
23 that we have.

24 Q. Let me hand you 222 and I want to talk to
25 you about, first of all, Ross Elementary. What is

1 222?

2 A. Basically, what this is showing, this is the
3 revenue and expenditure information that was
4 produced.

5 Q. And I want to look at Ross Elementary that's
6 highlighted there, annual payment amount. The FY
7 '12, 1.6, what is that?

8 A. The 1.6, basically, what we are able to do
9 under Kansas statute -- there's several ways that you
10 can finance facilities. One is obviously going to
11 the voters and asking for bond and interest. You can
12 bond against your capital outlay up to the length of
13 your resolution or you can do a lease/purchase.

14 With Ross Elementary, we basically did a
15 lease/purchase, which means that the board has to
16 give notice. We were protested. We did have to go
17 to vote for the lease/purchase. And even though it's
18 coming out of the general fund, again, the Montoy
19 money is what made us able to do this. We basically
20 built the building and these are the payments that
21 went to pay off Ross Elementary.

22 Q. Then what I want to ask you about are the
23 ARRA stimulus funds. And those are shown for 2010
24 and '11, but they're not available in '12. Is that
25 my understanding?

1 A. That's correct. And those title funds, what
2 we did with part of the ARRA money -- you have to be
3 very careful about supplanting when you talk with
4 title money. So what we basically did, our board
5 voted even though we'd always had all-day
6 kindergarten, was to discontinue all-day kindergarten
7 as a district program as a full-day program. And
8 basically, then what we did is come back and we used
9 the ARRA money to support that so we could reinstate
10 full-day kindergarten using the federal funds in that
11 availability.

12 Q. What's the future of all-day kindergarten in
13 Dodge City today?

14 A. We are still offering all-day kindergarten
15 at this point, sir.

16 Q. What about Ross Elementary -- I'm sorry,
17 Title I based allocation, what's that?

18 A. That was additional funds that came in, and
19 that money is also gone.

20 Q. And on the backside of 222, we've got a
21 listing of the reductions of current budget expenses?

22 A. Yes.

23 Q. And so if we wanted to, at some later point,
24 pull all the cuts that were involved in Dodge City
25 School District, if we looked at 222, 268, and 264,

1 we'd have a pretty good picture of that?

2 A. Yes, sir.

3 Q. In terms of from where you sit, and we've
4 heard a lot of this so I want you to give the Court
5 the highlights and not -- tell them what time it is,
6 don't teach them how to make the watch. So I want
7 you to explain to the Court what the increasing
8 costs, that you see, have been in the district.

9 A. Okay. Over the last number of years, of
10 course, personnel is one of our major issues. We're
11 in Western Kansas. And Western Kansas is hard to
12 recruit professional people to. So we've had
13 recruitment expenses we've actually -- our district
14 recruited up in Michigan for a period of time to get
15 teachers.

16 So we have tried to increase our teacher
17 salary schedule. That was one of things we did
18 immediately after Montoy. The last couple of years
19 we've not been as successful with that. We've given
20 some raises. We've tried to maintain or health
21 insurance plan. Health insurance, I was down to
22 \$180,000 in health reserve this week before we put in
23 our last insurance payment.

24 We do a self-funded plan. Couple years ago,
25 I was at million-two. It just eats us alive. We had

1 two preemies. The good news is the preemies made
2 it. Our health insurance reserve was not as
3 fortunate. So health insurance cost is definitely
4 there.

5 The other things, utility rates have gone
6 up. We know that on an ongoing basis. I got notice
7 this week from my Workmans' Comp person I'm going to
8 have an increase between 50 and \$70,000 dollars in
9 Workers' Compensation coverage. Our mod factor
10 increased.

11 And then there's just the ongoing cost of
12 doing business just like the homeowners. I have the
13 largest fleet of vehicles in town. We transport
14 about 2,500 students every day, just the nature of
15 the beast we work in. Is that kind of ...

16 Q. Yeah. Do you know of any costs associated
17 with delivering education to the kids in Dodge City
18 that has gone down?

19 A. We have tried with some building
20 renovations, improvements in heating and cooling, to
21 reduce utility costs. Unfortunately, it seems like
22 by the time you figure out a way to reduce the usage,
23 they have figured out a way to increase the rates.
24 But we have been successful in a couple buildings of
25 doing some things there, but very minor.

1 Q. Other than that, are there any areas that
2 the costs have gone down?

3 A. I'm really not aware of any, no.

4 Q. Let me hand you 391, please. And 391 is a
5 communication from Alan Cunningham to the faculty and
6 staff, is that correct?

7 A. That's correct.

8 Q. May 15, 2009. And in that second paragraph,
9 does he delineate what the amount of reduction in
10 funding has been for the Dodge City Public Schools?

11 A. Yes.

12 Q. And if the Court wanted to identify what the
13 reductions have been from the State of Kansas, year
14 by year since 2008 and '09, what would be the place
15 the Court would look?

16 A. I would look in base state aid per pupil,
17 multiply that times the number of students, and
18 compare the different results. That's what I would
19 do.

20 Q. Do you have available to you, in your
21 recollection, what the reduction has been in that
22 time frame?

23 A. My understanding is the last -- my
24 recollection is, it's in excess of \$600 per base
25 state aid per pupil. When you eliminate special ed,

1 we have about 10,000 weighted FTEs, so it would be
2 about 6 million bucks.

3 MR. RUPE: That's all the questions
4 I have.

5 CROSS-EXAMINATION

6 BY MR. CHALMERS:

7 Q. In your calculation I guess you don't
8 include or you didn't include the weighting concept
9 in it?

10 A. Well, what I do, if I might go back to the
11 Form 110. For example, on Form 150 that I was
12 handed, it shows estimated operating budget based on
13 11,707 FTE. Usually about 1,000 of those or more are
14 our special ed numbers.

15 So a quick and dirty for our district is
16 when you include the weightings and everything, it's
17 10,000. Now, it varies from year to year depending
18 on the number of weighted students. It depends on
19 the enrollment and to get specific, I could go each
20 year and tell you exactly what those numbers are --

21 Q. I want to be clear, what you did is you took
22 the weighted number --

23 A. Yes.

24 Q. -- in your --

25 A. Right.

1 Q. -- down and dirty calculation?

2 A. That's correct, without special ed because
3 special ed's calculated --

4 Q. Okay.

5 A. It's a whole different world.

6 Q. Thank you. A few just quick, clean-up
7 questions on some things you said. You explained
8 that when you calculated the LOB, that there is a
9 statute now in place that permits the calculation of
10 LOB to be based on a higher base amount than is being
11 funded, as well as this special ed. And then as of
12 this next year the special ed formula is modified so
13 that there's an option to the district so that they
14 can choose a special ed number that might be higher,
15 and accordingly allow them more LOB authority, is
16 that correct?

17 A. That's correct. I have not done that
18 calculation yet because we're not that far in our
19 budget process, but yes, that's is my understanding
20 and that's what we've been told --

21 Q. And so we understand, the LOB authority,
22 without an election, is capped at 30 percent of the
23 general fund as calculated with the modifications we
24 just discussed?

25 A. That's correct.

1 Q. So with those modifications there's more LOB
2 authority available?

3 A. More than there would have been if we were
4 using 3,780 or -- yes.

5 Q. I think you indicated, on average in the
6 State, that the LOB is at 30 percent. Would you
7 defer to the actual state records that show what the
8 average is of LOB across the State for the various
9 districts?

10 A. The only thing -- when I'm referring to the
11 30 percent, they say there's a statute that allows us
12 to go to the statewide average. We've been informed
13 by the Kansas State Department of Education that that
14 is 30 percent, so that's what I -- there may be
15 something else but that's what we use.

16 Q. The statute says you can go to 30 percent.
17 I think the records will show that many districts
18 don't go to the full 30 percent of their revenue.
19 What I'm trying to understand is, when you've
20 testified that there's a statewide average of 30
21 percent, will you defer to the State records on the
22 subject?

23 A. I think we may be speaking of two things.
24 What I was referring to is there's a statute that
25 allows us to go to the statewide average, which has

1 been many different numbers, and at this point, what
2 we're told it's 30 percent. Now, you may have a
3 calculation that would show what the actual LOB is,
4 and that may be entirely different. I understand
5 that, so ...

6 Q. Let's be clear on what you define as
7 statewide average, because I do think there's a
8 disconnect.

9 A. Right.

10 Q. At one point, the LOB, pre-Montoy, was at --
11 25 was the cap --

12 A. That's correct.

13 Q. -- is that correct? And now it's been moved
14 up to 30 with the ability to go to 31 if you get an
15 election with the calculation that we just talked
16 about?

17 A. Right. And I understand that 30 percent's
18 dependant on the calculation that the State
19 Department of Education does. And I'm not -- that's
20 where we are.

21 Q. But when you're talking about the statewide
22 average, you're talking about what the State has
23 said. Once it was 25; now, it's 30, possibly 31.

24 A. At one point it was 26.78 or something, so
25 yes, it's been a number of numbers.

1 Q. I think the records there show, in fact,
2 that many districts don't fund up to full amount of
3 their LOB.

4 A. That can be very true.

5 Q. And you concede that's a possibility?

6 A. I understand that, yes, sir.

7 Q. I want to talk to you about a couple other
8 clean-up things and then I've got a few questions, I
9 think. About the lease/purchase arrangement that you
10 had for the Ross Elementary school, that
11 lease/purchase was arranged and you were able to get
12 the school, is that right?

13 A. That's correct, sir.

14 Q. And lease/purchase was protested when?

15 A. I don't have the date on that. I know that
16 we calculated the difference in cost to the building
17 between doing it before the protest and after the
18 protest, and it was our understanding, based on our
19 architect's estimate, cost us another million dollars
20 because we had to go through the election. And that
21 deferred the construction, but I don't have the dates
22 in front of me, sir.

23 Q. Help me understand what year it was that it
24 took place. Give us some sort of a reference point.

25 A. See --

1 Q. When was the election, maybe is a better way
2 to phrase it?

3 A. Well, our first payment was due in 2012, so
4 it would have been prior to that date. So the
5 election would have been either been the 2010 or
6 2011. Again, I guess time moves very rapidly
7 sometimes.

8 Q. And so that we're clear on that, the
9 election would have been sometime after the beginning
10 of -- and Mr. Rupe has the chart up here that he's
11 used frequently, Plaintiffs' Exhibit 411, it would
12 have been sometime after the cut began in '08/'09?

13 A. I couldn't -- again, I wouldn't swear to it,
14 but it was some point in that period of time.
15 Because we know that after we had the election, we
16 had to have the architect draw the plans and so
17 forth, and that took a period of time. I mean, I can
18 provide that, I just don't have it in front of me.

19 Q. There's an exhibit, and we can pull it out,
20 222. It was a colorful exhibit that talked about
21 Ross Elementary. It showed a date on it of May 13,
22 2009. Was that a chart that you provided? At the
23 top right corner I think is the revision date, top.

24 A. Updated. This is 222?

25 Q. Yeah, top-right corner.

1 A. I showed updated May 13, 2009, yes.

2 Q. Is this a document that you prepared?

3 A. Yes -- or I prepared -- yes, I did this.

4 Q. And I presume --

5 A. I should say I did it in conjunction with my
6 superintendent. I provided a lot of numbers; he
7 actually did the final document on this.

8 Q. I presume after the May 2009 dates where
9 there are projections going forward, that some of
10 those projections have been modified with the
11 variances in funding that's been brought --

12 A. Yes.

13 Q. This last year there was an increase at the
14 State level of funding to K-12 education. You
15 understand that?

16 A. This last year?

17 Q. Yes.

18 A. In terms of base State aid per pupil?

19 Q. Yes.

20 A. Yes.

21 Q. And your district is now in the process of
22 working up its budget for the year '12/'13, is that
23 correct?

24 A. That's correct.

25 Q. In fact, I think on June 11th this year,

1 there was an agenda meeting before your Board of
2 Education in which the proposed budget was being
3 discussed, is that correct?

4 A. That's correct.

5 Q. That proposed budget indicated what -- it
6 was based on assumption of an increase in
7 enrollment? Or what was the assumption as far as
8 enrollment, do you remember?

9 A. The assumptions that were made to the board
10 at that point were that we would have level
11 enrollment, not increase in enrollment. One of the
12 dilemmas that we face is if we don't anticipate an
13 increase in enrollment, then we can never access the
14 full LOB. But if you anticipate that enrollment, it
15 also can cause an increase in local taxes, so that's
16 always a very touchy situation with every Board of
17 Education.

18 Q. You err on the side of being conservative
19 and anticipating a stable enrollment for next year?

20 A. That's correct. I've had board members in
21 the past who've asked to look at numbers. I've
22 prepared budgets that show both a stable enrollment,
23 an increased enrollment based on the prior year's
24 enrollment. I've done everything the board's
25 requested in that matter. Finally, it comes down to

1 a board decision on what they want to base the budget
2 on. We provide the data.

3 Q. And did you make estimates what the
4 demographics would be for your students?

5 A. If you're referring to what the weightings
6 would be?

7 Q. Better way to phrase it.

8 A. Okay. If the weightings -- we're
9 anticipating the same weightings we had the prior
10 year. We've had no indication that those will
11 significantly change.

12 Q. So you expect this next year to have more
13 money from the State than you did last year?

14 A. That would be correct.

15 Q. Now, the decision on when the budget will be
16 finally approved or offered for final approval, that
17 won't be until August of this year?

18 A. That's correct. It's kind of different but
19 we actually operate under this year's budget starting
20 July 1 that the Board really doesn't approve until
21 their August meeting.

22 Q. And you talked about the republishing of
23 budgets. So let's visit about that for a second.

24 A. Okay.

25 Q. It's your understanding that the budget has

1 to be approved in a open meeting of the school board?

2 A. Yes, and it's also requirement that we
3 provide opportunity for public comment at that
4 meeting.

5 Q. So the budget is prepared, notice is
6 provided to the public for them --

7 A. Yes.

8 Q. -- to review the budget, and they can make
9 comment. Ultimately, the board has to approve it.

10 A. That's correct.

11 Q. And then if you want to change your spending
12 to be inconsistent -- or consistent with those laws,
13 you have to go through the same process again?

14 A. That is correct. You basically have to
15 notify -- you have to publish a notify of change in
16 the newspaper. Then you have to have a public
17 meeting with a public hearing before it can be
18 changed.

19 Q. And that, I think, is what you did -- or
20 have you done it yet this year? You're preparing to?

21 A. We didn't need to do it this year. We
22 didn't need to do it this year.

23 Q. I thought you ended up getting some more
24 special ed and that that was going to require a
25 re-publication?

1 A. One of the things that happens with special
2 education money, the State will direct you to publish
3 your special ed funds a little high because you never
4 know until June, you know, what you're going to get.
5 So they recommended you publish it a little high, not
6 spend it all, but that way you don't have to try to
7 go back at the very last minute and re-publish
8 special ed. We follow their advice in that
9 situation.

10 Q. Worked out for you this time?

11 A. It worked out. I've had some years where I
12 had to go back and re-publish, but this year, it
13 worked out.

14 Q. Let me talk to you briefly about some
15 numbers real fast. Exhibit 1022 is the '11/'12
16 profile information for your district. I think
17 that's one of the ones you talked about with
18 Mr. Rupe. And if I understand your testimony
19 correctly, what happens is, is that your office will
20 report data to the Department of Education, and then
21 they spit out this report --

22 A. Well, it comes out of their computer
23 program. Whether we spit it out, they spit it out on
24 the website, it's all -- it's a canned report at this
25 point. It's not something we really --

1 Q. It shows in '09/'10 and '10/'11 a slight
2 increase, I guess a one percent increase, in actual
3 expenditures on instruction. Shows other items as
4 well, and then it shows a budgeted 7 percent increase
5 on instruction for '11/'12. Is that about how it
6 works or will work out this year?

7 A. No.

8 Q. I understand the numbers aren't quite
9 complete.

10 A. No, we did not -- the budget did not come in
11 as high as we published. We will be under our
12 budget.

13 Q. So will your spending in terms of actual, in
14 certain construction, be slightly less than the
15 40 million that is shown in --

16 A. Yes.

17 Q. -- in the ...

18 A. Yes, it will be.

19 Q. And you mentioned -- and part of the reason
20 I want to put this up here -- that your funding was
21 about -- for general fund, I think, was around 44
22 million. I'd have to look back, but is about what
23 the number was?

24 A. Let me go back. I'll just -- the published
25 budget this year requests 44 million, that's

1 correct.

2 Q. And ended up being a little lower?

3 A. Yes.

4 Q. And if you look at the total expenditures as
5 reflected in the Exhibit 1022, it will show total
6 expenditures of -- well, it starts in '09/'10 of
7 about 73.6 million. Then, it was budgeted at the
8 beginning of the year at 85.9 million. The reason
9 that you have that additional amount is because that
10 would include bond and interest, as well as the LOB,
11 as well as federal money, wouldn't it?

12 A. And on this report, again, if something's
13 generated by the state program, I'm not sure where
14 all the transfers would also be considered in this.
15 So I don't know if these are net numbers or also
16 include transfers.

17 Q. Well, what I'm getting at is the general
18 fund, we can agree, is just one source of --

19 A. Absolutely.

20 THE COURT REPORTER: I'm sorry.

21 MR. CHALMERS: One at a time.

22 THE COURT REPORTER: Thank you.

23 Q. Just one source of funding for your
24 district, that there are other sources, federal
25 money, the LOB money, and we've talked about those?

1 A. That's absolutely correct, yes, sir.

2 Q. I want to show you what's been marked as
3 Exhibit 1037. And this is another state document
4 provided from your data. And it talks about function
5 codes and you just mentioned those a moment ago.
6 When you report your data, where you spend your
7 money, it's reported in certain function codes and
8 certain funds, is that correct?

9 A. That is correct.

10 Q. And then those can be aggregated and they
11 can show what your expenditures are for a given
12 year. And what this shows is expenditures for
13 '10/'11, is that correct?

14 A. Yes, sir.

15 Q. And it describes in this exhibit at the
16 bottom some information that I think might be
17 helpful. It's got the FTE, includes four year
18 at-risk number of about 6,000. What is that?

19 A. Basically, and this is -- I don't want to
20 belabor this, but when we look at the FTE, we have
21 students, for example, from our Catholic school that
22 come over and maybe take music with us. We may get a
23 partial FTE for serving those students or for special
24 ed or for some other services.

25 So basically, it's not a head count in the

1 sense that while every student at that base counts
2 one, we have students that are only part-time with us
3 and you only count that fraction of the day or the
4 minutes that we actually have them that we get
5 funding for.

6 When it includes the 4-year-old at-risk,
7 that's a program that is defined by the State. And
8 in that program we don't have -- we can't just take
9 everybody that might even qualify. The State assigns
10 slots. We have so many slots to fill. If we fill
11 those, we get a half FTE for each student that we
12 serve, so that's that number. That's what all is in
13 that number, the 6,024.6.

14 Q. The fact that you have partial time on
15 kids --

16 A. Yes.

17 Q. -- for the reasons you described. We use an
18 FTE number to reflect how we calculate what funds
19 you'll get from State?

20 A. Absolutely. For example, some high school
21 students are not full-time. If they're an alt-ed or
22 something --

23 THE COURT REPORTER: An all?

24 THE WITNESS: Alt, alternate
25 education. Those students may not attend a full

1 day. They may only attend part of the day. So if
2 they only attend part of the day and it's based on
3 minutes and how many minutes over a period of time,
4 we may only get .5 or .25, or something of that
5 nature for those students, so it's pretty
6 complicated, but that's what the number is.

7 Q. Let me switch gears with you real fast.

8 A. Okay.

9 Q. I want to talk to you about how you have
10 your money. It's coming from federal sources and
11 local sources and from state sources and we've talked
12 about that. When we talk about how individual
13 building's budgets are set, those are the schools,
14 how they get their money, is there a formula used to
15 fund how much an individual school will get?

16 A. Let's back up just a little bit. There's
17 several sources for what we'd refer to as building-
18 base budgets. As a district, we determine, for
19 example, how many teachers each building's going to
20 receive. I mean, that's a district decision. Those
21 staffing decisions are at the district level.

22 But each of our principals will receive a
23 building-based budget for supplies and various things
24 that they need for their building. They'll also
25 receive a budget for what we refer to as extra duty.

1 Extra duty, for example, at the high school could
2 include anything from somebody coaching football, to
3 somebody doing an extracurricular activity. At the
4 elementary schools that might include lunchroom duty,
5 bus duty, or variety of the other duties. They also
6 receive -- and those funds would tend to come out of
7 the general fund or the LOB.

8 Also, our buildings will receive an
9 allocation from the at-risk program. And those are
10 based on the number of at-risk students they may have
11 in the building. And we also have some funding that
12 will come from the migrant program, which is, again,
13 a different type of allocation based on the numbers
14 of students served in each building.

15 Q. And the bilingual?

16 A. And the bilingual, yes.

17 Q. So just to kind of try to recapture what you
18 said, there is a budget set for buildings, but some
19 of it is driven by district decisions on what the
20 staffing will be and how much will be paid to the
21 staff. And then, there's a sum set aside for
22 buildings that the district provides, that the
23 principal has discretion in spending, is that right?

24 A. Right. For example, in our elementary
25 schools, it's based on number of classrooms. We give

1 so many dollars for each classroom in the general
2 fund to each building.

3 Q. And the district principal or the principal
4 of a particular building then will have authority to
5 decide how to spend that money, and also has the
6 authority to decide whether to use some of that money
7 for extra duty to do --

8 A. There's also an extra -- yes, there's an
9 extra duty budget, too, and they decide how they feel
10 best those needs are met.

11 Q. And in your experience the moneys that are
12 provided to the these principals, they spend down
13 their budgets each year, don't they?

14 A. On the whole, yes. There'll be exceptions
15 from year to year. You may have somebody who's
16 ordered supplies, for example, and they anticipate
17 paying shipping, and for some reason, there was a
18 special. And so at the end of the year, instead of
19 spending 200 bucks on shipping that's given as part
20 of the deal, and we end up with \$200. It just kind
21 of varies from year to year.

22 Q. You're talking about a very small fraction
23 of your budget?

24 A. Principals, they tend to find things to do
25 for the benefit of their children they have

1 responsibility for, yes.

2 Q. They don't want to come to you next year and
3 explain, when it comes time to allocate money to
4 them, why it is they didn't spend down their -- why
5 they didn't need the full amount of money for the
6 previous year?

7 A. Principals, on the whole, would come to me
8 and say, I could sure use more money than I had last
9 year because there was things that I would like to do
10 that I was unable to do. That's the conversation I
11 would tend to have.

12 Q. That's the conversation you normally get
13 with them?

14 A. Yes.

15 Q. But as human nature being what it is,
16 they're not going to come to you and say, I didn't
17 spend down my -- they're not going to refuse to spend
18 down their budget for fear of not having what they
19 perceive is important that next year?

20 That's a bad question. Did you even follow
21 that, because I didn't?

22 Human nature being what it is, as you said,
23 principals always telling you they want more, they're
24 going to make sure that they get their budget spent
25 down so they're not cut next year?

1 A. I would answer it this way: If the
2 principal came and told me that their librarian they
3 would have to answer to -- because I have librarians
4 in the district who very much would like to have
5 additional resources. And I've had a number of
6 librarians who say their principals don't give them
7 enough money to do what they'd like to do in their
8 libraries.

9 Q. I guess we can both agree that the
10 principals have always come to you under all
11 circumstances saying they want -- they're not telling
12 you --

13 A. Our people --

14 THE COURT REPORTER: I'm sorry. I
15 just need you to talk one at a time.

16 THE WITNESS: I'm sorry. I
17 apologize.

18 Q. I'm sure you lost track of my question
19 before you started to answer it. We can both agree
20 that principals have come to you saying, I want more,
21 rather than, I've got things that I saved from the
22 last year and I've not spent down my budget?

23 A. And my answer would be that I've also had
24 principals come to me and say, I understand with the
25 finances of where we are as a district, and what can

1 we do to help, so I've had both.

2 Q. Some principals come to you and said that I
3 found ways that I don't need to spend money, I
4 haven't spent it, and I don't need as much next year?

5 A. I'm saying I've had principals who've
6 approached me and say, with, you know, the situation
7 with the funding, you know, if we need to make some
8 cuts, I can come up with those cuts if we have to.
9 Not that they want to or think it's in the best
10 interest of our children, but they are willing to be
11 part of the process.

12 Q. I want to look at Exhibit 391 with you for a
13 moment. It's the exhibit that Mr. Rupe talked
14 about. I tell you what, I can't put it up on the
15 board, but to speed things up, I'll read it for you.
16 Do you have 391 up there still?

17 A. Is this it?

18 Q. You do. Great. Thank you. Along the same
19 vein that we were just talking about, in 391, this is
20 the letter from -- is it Dr. Cunningham? Was he a
21 doctor? I can't remember.

22 A. No.

23 Q. Mr. Cunningham, he's the former
24 superintendent?

25 A. He's the current superintendent.

1 Q. The current superintendent, I'm sorry.
2 You're right; I remember. In this, he concluded,
3 while next year or so may be difficult, I don't know
4 of any group of people better to make lemonade out of
5 this unfortunate economic situation that the faculty
6 and staff of USD -- out of this unfortunate situation
7 that the faculty and staff of USD 443. I'm not sure
8 I read that correct.

9 We will continue to do more with less, as
10 public school teachers and staff have seemed to have
11 always had to do, but you have to admit we're pretty
12 good at it. Our success rate has been seen in the
13 faces and lives of children who move through our
14 schools and classrooms every year.

15 Does that kind of capture what you're
16 talking about with these principals saying, we don't
17 want to do it, but we'll make it work?

18 A. I think that's a fair statement, sir.

19 Q. Your district made the decision not to levy
20 the eight mills that it could have levied for capital
21 outlay, and instead decided to use -- or to slightly
22 increase it's LOB funds, is that correct?

23 A. There's two points I should make on that.
24 The first is, our resolution for capital outlay only
25 authorizes us to go to four. While State statute

1 allows us to go to eight, the resolution that we
2 published, which we have to do subject to protest and
3 so forth, we've only gone to four mills.

4 Before I was at the district, I understand
5 there was an attempt to increase that to beyond four,
6 and public sentiment was that the public would not
7 support a mill levy above four. So we have been at
8 four mills authority since my tenure in Dodge City.

9 And you are correct in the second point. We
10 basically reduced the capital outlay mill so we could
11 continue with the full equalization on LOB.

12 Q. And I appreciate your answer. Two things I
13 need to follow up, I guess, on. Number one, the
14 resolution that was passed, another resolution could
15 be issued, subject to protest, to increase the
16 capital outlay. You don't mean to imply that the
17 district is unable to put that -- to levy additional
18 four mills?

19 A. That's absolutely correct. That's
20 absolutely correct.

21 Q. The second point, I guess, is how the
22 increase in the LOB is to your advantage over the
23 capital outlay. That's because you're getting
24 equalization money on the LOB but not on the capital
25 outlay, is that right?

1 A. That's correct, sir.

2 Q. So the decision has been made, let's go
3 ahead and get that money through our LOB that we will
4 then transfer from the supplemental general, the LOB
5 money -- we'll transfer that over into our capital
6 outlay fund to be used for capital outlay projects?

7 A. Actually, there's another step we have to
8 do. We actually move expenses from the general fund
9 to the LOB and then the actual transfer comes from
10 general fund to capital outlay. But you got the
11 essence of it, just not the technicalities.

12 Q. I appreciate that correction. That still is
13 accomplished for the purpose of maximizing the
14 equalization aid?

15 A. Yes.

16 Q. Your district has a contingency fund, is
17 that correct?

18 A. That's correct.

19 Q. The decision on how the contingency fund is
20 spent or not spent is a decision made by your local
21 board, is that correct?

22 A. That's correct, sir.

23 Q. I think that your district was one of the
24 districts that elected to use some of the -- or take
25 advantage of Senate Bill 111, to transfer some funds

1 from certain accounts to be able to be used then for
2 operational expenses. Is that right, or have I
3 confused you with another district?

4 A. We have not done that. It's been my
5 experience that we have enough flexibility in the
6 current before that bill was ever passed to do what
7 we needed to do. It's never been a -- the places
8 where we have trouble with pulling funds out of are
9 federal programs, not state programs. The State has
10 enough flexibility.

11 Q. There was discussion in some previous
12 testimony and I want to touch on that real quick,
13 clarify it. You were asked about the general
14 budget. And the general budget, my copy of it is
15 1030, Exhibit 1030. And in the context of the
16 general budget, I think there's some previous
17 testimony from either teachers or your superintendent
18 about professional development, so I want to look at
19 that. And could you turn to Code 26.

20 MR. ROSE: 1030 page 26?

21 MR. CHALMERS: As you're well
22 aware, there's no page numbers so I'm looking to the
23 code number.

24 THE WITNESS: This is what I was
25 handed.

1 MS. GARNER: What was the exhibit
2 number again, I'm sorry?

3 MR. ROSE: You said 1030.

4 MR. CHALMERS: 1030 that's the --

5 THE WITNESS: That's just the
6 beginning point.

7 MR. CHALMERS: No, that's the
8 Form 150.

9 Q. (By Mr. Chalmers) It's going to be for your
10 district. It's going to be -- let's see here --
11 1034. I apologize. I'm not sure my index is right.

12 A. Okay.

13 Q. And I'm not going to go through all of
14 these -- time is precious -- but I want to have a
15 workings with how this is.

16 A. Yes.

17 Q. This shows the actual amounts that we
18 started the year with as far as funds and the
19 professional development fund, is that right?

20 A. That's correct, sir.

21 Q. And then you've got the budgeted amount for
22 '11/'12. In terms of what was expected to be the
23 funds available --

24 A. Mm-hmm.

25 Q. -- at the beginning of the year and as a

1 function of the transfer of money from the general
2 fund, it went up, basically, is that right?

3 A. Yes.

4 Q. Then you've got, as we work on, the
5 expenditures. And that tells us what the
6 expenditures were for the two previous years, and
7 then for the year preceding this year, this last year
8 the expected expenditures were to be. And did they
9 work out to be about that amount?

10 A. If I could, on this, this is one of things
11 that happens in professional development. There are
12 some federal funds that we can also access for
13 professional development. In past years we were also
14 successful in getting some grants for our teachers to
15 go back and work on their master's program.

16 So when we set the budget for the middle
17 year there, we actually expected to spend more than
18 we ended up spending because we were able to access
19 those federal dollars. And also we got a special
20 grant for the -- and the programs left me, but we've
21 been successful in putting about 30 teachers through
22 a master's program. So that's the reason we ended up
23 with a higher beginning balance in this current year.

24 Q. And you lost the question.

25 A. I'm sorry.

1 Q. Did you end up spending about what is shown
2 as budgeted that year?

3 A. This year? Or last year? I'm sorry,
4 I'm ...

5 Q. The '11/'12 year.

6 A. We haven't completed our budget yet. I
7 don't know, sir. I haven't looked at that fund yet.

8 Q. Is there any reason that you can think of
9 today that would make you think that you would have
10 spent less than what you had budgeted for that year?

11 A. It will depend if we have money available in
12 federal programs that we haven't spent on something
13 else that we can spend on professional development.
14 If we can, we'll do that first, because we can carry
15 over money here and the federal programs we can't.
16 And I haven't looked at the fund yet. I'll know that
17 within the next week or two and I could tell you. I
18 anticipate we'll spend that much, but whether we
19 spend it out of this fund or not, I don't know.

20 Q. I think maybe you're answering a slightly
21 different question --

22 A. Okay.

23 Q. -- and that is not the source, but the
24 amount spent --

25 A. I would anticipate -- yes, I'd anticipate we

1 would spend that much, yes, sir.

2 Q. You'd expect the professional development to
3 have gone up about 50,000 from the previous year?

4 A. We were anticipating -- because we were a
5 district that we had some issues with improvement and
6 so forth, we anticipate that we're going to have to
7 spend more on professional development than we have
8 in the past.

9 Q. There's another -- hopefully it's 1027 --
10 Exhibit, 1027, which is the Budget at a Glance for
11 Dodge City. If I look at page 8, page 8 would
12 indicate the difference in terms of what was actual
13 and what was contracted in terms of the number of
14 administrators, teachers, and so forth, and it shows
15 it was at least budgeted that in '11/'12, that there
16 would be increases in a couple of those categories;
17 one being the teachers, the others being the
18 classified personnel. Was there that increase as it
19 was budgeted?

20 A. In this particular report -- and the human
21 resources department actually puts the FTE and so
22 forth together on the report; my office does not.
23 But I do know, for example, we just settled our
24 contract for the current year with our teachers about
25 two weeks ago. So just right before the end of this

1 year we -- so when this report was put together,
2 there was no way we'd know for sure what our teachers
3 cost was going to be. So it's just an estimate at
4 the point when you do the report.

5 Q. I'm not focused on the amounts, then, I'm
6 just talking about the full-time equivalent numbers.
7 And I understand that a full-time equivalent, as we
8 talked about with kids, that could be partial
9 person. I suppose that's why we've got a .2 up
10 there -- I guess, .4 --

11 A. I would --

12 Q. To your knowledge did we actually get the
13 staffing that was --

14 A. Yes. You're saying did we fill all of our
15 teaching positions? Yes.

16 Q. And would you expect it to then fill more
17 positions in '11/'12 in your district than we did in
18 '10/'11?

19 A. Yes.

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

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. Did the State at one time fund professional
25 development?

1 A. Yes.

2 Q. And do they now?

3 A. Only through the general fund. You have to
4 transfer the amount.

5 Q. Okay. The State used to fund specifically
6 professional development; now, they don't, right?

7 I think you can agree with me that how much
8 is spent per pupil kind of depends on what you
9 include in the money?

10 A. Absolutely, because it depends, for example,
11 if you're paying off a bond issue and that's
12 included, that makes a tremendous difference. So if
13 you're a district that has had facilities, no growth,
14 and you don't have to spend a lot for facilities,
15 obviously your amount per pupil is going to be less
16 than a district that's also having to expend money on
17 facilities.

18 Q. Let me show you what the State produced as
19 the expenditures per pupil, and just pay attention to
20 the overhead. We'll move pretty quick through this.
21 I want to put three things up.

22 First is from Exhibit 1068, and this is a
23 form that purports to show the school year and the
24 amount per pupil, federal aid, local aid, total
25 expenditures, and it has the Dodge City 443 at the

1 top. Do you see that?

2 A. Yes, sir.

3 Q. There's a question I have for you -- and
4 this purports to be all expenditures with a per pupil
5 total expenditure of 12,026. It looks like when you
6 compare that for the years previous, back to
7 2005/'06 -- and I'll just stop there because that's
8 an important date in terms of the money -- but when
9 you go back to those years from the time the Montoy
10 money started through the cuts in '11/'12, you're at
11 an all-time low?

12 A. That would be correct.

13 Q. And the State has produced another chart
14 that you were given, and that shows -- and this is,
15 by the way, census bureau data on current operating
16 expenses, as defined by the U.S. --

17 MR. CHALMERS: It's not census
18 bureau data. I think you're misstating the previous
19 testimony.

20 MR. RUPE: Fair enough.

21 Q. Current operating expenditures as defined by
22 what the U.S. Census says is operating expenses, and
23 that's reported as FTE on September 20, 2010 as
24 6,024.6. That would approximately, correct?

25 A. Yes.

1 Q. Then, let's look at Defendant's other chart
2 that shows expenditures in 1196, and that does not
3 have '11/'12; it just has to '10/'11. But let's take
4 '10/'11, and I'll do the arithmetic for you so you
5 won't have to sit there with a calculator. And I'll
6 lose the effect, but I'll do it for you. 9,825 minus
7 9,397, that's \$458 based on what is called cost
8 function funds per pupil. And that's a difference,
9 if you use that FTE we were talking about, of 6,024
10 of 2,758,992, isn't it?

11 A. That would be correct.

12 Q. That's pretty close to that \$3 million you
13 talked about, isn't it?

14 A. And that FTE is based only on the 6,000.
15 It's on a weighted FTE. And when we talked about the
16 loss in base state aid per pupil, you would have to
17 also include all the weightings.

18 Q. So with that, you come to the \$6 million
19 number --

20 A. Yes.

21 Q. -- you were talking about?

22 MR. RUPE: That's all I have.

23 MR. CHALMERS: Wonder if I can
24 borrow your blow-up of my chart.

25 MR. RUPE: This one?

1 MR. CHALMERS: Yeah.

2 MR. RUPE: You want my numbers,
3 too?

4 MR. CHALMERS: That's fine. It's
5 got two stickies on it.

6 MR. RUPE: Says, "keep it short."

7 MR. CHALMERS: Hand it back to you.
8 Didn't say that, but I like the --

9 JUDGE BURR: Put it back on.

10 JUDGE THEIS: Souvenir sticky.

11 MR. CHALMERS: Put that up at the
12 top.

13 RECROSS-EXAMINATION

14 BY MR. CHALMERS:

15 Q. Exhibit 1196, just so you're aware, says,
16 cost function fund per pupil. And I'm guessing that
17 that is a term that you're not familiar with?

18 A. I'm really not, sir.

19 Q. Okay.

20 A. Not something I do in my budget process.

21 Q. The reason that's there is -- I thought I
22 could show that to you, but maybe not.

23 From Exhibit 1037, we looked at the funds,
24 the function funds. And you're familiar with those
25 function funds?

1 A. Yes, sir.

2 Q. Those are the ones -- they may be defined by
3 U.S. Census Bureau, but those are the function funds
4 that also define the ways that you report to the
5 State your spending, is that right?

6 A. That's correct, sir.

7 Q. The cost functions per pupil, there's a
8 diagram that would show that they remove
9 transportation costs, food services cost, and
10 community and adult services, and so this number is
11 back down when you take the per pupil out to the
12 lower number. You understand that now, with that
13 definition of what this means? I'm not asking you to
14 agree that's what it is, but that's what it's
15 intended to mean.

16 A. Okay.

17 Q. And what this would show, then, is in
18 Defendant's Exhibit 1196, those are actual operating
19 expenditures from all sources, whether it's from
20 federal money or local taxes through the general
21 fund, or local taxes through the State or LOB, or
22 whatever source, and would show that in '10/'11, that
23 your district was, for those functions, spending
24 \$9,397 per kid.

25 Now, Mr. Rupe does that calculation of

1 looking at before. And what I think we can agree is,
2 is, that if his numbers are right, that there is less
3 money being spent in '10/'11 than there was in peak
4 time of '08/'09. So I think we can agree with that,
5 can't we?

6 A. Yes, sir.

7 Q. Have you looked at what the LPA study said,
8 even with inflation, should be your spending in these
9 categories as of '10/'11?

10 A. No, I have not, sir.

11 Q. You're not aware if this 9,397 actually
12 equals or exceeds or is about what the LPA study has
13 recommended?

14 A. The only numbers that I have seen from the
15 LPA study was based on base state aid per pupil, and
16 I know we're lower than what those numbers indicated.

17 MR. CHALMERS: I don't have
18 anything else. Thank you.

19 I guess that's your sticky.

20 MR. RUPE: No other questions.

21 EXAMINATION

22 BY THE PANEL:

23 JUDGE THEIS: I've got one
24 question. I'm confused. 6,024 FTE, and says,
25 included four-year at-risk?

1 THE WITNESS: Yes, sir.

2 JUDGE THEIS: And then you
3 mentioned that doesn't include other weightings?

4 THE WITNESS: Yes, sir.

5 JUDGE THEIS: That's not the actual
6 enrollment, it's something less, and that's
7 multiply -- that's an already weighted enrollment
8 there. And then why is it used, that one, instead of
9 all others and blah, blah, blah?

10 THE WITNESS: It has to do with the
11 way the law is written and our funding, especially
12 prior year or three-year average for funding.

13 There's some special things. So when we figure the
14 FTE pupils, for example, kindergartners still count
15 half even though we have all-day kindergarten, the
16 State pays us a half for every kindergartner.

17 The 4-year-old at-risk program, we
18 get a half FTE for each student that we enroll, up
19 to -- we have so many slots to fill. The other FTEs
20 are, like, we have people come from Sacred Heart
21 School who may take just music with us. We will get
22 so many FTEs based on the number of minutes that
23 they're actually served each day in our district. So
24 that's that FTE number there. Then, what happens
25 later -- and what's that form --

1 MR. RUPE: 150.

2 THE WITNESS: -- which is a joyous
3 thing to fill out -- and I used to do that manually
4 by the way -- you actually go through it. And then
5 figure your number of minutes, for example, on your
6 bilingual. That calculates to an FTE. There's a
7 transportation weighting that depends on how many
8 students you transport over two and a half miles,
9 that comes into an FTE weighting.

10 There is at-risk students based on
11 free lunch; that's a weighting. There's a high
12 at-risk number; that's a weighting. And then there's
13 also non-proficient students at-risk, and that's
14 another weighting. So when we do all that, that's
15 when we come out to it's about 10,000 -- it's
16 actually a little more than that.

17 Special ed is calculated
18 differently. You actually get your special ed
19 budget, they divide it by the base state aid per
20 pupil, and that's how you get your FTE from
21 special ed.

22 JUDGE THEIS: Why would you show a
23 graph with just that one little -- that 6,024 FTE? I
24 mean, why is that singled out?

25 THE WITNESS: Well, at some point

1 if we want to know district enrollment, that's the
2 number that they'll usually use, is the FTE
3 enrollment as opposed to head count. And that's just
4 kind of the way it is.

5 JUDGE THEIS: Still -- no, still,
6 that four-year at-risk --

7 THE WITNESS: Yes.

8 JUDGE THEIS: -- in the brackets,
9 that's the standard number they usually use?

10 THE WITNESS: Again, we will see
11 both on our budget forms. We will see it with the
12 4-year-old at-risk and we see it without the 4-year-
13 old at-risk. I will get a report, now at the end of
14 the year, where they actually have about a three-
15 column -- it goes about three columns that'll go and
16 everything -- you will see the current year
17 enrollment, base enrollment. You'll see the 4-year-
18 old at-risk. You will see virtual is another issue,
19 and then they'll calculate it multiple different
20 ways. It's really ...

21 JUDGE THEIS: If I want to look at
22 that 4-year-old at-risk, where I would read that?

23 THE WITNESS: It would be on the
24 budget form. Where's the 150? Hold on.

25 MR. RUPE: Right here, 223.

1 THE WITNESS: If you look at
2 4-year-old at-risk, it's line 2. And basically, what
3 you'll see on our line 2 of Form 150 shows 74.5
4 4-year-old at-risk. And since each of those
5 represents one-half, you actually take that number
6 and multiply times two. That's the number of 4-year-
7 old at risk students we have in our district.

8 Now, the dilemma that we have as a
9 district, we don't feel like we're meeting all the
10 at-risk students that we need to in the 4-year-old
11 at-risk program, but we only have this many that the
12 State will pay for. We can have more students, but
13 the State won't pay for them.

14 MR. RUPE: If I can do a follow-up
15 question, Your Honor?

16 JUDGE THEIS: I might have one more
17 here and then we'll get it out of the way.

18 MR. RUPE: Okay.

19 JUDGE THEIS: I was going to ask
20 you, you were talking about spending money for
21 teacher development.

22 THE WITNESS: Yes.

23 JUDGE THEIS: Do you pay for their
24 college, master's degrees?

25 THE WITNESS: We have paid -- we

1 had a special grant that we received and we had a
2 program called DCELA, where it was a cooperative
3 program with us and K State. We actually offered
4 some of those classes in Dodge City. And so we were
5 trying to get more teachers into that master's level,
6 more developed, more professional development. And I
7 think we've had close to 50 to 60 teachers go through
8 that now. We've had two separate classes go through
9 that program. All of it's been picked up by the
10 grant, not local funds, but some of it has been by
11 local funds.

12 JUDGE THEIS: The grant comes
13 from?

14 THE WITNESS: I don't remember.
15 I'll be honest, I don't remember. I don't know if it
16 was a federal grant --

17 JUDGE THEIS: Not a state fund?

18 THE WITNESS: I don't think it was
19 state. I think it was a federal grant, but I do not
20 know for sure.

21 JUDGE THEIS: So that just flowed
22 through your district?

23 THE WITNESS: Yes, it was -- it's
24 really tough for a lot of our teachers to get
25 professional development. We're more isolated than a

1 lot of other parts of the State. We don't have a
2 four-year university at our doorstep.

3 JUDGE THEIS: When they go to get
4 their master's, what happens with the -- I assume
5 they were employees and can't be both going to school
6 and teachers at the same time. What happens?

7 THE WITNESS: Actually, a lot of
8 them teach and a lot of them take classes both during
9 the year and also summers. It's not unusual for
10 people in education, while they're starting out,
11 to -- they'll be teaching full-time and they're also
12 taking a class one night a week or on a Saturday or
13 on weekends and summers. That's just not unusual at
14 all.

15 This year we anticipate our column
16 movement at Dodge City will be about \$175,000 on our
17 teacher scale because of the number of people who
18 will receive advanced education and a master's. So
19 we try to do all we can to help our teachers grow and
20 develop.

21 JUDGE THEIS: Okay. Go ahead,
22 Mr. Rupe.

23 REDIRECT EXAMINATION

24 BY MR. RUPE:

25 Q. The grant program that you talked about on

1 the master's with K State, those courses are actually
2 taught in Dodge City?

3 A. Some of them have been. And then there was
4 some political issue about where they should be
5 taught. Some of them did online. And then some of
6 them, they actually had to go to Salina to take
7 classes. Getting classes offered in our area is
8 tough. I mean, that may sound dumb, but it's tough.

9 Q. Kansas has kind of a unique foundation
10 system with the weights, and if the Court wanted to
11 walk through what you just described by how the
12 weights worked, Exhibit 20 kind of summarizes the
13 Form --

14 A. Yes.

15 Q. -- 150, which is Exhibit 233 in that far
16 right-hand column, true?

17 A. Right. And this was up here where we looked
18 at the enrollment. And you'll notice the
19 enrollment's the very top number, that's the FTE
20 enrollment.

21 Q. Sorry. Next to the last column is Dodge?

22 A. Right. Then, we come down to the 4-year-old
23 at-risk, which we'd really like to have some more
24 slots for, so we can offer to more kids. And then
25 you get the high enrollment weighting, which is

1 at-risk. Bilingual weighting based on minutes that
2 we have a teacher who is certified or on program
3 that's in front of a kid that's considered
4 bilingual --

5 Q. We get the drill.

6 A. I'm sorry.

7 MR. RUPE: But Exhibit 20,
8 Your Honor, is the one that computes that and shows
9 those.

10 JUDGE THEIS: My questions went to
11 why it was singled out to be used.

12 MR. RUPE: Okay. I see. All
13 right.

14 MR. CHALMERS: Maybe I can --

15 Q. (By Mr. Rupe) One last question with regard
16 to the weighting amounts, is that money sufficient to
17 cover the rising expenses from the population you're
18 getting?

19 A. No.

20 MR. RUPE: Thank you.

21 RECROSS-EXAMINATION

22 BY MR. CHALMERS:

23 Q. In your opinion, the money's never been high
24 enough to cover the cost in your district?

25 A. I would say I still have facilities that are

1 inadequate to offer educational classes in.

2 Q. In your deposition you said, "it's never
3 been high enough."

4 A. No, it has not since I've been there.

5 Q. Now, talking about Exhibit 1037, try to, if
6 you can, answer the Judge's questions by looking at
7 some documents; I think that'll help. This is the
8 one that has the FTE number. If we look at
9 Exhibit 1022, which is the '11/'12 profile document,
10 budget document, what it shows is it shows the
11 categories you're talking about, the enrollment FTE
12 and then the enrollment FTE, adding the little
13 asterisk, the preschool kids, the Head Start, the
14 all-day kindergarten.

15 So we've got your two numbers, do we not,
16 that would show, by way of illustration, budgeted for
17 the '11/'12. One would be the 6,187, and the other
18 one would be 6,000 number depending on whether you
19 include the 4-year-old and so forth.

20 Now, those are a way to try to approximate
21 the head count because you get partial kids, and
22 we've talked about that?

23 A. Yes.

24 Q. And when we want to try to come up with, in
25 Exhibit 1037, an estimation of about what the amount

1 of money spent per head count is, what we do is we
2 take the FTE and divide it by the expenditures. And
3 that's how this particular form, Exhibit 1037, comes
4 up with a 10,307, is that right?

5 A. That's correct.

6 Q. Now, there's a reason that that \$10,000 is
7 bigger than the weighting -- or rather than the base,
8 the base being down in the 380 category, and that's
9 because this includes the weighting, the federal
10 money, and whatever other revenue is spent, is that
11 correct?

12 A. I'm not familiar with this particular -- the
13 background on this particular page.

14 Q. There's a reason that there's a per pupil
15 expense --

16 A. Right.

17 Q. -- that's higher than those -- than what the
18 base is --

19 A. Oh, yes, okay.

20 Q. -- and you add all those other things --

21 A. Okay. Right. I understand.

22 Q. So by way of illustration, I think Mr. Rupe
23 at some point had one of our blow-ups up and was
24 trying to do per pupil based on the weighted number.
25 That wouldn't make any sense because you do your per

1 pupil based on --

2 MR. RUPE: Hang on, I was.

3 Q. -- expenditures against --

4 MR. RUPE: I was doing FTE.

5 MR. CHALMERS: This last time you
6 were; not the time before it. But I won't quarrel
7 with you.

8 JUDGE THEIS: Which FTE, that was
9 my question.

10 MR. RUPE: Yeah.

11 Q. (By Mr. Chalmers) Yeah. So this FTE, the
12 624, to answer Your Honor's question, this would be
13 for, let's see, '10/'11. And if we compare that to
14 1022, there seems to be a little bit of a difference,
15 but it's probably the FTE excluding the 4-year-olds
16 that are -- and the Head Start kids?

17 A. Mm-hmm, and Head Start would not normally be
18 in any of these because that's all through a federal
19 grant program. So we would tend to keep it entirely
20 separate from any of these dollars. You'll see it
21 reported in our audit under federal gifts -- you
22 know, grants and so forth, but it's not included,
23 usually, in any of these reports.

24 Q. The differences in the numbers between the
25 6,000 and the 6,024 likely has to do with when the

1 data is reported because that's --

2 A. Could be.

3 Q. -- a little bit of a moving target until the
4 end of the year?

5 A. Absolutely.

6 MR. CHALMERS: Right. I don't have
7 anything else.

8 MR. RUPE: Nothing further.

9 JUDGE THEIS: See you about between
10 quarter 'til and ten 'til.

11 MR. RUPE: Sure. Thank you. You
12 are free to go.

13 (Witness excused.)

14 MR. RUPE: Lori Blakesley, please.
15 I'm sorry. Are you taking a
16 break?

17 JUDGE THEIS: Sure. I am.

18 MR. RUPE: Sorry. I thought you
19 said to go to ten 'til.

20 (A recess was taken.)

21 LORI BLAKESLEY

22 Called as a witness for the
23 Plaintiffs, was duly sworn by the reporter and
24 testified under oath as follows:

25 DIRECT EXAMINATION

1 BY MR. RUPE:

2 Q. Tell the Judges your name and the city in
3 which you live.

4 A. My name is Lori Blakesley and I live in
5 Hutchinson, Kansas.

6 Q. What's your title?

7 A. Executive director of fiscal management and
8 business operations.

9 Q. For what school district?

10 A. For Hutchinson Public Schools.

11 Q. And the USD number?

12 A. USD 308.

13 Q. Tell us a little bit about your educational
14 background and your work history.

15 A. I have a Bachelor's in Business
16 Administration that I received from Barton County and
17 National College. I've worked for Hutchinson Public
18 Schools for 11 years. Prior to that I worked for
19 Haven School District. I was their business
20 manager.

21 And prior to that I was the accountant for
22 Great Bend School District. And prior to that, I
23 worked for an original equipment manufacturer who
24 made hydraulic cylinders and I was their accountant.
25 And through college, I worked for the Kansas Bureau

1 of Investigation. I typed their lab reports and
2 checked in evidence.

3 Q. The year you started in Hutchinson was what
4 year?

5 A. I want to say 2000. I've been with them 11
6 years.

7 Q. Tell us a little bit about yourself besides
8 typing lab reports.

9 A. I do have to tell you, I just recently -- I
10 get up at 4:45 in the morning and I work out every
11 day. I do Zumba and Group Power and yoga, and I have
12 found out that this old body isn't what it used to be
13 but I am getting better at it.

14 Q. Welcome to the club. Let's talk a little
15 bit about the Hutchinson School District. And I want
16 to give you three exhibits to look at and hand you
17 Exhibits 219, 218, and 217. What is 219?

18 A. It is the budget for Fiscal Year '11/'12 and
19 the codes.

20 Q. This has been shrunk down so it's two pages
21 on one, but explain to the Judges what the budget is.
22 And I don't want you to go through it. I just want
23 you to explain generally what it is.

24 A. Yeah, I'm not going to re-hash everything
25 Mr. Hammond said, but the budget -- the school

1 district does have to publish a budget every year.
2 And there are several different budget areas that we
3 budget for, and then we basically live within that
4 budget throughout that year.

5 Q. Okay. And is the budget amended during the
6 course of the year?

7 A. It can be. And Hutchinson Public Schools
8 has amended their budget for '11/'12 this year based
9 on enrollment increases, weighting increases, and at
10 the very end, we re-published for additional 17,000
11 in special ed aid.

12 Q. And when do the books close on '11/'12?

13 A. Well, we're still working on that. We met
14 with the board on Monday, and part of the process is
15 dealing with your final transfers into the various
16 funds. We probably will not close this year until
17 middle of July.

18 Q. And then when does the '12/'13 budgeting
19 start?

20 A. '12/'13 budgeting started pretty much in
21 January of 2012. We met with a community budget
22 group and we've had several meetings on the budget
23 for '12/'13. We will have a budget we'll set for the
24 last board meeting in July. We will ask the board to
25 publish the budget. We'll have to wait ten days.

1 And then, we'll have a hearing, which would
2 be the second board meeting in August -- I'm sorry,
3 the first board meeting in August. I think it's
4 August 10th. It's the second Monday in August. And
5 then, at that point, you have to file your budget by
6 August the 25th.

7 Q. Now, let's go to 218. And explain to the
8 Judges what 218 is, please.

9 A. 218 is Hutchinson Public Schools Budget at a
10 Glance, and it goes back through '11/'12, '10/'11,
11 and, '09/'10. And '11/'12 would not have our
12 re-published numbers.

13 Q. Now, turn your attention to Exhibit 217, and
14 tell us what that is, please.

15 A. It's Form 150 for the school district for
16 Fiscal Year '11/'12.

17 Q. Let's go to the first line of that. That
18 says, estimated 9-20-2011 FTE enrollment. And how is
19 that calculated?

20 A. It can either be current year, previous
21 year, or three-year average of student FTE
22 enrollment.

23 Q. And we covered this with Bill Hammond, but
24 let me cover it with you, briefly. What is 4-year-
25 old at-risk FTE, and why is that excluded?

1 A. They exclude it because you only get .5
2 weighting for your 4-year-old at-risk students.
3 Technically, our school district has 56 slots. We
4 get funded for 56 slots, and so we get FTE of 26 for
5 those 56. And we have greater needs than what our
6 slots availability is.

7 Q. That was going to be the question. Are
8 there more 4-year-olds -- more at-risk 4-year-olds in
9 the program than the slots?

10 A. We do have greater need than what we are
11 funded.

12 Q. And what's the purpose of 217? Why do you
13 fill out the Form 150?

14 A. The Form 150 is a way to lay out the
15 district's enrollment in all the different weightings
16 that the district may or may not qualify for. And
17 then, it brings in your special ed. And then, that
18 number, which on this document is 7,604.5 -- I'm on
19 line 17 of our form -- and that is multiplied times
20 the current base state aid, and then that is what
21 your Legal Max budget is for the year.

22 Q. And you use that in your budgeting?

23 A. Mm-hmm. And this is just an estimate, a
24 point-in-time estimate. Districts do not know what
25 their budgets are, we do not know what our enrollment

1 numbers are until after the audit. The KSDE comes
2 out and audits our district. And then, like
3 Mr. Hammond said, we do not know our special ed until
4 usually the first or second week of June.

5 Q. And is that then updated or not, the 150?

6 A. The Form 150? After enrollment audit -- and
7 we did have to update our Form 150 and re-publish.
8 And when you re-publish a budget, you have to go
9 through all the same steps that you did when you
10 initially published your budget. You have to ask the
11 board to publish in the paper, and then you have to
12 wait ten days, then you have a hearing. And then
13 it's official at that point.

14 Q. Thank you. Let me hand you a couple of
15 exhibits because I want to move to talking to you
16 about some cuts. And as we're getting 289 and 288 to
17 the witness, let me, Ms. Blakesley, ask you this
18 question: In terms of the cost to the district, the
19 costs of educating -- the actual cost of educating
20 kids, has that increased over time?

21 A. Yes.

22 Q. Explain to the Judges --

23 A. Okay.

24 Q. -- where you see the increase in cost.

25 A. Well, you can just get up the next morning

1 and costs have gone up. We have increases in health
2 insurance. And the federal health care law is
3 looming over, and that will be an extremely expensive
4 endeavor. We have higher fuel costs. We just got an
5 email yesterday from the State department that
6 mileage, the in-district mileage reimbursement that
7 we would provide to staff is going up, and it went up
8 7.8 percent.

9 Our postage goes up. Our utilities are
10 going up. Our Workers' Comp insurance did go up.
11 Our unemployment insurance has gone up. Our
12 retirement benefits have gone up. So it's just like
13 your personal finances every year, it costs more to
14 live.

15 Q. And in terms of the State funding, what has
16 been the corresponding state funding as these costs
17 go up?

18 A. Hutchinson Public Schools, the base state
19 aid has gone down every year, and sometimes mid-year
20 it has gone down. And we've had added weightings.
21 Our weightings have gone up because our at-risk -- or
22 poverty level has gone up, and so we have more needs,
23 our children have more needs when they come into our
24 school, with lower funding.

25 Q. As a result of the lower funding, have you

1 had situations in which you've had to make reductions
2 and cuts?

3 A. Yes.

4 Q. Take a look at 288 and 289. And if you
5 would, can you identify these exhibits as exhibits
6 that chronicle the cuts and the reductions?

7 A. Yes. Exhibit 288 was a document that I
8 prepared to give a snapshot of what our
9 non-instructional reductions have been, what our
10 instructional staff reductions have been, what our
11 support staff reductions have been. And then, I
12 also -- there's a section in there on what the
13 district had to add back into their budget.

14 Q. If you would, give us the same explanation
15 of what 289 is.

16 A. Yeah, 289 was a document that the
17 superintendent and I prepared while we were working
18 up the budget for Fiscal Year '11/'12. And this was
19 a document that was presented at our community
20 meetings. We had, I think, three or four of them,
21 and it was just the story that we told on where our
22 funding is at and where it was heading.

23 And you can see in that, on the first page
24 on the Exhibit 289, that we were expecting 1.5 loss
25 in funding, that included with the special ed.

1 Without it was 1.3. Now, of course, this information
2 was all before we knew that our enrollment and our
3 weightings or poverty level went up, and we have
4 additional poverty students in our district. So this
5 is before audit enrollment.

6 Q. Okay. But in terms of what this exhibit
7 shows, it shows a loss of 1.5, with the additional
8 explanation you just gave. Has this been updated?

9 A. I have not -- this exact spreadsheet I have
10 not updated. I do have another spreadsheet that I've
11 prepared that shows the new enrollment.

12 Q. Okay. And why don't you give the Judges
13 that information, in terms of what your conclusions
14 are.

15 A. Okay. Fiscal Year '11/'12, we actually
16 ended the year -- our Legal Max budget was 29-nine,
17 and so that was almost 1.1 million higher than what
18 we would initially thought we would have. And a half
19 of it was based on enrollment increases, and the
20 other half was based on our higher increase in
21 poverty, free and reduced lunch count.

22 Q. So there was some decrease, am I on track,
23 between this number --

24 A. Yes.

25 Q. -- and this number. And 289 is for what

1 year? For this year?

2 A. 289 was for Fiscal Year '11/'12 budget. And
3 so if you were looking at the difference between what
4 was on Exhibit 289 and what we actually ended the
5 year with, we were still down about half a million --
6 or 400,000, excuse me.

7 Q. And in terms of that money, you were down --
8 that money was down at a time where your costs were
9 increasing?

10 A. Yes, sir.

11 Q. What about ARRA funds, are those available
12 to the district?

13 A. We got just a little bit of ARRA funding
14 this year. It was \$13,000 this year. Prior to that,
15 though, we did have significant ARA and jobs money
16 that the district received. However, it did not
17 increase our Legal Max any, our Legal Max budget.
18 The State basically used it to back-fill their state
19 aid that they owed the district.

20 Q. In terms of your at-risk numbers, are
21 they -- we'll cover more of this with the
22 superintendent, but are your at-risk numbers rising
23 in terms of at-risk pupils?

24 A. Yes.

25 Q. What about ELL?

1 A. Yes.

2 Q. In terms of the costs of educating those
3 kids, they have continued to increase, the number of
4 kids and the cost?

5 A. Yes, sir.

6 Q. Talk to me a little bit about -- and don't
7 go through it line by line, but talk to us about what
8 reductions, cuts USD 308 has instituted as a result
9 of these increasing demands and decreasing funds.

10 A. Well, we are down approximately 40 FTE in
11 our staffing with our -- with what we've cut and what
12 we've had to bring back in. We've had to reduce
13 after-school programs. We've had to reduce
14 activities. We've had to reduce -- we've had to
15 increase our deductibles on our insurance. We've
16 reduced technology lines.

17 And one of the issues that we have with --
18 it's, we've tried to keep our cuts as far away from
19 the classroom as possible, so we made a lot of
20 reductions in the support staff, which would be
21 technology, custodians, maintenance workers.

22 An example I could give you, in the business
23 office, the business office has absorbed three jobs
24 that were in the administration office. And a month
25 ago we had an opening in the business office and we

1 hired an individual from the private industry. And
2 she made it five days and said she could not handle
3 the workload for the pay that she was getting and she
4 quit. So we have an extremely large work load in the
5 business office. We've reduced some travel.

6 Q. Has there been a reduction -- in terms of
7 the FTE, tell me what the teaching positions reduced
8 have been and what the para-professional positions
9 have been reduced.

10 A. Well, beyond page 3 of Exhibit 288, and
11 we've reduced elementary teaching staff. We've
12 reduced elementary music. We've reduced some world
13 language. We've reduced some PE. We've reduced test
14 teachers; we have one less. We have -- we reduced
15 the dental hygienist. We've reduced media aides,
16 library media aides. We have one less staff position
17 in HR. Did you just want instructional staff?

18 Q. Yeah --

19 A. Okay.

20 Q. -- this chronicles it and you've directed us
21 in the document to where it is, so let me move on.

22 In terms of the local moneys available to
23 back-fill these losses you've described, has the
24 district gone to the voters to increase the LOB?

25 A. No.

1 Q. Explain why not.

2 A. In our district, I believe it would be
3 taxpayer tolerance on increasing their taxes. It
4 would be financial capabilities for our community to
5 afford an increase in taxes. And also, you have to
6 look at your surrounding tax base, which we have
7 like, five or six districts that are all right in our
8 county, plus we have a community college. So you
9 have to be mindful of the overall taxing base.

10 Q. And when you say, you have to be mindful of
11 it, what's the board consider in being mindful of it?

12 A. They do not want the taxes to -- the local
13 taxes to increase in our district.

14 Q. Off the top of your head, can you recall
15 what the mill levy is in Reno County?

16 A. You know -- the whole tax base?

17 Q. Yeah.

18 A. No, not off the top of my head. I can get
19 that for you. I have it in one of my documents.

20 Q. That's fine. But in terms of where are you
21 on the LOB in Hutchinson?

22 A. We are at 26.7 percent right now. However,
23 that's on the higher Legal Max number that
24 Mr. Hammond was talking to you about. If you were to
25 take that -- where we're at right now, if you were to

1 take that LOB Legal Max and divide it into the Legal
2 Max that we are currently operating off, we would be
3 at 29.2 percent.

4 Q. And in terms of LOB equalization aid and the
5 capital outlay equalization aid -- you were in the
6 courtroom when Mr. Hammond testified -- has
7 Hutchinson experienced similar issues?

8 A. Yes. Our LOB -- we are for Fiscal Year
9 '11/'12, we were at a 60 percent poverty level. And
10 the State funded it -- initial at budget time, they
11 prorated that 60 percent amount to 83 percent. Just
12 last week they were able to increase that amount to
13 86 percent. But since the State has reduced the
14 school districts, they have not been funding that LOB
15 at the proper equalization rate.

16 Q. And capital outlay equalization disappeared
17 in '09/'10?

18 A. Yeah, I was listening to Mr. Hammond and I
19 was trying to think what year we lost that. And I
20 wanted to say '09/'10, but I can't be for certain.
21 But our district did lose that first year 280,000 in
22 state aid that our taxpayers. You know, that --

23 Q. And just to clarify the record, that 280,000
24 was capital outlay equalization --

25 A. Right.

1 Q. -- that you were entitled to?

2 A. Right.

3 Q. And it just didn't show up?

4 A. Right.

5 MR. RUPE: No other questions.

6 CROSS-EXAMINATION

7 BY MR. CHALMERS:

8 Q. Ms. Blakesley, I want to clarify a couple
9 things. Your district is not at the maximum amount
10 of LOB that it can issue without a vote, is that
11 right?

12 A. Correct.

13 Q. Mr. Rupe had asked whether your district's
14 board had gone to the voters to ask for increased LOB
15 authority, and they don't have to do that, do they?

16 A. Our board has not.

17 Q. They don't have to go --

18 A. Our mill levy -- excuse me, our mill levy
19 has increased, though, however, in the LOB because of
20 the loss of the state aid.

21 Q. Ma'am, the board does not have to go to the
22 voters to seek a vote or an election to increase the
23 mill levy for the LOB, do they?

24 A. As long as you stay at your -- at the state
25 average you are -- you can go up to that if your

1 local area can tolerate that in taxes.

2 Q. I'm not sure that you're answering my
3 question; maybe you are. Are you agreeing that your
4 board, your district, has the ability to raise more
5 money through LOB than it's presently raising?

6 A. Our district can go into their LOB further.
7 We have chosen not to. And I do meet with a
8 community business group. It's made up of an
9 attorney, couple of bankers, an investment --

10 Q. Your feeling is --

11 A. -- broker --

12 Q. Your feeling is that your voters are not
13 willing to tolerate an increase in their taxes. I
14 understand that that's your feeling, right?

15 A. The avenue that we're looking at is that we
16 are wanting to keep it in reserve to go -- so that we
17 have a revenue source next year and maybe the year
18 after.

19 Q. Your feeling -- well, you can increase it
20 and then the following year still increase it, you
21 don't have to -- in other words, you raise it, your
22 mill levy, so you get your full 30 percent on the
23 calculated LOB for this year, that doesn't foreclose
24 you from getting the full 30 percent of your LOB the
25 next year, does it?

1 A. In our district, without it being fully
2 equalized, it would be a large increase in our mill
3 levy.

4 Q. That's what I think we need to be clear on.
5 It's your position that your voters, your electorate
6 will not support any additional tax increases, and
7 they've communicated that to your board, right?

8 A. I think there would be some tolerance there
9 that we'd have to visit about.

10 Q. I understand that point. I just want to be
11 clear on the other side; that is, that they have,
12 your board, has the ability, you concede, to get more
13 money that they've chosen not to get --

14 A. And yes.

15 Q. -- through the LOB?

16 A. Yes, and I have answered your question now.

17 Q. As to the tolerance issue, it's your
18 position that your community can't afford it but the
19 State can?

20 A. The issue, at that point, would be
21 equalization.

22 Q. Let's talk about Exhibit 1104. And it's the
23 mill levies for the '11/'12 year that's in evidence.
24 And it's done by county, so I'm finding Reno here.
25 Here we go.

1 You were asked by Mr. Rupe what the mill
2 levy was for -- here we go -- for Hutchinson Public
3 Schools. And this would reflect, would it not -- and
4 I don't know if you can see it -- the figures for
5 your mill levy? You have it in front of you?

6 A. I don't have that in front of me, no.

7 Q. Well, it shows a -- under the category of
8 total actual levies it shows Hutchinson at a --

9 JUDGE THEIS: I think you're on the
10 wrong page.

11 MR. CHALMERS: I'm trying to show
12 it, and I'm making it more difficult than I should,
13 Your Honor. Apologize.

14 Q. It shows 57.174, when you include the mill
15 levies for LOB, the required mill levy for local
16 effort -- actually, the mill levy for the LOB --
17 that's down this column -- works out being 21? 296,
18 is that right?

19 A. Yes.

20 Q. So now, there is an average number here, I
21 think, for all these --

22 MR. RUPE: Well --

23 Q. -- mill levies --

24 MR. RUPE: I'm going to pose an
25 objection. You said this was for the Hutchinson

1 School District. I think this is Reno County, isn't
2 it?

3 MR. CHALMERS: Well, these are mill
4 levies by the Department of Education by county, but
5 I think that the mill levies are for the district. I
6 would clarify that with Mr. Dennis. Maybe the
7 witness can help us out there.

8 Q. (By Mr. Chalmers) Where it says, under USD
9 308, Hutchinson schools, that is your school, isn't
10 it?

11 A. Correct, and that is our --

12 Q. It is in Reno County, isn't it?

13 A. And that is our levy.

14 Q. I thought that there was a total; I guess
15 there really isn't. But if we were to look at the
16 actual levies, you agree that there are other
17 districts that are levying amounts that exceed what
18 Hutchinson is levying? By example, with the one I
19 pointed out at 74, which I think is hard to read on
20 this particular chart, so I'm not going to try to do
21 it. But there are other counties that are levying a
22 higher amount, aren't there?

23 A. Mm-hmm.

24 Q. Is that right?

25 A. Yes. It would depend on -- a lot of times,

1 it's on your bond and interest, where you're at in
2 your debt schedules --

3 Q. Sure.

4 A. -- as to --

5 Q. If you have less bond and interest, then
6 some people think that allows you to levy a higher
7 amount. And when we talked about your particular
8 amount in Hutchinson, you have a bond and interest
9 levy amount of 13.8393 as of last year, is that
10 correct?

11 A. Yeah. Our mill levy from Fiscal Year
12 '08/'09 was 45.87, and now it's at 57.17.

13 Q. Now, the capital outlay -- I don't know if
14 we talked about that -- that's going to be in there
15 somewhere probably. Your district does not fully
16 levy for the capital outlay, does it?

17 A. No, we have a resolution for four mills for
18 five years. We do levy for two -- two mills. And
19 the other two mills we are running through our local
20 option budget, similar to what Dodge City was doing.

21 Q. Talk about that for a second, but Exhibit
22 1201 is kind of a blow-up for the '11/'12 -- or
23 '10/'11 year. And it reflected that your mill levy
24 for capital outlay was 1.98, and you say it's
25 increased a little bit this last year?

1 A. We are actually -- 1.98 is actually going
2 through the capital outlay, but we are actually
3 capturing the other -- the dollars amount that you
4 would generate with a two mill levy, a capital
5 outlay -- we're getting that out of LOB.

6 Q. You're transferring money that you're
7 collecting through the LOB tax into the capital
8 outlay fund?

9 A. Mm-hmm. Yes, sir.

10 Q. And you do that because there's equalization
11 on the LOB and that way --

12 A. That's partial equalization, yeah.

13 Q. There is equalization -- and that allows you
14 to capture more money than if you levy the tax on the
15 capital outlay?

16 A. Yes, sir.

17 Q. And you indicate that your resolution is at
18 four mills, so you don't have to go seek -- you don't
19 have to put yourself at-risk of voter protest if your
20 district had chosen to raise its levy from the 1.98
21 to the full two, is that correct?

22 A. The difference -- you mean the full four
23 mills?

24 Q. Full four, I'm sorry.

25 A. All right. We could go into the additional

1 four mills or capture the additional two mills going
2 up to four mills, but at this time, we are leaving
3 that in reserve for future growth if we need it.

4 Q. Again, you're leaving that in reserve for
5 future growth. If you were to raise it to the full
6 four mills, you're not saying you can't raise it and
7 keep it at the full four mills the following year, is
8 that right?

9 A. We could, yes.

10 Q. And we talk about four mills. That's what
11 your resolution says, that the statute of course
12 would permit your board to, if it elected to do so.
13 And I understand your concern that your voters would
14 resist it. They could go up to full eight mills
15 subject to a voter protest?

16 A. We would have to re-run our resolution, but
17 yes, the state law does say you could go to eight
18 mills.

19 Q. Now, you folks in your district have carried
20 a cash balance in your -- is it in your cash
21 reserves, that now you're spending down over four
22 years?

23 A. Mm-hmm. Yes, sir.

24 Q. And that balance that you're using Senate
25 Bill 111, which allows you to move funds from silo to

1 silo, that cash balance would you say 1.5 million,
2 and what you're doing is you're using a quarter of
3 that each year --

4 A. Mm-hmm.

5 Q. -- is that correct?

6 A. Yup, 380,000 there.

7 Q. And you started using that cash, what was
8 the first year for that?

9 A. It would have been '10/'11; this '11/'12
10 year, second year.

11 Q. Up until then, the money was collected in
12 these silos and not accessible, that's why you needed
13 to?

14 A. I'm going to stand corrected, the 380,000,
15 this would be the first year that we're actually
16 going to use that form 149 on that.

17 Q. So that would be '11/'12 year?

18 A. Mm-hmm.

19 Q. Okay. I think that's what I wrote down.
20 Before that, those moneys were not accessible to you
21 in the same fashion they are now because -- well,
22 there was Senate Bill 111 the previous year, wasn't
23 there, you could have used the money --

24 A. Yes.

25 Q. -- but you're choosing to use it now? Or

1 more accurately, your board is, is that correct?

2 A. Yes.

3 Q. Now, let me talk to you just quickly about a
4 few budget figures. Exhibit 218 is the Budget at a
5 Glance. Do you still have that in front of you? And
6 at page 1, which is three pages in on the exhibit,
7 that's where it shows the expenditures by all funds.
8 And I've got a couple questions about that.

9 The 2009, 2010, '11 numbers are actual
10 numbers. So those -- I understand that these are
11 little bit of a moving target as the data comes in,
12 but those are numbers that should be final by the
13 time this document's published, correct?

14 A. Correct.

15 Q. And they would have shown between '09/'10
16 and '10/'11, an increase in per pupil expenditures by
17 3 percent, I think, is how we read that, is that
18 correct?

19 A. Yes. '10/'11, though, if this has federal
20 funds in it, which I believe it does, if I'm reading
21 the little disclaimer thing, information down below
22 here, the federal funds are in there, and we did get
23 some large ARA federal dollars.

24 Q. You want to go there, let's go there. Let's
25 talk about the ARRA for a moment. That program was a

1 part of the federal stimulus package that said to
2 states, here's money that you can use in place of
3 money that you don't have available because of the
4 recession. And that's what Kansas did.

5 A. You had to be real careful and not supplant
6 with that. The other thing --

7 Q. What they did, is they took that money and
8 they flowed it through the general fund so that from
9 your standpoint it was -- you were receiving --
10 although it was federal money, you were receiving the
11 general fund state money, right?

12 A. Yeah, you're talking about stabilization
13 money?

14 Q. I'm talking about the ARRA money.

15 A. Well, there's, like, two different pots of
16 money, because there's the ARA stabilization, and
17 then the recovery money that came outside of your
18 general fund, through your federal dollars, through
19 Title, mostly.

20 Q. So you had, then, Title fund money, as
21 well. The money came through Title I money, as
22 well?

23 A. Mm-hmm, and we also wrote some grants and
24 got some for food service and Head Start.

25 Q. But the ARRA money, if I understand your

1 testimony, you saw it both through the general fund
2 as well as through Title I funds, right?

3 A. Yes. Now, the general fund did not give us
4 any additional revenue.

5 Q. They flowed the money through the general
6 fund, that's how it came; nothing additional, just
7 replaced the money?

8 A. Correct.

9 Q. Now, the Title I money, we can look at the
10 exhibit budget, and maybe we ought to, the spike up
11 from the AARA (sic) money, how much was that relative
12 to what was budgeted this last year?

13 A. I think it was \$980,000 for Title I
14 additional ARRA money that we received over a
15 two-year period. But it had --

16 Q. You misunderstood my question or I was not
17 clear; I apologize. The Title I money, the AARA
18 money, that was received over those years, how much
19 more was it this last year than it is for the
20 budget -- well, how much more was it -- because we
21 got two things going. How much more was it for the
22 2010/'11 year than it was for the '11/'12 year, as
23 budgeted?

24 A. All of our federal dollars in Fiscal Year
25 '10/'11, we had 5.6 million. And in Fiscal Year

1 '11/'12, we received 4.9.

2 Q. So the difference?

3 A. Close to a million.

4 Q. And --

5 A. We're less --

6 Q. -- when we look at the budget, then, for the
7 federal money, the difference you're talking about,
8 the AARA money, is it a million?

9 A. For -- are you talking -- which pot of
10 money? All of it or just the --

11 Q. For the money we've been talking about?

12 A. -- strictly the title --

13 Q. -- the money that's been flowing through
14 Title I?

15 A. In Fiscal Year '11/'12?

16 Q. Yes.

17 A. We had no money, ARA money, go through
18 Title I money for '11/'12.

19 Q. The difference, ma'am. The difference
20 between what was budgeted this year and you received
21 in that money. Your Title I money just didn't
22 disappear; it didn't go away. You would have had
23 Title I money this year.

24 A. Yes, but not ARA title money.

25 Q. I understand that. What I'm trying to do is

1 find out how much Title I money you remember
2 receiving this year compared to what it was that had
3 been provided when you had the last year with the
4 ARAA money?

5 MR. RUPE: That question is
6 compound and it's confusing, because I think she's
7 saying there isn't ARRA money this year. And you're
8 asking her what that money is this year --

9 JUDGE THEIS: There's Title I
10 money, there's stimulus money, and the question is
11 what was the Title I money last year and what was it
12 this year? And then, if there was stimulus money, I
13 suppose you ought to use stimulus money, or if it was
14 in both, I don't know.

15 MR. RUPE: Yeah.

16 MR. CHALMERS: I think I can
17 clarify it. I don't know that the question's been
18 misleading, but I can certainly can a better job, I
19 think.

20 JUDGE THEIS: The terms are mix and
21 match, I think.

22 MR. CHALMERS: Yeah.

23 Q. (By Mr. Chalmers) There is stimulus money
24 and then there is money that the ARRA flowed through
25 Title I, right?

1 A. Right, and that would have been for Fiscal
2 Years '09 and '10, and '10 and '11.

3 Q. And what I want to talk about is the money
4 that flows through the Title I, because as I
5 understand your testimony, you say you've got less
6 Title I federal money because you've got less ARRA
7 stimulus money, is that accurate?

8 A. If I understand your question correctly, we,
9 for Fiscal Year '11/'12, USD 308 received 13,000,
10 approximately, stimulus money that went through the
11 general fund. For Fiscal Year '11/'12, the district
12 has received no ARRA funding.

13 Q. That's not my question. What I'm trying to
14 ask -- and I apologize, I'm not doing a very good
15 job -- you've said that the Title I money, that
16 included some of this ARRA money, and I just want to
17 focus on that for a moment. And you've said that
18 there was that money in 2010/'11, it was in '11/'12,
19 and I was trying to figure out how much -- in terms
20 OF what you budgeted in '11/'12, how much of that
21 went down because of the loss of the ARRA money.
22 We're now talking about the Title I money.

23 A. Total federal dollars in '10/'11 was five --

24 Q. You're not answering my question. I'm
25 asking you about the Title I money. Let me show you

1 what's been marked --

2 A. I don't have that in front of me separated
3 out. I can give you a total --

4 Q. Let's me show you what's been marked as
5 Exhibit 219, and it's Code 7, and it's under federal
6 funds. And it shows Title I, and it shows 2.3
7 million in '10/'11, and 2.1 million in '11/'12,
8 budgeted. Is that the difference?

9 A. '09 and '10 budget years would be actual.
10 Fiscal year '11/'12, those are just guesstimates of
11 what we received -- what we've actually received, as
12 far as revenue goes for '11/'12, is 4.9 in total
13 fund. I don't have it broke out for just Title.

14 Q. 4.9 million?

15 A. Revenue received --

16 Q. Yeah.

17 A. -- in '11/'12.

18 Q. This was what was budgeted when we knew that
19 we weren't going to get the Title I funds or the --

20 A. Yes.

21 Q. -- ARRA money, right?

22 A. Yes. But you have to make sure in this fund
23 that you have enough budget authority so that if you
24 get any additional federal grants, that you have the
25 authority to accept them. So you do have to have

1 some budget authority.

2 Q. And you don't know today how much was
3 actually received in Title I funds in '11/'12?

4 A. Not on the top of my head. I can give you
5 the total for that fund based on what it was the day
6 I left. Like I said, though, we're not done with the
7 year, and we had received 4.9.

8 Q. Now, in Exhibit 18, it talks about
9 instructional -- or instruction costs. And actually,
10 it went up the years we talked about. And then we
11 took this Title I detour, and it was budgeted to go
12 up in '11/'12, 9 percent; did it?

13 A. Yes. If I'm looking at this right, like,
14 this is a State report and I'm not exactly for sure
15 how this all goes through here. But our bond and
16 interest has taken -- we have a large debt schedule
17 that just came on in the last couple years, and that
18 has been -- they've been trying to ramp it up. So
19 those increases would -- if those dollars are in
20 this, that would make a difference.

21 Q. Bond and interest is never in instruction,
22 is it?

23 A. I'm just looking at the bottom total.

24 Q. But that wasn't what I was asking you
25 about. The instruction has gone up, or it looks like

1 it was slated to go up this last year 9 percent; did
2 it?

3 A. Well, when you're looking at your budget,
4 you can have increases in instruction and
5 instructional support and have some reductions
6 elsewhere.

7 Q. Did it go up or didn't it?

8 A. On that document, if you're looking at the
9 percent of the total, it went down.

10 Q. No. No. This is a budget. So I don't have
11 your data and we only know what you know. If you
12 know, did the instructional amount reach or
13 approximate what you all budgeted --

14 A. Okay, I was --

15 Q. -- for the last year?

16 A. -- looking at Fiscal Year '10/'11, because
17 that's an actual amount. What was budgeted for
18 '11/'12, we do not know where we're at yet with
19 Fiscal Year '11/'12 --

20 Q. You don't have a clue?

21 MR. RUPE: Objection. That's just
22 pure argumentative.

23 MR. CHALMERS: I suppose it is, but
24 I'm just asking -- I apologize.

25 Q. Maybe I'm getting a little frustrated,

1 ma'am.

2 JUDGE THEIS: Do you have any
3 numbers?

4 Q. Any number.

5 A. Well, you won't get them in this format
6 until after we've completed our budget. And we just
7 got the file last week and I'm working on it.

8 Q. I'm sure that these final numbers don't come
9 as a surprise to you at the end. You've got a rough
10 approximation as to how much is spent before you look
11 at the final numbers; isn't that right?

12 A. Right now, I'm just looking at funds and
13 making sure that we're spending down our budget
14 authorities, and that we have cash.

15 Q. The best information you can give us here
16 today is that this is how much was budgeted; you
17 can't say whether you exceeded were less than it, or
18 were right on?

19 A. I can't give it to you in that format until
20 after we've worked up the state budget that we just
21 received last week.

22 JUDGE FLEMING: He's not asking
23 that format. He's asking if you have an estimate.

24 THE WITNESS: No, we are not
25 complete with Fiscal Year '11/'12, yet.

1 Q. I lost the sheet. I apologize. I want to
2 show you a couple more things but I'm pretty certain
3 I'm not going to get too much farther along. Let's
4 see, there's an Exhibit 1188 that's in evidence, and
5 it shows from all sources, all spending, your
6 district's total expenditures over the years, with
7 the last one was 56,657,313 for '10/'11. Do you have
8 any idea of what that is for '11/'12?

9 A. Not -- not pull -- all my funds rolled up,
10 no, I don't.

11 Q. Then, into the next year -- let's talk about
12 the funding that's coming up -- there has been an
13 increase in the base; you understand that?

14 A. For '12/'13?

15 Q. Yeah. And in '12/'13, do you have any idea
16 of what the total expenditures will be budgeted for
17 your district?

18 A. We're just now working on that.

19 Q. Talk to you briefly about your cuts figures.
20 Exhibit 289 was the one I think you visited with,
21 with Mr. Rupe. If I understand correctly, this
22 showed a loss, I think is how it was described, of
23 about 1.5 million, and it ended up being a reduction
24 really of .4 million when additional funding was made
25 available, is that right?

1 A. Yes, after our increase in enrollment and
2 our weightings.

3 Q. Now, I want to talk to you about the
4 increased enrollment and weightings. And I'm not
5 going to, if I can try not to do it, put a document
6 in front of you. But you had testified, when talking
7 about the increased cost, that there are increased
8 demands. And I think one of the demands you talked
9 about was that you've got kids now that are higher
10 percentage, by your recollection, that are at-risk
11 kids, the kids with the poverty, the kids with the
12 English language, is that right?

13 A. Our counts have gone up in the at-risk and
14 bilingual.

15 Q. And you also point out that you've had an
16 increase in numbers of kids in recent years?

17 A. Mm-hmm, yes.

18 Q. And so we're clear that the way that works,
19 is the more kids you have and if you've got kids that
20 fit in the categories for which there are weightings,
21 the poverty, the English language, you get more money
22 for those kids under the formula with the state, is
23 that correct?

24 A. Yes, they take the enrollment, plus all your
25 weightings and then that is multiplied by your base

1 state aid.

2 Q. In terms of looking at a ratio of how much
3 the weightings are in your district, we've got, in
4 Exhibit 20, an enrollment estimate of about 6,000,
5 and we've got a --

6 A. That's actually Dodge City.

7 Q. I'm sorry, I misspoke. About 40 -- what do
8 we call that, 45 just for approximation purposes, and
9 a weighted enrollment that works out to about 7,900,
10 is that right?

11 A. Do you know what year that is?

12 Q. I don't know. It's plaintiff's exhibit.
13 I'm assuming that it's '10/'11, because it says
14 enrollment 9-20-11?

15 A. Because I'm showing my enrollment for 4,641,
16 would have been '10/'11.

17 Q. That would make sense because it's for
18 enrollment 9-20-11.

19 A. But I have a different enrollment.

20 Q. Let's not use 20 then. You tell me about
21 how much, by way of percentage, is there an increase
22 as a result of the weightings over the base?

23 A. I'm not for sure. Can you repeat your
24 question?

25 Q. If you had a base of 5,000, and you had

1 weightings that took it up to 10,000 in terms of the
2 amount, that would be 100 percent increase. What I'm
3 trying to understand, under your weightings, about
4 what percent increase do you have?

5 A. From the previous year or ...

6 Q. Based on data that you have in front of
7 you.

8 A. Okay. Well, Fiscal Year '11/'12, our
9 weighting number was 7,009. And Fiscal Year '10/'11,
10 it was 7,005. That's rough.

11 Q. If you started out, in those years, with
12 about 4,600 kids each year at full-time enrollment?

13 A. Our FTE?

14 Q. Yeah.

15 A. For Fiscal Year '10/'11, was 4,641, and for
16 '11/'12 is 4,781.

17 Q. We'll do the math for you. Let me talk to
18 you about the budget process real quick. In your
19 district, the budget isn't final until the first week
20 in August, is that correct?

21 A. Correct.

22 Q. So the budget for next year is still not
23 final, is that right?

24 A. Right. We do have some projections on, you
25 know, what we're looking at for our Legal Max, but

1 not rolled up like you had it; I don't have that done
2 yet.

3 Q. I understand. The district determines what
4 you believe the Legislature will give you. And then
5 you sit there with your operational plan for your
6 district and determine the best way to distribute the
7 funds or the expenditures based on what you believe
8 will accomplish those goals, is that true?

9 A. Correct.

10 Q. And the operational plan is something that
11 is voted upon by your district board each year, is
12 that right?

13 A. Well, the strategic plan is the marching
14 orders for the district. The operational plan is
15 really owned by the administrators in the district as
16 to how we're going to achieve that plan.

17 Q. So the administration then will have come up
18 with an operational plan for this year that will
19 decide how you want to divide your money up among
20 your schools?

21 A. Yes. And the community budget group this
22 year looked at that strategic plan and operational
23 plan and had to make some decisions based on, did you
24 want to enhance this or decrease this in order to
25 achieve those operational goals based on the funding

1 levels that we currently have.

2 Q. Once you then make the decision -- well,
3 once your administrators make the decision, then,
4 under the operational plan to divide the money up,
5 individual schools get a sum, per student enrolled,
6 that they use to determine their budget, is that
7 correct?

8 A. Yes. Our district, we don't use building-
9 driven budgeting as such. We break our budgets up
10 into responsibility codes, so we have about 32
11 different responsibility codes within the budget with
12 administrators that have responsibilities.

13 The building principals do get an allotment
14 for their general fund dollars. And it's different
15 based on whether or not they're elementary, middle
16 school, or high school, and it's multiplied, then,
17 times their enrollment. But they -- all those
18 responsibility -- individuals that have
19 responsibilities within the budget have across funds,
20 the general fund, professional development, mostly
21 those areas. But they do have some areas in Title
22 and federal funds that they get some decisions that
23 they can make as far as what they're held accountable
24 for.

25 Q. Now, maybe listen closely to my question.

1 You're providing me, maybe, helpful information but
2 it goes well beyond what I'm asking.

3 First of all, when the decision is made how
4 much money go to an individual school --

5 A. Mm-hmm.

6 Q. -- that's made by administration and it's
7 based on a formula that looks at how many students
8 are in the individual school, is that right?

9 A. Yes. It's about \$60 --

10 Q. That's all right. All I needed was "yes."

11 A. Yes.

12 Q. And then it varies depending on whether it's
13 an elementary school, a middle school, or a high
14 school in terms of per pupil amount, is that
15 correct?

16 A. Mm-hmm, yes.

17 Q. And then, there are sums that are available
18 that are targeted sums, whether they're federal
19 moneys or whether they're at-risk moneys, and those
20 will follow, kind of, where those students are, is
21 that correct?

22 A. Pretty much, yes.

23 Q. I'll accept "pretty much." And then, once
24 the principal has that money, they have the
25 discretion to operate their schools as they see

1 appropriate, is that correct?

2 A. Within those budget dollars, yes, they do,
3 sir.

4 Q. The principal can run a report on your
5 system to determine where they are on their budget at
6 any time, can't they?

7 A. Yes, they can.

8 Q. If a principal doesn't spend the money
9 budgeted, then, that next year, the administration
10 re-evaluates what their budget will be to see how
11 much there'll be allocated the next year, isn't that
12 true?

13 A. No.

14 Q. How is that not true?

15 A. Well, I don't -- since I've been there, I
16 don't know of a building that has had their
17 allocations reduced. We've had, based on loss of --
18 we've had to make some huge cuts in postage or
19 mileage or -- then it might have had to reallocate
20 some of those budgets. But as far as the amount that
21 they get per student, that has not been reduced since
22 I've been there.

23 Q. In your deposition of November 2, 2011, you
24 were asked, starting at page 109, at line 2, my
25 question was, at the end, and I'm a principal and I

1 see that I'm not going to spend everything or, I
2 mean, there is money, rather, to be left over, I
3 don't have anything -- I don't have to do anything.
4 It just automatically is going to -- those funds sit
5 there to be reallocated as the administrators deem
6 appropriate, is that what you said? And you -- wait
7 a minute --

8 A. I'm sorry.

9 Q. Your answer was, pretty much, if they don't
10 spend that money then they -- we re-evaluate what
11 their budget is.

12 Question: That's what I was getting -- and
13 I think it's supposed to say "at" -- next year comes
14 around and if they've not spent that money, that's
15 something that is looked at to see whether or not the
16 money allocated is to be as much.

17 The answer you gave was, yes.

18 That was your testimony back in November 2nd
19 of 2011, wasn't it?

20 A. Yes.

21 Q. Now, it's been your experience that the
22 budgets by the principals, are -- they're all spent
23 down, is that correct?

24 A. Pretty much. They could leave a couple
25 hundred dollars here or there, and at the end of the

1 year then those do become usable by end of the year
2 funds.

3 MR. CHALMERS: I don't have any
4 other questions. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. RUPE:

7 Q. In fact, you were asked at line 17, on 109,
8 beyond what Mr. Chalmers read: What's been the track
9 record, in your experience in this in district,
10 moneys that are budgeted at -- at a building level
11 whether it is a support building or a school, do they
12 usually get spent?

13 And you said, for the most part, yes. One
14 thing that makes it difficult when you're -- with a
15 budget in a school district is not audited until
16 March, so we don't know what our actual budget is
17 until after that. So it makes it hard as far as
18 budget goes when you don't even really know what your
19 budget is until March, and we don't know what our
20 special ed budget is until June of the year that is
21 about to end.

22 Is that accurate?

23 A. That's correct.

24 Q. Mr. Chalmers was asking you what appeared to
25 be a frustrating question for you and all of us about

1 the Title I ARRA money. And I'd like to take a step
2 back and ask you, do you have any estimate as to the
3 difference last year to this year in terms of federal
4 dollars you're receiving?

5 A. Yes, last year our actual revenue received
6 was 5.6 million, which when I mean last year, I mean
7 Fiscal Year '10/'11. For Fiscal Year '11/'12, we're
8 looking at 4.9.

9 Q. Okay. So in terms of the difference in
10 federal money, is that what you just explained?

11 A. Correct.

12 Q. And then, are you, between last year and
13 this year, receiving ARRA funds?

14 A. Between Fiscal Year '10/'11 and Fiscal Year
15 '11/'12, we did not receive any ARRA funds, no.

16 Q. And my sense was, and tell the Judges, were
17 you trying to be difficult with Mr. Chalmers, or do
18 you have those numbers?

19 A. I'm sorry if you thought I was being
20 difficult. We do not -- we did not receive any
21 Title I ARA money in Fiscal Year '11/'12.

22 Q. So in terms of the estimate of the change in
23 federal dollars, can you attribute that to the ARRA
24 money?

25 A. Correct.

1 Q. Okay. Now, let me show you, in terms of per
2 pupil expenditures, a little something here that
3 we've looked at. And let me first look at Reno
4 Public Schools, USD 308. This is what has indicated
5 for years 2010 and '11, and total expenditures, in
6 terms of the amount of expenditures compared to say,
7 let's just pick 2005/'06, your total expenditures are
8 down during that period of time from last year?

9 A. Yeah.

10 Q. Down, 242 --

11 A. Yes. Correct.

12 Q. -- according to this. And you got some
13 increases at some point in expenditures, from
14 '05/'06, '07/'08, '09?

15 A. Yes. With the Montoy suit, the school
16 districts were given more money to address their
17 needs, which at that point, we were going in the
18 right direction with helping districts address the
19 needs of all students.

20 MR. CHALMERS: I would ask the
21 witness just to answer the question asked and move to
22 strike non-responsive.

23 MR. RUPE: I'll get there in a
24 minute.

25 Q. Let me ask you another question here. In

1 terms of the amount -- do you have an estimate or can
2 you tell us, for '11/'12, what that number is going
3 to be? Or is that what you've not been able to put
4 together?

5 A. We are real close, but when I left, we are
6 still working on closing the books for '11/'12.

7 Q. In terms of total expenditures, it looks
8 like you were down from, let's say, oh, \$8,262, if
9 your FTE is 4,669, that's about \$1.2 million. Do you
10 agree with that?

11 A. Correct.

12 Q. And I want to talk about the voter
13 resistance that you mentioned in terms of raising
14 your mill levies. Let me show you what's been marked
15 as Plaintiffs' Exhibit 163. And does that show the
16 unemployment rate and the median household income for
17 counties in Kansas?

18 A. Yes, that's -- it does show that.

19 Q. And it starts with number one, Woodson
20 County, and ends with 106, Johnson County. And I'll
21 represent to you that this is in terms of the ranking
22 of median household income from lowest to highest.

23 So let's take a look at the chart. So we
24 have over here the name of the county, we have the
25 unemployment rate, then we have the median household

1 income, and we have the percent of state median
2 income. Do you see that?

3 A. Yes, I do.

4 Q. Is it accurate that in Reno County, the
5 median income is 41,536?

6 A. Correct.

7 Q. And according to this, they rank 47th in
8 that ranked order I mentioned among the counties in
9 Kansas, 106 counties? Do you see that?

10 A. Yes. Correct.

11 Q. All right. So while the median income in
12 Reno County is 41,500-some, in Johnson County, the
13 median income the 72,006, right?

14 A. Correct.

15 Q. In terms of the ability to go to the voters
16 and ask for more money, is that an issue where Reno
17 County ranks in terms of the -- not even to the
18 midpoint of all the counties in Kansas in terms of
19 median income?

20 A. I believe based on this data, it would be.

21 JUDGE BURR: What's the number of
22 that exhibit?

23 MR. RUPE: 163.

24 JUDGE BURR: Okay.

25 Q. So why hasn't your board reduced the

1 property tax down to zero in order to raise a whole
2 bunch of revenue through the community, taking the
3 lead from the State?

4 A. Because they can't do that.

5 MR. RUPE: No other questions.

6 RECROSS-EXAMINATION

7 BY MR. CHALMERS:

8 Q. In the budget exhibit, it shows at Code 7,
9 page 22, for the '11/'12 year, budgeted expenditures
10 of about 5.4 million, which would have been less than
11 the 5.6 from the previous year actual. And we're not
12 talking about Title I; we're talking about all
13 sources of federal here, aren't we?

14 A. All the sources of federal that run through
15 that, those funds --

16 Q. And as of your tabulation today, you're up
17 to about 4.9 million?

18 A. Are you done?

19 Q. I'm asking whether you're up to 4.9, is that
20 what you said?

21 A. That right there is expenditures, and the
22 numbers I was giving earlier were revenues --

23 Q. Revenue. Okay.

24 A. -- in Fiscal Year '11 --

25 Q. Have we spent this year, to your knowledge,

1 about the four-point --

2 A. No.

3 Q. -- 5.4? Do we have an idea how much was
4 spent in federal money this year?

5 A. No, not at this point. I knew my revenue
6 number, which I gave the Court already.

7 Q. You were asked about mill levies. And I
8 want to talk to you about 1104 for a moment. I think
9 Mr. Rupe referenced Johnson County, which is at the
10 bottom, or at least the particular one, I guess, in
11 appraised values. I want to look at the part of 1104
12 that has the Johnson County figures; not very long,
13 because it's hard to see.

14 But if you go across to Johnson County, will
15 you agree with me that the mill levies that the
16 Johnson County district imposes are substantially
17 higher than the Hutchinson district?

18 A. I can't tell by looking there what all
19 they're levying for, and I don't know what their bond
20 and interest looks like, so it's really hard for me
21 to give an answer to that --

22 MR. CHALMERS: Well, the bond and
23 interest is included with that, but that's all
24 right. We've got the exhibit in evidence. I don't
25 have anything else for this witness. Thank you.

1 MR. RUPE: No further questions.

2 JUDGE THEIS: You can step down,
3 Ms. Blakesley. Thank you.

4 (Witness excused.)

5 MR. RUPE: Donna Davis. Do you
6 want me to keep going?

7 JUDGE BURR: Yeah.

8 MR. RUPE: Okay.

9 DONNA DAVIS
10 Called as a witness for the
11 Plaintiffs, was duly sworn by the reporter and
12 testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MR. RUPE:

15 Q. Could you tell the Judges your name and the
16 city in which you live?

17 A. My name is Donna Davis and I live in
18 Hutchinson.

19 Q. And what is your current title?

20 A. I'm the assistant superintendent for student
21 learning in Hutchinson USD 308.

22 Q. And how long have you been in that position?

23 A. I just finished my third year in that
24 position.

25 Q. Let's work backwards from three years ago

1 when you became assistant superintendent, and
2 describe for the Judges what your work history was
3 before that.

4 A. Okay. Prior to coming to Hutchinson as
5 assistant superintendent, I was the director of
6 secondary ed in Hutchinson for two years. Prior to
7 that, intermediate principal, and district assessment
8 coordinator for a couple years. I was an assistant
9 superintendent in Pratt, Kansas, for five years; an
10 intermediate school principal for two years. Before
11 that, I was an assistant principal at a high school
12 in Lincoln, Nebraska, and prior to that was
13 coordinator for an at-risk program with the school
14 district in Lincoln, Nebraska, and taught -- my first
15 teaching job was math and science in middle school in
16 Lincoln.

17 Q. Your educational background is?

18 A. I got my associate degree at Hutch Community
19 College. I'm a Hutchinson girl. Went to Wichita
20 state, got my Bachelor's Degree in Elementary Ed,
21 Middle School Math and Science. Went to University
22 of Nebraska, got my Master's Degree in Educational
23 Administration, and then came back to Kansas and got
24 my building level administration -- or my district
25 level at Wichita State.

1 Q. Tell us a little something personal about
2 yourself.

3 A. Well, when I was in Lincoln, I had the
4 fortunate experience to work in a position that was a
5 school district in University of Nebraska program
6 called TeamMates. And I got to work and with Tom and
7 Nancy Osborne. In Nebraska, Tom Osborne is a big
8 deal.

9 And what really impacted me from that
10 experience was how one person can make such a big
11 difference. Tom and his wife started the program
12 called TeamMates where it took community dollars and
13 school district dollars and college dollars and got
14 mentors for at-risk middle school kids and paid for
15 them to go to college if they'd stay in school. So
16 that was a really neat experience for me as a young
17 girl.

18 Q. Which explains why anybody that has any
19 connection to Nebraska always comes back to
20 football. But I appreciate that.

21 JUDGE THEIS: Big Ten football,
22 doesn't make ...

23 THE WITNESS: I have a little
24 shrine to UNL in my office even now.

25 MR. RUPE: No other questions.

1 Just kidding.

2 MR. CHALMERS: I'll hold you to
3 that.

4 Q. (BY MR. RUPE) Let's get down to work. Would
5 you please explain to us what the demographics are,
6 generally, of the Hutchinson School District?

7 A. Our --

8 Q. Going to get to particular numbers in a
9 little bit --

10 A. Okay.

11 Q. -- on the report card, but I just want to
12 set the context for your testimony here with an
13 explanation, generally.

14 A. Two-thirds of our students, a little more
15 than two-thirds of the students in Hutchinson Public
16 Schools qualify for free and reduced meals. That's
17 up in the last six years from about 50, low 50
18 percent. We have about -- this year there were 266
19 students who qualified to be served as English
20 language learners; that's up 150 percent in the last
21 five years. And our demographics were up a couple
22 hundred kids in the district than we were five or six
23 years ago. So we have some pretty needy students.

24 Q. I'm going to step over what -- I assume you
25 know by way of what you need to do in order to

1 provide a suitable education to kids in the district,
2 and I'm going to step over the strategies that you
3 may be familiar with that work in reaching all the
4 kids, and moving them upward in terms of achievement,
5 and I want to focus, if I could, on any cuts to
6 programs and services that you're aware of within the
7 Hutchinson district. And keep in mind, the Judges
8 have a list of all those and have heard and have that
9 information available, but I'd like you to give us
10 the highlights, for lack of better word --

11 A. Okay.

12 Q. -- of cuts you're familiar with.

13 A. So the list that they have is the one
14 that's --

15 Q. Yes.

16 A. Okay.

17 Q. That's that list.

18 A. Okay.

19 Q. But I just want you to tell us the ones that
20 you are familiar with. And you don't have to go
21 through every one of, them but give us the sense of
22 what the cuts have been.

23 A. The most devastating cuts have been we've
24 cut some elementary classroom teacher positions,
25 which has increased class size. We've cut -- we had

1 a middle years program in math and we've cut
2 coordination of that middle school program. We've
3 cut world language. We no longer offer French, so
4 our world languages in high school have been reduced.
5 We've cut some music and elementary staff from music,
6 and PE from elementary.

7 We've cut three, we called them test
8 teachers. They were technology integration
9 specialists. They were teachers who helped classroom
10 teachers use technology for instructions. Our kids
11 know technology, but we're not natives in that land.
12 So we've had to cut those teachers that have helped
13 our teachers with that.

14 We've had to reduce media aides. Those were
15 the people who helped our librarian shelve books. So
16 now we have paid librarians having to actually spend
17 time to shelve their own books instead of working
18 with kids. Those kind of things have just slowly
19 eroded the services that we can offer to kids.

20 Q. And talk to the Judges, if you would, about
21 the effect of those kids (sic) on students and
22 student performance in Hutchinson School District.

23 A. Well, I'm not proud to say this, but
24 '11/'12, the data for state assessment just came out,
25 and of course it's really preliminary, but this will

1 be the first year that our district has not made AYP
2 in reading. And that's a tough pill to swallow
3 because our staff works so hard. So this is ...

4 Q. In terms of why they're not making AYP, do
5 you see any relationship between why they're not
6 making AYP in reading and the cuts that have been
7 made?

8 A. Absolutely I do. You know, there's so many
9 factors that go into it, but I know funding has
10 something to do with it. We have fewer adults to
11 help kids with the needs that they have.

12 Just one example, there's a percentage of
13 our population, probably about 10 percent, who has
14 difficulty reading. Some call it dyslexia; some call
15 it learning disability. And of that 10 percent, some
16 are pretty severe; some are not as severe; we may not
17 even know it; they may compensate themselves.

18 But of those kids that are more severely
19 dyslexic, we know that there are programs out there
20 that are research-based and they're intense. In
21 other words, they take a lot of adult interaction.
22 It may take 60 minutes a day every day for several
23 years to get a student past those dyslexic tendencies
24 to teach them whatever it is in their brain that's
25 not firing to help them learn to read anyway. We

1 know we can do it, but it's pretty intense. It's a
2 one-on-one; it's very expensive.

3 I think there was a time when we knew those
4 kids couldn't read, and it was okay. There were
5 other jobs for those kids, other things for them to
6 do; they could be successful. But in our current
7 economy and in our current global economy, we can no
8 longer just say, well, it's okay for you, 10 percent
9 of the kids, to not be literate; it's okay, we have
10 other things for you to do. It's not okay anymore.
11 That's just one example.

12 Q. In terms of the current assessments, with
13 regard to what you've described as not making AYP in
14 reading, what's the status of 308, as far as on
15 improvement, or what's the district's status?

16 A. We are a district on improvement. We've
17 been on improvement for math the last couple years,
18 so this -- we will not be on improvement for reading
19 until we don't make AYP for two years.

20 Q. Given the cuts that you've given us, at
21 least an example of, and what you have to comply with
22 and the current resources, are you able to provide a
23 suitable education to all the kids in schools in Reno
24 County?

25 A. And all means all, right?

1 Q. All means all.

2 A. All means all. No, we can't. When class
3 sizes get 25, 28 students, the teachers typically
4 tend to aim toward the middle because you can get the
5 most kids that way. We know there's groups at the
6 bottom who need more intervention, one-on-one time,
7 special programs, and we're also leaving behind some
8 of those students at the top who are the best and the
9 brightest, who, with some extra intervention, could
10 really, really do well. Some folks call those gifted
11 and talented students, so we know we're not able to.

12 There's, you know, Maslow's hierarchy of
13 needs says, that for students to do well in the
14 classroom, there's some basic needs that have to be
15 met first. One of them is safety. You know, kids
16 have to know that they're safe before they can come
17 to school and learn.

18 We have one school here in Hutchinson, it's
19 a school right down the street from our reformatory,
20 our prison, from one of the three we have in
21 Hutchinson. And those kids, when there's a big meth
22 bust in town, some of those kids, in fact about half
23 of them, the principal says come to school either
24 having parents or family members that have been
25 impacted by that. So that's a safety issue that we

1 deal with at school when little kids come to school
2 and say, my mom and dad got hauled off to jail last
3 night in the meth bust.

4 So safety's one; food's another. We have
5 some kids who come to school -- the term for that's
6 called food insecure. We have kids who come to
7 school, they're food insecure; means they don't know
8 where their next meal is coming from unless they're
9 at the school. So we send backpacks home with them
10 every weekend with food so that they have food at
11 home. We have a summer feeding program. When
12 students aren't in school, we feed about 1,000 kids a
13 day, breakfast and lunch, during the summer because
14 they're food insecure. We know they have to have
15 food before they're ready to learn.

16 Health is another area that we know students
17 have to have before they can learn. And our school
18 nurses will tell you that, for some of our families,
19 right now many of them, the school nurse is their
20 family health care. They have no insurance. They
21 have no family doctor. They come to the school
22 nurse. And if it's something she can't handle, then
23 she has to send them on; they go to the emergency
24 room.

25 So sometimes we don't even get to the

1 educational strategies until we help families and
2 kids meet those basic needs. And that's something
3 new in Hutchinson to our staff. You and I and our
4 teachers, we're blue collar, we're middle class.
5 Those kinds of things we don't get. None of us have
6 ever been food insecure. I don't know even know what
7 that's like. In fact, sometimes I'm too food secure;
8 I have too much.

9 But our teachers don't really get that. And
10 some of the behaviors of our low-income kids and
11 low-income families -- for example, education's not
12 their number one priority for many, many of them.
13 It's just getting the food and the safety and the
14 health that they need. So our teachers, we've had to
15 do a lot of professional development with them,
16 helping them to understand what it is like to come
17 from a family of poverty, why do they behave in some
18 of the ways that they do, why do they make the
19 decisions that they do.

20 We've worked with a lady named Ruby Payne.
21 She's out of Texas and she's written several books,
22 framework for working with students of poverty, that
23 have helped our middle class teachers work with
24 students and families of poverty. So that's just one
25 of the strategies that we use.

1 Q. Have those cuts affected those kids?

2 A. Absolutely. Absolutely they have. They're
3 food insecure; they're health insecure; they're
4 safety insecure.

5 Q. And in terms of achievement has that
6 affected achievement?

7 A. You know it has. Absolutely.

8 MR. RUPE: That's all I have.

9 CROSS-EXAMINATION

10 BY MS. TIBBETS:

11 Q. So, ma'am, it sounds like your district has
12 worked to bring in an out-of-state authority to help
13 your teachers help elementary school kids from
14 poverty. Is that what you just told us?

15 A. Yes. It was before I was in district --

16 Q. No. No, ma'am, just -- that's right, I'm
17 correct --

18 A. Okay.

19 Q. -- is that right? Okay. Great.

20 Let's talk about how your elementary schools
21 are doing. First, I think you said you've
22 eliminated, over the years, three elementary school
23 classroom teachers?

24 A. Yes, in '11/'12 we eliminated three.

25 Q. Okay. In terms of elementary schools in

1 Hutchinson, how many do you have?

2 A. Eight.

3 Q. Eight. All right. Let's just talk about
4 each of those eight. Graber Elementary, that is an
5 elementary school. Is that the one you talked about
6 that was in the dangerous area?

7 A. No.

8 Q. Which one is that?

9 A. Lincoln Elementary.

10 Q. All right. Let's talk about Graber. Graber
11 has two-thirds, at least, of free and reduced lunch
12 kids, right? You don't have to be exact. Does that
13 sound like an appropriate number to you?

14 A. Graber has 59 percent of their students are
15 free and reduced.

16 Q. But Graber has been able to make AYP for all
17 the years, correct?

18 A. Every year in every subject, yes.

19 Q. That's right. In fact, it won an award, the
20 Challenge Award, for making AYP in math and reading
21 from the State?

22 A. Yes.

23 Q. Correct?

24 A. Graber is a high-performing school.

25 Q. Absolutely. Faris, what's the free and

1 reduced lunch there at Faris?

2 A. 83.9 percent.

3 Q. So that's a poor school, right?

4 A. Mm-hmm.

5 Q. But your teachers, let's see, I think
6 they've made AYP, except in reading, every year but
7 they didn't make it in math for one year. Does that
8 sound right to you?

9 A. In '11/'12, they haven't made reading or
10 math.

11 Q. But we don't know about who's going to make
12 AYP for the preliminary numbers, do we?

13 A. There's nothing we can do to fix that one.
14 That's low in reading and math. They will not make
15 AYP.

16 Q. Okay. So if yesterday the head of
17 assessment for the Kansas School Board told us that
18 AYP hadn't been decided for the schools, you're
19 certain about this school, though?

20 MR. RUPE: I'm going to object.
21 That's argumentative.

22 JUDGE BURR: We're aware of the
23 temporary nature.

24 MS. TIBBETS: Okay. I'll move on.

25 Q. Let's talk about Allen. Allen has made AYP,

1 always, correct?

2 A. Not in everything always, no.

3 Q. Okay. It made its AYP goals for the last
4 year that we have reported, right?

5 A. It did not in '11/'12.

6 Q. But '11/'12's not reported?

7 A. Right.

8 Q. We're taking your word on that one.

9 A. Yeah.

10 Q. Okay. And that'll be just first year, so
11 it'll be what we call on watch, right?

12 A. Right.

13 Q. And McCandless made AYP for all of its
14 years, correct?

15 A. No.

16 Q. It may --

17 A. I don't have that information in front of
18 me, but McCandless has struggled the last couple
19 years. In fact, '11/'12 it won't make it in reading
20 or math.

21 Q. But in '10/'11 it made it, didn't it, using
22 either the safe harbor or the confidence?

23 A. I don't think so.

24 MS. JEANNE STROH: No.

25 Q. Wiley made AYP last year?

1 A. Yes.

2 Q. And I suppose if it hadn't made it this
3 year, you would tell me that, right?

4 A. Right, and it did in both. And they're 60
5 percent free and reduced.

6 Q. All right. And Lincoln is a school that
7 struggles, right?

8 A. Yes.

9 Q. It has 90 percent --

10 A. Yes.

11 Q. -- I think, poverty?

12 A. Roughly.

13 Q. Right. And in the earlier years in '07/'08
14 and '08/'09, it did not make AYP?

15 A. Right.

16 Q. And that would have put it on improvement,
17 right?

18 A. Yes.

19 Q. And then your district focused some extra
20 attention on it, and in '09/'10, it made AYP?

21 A. In '09/'10, it did not make it in reading or
22 math.

23 Q. In '09/'10, are you sure?

24 A. Yes.

25 Q. In '10/'11 it did not.

1 A. It did not.

2 Q. So you continue to focus those extra efforts
3 on that school?

4 A. Yes, in fact, we restructured there --

5 Q. And that would mean that school is eligible
6 for choice and the district has to bus the children
7 elsewhere, right?

8 A. Yes.

9 Q. It also means it's eligible for special
10 tutoring that's paid for out of Title I money,
11 right?

12 A. It's not additional Title I money. It's the
13 Title I money we were already getting.

14 Q. The children there are eligible for
15 specialized tutoring that's paid for with Title I
16 money, right?

17 A. Yes.

18 Q. And that tutoring has to be done by someone
19 from outside of your school district, right --

20 A. Yes.

21 Q. -- a vendor? And that tutoring can take
22 place at home, or at school, or individualized, or
23 with a small group, or on the computer, right?

24 A. Yes.

25 Q. And those funds are available to those

1 children, but not all those families take advantage
2 of that tutoring, do they, ma'am?

3 A. None of them did.

4 Q. Not a one?

5 A. No.

6 Q. And that has to do with their family
7 decision?

8 A. Yes, it's school -- it's choice and they
9 chose not to.

10 Q. Sure.

11 A. We had two fairs this year to offer it and
12 they didn't take it.

13 Q. That must have been frustrating for you.

14 A. No.

15 Q. It wasn't frustrating for you?

16 A. No.

17 Q. That there was an opportunity for that kind
18 of tutoring that was --

19 A. No.

20 Q. -- on the table?

21 A. Because the funding would have come from
22 funding we were already getting, so we'd have to pull
23 it off of what we were doing to spend it for that.
24 So no, it wasn't frustrating. The folks that applied
25 to do that were not as highly qualified as we are.

1 Q. So you're going to continue to invest your
2 funds, the funds that you had been investing in
3 Lincoln with the strategies that you've been using?

4 A. Actually, no. We restructured Lincoln a
5 year ago. We essentially started a new school. The
6 only teachers left there now, we have a couple that
7 were non-tenured, one- or two-year veteran teachers.
8 Most of the teachers either retired or quit. There
9 were four that we moved to other buildings. We split
10 them up.

11 Q. Because that's the second time you
12 restructured or was it the first time?

13 A. The first time.

14 Q. I'm sorry?

15 A. The first time.

16 Q. Okay. And that didn't bring you to AYP this
17 year?

18 A. Well, yes; for Lincoln, yes.

19 Q. Lincoln did make AYP this year?

20 A. They did.

21 Q. That's something you know -- you have the
22 preliminary results?

23 A. Right.

24 Q. And then Avenue A did not -- it was on
25 improvement for a few years, but it has made AYP the

1 last couple of years, correct?

2 A. Correct.

3 Q. And AYP -- I'm sorry. And so you have,
4 correct me if I am wrong, you have one school on
5 improvement, which is Lincoln?

6 A. Right.

7 Q. And you have, let's see, two schools on
8 watch?

9 A. McCandless will be. Faris will be. If the
10 middle school was Title, they would be.

11 Q. Not the middle school. I just want to talk
12 about elementary schools.

13 A. Okay. Faris would be on watch. Lincoln's
14 on improvement. McCandless would be on watch, yes.

15 MS. TIBBETS: I don't have anything
16 further.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. Where does the district stand this year?

20 A. We are a district on improvement.

21 MR. RUPE: That's all I have.

22 Thank you.

23 JUDGE THEIS: You can step down.

24 Thank you.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 JUDGE THEIS: 1:45 good with you?

3 MR. RUPE: That's fine.

4 JUDGE THEIS: Are we doing okay?

5 MR. RUPE: We're doing great.

6 We're going to get done today with everybody I said,
7 depending on the cross-examination.

8 JUDGE THEIS: We'll take you off on
9 improvement.

10 MR. RUPE: But I'll still be on my
11 PIP.

12 (A recess was taken.)

13 JUDGE THEIS: Be seated. Thank
14 you. I'll be back I promise.

15 RONN ROEHM

16 Called as a witness for the
17 Plaintiffs, was duly sworn by the reporter and
18 testified under oath as follows:

19 MR. RUPE: Our next witness is Ronn
20 Roehm, who's just been sworn in. Before we get there
21 we've run into a little snag with the DeBacker
22 situation. I'm told that the State wants to wait
23 until after the final word comes in. And in terms of
24 scheduling, we're looking, not at the next couple of
25 weeks, but apparently beyond that.

1 And you know, I guess we could say,
2 let's hold out and wait until the final results are
3 in on the 2012 assessments and books are closed on
4 2012. And school districts -- this could go on and
5 on and on. And I would like some direction from the
6 Court, or maybe some instructions as to, kind of,
7 endpoint on when the DeBacker deposition can be
8 taken.

9 JUDGE THEIS: Think about it.

10 MR. RUPE: Yeah.

11 JUDGE BURR: Is there some estimate
12 as to what they think might be? A month or three
13 weeks or ...

14 MR. CHALMERS: I thought we had
15 this worked out this morning. We don't know until
16 after the phone call tomorrow --

17 JUDGE BURR: Right.

18 MR. CHALMERS: -- the likely time
19 line. I had the impression it's going to be a
20 relatively short time line. If it's a really
21 extended time line, then obviously it's not practical
22 to have a deposition to delay it to have the final
23 say from the secretary of the Department of
24 Education, but we'll know that tomorrow afternoon
25 after the phone call.

1 So I think the plan was we would
2 wait until tomorrow afternoon until after the phone
3 call, and with that time line in mind, we try to do
4 it. And with information counsel for Ms. DeBacker
5 has indicated is that she will provide the
6 information and try to schedule it as soon as we get
7 it after that.

8 JUDGE THEIS: Let's think about it
9 and think about those other things, too.

10 MR. RUPE: Okay.

11 JUDGE BURR: I think we can
12 probably take care of it one way or the other after
13 we find out what we think we're talking about after
14 the phone call tomorrow maybe.

15 MR. CHALMERS: I think so.

16 JUDGE BURR: One way or the other.
17 Okay.

18 DIRECT EXAMINATION

19 BY MR. RUPE:

20 Q. Let me jump right in. Tell us your name and
21 the city in which you live.

22 A. My name is Ronn Roehm and I live in
23 Hutchinson, Kansas.

24 Q. What's your current position?

25 A. My position is Hutchinson High School

1 principal.

2 Q. And how long have you held that position?

3 A. I've completed 14 years. Next year will be
4 my 15th.

5 Q. Let's go back and get a little bit about
6 your work history before being principal at
7 Hutchinson High.

8 A. I started as a teacher at Dodge City Middle
9 School. And I was assistant principal at Dodge City
10 Middle School. I taught at Dodge City High School,
11 and then assistant principal at Dodge City High
12 School. In 1998, I became principal at Hutchinson
13 High School.

14 Q. Tell us your educational background.

15 A. Graduated from high school in suburban
16 Denver, Colorado. Graduated from St. Mary of the
17 Plains College with Bachelor's Degree in
18 Mathematics. In 1985, got my Master's Degree in
19 Educational Administration from Fort Hays State, and
20 that's where I am.

21 Q. Tell us a little something personal about
22 yourself.

23 A. Before I became involved with education, I
24 umpired professional baseball, kind of an interesting
25 job for a while, but then I became involved with

1 education.

2 JUDGE BURR: I would have guessed
3 basketball.

4 Q. Okay. Some of us haven't been to Hutchinson
5 High, so give us a description of the demographics of
6 the population of Hutchinson High.

7 A. Current demographics, we're a school of
8 about 1,400 kids. Have about 70 percent Caucasian,
9 about 18 percent Hispanic, 6 percent African
10 American, and 6 percent, roughly, other, Asian,
11 Pacific Islander, multi-racial. And about 4 percent
12 of our kids qualify for ELL, which is about 50 kids.
13 We have 58 percent of our kids that qualify for free
14 and reduced lunch; that's up from 42 percent just
15 about six or seven years ago, so that population is
16 definitely growing.

17 Q. Is that the largest growing subgroup you
18 have?

19 A. That and ELL. We had about 16 ELL kids just
20 three or four years ago, and now we're up to 50, so
21 that's growing rapidly as well.

22 Q. I'm going to step over the strategies that
23 you found helpful in achieving what I'm going also
24 going to step over, what you need to do by way of
25 state standards and by way of college readiness and

1 career readiness and things that kids need when they
2 come out of school today, and go right to the
3 question: Explain to us what cuts have been made in
4 the programs, strategies, services that you're
5 familiar with?

6 A. We've had some cuts in a lot of different
7 areas to try to be able to make the budgets that we
8 have to make. The big area is staff. In the last
9 three years since the budget cuts came, we lost
10 around 13 full-time staff member.

11 That's been in the areas of music; we've had
12 to reduce our world language; we had increased class
13 sizes in social studies, science, English; reduced
14 electives in those areas, as well.

15 We've had to cut out math classes. For
16 example, we had a technical math class where we
17 taught kids math in the context of more hands-on type
18 of activities; we had to cut that out. And we've had
19 to reduce some programs like our teacher education
20 when we were trying to train future teachers.

21 Another big loss for us, we were in a
22 cooperative agreement with the court services people
23 to provide a full-time probation officer on campus to
24 supervise our roughly 80 or so, 80 or 90 kids who are
25 on some type of probation. We've lost that. We've

1 lost summer school. Those are the ones that really
2 hurt us.

3 Q. And let's focus in on the really hurt. In
4 terms of the effect of those cuts on the kids at
5 Hutchinson High, explain what those are.

6 A. One of things that we know really works with
7 kids that struggle is being able to individualize and
8 offer a variety of options. When you have less
9 people, it's very difficult to do that. Another
10 thing that we know really helps those kids is
11 relationships and being able to develop solid
12 relationships with them. When you have less people
13 less staff members, it's very difficult to do that.

14 Another thing that works is being able to
15 spend extra time with them to provide the extra help
16 that they need to get up to speed. With less people,
17 you're not able to do that. Probation officer,
18 obviously being able to supervise kids on a daily
19 basis and work with them and provide services to help
20 them, the loss of that has been very difficult on
21 that group of at-risk, 80-or-so kids as well.

22 Q. What do your assessments for Hutchinson High
23 look like this year?

24 A. We will make AYP in math. It looks like we
25 will not make it in reading.

1 Q. Are those results, as far as your use of
2 those, are those preliminary?

3 A. They're still preliminary, but we know we're
4 going to make math and we're not going to make
5 reading. That's the first time since AYP's come out
6 that we have not made reading. One of the cuts that
7 we had to make three years ago was our supplemental
8 reading program for all freshman. This is the first
9 group that is tested as 11th graders that have been
10 without that class, and it's perhaps -- not
11 coincidentally seeing the first time we've not made
12 AYP in reading.

13 Q. Is AYP a measure of a complete education?

14 A. No. AYP basically only addresses reading
15 and math. We believe that there's a lot of other
16 areas that are important for a suitable education for
17 all our students. And even if you make AYP, there
18 are a lot of kids who didn't pass the test. For
19 example, in '09/'10, we made AYP in math, but we had
20 less than 50 percent of our special ed kids pass the
21 test. There's still 50 percent of those kids that
22 did not pass the test, and I don't believe that they
23 received a suitable education.

24 Q. Are these kids that you've mentioned, are
25 these kids just kids that you'll never be able to

1 teach?

2 A. No, with the proper resources we'll be able
3 to provide a suitable education for all our students.

4 Q. Just give the Court a sense of what you
5 would consider to be a suitable education.

6 A. I think you have to be competent in a lot of
7 thinking skills. You have to have social skills.
8 You have to be able to be part of a team. You have
9 to be able to realize that it's not all about you.
10 You have to be able to read, obviously.

11 There are a lot of different pathways that
12 our kids go to when they leave us, be that vocational
13 school, 2-year college, 4-year college, into the work
14 force. For whatever path they choose, they need to
15 be prepared for that path.

16 Q. When you say, they're not receiving suitable
17 education, you mean they're not ready for that, that
18 you just described?

19 A. Correct.

20 Q. Take a look at Exhibit 1233.

21 MR. RUPE: You don't have that,
22 Andrew, so don't worry about it.

23 MR. ANDREW ROSE: Okay.

24 Q. The major findings on page 1, I just want to
25 make sure we cover these. Hutchinson High School did

1 not attain AYP for the 2011 school year, is that
2 accurate?

3 A. 2011/'12.

4 Q. '11/'12, okay.

5 A. Right. Excuse me, I'm sorry, '10/'11 --
6 yeah, '10/'11, we did not make it in math; '11/'12,
7 we will not make it in reading.

8 Q. Now I'm with you. And then, you are an
9 accredited high school?

10 A. Correct.

11 Q. Then it says, all five subgroups, all
12 students, free and reduced lunch, students with
13 disabilities, Hispanic and White, did meet the AYP
14 reading criteria in 2011, is that true?

15 A. In the '10/'11 school year, that is correct.

16 Q. Three subgroups, all students, students with
17 disabilities, and White, did meet it in math in 2011?

18 A. Correct.

19 Q. Two subgroups, free and reduced lunch and
20 Hispanic, did not meet AYP in math in 2011?

21 A. That is correct.

22 Q. And down here on that same page it says, in
23 2011, the percentage of students receiving free and
24 reduced lunch was 54.73 percent, which was an
25 increase of 10.78 percent, 10.78 percent since 2007,

1 is that right?

2 A. Correct. And for this year's, as I stated
3 earlier, the '11/'12 number for free and reduced is
4 about 58 percent.

5 Q. The AYP QPA results on page 4 are up through
6 2011, and you have updated those with what you've
7 indicated to the Court?

8 A. Correct.

9 Q. And then look at the science assessment on
10 table 13, page 10. Now, that's the Kansas
11 assessment, correct?

12 A. Correct, the Kansas science assessment.

13 Q. And the change over time for all students,
14 explain what that was. Says, minus 7.7 --

15 A. In the graph, obviously, it went down 7.7
16 percent, from 2008 to 2011. As I stated earlier, the
17 science assessment does not count as part of AYP. So
18 it's a separate assessment, and those scores have
19 gone down over time, correct.

20 Q. And then free and reduced lunch was down how
21 much over that period of time, '08 through '11?

22 A. 10.3 percent.

23 Q. And Hispanic?

24 A. 24.9 percent.

25 Q. And White?

1 A. 1.5 percent.

2 Q. Have you had cuts in science?

3 A. Yes.

4 Q. You attribute that decrease to any of the
5 cuts?

6 A. Certainly. With larger class sizes, it's
7 harder to teach and prepare kids to do well in
8 science.

9 MR. RUPE: That's all I have.

10 CROSS-EXAMINATION

11 BY MS. TIBBETS:

12 Q. The math teacher that you just told us
13 about, that was a .25 position; wasn't a full-time
14 math teacher?

15 A. We did not reduce a full-time math teacher.
16 However, because we've had to have some of our math
17 teachers pick up and teach in other subject areas,
18 for example, in our engineering classes, we are less
19 able to offer as many math sections as we were
20 before, even though we didn't reduce by a full-time
21 teacher.

22 Q. But the point is, you said you reduced a
23 math teacher, and really, you reduced a quarter of
24 that position, is that fair?

25 A. I think what I said was we had to increase

1 class sizes in math, and we were not able to offer
2 the class -- technical math class that I described
3 where we were able to do more hands-on instruction.

4 Q. Because you were able to do more hands on
5 instruction?

6 A. No, we were -- because we were not able to
7 offer the technical math class, we were not able to
8 do as much hands-on instruction.

9 Q. Okay. Let's talk about what's happened at
10 Hutchinson High in the last few years. You have a
11 career and technical education academy there, right?

12 A. Correct, we do.

13 Q. That's a free-standing building that's part
14 of your responsibility as the president -- I'm sorry,
15 the principal of Hutchinson High School?

16 A. We have a campus-type school where we have
17 many different free-standing buildings. Our career
18 and technical education academy is one of those
19 buildings that is on our campus that is -- we have to
20 go outside to get to it.

21 Q. Right. And it's a new building, right?

22 A. Correct.

23 Q. And your students there learn trades, right?

24 A. Define trades.

25 Q. Well, welding? They learn welding?

1 A. That's not in our career and technical
2 education building; that's in a separate building.
3 But, yes, there's auto mechanics, auto body, business
4 classes, medical science, those kind of classes in
5 that building.

6 Q. Sure. You have medical science so that some
7 of them can earn certificates?

8 A. Correct. They can take their CNA and CMA
9 tests through our programs.

10 Q. Sure. And they can also, I think, get
11 college credit through either Hutch Community College
12 or even some of the Regent universities, right?

13 A. It's through Hutchinson Community College,
14 in certain programs you can earn college credit.

15 Q. Okay. You also have a new science lab
16 there?

17 A. Correct, part of -- we have a new science
18 lab that was part of our bond issue that was passed
19 in, I believe, 2006.

20 Q. But you just got it in the last couple
21 years, right?

22 A. Correct, it was just completed in last
23 couple years.

24 Q. You just expanded your library there?

25 A. Again, part of the same bond issue.

1 Q. And you -- is that a yes?

2 A. Yes, part of the same bond issue --

3 Q. You got a new performing arts center there
4 at Hutchinson High School, right?

5 A. Yes, part of the same bond issue.

6 Q. And you expanded your cafeteria there?

7 A. Yes, part of the same bond issue.

8 Q. And you built a new entryway there, right?

9 A. Yes, part of the same bond issue.

10 Q. Right. All of those, though, in the last
11 couple of years, correct?

12 A. The construction was started on our campus
13 in 2008. They opened at various times depending on
14 the sequence of the bond issue.

15 Q. Some other good news at your school is
16 teachers are going to get \$1,000 bonuses for the last
17 school year, right?

18 A. That is correct.

19 Q. And then next year, they're going to get a
20 3.9 salary increase for the next teaching year,
21 right?

22 A. I'm not an expert in teacher negotiations
23 and salary. The 3.9 does not sound correct; it
24 sounds close, but not correct.

25 Q. Will you be sharing in both of those

1 increases, as well?

2 A. Yes.

3 Q. Okay. And whatever the amount of the raise
4 is, that's a district-wide raise, right?

5 A. Yes.

6 Q. Not just for your school, right?

7 A. Yes.

8 Q. Now, you talked a little bit about AYP, and
9 I want to talk a little bit about that. You won a
10 Standard of Excellence Award in reading in 2010 and
11 2011, right?

12 A. Correct.

13 Q. And your high school, too, in the last --
14 since about 2007, you've been kind of steadily
15 decreasing your enrollment a little at a time, is
16 that fair?

17 A. Until this year, the 2011/'12 school year,
18 our enrollment was back up to about 1,394. So we had
19 a significant enrollment increase for '11/'12 school
20 year.

21 Q. And that wouldn't be reflected in any
22 official documents yet, because you haven't done the
23 '11/'12 school year, right?

24 A. No, it's in our principal's building
25 report. It's the September 20th number from 2011.

1 Q. Okay. And in 2010/2011, each of the schools
2 in your district publish a little publication that's
3 the school profile, right?

4 A. Correct.

5 Q. And it explains to parents or to the
6 public -- and this is Exhibit 1233. It explains to
7 parents and the public how your school is doing on
8 AYP, right?

9 A. On certain tests, yes.

10 Q. Sure. And so it says -- for example, it
11 explains the number of students that you have and
12 then your demographics. That's one of the things
13 contained in this report.

14 And then, it also is a place that we can
15 look to see what the demographics are in, for
16 example, each grade, right?

17 A. (Nodding head.)

18 Q. You need to answer out loud.

19 A. Yes. I'm sorry. Yes.

20 Q. That's fine. And so for reading -- and now
21 I'm going to talk to you about 2010/2011 -- if we
22 went to page 5 of that report, we can look at the
23 history of Hutchinson High School in reading, right?

24 A. (Nodding head.) Yes.

25 Q. On the table, looks like it's Table 5, so

1 we've been over this, but every year the AYP target
2 goes up, right?

3 A. Yes.

4 Q. You know that, right? And it looks to me
5 like every year your school has been above the AYP
6 target in reading from 2007 to 2011, is that correct?

7 A. For all students?

8 Q. Yes, sir.

9 A. Yes, for all students, that's correct.

10 Q. Okay. On the free and reduced lunch, you
11 were .2 down, but that would have still brought you
12 within AYP?

13 A. Yes, because of what they call the ...

14 Q. Confidence interval?

15 A. Thank you.

16 Q. And confidence interval means there's just a
17 plus or minus wiggle room, is that fair?

18 A. Yes.

19 Q. Now, if we go to page 7 -- who created this,
20 these reports, do you know?

21 A. The district office prepares them.

22 Q. Okay. So if we go to page 7, someone's done
23 a graph for us of that same information about how
24 your school has done on reading. And on this graph,
25 your Hutchinson students are red and the AYP targets

1 are blue. And so is it fair to say you had a fairly
2 steady increase with little bit of dip in 2009?

3 A. May I explain my answer?

4 Q. I'm sorry?

5 A. May I explain my answer?

6 Q. No. I just want to know if that's a fair
7 characterization, that you've had a steady increase
8 in your reading scores though you had a little bit of
9 a dip in 2009?

10 A. For all students, yes.

11 Q. Okay. And someone here to has tried to
12 compare each year -- has tried to compare the scores
13 each year in a bar graph. And again, fair to say
14 that those have risen fairly steadily, but 2009,
15 little bit lower; fair?

16 A. For the all students, yes.

17 Q. Okie-doke. Let's talk about math. And you
18 want to talk about students other than all students,
19 let's talk about math here. In math, from 2007 to
20 2011, again, through 2010 your scores increased,
21 correct? I'm on page 6, sir. I'm sorry, I should
22 have told you that.

23 A. For all students, yes.

24 Q. For all students they increased in 2010.

25 Well, let's look at free and reduced lunch, those

1 increased every year through 2010, right?

2 A. They increased, yes.

3 Q. And for your Hispanic students, boy those
4 are up-down, up-down; is that true? They increase
5 and then they decrease --

6 A. Yes.

7 Q. -- and then they increase and they decrease,
8 right? And the last, in 2010, there was a 51 -- they
9 were at 51. But this year, in 2012, you've seen your
10 numbers, haven't you?

11 A. Yes.

12 Q. And what are they this year?

13 A. For Hispanic?

14 Q. Yes, sir.

15 A. I believe 82.

16 Q. In math? Yeah, 82. So that's a
17 30-something percent increase, right?

18 A. Yes.

19 Q. Impressive.

20 A. Yes, it is.

21 Q. During the year after you had the cut of the
22 math teacher?

23 A. Yes.

24 Q. Okay. Let's look at a graph of your math
25 results. And again, blue is -- this is through

1 2012. Blue is the State's AYP goals and red are your
2 students. This is on page 8, if you need to look at
3 it from there. Looks like your students were
4 consistently above the AYP goal through 2010,
5 correct?

6 A. For all students, yes.

7 Q. And also in 2009, you had a little bit of a
8 dip again, right --

9 A. Yes.

10 Q. -- in math as well as in reading, right?

11 A. (Nodding head.)

12 Q. I'm noticing that in 2011 -- did you make
13 AYP in math in 2011?

14 A. No.

15 Q. You did not. Okay. In 2010, you were three
16 points above and 2011 you were three points below,
17 but that didn't bring you within the confidence
18 interval --

19 A. I believe it's six points below -- no, well,
20 3-point-something.

21 Q. But you've looked at your scores for 2012,
22 and in math, what are they?

23 A. For all students?

24 Q. For all students, yes, sir.

25 A. I think 86.

1 Q. Right. And you know, don't you, sir, that
2 the AYP goal for 2012 is going to be the same that it
3 was in 2011?

4 A. I know that.

5 Q. You do know that. So whatever your score
6 is, you know it's above AYP for all students -- above
7 the AYP target for all students in math, right?

8 A. Yes.

9 Q. You have an IB program at your school?

10 A. May I explain my answer?

11 Q. About whether you have an IB program?

12 A. Yes.

13 Q. Sure.

14 A. Yes, we do have an IB program.

15 Q. Okay.

16 A. And the explanation I would like to make is,
17 for many of our students, that is the suitable
18 education for them. They are on a track to exceed
19 and go above and beyond. For example, one of our
20 students went to Notre Dame; came back after freshman
21 year and her quote to me was, all the other students,
22 or a lot of the other freshman students were
23 stressing out and struggling, I had no problem with
24 it because it had an IB program.

25 Q. Great. And you've offered that program for

1 ten years, sir?

2 A. Not ten.

3 Q. Not ten? Okay.

4 A. We've had, I believe, four or five
5 graduating classes, which means we started the year
6 before that.

7 Q. You offered some classes before you could
8 offer the degree, isn't that right?

9 A. For one year before we offered the diploma.

10 Q. All right. Your biology teacher won an
11 Educating in Excellence Award with a cash prize last
12 year, right?

13 A. Yes, that is correct.

14 Q. And your graduates received \$1.1 million
15 worth of the scholarships in their graduation class
16 this last year, right?

17 A. That is correct.

18 Q. And that was for something less than 300
19 students?

20 A. Little bit more than 300.

21 Q. Okay. And your extracurricular activities,
22 your drama and debate and speech teams went to
23 national competitions?

24 A. May I explain my answer?

25 Q. That's really kind of a yes or a no. Did

1 that happen?

2 A. Yes, it did.

3 Q. Okay. You said you have a health
4 occupations program, right?

5 A. Yes.

6 Q. And those people have some competitions,
7 right?

8 A. Yes.

9 Q. And they also got to go the nationals,
10 right?

11 A. Yes.

12 Q. And your building training program got to go
13 to a national competition?

14 A. Yes, and many of those were funded by their
15 own fundraising efforts to be able to go.

16 Q. Sure. But that is part of them receiving a
17 suitable education, some of the opportunities they've
18 had through being a part of the building trade
19 competition in your school, right?

20 A. The building trade competition?

21 Q. I'm sorry, the building training
22 competition. Was there a building training
23 competition?

24 A. No.

25 Q. Okay, what words --

1 A. There was health occupations --

2 Q. Sure.

3 A. And then, there was a business DECA-type of
4 competition.

5 Q. Was there a competition that had to do with
6 your career and technical education academy?

7 A. Some of those are part of that, yes.
8 There's also a Skills U.S.A. competition that takes
9 into account different things, commercial
10 construction, those kinds of things, yes.

11 Q. Sure. And your kids have been able to
12 participate on a national level in competitions
13 having to do with those skills, is that right, sir?

14 A. Yes, many times through their own
15 fundraising efforts.

16 Q. Sure. You said earlier that with the proper
17 resources you could provide a suitable education for
18 all of the students?

19 A. Yes.

20 Q. Should we assume that the flip side of that
21 is true; that if all the students are not educated,
22 then there are not proper resources?

23 A. Could you say that question again, please?

24 Q. Sure. If all the students are not
25 proficient, then your assumption would be there are

1 not proper resources?

2 A. Are you just talking on state assessments,
3 or ...

4 Q. Well, you said earlier, with the proper
5 resources, we can provide a suitable education for
6 all of our students. And I'm saying, if the students
7 are not proficient on the state assessments -- sure,
8 let's use that as the yardstick. If the students
9 aren't proficient on the state assessments, is it
10 your allegation that that means there have not been
11 proper resources?

12 A. In some cases, yes. But again, as I said,
13 the state assessments are a very narrow picture, so
14 to tie those directly to being prepared I think is
15 not a proper conclusion.

16 Q. Well, I'm just talking about tying them to
17 resources. If you have students who are unable to be
18 proficient on whatever yardstick we use, do you
19 believe that that is an indication that the schools
20 are not properly funded?

21 A. If the yardstick is the proper one.

22 Q. I'm sorry.

23 A. If the yardstick that referred to is the
24 proper yardstick, then I would go along with that
25 statement.

1 Q. So when all the kids are educated to the --
2 whatever measurement you believe to be the true
3 measurement of an educated kid, that is when you know
4 that there have been sufficient resources provided
5 for education. Is that a fair statement?

6 A. I think I could go along with that.

7 MS. TIBBETS: I don't have anything
8 further.

9 REDIRECT EXAMINATION

10 BY MR. RUPE:

11 Q. Give us a clue as to what the proper
12 yardstick is, please.

13 A. It's very difficult to measure because
14 you're talking about a lot of skills that are hard to
15 measure; social skills, technology. It can be
16 different for every kid depending on the pathway that
17 they choose. So I'm not sure that we've identified a
18 proper yardstick at this point.

19 Q. In terms of what the State requires, we've
20 seen some information about that. And let me see if
21 this syncs with what you believe. I'm going to put
22 up Exhibit 39.

23 This is Kansas Statute 72-1127, and it talks
24 about developing sufficient oral and written
25 communication skills to enable students to function

1 in a complex and rapidly changing society; acquire
2 sufficient knowledge of economic, social, and
3 political systems which enables students to
4 understand the issues that affect the community,
5 state, and nation; develop the student's mental and
6 physical wellness; development of knowledge of the
7 fine arts to enable students to appreciate the
8 cultural and historical heritage of others; training
9 or preparation for advanced training in either
10 academic or vocational fields so as to allow them to
11 choose and pursue life work intelligently;
12 development of sufficient levels of academic or
13 vocational schools; and then, students requiring
14 special education services.

15 In terms of that yardstick that you want
16 your kids to achieve, does that sync with that?

17 A. Yes, I would agree with that.

18 Q. Now explain what you mean by the AYP isn't
19 that measuring stick for that.

20 A. If you look at the things on that list, for
21 example, things like fine arts and wellness, they're
22 not a part of the AYP, when all AYP is, is basically
23 the math and the reading assessment along with some
24 attendance, graduation rates, a couple of those
25 things thrown in, but in no way measure everything

1 that's on that list.

2 Q. Let's go back and give you a chance to explain a
3 couple of things that I made a note that you wanted to
4 explain. You were asked about the --

5 MR. RUPE: Oh, by the way, I would move
6 for admission of 1233.

7 MS. TIBBETS: No objection.

8 JUDGE THEIS: Admitted.

9 (Defendant's Exhibit Number 1233 was admitted.)

10 Q. (By Mr. Rupe) In terms of the diagram you were
11 shown having to do with Kansas reading assessments, State
12 reading, 2007 to 2011, you were asked about the
13 subgroups. What is it that you wanted to explain about
14 that?

15 A. For example, if you look at subgroup of special
16 ed in 2011 reading, even though that's not on that graph,
17 it's on the chart, the Table 5, because that chart is
18 only all students. But if you look on page 5, 54.8
19 percent of our special ed kids were proficient in
20 reading -- there you go -- that leaves about 45.2 percent
21 that weren't, which is well below the standard. We do
22 show some improvement over time in that area, but to me,
23 it's not acceptable that you have 45.2 percent of your
24 kids not proficient in reading.

25 Q. Well, let's look at the math score, if we

1 could. Section 4, math assessment, Hutchinson High
2 School. And it looks like the target -- according to
3 the target, the State math AYP target is 82.3, and
4 the score in 2011 is 78.6. And what did you say it
5 was in 2012?

6 A. 83.

7 Q. 83?

8 A. 86, 83, something.

9 Q. So you finished above target?

10 A. Correct, for all students.

11 Q. And disaggregated, did you?

12 A. We did. We finished above the target, but
13 for example, if you look on page 6 at the top.

14 Q. Okay.

15 A. In 2011, again, we only have 45.9 percent of
16 our special ed students passing the test.

17 Q. Well, let's go back to the 2011 math score.
18 I guess with the waiver, it would be probably make
19 you happy that these 78.6 percent kids would not be
20 considered to having not met the target, would it?

21 A. Not met the target?

22 Q. Yeah. If the target disappears with the
23 waiver, does that resolve the issue with these 78.6
24 percent kids?

25 A. No.

1 Q. There's still, what, 20-some percent kids
2 that are not proficient, right?

3 A. Correct.

4 Q. What did you want to explain with regard to
5 the Hispanic students in the fluctuations?

6 A. Again, just because you make AYP you still
7 may have a huge percentage of that subgroup that's
8 not proficient, even though you made AYP. Maybe you
9 didn't even come close to the target, but if you
10 improve, you can make AYP through safe harbor which
11 is what we did in some instances before, but it
12 stills leaves a lot of your students not proficient.

13 Q. And not achieving a suitable education?

14 A. And not achieving a suitable education.

15 MR. RUPE: No other questions.

16 EXAMINATION

17 BY THE PANEL:

18 JUDGE THEIS: What was that IB
19 program or IP?

20 THE WITNESS: The IB program is an
21 international baccalaureate. It's a program that
22 emphasizes rigor, writing, research. There's an
23 assessment for each part of it that's given and
24 scored externally. In other words, outside your
25 school, we mail those off to different parts of the

1 world.

2 The curriculum is standardized, so
3 if you go to an IB school in Kansas or in Florida or
4 in Saudi Arabia, it's the same curriculum and the
5 same type of test. It's very geared towards a
6 college preparatory -- preparation for college, to
7 get kids prepared to do well.

8 And again, it emphasizes a lot of
9 writing, a lot of research, a lot of higher-level
10 thinking. And we are an IB school and we're able to
11 offer an IB diploma if the kids take the proper
12 course work and pass the assessments that are scored
13 throughout the world.

14 JUDGE THEIS: Is that unique to
15 Hutchinson in Kansas?

16 THE WITNESS: There are four IB
17 schools in Kansas; one in Wichita, Kansas City, us --
18 maybe two in Wichita, or two in Kansas City, I can't
19 remember.

20 JUDGE THEIS: And you have a
21 technical school in Hutchinson.

22 THE WITNESS: Correct. We have a
23 vocational technical school, which the new word for
24 that is career and technical education academy.

25 JUDGE THEIS: Is that what you're

1 referring to that you've got an arrangement with the
2 technical school, when they were talking about the
3 career educational academy, or --

4 THE WITNESS: Yes, that is part of
5 Hutchinson High School.

6 JUDGE THEIS: Okay. But the
7 technical school is separate --

8 THE WITNESS: No.

9 JUDGE THEIS: -- or the same?

10 THE WITNESS: It's the same. It's
11 one and the same, part of Hutchinson High School.
12 But we do offer -- able to collaborate with the
13 community college to offer some, as she mentioned,
14 some dual-credit programs.

15 JUDGE THEIS: Thank you.

16 MR. RUPE: If I may follow up?

17 JUDGE THEIS: (Nodding head.)

18 REDIRECT EXAMINATION

19 BY MR. RUPE:

20 Q. In terms of the IB program, Sumner Academy,
21 we've heard a little bit about that in Kansas City
22 that's an IB program.

23 A. Right.

24 Q. And East High has an IB program. Is your IB
25 program at Hutchinson like those in the sense that

1 you have to test in order to be admitted to the
2 program?

3 A. We do not have an entrance test. You do,
4 obviously, have to prepare yourself to -- that
5 program starts your junior year, so there are some
6 preparatory classes along the way. We do allow
7 basically anybody that wants to start to travel down
8 that road to be able to do it.

9 Kids kind of self-select themselves in or
10 out of it. You can also not take the whole boat, so
11 to speak, of the IB diploma, but just take individual
12 classes in areas that might interest you and not do
13 the entire program.

14 EXAMINATION

15 BY THE PANEL:

16 JUDGE THEIS: Is that more
17 expensive for the district or not?

18 THE WITNESS: It does cost more for
19 a variety of reasons. One is there are fees that you
20 have to pay to get these tests scored and to be part
21 of the IB.

22 And the curriculum, there's teacher
23 training that's involved. The class sizes tend to be
24 a little bit smaller in those specialized areas, so
25 there is a cost associated with that. But again, if

1 we're going to try to provide that suitable education
2 for all students, there are students that that is
3 their suitable education.

4 JUDGE THEIS: You have a separate
5 funding stream for that?

6 THE WITNESS: We do have private
7 that helps with some of it, but it is a lot of our
8 general fund money, LOB money, that pays for the
9 rest.

10 JUDGE THEIS: Thank you.

11 MR. RUPE: Thank you.

12 JUDGE THEIS: Thank you. You can
13 step down.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 MR. RUPE: Jeanne Stroh, please.

17 JEANNE STROH

18 Called as a witness for the
19 Plaintiffs, was duly sworn by the reporter and
20 testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MR. RUPE:

23 Q. Jeanne Stroh, tell the Judges your name and
24 the city in which you reside.

25 A. Jeanne Stroh; Hutchinson, Kansas.

1 Q. What is your current title?

2 A. I'm the executive director of elementary
3 education for USD 308.

4 Q. How long have you had that position?

5 A. Three years.

6 Q. Talk to us a little bit about your job
7 history.

8 A. I graduated from Northern Arizona University
9 in 1982. And that's in Flagstaff, Arizona. I taught
10 for 16 years, kindergarten through high school. And
11 in 1993, we moved to Manhattan, and I taught
12 kindergarten and preschool at Riley County in grade
13 school.

14 In 1997, I graduated from Kansas State
15 University with my degree in Educational Leadership,
16 my master's, and I became the principal at Central
17 Elementary in Wamego, Kansas, USD 320, for 11 years.
18 And five years ago, I began working on my Doctorate
19 in Educational Leadership, and in about six or eight
20 weeks I will do my defense for my dissertation.

21 Q. When did you move to Hutchinson?

22 A. July of 2009.

23 Q. And the 16 years you spent teaching
24 kindergarten, high school, was where?

25 A. Say that again.

1 Q. After you graduated from Northern Arizona,
2 where did you teach?

3 A. I taught -- my first year I taught at the
4 school I went to when I was a little kid, Parker,
5 Arizona. I taught in Florence, Colorado, in Penrose,
6 Colorado. Globe, Arizona, actually, I taught on the
7 San Carlos Apache Reservation for four years while we
8 lived in Globe, Arizona. I taught in Page, Arizona,
9 which is on the Navajo reservation. And then we
10 moved to Manhattan and I taught at Riley County Grade
11 School.

12 Q. Tell us a little something personal about
13 yourself.

14 A. I have three daughters who I pretty much
15 raised by myself. My husband passed away when he was
16 42 years old of cancer. And two of them are going to
17 be teachers, and I'm very proud of the fact that two
18 of them are in graduate school, and my youngest will
19 graduate from McPherson College in next spring.
20 She'll be a teacher.

21 Q. Let's talk and I'm going to step over the
22 suitable education questions, and step over
23 strategies that you've seen that work with kids at
24 the elementary level, and I want to go right to the
25 question whether you are aware of any cuts in

1 services programs, personnel; explain to the Court
2 what those cuts are.

3 A. Absolutely. At the elementary level, we cut
4 three elementary teaching positions which caused our
5 classes to be larger. For example, last year we had
6 kindergarten classes that were 29 and 30. And we cut
7 one elementary PE position and one elementary music
8 position, which had an impact on the amount of music
9 and PE that we could offer our students.

10 Our strategic plan called for increasing
11 students' time with the fine arts and adding art
12 teachers. We haven't been able to do that. There
13 have been a number of things that have been called
14 for in our strategic and operational plan, but
15 because of the cuts, we haven't been able to do
16 that.

17 Cuts to not only our program, but the mental
18 health program and SRS have impacted our little ones
19 greatly. We are less able to work with them. They
20 have less people; we have less people; so it's much
21 more difficult to serve our little ones with the
22 kinds of services that they need to be successful.

23 Q. What impact have these cuts had on kids at
24 the elementary grades?

25 A. The first thing that comes to mind is a

1 little story that -- and this is just one example of
2 so many stories that happen to us in Hutchinson.
3 We're about 45 miles north of Wichita and so we have
4 a pretty successful homeless shelter. And so we get
5 a number of families who are single moms or single
6 dads, who come to the homeless shelter from Wichita
7 because Wichita can't serve all the homeless people
8 that they have. And so, because there wasn't
9 resources and there wasn't adequate education for
10 those parents, then they, in turn, can't support
11 their children.

12 And so, for example, we had a mom who came
13 to us from Wichita. She had three little
14 kindergarten boys. Sorry. And they were all very
15 special needs. Two of them were twins and had been
16 born very prematurely. Because she had moved around
17 a lot in the Wichita area, they don't get constant
18 services in terms of the infant/toddler program and
19 other early ed services.

20 So they come to us, and the two little twins
21 had very little language. We had a great deal of
22 difficulty serving those three little boys and
23 helping mom, because we don't have the resources to
24 work with SRS and to provide special education
25 programs, and early intervention would have been very

1 key. And that's one example of the many, many things
2 that our kids endure because we're not able to
3 provide the services that they need.

4 Q. And I understand that's an example of other
5 situations in terms of the class size at 29 to 30 in
6 a kindergarten. Tell the Court whether that's an
7 average size or whether it's a size that works.
8 Describe the size of those kindergarten classes in
9 terms of the ability to educate those kids.

10 A. We know from research that if we can keep
11 early programs to between 18 and 23 that that's about
12 right; we can serve kids very well. To get under
13 that number, for the money, it really doesn't -- you
14 don't get as much bang for your buck.

15 But for kindergarten through 3rd grade
16 classes, if you can keep your numbers between 18 and
17 23, you can serve those children very well. 29, for
18 us, 27 to 29 in kindergarten was pretty much average.
19 We had two buildings where the numbers were smaller,
20 but the majority of our kindergartens were large.

21 Q. And in terms of what works for kids to move
22 them toward improvement and toward that suitable
23 education, is 18 to 23 the acceptable size?

24 A. That's the acceptable size for K-3. And
25 then it goes up a little bit for 4 through 6.

1 Q. Yours are at 29 to 30?

2 A. They were this year, yes.

3 Q. And have you made any estimate on what
4 they're going to be next year?

5 A. We haven't -- we have done kindergarten
6 pre-enrollment, but those numbers aren't numbers that
7 we can really depend on. We don't expect to have the
8 420, or however many kindergarten kids we had last
9 year. We expect to keep those, so our first grade
10 numbers will be big. Typically, in kindergarten,
11 this past year notwithstanding, we still have classes
12 of 23 to 25, 26, 27, depending on the building.

13 Q. Given the resources you have to comply with
14 what you need to do to provide a suitable education,
15 given those resources, are you able to provide that
16 suitable education to all the kids?

17 A. No.

18 Q. You want to explain your answer?

19 A. I do. We know from research that the MTSS,
20 multiple system of support, is research-based and can
21 support students who come into the school with lower
22 skills than we would expect. And we have implemented
23 that and as best we can with the resources we have in
24 our buildings, but we don't have the -- if we had
25 smaller class sizes, if we were able to hire more

1 paras and more aides, then we could have smaller
2 groups.

3 The research shows -- MTSS, just so you
4 know, if you think of a triangle, the base of a
5 triangle would be all kids. And all kids would get
6 the core curriculum, all the curriculum that is
7 expected in the district.

8 Then, the next tier up would be some kids.
9 Those would be kids that would be a few months to
10 maybe close to a year behind. And we would be able
11 to take those kids in groups of three to five and
12 really hone in and teach the skills that they're
13 missing.

14 And research shows that if you can do that
15 for six to eight weeks, then those kids will move
16 into the all group. We can teach them those skills
17 and they'll be ready to go to the next level.

18 The top part of the triangle is a few kids.
19 We need to teach those kids in groups of one to
20 three. And again, you hone in on the skills that
21 they're missing, you teach those skills, you practice
22 those skills, and those kids will move very quickly.
23 They'll achieve greatly.

24 Q. And you have the resources to do that?

25 A. We do not.

1 MR. RUPE: That's all I have.
2 Thank you.

3 CROSS-EXAMINATION

4 BY MS. TIBBETS:

5 Q. I just have a couple of questions that I
6 wanted to clarify, ma'am. This 29 to 30 in the
7 kindergarten classes was for the 2011/'12 school
8 year?

9 A. Yes.

10 Q. If I heard you right, I think that you had
11 an unexpected bump in the size of your kindergarten
12 class, is that what you said?

13 A. A little bit of a bump, yes.

14 Q. And that typically, your kindergartners are
15 in the 23, 25 range, is that what you said?

16 A. Yes.

17 Q. That's what you anticipate happening for the
18 2012/2013 year, right?

19 A. And yes, and that's still above or 18 to 23
20 researched-based number.

21 Q. To be fair, though, the 23 to 25, there's a
22 little overlap between your 18 to 23 goal, right?

23 A. When you serve kids that have the needs that
24 we have, 18 is the best number.

25 Q. Sure, but 18 to 23 is what you said

1 earlier --

2 A. Right.

3 Q. -- are you now saying you really meant 18?

4 A. No.

5 Q. 18 to 23?

6 A. 18 to 23, but 25 is not 23, so ...

7 Q. And in terms of homeless families, that's
8 always a struggle, right?

9 A. It is.

10 Q. And in fact, there's a federal program
11 specifically for homeless children to help them in
12 schools, right?

13 A. The federal program for homeless students,
14 for us, barely provides enough money to transport
15 students.

16 Q. Sure. But there is a federal program
17 specifically aimed at homeless children and their
18 education, true?

19 A. True.

20 Q. Thank you. In terms of how you've been able
21 to educate elementary school students, I'm going to
22 put up on the screen here Exhibit 1229, which is the
23 preliminary results, and I just want to look real
24 quickly. Now, Avenue A Elementary in Hutchinson is a
25 low-income school, right?

1 A. Yes.

2 Q. High needs school?

3 A. Yes.

4 Q. There, your scores this year were in the 90s
5 in reading and in the 80s in math for all students,
6 right?

7 A. Yes, and the great thing about it is Avenue
8 A has received two grants over the past several years
9 in addition to what we can offer, and so those extra
10 resources have really made a great way for us to
11 advance, absolutely.

12 Q. So you've done a good job with Avenue a, you
13 would agree?

14 A. Because we had the extra resources,
15 absolutely, I would agree.

16 Q. Earlier -- were you here earlier when I was
17 talking to Ms. Davis about the schools that did and
18 didn't make AYP?

19 A. I was.

20 Q. And I think we had a conversation about
21 whether or not McCandless had made AYP in
22 2010/2011 --

23 A. Mm-hmm.

24 Q. -- were you here for that? And each school
25 puts forth a school profile --

1 A. Mm-hmm.

2 Q. -- about the school, right?

3 A. Yes.

4 Q. And I want to hand you what I've marked as
5 Exhibit 1236, which is the McCandless Elementary
6 School profile, and ask you whether that would be a
7 good source for us to know whether McCandless made
8 AYP in the 2010/2011 school year?

9 A. Yes.

10 Q. And in fact, did McCandless Elementary
11 report that it did attain AYP for the 2011 school
12 year?

13 A. Yes, they were on -- let me think now. They
14 were on watch the year before because they did not
15 make AYP. They made AYP 2010/'11, that's what you're
16 talking about, is that correct?

17 Q. That's correct.

18 A. And they will not make AYP this year, so
19 it's an up-down.

20 Q. But the first year that you don't make AYP
21 after you do make it, you get a little bit of a
22 breather, right? They'll be on watch again?

23 A. They're on watch, you're correct.

24 Q. One of the questions, you brought up
25 something that the Judges have asked about.

1 MS. TIBBETS: First, I'd like to move
2 for admission of -- what's the number on there -- 1236.

3 MR. RUPE: No objection.

4 JUDGE THEIS: Admitted.

5 (Defendant's Exhibit Number 1236 was admitted.)

6 Q. (By Ms. Tibbets) One of the questions that the
7 Judges have asked is, what happens when schools don't
8 make AYP? Are you familiar with --

9 A. Yes.

10 Q. -- what happens? And in each of the reports
11 that your school puts forth, they explain what happens,
12 at least for Title I schools, when the schools don't make
13 AYP, right? Are you familiar with that portion of the
14 report?

15 A. Yes.

16 Q. And just really briefly, if you have AYP for two
17 consecutive years, you're not on improvement. Year one,
18 if you don't make AYP, you get school choice, you have to
19 write a plan, and you have to set aside Title funds for
20 professional development, right?

21 A. Exactly. And addition to that is, if you're on
22 watch, meaning that you did not make AYP for one year,
23 then you're strongly encouraged by the State department
24 and by our coaches and so on, to write the integrated
25 improvement plan so you can apply for expected gains.

1 Q. Right, because your school wants to stay
2 ahead and get started on that improvement plan so
3 that you don't end up actually being on improvement,
4 right?

5 A. Exactly.

6 Q. Sure. And then, on second year, if you
7 don't make AYP for three consecutive years, or make
8 it but then you -- make it for one year and then you
9 have two years that you don't make it, then you have
10 school choice. You have to provide tutoring, you
11 have to implement your improvement plan, and you have
12 to provide 10 percent of your funds for professional
13 development, right?

14 A. And I think just to clarify for you, that
15 would be year three, okay? You said, year two. But
16 really, you don't make it the first year you're on
17 watch. You don't make it the second year, then the
18 third year is when really the --

19 Q. Okay, sure.

20 A. -- punitive damages start.

21 Q. When it stays on improvement, year two --

22 A. You've already not made it for three years,
23 yes.

24 Q. That's a good point. After that, if you
25 still, after all those interventions, don't make it,

1 then you're on corrective action, right?

2 A. Exactly.

3 Q. And corrective action means you have school
4 choice, you have to provide tutoring, you have to
5 have a corrective action plan, you have to have 10
6 percent of your Title funds go to professional
7 development, and then you have to restructure or try
8 a new curriculum or have some outside experts, or
9 extend your school day, or there's a whole host of
10 things that you have to do to kind of start all over
11 again with your school, is that right?

12 A. Yes.

13 Q. Then, if those things don't work, then after
14 restructuring, there's school choice, the tutoring
15 has to be done and then you have to write a
16 restructuring plan and continue to provide funds for
17 professional development, right?

18 A. Yes.

19 Q. And if another year of restructuring doesn't
20 work, you continue with those same sorts of
21 interventions, right?

22 A. Yes.

23 MS. TIBBETS: I don't have anything
24 further.

25 REDIRECT EXAMINATION

1 BY MR. RUPE:

2 Q. Where did the grant money for Avenue A come
3 from?

4 A. It was, I believe, a 103 B grant that comes
5 either -- I'm not sure, from the federal or the state
6 level. When you're on improvement, you qualify for a
7 number of different kinds of money. They also had a
8 technology grant, Tech Rich grant, that helped them
9 greatly.

10 Q. And it sounds like, from your answer, when
11 you were asked about Avenue A's performance, that you
12 believe money can make a difference in student
13 achievement?

14 A. Absolutely. At Avenue A, we have purposely
15 kept our class sizes as small as we possibly could
16 and we have had more paras and aides to help our
17 students. And we implemented the MTSS process, if
18 you remember the triangle with some, few, and all,
19 before we did any other building. We've concentrated
20 a lot of -- as much as resources as we possibly could
21 to help those students who were most in need.

22 Q. And has this been a Peter to pay Paul
23 situation that has come at a cost to other schools?

24 A. Yes.

25 MR. RUPE: That's all I have.

1 JUDGE THEIS: Thank you, Ms. Stroh.

2 THE WITNESS: Thanks.

3 (Witness excused.)

4 MR. RUPE: Rod Rathbun is our next
5 witness.

6 RODNEY A. RATHBUN

7 Called as a witness for the
8 Plaintiffs, was duly sworn by the reporter and
9 testified under oath as follows:

10 DIRECT EXAMINATION

11 BY MR. RUPE:

12 Q. Tell the Judges your name and the city in
13 which you reside.

14 A. Rodney A. Rathbun. I go by the name of
15 Rod. I live in Newton, Kansas.

16 Q. And what is your current title?

17 A. I am the principal at Morgan Elementary
18 School in Hutchinson, Kansas.

19 Q. Tell us a little bit about your educational
20 background.

21 A. I attended JUCO at Hutchinson for two
22 years. Transferred to Hays to complete my Bachelor's
23 Degree in Elementary Education. Finished there and
24 attended Wichita State University where I completed
25 my administrative degree.

1 Q. Your work history, please?

2 A. I taught two years in a little community
3 called Tipton, Kansas up in North Central Kansas and
4 then went to Hesston, Kansas for 19 years as a middle
5 school instructor. In '98, I went to Hutchinson as
6 an assistant principal, for two years at McCandless
7 Elementary, which has been spoke of here earlier, and
8 transferred to Morgan, where I have been the
9 principal now for 12 years.

10 Q. Give us a little something personal about
11 yourself.

12 A. Personal about myself. Well, I'm pretty
13 much a Kansas boy. I grew up on a farm in North
14 Central Kansas. I come from an educational family.
15 My mom was a teacher. I had an aunt that was a
16 teacher. I'm married to a teacher. My daughter's a
17 teacher. I couldn't talk her out of it no matter how
18 hard I tried.

19 Q. Let's focus a little bit on going right to
20 the question that -- stepping over what's a suitable
21 education and strategies that work, and go right to
22 your school in which you're principal. Describe what
23 cuts were instituted at your school.

24 A. Well, the circumstances at Morgan are a
25 little different than the other elementary buildings

1 in Hutchinson, as we are the only non-Title building
2 in Hutchinson. Title is based upon the SES of your
3 building. Therefore, the operations and the
4 functioning of the building is based upon our budget
5 that is allotted from the district.

6 We are the largest building in Hutchinson, I
7 might mention that. We have a population of about
8 500-and-some students. When I originally came to
9 Morgan, it was about 350, population. And so it had
10 increased over the years.

11 As that population increased, the
12 administration suggested that there be an assistant
13 principal placed with me. Well, part of the budget
14 cuts over the last three to four years has been that
15 position has been absorbed. So one of the things we
16 have lost is the assistant principal position at our
17 building.

18 Q. There are 500 kids in your building?

19 A. Slightly over 500.

20 Q. What other cuts?

21 A. Elementary schools are in a little different
22 scenario as in comparison to middle schools and high
23 schools in the sense that the teachers are highly
24 qualified as an elementary teacher. So a teacher at
25 my building teaching 2nd grade could actually go to

1 another building and teach 3rd grade. So class sizes
2 from building to building have been pushed up to a
3 maximum by moving staff around in order to absorb
4 some of the cuts that have been made over time.

5 So our building, right now, is setting with
6 a class size that varies from 26, I think was our
7 kindergarten or 1st grade population last year, per
8 class, to up to 29, which was our 5th grade
9 population per class. And we have three sections at
10 every grade level for a K-6 building.

11 Q. What about any other cuts that you can
12 recall?

13 A. We have pretty much budget -- or salary-wise
14 our staff has been frozen for about the last three
15 years. We have went through and cut our building
16 budget for supplies and for capital outlays for other
17 equipment, which, as a teacher, it translates into
18 our staff investing more of their personal funds in
19 their classrooms in order to try to teach the way
20 that they want to because the schools, you know,
21 don't have the budgets to buy those materials.

22 Q. Is the Morgan Elementary --

23 MR. RUPE: What's the number of
24 that?

25 MS. TIBBETS: 1234.

1 MR. RUPE: 1234.

2 Q. I want to ask you about the Morgan
3 Elementary publication, 1234.

4 A. Mm-hmm.

5 Q. Is that the profile of Morgan Elementary for
6 2010/2011?

7 A. Yes, I believe it would be.

8 Q. What's the status of the assessments -- and
9 you can use this to look. What's the status of the
10 assessments for '10/'11?

11 A. Our status for assessment was that we
12 achieved AYP for '10/'11 in both math and reading.

13 Q. What are your current test scores?

14 A. Our current test scores, preliminary test
15 scores indicate that we will achieve them again.

16 Q. This year?

17 A. This year, mm-hmm.

18 Q. And in terms of the resources you have
19 available to provide that suitable education to all
20 your kids, do you? Do you have that?

21 A. Unfortunately, I think we're spending a
22 little bit too much time emphasizing AYP which, at an
23 elementary building, is slightly over half of the
24 student population, because kindergarten, 1st Grade,
25 and 2nd Grade doesn't appear on this information. So

1 the development of the whole child up until we start
2 administering written testing is truly not measured.
3 And too many of our resources, it seems like, has to
4 go into meeting AYP and our younger children are
5 getting short-changed in that sense.

6 Q. When you say, short-changed, do you mean not
7 provided that suitable education?

8 A. We're not being able to meet their needs,
9 correct.

10 Q. Look at years '11/'12, what were your math
11 percentages and reading percentages?

12 A. Years '11/'12.

13 Q. That's ...

14 A. Not an '11/'12.

15 Q. I'm sorry --

16 A. I don't know off the top of my head.

17 Q. Yeah, it's not in there.

18 A. You're talking '10/'11?

19 Q. No, '11/'12, do you know what your
20 percentages will be?

21 A. Do I know what it was off the top of my
22 head? We were in the 80s, but I don't recall for
23 sure what it was.

24 Q. Okay, we can get that information. Does
25 your school have -- or does Hutchinson community have

1 a problem with meth?

2 A. You're talking about the drug --

3 Q. Yes.

4 A. -- methamphetamine?

5 Q. Not M-A-T-H; M-E-T-H.

6 A. Okay. Yes, I would say, as a community
7 there is an issue with methamphetamines.

8 Q. And do you deal with kids from homes where
9 meth is prevalent?

10 A. We have no real data to back that up, but
11 the evidence of some of the adults that walk in the
12 front door would indicate that by their look and
13 their behavior.

14 Q. And in terms of the amount of money
15 necessary to educate kids who are the children of
16 people who have meth addiction, are they more costly
17 to educate?

18 A. Yes. But it's not totally limited to
19 methamphetamine. I mean, children born to alcoholic
20 parents, you -- that takes more of your resources to
21 educate them, as well. But over the years, it seems
22 that the somewhat erosion of the nuclear family are
23 bringing children to us that are less prepared for
24 education. Very prominent example of that was this
25 very year when we had kindergarten students, I had

1 two kindergarten students that came to school still
2 wearing diapers. We seem to have parents that aren't
3 able to parent.

4 Q. And those kids, I think uniformly with everybody
5 who sat in that witness chair, cost more to educate?

6 A. Absolutely.

7 MR. RUPE: No other questions.

8 CROSS-EXAMINATION

9 BY MS. TIBBETS:

10 Q. So if we look at Exhibit 1234, to get kind of a
11 snapshot, the best we have, of how Morgan Elementary is
12 doing if you'll turn to --

13 MR. RUPE: You want to admit it, move
14 for admission.

15 MS. TIBBETS: Sure, I'll move to admit
16 1234, and I'll bet you don't object.

17 MR. RUPE: No.

18 JUDGE THEIS: We don't either.

19 (Defendant's Exhibit Number 1234 was admitted.)

20 MR. RUPE: Can the witness have a
21 copy?

22 MS. TIBBETS: I'm sorry, I thought I
23 gave him one. Here you go. I apologize.

24 THE WITNESS: Thank you.

25 Q. (By Ms. Tibbets) If you'll just turn to page 5,

1 that's your scores in reading. And back in 2007,
2 when they started testing reading, you only had to
3 beat 69.5, and your school was at 92.6 for all
4 students. And you've maintained scores that are
5 ahead of the state for all those years from '07 to
6 2011, right?

7 A. Data would indicate that, correct.

8 Q. Okay. And the data would also, if we looked
9 at Exhibit 1229, indicate that for this year you're
10 all students percentage is 92.1. So you're still
11 continuing on that upward path that's well ahead
12 of -- well, I shouldn't say well ahead -- that's
13 ahead of the AYP requirements?

14 A. That's -- what is that figure you have
15 there?

16 Q. It is 92.1 for reading. I got this from the
17 Kansas Department of Ed.

18 A. That's the ...

19 Q. All students.

20 A. '11/'12 or -- yeah, '11/'12 data?

21 Q. Yes, sir.

22 A. Okay. Which would indicate a drop from the
23 2011 data, which was 93.4.

24 Q. Okay. A drop from that, but still ahead of
25 AYP, of the AYP target, right?

1 A. Okay.

2 Q. I mean, I'm right, aren't I? Isn't the AYP
3 target the same as it was last year at 87.8?

4 A. Mm-hmm.

5 Q. So 92.1 is going to be ahead of that?

6 A. Mm-hmm.

7 Q. You agree? Yes?

8 A. Yes.

9 Q. You have to answer out loud so we can get it
10 down.

11 A. (Nodding head.)

12 Q. And if you look to see kind of what that
13 looks like on a graph, if the red is your group and
14 the blue is the State goals, your scores have been
15 pretty even, pretty flat, and very high for those
16 years, is that fair?

17 A. We have been consistent, yes.

18 Q. Sure. And let's just do the same analysis
19 here on your math results. If the red is your math
20 results and the blue is the State requirements, it
21 looks like you have been pretty flat and you made
22 state requirements last year. Are both of those
23 things true?

24 A. That is true. Year before, we did not.

25 Q. You did not?

1 A. No.

2 Q. What year did you not make AYP in math?

3 A. We did not make AYP in math in -- let's see,
4 last year was '11/'12, '10/'11 -- '09/'10, I believe,
5 and we were -- we did not make it because of a
6 special ed subgroup.

7 Q. Let's look at that. Well, actually, here it
8 is. It was 2009 and it was because of your
9 special ed subgroup, right?

10 A. I think that's what I just said, yes.

11 Q. All right. And the other years you might
12 not have made the target with your special ed group,
13 but you either made the confidence range or you had
14 significant improvement, right?

15 A. That's been pretty consistent every year if
16 you look at our special ed subgroup.

17 Q. Sure.

18 A. And we recently have --

19 Q. Wait a minute. Let me just ask you a couple
20 more questions. On math, if we looked for this year,
21 your scores are 80 for all students, 88.3, right?

22 A. Okay.

23 Q. And so that's going to mean that you make
24 AYP again this year, correct?

25 A. Okay. Yes.

1 Q. You agree with that. And I do want to talk
2 to you a little bit about your subgroups. If we look
3 at 2011 and '12, looks like in reading you had a
4 little gain in your Hispanic population. Do you
5 remember that?

6 A. And that is the subgroup that we have
7 recently developed in math. We've had -- we did not,
8 up until two years ago, I believe, have a Hispanic
9 subgroup.

10 Q. But last year -- I mean, my records show
11 that last year you were right around 87 and this year
12 you're at 87.9, does that sound right to you?

13 A. I guess.

14 Q. But in math, your subgroups -- you increased
15 in all of your subgroups according to my records, in
16 your all students and your free and reduced lunch
17 your students with disabilities and your Hispanic
18 subgroups, as well. Does that comport with your
19 memory?

20 A. Mm-hmm.

21 Q. That those scores are better than last year?

22 A. Yes.

23 Q. In addition to scores, because you say we
24 shouldn't focus exclusively on scores to see how your
25 kids are doing, right?

1 A. Correct.

2 Q. So your school's also recently won an award,
3 Kansas Schools of Character Award, because of a
4 program where you have where you use videos and you
5 also use personal relationships between the adults in
6 the school and students in the school to teach
7 character kinds of --

8 A. Character traits.

9 Q. Character traits. And your school recently
10 won an award for that, correct?

11 A. Correct.

12 MS. TIBBETS: I don't have anything
13 further.

14 REDIRECT EXAMINATION

15 BY MR. RUPE:

16 Q. Just by way of example, you talked about
17 your score being consistent. And let's look at the
18 period of time in which math results under the Kansas
19 assessments occur. The blue would be the State AYP
20 math goal, and all students would be the maroon. So
21 over the period of time 2007, 2008, 2009, 2010, and
22 then to '11, you have been consistent, is that
23 right?

24 A. Correct.

25 Q. Is that another way of saying you haven't

1 improved much?

2 A. We have not improved much.

3 MR. RUPE: That's all I have.

4 JUDGE THEIS: Thank you,

5 Mr. Rathbun.

6 (Witness excused.)

7 JUDGE BURR: Do you have two more
8 witnesses from Hutchinson or --

9 MR. RUPE: And that's two more for
10 the day.

11 JUDGE BURR: Yeah, but I'm talking
12 about if we took another witness from Hutchinson
13 would we be through with them in case they wanted to
14 head back.

15 MR. RUPE: I don't think it makes
16 any difference.

17 JUDGE BURR: I just wondered that.
18 Just trying to help them out.

19 MR. RUPE: And we appreciate that,
20 but if now's a good time to break, we can break now.

21 JUDGE THEIS: Do you have another
22 short witness?

23 MR. RUPE: I do.

24 JUDGE THEIS: Go ahead.

25 MR. RUPE: Michael Ellegood.

1 MICHAEL ELLEGOOD

2 Called as a witness for the
3 Plaintiffs, was duly sworn by the reporter and
4 testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. RUPE:

7 Q. You've been billed as a short witness.

8 A. Good deal.

9 Q. So let's go. Tell the Judges your name and
10 the city in which you reside.

11 A. My name is Michael Ellegood, and I live in
12 Hutchinson, Kansas.

13 Q. What is your current title?

14 A. Principal at Hutchinson Middle School.

15 Q. And give us a little bit of work history
16 here in terms of how long you've been in that
17 position, and than backwards from there.

18 A. Okay. Currently, I'm the principal. We
19 have two buildings. Used to be two different middle
20 schools; one was Sherman Middle School and one was
21 Liberty Middle School. Back in 2000, the district
22 decided to make it so that one was a 7th grade
23 building and the other one was an 8th grade
24 building.

25 So between the two buildings, I still have

1 roughly 750 kids, but I go back and forth between two
2 different buildings. Monday, Wednesday at 7th grade;
3 Tuesday, Thursday at 8th grade; and then Fridays I
4 split it during the day. I've been doing that for
5 the last seven years. And then the four years prior
6 to that, I was just at the 8th grade building as the
7 head principal.

8 Prior to coming to Hutchinson in 2001, I was
9 at Garden City at Charles Stones Intermediate School
10 where I was an assistant principal for about 750 5th
11 and 6th graders. Before, that I taught at Kenneth
12 Henderson Middle School in Garden City, 6th grade
13 science for five years. And prior to that, I went to
14 Fort Hays State and worked on my bachelor's. Before
15 that I graduated from Garden City High School.

16 Q. Talk to me a little bit about your -- well,
17 I guess you just told me you graduated from Garden
18 City High School, and you got your teaching
19 certificate where?

20 A. At Fort Hays State University.

21 Q. Tell us a little something personal about
22 yourself.

23 A. Personal about myself. I come from a family
24 of educators. And I actually wasn't born into a
25 particular family. I'm actually adopted. I was born

1 in Nebraska and my twin sister and I were both
2 adopted when we were three days old, and we became
3 Kansans at that particular time.

4 Q. I appreciate that Nebraska story without
5 football. So let's move on.

6 A. Go Big Red.

7 Q. In terms of your school's demographics, just
8 give us an overview.

9 A. Mirrors pretty much what the rest of the
10 district does, but it's -- our hometown is, you know,
11 1 percent Asian, 3 and a half percent African
12 American, 70 percent Caucasian, 21 percent Hispanic,
13 about 5 percent multi-ethnic. So pretty much the
14 same as the rest of Hutchinson.

15 Q. I'm going to step over strategies, and
16 providing a suitable education, and what constitutes
17 that, and go right to, please discuss with the Judges
18 the cuts that have occurred in your school.

19 A. Cuts that I've had in my building have been
20 mostly on educational aides, which can get down to
21 the nuts and bolts helping the children there, mostly
22 in the library. I've lost both library aides over
23 the last couple years.

24 I've also lost parts of part-time teachers.
25 We've cut our orchestra from two teachers -- two

1 part-time teachers down to one part-time teacher.
2 We've lost a test teachers, which is a technology
3 specialist teacher, which was part-time in the middle
4 school. We've cut supplies.

5 We've cut -- probably the biggest staff cut
6 has been our SRO officer. The district, when I first
7 came 11 years ago, had three SROs, student resource
8 officers, and now we're going to one just at
9 Hutchinson High School. And it's made a big, big
10 change in the policy -- not necessarily policies, but
11 the procedures that we do when we need law
12 enforcement.

13 Q. In terms of how many kids you have at your
14 school, how many in the middle school?

15 A. It ranges every year from 725 to 765, so
16 about 750 is a good average.

17 Q. What impact have these cuts had on kids?

18 A. They've made it so that middle school --
19 back up just a little bit. Middle school is a unique
20 age for kids, as well as for teachers, as well as for
21 parents. Middle school kids think they know it all.
22 And part of what we have to do is we have to work
23 with the whole child. I mean, the math and the
24 reading is very important, of course, but trying to
25 get them through adolescence is sometimes a difficult

1 challenge, and having less staff to be able to do
2 that makes it more of a challenge.

3 Q. In terms of the resources that you've been
4 provided, are you able to provide all the kids at the
5 middle school a suitable education?

6 A. Suitable education, no. With more
7 resources, we could provide more one-on-one, more
8 interaction for children, so that they could be
9 better prepared for life.

10 Q. It sounds like your aides have decreased.
11 Has your class size increased?

12 A. Class size has maintained pretty stable in
13 everything except in a few of our elective classes.
14 In my technology class, for example, I'll run 42 kids
15 in a class with two aides there rather than two
16 teachers with an aide. My band and choir classes
17 larger, but then those are by natural -- nature a
18 little bit larger. But the core classes are going to
19 run in the 18 to 22 range, so that's -- we've been
20 fairly stable there.

21 MR. RUPE: That's all I have.

22 Thank you.

23 CROSS-EXAMINATION

24 BY MS. TIBBETS:

25 Q. I just have a couple of things. One of the

1 things, as we look at your numbers that we should
2 keep in mind, is that you had quite a fluctuation in
3 your enrollment, right?

4 A. Yes, ma'am.

5 Q. In looking here, between 2008 and 2010 you
6 added almost 100 students?

7 A. Yes, ma'am.

8 Q. So any time that we look at the results from
9 2009 or 2010, we have to keep in mind that you
10 absorbed 100 students, wouldn't we?

11 A. Yes, ma'am.

12 Q. So it would be hard for us to say what
13 changes were due to increased students, or what
14 changes were due to decreased staff, or any of the
15 other things, wouldn't it?

16 A. It would be more difficult, yes, ma'am.

17 Q. Sure. But let's just talk about how your
18 school's been doing. Looking here at reading, what I
19 have up here is from the report that was marked
20 Exhibit 1235 --

21 MS. TIBBETS: Which now I move for
22 the admission of 1235.

23 MR. RUPE: No objection.

24 JUDGE THEIS: It's admitted.

25 (Defendant's Exhibit Number 1235 was admitted.)

1 Q. (By Ms. Tibbets) Looking here across this
2 report, it looks like you've had scores in the 80s. I'm
3 just talking now about all kids. You've had scores in
4 the 80s. You dipped a bit in 2010, and back up in 2011?

5 A. Yes, ma'am.

6 Q. And then, if we look for this year, looks like
7 in reading you took another good jump, right?

8 A. Yes, sir.

9 Q. You're really happy with that improvement,
10 weren't you?

11 A. Happy but not satisfied because still have 10
12 percent of my kids that aren't passing.

13 Q. You will not be satisfied until 100 percent of
14 the kids are proficient, right?

15 A. Yes, ma'am.

16 Q. If we looked in your subgroups, it looks to me
17 like your free and reduced lunch kids -- let's see, free
18 and reduced lunch kids on reading were at 87.2, which is
19 about a five jump, does that sound right to you?

20 A. I'd have to see the other one, back page.

21 Q. Sure. That's a fair thing to ask. This is free
22 and reduced lunch right here, so you were at 82.3, and
23 now it looks like you were at 87.2 in reading?

24 A. Yes, ma'am.

25 Q. That's something you keep track of right?

1 A. Yes, ma'am.

2 Q. Also, on your Hispanic population, looks
3 like you were at 83.9, and now at 89? Got it?

4 A. Actually, we were at 81.9.

5 Q. Oh, okay, so quite a jump?

6 A. Yes.

7 Q. All right. And that's another thing you
8 keep track of, is how those subgroups are doing,
9 right?

10 A. Yes, ma'am.

11 Q. If we wanted to look at the graph to just
12 kind of get a feel for how things have progressed in
13 Hutchinson Middle School, we would see that, if the
14 top with the squares is the goal -- I'm sorry, if the
15 diamonds are the goal and Hutchinson is the squares,
16 that you all sort of the peaked in 2009, and took a
17 bit of a dip in 2010, but you've started to rise
18 again in 2011, is that fair?

19 A. Yes, ma'am.

20 Q. In 2012, if we graphed your reading, you
21 continue that rise, right?

22 A. Yes, ma'am.

23 Q. And that year that you dipped, that was the
24 year that you had the increase in enrollment?

25 A. Yes.

1 Q. Yeah. So let's just do the same little
2 exercise here with the math, and then I will let you
3 go. If we look at the diamonds as the expectations
4 and then the squares are your school's performance,
5 looks like you kind of peaked again in 2009, took a
6 little dive in 2010, started back up in 2011, and
7 then you had about a seven increase. So you would
8 continue up if we included 2012, is that fair?

9 A. Yes, ma'am, on our all group, yes.

10 Q. On your all group, sure.

11 MS. TIBBETS: I don't have anything
12 further.

13 REDIRECT EXAMINATION

14 BY MR. RUPE:

15 Q. Before you get away, look at page 4, so
16 we're on track, the years that the school attained
17 AYP, it says, 2007 you did, is that right?

18 A. Yes.

19 Q. Did not in '08?

20 A. Correct.

21 Q. Did in '09?

22 A. Yes.

23 Q. Did not in '10, did not in '11, and what
24 about this year?

25 A. Do not believe we will again this year, as

1 well.

2 Q. So that's three years in row that you have
3 not --

4 A. That would be correct.

5 Q. -- met AYP? It looks like some of the
6 groups have done all right, but overall, the school
7 has not made AYP at least three years in a row?

8 A. Because of different subgroups, yes, sir.

9 MR. RUPE: No other questions.

10 JUDGE THEIS: You don't have to
11 look too far for good football in Hutchinson, do
12 you?

13 THE WITNESS: Fortunately, no.

14 JUDGE THEIS: You can take a step
15 down. Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 MR. RUPE: You want to take your
19 break now?

20 JUDGE BURR: Can I say something.
21 I just want to make sure the Hutchinson people, if
22 they, for some unknown reason, would happen to
23 compare the amount of paper it took for a transcript
24 to get through their group as opposed to the original
25 group of Kansas City -- and I don't know why they

1 would do that -- but I don't want you to think that
2 we're giving you short shift.

3 It's just the first couple groups
4 got to explain the entire AYP and No Child Left
5 Behind, and you know, the whole deal. And you're
6 probably in a better spot, I just want you to know
7 that.

8 MR. RUPE: Thank you, Your Honor.

9 JUDGE THEIS: Who's the next
10 witness, for info?

11 MR. RUPE: Dr. Kiblinger. She's
12 the superintendent at Hutchinson.

13 JUDGE THEIS: About 20 minutes
14 then; 20 'til.

15 (A recess was taken.)

16 JUDGE THEIS: Be seated. Thank
17 you. What does it say now?

18 MR. RUPE: Our next witness is
19 Dr. Shelly Kiblinger.

20 SHELLY KIBLINGER

21 Called as a witness for the
22 Plaintiffs, was duly sworn by the reporter and
23 testified under oath as follows:

24 DIRECT EXAMINATION

25 BY MR. RUPE:

1 Q. Tell the Judges your name and the city in
2 which you live.

3 A. Shelly Kiblinger, and I live in Hutchinson,
4 Kansas.

5 Q. What is your title?

6 A. I am the Superintendent of Hutchinson Public
7 Schools, USD 308.

8 Q. How long have you been in that position?

9 A. Just almost one year to the day.

10 Q. Prior to that, work backwards and give us
11 your job history.

12 A. Prior to coming to Hutchinson as
13 Superintendent, from 2008 to 2011, I was the
14 Assistant Superintendent of Human Resources for
15 Garden City Public Schools. From 2004 until that
16 time, I was the Assistant Superintendent of Learning
17 Services for Garden City.

18 From 1999 to 2004, I was Assistant Principal
19 at Garden City High School in Garden City, and from
20 1989 until 1999, I taught language arts, debate,
21 drama and forensics at Fredonia High School in
22 Fredonia, Kansas.

23 Q. Give us your educational background.

24 A. In 1985, I graduated from Neodesha High
25 School --

1 THE COURT REPORTER: What high
2 school?

3 THE WITNESS: Neodesha.

4 Q. Can you spell that for her?

5 A. N-E-O-D-E-S-H-A.

6 JUDGE BURR: Judge Fleming knows
7 where that's at.

8 THE WITNESS: Good.

9 A. In 1987, I graduated from Independence
10 Community College. In 1989, I received my Bachelor
11 of Education with an emphasis in Language Arts from
12 Pittsburgh State University.

13 In 1997, I graduated from Pittsburgh State
14 University again with a Master's of Science in
15 Educational Leadership. In 2004, I graduated from
16 Kansas State University with a Doctorate of
17 Education, emphasis in administration. And then, in
18 2007, I attained my English as a Second Language
19 endorsement on my teaching certificate from Newman
20 University.

21 Q. Give us a little personal information about
22 yourself.

23 A. Well, I grew up on a farm, so if you need to
24 know anything about driving a tractor, a combine,
25 grain truck, or how to take care of pigs, I can fill

1 you in on that. Also, during the ten years that I
2 was teaching, I ran a successful trucking company in
3 my spare time.

4 Besides being superintendent, I serve on a
5 board of directors of the United Way. I'm also on
6 the Special Housing Projects Committee for City of
7 Hutchinson, and have recently been appointed to the
8 Housing Commission.

9 Q. Let's jump in and talk about the Hutchinson
10 School District. And we've heard little snippets of
11 this, but would you give us --

12 MR. RUPE: And let's hand her
13 Exhibit 117, Andrew.

14 Q. Would you give us a picture, if you would,
15 of the Hutchinson School District?

16 A. Well, I think Hutchinson Public School
17 District is very typical of most of the school
18 districts in Kansas in that, you know, it isn't
19 Southwest Kansas extreme with a lot of ESL students;
20 it isn't urban. It's -- you know, it does have more
21 of a small town feel, and yet, a lot of increasing
22 issues with poverty, with increasing diversity, with
23 an increasing number of ESL students that I think all
24 of the small towns across our state are dealing with.

25 We have 66 percent of our students are now

1 on free and reduced lunch; most of those free. That
2 is up about 20 percent from what it was about six or
3 seven years ago. Our number of ESL students, so
4 you've already heard, it's increased by 150 percent;
5 it's now up to 5.5 percent.

6 Our special ed population, those numbers
7 have also increased by 19 percent over the last six
8 years, so we have 15.25 percent special ed children.
9 We just have a lot of students who have special
10 needs.

11 In addition, one thing that is a little
12 unique about Hutchinson, we do have a prison in our
13 town, so we have a lot of children who live there
14 because they've come to be near one or both parents
15 who are incarcerated. And we also have a number of
16 students who are coming in and out of the foster care
17 system. And so they have additional mental health
18 needs and just special things going on in their life
19 that does make it more difficult for them to be
20 successful in school.

21 Q. And Plaintiffs' Exhibit 117 is the
22 demographics, the report card for Hutchinson with the
23 demographics by district compared to the State?

24 A. Yes, and we -- our demographics -- the
25 State, as far as diversity, has 7.4 percent students

1 who are African Americans. We as a district are 4.6
2 percent. Hispanics, we are a little above the State
3 average with 19.3 percent of our students being
4 Hispanic. And that is a sub group that is
5 increasing. A few years ago we didn't have nearly
6 that many Hispanic students.

7 And then other, the State has about 8.1
8 percent that are other, and that might be American
9 Indian, Asian, Pacific Islander, things like that.
10 We're a little below that number at 6.8. We are
11 above the State average of free and reduced lunch
12 kids with the State average just being under 50
13 percent, and as I said, this year we were 66 percent.

14 Q. Let me put on the Elmo Exhibit 290, Bates
15 number USD 308 014856. And is this a slide that
16 shows the increase in poverty numbers from '06/'07
17 through '10/'11?

18 A. Yes, at a glance, that appears to be
19 accurate information.

20 Q. And this is the number of students in one
21 column, the percent of free and reduced -- or the
22 number of free and reduced and the percent of the
23 free and reduced in the third column, under each
24 year, is that right?

25 A. Yes, and that is broken out by bolding, as

1 well.

2 Q. So these numbers obviously are trending
3 upward from '07, 54, approximately 55 percent;
4 57-eight percent; 60 percent; 63 percent; about 64.6
5 percent?

6 A. Yes, and if you do the math on that, it
7 works out to about a 20 percent increase in number of
8 free and reduced lunch students that we've had over
9 that time period.

10 Q. So in terms of Hutchinson -- I'm going to
11 hand you or show you Exhibit 107. With the free and
12 reduced lunch numbers increasing statewide and the
13 ELL numbers increasing statewide, you're kind of like
14 everybody else?

15 A. We are.

16 Q. Now, what does "district on improvement"
17 mean?

18 A. Being a district on improvement means that
19 we have not made adequate yearly progress for two
20 years, consecutively. It means that there are
21 certain sanctions that begin to come into play which
22 place restrictions on how we can use our Title I
23 money; meaning that that money cannot be really spent
24 directly in the classroom with staff working with
25 students, but it's diverted into other things such as

1 professional development, which certainly is a
2 worthwhile and important thing. But it is taking
3 money away from that direct one-on-one or small group
4 intervention that we might be able to do with the
5 Title money.

6 If we come on improvement for a third year
7 and become a district on corrective action, then
8 there are further restrictions on money that -- how
9 it can be used in the district. It begins to limit
10 things, like that you can't -- you cannot hire
11 classroom aides with Title I money. Something like
12 that would be devastating to our title one programs.
13 Fortunately, we haven't had that happen yet.

14 Q. And what's the status of the district?

15 A. Currently, we are a district on improvement.

16 Q. And how long have you been that way?

17 A. This was our first year on improvement, and
18 we're on improvement for math.

19 Q. And what does it look like -- we'll look at
20 these in a little while, but what does it look like
21 for this year?

22 A. This year, it looks like, once again, as a
23 district we will not make adequate progress in math.
24 Our free and reduced lunch group is not going to make
25 it. Our special ed actually went down, so there's no

1 way we can make safe harbor with that.

2 Our English as a second language subgroup
3 will not make it in math. Our African American
4 subgroup I do not believe is going to make it in
5 math. Also, this year we will not make AYP in
6 reading, either. We have had a reduction in our
7 scores in free and reduced, a slight reduction in
8 special education; doesn't look like we'll make it
9 with our second language learners. Our African
10 American scores dropped by 6 percent.

11 Q. You're looking at what has been called
12 preliminary data?

13 A. Yes, I am looking at preliminary data. Now,
14 we believe that our data is all cleaned up. The only
15 thing in question that makes our data still
16 preliminary in our mind, we have applied for a
17 special education waiver. You can only have
18 1 percent of your students who take the alternate
19 exam, and 2 percent limit of students who take the
20 KAMM, the Kansas Assessment of Modified Measures; and
21 anything over that you have to discount the scores of
22 those students like they're failing even if they
23 pass.

24 We have 16 students who passed beyond that
25 number, so we're over our limit. In the past, we

1 marked for identification.)

2 Q. And let me hand you what I just marked as 219
3 (sic). And is that the data you're looking at?

4 A. Yes.

5 Q. That you recited from?

6 A. Yes, that is the data that I'm looking at.

7 MR. RUPE: I'm going to put that into
8 evidence. Offering 219, which is the State assessment
9 data for Hutchinson.

10 MR. CHALMERS: If I could?

11 MR. ROBB: 219?

12 MR. RUPE: 219.

13 MR. CHALMERS: I'll handle it on cross.
14 I don't have any objection to 219.

15 MR. ROBB: We already have a 219.

16 MS. GARNER: 419, I'm sorry.

17 MR. RUPE: Sorry, 419.

18 JUDGE FLEMING: Instead of two.

19 MR. RUPE: We already have a 219.

20 JUDGE FLEMING: I'm confused. Is this
21 219 or 419?

22 MS. GARNER: 419.

23 JUDGE BURR: This is 419.

24 MR. CHALMERS: Do you have a copy for
25 me?

1 MR. RUPE: I can make a copy.

2 MS. GARNER: He can have the copy.

3 MR. RUPE: Do we have an extra
4 color copy?

5 MS. GARNER: No.

6 MR. RUPE: We'll give you the black
7 and white one.

8 MR. CHALMERS: Get it after, Alan.
9 Don't slow up for me.

10 MR. RUPE: Get a copy of that from
11 someone.

12 MS. GARNER: Just use it right now.

13 Q. (By Mr. Rupe) I just want to make sure I'm
14 on track with what the data looks like so when the
15 Judges look at this, they are also on track. This is
16 for Hutchinson, the exhibit number is 419, and it
17 shows reading, is that correct?

18 A. Yes, reading and math. The top chart is
19 reading. The bottom chart is math. The only thing
20 that I might point out is the column on the left is
21 '11/'12, and then the column next to it on the right
22 is '10/'11. And I wish the person who put this
23 together would have done the years in order from left
24 the right. To me, they're backward of the way I
25 would like to read that chart, but ...

1 Q. So let me just make sure that we've got it
2 here so we can see it all and interpret it. And I
3 won't go through all of it, but -- all right. The
4 district number is the top number?

5 A. Yes.

6 Q. And the current year is here?

7 A. Yes.

8 Q. Last year is here?

9 A. Correct.

10 Q. And the growth or lack of growth is
11 indicated in red. It's a negative --

12 A. Yes, in red. If we went backward, it is red
13 and indicated that it's a negative number. And if it
14 was positive growth, and we did have some positive
15 growth, and it's in black ink.

16 Q. Okay. And these letters HHS, does that mean
17 Hutchinson High School --

18 A. Hutchinson High School, Hutchinson Middle
19 School, that's Allen Magnet School, that's Avenue A,
20 Faris Elementary, Graber Elementary, Lincoln
21 Elementary, McCandless Elementary, Morgan Elementary,
22 and Wiley Elementary, so you see all of our buildings
23 for the district.

24 Q. Okay. And then it's disaggregated. All
25 students are the three blocks on the left, and then

1 it's disaggregated with free and reduced?

2 A. Yes. And then, the next section of three
3 columns is our special education subgroup. Now, on
4 that you'll see some of our buildings do not have an
5 end size of 30. So if there's not an end size of 30,
6 there is no data reported because we do not
7 disaggregate by that subgroup because there aren't 30
8 students there.

9 Then, the next group there, ELL, that's
10 English language learners. Then African American.
11 Then Hispanic, and White, and then multi-racial. And
12 I might note, multi-racial, you know, it's just kind
13 of based on how students tend to mark them
14 themselves. But a lot of our multi-racial students
15 would be -- like, they might have a Caucasian parent
16 and an African American parent, or they might have a
17 Caucasian parent and an African American parent.

18 Q. And the top is for -- is the top reading?

19 A. Yes, the top is reading.

20 Q. And then we have the same numbers for
21 math --

22 A. Yes.

23 Q. -- underneath. Okay?

24 A. And the color coding, I might point out --
25 anything that you see that's kind of the peach color,

1 that means we do not believe we will make AYP in that
2 area. If it's the very light green, that means we'll
3 make AYP with safe harbor. Green means we'll make it
4 with confidence interval. And only the very dark
5 green would mean that we actually met the AYP target.

6 Q. So the legend is at the bottom?

7 A. Yes, the legend is at the bottom.

8 Q. That target, make AYP, make AYP with safe
9 harbor, and did not make AYP. Okay.

10 Then on the next page, what is that?

11 A. The next page? I'm afraid I don't know what
12 the next page is that you're referring to. Oh,
13 this. Okay, so it's this -- okay.

14 The next page that you have there is the
15 data broken down a little differently. It's each
16 building, but it goes by year, and so it charts the
17 data from the preliminary data this year, '11/'12,
18 going down the page '10/'11, '09/'10, '08/'09,
19 2007/2008.

20 So you can see, really, a visual
21 representation, particularly with the color coding,
22 as you look at that. You can see anywhere there's a
23 peach number as you progress forward in time, you can
24 see how we fail to make AYP in more and more of the
25 subgroups as you move to the present year.

1 Q. Okay. But the first page is all the data,
2 and the other pages are the same data arrayed another
3 way?

4 A. Yes, it's looked at a little differently. I
5 should say, on this page you just had up, Alan, those
6 show the raw numbers, so you'll see, like, 67
7 students out of 80. So you can actually see the
8 number of students proficient divided by the number
9 of students taking the assessment, whereas on page
10 where I actually -- you have the numbers that show
11 the percentage --

12 Q. I see what you're saying.

13 A. -- of growth, it's done by percentage.

14 Q. All right. I want you to describe for the
15 Judges what you consider to be a suitable education.

16 A. I think that a suitable education has to be
17 one that prepares children for a meaningful future in
18 our state and our country as adults. So it has to be
19 something that equips them with the skills to read
20 technical material with a certain level of
21 proficiency. They've got to be able to read
22 instructions and understand those. And it's more
23 than just fictional reading, it's technical reading.

24 They have to be able to do mathematical
25 computations, you know, to be able to manage a

1 budget. They have to be able to do calculations that
2 are required of them at work. And most importantly,
3 to be able to be successful as an adult, they have to
4 be college and career ready.

5 So that's a combination of not only the math
6 skills and the reading skills that we focus on in
7 AYP, they have to be able to speak clearly and
8 proficiently, they have to be able to write with
9 proficiency, and they have to have critical thinking
10 skills, and they have to be able to solve non-routine
11 problems when they get out in the real world. And
12 unfortunately, we're seeing not all of our kids can
13 do that.

14 Q. In terms of the preliminary assessment data
15 that we just looked at, have you had a chance to
16 analyze that data in terms of providing that suitable
17 education?

18 A. Well, as I, you know, look at -- look at the
19 data that we have, I certainly see areas where we are
20 failing. First of all, you know, a lot of our
21 scores -- you know, certainly we have buildings that
22 are in the upper 80s, and it would be really easy to
23 say, hey, look we have schools that are 88 percent,
24 87 percent proficient, and say, well, we're doing a
25 great job.

1 But if I go to McDonald's and 10 percent of
2 the time that I go I get soggy fries and a cold Big
3 Mac, I don't think that's acceptable. I won't go
4 back. And you know what? Kids are a lot more
5 important than my satisfaction at a fast food
6 restaurant.

7 So no, we're not doing very well, because at
8 least 10 percent of our kids are not prepared just in
9 the basics of reading and math, let alone those other
10 important areas of problem solving and being able to
11 speak proficiency and being able to write.

12 And as I look at -- achievement gap rates
13 are really quite telling, as well. As you look at
14 our reading scores, for example -- you know, I've
15 gone through and looked at how we're doing on closing
16 the achievement gap. You know, back in '07/'08, for
17 example, when I look at, like, our reading scores,
18 yes, we've made progress, but in, you know, '07/'08,
19 our gap was starting to close. And as the Montoy
20 money came in, the gap was 8 percentage points, then
21 it was 6, then it was 4. Now it's back up to 5.

22 The African American gap in 2007 and '08, it
23 was a 12-percentage-point gap. And we started to get
24 the Montoy money and became 7, and then it became 6.
25 And then in 2010, we started to lose ground and it

1 became a 9 percent gap. And now it's 16-percent-age-
2 point gap, so it's more than what it was just a few
3 years ago.

4 That same thing is happening in special
5 education. When I look over at our math scores,
6 particularly our African Americans, we are losing the
7 battle. We were making such good gains just a few
8 years ago. And now we've back slid even farther
9 behind where we were in 2007 and '08 as far as
10 closing that achievement gap. We know we can close
11 it. We were gaining on it just a few years ago and
12 now I see it slipping away. And they aren't just
13 numbers; they're kids' lives.

14 I've looked at our 3rd grade scores because
15 I thought that was particularly telling. And Jeanne
16 Stroh, she talked today about and Rod Rathbun, our
17 elementary principal, talked about the importance of
18 early childhood education and getting a good start.
19 And there's so much research that says, if we can
20 have kids on grade level when they leave 2nd grade,
21 it's more than half the battle. Otherwise, we spend
22 the rest of their education careers playing catch-
23 up.

24 And so I thought to myself, we have kids now
25 that have been several years of not having adequate

1 funds to give them a suitable education; what's the
2 impact of that? So I went back and I looked at our
3 3rd grade scores specifically, because I wanted to
4 see what's the impact been on the 3rd graders because
5 most of their lives in school have been during these
6 rough economic times. And I found some really
7 disturbing things.

8 Back in 2007, in reading, 85 percent of all
9 of our students were proficient. That's back slid
10 now to 82 percent. The free and reduced gap was only
11 4 percentage points back in '06/'07, but now it's
12 9 percentage points. The African American subgroup
13 gap was 10 percentage points in '06/'07. Today it's
14 24 percentage points.

15 The same thing is happening in special ed.
16 The same thing is happening when you look -- look at
17 math, the African American group. We actually had
18 closed the gap a few years ago. We didn't have much
19 of a gap in '06/'07. Today that gap has grown again
20 to 17 percentage points. Special ed, the gap is
21 larger now than it was back in '06/'07.

22 And I also thought, well, let's look at
23 exemplary. How many kids were exemplary back then
24 compared to today? And we're losing ground with
25 those students. In 3rd grade, the number of students

1 scoring exemplary in 2006/2007 for all students was
2 31 percent of our kids were exemplary. Today it's
3 only 22 percent of our 3rd graders. The gap in
4 exemplary kids for African American compared to White
5 kids it was 13 percentage points in '06/'07, which
6 certainly isn't acceptable, but today it's 26
7 percentage points.

8 And the same thing is true in math. Math
9 we've held a little more steady with all kids, but
10 the gap between African Americans -- we were closing
11 that gap. In '06/'07, it was only a 9-percent-
12 percentage point gap. We were closing that. Then we
13 started going backwards in '08/'09, and today it's a
14 33-percentage-point gap. So we're not only failing
15 to get kids proficient, we're letting our best and
16 our brightest fall behind, as well.

17 Q. Let me show you what is marked 233, and
18 that's just tracking the base state aid per pupil
19 through the years of Montoy -- what you call the
20 Montoy money and then into the present, where it's
21 declined until last year where there was a little bit
22 of an increase.

23 Thank you. I've spilled some water in this
24 courtroom from time to time.

25 In terms of what you just described, do you

1 see any connection between the amount of funding your
2 district receives?

3 A. I really do because about the middle line
4 here is where that -- that line reverses. And so
5 there's a little bit of lag time. It's like the car
6 running out of gas. You know, the professional
7 development carries us for a year or two until, you
8 know, the impacts of that start to wear off. But it
9 does seem to follow a correlation between when we
10 begin to not be able to provide adequate services and
11 when we see the scores begin to go down with the 3rd
12 graders and the achievement gap begin to widen again.

13 Q. We've heard some testimony about the cuts in
14 the district, and I'd like you to just describe
15 generally, for the Judges, what the diminished
16 resources have caused by way of cuts or reductions.

17 A. As you said, they've already heard a lot of
18 that. We have tried to keep the cuts as far away
19 from the classroom as possible, so many of the cuts
20 have been in the area of, you know, projects that
21 would have been done to maintain facilities. So we
22 have deferred maintenance. We've cut custodial
23 staff.

24 We had a bond project, so we've really
25 increased the square footage in the district, but

1 instead of adding custodial staff, as you might have
2 expected, we actually reduced custodial staff.

3 We have cut administration at the central
4 office level. We have cut -- we had cut technology
5 staff to the point that teachers had things like
6 projector bulbs not working or computer that wouldn't
7 work. And it was taking three to four weeks to get
8 that technology so that it would work again because
9 we just didn't have manpower to go out and get those
10 resources working.

11 You know, so we've made those kinds of
12 cuts. So even though they haven't been teachers in
13 the classroom, the impact is being felt by the
14 classroom teachers and the students. We have reduced
15 teaching staff. You know, you've heard, I think, all
16 of our principals talk about how that's impacted the
17 high school, how it's impacted elementary.

18 Class sizes have grown. We would like to
19 have added -- we needed to add kindergarten teachers
20 this year because of that increased enrollment that
21 you heard of, but we were not able to add
22 kindergarten teachers, and so the class size simply
23 has gone up, even though we have increased student
24 numbers.

25 And when you look at our enrollment, we've

1 added over 100 students in the district. When you
2 look at our weightings over the last number of
3 years -- and the weightings give you an indication of
4 what the costs are associated with the level of
5 at-risk and needs that our kids have -- that number
6 has gone up a thousand, and yet the resources have
7 been relatively stable.

8 So we've just -- you know, even though we've
9 got some extra money because the weightings have gone
10 up, you know, we're still backsliding, so we're not
11 making any progress, and the needs of kids just --
12 just keep growing. So bottom line, we're not being
13 able to provide the professional development that we
14 need to.

15 We've had to cut instructional coaches. And
16 in my opinion, the one thing that I have seen that
17 has made the biggest impact ever in my career on
18 improving the effectiveness of the teacher in the
19 classroom has been an instructional coach in each
20 building, preferably one in math and one in reading,
21 who can provide ongoing, embedded professional
22 development every week to that teacher. We're having
23 to cut those people. We need more of them. We don't
24 have the funding to add them. And so that's really
25 hampering our ability to have an effective teacher in

1 every classroom.

2 Q. Is the amount of resources that you're
3 receiving from the State sufficient to provide a
4 suitable education to all your kids?

5 A. No, it is not.

6 Q. I want to briefly touch on graduation rate
7 for a second. In 117, graduation rate in 2010 for
8 the district was 80 percent, 80.6; state average
9 80.7; and in five-year cohort rate it was 68.7; and
10 state was 75.2.

11 A. Yes.

12 Q. And the disaggregated groups, free and
13 reduced lunch graduated 72.9; students with
14 disabilities, 77.6; ELL students, 58.3; African
15 Americans, 73.1; Hispanics, 82 percent; White, 80;
16 Asian 100 percent; American Indian, 66.7; and multi-
17 racial, 90.

18 A. Yes.

19 Q. And that's the district number and the state
20 number statewide is on the right, is that correct?

21 A. Yes, that's correct.

22 Q. Graduation rates tell you anything about
23 providing a suitable education to all your kids?

24 A. Well, as I said, we've got to have students
25 who are ready for college and career when they exit

1 high school. There really are not any kinds of jobs
2 available for a student without a high school
3 diploma, when he or she exits high school, that will
4 pay any kind of a living wage. So you know, when we
5 have one out of five kids, basically, who is not
6 graduating with a high school diploma, that's
7 completely unacceptable. I mean, the long term costs
8 to society make me shudder when I think about them.
9 And not only -- you know, those kids; we have failed
10 those kids.

11 Q. Let's talk about a few things that have come
12 up today in the courtroom I just want to ask you
13 about. The teachers receive raises for '12/'13 in
14 the amount of 3.9 percent?

15 A. I'm not sure that's quite the right number.
16 I thought it was closer to 3.6, but we were finally
17 able to provide a raise this year.

18 Q. And in terms of raises for the teachers,
19 when was the last time before that they received one?

20 A. For the prior three years, the teachers had
21 received no raises. They had received no step
22 increase. In the last four years, this will be the
23 only year that they have been able to have any sort
24 of an increase to their paycheck. In the meantime,
25 you know, consumer price index -- you know, inflation

1 has gone up. So their ability to make a living and
2 provide for their basic needs and food and shelter
3 has been deteriorated each year.

4 Q. Does that indicate that you have sufficient
5 funds then, if you're able to give a 3.6 percent
6 raise?

7 A. No, I would have much rather used that money
8 to meet the needs of students, but I also realize
9 that if I cannot retain quality staff and attract
10 them to our district, if I can't have effective
11 teachers in the classroom, I can't educate kids,
12 either. So it -- we just had -- we just felt like we
13 had to give a raise. I mean, four years with no --
14 no kind of raise was just too long.

15 Q. In terms of the homeless funds that are
16 available, do your homeless funds come from the
17 State?

18 A. I believe those are federal homeless funds
19 that are available. It's Title -- it's a Title I
20 part ...

21 Q. And --

22 A. It's not D, but it's --

23 Q. What's the amount of money the district gets
24 from federal funds?

25 A. We get \$5,000 for the entire district for

1 homeless, and that doesn't go very far.

2 Q. In terms of moneys to handle the needs of
3 those homeless kids and the cost of educating them,
4 does that money, that \$5,000, account for all you
5 need?

6 A. Certainly not.

7 Q. Now, explain buildings Avenue A and Lincoln
8 in terms of the grants that were mentioned today.

9 A. Certainly. As you heard mentioned, Avenue A
10 had been a school on improvement. We were very
11 excited this year, they did get off of improvement.
12 So for the '11/'12 year, they were not on
13 improvement. Lincoln is now on corrective action, so
14 the '11/'12 school year was the third year that it
15 had not made adequate yearly progress.

16 I guess the bright side of not making
17 adequate yearly progress was that they were eligible
18 for school improvement grant moneys, which is Title
19 moneys; flows from the federal government to the
20 State, and then the State Department of Education
21 makes school improvement grants available.

22 So each of those buildings, while it was on
23 improvement, was able to pick up one of those
24 \$100,000 grants for that school year, which needless
25 to say made a huge amount of difference with what we

1 could do in terms of providing professional
2 development, in terms of providing after school
3 support, summer school programs, where we've had to
4 cut that back in other places.

5 Avenue A also was able to get a Technology
6 Rich Classroom grant, and had that infusion of
7 technology resources and professional development for
8 all of the teachers in the building. And so with
9 those additional funds and what we were able to do in
10 terms of support for the teachers through staff
11 development and additional support services for the
12 kids and resources, you saw some great gains.

13 Q. The school improvement grants are from the
14 federal government?

15 A. Yes.

16 Q. With the grants that you receive in from the
17 federal government for those schools, did you notice
18 improvement?

19 A. Yes, we did.

20 Q. And then, talk to us about -- it looks like
21 as we look at some of the scores today, the schools
22 that need improvement sometimes improve when they're
23 not using federal money. Explain how that works in
24 your district?

25 A. Well, to me, it's -- I guess it's kind of

1 like if you're a fireman fighting a fire and you
2 don't have enough water; you try to spray the water
3 where you think it will do the most good. So that's
4 what we've been doing with our money.

5 So when we don't have enough resources to go
6 around, but we see that a school -- if they don't
7 make adequate yearly progress two years in a row, we
8 know they're on improvement. Then that begins to tie
9 our hands on what we can do with funds we do have for
10 them; we really divert resources away from the other
11 schools into that school to try to help them.

12 And it isn't always in terms of money that
13 you see show up in that school's budget, but it might
14 be in terms of central office support staff. We're
15 going to make sure that it's a priority for the tech
16 people to make sure the technology is working in that
17 building; we're going to make sure it's a priority
18 for the director of elementary education -- that she
19 is making those buildings her priority, that she's
20 there to give them extra support; that I am there as
21 superintendent to be giving them extra support and
22 coaching the principal, and those sorts of the
23 things. So it's not always just money that you see
24 showing up in line items, but it's all the manpower
25 that we have available -- that we will really focus

1 our attention on those hot spots for that year to try
2 to get them over the hump.

3 So I think that explains why you see some
4 scores go up and down and do the wave, because, you
5 know, we spray the fire here, and then another fire
6 pops up because was took the resources away from that
7 building. And so the next year, okay, we can't give
8 this support to this school, now we have to focus our
9 attention over here because there's not enough
10 resources to go around.

11 Q. Briefly explain the SES tutoring situation
12 that came up with Ms. Davis, when she was on the
13 stand.

14 A. When you have a school that three
15 consecutive years in a row does not make adequate
16 yearly progress and they are a Title I school, then
17 you have to offer supplemental educational services.
18 It means that we have to set aside, I believe it's 20
19 percent of the Title I budget for the entire
20 district, not just that school; but for the entire
21 district, we have to set that aside. We can't spend
22 it for the year, so it really ties our hands.

23 And we have to make services available that
24 an outside agency will come in and provide, even
25 though, in my personal experience and opinion, that

1 is typically not as quality a service as what the
2 school is providing, but it's an outside provider
3 that would come in and offer that.

4 Q. Is this additional funding?

5 A. No, it is not additional funding. It is the
6 money that we already get; them saying, oops, 20
7 percent of that now you can't spend. You have to set
8 that aside, and you can't touch that until the end of
9 the year. And if you haven't spent it, then it can
10 carry over. You can spend it at the end of the year
11 for something.

12 But that's really taking aides and Title I
13 teachers out of the classroom. So we are not excited
14 when we have to do that because we may have been
15 providing after-school services with that money.

16 We might be paying a teacher \$30 an hour to
17 work with six kids after school. Suddenly, when
18 that's taken away from us, we can't offer that
19 program anymore, it goes to an outside provider. Now
20 we pay \$30 per kid to that outside provider for them
21 to offer the same tutor. And the really ironic thing
22 is, they may hire our teacher to do it. Doesn't make
23 sense, but that's how it works.

24 MR. RUPE: Thanks for that
25 explanation. That's all I have.

1 CROSS-EXAMINATION

2 BY MR. CHALMERS:

3 Q. You became the Superintendent and joined
4 Hutchinson, July 1, 2011, is that right?

5 A. That's correct.

6 Q. Sadly, I guess, since you've been there --
7 and I'm not saying it's your fault -- the test scores
8 in the school has not performed at the level it was
9 performing before?

10 A. Correct.

11 Q. At least that's what your preliminary data
12 shows?

13 A. That is what our preliminary data shows --

14 Q. What you have as Exhibit 419, or what's been
15 marked as Exhibit 419, looks like you've got more
16 than that, because you've been talking about 3rd
17 grade scores and that sort of stuff?18 A. That's just some -- some numbers that I -- I
19 ran myself.

20 Q. Ran it from what?

21 A. From the preliminary reports that you can
22 get off of the State web page. We can see how a
23 student scored the minute they hit the submit button
24 on the computerized assessments.

25 Q. You can see that; it's not available to the

1 general public?

2 A. No, it is not yet available to the general
3 public.

4 Q. In fact, none of these records are available to
5 the general public until they're in final form, per the
6 reason that it's not a final document?

7 A. That's true. You could look back and see much
8 of the trend, though, that I'm talking about, just going
9 back to the prior year and not including '11/'12.

10 Q. If you look at the data that is a matter of a
11 public record, what it would show is the year before you
12 became the superintendent at Hutchinson, there was a
13 substantial increase percentage-wise in students'
14 outputs, meaning test scores, aggregated, isn't that
15 right?

16 A. I'm studying your chart here trying to
17 understand it.

18 Q. That's all right.

19 A. What are the percentages over there?

20 MR. RUPE: Can we read the exhibit
21 number, too?

22 MR. CHALMERS: Sure. It's Exhibit
23 1215-A.

24 (Defendant's Exhibit Number 1215-A was
25 marked for identification.)

1 Q. And I don't want to get you hung up on my
2 exhibit. But you remember that in 2011 -- '10/'11,
3 that there was a substantial increase in test scores
4 in your district both in the individuals that were
5 all students, as well as in the category of kids in
6 poverty, over the previous year, which would have
7 been '09/'10?

8 A. Is that data that you have on there --
9 that's all students, all grades, correct?

10 Q. This would be all students, all grades, and
11 I'd have to double check. I think there's a separate
12 one for poverty, so this would be all students, all
13 grades.

14 A. Some of what I was speaking of was
15 specifically 3rd grade, because I think the point
16 that needs to be made is you have to look at what the
17 impact of the resources has been on our youngest
18 kids. And they've been in this condition of lack of
19 resources their whole career --

20 Q. I appreciate that explanation, but let me
21 see if we can't speed this along. This is not a
22 debate. I know you have that background. And it's
23 your opportunity to answer my question --

24 A. Sure.

25 Q. -- and I think that's what we want to get

1 to --

2 A. That's what I want to do. Sorry.

3 Q. In that context, can we agree that, at least
4 as to all students, the year of '10/'11 was a jump up
5 from '09/'10?

6 A. Yes. In all students we have been making
7 gains.

8 Q. Now, when you say Exhibit 419, the one that
9 your lawyer brought to court today and exchanged and
10 made an exhibit, it doesn't have, unfortunately, the
11 3rd grade data on it, does it?

12 A. That one does not, no.

13 Q. The only 3rd grade data that has been put
14 into the record that I'm aware of is for preliminary
15 results is in Exhibits 1229 and 1230, and it's 3rd
16 grade data applying to a couple different schools in
17 your district. And I thought I'd be able to find it
18 more readily -- I think I have it here. That would
19 be Morgan Elementary, and that's one of the schools
20 that's been talked about, and Avenue A, that's
21 another school that's been talked about?

22 A. Mm-hmm.

23 Q. When I've looked at it, it appears that 3rd
24 grade in Morgan Elementary went up with the all kids
25 scores of 89.3, from the previous year, 87. Is that

1 what your data shows?

2 A. I didn't break -- I just looked at mine by
3 district. I didn't break mine out by school but
4 if ...

5 Q. That's the problem, I don't have that data
6 either to analyze. But let's see if we can talk
7 about it in another framework. In your district
8 recently, there has been an increase in number of
9 students, as well as an increase in students with
10 poverty, is what that I think your previous testimony
11 has been?

12 A. Yes, that's correct.

13 Q. And these students are not always entering
14 at pre-K. They enter during the course of -- well,
15 they can enter in any grade level, can't they?

16 A. That's true of any district, yes, students
17 can enroll at any time --

18 Q. The progression you're seeing, I think you
19 said, you see in kids moving in -- particularly some
20 of which are affiliated with the prison systems up
21 there -- you do have a substantial number of these
22 kids that are in these at-risk categories that are
23 moving in, not starting at pre-K, but moving to your
24 district, is that right?

25 A. Yes, we do have students that enter at

1 various grade levels during the year --

2 Q. So if you were going to make an analysis of,
3 let's look at how we're doing in 3rd grade, you'd
4 have to do something to try to sort out what kids
5 were with you from the beginning as opposed to what
6 kids may have come from another district, is that
7 right? And your data doesn't show that.

8 A. I did not break it down that way.

9 Q. Let me talk to you about a few other things,
10 changing gears with you for a second before we talk a
11 little bit about the data. I think you indicated
12 exactly what I was going to ask you in that your
13 district, through you, controls how the money that
14 you receive is spent, subject to the money that has
15 strings attached to it, is that right?

16 A. It is a process that involves more than just
17 me, but certainly I play a large role in it.

18 Q. You talk about essentially acting like a
19 fireman putting out fires. You make a decision as to
20 allocate what resources to what schools to what
21 problems based on what you have available?

22 A. Yes, the administrative team makes those
23 decisions.

24 Q. There are some things that you're restricted
25 on, and I think you've indicated that as to federal

1 funds, by way of illustration, there's some strings
2 attached to them in terms of how they can be spent?

3 A. Yes.

4 Q. The money that comes in weightings, there's
5 some strings as to how that can be spent?

6 A. That's correct.

7 Q. At risk of taking too much of a detour here,
8 in response to one of Mr. Rupe's questions, you
9 talked about the funds that are provided to a school
10 that is -- is it on improvement that you get special
11 grants?

12 A. When a school is on improvement, then you
13 can apply for a school improvement grant.

14 Q. I think one of the things you indicated in
15 that context was that that has an effect to have a
16 school on improvement, that a certain percentage of
17 the federal moneys have to be held back, I think you
18 said 20 percent district-wide, is that correct?

19 A. That's correct.

20 Q. Now, what I was curious about, because I
21 don't know that you answered it fully, at the end of
22 the year, if that 20 percent is not spent down, if
23 the kids decide not to use the tutors as they do in
24 this instance, the money doesn't go away. What
25 happens to it?

1 A. You can only carry over, in Title I, 15
2 percent of those funds. So you can -- once you get
3 to the point in the year that you see that the
4 services aren't going to be utilized, you can begin
5 to spend some of that money.

6 Typically, then it ends up going into things
7 like resources. You might buy additional library
8 books or intervention materials to be used for
9 reading and math. And then, as I said, you can carry
10 over 15 percent of that money into the next year.
11 But that can't accumulate. It's 15 percent at the
12 end of every year, so it's kind of a rolling balance
13 that goes forward.

14 Q. So you roll over the 15 percent, you spent
15 some of it, and then next year you've got to set
16 aside some more --

17 A. Mm-hmm,

18 Q. -- assuming you're still improvement, is
19 that right?

20 A. Mm-hmm.

21 Q. How long has Hutchinson been on improvement?

22 A. Hutchinson itself has only been on
23 improvement for one year, but one school on
24 improvement triggers this -- these set-asides of 10
25 percent for staff development, 20 percent for SES.

1 Q. As a practical matter back before the Montoy
2 money, your district had at least one school on
3 improvement, is that correct? Maybe I'm wrong on
4 that.

5 A. I'm not sure.

6 Q. What was the first time you had a school on
7 improvement, that you recall?

8 A. The first ones that I knew of being on
9 improvement were Avenue A and Lincoln. But as I
10 said, I've only been here one year, so ...

11 Q. To the best of your knowledge, they were
12 first on improvement when?

13 A. I believe that would have been -- give me a
14 second here. I think that would have been, like, the
15 '08/'09 school year -- would have been their first
16 year on improvement.

17 Q. So as a practical matter, when we talk about
18 the 20 percent set-aside, that's been around at least
19 since '09/'10, giving a year, and it's been rolling
20 over every year?

21 A. No, the first year that we had to do the 20
22 percent set-aside for SES was last year because you
23 only have to do that for SES when you have been on
24 improvement -- you have three consecutive years that
25 you haven't -- it's not consecutive

1 Once you're on improvement, which is two
2 years of not making AYP, then, when you have a third
3 year of not making AYP, then you have the 20 percent
4 set aside for SES services. The first year that
5 we've ever had that in the district was last -- last
6 year -- well, still the end of this current year, it
7 was '11/'12, and that was for Lincoln Elementary.

8 Q. And I apologize for this detour, but one
9 other issue on that, I guess, then is moving into
10 this next year, which is the one I guess brings us
11 here in this courtroom. The money's already been set
12 aside, the tutoring wasn't done, and now you're able
13 to spend the money, with replenishing only a portion
14 of it next year, that's in the set aside money,
15 right?

16 A. We will need to carry forward 15 percent.
17 Reason being, we're being told that if Congress at
18 the federal level can't balance the budget, we may be
19 facing 8 percent mid-year cuts to all federal
20 programs next year, so it's very important that we
21 carry the 15 percent over so we aren't --

22 Q. That's a discretionary thing as opposed to
23 a --

24 A. -- we aren't spending all that.

25 Q. -- decision made for the set-aside we're

1 talking about, right?

2 A. I guess you can say that would be
3 discretionary.

4 Q. We probably detoured on that enough. There
5 are also weighted moneys, and we've talked about
6 that. I was a little confused in your testimony, you
7 can clear it up really quickly, I'm sure. At one
8 point I thought I heard you say you were limited in
9 amount of federal money you get, and that if another
10 school goes on improvement, there's not more
11 resources available. But then I thought maybe you
12 were talking about how you get federal grants if a
13 school goes on improvement.

14 A. I said --

15 Q. Could you reconcile that?

16 A. I think you may have misunderstood. The
17 first year a school does not make AYP, they're not on
18 improvement yet, they're just on watch. So they're
19 not eligible for any school on improvement grant.
20 They become eligible for that when they're actually
21 on improvement.

22 We don't want a school to go on
23 improvement. So that next year, we have to divert
24 just our normal general fund resources to help that
25 school so that they do not become on improvement.

1 If they do then become on improvement,
2 that's when the infusion of money would come, which
3 is why I said you'll see, like, one year, a school
4 will dip; the next year their scores will go up. You
5 may see the scores come down again the next year.
6 They never get on improvement, but that's because
7 we're trying to juggle the resources around to
8 prevent schools from getting on improvement.

9 Q. I know that's your impression. But what I
10 guess what we need to clear up, so there's no
11 uncertainty on anyone's part other than mine, and
12 that is, once a school is on improvement, after we're
13 past that one-year watch period, then there's federal
14 money, grant money that's available to that school?

15 A. Mm-hmm. Until the money is successful in
16 getting them off improvement, and then the money goes
17 away.

18 Q. That's fair; by then, you have taught your
19 teachers better how to teach those kids. That's the
20 theory?

21 A. The professional development part of it, you
22 do get more of a lasting impact of that. The money
23 that's being used to provide extra support that year,
24 you know, when that money is gone, so is that extra
25 support.

1 Q. And you've restructured how the schools
2 operated with the help of outside and external
3 consultants? That's part of when you're on
4 improvement someone takes a look and tells you how
5 you can improve.

6 A. Yeah, that is part of it.

7 Q. Worst case scenario, if it doesn't improve
8 then, it doesn't improve, then you have kind of a
9 re-shifting of the entire staff?

10 A. Correct.

11 Q. We probably beat that horse dead. Let me
12 talk to you about something else. The money, I think
13 you'll agree with me, that is in the general fund and
14 the LOB funds, your district controls how that's
15 allocated to the individual schools and what their
16 budgets will be?

17 A. Yes.

18 Q. Your district controls how much LOB it
19 chooses to levy, is that correct?

20 A. Yes, that is accomplished by the school
21 board.

22 Q. And how much capital outlay it chooses,
23 too?

24 A. Correct, also established by the school
25 board.

1 Q. And whether it wishes to transfer general
2 funds or LOB funds into capital outlay funds?

3 A. Yes.

4 Q. Your district has contacts with the
5 community and parents for inputs on these subjects,
6 that is school budgeting, the taxes that would be
7 imposed, all as part of the budgeting process that
8 goes through annually, is that right?

9 A. That's correct.

10 Q. You made one of your missions to be very
11 transparent on that and to bring it into the input of
12 the community?

13 A. Yes, this was our first year, really, to
14 have a community process. We had a committee of 32
15 people that sat on it. It was made up of community
16 members, as well as some staff members,
17 administrative staff, certified staff, and classified
18 staff. And we really wanted the role of those
19 community people to be reaching out to their peers
20 and bringing that input back to the committee. We
21 also had a hotline number and an online way for the
22 community at large to provide input into our
23 budgeting process.

24 And in that connection, you explained to
25 community members and those people that you reached

1 out to, some of the challenges -- well, all of
2 challenges that you discussed with the Panel here
3 this afternoon?

4 A. Yes, we tried to.

5 Q. Also, your district has control on how it
6 spends money out of its contingency fund, whether to
7 hold on to it or whether to spend it for an
8 educational purpose in a particular year, is that
9 correct?

10 A. That is correct.

11 Q. Now, one of the documents that I've seen
12 that was provided to community members as part of, I
13 think, this outreach program talked about some
14 positive things about your district. I think it's
15 fair to talk about those, so --

16 A. Sure.

17 Q. -- let's visit about those. Your district
18 implemented the national baccalaureate diploma
19 program, the IP middle year program, that's available
20 apparently to any kid that wants to be involved in
21 it if they make the effort, is that right?

22 A. Yes, they did implement that. I believe the
23 middle year program has been discontinued, though.

24 Q. Your district has advanced courses in math
25 from 6th grade through calculus, is that correct?

1 A. That is correct.

2 Q. They have honors and advanced placement
3 classes, is that correct?

4 A. We no longer have advanced placement
5 classes. We discontinued those because we couldn't
6 afford the IB program and the advanced placement
7 program.

8 Q. So now those classes are obtained through
9 the partnership you have with your community college?

10 A. Yes.

11 Q. You have instructional support, kindergarten
12 through 12th grade, is that correct?

13 A. Yes.

14 Q. And talking about instructional support for
15 just a second, I think, if I wrote it down in my
16 notes accurately, you said one of the most effective
17 things that you've seen is instructional coaches with
18 helping improve achievement, is that right?

19 A. That's correct.

20 Q. There's an exhibit that's been marked
21 Exhibit 288 that outlines the cuts of programs and
22 staff. And if I were to look at that document that's
23 been prepared by your office, how would an
24 instructional coach be described in the document?

25 A. Give me a moment to look through here. I

1 would guess it would have been called an
2 instructional coach or possibly a helping teacher.

3 Q. Page 3 is where I find in reference --
4 paragraph C, reference to reduce or defer
5 instructional and instructional support salary
6 expense. And I'm trying to understand, when we look
7 back at this, which of these, if any, are the
8 instructional coaches that you say we had to let go?

9 A. I don't know if some of that would just have
10 been listed as just elementary teachers or secondary
11 teachers, because they were considered teaching
12 positions. Some of what they did was assist with
13 technology integration and things of that nature.

14 Q. Well, is it fair at least to say that in
15 Exhibit 288, in the section that appears to apply to
16 instructional and instructional support, it doesn't
17 call out specifically instructional coaches?

18 A. I see.

19 Q. Do you? Great.

20 A. Ha.

21 Q. Where is it?

22 A. Test teacher. That's --

23 Q. Reduce a test teacher?

24 A. I believe that's it.

25 Q. One?

1 A. I think -- I'm looking at it. I think
2 there's more. Hold on.

3 MR. RUPE: There's another test --
4 here's, reduce two test teachers.

5 THE WITNESS: I was going to say, I
6 know there's another one on there.

7 MR. RUPE: So there's three.

8 MR. CHALMERS: Three.

9 THE WITNESS: So I believe that
10 would be right.

11 Q. (By Mr. Chalmers) One in 2011 and one in
12 '09/'10?

13 A. Mm-hmm.

14 Q. Let me talk to you about the needs analysis
15 for the Hutchinson School District, Exhibit 1147.
16 We'll talk about that. Before you came to the
17 district, Hutchinson had voluntarily agreed to be
18 part of the Kansas Learning Network, is that correct?

19 A. Yes.

20 Q. I guess maybe after it was put on
21 improvement, it would automatically have to be a
22 member --

23 A. Yes.

24 Q. -- but it is a member?

25 A. It is a member.

1 Q. And what that did is that resulted in some
2 folks coming in and looking at your school district
3 and trying to give you some outside information, is
4 that correct?

5 A. Correct.

6 Q. I want to talk to you in part about Exhibit
7 1147. I don't think I want to go through all of it,
8 but it does show that the visit took place, when they
9 came in and did their site inspections in October of
10 2010 -- so that would have been shortly before you
11 got to the district?

12 A. That's correct.

13 Q. They pointed out at page 4, that at that
14 time the district had 25 standards of excellent
15 certificates from the '09/'10 school year, 14 in
16 reading, 11 in math; and only two district schools
17 deemed on improvement, according to the No Child Left
18 Behind and that was the Lincoln and Avenue Elementary
19 School, which then both made AYP in '09/'10 according
20 to this document, so --

21 A. No, Lincoln -- or no, in '09/'10, no, they
22 did not make AYP in '09/'10. Avenue A did, I
23 believe.

24 Q. I can't argue with you without looking back
25 at other documents, but we at least see that in

1 Exhibit 1147 that it's showing that they both made
2 AYP by '09/'10, and you just recall one being a
3 little bit different?

4 A. Yes.

5 Q. It said that the district faces challenges.
6 Students with disabilities did not meet reading or
7 math benchmarks in '09/'10. Moreover, at least two
8 other groups of students the ELL and African
9 Americans are struggling to meet state benchmarks,
10 which I think is what prompted -- or would you agree
11 is what prompted getting the Learning Network
12 involved?

13 A. That would be -- you know, that would be
14 part of it that we had groups that were not making
15 adequate yearly progress.

16 Q. Now, then as of October of 2010 --

17 A. Can we go back just a second? I might point
18 out the standards of excellence, those are based on
19 all students. So the standard of excellence
20 designation doesn't look at how your subgroups are
21 doing.

22 Q. Okay. I appreciate that explanation. Are
23 you trying to demean the standard of excellence?
24 Certainly, that's something that school districts and
25 schools should be proud of?

1 A. You know, we're proud of what we're doing
2 with all students but it is a state level award that
3 can, to a certain extent, gloss over an issue that
4 you might be having in a subgroup --

5 Q. We'll come back to that. Let's go on and
6 look at page 8 of the exhibit. Says, despite budget
7 cuts, the district found a way to fund full-day
8 kindergarten, providing much needed support for
9 Hutchinson's young learners. And it did and
10 continues to fund full-day kindergarten, is that
11 correct?

12 A. That is correct.

13 Q. Hutchinson students have access to state-of-
14 the-art technology, which is updated and maintained
15 on an annual basis; there are SMART Boards in
16 virtually every classroom, for example. Moreover,
17 the new career and technical education facility
18 allows students to complete course work in a variety
19 of technical fields in modern, open and well-
20 equipped -- or very well-equipped spaces. And that's
21 true, even as to the upcoming year, is that correct?

22 A. That is correct.

23 Q. And we've talked about SMART Boards, so I'm
24 not going to talk about those again.

25 Says, there are ample opportunities for

1 students to complete concurrent course work through a
2 partnership with the Hutchinson Community College and
3 Hutchinson High School. It was reported that one
4 student who graduated recently, for example, received
5 a concurrent high school and associate degree. The
6 schools -- what does that mean, they got the college
7 credits to get an associate degree before they
8 graduated --

9 A. Yes, one student, the year that this report
10 was written, was able to have earned -- you know,
11 took classes at night and what have you and summer --
12 and anyway, had enough credits to do that.

13 Q. And they explain, the schools are located
14 within walking distance of each other. They share
15 space and resources, and students are encouraged to
16 enroll currently where possible, and that's still
17 true even as to today?

18 A. Yes.

19 Q. You said you had to replace some IP programs
20 so this is the alternative available to some students
21 if they choose to take the accelerated track?

22 A. AP programs.

23 Q. AP, I'm sorry.

24 A. And they can earn credit through the
25 community college.

1 Q. This analysis went on at page 9. It says,
2 teachers are highly-qualified. Further, parents,
3 students, and community members praise both teachers
4 and administrators for their work on behalf of
5 Hutchinson students. Says, the district appears to
6 have very strong extracurricular activities. And
7 then it kind of outlines those.

8 You can continue to have those strong
9 extracurricular activities, I think, at least in
10 football?

11 A. We do.

12 Q. But otherwise, as well?

13 A. We have had to make some cuts, but we do try
14 to maintain strong programs to provide that well-
15 rounded experience for kids.

16 Q. At the time, when they were talking about
17 some of the challenges, they said, teachers'
18 evaluation process has not been updated for ten
19 years. Currently, teacher evaluation is not linked
20 to student performance.

21 Is the teacher evaluation now linked to
22 student performance?

23 A. We have updated our evaluation instrument.
24 We will be piloting that new instrument this coming
25 school year. That was something we spent a good

1 amount of time last year on.

2 We had a staff member that was part of the
3 KEEP Program, and so we've used some of that
4 information with that process that the State was
5 doing to update our teacher evaluation instrument.

6 We have not yet linked that maybe to student
7 performance. It depends on what you mean by linked
8 to student performance. We do not have, like, a
9 percentage of the kids scored at this level on the
10 assessment, and that's this percentage of you having
11 a good or a poor evaluation.

12 Q. What I've come to learn in this trial, and
13 maybe a little bit before, is that in today's world
14 that you, as teachers and administrators are able to
15 kind of access, almost in realtime, how kids are
16 doing with the data that's collected, is that true?

17 A. That is -- that is correct.

18 Q. You can do that. You can also access that
19 if you're inclined to say, how is a group of kids
20 being instructed by a given teacher doing at a given
21 time, is that true?

22 A. Would you say that one more time, please.

23 Q. Well, you can now have the data available
24 that you can aggregate how individual students within
25 a class, by way of illustration, are doing before a

1 particular teacher. You can do that if you wanted
2 to, almost in realtime?

3 A. Almost in realtime, but also given the
4 caveat that you said, when you look at kids that have
5 moved in at different periods of times, they may not
6 have been that teacher's for the entire year. It
7 would be more difficult to really get down to the
8 nitty-gritty of trying to identify how much growth is
9 or is not attributable to that particular teacher is
10 very problematic and --

11 Q. This is an example of you thinking maybe
12 I've asked a different question. Because what I was
13 curious about is whether or not you could take that
14 data and you could now use it to say, my class, as a
15 whole, doesn't seem to be catching on to some
16 particular item of instruction that I've provided
17 yesterday or early last week --

18 A. Yes, and that's something that we are
19 working -- and that is one of the reasons why the
20 instructional coaches I spoke of can be so valuable.
21 Because when you can have a couple of coaches in a
22 building, then you can begin to have time to have a
23 person working with the data and giving that to the
24 teachers and helping the teachers understand that
25 data.

1 Q. And that's been a pretty big change in
2 recent years. I think it wasn't until 2006 that
3 Kansas started keeping data of that nature on all
4 kids?

5 A. And the data that you're talking of, there
6 is more data of a summative nature, where I think the
7 data you were talking about just a moment ago would
8 have been data more of a formative nature.

9 Q. The formative nature data may have been
10 around longer than that, sounds like?

11 A. Yes and no. We're getting -- we have some
12 pretty good test measures now that give us formative
13 data on reading. Math is an area where the research
14 is still lagging behind. We don't have as good
15 indicators for formative data on math. You know,
16 it's an area of -- the science there is developing.
17 It's coming along. It's not as far as reading.

18 Q. Teaching is not a static art. We learn more
19 every day --

20 A. Correct.

21 Q. -- and learn how to more effectively educate
22 kids, is that correct?

23 A. That's correct.

24 Q. If we look at the exhibit, turning to
25 Exhibit 1147, page 11 it talks about curriculum. And

1 it says, the curriculum and assessments are key
2 strengths for Hutchinson that clearly support the
3 quality of education students receive. And they
4 talked about Hutchinson having adopted and using the
5 21st century skills -- rather in their curriculum,
6 the 21st century skills are embedded.

7 And we've had a little bit of discussion
8 about 21st century skills. I don't want you to
9 re-invent the wheel, but if you could describe what
10 that means in Hutchinson to this panel, I'd
11 appreciate it.

12 A. You know, in a nutshell, we're very
13 concerned with students' use of technology, students'
14 ability to do research, students' ability to speak
15 and write. Although, I will say that our writing
16 scores, we've not been able to focus on writing. We
17 aren't getting the results that we want out of
18 writing the way that we should, but we do have it in
19 the curriculum, so it's something we're working on
20 because we know it's important.

21 Q. It says that the district has excellent
22 curricular options for both college-bound and career
23 and technical students. Is that true, going into
24 this next year?

25 A. Yes, I think -- I think as a large high

1 school, we are able to offer a variety of things.

2 Q. Says, the curriculum is uniform across
3 elementary schools and vertically aligned between
4 school levels. Why is that important?

5 A. Well, if you don't have vertical alignment,
6 then it means when students matriculate, say, from
7 3rd grade to 4th grade, if you've missed an important
8 prerequisite skill, they're going to be behind, you
9 know, when they get to that next grade level.

10 It's also important that it's across
11 schools, as we have, you know, mobility. We have a
12 lot of kids that move around just within our own
13 district. So if you don't have that alignment among
14 the schools so that we're all teaching the same
15 thing, you know, that can also be a problem. I think
16 the Common Core Standards are an attempt at the
17 national level to get that kind of alignment both
18 horizontally and vertically among the schools all
19 over the United States.

20 Q. The students identified as possibly in need
21 of special education services also receive
22 appropriate set of diagnostic tests. Those tests
23 still available?

24 A. Yes.

25 Q. And that's important because you need to

1 have an accurate identification for the benefit of
2 the kid, obviously, but also as a financial impact.
3 If you have someone who qualifies for special
4 education needs, if they're properly identified as
5 that, that means more money to the district, doesn't
6 it?

7 A. Yes, once they are identified, you do get
8 more money because you have to start providing all
9 those services.

10 Q. Then it says, the Kansas Multi Tier System
11 of Supports is in its beginning stages of
12 implementation. During the '07/'08 school year,
13 Hutchinson began to train individual teachers and in
14 '10/'11, the MTSS will be implemented systemically.
15 Has it been implemented?

16 A. We are working on it and we are implementing
17 it the best we can, given the staff and support staff
18 that we have available.

19 Q. I think we mentioned this, that you've
20 invested heavily in technology. You have the SMART
21 Boards and laptops. But it says, however, we saw
22 little or no use of this technology by students in
23 the 96 classrooms visited at the elementary, middle,
24 and high school buildings, with the exception of a
25 few classrooms.

1 What's been done to get the folks to use the
2 technology that you bought?

3 A. Well, that comes back to one of the issues
4 that I already mentioned, is that sometimes the
5 technology isn't being used because it wasn't working
6 because we don't have staff available, you know, to
7 get out to work on all the technology that our bond
8 issue put in place.

9 When we passed the bond, you know, we
10 couldn't foresee the staffing cuts that we would need
11 to make. So that has been an impediment to doing
12 this. Also, staff development, again, in order to
13 get the teachers using this, we need that ongoing,
14 job-embedded professional development. We are making
15 some strides to get there, but, you know, we're
16 hindered by the resources that we have.

17 Q. Okay.

18 A. We're making progress.

19 Q. You got people like Alan Rupe and me that
20 still use these boards, and we're resisting the
21 stuff. That's been the fact, isn't it, that there
22 are teachers as well that have -- some of which have
23 resisted the technology?

24 A. True.

25 Q. Says that even though teachers and

1 principals view professional development
2 opportunities as valuable and applicable, the wealth
3 of professional development available to teachers
4 appears to be cutting into instructional delivery
5 time. Has that been a problem, last year and the
6 upcoming year, as it was, apparently, when this was
7 done?

8 A. It does continue to be a problem because
9 there's only so much time available. You know, as --
10 you know, as schools have not been able to pay
11 teachers to come in after school or in the summer or
12 to expand the length of the calendar year to build in
13 days of professional development, you know, it's just
14 difficult to find that time.

15 With an instructional coach available in
16 every school or some people dedicated -- you know, we
17 wouldn't even have to have one in every school. But
18 if we had a few around the district that could be
19 freed up to give that professional development, like
20 during teacher planning times and things like that,
21 to make it more available, we could overcome that
22 problem. So it's kind of a multi-faceted problem.

23 Q. The exhibit goes on to page 20. And it
24 says, professional development activities appear to
25 be overwhelming for many teachers and

1 administrators. That would kind of suggest that we
2 don't need more professional development, we just
3 need to get it more accurately and quickly applied so
4 we can get back to our work. Is that --

5 A. I think that's what I've been saying, but
6 maybe I haven't been clear about that.

7 Q. What I hear you saying, and maybe you are
8 saying the same thing, is that you need more people
9 to provide professional development, not that it
10 needs to be more effectively and efficiently
11 presented.

12 A. You need to be able to do it so that it's
13 job-embedded, just-in-time professional development,
14 not -- you know, not coming just, well, it fits into
15 the calendar here, so that's when we'll do it, or
16 it's after school, so it's on top of everything else
17 that, you know, teachers or administrators are -- are
18 trying to do.

19 Q. This aspect of the report, page 19 -- and
20 these are challenges. I don't think that anybody is
21 looking at these as criticisms. It says that the
22 classroom observation data indicates minimal
23 implementation of the teaching practices to support
24 the ELL students through the use of culturally-
25 responsive readings and perspectives and materials.

1 Such strategies were observed in 8 percent of the
2 high school classrooms, 11 percent of the middle
3 school classrooms, and only 11 -- or 7 percent
4 elementary classrooms visited. Strategies to address
5 diverse language needs are also rare, and we get a
6 description of that.

7 As the head administrator in your school
8 district, how are you addressing that need or that
9 challenge?

10 A. First of all, the classroom observation
11 data, we're not using that PALSS. We've developed
12 our own that more closely aligns to the art and
13 science of teaching. We are -- we did ongoing
14 professional development with our administrators,
15 monthly. We've worked together to calibrate the
16 results that we're getting and are really making an
17 effort to use those observation tools and tie that --
18 align it with our evaluation instrument and to align
19 it with the type of professional development that
20 we're offering.

21 So I think that also comes back to try to
22 address the issue with the staff development maybe
23 being overwhelming that you saw, that we're trying to
24 get that alignment so it's not the shotgun approach
25 to staff development, that it's more focused and

1 targeted.

2 Q. In the profile that you folks publish -- and
3 wouldn't you know, doesn't have the number on it.
4 Got multiple copies of it and I picked up the one
5 that doesn't have the number.

6 MR. CHALMERS: The 2011/'12 profile
7 information, Gaye, if you could find it real fast,
8 I'd appreciate it.

9 MS. TIBBETS: 1022.

10 MR. CHALMERS: 1022, is what we
11 think it is.

12 MS. TIBBETS: I'm sorry, 1023.

13 Q. (By Mr. Chalmers) Exhibit 1023 is what we're
14 certain it is. Exhibit 1023 at page 3, after talking
15 about voluntarily joining the Learning Network and
16 receiving an in-depth look at academic opportunities,
17 it's noted that the district also completed a second
18 district-wide accreditation process through AdvancED,
19 and was re-accredited for five years from the
20 international organization. What is the AdvancED?

21 A. It's the old NCA, North Central, if anybody
22 was familiar with that. It's basically a national
23 organization that accredits schools. Actually, with
24 the new accreditation process that the State of
25 Kansas is designing as we speak, I wouldn't -- I

1 wouldn't guarantee you that we will use AdvancED for
2 our next accreditation cycle because I think we'll be
3 able to get the same type of service through the QPA
4 accreditation process once it's redesigned by KSDE.

5 Q. Short, when you did use it, the district was
6 considered highly functional in three of seven areas,
7 operational in four additional areas, and it gave the
8 district seven commendations while providing it three
9 areas of improvement. What were the areas of
10 improvement that this organization suggested?

11 A. As I recall, one of -- one of them has to do
12 with aligning our -- getting a document that shows
13 better alignment and everything of our assessments,
14 better use of the data that was a part of our
15 assessments. You know, that's an ongoing one that
16 we've really been trying to find the time to work on.

17 Q. Those are the main ones that come to mind
18 right now?

19 A. That's the main one that comes to mind right
20 now.

21 Q. In addition to being accredited by this
22 outside organization -- or re-accredited, I guess,
23 you're also, your district -- not your district, but
24 your schools within your district are all accredited
25 by the State, is that correct?

1 A. That is correct.

2 Q. Now, every year a district has to complete a
3 quality performance accreditation summary report that
4 certifies it satisfied each of the 11 quality items
5 set out in QPA. You're aware of that, aren't you?

6 A. Yes.

7 Q. Your district did certify that it met all 11
8 of those criteria, is that correct?

9 A. Yes, that's correct.

10 Q. Let's talk about this just a little bit
11 more, and not much. This is Exhibit 419. And I just
12 want to have an understanding so when we go back to
13 read this, we'll figure out how it works. The second
14 page of the exhibit is designed to try to graphically
15 show what was happening in year 2009/'10, then it
16 moves up, '10/'11, and the preliminary data for
17 '11/'12, is that correct?

18 A. That's correct.

19 Q. And the targets for AYP, they were lower in
20 '09/'10, moved up to '10/'11, and then stayed the
21 same in '10/'12, is that correct?

22 A. Would you say that one more time, please?

23 Q. Sure. The targets for AYP were lower in
24 '09/'10 than they were in '10/'11, is that right?

25 A. That is correct.

1 Q. The targets, as I understand it, for '10/'11
2 under a partial waiver are the same in '10/'12?

3 A. That's correct.

4 JUDGE FLEMING: '11/'12.

5 MR. CHALMERS: '11/'12. Thank
6 you.

7 A. Yes, '11/'12.

8 Q. If we were looking at it, though, in terms
9 of rather than meeting targets or potentially meeting
10 AYP, just looking at it in scores, what we would see
11 is, pretty much throughout, there has been an
12 increase in the level of kids reaching proficiency
13 from each one of those years, isn't that true?

14 A. Yes, for the most -- for the most part all
15 the students have gone up in most of those years.
16 And in some cases, we have been able to continue to
17 close the achievement gap, although, the rate of
18 progress that we're making has, in some cases, slowed
19 to a trickle. In some cases, it's now begun to
20 reverse and the gap is widening again.

21 Q. And to compare whether your preliminary data
22 is any different than the preliminary data that was
23 produced by the State in Exhibit 1230 and 1229, we
24 just have to sit down and look at the numbers and
25 compare it, and that's not anything I'm going to ask

1 you to do.

2 A. You would --

3 Q. That's what you would have to do?

4 A. That's what you would have to do.

5 Q. That numbers you came up with the terms of
6 preliminary data -- and I assume this is not
7 something you did yourself; you had someone do for
8 you?

9 A. That's correct.

10 Q. And that individual who pulled those numbers
11 together, I'm guessing the second page of the
12 Exhibit -- and you confirm this as being accurate --
13 419, would suggest that that would have been as of --
14 can you read that on the screen? It's June 12 -- it
15 says preliminary -- excuse me, June 11 --

16 A. June 11, 2012.

17 Q. -- 2012. It your understanding they would
18 have pulled whatever data you had off on the 11th to
19 prepare this report?

20 A. That's correct.

21 Q. By the way, when was this report prepared?

22 A. I believe it was prepared on -- on the 11th,
23 just as it says there. Now, the other charts, those
24 are charts that we already have, because we produce
25 for our Board of Education what we call a Key

1 Indicator Report. And our Board of Education looks
2 at these things, and of course, is very interested in
3 how we're doing with our scores. Are we closing the
4 achievement gap? Are we getting the kids -- you
5 know, are we really getting them college and career
6 ready? So the only chart that really had to be
7 prepared was the preliminary data. The rest of those
8 were charts that we already had.

9 Q. There's another blow-up, which is
10 Exhibit 1210. It doesn't have the '10/'12 numbers on
11 it, but this is Hutchinson, all kids, Hutchinson
12 poverty. And you would agree with me, just looking
13 at this kind of on a global basis, that there has
14 been continuing improvement since 2003 through 2011,
15 the last final report, in the Hutchinson scores, both
16 in the general as well as the poverty categories?

17 A. So when you say general, that's all
18 students?

19 Q. Uh-huh.

20 A. Okay. So all students in 4th grade math ...

21 Q. By way of illustration --

22 A. Somewhere in there is when the tests were
23 re-normed and --

24 Q. 2006.

25 A. -- so you're really not comparing apples to

1 apples prior to 2006.

2 Q. You're preaching to the choir, but the test
3 scores, from '03 to '11, generally, across that time
4 frame have been increasing, both in general as well
5 as kids in poverty? Times when it went down a little
6 bit here and there but it went back up the next year?

7 A. Grad rate really dropped there in 2010.
8 That's when they started re-calculating it, according
9 to new formula --

10 Q. You get that one in bold, that's where they
11 started looking at the graduation differently, yes.

12 A. Yeah, that's what I said, re-calculated
13 there.

14 Q. Now --

15 A. I'm still looking at your chart.

16 Q. Okay.

17 A. So yes, the all student did go up, which is
18 why I make the point you really do have to look at
19 the subgroups, because just looking at all students
20 really masks some other things that are happening
21 with poverty --

22 Q. Poverty is also going up, too --

23 A. Or with African American students is a real
24 concern in our district.

25 Q. The African American students in your

1 districts that are having difficulty making
2 assessments, they also fit in the poverty category,
3 don't they? I'm talking about --

4 A. Some --

5 Q. -- by far, away?

6 A. Some of them, yes. To say every single one
7 fits in the poverty, no, that would not be a true
8 statement --

9 Q. We're not saying the color of skin. You
10 don't want to say that, I'm sure. I want to be
11 clear, you're not saying the color of our skin makes
12 a difference on how -- whether we're easily educable
13 or how we perform on these tests?

14 A. I am not saying that that makes a
15 difference, but for some reason they seem to need
16 additional supports to achieve at their potential.

17 Q. Isn't that because they, maybe, are in a
18 higher number in poverty?

19 A. That may be one of the factors, yes.

20 Q. Then switching gears on that, I've got a
21 last couple of things I want to visit with you
22 about. There are students in your district that are
23 receiving a suitable education, is that true?

24 A. Yes, we have some kids we are doing a
25 wonderful job with.

1 Q. And given your efficiency levels -- and I
2 know that's just a piece of it -- the vast majority
3 of kids are receiving what you would contend are a
4 suitable education in your district?

5 A. You know about 85 percent of our kids, we do
6 quite well with.

7 Q. There are students who are from poverty that
8 are receiving a suitable education in your district,
9 is that correct?

10 A. Yes, a little bit lower percentage of them
11 that are doing well.

12 Q. There are minority students, and what I mean
13 by that, I guess, is African American, but I won't
14 limit it to that, that are receiving a suitable
15 education in your district, isn't that correct?

16 A. Yes, there are some, but again about 20
17 percent aren't graduating.

18 Q. Now, if we look at AYP alone, if we look at
19 whether a kid is proficient or not, how does that
20 address how a school district or a teacher has
21 performed, or really does it?

22 A. State the question again, please.

23 Q. It's a point that you were making earlier.
24 If we have, say, an African American young male or
25 female who transfers into your district and makes

1 tremendous progress over the course of a year, takes
2 the standardized tests and is not proficient, maybe
3 just right below that cut score, AYP doesn't give any
4 credit to the teacher or the district for having
5 moved that kid along during the course of that year,
6 does it?

7 A. That particular student, if they fall short
8 of the cut score, no, it does not.

9 Q. If you've got a child who maybe comes from a
10 poverty or family of English as a second language,
11 that even starts in your school district, and as that
12 child progresses along the grades, makes improvement
13 that gets closer to being proficient, again, that
14 improvement isn't tracked or accounted for with the
15 present AYP, is that right?

16 A. In the current system, no, it is not.

17 Q. Now, as to those kids where you've got this
18 improvement being made, and there are a whole bunch
19 of examples that we can give, is it your position
20 that they're not receiving an adequate education? Or
21 suitable education, I want to use that term.

22 A. Ask the question again, please.

23 Q. As those kids that we've given you a couple
24 examples, is it your position that they're not
25 receiving a suitable education from your district and

1 from your teachers who are performing well enough
2 that you're able to move them dramatically from one
3 point to another, although not across that
4 proficiency hurdle?

5 A. If we can get greater than one year's
6 growth, catch-up growth -- they have to get more than
7 one year's growth, you know, to help close the
8 achievement gap. If we can get more than one year's
9 growth, if we can provide that kind of support, yes,
10 that's a suitable education. Giving those kids what
11 they need is giving them the support to get that gap
12 closed by the time they get out of high school.

13 Q. But the gap has to be closed by the time
14 they're out of high school?

15 A. They won't be college and career ready if we
16 don't get it closed by the time --

17 Q. We got a kid that moves into your high
18 school, transfers in his or her junior year and is
19 woefully behind, you do your best to educate that
20 kid. They don't graduate, at least in the four
21 years, or maybe they didn't even graduate in that
22 five years. Has your district failed to provide to
23 that kid a suitable education?

24 A. If they came from the State of Kansas, then
25 Kansas has failed them.

1 Q. I've been -- use the State of Kansas. Say
2 that they came in from Samoa.

3 A. Well, we -- you know, they won't be able to
4 graduate if -- if they aren't college and career --
5 if they're that far behind, you know, then they're
6 going to become a dropout statistic so ...

7 Q. In your position -- I interrupted you, go
8 ahead.

9 A. I said, they'll -- you know, they're going
10 to become a dropout statistic. If we haven't -- if
11 we haven't gotten them to their full potential by the
12 time they get out of high school, then we -- we have
13 failed them.

14 Q. In your deposition you defined a successful
15 school as one that meets the No Child Left Behind and
16 the quality -- or the QPA standards, and that would
17 include meeting AYP. Are you now changing that
18 definition of successful school a little bit? That
19 is that maybe if you could move students even though
20 they don't move --

21 A. I think when we were talking about the
22 definition of a successful school I said, to me, what
23 would be a reasonable definition would be you should
24 be able to get 95 -- at least 95 percent of your kids
25 to meet those -- to meet rigorous standards.

1 Q. And when we talked about that trying to sort
2 out whether there was a school anywhere in the State
3 of Kansas that, at least to date, had satisfied that
4 requirement, I think there was only one school you
5 could think of.

6 A. You asked me the 100 percent, and I had one
7 school that did immediately come to mind that I was
8 familiar with.

9 Q. Well, are there more than one school
10 district that you can think of where there are kids
11 that are all performing, that is passing the State
12 assessment tests, at all categories, all students,
13 all sub categories, at 95 percent or more?

14 A. I think there would be some schools that are
15 at this 95 percent --

16 Q. There aren't any now, are there?

17 A. But I have not -- I haven't looked -- I
18 haven't look at the data. I didn't go on a research
19 project, you know, looking at all the schools in the
20 state.

21 Q. One school you did talk about, which is the
22 Plymell school in Garden City.

23 A. Mm-hmm.

24 Q. That school, if we look back for the last
25 couple of years' test scores, they've done quite

1 well. I think last year they had 85.9 percent in
2 reading, and 80.7 in math for all students. But on
3 your definition, that one school would not be
4 providing a suitable education, is that right?

5 A. That's correct. Interestingly, you know,
6 the last couple of years, those resources fell.
7 They -- they're no longer at that 100 percent level.

8 Q. Well, even when they were at the 100 percent
9 level, it wasn't for all subgroups, was it?

10 A. Yes, it was.

11 Q. Your recollection may be different than what
12 the records show, or maybe it isn't; I don't know.
13 The question I guess I have to you now is, in your
14 knowledge of the Hutchinson School District, even at
15 the peak of what Mr. Rupe refers to as the Montoy
16 money, under your definition, the Hutchinson School
17 District has not been providing a suitable education
18 to the kids in its district, is that correct?

19 A. That's correct. We should be able to get 95
20 percent of the kids to meet rigorous standards.

21 MR. CHALMERS: I don't have any
22 other questions. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. RUPE:

25 Q. Have you heard the phrase --

1 MR. RUPE: I won't be very long.

2 JUDGE THEIS: Liebe, are you okay?

3 THE COURT REPORTER: My hands are
4 going to fall off soon.

5 MR. RUPE: Can you give me five
6 minutes?

7 THE COURT REPORTER: Yup.

8 JUDGE THEIS: You're the one that
9 made the promise, not Mr. Chalmers.

10 Q. (By Mr. Rupe) Have you heard the phrase,
11 averages hide the problem?

12 A. Yes.

13 Q. What does that mean?

14 A. To me, it means, just like when we're
15 looking at all students and it looks like the scores
16 are going up. But when I'm looking at, you know, how
17 are the younger kids doing that we haven't had
18 adequate resources for a while, and you see, gosh,
19 I'm starting to see a problem with 3rd grade, maybe
20 4th grade -- you know, looking at the average of the
21 entire school district, it hides that problem. Or if
22 you look at the average of all students and you don't
23 take into consideration certain subgroups, it hides
24 that problem.

25 Q. In terms of what counsel called, I think,

1 1210, but it's actually 1209, the scores from
2 Hutchinson that he visited with you about, looks like
3 when you don't look on average, but look at the
4 subgroups, there is a situation which the scores have
5 gone down?

6 A. Yes, there are.

7 Q. And a couple of last things. Counsel asked
8 you about Exhibit 417 which was the -- 1147, sorry,
9 which was the needs analysis done by the Kansas State
10 Department of Education's Learning Network, KLN?

11 A. Yes.

12 Q. That was done in October of 2010?

13 A. Yes.

14 Q. And he didn't highlight this, but let's look
15 at this because I want to see if you agree with
16 this. On page 9, it says, parent and community focus
17 groups participants express frustration that schools
18 have become too test-driven. Parents noted that many
19 schools begin preparing students for state assessment
20 tests early in the year and that AYP has become the
21 overriding concern of schools, especially elementary
22 schools. Parents, community leaders, and some
23 teachers express concern about kids falling through
24 the cracks.

25 A. Yes.

1 Q. What does that mean?

2 A. I think it means a couple of things. First
3 of all, the preoccupation and focus on AYP that's
4 been forced upon us by the federal government, and
5 the State to a certain extent, in order to make those
6 scores go up we -- again, we've had to divert
7 resources. So we've diverted time, energy, money,
8 teaching time away from science, away from social
9 studies, away from writing, away from mental health
10 services that some of our kids desperately need.
11 It's those kinds of things that -- kids just falling
12 through the cracks. Because, you know, just being
13 able to read to the extent that you can pass those
14 tests, that may not be good enough to actually get a
15 job out in the real world where you have to do
16 technical reading.

17 Q. With the increasing demands on the State
18 assessments, Common Core, what you've described as
19 college and career ready, if we focus on just the
20 grade level progress, have we missed providing that
21 suitable education?

22 A. Yes, I think -- I think so.

23 Q. And then one other thing, and I'll leave
24 everybody with this in terms of my questions to you.
25 On 1023, which was the 2012 profile -- 2011/2012

1 profile for the district, Exhibit 1023, Mr. Chalmers
2 asked you about this language in here in terms of
3 some accomplishments that were gained with
4 accreditation.

5 But what I think is -- to complete the
6 story, this budget indicates that the top challenge
7 faced by the district is dwindling resources in a
8 time of increased need for those resources, a weak
9 economy, for example, increases the district's
10 at-risk population.

11 Since 2008/'09 school year, district funding
12 has dropped by nearly a quarter. Dwindling resources
13 also impacted the district's ability to fully take
14 advantage of new spaces provided by the 78.8 million
15 bond issue district voters approved in 2006.

16 The district is nearly -- is nearing
17 completion of those improvements, but was unable to
18 provide all the staff needed for the new spaces. All
19 the district begins the 2011/'12 school year -- I'm
20 sorry, as the district begins the 2011/'12 school
21 year it does so with fewer staff and more student
22 challenges.

23 Is that a fairly accurate picture of
24 Hutchinson School District?

25 A. Yes, that is dead-on.

1 MR. RUPE: No other questions.

2 MR. CHALMERS: I've got about an
3 hour. I don't have anything else. I was going to be
4 in jail, wasn't I?

5 EXAMINATION

6 BY THE PANEL:

7 JUDGE THEIS: Just a question
8 here. As Superintendent, looking back, you know,
9 cuts were made and everything. Are there any cuts
10 you think were probably things that you can live
11 without, now looking back?

12 THE WITNESS: You know, there are a
13 few things that we've done that have forced us to
14 find, you know, a little inefficiency here or there.
15 You know, we've introduced an energy management
16 program, so we've captured a little bit of savings
17 there. So you know, to say that there weren't some
18 things that as we really looked hard, you know, did
19 we find some things that we could do a little
20 differently and a little more efficiently? Yes, we
21 did find some of those things.

22 JUDGE THEIS: Can you name them?

23 THE WITNESS: We've squeezed all
24 the blood out of the turnip that we can now. And
25 inflation is increasing the price of everything from

1 textbooks to our insurance premiums. You know, you
2 name it; utilities, gas, tires on the vehicles, you
3 know, all of those costs. There isn't any more money
4 that we can ring out of inefficiencies that I can see
5 to keep pace with inflation. And the student needs
6 just keep getting greater and greater as the
7 demographics change.

8 JUDGE THEIS: When did you decide
9 the turnip had been wrung?

10 THE WITNESS: About last year. I
11 mean, as we were starting last year when I was in
12 Garden City, you know, you're just looking around
13 saying, there's no inefficiency. Everything we're
14 cutting is hurting kids. And coming to Hutchinson --
15 I pride myself on being a really good business woman,
16 and you know, you're looking for the inefficiencies
17 and ways to do it smarter and better, and you know,
18 boy, there's not a lot to find to get just another
19 dollar here or another dollar there. I mean, it's
20 down to pocket change.

21 JUDGE THEIS: Your school system
22 isn't going to collapse without an extra janitor, is
23 it?

24 THE WITNESS: It won't overnight,
25 but you know, delayed maintenance and things, there

1 will be a price to be paid for that down the road.

2 JUDGE THEIS: Two days ago, still
3 be there when you get to it.

4 THE WITNESS: Some of those things,
5 you know, it's -- but it's delayed maintenance.
6 Because what we're seeing are things like when the
7 custodian might have been able to make some little
8 repairs here or there, we don't have the staff to do
9 that, so they're just doing what has to be done every
10 day. So long-term, there will be some issues.

11 But to say there are some things
12 that we were able to get rid of that we won't miss,
13 that we won't put back any time in the near future,
14 yes, that's an accurate statement.

15 JUDGE THEIS: We've heard about
16 instructional coaches, and you called it a test
17 teacher today. Who's going to interpret data --

18 THE WITNESS: Mm-hmm.

19 JUDGE THEIS: -- seems to me that a
20 teacher should be reasonably trained in what they're
21 doing if they're dealing with the population. I
22 mean, special training, there ought to be -- there
23 doesn't seem something that you -- you carry a Jiminy
24 Cricket with you all time to ask what you should do
25 next, shouldn't you know that kind of stuff? And

1 don't you think an instructional coach is so busy
2 telling somebody how to do it, they never have time
3 to do it, you know?

4 THE WITNESS: Well, the
5 instructional coach is building that capacity in the
6 teachers. And you -- you know, they work with some
7 teachers and they really get up to speed, and they
8 move onto the next new teachers, you know, that are
9 coming into the district, so you're not necessarily
10 always spending your time with the same teachers.
11 You build the capacity and somebody retires and
12 you've got some new ones that move in.

13 JUDGE THEIS: Who calls who,
14 though?

15 THE WITNESS: Who calls what?

16 JUDGE THEIS: Does the teacher call
17 the instructional coach and say, I need help, or does
18 the instructional coach just happen to drop by?

19 THE WITNESS: It needs to be
20 planned, on a schedule. It happens. It is not by
21 accident; it is by design.

22 JUDGE THEIS: You would think it
23 would be a temporary position because you wouldn't
24 think it would be that constant.

25 THE WITNESS: I disagree. I think

1 as the needs continue to grow. As we learn more and
2 more, you know, brain research -- and we're learning
3 so much more about how kids learn every day to get
4 better at our craft. It is an expanding field of
5 knowledge that we have to keep up-to-date with.

6 JUDGE THEIS: When in the sequence
7 of the instruction do coaches pop up in the school
8 system?

9 THE WITNESS: You say, when did
10 they pop in?

11 JUDGE THEIS: When did someone get
12 the idea to get an instructional coach, just time-
13 wise, was that old concept --

14 THE WITNESS: When I first started
15 hearing about instructional coaches was probably
16 eight years ago, seven years ago.

17 JUDGE THEIS: And they were
18 frequent or infrequent?

19 THE WITNESS: Somewhat infrequent.
20 But yet, as we've seen that that really is effective,
21 I think you've seen more and more schools try to
22 implement that. Because when you see something that
23 is obviously working, you know, the idea takes off.

24 JUDGE THEIS: Thank you.

25 JUDGE FLEMING: I've got a couple

1 questions. In response to Mr. Chalmers' cross-
2 examination, you acknowledged that the vast majority
3 of your students were receiving a suitable
4 education. He said, 85 percent; you said yes.

5 THE WITNESS: Mm-hmm.

6 JUDGE FLEMING: Then he asked this
7 question: As to the Montoy money under your
8 definition, the Hutchinson School District has not
9 been providing a suitable education to the kids and
10 its district, is that correct?

11 And this is your answer: That's
12 correct, we should be able to get 95 percent of the
13 kids to meet rigorous standards.

14 So is that the bright line that
15 this panel should use, 95 percent? What if it's 94?
16 93 percent? Where do we draw the line to determine
17 whether or not your district is providing a suitable
18 education?

19 THE WITNESS: My personal opinion
20 is 95, because I think that takes into -- I think the
21 5 percent takes into account there are some kids --
22 you know, you can lead the horse to water, you can't
23 make them drink that sort of thing --

24 JUDGE FLEMING: What do you base
25 the 95 percent on?

1 THE WITNESS: I guess I base it on
2 that I'm torn between I want to say 100 -- 100
3 percent is what's morally right to do for our kids,
4 and yet, knowing that 100 percent is not
5 attainable --

6 JUDGE FLEMING: Is it reasonable
7 to --

8 THE WITNESS: -- but it does seem
9 like 95 percent could be reasonable because I've
10 seen -- I've seen some high poverty schools that are
11 getting awfully -- they were getting awfully close to
12 that 95 percent number a few years ago. So I know
13 given the proper resources we can get there.

14 JUDGE FLEMING: Is it reasonable to
15 expect Hutchinson to provide a suitable education to
16 a greater percentage of its students than Wyandotte
17 County because Wyandotte County has more poverty?

18 THE WITNESS: No, I think everybody
19 should be able to get to 95 percent. They have to be
20 given whatever resources are suitable for that
21 population of kids to get there.

22 JUDGE FLEMING: Thank you.

23 JUDGE BURR: I don't have any
24 questions, but I want to tell you all that what I
25 said earlier about being slighted, we've done

1 everything we can to even it up at this point.

2 JUDGE THEIS: Have a nice evening,
3 and good luck.

4 (Thereupon, the proceedings were
5 adjourned to June 28, 2012, at 9:00 a.m.)
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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 27, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 306 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al,
Plaintiffs,
vs. Case Number 10-C-1569
THE STATE OF KANSAS,
Defendant.

TRANSCRIPT OF COURT TRIAL
(Day 15)

PROCEEDINGS had before the Honorable Franklin
R. Theis, Judge of the District Court of Shawnee
County, Kansas; The Honorable Robert J. Fleming, Judge
of the District Court of Labette County, Kansas; and
The Honorable Jack L. Burr, Judge of the District
Court of Sherman County, Kansas, on the 28th day of
June, 2012.

APPEARANCES:

The Plaintiffs, LUKE GANNON, et al, appeared by
and through their counsel, Alan L. Rupe and Jessica L.
Garner, Attorneys at Law, Kutak Rock, LLP, 1605 North
Waterfront Parkway, Suite 150, Wichita, Kansas, 67206;
and John S. Robb, Attorney at Law, Somers, Robb &
Robb, 110 East Broadway, Newton, Kansas, 67114.

The Defendant, THE STATE OF KANSAS, appeared
by and through its counsel, Arthur S. Chalmers and
Gaye B. Tibbets, Attorneys at Law, Hite, Fanning &
Honeyman, LLP, 100 North Broadway, Suite 950, Wichita,
Kansas, 67202.

EXAMINATION INDEX

1		
2		
3	ROCHELLE RUTH CHRONISTER	
4	DIRECT BY MR. RUPE	3235
5	CROSS BY MR. CHALMERS	3272
6	REDIRECT BY MR. RUPE	3301
7	RECROSS BY MR. CHALMERS	3305
8		
9	DALE DENNIS	
10	DIRECT (CONT.) BY MR. RUPE	3320
11	CROSS BY MR. CHALMERS	3358
12	REDIRECT BY MR. RUPE	3403
13	RECROSS BY MR. CHALMERS	3406
14	BY THE PANEL	3406
15	REDIRECT BY MR. RUPE	3408
16	BY THE PANEL	3409
17	RECROSS BY MR. CHALMERS	3413
18	BY THE PANEL	3414
19		
20		
21		
22		
23		
24		
25		

EXHIBIT INDEX

1			
2			MAR / ADM
3	Plaintiffs' Exhibit		
4	419		3225
5	420 Demonstrative		3353
6	Defendant's Exhibit		
7	418A Defendant's Supplement to		3429
8	Plaintiffs' Exhibit 418		
9	1037A		3383
10	1212A	3227	3227
11	1213A	3227	3227
12	1214A	3227	3227
13	1215A		3227
14	1216A	3227	3227
15	1237		3384
16	1238 Demonstrative	3319	
17	1239 Demonstrative	3319	
18	1241 (Withdrawn)	3314	

(For a complete list of exhibits,
please refer to the 10-C-1569 Court Trial Index to
Exhibits.)

1 PROCEEDINGS

2 JUDGE THEIS: Be seated. Thank
3 you. Do we look giddy?

4 MR. RUPE: See if we can change
5 that.

6 Couple of housekeeping matters. As
7 you know, Diane DeBacker is going to be presented by
8 deposition. The attorney for the Department of Ed
9 has indicated that she is available on a number of
10 dates. It looks like Art has to -- Mr. Chalmers has
11 to check one thing, but it looks like July 9th is
12 when we're going to videotape the deposition. So
13 that will work out.

14 Two other housekeeping matters
15 before I start with the witness this morning. In
16 visiting with the court reporter yesterday, I offered
17 219 and then changed the number to 419. And I'm not
18 sure 419 was shown as admitted, but both Mr. Chalmers
19 and I agree that it should be admitted.

20 JUDGE THEIS: It's admitted.

21 (Plaintiffs' Exhibit Number 419 was admitted.)

22 MR. RUPE: Okay. Thank you.

23 JUDGE BURR: I thought it was, but
24 I don't know.

25 MR. RUPE: I did, too, but it's now

1 for sure.

2 And then, the third thing is we
3 have provided, as of right now, the court reporter
4 with all the originals of our exhibits, and I believe
5 all the copies are now in your possession, so you
6 have a complete set of all the exhibits in your
7 notebooks, and I think everything has been submitted.

8 There were a couple of
9 demonstrative exhibits that counsel for the defense
10 indicated they were going to update. I have not seen
11 those. What I don't want to happen is for those to
12 all of a sudden appear brand new in the videotape
13 deposition we do on July 9th.

14 So I think at some point we need to
15 have a last call for exhibits so that we don't have
16 new stuff coming later. And maybe that's not an
17 issue.

18 MR. CHALMERS: The demonstrative
19 exhibits that we indicated at the beginning, if you
20 remember we took some home and brought them back, are
21 that we would withdraw unless there's some reason to
22 keep them in the record are 1212, 1213, 1214, 1215,
23 and 1216. And what we have done and they're here in
24 their place we have 12-A, 13-A, 14-A, 15-A and 16-A.

25 (Defendant's Exhibit Numbers

1 1212-A, 1213-A, 1214-A, and 1216-A were marked for
2 identification.)

3 MR. CHALMERS: It's my impression
4 that a copy of those have already been provided to
5 Counsel, but we'll make sure that Counsel sees those.

6 MR. RUPE: My only issue is I don't
7 think, since they were admitted as exhibits, I'm not
8 going to agree to withdraw them. I think we just
9 have both.

10 MR. CHALMERS: That's fine.

11 MR. RUPE: The regular number
12 and A.

13 MR. CHALMERS: So I guess then, for
14 the record we're admitting the regular number and the
15 As, is that what we're doing?

16 MR. RUPE: Yes.

17 MR. CHALMERS: Then for the record
18 I move for admission.

19 JUDGE THEIS: Although they are
20 demonstrative, I think they should be in, because
21 anything we've looked at should be available.

22 (Defendant's Exhibit Numbers
23 1212-A, 1213-A, 1214-A, 1215-A, and 1216-A were
24 marked for identification.)

25 MR. CHALMERS: And in connection

1 with those housekeeping matters, Your Honor, what I
2 would like to do, and I don't know what the
3 preference is, we were talking about this with the
4 court reporter before, we have a complete set with
5 the original and we could have that released to Judge
6 Theis. We're going to have a complete set shipped to
7 each of the other members of the Panel, because it's
8 more convenient to get it that way.

9 But I was wondering if, instead of
10 another set of documents, perhaps an electronic copy
11 could be provided to the court reporter and marked
12 for the purposes of the original so that we don't
13 have as much space that we have to use the clerk's
14 office. But I don't know the upsides or downsides of
15 that, frankly.

16 MR. RUPE: My experience with
17 records on appeal, and I suspect that's what's going
18 to happen with the case one way or the other, is that
19 the --

20 JUDGE THEIS: Shocking.

21 JUDGE BURR: We'll be shocked.

22 JUDGE FLEMING: We haven't decided
23 it and you're already assuming it's going to be
24 appealed?

25 MR. RUPE: Yeah, so my experience

1 is that they would want a hard copy.

2 MR. CHALMERS: What we'll do is, if
3 it please the Court, we'll leave a hard copy with
4 Judge Theis as the original to be released to him,
5 and then we will substitute a hard copy with the
6 court reporter. We'll have that shipped up, as well.

7 JUDGE THEIS: What I intend to do
8 is with the court reporter we're going to have to
9 find storage, so we're probably going to store them
10 and work off the copies. You know, I'm not about to
11 dig in those boxes and try to get them back in order
12 and have them glopped all over with other cases in my
13 office.

14 So we'll do that, but I would like
15 an independent copy. I don't particularly care
16 whether you send mine. I assume these are just like
17 imaging.

18 MR. CHALMERS: Yes.

19 JUDGE THEIS: I can see them off a
20 computer screen.

21 JUDGE BURR: You're talking about
22 sending us an electronic one?

23 MR. CHALMERS: I was going to send
24 you a hard copy.

25 JUDGE FLEMING: I'd read the hard

1 copy.

2 MR. CHALMERS: I was going to send
3 an electronic and hard copy.

4 JUDGE BURR: I don't care. My wife
5 might.

6 JUDGE THEIS: I'd like an
7 electronic and hard copy, too.

8 MR. CHALMERS: In that connection,
9 we have the blow-ups and we have the smaller copies
10 of those, and I thought what we'd do is -- I'm not
11 sure what we want to do with the blow-ups, I guess,
12 for everyone.

13 MR. ROBB: We've already reduced
14 these and they're part of the exhibit and in your
15 notebooks.

16 MR. CHALMERS: Can we agree to use
17 the reduced ones as the originals?

18 MR. RUPE: That's what we have
19 done.

20 MR. CHALMERS: We'll make sure we
21 have the reduced ones in the record in the notebooks.

22 MR. RUPE: What's the status of
23 1198-A and 1199-A? You indicated you were going to
24 re-do those.

25 MR. CHALMERS: We just didn't re-do

1 them.

2 MR. RUPE: Okay.

3 MR. CHALMERS: So they're in the
4 record.

5 MS. GARNER: Should be 1198 and
6 1199 without an A?

7 MR. CHALMERS: Yeah, I don't know
8 what the A is. I don't think that we even offered
9 those. I can't remember.

10 MR. RUPE: Okay.

11 JUDGE THEIS: Is there somewhere a
12 description of exhibits?

13 MS. TIBBETS: Working on it.

14 MR. CHALMERS: The answer is yes,
15 but it's not complete. There are a few more we're
16 going to offer today.

17 JUDGE THEIS: I meant both parties,
18 too, since all of the exhibits were admitted.

19 JUDGE BURR: This would seem to be,
20 I mean, this was on my desk. Is that it?

21 MR. ROBB: No.

22 MR. RUPE: That's ours.

23 MR. ROBB: We're working on the
24 synopsis that gives you a one sentence on what is in
25 this, and we need about another week on that.

1 MR. CHALMERS: Yeah, I think that
2 was what we anticipated.

3 JUDGE THEIS: That'll be important.

4 MR. RUPE: Can I go back to 1198
5 and 1199. If those are, in fact, inaccurate and you
6 haven't re-done them, then maybe those ought to be
7 withdrawn.

8 JUDGE THEIS: Refresh me. I don't
9 know what they are.

10 JUDGE BURR: I don't know what they
11 are.

12 JUDGE THEIS: What are they?
13 Refresh me. What are they?

14 MR. RUPE: They're these. They're
15 the charts that Mr. Chalmers says that the name of
16 them is, How Close to LPA Study Are We?

17 MR. CHALMERS: We withdraw those
18 charts. I've got something that I'm going to admit
19 today that will take it from a different approach.
20 But those charts are -- they had mathematical
21 problems and also methodological problems, so we'll
22 withdraw them.

23 MR. RUPE: So I guess we agree 1199
24 and 1198 are withdrawn?

25 MR. CHALMERS: Okay.

1 JUDGE BURR: Okay.

2 MR. RUPE: But is there a new chart
3 that you're going to come up with today?

4 MR. CHALMERS: I'll show you at the
5 break after Ms. Chronister.

6 JUDGE THEIS: We can always put the
7 new one and clip it to the old one and show it
8 superseded. That might be the best way.

9 MR. RUPE: Okay.

10 JUDGE THEIS: That way we have what
11 was ponied up the first time with what comes in next.

12 MR. RUPE: Okay. Then let's if we
13 can, if everybody's in agreement, we will not show
14 1198 and 1199 as withdrawn but we'll show them as not
15 accurate.

16 JUDGE THEIS: We'll show them as
17 attachments to the new ones, and historically, just
18 leave them in the record and show the new ones
19 updated or corrected. That way we have a record of
20 their transformation.

21 MR. RUPE: I'm going to object.
22 He's now done -- these are brand new charts and he's
23 again purporting to show -- we're on the last day of
24 evidence.

25 JUDGE THEIS: Are they evidence or

1 are they -- are they just claiming to be a composite
2 of evidence? And are they argumentative? Are they
3 demonstrative? What are they?

4 MR. RUPE: What he's -- I guess he
5 can probably explain it, because I just got it handed
6 to me, but it looks like he's stacking up what he
7 claims is actual operating expenditures, Baker's LPA
8 and LPA study, and showing where the actual
9 expenditures are in relationship to these other
10 studies.

11 JUDGE THEIS: Well, they sound --
12 they're not being -- they are not coming in through a
13 witness, they're more or less demonstrative of --

14 MR. CHALMERS: No.

15 JUDGE THEIS: -- what you believe
16 the evidence is.

17 MR. CHALMERS: They are
18 demonstrative, that's true. I planned on laying a
19 foundation description as to what it is in talking to
20 Mr. Dennis about it, but.

21 JUDGE THEIS: Let's see -- cart
22 before the horse a little bit at this point.

23 Let's see what Mr. Dennis does.

24 JUDGE THEIS: You might, however,
25 when we do it, you might save us just a little time

1 toward the end so we can talk about the format for
2 anything coming in subsequent.

3 MR. RUPE: Absolutely. I think we
4 will be done before the end of the day, is my hope.

5 JUDGE THEIS: Well --

6 JUDGE FLEMING: Ours as well.

7 JUDGE THEIS: My two roadies here
8 and I'm sure all of you, too, are eager to hit the
9 highway.

10 MR. RUPE: Okay.

11 With that I'll call my first
12 witness today, Ms. Rochelle Chronister.

13 Would you swear her in, please.

14 ROCHELLE RUTH CHRONISTER

15 Called as a witness for the
16 Plaintiffs, was duly sworn by the reporter and
17 testified under oath as follows:

18 DIRECT EXAMINATION

19 BY MR. RUPE:

20 Q. Please tell the judges your name and the
21 city in which you live.

22 A. Rochelle Ruth Chronister. Neodesha, Kansas.

23 Q. Tell us a little bit about your background,
24 if you would, please.

25 A. I was born and raised in Neodesha, Kansas,

1 graduated from high school there. Went to the
2 University of Kansas. Received a degree in
3 microbiology. Worked for University of Kansas
4 Medical Center for three years.

5 Married my husband, who is a doctor. Went
6 home to Neodesha, found out that there wasn't any
7 place for a research microbiologist to work in
8 Neodesha, Kansas.

9 Q. Imagine that.

10 A. Yeah. And went to the Legislature -- well,
11 actually, first I became a member of the Neodesha
12 School Board. Served on that school board for
13 approximately nine years. Ran for the Legislature in
14 1978. Was a member of the Legislature for 17 years.
15 Served for 12 years on the Appropriations Committee
16 as a member; also served during that time as
17 chairman, vice chairman, and ranking minority
18 member. So had a variety of experiences there.

19 I served on the Education Committee for five
20 years, also as chairman of that committee. When I
21 left the Legislature I served as Bill Graves'
22 secretary of SRS for four and a half years.

23 And in 2005, when the Legislature created
24 the 2010 Commission, I was asked to be on that
25 commission, and served as chairman of the commission

1 for five years.

2 Q. Let's talk a little bit about the 2010
3 Commission. Oh, by the way, when you were in the
4 Legislature, what committees were you on?

5 A. I served on Appropriations. I served on
6 Education. I served on Public Health and Welfare,
7 Economic Development, Governmental Organization,
8 among others.

9 Q. Okay. Thank you. Let's turn our attention
10 to the 2010 Commission. And there's an exhibit,
11 Exhibit 8. That is a Kansas statute that creates the
12 2010 Commission. And I'd like for you to just give
13 the Judges an idea of what the 2010 Commission was.

14 A. The 2010 Commission basically was created as
15 a result of the loss of the last lawsuit by the
16 Legislature. One of the things that was asked of the
17 Legislature was that they create some kind of a
18 commission to oversee school finance. And so they
19 decided to create a commission that was for five
20 years to look at not just school finance, but public
21 education in the State of Kansas.

22 It was a very broad commission. It was
23 basically everything from early childhood education
24 to vocational education. It also included -- they
25 asked us to look at all kinds of things that included

1 extra-curricular activities.

2 They appointed a wide variety of people to
3 the Commission also. They asked for a CPA to be
4 appointed to it. There were legislators on it.
5 There were former legislators. There was members of
6 the public, also. The speaker of the House had one
7 appointee. The President of the Senate had one
8 appointee. The minority leader had an appointee of
9 the House, and the minority leader to the Senate had
10 an appointee. The Governor had two appointees. And
11 then all four members of the leadership of the
12 Legislature had a joint appointee along with the
13 Governor, so that all five of them had to agree on
14 that person. That one turned out to be me. But that
15 person was not automatically the chairman. The
16 chairman was elected then by the nine voting members
17 of the Commission.

18 There were also two ex officio members. One
19 of them was the head of Post Audit, and the other one
20 was either the Attorney General or an appointee of
21 the Attorney General. We had three members from the
22 Attorney General's staff during the time that the
23 Commission was there. And most of the time, the Post
24 Auditor was there herself until she retired at
25 basically the very end of that time.

1 We were given exceptionally broad powers.
2 Seventeen years in the Legislature and I never saw a
3 commission that had this type of power. We were
4 basically told we could go anywhere, we could meet at
5 any time. However, our staff was a legislative
6 staff, which meant we couldn't meet when the
7 Legislature was meeting because we didn't have any
8 staff available to us, but that we could -- and they
9 basically wanted us to go look at school districts
10 all over the state to basically see everything that
11 was happening, to see what kind of practices were
12 taking place in the state.

13 And they gave us something that I had also
14 never seen happen, they gave us our own Post Audit
15 team that we were to direct. And that was something
16 very unusual, because the Legislature had a Post
17 Audit staff but they always directed it themselves.
18 This 2010 Commission was given a separate Post Audit
19 team that we were to direct what it was that they
20 were going to do.

21 The Commission had nine voting members and
22 an unusual number of six members had to agree before
23 we could make a recommendation and before we were
24 basically legal.

25 Q. In terms of the responsibilities that you

1 had, part of your responsibilities was to look at
2 the -- and I'm looking at 46-3402 in Plaintiffs'
3 Exhibit 8, but part of your responsibility was to
4 evaluate the School District Finance and Quality
5 Performance Act and determine if there is a fair and
6 equitable relationship between the costs of the
7 weighted components and assigned weightings;
8 determine if existing weightings should be adjusted,
9 and determine if additional school district
10 operations should be weighted; review the amount of
11 base state aid per pupil and determine if the amount
12 should be adjusted; evaluate the reform and
13 restructuring components of the act and assess the
14 impact; evaluate the system of financial support and
15 restructuring of public education; conduct other
16 studies as directed by the legislative coordinating
17 council; conduct hearings and receive and consider
18 suggestions from teachers, parents, the Department of
19 Education, the State Board of Education, other
20 governmental officers and agencies and the general
21 public concerning suggested improvements in the
22 educational system of the finance system.

23 And then it goes on from there, but that was
24 part of your responsibilities?

25 A. That's correct.

1 Q. And if I understand what your testimony is,
2 there were nine members appointed. And how they were
3 appointed is set out in the statute. And those nine
4 members elected a chair and they elected you?

5 A. That's correct.

6 Q. And your appointment was by whom again?

7 A. By the Speaker of the House, the President
8 of the Senate, the Minority Leader of the House, the
9 Minority Leader of the Senate, and the Governor.

10 Q. I think what you said a moment ago, was that
11 in your tenure in the Legislature you had not seen a
12 commission that had been empowered to the extent the
13 2010 Commission was by the Legislature?

14 A. That's correct.

15 Q. Well, I'm trying to figure out the best way
16 to do this, why don't you just explain to the Judges
17 how the Commission met, where they met, and what they
18 did.

19 A. Well, it was a very interesting process,
20 because we had people who had -- although they may
21 have been educators, many of them had never been out
22 of, for instance, their own school system. They were
23 either -- particularly large district people. We had
24 the superintendent of schools from Kansas City,
25 Kansas, for instance, who had spent his entire school

1 career in Kansas City, Kansas. We had a member from
2 Wichita, who was also the same way. She had spent
3 her entire career in Wichita.

4 By contrast, we also had a member from
5 Lakin, Kansas, who was an attorney, and he had spent
6 basically most of his life in Kearny County. And
7 although he had been very active in particularly tax
8 matters and had been on a number of tax commissions
9 and had some knowledge of school systems which
10 revolved around his children, his boys that he had
11 raised out in that part of the country, he didn't
12 know a lot about big city school systems.

13 And then we also had a member who was from
14 here in Topeka who had only been involved with
15 private schools and really had no idea how public
16 schools worked. So it was an interesting group that
17 we had meeting together trying to figure out what it
18 was that the school systems across the State of
19 Kansas were all about, what the differences were
20 between them.

21 Also, one of the things that legislators
22 learned -- if I go on too long, please tell me.

23 Q. I'm sure somebody will.

24 A. But one of things that legislators learn
25 over the years is the differences between school

1 systems, the difference between Galena, Kansas, down
2 in the southeast portion, and how poor that school
3 district is between, for instance, Satanta out in the
4 southwest, which is one of the richest. For
5 instance, Galena, the average is around \$17,000 for a
6 house or for a property and in Satanta it's around
7 almost \$450,000.

8 So I kind of thought, how on earth are we
9 going to figure out what we're going to do? And we
10 took on road trips. And as my legislative research
11 staff would say, we covered the State of Kansas.
12 I've worn out my Kansas road maps, and I didn't
13 happen to have anything but an atlas, but this will
14 give you some idea of where it is that we went.

15 We were in, let me see if I can move, where
16 -- well, I need it fairly close so I can show them.

17 Q. I'm used to this, as long as I don't knock
18 anything over.

19 A. Okay. We were in Galena clear down here.
20 We were in Baxter Springs. We were at Greenbush.
21 And that's Greenbush Regional Education Center, which
22 is also right down here, not too far from Parsons,
23 and I know that at least one of you knows where
24 Parsons is. And Greenbush is very close to Girard.
25 These are all relatively small school districts.

1 Then we were in Shawnee Mission, we were in
2 Olathe, and we were in Kansas City, Kansas. Now,
3 Kansas City, Kansas has a very high minority group
4 and also very high poverty group. We were in
5 Wichita. We were out here in Lakin. And when we
6 were in Lakin, we had people, superintendents from
7 Garden City and from all of the school districts
8 around here. And incidentally, in this part of the
9 world there is one school district for each county.
10 Then we were in Junction City, we were in Salina, and
11 we were in Colby.

12 That took us three years to cover.

13 Q. If I'm on track with your testimony, the
14 entire Commission would meet in those locations?

15 A. That's right. We were meeting and also,
16 while we were out there, we were trying to study best
17 practices. We were talking about at-risk students,
18 and we were talking about different ways of dealing
19 with particularly declining populations, English as a
20 second language, because in our southwest part of our
21 state, that is a major problem; also in Wichita. I'm
22 trying to think.

23 Sharon, can you tell me? I'm not allowed to
24 ask.

25 MR. RUPE: Hang on. Hang on.

1 THE WITNESS: Okay. I'm sorry.
2 It's something like almost 40 languages out in Garden
3 City that they have to teach in their school system.
4 It's getting pretty close to that. Garden City's not
5 that big. It's a pretty good size, but it's not that
6 big.

7 But think about that, a school system
8 that has to teach 40 different languages to their
9 students and try and meet No Child Left Behind,
10 that's truly an at-risk school system. And then you
11 go up to Colby, Kansas, and there's something like
12 two kids that they have to teach that have English as
13 a second language.

14 One of the things that we're out there
15 trying to figure out what is it that we really need
16 to do. And we came to some ideas about how we could
17 organize our reports as we went along.

18 Q. (By Mr. Rupe) Let me interrupt you.

19 A. Yeah.

20 Q. Because I want to make sure that I'm on
21 track with when the Commission met. Did the
22 Commission follow its charge from the Legislature and
23 hear from parents, teachers, Department of Ed, people
24 in the communities as you traveled and met?

25 A. Yes. We heard from anybody that wanted to

1 come talk to us. Sometimes there would just be
2 superintendents. But also, everywhere we went, we
3 went into classrooms. We looked to see what teachers
4 were doing. We listened to kids. A lot of times our
5 people -- our commissioners would just go in and
6 start talking to the kids to find out what was going
7 on.

8 We were in classrooms with special ed kids.
9 We saw kids that teachers -- I remember we were in
10 one classroom, and I'll be honest and tell you I
11 don't remember where it was, but it's actually in the
12 report, one of the special ed teachers had to have a
13 lift so that they could lift the child onto the table
14 to change their diaper. And it was a -- I think it
15 was a middle school child that we're talking about.

16 When you think about what it is that an
17 at-risk child is, and when you think about all of the
18 different kinds of schools that there are across this
19 state, you understand why at-risk and best practices
20 mean different things all the way across the state.

21 Now, when we were in Lakin, which was one of
22 our relatively early places the At-Risk Commission --
23 ready?

24 Q. Yes.

25 A. Okay. The At-Risk Commission that had been

1 appointed at the same time that the 2010 Commission
2 was appointed, which is Exhibit 182, actually came
3 out to Lakin. They flew out and met us. Dr. Andy
4 Tompkins was the chairman of that commission. And
5 they had been meeting for about two years. They got
6 organized a little faster than we did. And they
7 started -- they gave us some conclusions that they
8 had reached.

9 And one of --

10 Q. Let me stop you.

11 A. Okay.

12 Q. If I can get Mr. Chalmers to turn the Elmo
13 on, I'm going to put Exhibit 182 on the overhead.
14 And that is the report from Andy Tompkins that he
15 submitted to the 2010 Commission, is that right? Is
16 that what that is?

17 A. Yes, I'm sorry.

18 Q. And then, I'll just put this on the overhead
19 and you explain what the conclusions are.

20 A. Probably the most important conclusion --
21 the Legislature argues about a lot of things, but one
22 of the things that we've talked about for a long time
23 in education is how do you identify an at-risk child
24 to identify them potentially as early as you can.

25 And one of the major conclusions that the

1 At-Risk Council came to was that the best state proxy
2 for identifying at-risk students is poverty, whether
3 it's measured -- and their suggestion was to measure
4 it by free and reduced lunch. Now, not every kid who
5 lives in poverty is going to be an at-risk student.
6 But the best way to identify them is by free and
7 reduced lunch.

8 They noted that on state assessments there
9 was improvements in elementary and middle school but
10 very little at the high school level. They believed
11 that a single tool, such as the state assessments
12 score, was too narrow, really, to look for a child to
13 identify a child that's at-risk.

14 They said the core funding being decided on
15 poverty in the second level of funding should take
16 density into account and that they should consider a
17 third level of funding, and that that is that we
18 should maybe look at student proficiency on state
19 assessments.

20 And they concluded that at-risk students
21 need the most qualified teachers. And in many
22 schools, that's not what happened.

23 Q. I think that's consistent with what we've
24 heard in the courtroom about kids in poverty. Tell
25 us, with that information from Dr. Tompkins and his

1 report from the At-Risk group, what the 2010
2 Commission did with that.

3 A. We started focusing basically on at-risk
4 kids and trying to identify some of the things that
5 at-risk really means, and what it is that we might be
6 able to make recommendations on.

7 Q. And let's move to Exhibit 183, if we could,
8 and is Exhibit 183 the first report that the
9 Commission provided to the Kansas Legislature that
10 was published by the Kansas Legislative Research
11 Department, December 2006?

12 A. Yes, it is.

13 Q. This is the report of the 2010 Commission to
14 that 2007 Legislature?

15 A. Yes.

16 Q. All right.

17 A. This report was distributed to the entire
18 Legislature. On the first day of the Legislature
19 when they go back in January, they find on their
20 desk -- they find a lot of things, but one of the
21 things is all of the interim reports are put together
22 and distributed to the Legislature. And as you will
23 see there, the 2010 Commission report and the At-Risk
24 Education Council report were both included in this
25 document.

1 Q. So I put on the overhead Plaintiffs' 183,
2 which is the 2010 Commission's report conclusions,
3 and it's at Page 15-3, and for our control purposes
4 it's 2010 Commission 000069. Would you walk the
5 Judges through what those conclusions were in that
6 report that was submitted to the Legislature?

7 A. This report began to focus on something that
8 became a two-year, really, emphasis by the 2010
9 Commission, and that was early childhood education.
10 It happened to be one of the things that the Governor
11 also was especially interested in, all-day
12 kindergarten and programming for at-risk 4-year-
13 olds. And that was the main thing that we started
14 recommending.

15 Innovative programs for professional
16 learning communities and schools within schools.
17 Also, we acknowledged the fact that at-risk kids, the
18 main way to identify them was the free lunch program
19 in the districts. We focused on the fact that for
20 English language learners, the lack of teachers was a
21 major problem.

22 Also, when you get down to the bottom of
23 that page, a second theme that we heard was that we
24 needed to be able to provide leadership academies,
25 especially for principals, and mentoring programs for

1 new teachers. We lose new teachers at a very, very
2 high rate because they don't have proper help when
3 they start teaching.

4 Q. Let me interrupt you for just a second,
5 because we've heard some testimony in this courtroom
6 from teachers and from principals, and they have
7 talked about teaching the teacher, having somebody
8 available to help teachers with various strategies.
9 And in terms of 2010 Commission's look at that issue,
10 what did the 2010 Commission examine?

11 MR. CHALMERS: Your Honor, I would
12 ask that Counsel simply ask questions as opposed to
13 summarizing previous testimony. It ends up being
14 suggestive to the witness. And I object to its form.

15 JUDGE THEIS: That was sure a short
16 summary. So overruled.

17 Q. (By Mr. Rupe) Go ahead. Explain what the
18 Commission looked at in terms of the teacher
19 mentoring and the teacher teacher situation.

20 A. Actually, what we found, Your Honors, was
21 the fact that we had had some teacher mentoring in
22 place. And while we had that in place, our retention
23 rate for teachers went up. We lost it and the
24 retention rate went down. So we know that it works.

25 Q. Continue on with the conclusions that you

1 submitted to the Legislature for 2007.

2 A. And we also asked for improved and increased
3 professional development opportunities for teachers.

4 Q. And it looks like you made specific
5 recommendations on how much money those programs
6 cost?

7 A. Yes, we did.

8 Q. And where did you get that information on
9 the cost of those programs?

10 A. Some of that was a result of information
11 that came from the State Department of Education.

12 Q. And through the next year, did the -- you
13 said the meetings with the 2010 Commission were a
14 fairly long process and you visited different parts
15 of the state. I want to turn your attention to
16 Plaintiffs' Exhibit 181, but before we leave that
17 last exhibit, which was 183 --

18 A. Three.

19 Q. -- was that a unanimous report to the
20 Legislature?

21 A. I don't think -- I don't think we ever had a
22 unanimous report, but we always had an 8-to-1.

23 Q. So it was a recommendation by eight of the
24 members of the Legislature, and I believe attached to
25 that exhibit is the minority report?

1 A. That's correct.

2 Q. That was by one of the commissioners?

3 A. That's right.

4 Q. Let's move to Exhibit 181 then. And can you
5 identify 181 as the report of the 2010 Commission to
6 the 2008 Kansas Legislature?

7 A. Yes.

8 Q. And did this work the same way, by way of
9 bringing these recommendations to the Legislature?

10 A. Yes.

11 Q. In other words, on the first day of the
12 session in 2008, did each legislator, as they came to
13 work, find this information?

14 A. That's correct.

15 Q. Why don't you walk us through the report
16 that is Exhibit 181, the report of the 2010
17 Commission to the 2008 Kansas Legislature.

18 A. This was the second year of the early
19 childhood development that we focused on. We chose
20 two basic things to focus on, early childhood
21 development and the teacher shortage retention and
22 recruitment.

23 The teacher shortage retention and
24 recruitment was the first part of the package. In
25 that was a recommendation for an increase in the

1 state base -- the base aid per pupil of \$100 in order
2 to bring spending for 2009 to \$4,474 per pupil.

3 We also recommended again an increase in
4 mentoring and professional development.

5 Q. And what you recommended was specific
6 dollars to the professional development program for
7 that purpose?

8 A. Yes. We thought that it should be an
9 increase, so that 50 percent reimbursement to
10 districts for actual professional development
11 expenditures, and that's one-half of 1 percent of a
12 district's general fund budget or 50 percent of the
13 actual expenditures.

14 Q. And then did you make recommendations
15 concerning early childhood?

16 A. We did. Our recommendation in the early
17 childhood, we had a number of recommendations in that
18 area, \$15 million to fund all-day kindergarten. To
19 move forward with -- we were trying to get the early
20 childhood people to come together. You know, it was
21 a little like herding cats, incidentally; everybody
22 had their own program and they wanted to keep it
23 separately.

24 However, we were able to convince them to
25 come together in a council and to at least talk to

1 each other and to begin some coordination of having
2 those programs work together. So we weren't 100
3 percent successful, but we did at least have some
4 effect on having them begin to work together. And
5 that was part of what it was that we wanted to see
6 happen.

7 This was a time when early childhood was --
8 had within, at that time, about the last five to ten
9 years really begun to understand how important early
10 learning, that even in the first year, stimulation of
11 babies was so important that as the neurons begin to
12 fire, you can actually see on some kinds of equipment
13 lights literally begin to show up.

14 And if the children are not stimulated
15 correctly, some of those lights never show up. And
16 that's how important early learning becomes in
17 helping children get ready for school. And our
18 commission learned how important early childhood
19 education really was. And I think that that helped
20 the Legislature begin to learn, also.

21 Q. In terms of the all-day kindergarten, what
22 was the conclusion?

23 A. \$15 million to fund all-day kindergarten.

24 Q. Okay. And that was your --

25 A. For five years.

1 Q. That was your recommendation to the
2 Legislature?

3 A. It was.

4 Q. Now, if you look on Bates number 2010
5 Commission 000099, which is 15-3, the Commission made
6 certain recommendations on that page. And explain
7 what those recommendations were.

8 A. We made some recommendations in regard to
9 the accounting handbook to allow additional training
10 for district clerks of school districts, and to
11 review the financial reporting systems to see if
12 there were changes that needed to be made in the
13 financial reporting systems.

14 There was some major changes being made at
15 the federal level in regard to vocational education
16 that we made that needed to be -- we felt needed to
17 be examined and watched.

18 Q. And the requirement that the Kansas
19 accounting handbook be used and that school district
20 clerks be trained, of course using the Kansas
21 Accounting Handbook, was that an effort by the
22 Commission to have the districts keep track of
23 finances?

24 A. It was partly that. And it was partly,
25 also, our member who was a CPA had concerns that

1 maybe they were not being followed correctly. He
2 wanted a much stronger -- we looked into it. We
3 looked into it extensively. We had testimony about
4 it. We concluded that what he wanted was, frankly,
5 going to cost millions of dollars, and we weren't
6 sure it was going to work in the end. So instead we
7 asked the department to look at strengthening what it
8 was that was already in place.

9 Q. So we touched on this in the last report,
10 but you made recommendations on Bates numbers, series
11 of numbers 10515-9 in the exhibit concerning the
12 mentoring of new teachers; is that accurate?

13 A. That's correct.

14 Q. And you talked about this before, but
15 leadership academies, that would be for the
16 principals?

17 A. That would be for the principals.

18 Q. Mentoring new teachers, professional
19 development of current teachers, and attracting,
20 developing and retaining teachers?

21 A. That's correct.

22 Q. Then let me hand you, let's pull Exhibit
23 180. By the way, other than providing the report to
24 the Legislature in 2008, before we get to 2009
25 Legislature, other than providing the report to the

1 Legislature in 2008, did you offer any testimony or
2 provide any guidance to the Legislature any how, any
3 way?

4 A. Yes. The first week that the Legislature
5 was in session, I normally went to visit with the
6 leadership on both sides, on the House and the Senate
7 side, because that's when they're not quite as busy
8 as they are a little later, to give them a report --
9 I mean, we were their commission that they had asked
10 to have appointed -- to tell them what it was that
11 the recommendations were.

12 Also, I normally testified before both the
13 House Appropriations Committee and the Senate Ways
14 and Means Committee. I usually did not testify
15 before the Education Committee because the members --
16 the chairman of both of those commissions was on the
17 2010 Commission, so their chairman could present
18 whatever it was that they felt was important from
19 there.

20 So the House and the Senate both had access
21 to and usually reports from the Commission, as well
22 as just simply having the piece of paper before
23 them.

24 Q. Let's turn to Exhibit 180. And was the
25 process the same for the 2009 Kansas Legislature?

1 A. It was, except by this time I think that we
2 had -- I'm pretty sure, yes, we had concluded our
3 trips around the state, which I think my commission
4 was very happy that I had quit taking them around the
5 state. Some of those trips were pretty long.

6 Q. Then in terms of the report to the
7 Legislature, it's on their desk the first day of the
8 legislative session, you have these conferences that
9 you've described and testified as you had previous
10 years?

11 A. That's correct.

12 Q. When you gave this 2009 Kansas
13 Legislature -- or the 2010 Commission to the 2009
14 Kansas Legislature report, was the Legislature
15 receptive to you?

16 A. They were mad at me.

17 Q. What do you mean?

18 A. They didn't like what it was that we had to
19 say.

20 Q. Can you give the Court an example of some
21 legislative reaction to what you said?

22 A. When I went to speak to the House
23 leadership, one of the members of the leadership
24 walked out.

25 Q. Let's look at Exhibit 180, if we could.

1 And is Exhibit 180 this 2009 Kansas
2 Legislature report?

3 A. That's correct.

4 Q. Do the same as you did before, if you would,
5 Ms. Chronister, and walk through what your
6 recommendations were.

7 A. We recommended that the Legislature should
8 approve a three-year school finance plan, to increase
9 with increases in state aid based upon the Consumer
10 Price Index, Urban. We recommended that they should
11 approve a professional development program again for
12 a school year, totaling 6 million -- six and a
13 quarter million dollars.

14 We recommended a budget of \$630,000 for
15 leadership initiative. And that was again for
16 principals. We recommended -- well, this is mainly a
17 technical thing and that was to help military
18 families mainly in the Junction City area.

19 Then we recommended continuing monitoring of
20 the early -- early childhood coordinating group. And
21 then we recommended looking into continuing -- just a
22 minute -- looking into things that needed to be done
23 in order to retain our teachers at the time that we
24 had a teacher shortage.

25 Q. These were things like what you described

1 before --

2 A. Yes.

3 Q. -- in terms of teacher mentoring?

4 A. Yes.

5 Q. And teaching the teachers?

6 A. Yes.

7 Q. It looks like there's a part in here where
8 Mr. Tallman, who we've heard from in this matter --
9 did Mr. Tallman make recommendations to the 2010
10 Commission that you then passed along to the Kansas
11 Legislature?

12 A. He did. One of the things that we had an
13 opportunity to do, since we had finished with our
14 trips around the state, was we had more of an
15 opportunity to listen to some of the best practices
16 and also some ideas that particularly educators, but
17 people who maybe had more farseeing ideas, about how
18 improvements could be made to Kansas education.

19 And we asked a number of different people to
20 appear before the Commission and talk to us about
21 some special -- some far-reaching ideas. We had
22 people from our Blue Ribbon Schools. And Blue Ribbon
23 Schools have a special designation. They have a high
24 number of children who are in poverty, who are at
25 least 40 percent of the students are in poverty, and

1 they have made outstanding improvement in their
2 school scores, at least a 60 percent improvement over
3 three years. And so we invited those people to come
4 in and speak to us about what it is that they had
5 done.

6 And also, the Kansas Association of School
7 Boards came in and talked to us about what it is that
8 their suggestions were for improving schools. And
9 they talked about the diplomas, the number of
10 graduations was at an all-time high; that our ACT
11 scores had increased to twice the national rate; and
12 student proficiency had risen steadily since state
13 assessments had started in the 1990s.

14 However, one of the things that Mr. Tallman,
15 who was making the presentation, said was that all of
16 this, basically, was impressive, but it did not come
17 without a cost. Obviously his -- what he was saying
18 to us was that there was money needed in order to do
19 that.

20 Q. In terms of the report of the Exhibit 180,
21 which was the report to the 2009 Kansas Legislature,
22 what action did the Kansas Legislature take in
23 response to your report?

24 A. They ignored it.

25 Q. In terms of the next year, let's turn to

1 179, if we could. And was the process the same with
2 the report of the 2010 Commission to the 2010 Kansas
3 Legislature?

4 A. Yes, it was.

5 Q. And in terms of when this report was
6 submitted, did it work the same way?

7 A. Yes, it did.

8 Q. The legislators came, found it on their
9 desks, you met the leadership, you testified before
10 the committees; is that the process?

11 A. That's correct.

12 Q. Why don't you take Exhibit 179 and tell us
13 what the conclusions were to the Legislature in
14 2010.

15 A. The Legislature should re-focus its revenue
16 and funding priorities to make education priority
17 number one. Education is the single most important
18 function provided by state government. It is, at its
19 essence, how we prepare for the future. The
20 Commission has heard repeatedly that education
21 spending has a direct and positive impact on student
22 performance.

23 Most recently, in the 2006 Legislative Post
24 Audit report entitled, Elementary and Secondary
25 Education in Kansas, estimating the cost of K-12

1 education using two approaches that report stated in
2 part, "We found a strong association between the
3 amounts districts spend and the outcome they achieve.

4 "The Commission also has received
5 information regarding the State's dire economic
6 situation. However, we also know the Legislature has
7 made tax policy decisions that have contributed to
8 these circumstances.

9 "Tax cuts made by the Legislature from 2005
10 to Fiscal 2010 have totaled \$180 million. By Fiscal
11 2011, that total will rise to nearly 209 million.

12 "In contrast to the philosophy that low
13 taxes contribute to economic growth and high taxes
14 detract from it, we believe instead the following:
15 Kansas is not a high tax state and the tax burden,
16 taxes compared to personal income, has been stable
17 for decades. Tax policy alone does not drive
18 prosperity.

19 "Education attainment drives state income
20 more than tax burden. Lower taxes will not help the
21 economy in the long run if the State cannot support a
22 strong public education system. That takes a
23 significant investment.

24 "In prosperous economic times the
25 Legislature has been eager to reduce revenues. Now

1 in these difficult times, the Legislature must face
2 the fact that it needs to replace some of that
3 revenue.

4 "In summary, the Commission believes that we
5 cannot sacrifice a generation of Kansas students
6 because the economy is weak. It's time for the
7 Legislature to take steps to ensure that the revenue
8 and funding policies of the Legislature allow every
9 Kansas student to achieve his or her full potential."

10 Q. Among the Commission, the recommendation
11 was that the Legislature should allow every Kansas
12 student to achieve his or her full potential?

13 A. That's correct.

14 Q. Then, as part of the recommendations you
15 talked about, the Commission recommended the
16 Legislature should consider generating revenue from
17 at least three specific revenue sources, and made
18 recommendations concerning those sources?

19 A. We did. We recommended reversing previous
20 tax cuts, increasing the state school mill levy back
21 to its former level, and increasing the state sales
22 tax.

23 Q. All right. And then, in terms of the rest
24 of the conclusions on the next page, summarize those
25 for us, if you would, please.

1 A. "In addition to the knowledge that the
2 education of children is the most important function
3 of state government, there are practices we know
4 makes a difference ensuring that each child receives
5 the maximum benefit of his or her education: Early
6 childhood education, before and after-school tutoring
7 and support programs, at-risk funding and programs,
8 staff development, leadership academies especially
9 for principals and highly-qualified teachers."

10 Q. Let me stop you before we go to the next
11 bullet point, because I want to ask you if these
12 strategies, which we've heard some testimony about,
13 and how they help move kids toward improvement in
14 achievement and toward college readiness and
15 vocational readiness, if these strategies were
16 strategies that the Commission, by a vote of eight to
17 one, recommended that the Legislature fund?

18 A. Absolutely.

19 Q. All right. Finish with your conclusion then
20 on the three-year funding, please.

21 A. We also recommended continuation of a three-
22 year funding cycle, because we had superintendent
23 after superintendent say to us, if we can plan for
24 three-years, we can make savings on what it is
25 that -- what it is that we're doing.

1 We also made recommendations in regard to
2 special education, catastrophic aid, and the other
3 one was in regard to moving the tiny-k program and
4 Early Head Start.

5 Q. Turn to 177, if you would, and tell us what
6 177 is.

7 A. 177 is the final report that the Commission
8 gave.

9 Q. I think that's 178.

10 A. Oh, I'm sorry. 177, well, 177 is attached
11 to the final report. 177 is actually my testimony,
12 which was attached to it.

13 Q. Okay. So in terms of your testimony --

14 A. That I wrote.

15 Q. -- and attached to the majority report?

16 A. That's correct.

17 Q. Okay. Then let's go to one -- well, let me
18 ask you about one thing you said in your testimony.
19 Explain this paragraph 4 to the Judges, please.

20 A. There were a number of things that people
21 have said about Kansas that I choose to call urban
22 myths or the big lies. And this one was that Kansas
23 schools do not spend their education dollars
24 efficiently. When we actually look at it, Kansas
25 ranks in the top ten states on educational outcome

1 testing, but is far below the national average in
2 cost per pupil.

3 Kansas, at this time, spent \$8,392 per
4 pupil, where the national average for the top ten
5 states is \$10,786; a \$2,400 difference.

6 Q. Let's now move to the final report. This
7 one you made to the -- oh, by the way, what action
8 did the 2010 Kansas Legislature take in response to
9 the recommendations by the 2010 Commission?

10 A. They ignored it.

11 Q. Let's move to Exhibit 178, which was the
12 final report, and the process the same?

13 A. Yes, I didn't go try and talk to everybody
14 that time.

15 Q. Because of previous reactions?

16 A. Yes. But they did get a copy of the report.

17 Q. And my guess is you don't go many places
18 that people don't know you're around. And you were
19 certainly available to talk to, weren't you?

20 A. I was available.

21 Q. Let's look at the recommendations to the
22 2011 Legislature and tell me what those
23 recommendations are, please.

24 A. "The 2010 Commission concluded after five
25 years that the current school finance formula, when

1 funded, adequately works well to ensure that students
2 from all areas of Kansas have access to a suitable
3 education.

4 "The formula serves to equalize among
5 Kansas, at that time, 289 school districts, whose
6 assessed valuation runs from a low \$17,937 in
7 Galena -- that excludes Fort Leavenworth -- to a high
8 of \$443,970 in Satanta.

9 "It also equalizes educational opportunities
10 among students based on their varying needs.

11 "The base state aid per pupil had been
12 increased \$3,873 in 2004/'05, to \$4,400 in '08/'09,
13 and was planned to increase to a statutorily required
14 level of \$4,492.

15 "Together with the existing at-risk,
16 bilingual, vocational and other weightings for
17 at-risk pupils, the formula was working well.

18 "With the economic downturn, however, the
19 Legislature pulled much needed funding from the
20 educational system by reducing the BSAPP from 4,400
21 to \$4,012; \$480 short of the statutorily required
22 \$4,492, for a total of 317 -- 319.7 million in K-12
23 education funding reductions as a result.

24 "The result has been devastating to school
25 districts, and ultimately, the reduction will stunt

1 the educational progress of Kansas children, our most
2 valuable resource. This is just when test scores
3 were showing marked improvement over the past.

4 "Therefore, the 2010 Commission recommended
5 the following: Beginning with school year 2011 and
6 '12, the Legislature should fund the school finance
7 formula with a budget per pupil of \$4,492."

8 Q. And then, you also made recommendations
9 concerning -- and we've covered this and you did
10 previously -- but professional development issues?

11 A. Yes, in the area of professional
12 development.

13 Q. Okay, and then likewise?

14 A. Early childhood professional development.
15 In professional development, particularly to provide
16 best practices. Just as you have to talk about best
17 practices for attorneys when things change, just as
18 in the medical profession -- my husband has to find
19 best practices when there are new things that happen
20 in the medical world -- best practice is especially
21 important when you're changing to improve things for
22 schools to provide practical training, such as on
23 budget, case studies, and problem solving, include
24 opportunities for peer support and coaching, support
25 groups and training, offer development through a

1 variety of providers. And I think that it's
2 especially important when you're changing the entire
3 culture of a school, and that's what often has to
4 happen.

5 Q. And then you made specific recommendations
6 concerning professional development funding; is that
7 accurate?

8 A. That's correct.

9 Q. And in response to the 2011 report, what did
10 the Legislature do?

11 A. Nothing.

12 Q. Did they cut taxes?

13 A. Yes. I don't know that they did that year.
14 I don't think they cut taxes that year.

15 Q. Okay.

16 A. They cut taxes this year.

17 Q. This year?

18 A. In 2012. They cut the budgets.

19 Q. What do you mean "they cut the budgets"?

20 A. They cut -- they took money from the school
21 budget.

22 Q. I see. All right. Talk to me a little bit
23 about the Commission. The exhibit I just showed you,
24 which was 178, was that the last report?

25 A. Yes, it was.

1 Q. And the Commission sunsetted in 2010?

2 A. That's correct, December.

3 Q. Has there been any extension of the program?

4 A. There has not. One of the things we
5 recommended was, we reminded the Legislature that
6 that was one of the requests or requirements of the
7 report that came from the judiciary.

8 Q. You're talking about the Montoy decision,
9 the Kansas Supreme Court decision?

10 A. The Kansas Supreme Court decision, yes.

11 Q. Okay.

12 A. That they should continue to monitor school
13 finance. They have chosen not to do that.

14 Q. Did you run across any information in any of
15 your trips and any of your comprehensive listening to
16 parents and teachers and anybody who wanted to talk
17 to you, that the actual costs of delivering education
18 to today's kids is declining?

19 A. No.

20 MR. RUPE: That's all I have.

21 CROSS-EXAMINATION

22 BY MR. CHALMERS:

23 Q. Just so that I don't lose track of it, on
24 the monitoring issue, I think that a consistent
25 suggestion that has been made by the 2010 Commission

1 is that there should be some continued monitoring of
2 how Kansas education is going forward; is that
3 correct?

4 A. That's correct, not necessarily by this
5 Commission, but ...

6 Q. And what the Legislature apparently has not
7 done is put together another commission like your
8 commission; is that right?

9 A. That's correct.

10 Q. You're not suggesting that there aren't
11 people from the Department of Education or otherwise
12 that are monitoring how kids are doing, are you?

13 A. No.

14 Q. Let's talk about you for a second and then
15 the Commission. You were last on the Education
16 Committee when?

17 A. I came '95, I chaired the Education
18 Committee.

19 Q. And you are, by training, not an educator?

20 A. That's right.

21 Q. There were some, on the Commission,
22 educators, I think you said?

23 A. Yes.

24 Q. How many?

25 A. Sue Storm. Now, there were -- do you want

1 to count people who were also State Board of
2 Education members?

3 Q. Well, I'm kind of interested in the voting
4 members first, if you can clarify that.

5 A. Okay. Sue Storm, Senator Schodorf, Ray
6 Daniels, Barbara Mackey, four of them.

7 Q. And each one of, them their training were as
8 teachers?

9 A. Yes. They became -- let's see, at least --
10 did I say Ray Daniels?

11 Q. I think you did.

12 A. Did I get him?

13 Q. I think so.

14 A. He became a superintendent.

15 Q. Where did he become a superintendent?

16 A. Kansas City, Kansas.

17 Q. You had an administrator and three teachers
18 that were on?

19 A. Yes.

20 Q. There were no educational research people on
21 the Commission, I take it?

22 A. I don't think so.

23 Q. But you did have available to you, from time
24 to time, educational resources --

25 A. We certainly did.

1 Q. -- through some of the testimony that was
2 presented?

3 A. And as a matter of fact, I'm trying to
4 remember the name of the group. Yes, the answer is
5 yes; that's just the easiest.

6 Q. I think it's in a number of reports the
7 details.

8 A. Yes.

9 Q. And as far as information concerning a
10 comprehensive study concerning the cost to educate
11 children in our state, you had the LPA study at one
12 point; is that correct?

13 A. That's correct.

14 Q. And that study was reported to your
15 Commission and then your Commission then shared that
16 with the Legislature; is that correct?

17 A. Actually, it was the other way around.

18 Q. Is that right? Okay. Well, help me on the
19 sequence then. Was the LPA study done before the
20 Commission was impaneled?

21 A. No. Why I said that is that the Legislative
22 Post Audit got the study first and shared -- it's a
23 little bit confusing, I'm sorry. But the way that
24 the process worked, the LPA group was always required
25 to report to the actual legislative committee first.

1 Q. I see. And then reported to you folks?

2 A. Yeah. And sometimes they reported to us at
3 the same time.

4 Q. And then, you had on your committee members
5 from the LPA, as well as a representative from the
6 AG's office?

7 A. Yes.

8 Q. There were nine --

9 A. The Legislative Post Auditor was actually an
10 ex officio member.

11 Q. And these were nine voting members?

12 A. That's correct.

13 Q. And ultimately, in your last report to the
14 Legislature, that's to the 2011 legislature -- and
15 that would be the Legislature before last, or would
16 that be this Legislature we just had?

17 A. It was to the 2010 -- no, to the 2011, yes.

18 Q. I think it was the Legislature before last.
19 And when we look at these exhibits. Exhibit 179, it
20 says, To the 2011 Legislature. And so we're clear,
21 we've had one legislative session after that. It's
22 referred to -- although it started in 2011, it's
23 referred to as the 2012 Legislature. Is that how it
24 works?

25 A. Mm-hmm.

1 Q. Is that --

2 A. The one that just finished.

3 Q. Now, in your report, one of the things that
4 you were tasked to do, I think Mr. Rupe said, was to
5 look at whether or not the current school finance
6 system in place worked well to ensure students in
7 Kansas had access to a suitable education, and in
8 particular, whether or not it was fair and
9 equitable. That was one of the things that you were
10 to evaluate, wasn't it?

11 A. Mm-hmm.

12 Q. Exhibit 178 actually says, "Evaluate the
13 School District Finance Act and determine if there is
14 a fair and equitable relationship between the cost of
15 weighted components and the assigned weightings."
16 And the weighted components we're talking about are
17 ones that are designed to get more money into
18 administrators' hands so that they can use it for
19 at-risk kids; is that right?

20 A. To be used for those -- yes, many of them
21 are specific what they're to use them for, correct.

22 Q. Well, some of it would go to bilingual kids,
23 some of it will go to kids in poverty, and then the
24 weightings talk about concentration of the poverty,
25 but it's those weightings you were looking at; is

1 that right?

2 A. That's correct.

3 Q. You looked at all the weightings that were
4 in the Act and were being implemented and used at the
5 time of your report to the 2011 Legislature?

6 A. Correct.

7 Q. And your conclusion at Page 18-1 of Exhibit
8 178 was that the Commission concludes that the
9 current finance formula, when funded adequately,
10 works well to ensure that students from all areas of
11 Kansas have access to a suitable education. You
12 concluded that the weightings, when adequately
13 funded, were acceptable?

14 A. We concluded that the formula ...

15 Q. The formula included the weightings?

16 A. That's correct.

17 Q. So I guess what I'm getting at is, I
18 understand, and we've had lots of testimony, that you
19 were dissatisfied with the amount of the funding --

20 A. That's right.

21 Q. -- but you were not dissatisfied with how
22 the money was being distributed?

23 A. That's right.

24 Q. That was based on your evaluation for five
25 years of the system?

1 A. That's right.

2 Q. The testimony, Exhibit 177, that you
3 provided with connection with the last report states
4 in part, and I've got it highlighted, that our
5 country has been hit hard by economic times and
6 Kansas is no exception.

7 A. Mm-hmm.

8 Q. That's factually what was happening and
9 continues to happen in this state, at least as of
10 2008/2009; is that correct?

11 A. That's correct.

12 Q. There was a minority view by the accountant
13 of the Commission, and that is found in part in
14 Exhibit 179. And the accountant writes, "Taxes
15 recommended by the 2010 Commission will hurt
16 everyone, as well as create an environment that is
17 unattractive to new and existing businesses." And
18 that was the position he advocated when your
19 Commission members were saying we ought to increase
20 taxes?

21 A. That's his position.

22 Q. That frames the issue, doesn't it?

23 A. That was the minority position.

24 Q. Yes.

25 A. He was the only one that believed that.

1 Q. And he, at the next page writes, "The 2000
2 Commission said the Legislature has created some of
3 the problem by decreasing taxes and keeping those
4 decreases in place. This is not an accurate
5 opinion. It has been successfully shown that tax
6 decreases create more money for businesses to expand
7 and employ more people and take more risks." That's
8 a position you don't agree with?

9 A. That's correct.

10 Q. That debate as to whether taxes need to be
11 raised to help stimulate and help the economy, or in
12 this instance, to be spent on educational needs,
13 needs and services, or whether it's best to lower
14 taxes and hope that there is increased growth that
15 will allow for revenues to address those problems,
16 that debate has been around for a long time, hasn't
17 it?

18 A. Yes, it has.

19 Q. It's national?

20 A. It is.

21 Q. I guess it's international, because we heard
22 about it over in Greece and Italy, and so forth; is
23 that right?

24 MR. RUPE: I'm going to object to
25 the relevance of Greece.

1 MR. CHALMERS: Ireland?

2 JUDGE BURR: I prefer not to get
3 into the Greek educational system.

4 Q. (By Mr. Chalmers) The point being is that
5 there are people who are reasonable people who are on
6 opposite sides of those issues and feel very strongly
7 about their positions, is that correct?

8 A. Yes, I would say that's correct. The 2012
9 Legislature certainly seemed to think so.

10 Q. Now, you had indicated that with your report
11 in 2000 -- I'm not sure it wasn't the last report, as
12 well, but a couple of reports, that after they were
13 provided -- I think your words were that the
14 Legislature ignored them. And I want to talk to you
15 about what you meant by that. Obviously, they had
16 the material because it was provided to them, as
17 you've said, is that correct?

18 A. Yes.

19 Q. You went up and testified, true?

20 A. Correct. Until the last report.

21 Q. Until the last one. You were available to
22 testify?

23 A. That's correct.

24 Q. They didn't agree with your position?

25 A. That's right.

1 Q. When you say "ignored," maybe that means
2 different things to different people. It may be they
3 heard what you said but just didn't agree?

4 MR. RUPE: I'm going to object.
5 Counsel is opening the door on an issue, I've been
6 trying to go there for a long time. And I'm going to
7 make --

8 MR. CHALMERS: I think you went
9 there. I'm trying to clarify where you went. And I
10 have a right to do that, I think.

11 JUDGE THEIS: We know what the
12 Commission recommended and we know what occurred, so,
13 I mean, you're just --

14 MR. CHALMERS: All right.

15 JUDGE THEIS: -- floating flags in
16 the air.

17 Q. (By Mr. Chalmers) Now, one of the big
18 findings of your Commission, as I understand it, is
19 that poverty presents challenges to the Kansas
20 education system.

21 A. That is not only of our Commission but it
22 was of also the At-Risk Commission.

23 Q. And that At-Risk Commission, so that we have
24 that of record, that commission report was in
25 September 2006; is that --

1 A. That's correct.

2 Q. The issue of poverty presents a problem for
3 more than just education, it's a deeper and more
4 extensive problem, would you agree?

5 A. Correct.

6 Q. The experience that you saw as a legislator
7 that you saw while on the Commission was, in hard
8 economic times, that's when you would see more
9 poverty?

10 A. Absolutely.

11 Q. And when we talk about the schools, when you
12 went around and visited them, were you finding that
13 the schools, as it was reported to you, were having
14 to feed some kids in poverty, clothe some kids in
15 poverty, provide to them some minimal medical care,
16 at least at a triage level, through a school nurse,
17 and provide them with the equivalent of mental health
18 services through counseling?

19 A. There were nutrition programs. I don't know
20 as we really heard many of the other programs
21 described. Let me think just a minute.

22 None of the schools probably presented us
23 with those kinds of programs. They may have been
24 there, but they didn't say -- they didn't tell us
25 about them.

1 Q. When you were the head of SRS, one of the
2 ways that the Kansas -- well, one of the ways Kansas
3 attempted to attack and address poverty was through
4 the SRS programs; is that correct?

5 A. Absolutely, yes.

6 Q. And there are other ways that Kansas has
7 attempted to address poverty, have they not, through
8 other funded programs --

9 A. Oh, yes.

10 Q. -- other than through SRS? Despite the
11 efforts of Kansas to address poverty through these
12 various programs, poverty is still a problem in this
13 state that we've not been able to solve; is that
14 correct?

15 A. That's correct.

16 Q. And it gets back, a little bit, to the
17 debate we were talking about, and that is what's the
18 best way to solve that. Some would say, let's grow
19 the state, let's do economic development in the
20 private sector, let's get those people jobs. And
21 some would say we can't do that without investing and
22 education, and I think that's your position, is that
23 right?

24 A. Education leads to good jobs.

25 Q. Again, the best way to address the poverty

1 issue, which is a real issue that affects people in
2 many more ways than just in education -- I don't mean
3 to demean the significance of the issue, but one way
4 to address the poverty issue as it affects education
5 is to come up with a strategy that attempts to remove
6 the poverty; is that correct, that's what some people
7 would argue?

8 A. Would you --

9 Q. I think it's --

10 A. -- try that again.

11 Q. I think I'm probably getting to the stage
12 where the Judge would tell me I'm argumentative.
13 I'll move on to the next point.

14 MR. RUPE: Your Honor -- are you
15 going to be much longer?

16 MR. CHALMERS: No.

17 MR. RUPE: Okay. Because I
18 promised Ms. Chronister that we'd have a break around
19 10:30, because she needs one.

20 MR. CHALMERS: If you want to take
21 a break, that's fine.

22 JUDGE THEIS: How much longer are
23 you going to be?

24 MR. CHALMERS: Maybe 10, 15
25 minutes.

1 MR. RUPE: You okay?

2 THE WITNESS: Yeah.

3 MR. RUPE: All right. Thank you.

4 Sorry.

5 JUDGE BURR: That's okay. I'm
6 going to need one, too.

7 JUDGE THEIS: If that changes just
8 let us know.

9 THE WITNESS: Thank you.

10 Q. (By Mr. Chalmers) In your report -- and I'm
11 now talking about Exhibit 178, which is the last
12 report of the 2010 Commission. And I think you read
13 this, on page 18.1, it points out that just when test
14 scores were showing marked improvement over the
15 past -- or this is just when test scores were showing
16 marked improvement over the past, talking about the
17 reductions in --

18 A. Mm-hmm.

19 Q. -- Kansas funding, did you find that?

20 A. No, I haven't yet. 178?

21 Q. Well, yeah, it should be Exhibit 178 and it
22 should be --

23 JUDGE THEIS: It says what it
24 says. I think you can go ahead and ask the question.

25 MR. CHALMERS: That's fine.

1 THE WITNESS: I tore it off.

2 Q. (By Mr. Chalmers) The last time your
3 Commission would have looked at data on how kids were
4 doing on tests, I presume, would have been right
5 before your report to the 2011 Legislature; is that
6 correct?

7 A. We always got the latest data, yes.

8 Q. I want to talk to you briefly about that.

9 A. Okay.

10 Q. We got a chart that Mr. Rupe has used that's
11 handy, Plaintiffs' Exhibit 411. And what this shows
12 is the third year of what's been described as the
13 Montoy money, and then, the fact that that year --
14 that's when we had some allotments from the Governor
15 when times started to get hard, is that right?

16 A. Mm-hmm.

17 Q. And then, of course, there have been
18 reductions in the base from '09 through '11/'12. And
19 '11/'12 would have been the last year that you
20 provided a report to the Legislature, is that
21 correct?

22 A. Mm-hmm.

23 Q. And I understand mm-hmm to be a yes.

24 A. I'm sorry, yes.

25 Q. And not to be rude, she has a hard time

1 taking that down sometimes.

2 On Exhibit 1207, what we did is we tracked
3 how the State and how State poverty scores had -- at
4 proficient level had moved over the years. And your
5 Commission concluded that there had been improvement,
6 and in fact, the test scores at the state level and
7 as well as at the level of the state for poverty,
8 improved at one level or another, pretty much from
9 2003 to 2011. You're going to see a negative there,
10 but that has to do with a graduation definition
11 change. But is that what you found?

12 A. Can you move that back?

13 Q. I'm sorry. Okay.

14 A. Okay. Now, what are you asking?

15 Q. I've got a better way to ask it.

16 A. I find that a confusing chart.

17 Q. Let me show you Exhibit 1231, because it
18 might just be a little easier to see. And the
19 difference between 1231 and, incidentally, the
20 exhibit that I was just showing you, is that this has
21 the data from 2012 on a preliminary basis.

22 A. Okay. The scores are always going up,
23 basically.

24 Q. Yeah.

25 A. Yeah.

1 Q. That's what you were finding, and that the
2 scores continued to go up --

3 A. And I'm not surprised at that.

4 Q. -- even after the cuts --

5 A. Sure.

6 Q. -- we talked about? And you want to tell me
7 why you're not surprised at that? Go ahead and tell
8 me.

9 A. Because the children are still receiving the
10 benefit of what it was that happened when they were
11 early childhood, elementary school. You know,
12 nothing happens in education immediately. You see
13 the results in high school of what happened ten years
14 before when they were early childhood and the changes
15 that were made at the early childhood level. The
16 results of what happened in elementary school are not
17 reflected for probably five years.

18 So you're not going to see the results
19 immediately of the cuts because you still have the
20 positive results of what it is that's going on with
21 those children from back -- and besides that,
22 hopefully, the teachers are still doing some of those
23 things, but they're beginning to lose, also,
24 benefits.

25 Q. See, that's the part that we need to talk

1 about.

2 A. Okay.

3 Q. That they're beginning to lose benefits.

4 That's based on your gut reaction, right?

5 A. That's right. You know, though, it's not
6 just my gut reaction, because some of the things that
7 -- I'm sorry, I'll wait for your question.

8 Q. It may not just be your gut reaction, but
9 it's borne out by the numbers, at this point, that if
10 they're going to lose it, we're still not seeing it?

11 A. But part of what it is that is that
12 important is the after-school things that many school
13 districts will no longer be able to afford, some of
14 the special teaching aids that they'll no longer be
15 able to afford. Those kinds of things are the things
16 that we will lose. And as we begin to lose them, it
17 will be difficult for the truly at-risk students to
18 continue to keep up.

19 Q. This is a description of what presumably
20 others have provided as to their opinions to you, is
21 that right?

22 A. I have no idea what they provided you.

23 Q. No, no, no, mine's a bad question. What you
24 have articulated is an opinion, and it's based on
25 what others have told you in terms of their opinions,

1 is that correct?

2 A. No. It is what we have seen that they have
3 done in order to improve those scores in the past.

4 Q. What we've seen, as shown on the exhibit, is
5 that the scores continue to improve even though there
6 have been cuts, as you've described them, in
7 spending. That's what the data shows. What I'm
8 asking is the basis of your opinion that some time in
9 the future we're not going to see that improvement if
10 things stay static.

11 A. I think that's correct, but I think it's the
12 at-risk students that we lose.

13 Q. There was an exhibit from the House
14 Education Committee, February 2, 2012, which is
15 Exhibit 166 -- 1166, and in that exhibit, there are
16 some charts I want to show you.

17 A. Okay.

18 Q. The first one is found at Page 11 of the
19 exhibit, and that would have been showing the Kansas
20 readings for all students, test proficiency levels
21 from '01 through '10/'11. We still don't have the
22 final results. Can we agree that after 2006 they
23 changed the Kansas assessment tests and they test on
24 different standards?

25 A. That's my understanding.

1 Q. Can we agree that if we look at this
2 graphically, that since that time there's been a
3 steady, consistent improvement on all student reading
4 scores in the state?

5 A. Yes. It was before, too.

6 Q. Well, before, it was kind of a more steep
7 improvement rate, and actually, that would have been
8 before the Montoy money, wouldn't it?

9 A. Mm-hmm.

10 Q. And then, if we look at page 12 of the
11 exhibit, there is a comparison between '10 and '11 on
12 how kids were doing at different levels, whether it
13 was levels of exemplary, or the levels of warnings,
14 so we're not just looking at people that have reached
15 the cut score and become proficient --

16 A. I can't see it.

17 Q. Can't you?

18 A. You're in the way.

19 Q. I'll step out of the way.

20 A. Thank you.

21 Q. So we're not just talking about the cut
22 score on this particular slide. My question is, did
23 the Commission look at how all kids are moving along
24 improving, and not just cut scores?

25 A. Are you asking about the gaps?

1 Q. No. No, ma'am. There's been testimony in
2 connection with a waiver that what's happened is that
3 as Kansas -- these last several years as Kansas kids
4 have taken these exams, that everyone as a group has
5 progressed in improving their scores. We've got more
6 people exemplary, more people exceed, so it's not
7 just the lower end catching up. And I'm wondering if
8 that's something the Commission looked at?

9 A. You know, I don't remember.

10 Q. You did talk about the gap, and that was
11 something --

12 A. Yes, we did look at that.

13 Q. -- you looked at, and the data that was
14 available -- and this comes from Page 17 of the
15 report -- this talks about the reading gap; showed
16 that the gap was narrowing, although slowly, and
17 continues to narrow to the last available data, which
18 would have been that last year, the 2010/2011,
19 '10/'11?

20 A. Yes, we have looked at the gap.

21 Q. That's what you found?

22 A. Yes.

23 Q. There's been some discussion of the gap as
24 it relates to ethnicity, possibly separate to
25 poverty. But in any event, if you look at Page 18,

1 what you found in your Commission was that the gap
2 between whites, Hispanics and African Americans
3 continues to narrow, at least through the time of
4 your report in 2011?

5 A. Yes.

6 Q. And I don't want to just put up -- cherry
7 pick here. The math scores, Page 19 of the exhibit,
8 once again, they show since '06, with the new test --
9 they show kind of a steady, uphill climb for kids at
10 the state level?

11 A. Yes.

12 Q. The math gap, your Commission I'm sure found
13 that, through 2011, it continued to narrow. And now
14 this has to do with between poverty; that's paid
15 lunch, reduced lunch and free lunch.

16 A. Actually, it doesn't narrow much when you
17 really look at it.

18 Q. Well, I think we could do the math and look
19 at the difference between 91.5 and 74.9, and come up
20 with a less -- we would come up with a less-
21 subjective view, but the numbers show some narrowing
22 at least, you agree with that?

23 A. Mm-hmm.

24 Q. If we look at, from the basis from whites,
25 Hispanics and African Americans, on the gap, at Page

1 26 of the exhibit, again, through that last year,
2 what we've got is, once again, that your Commission
3 was finding a narrowing, is that correct?

4 A. Mm-hmm.

5 Q. And the narrowing was continuing even during
6 '09/'10 and through the -- this would have been the
7 last number we have, so '08/'09 through '10/'11. I
8 understand your position is that that's just because
9 we haven't seen the results of the cuts yet?

10 A. Right.

11 JUDGE THEIS: Mr. Chalmers.

12 A. Hopefully, our teachers are better, too.

13 MR. CHALMERS: I've got one more.

14 Q. (By Mr. Chalmers) And we hope that over time
15 that the teachers are improving, is what you've said,
16 as well?

17 A. That's right.

18 Q. Then, of course, this slide, which is
19 Exhibit 20 -- or page 20 of the exhibit, talks about
20 how the last year, '10/'11, that we have data on how
21 kids have performed on the math tests through the
22 subgroups. Like the reading, did your Commission --
23 do you remember looking at how we're moving at math
24 as opposed to --

25 A. We haven't had that, if that was 2010.

1 Q. I know you wouldn't have. I'm wondering
2 whether or not you looked at that issue of how kids
3 were moving en masse?

4 A. No.

5 Q. And then, there is the teacher mentoring
6 issue that you mentioned. I just want to be
7 understanding what that is. I think that is a
8 program saying, let's talk about helping teachers who
9 are right out of school that are starting with us to
10 guarantee that they're going to stay with us longer,
11 is that right?

12 A. It helps them to be better beginning
13 teachers, keep them in the profession.

14 Q. Because there's been some discussion of
15 learning coaches and testing teachers. Do you know
16 what a learning coach is?

17 A. Basically, yes.

18 Q. Okay. And that's something different than
19 the mentor; isn't it?

20 A. Very similar, is my understanding.

21 Q. But it would serve different functions,
22 would it not?

23 A. It doesn't have anything to do with the
24 testing of teachers.

25 Q. No. No. No. Well, we heard yesterday that

1 it did. But that's, I don't know -- your
2 understanding of testing teachers is what?

3 A. I don't even know what testing teachers
4 means.

5 Q. If we talk about learning coaches, so that
6 we're clear on this, and what the Commission was
7 recommending on mentoring --

8 A. What the teachers -- would you like to hear
9 what it is we recommend on mentoring?

10 Q. I understand that what you have already
11 testified is what you recommended, which is that we
12 have teachers in place that will help the new
13 teachers coming into the program because we find that
14 that --

15 A. On a very formal basis.

16 Q. -- and that we find that that helps retain
17 teachers?

18 A. It about doubles the retention rate on
19 teachers.

20 Q. And Hutchinson, I think there's testimony
21 has that program. Are you aware of Hutchinson's
22 program on that?

23 A. I, frankly, don't remember which programs it
24 was.

25 Q. And, lastly, did your Commission look at the

1 levels of expenditures by school districts when you
2 consider all sources of funding, that is, the funding
3 that is produced through the LOB? You know what the
4 LOB is, I'm sure?

5 A. Yes, I do.

6 Q. As well as the funding that they received
7 through both state and local funds, through the
8 general fund, and federal moneys, did you look at
9 that amount and then compare that amount to what the
10 LPA study recommended?

11 A. Not federal funds. Federal funds was not
12 our responsibility. There's too much difference in
13 federal funding.

14 Q. Did you look at the level when you include
15 the LOB funds?

16 A. Yes, LOB is part of, basically, what it is
17 that goes into the state -- into the basic funding
18 for schools.

19 Q. And was part of your assumption then, as a
20 Commission, that the LOB funding was part of the base
21 amount?

22 A. Of the school finance formula.

23 Q. And so that I'm not confused on this --
24 probably everybody else is clear -- when you look at
25 the level of funding recommended by the LPA study --

1 and that's one of the things that your Commission did
2 at one point, is that correct?

3 A. Yes, it is.

4 Q. The LPA study talked about, this is an
5 amount that is necessary to get our kids to the
6 outputs that we desire. And you read that study and
7 were aware of that, is that correct?

8 MR. RUPE: Object to that. That's
9 just flat wrong. The LPA testimony is it was to
10 grade level progress, and that's what everybody has
11 testified to. When you say, it was designed to be an
12 amount of what everybody desires, I think that's
13 absolutely inaccurate.

14 MR. CHALMERS: I said the outputs
15 desired, Counsel, and that's exactly what it was
16 designed to hit at that time, but I can rephrase
17 it --

18 MR. RUPE: The output is to get us
19 to grade level progress.

20 MR. CHALMERS: I can rephrase the
21 question so that I don't have the problem, Mr. Rupe.

22 JUDGE THEIS: Get them to required
23 output, and we'll decide what that was?

24 MR. CHALMERS: Pardon?

25 JUDGE THEIS: Get them to the

1 required output and we'll decide what that is?

2 MR. CHALMERS: The LPA study said
3 what their output was. That's what I was trying to
4 ask.

5 JUDGE THEIS: But you have to ID it
6 with an arrow.

7 MR. CHALMERS: I'm sorry?

8 JUDGE THEIS: Do we have to ID
9 precisely it in order to ask the question?

10 MR. CHALMERS: I think I can
11 rephrase it to clarify. I think that Mr. Rupe's
12 right.

13 Q. (By Mr. Chalmers) What I was trying to ask
14 when I said, the output we all desired, what I meant
15 was the output as it was defined in the LPA study.
16 And do you know what that output is?

17 A. By now I don't.

18 Q. I think the testimony is that the LPA study
19 said we had certain aggregated test scores and we had
20 graduation. And what we're saying is, this is the
21 funding level that you need to have to be able to
22 generate those test scores, and that as aggregated
23 with the graduation rate. Does that refresh your
24 recollection?

25 If it doesn't, that's fine.

1 A. I was going to say. Give me a question.

2 Try it again. I'd like to answer your
3 question, but I can't get to it.

4 Q. I think you have answered my question.

5 A. Okay.

6 Q. And what it really boils down to is, when
7 you've used the LPA study, your Commission, was your
8 understanding that that study was a description of
9 the spending that would be necessary, including all
10 states -- all parts of state and local revenue; is
11 that correct?

12 A. All parts of state and local revenue --

13 Q. General and supplemental general, the LOB
14 and the general fund.

15 A. Yeah.

16 MR. CHALMERS: Thank you. I don't
17 have anything else.

18 REDIRECT EXAMINATION

19 BY MR. RUPE:

20 Q. I'll be real quick.

21 A. Okay.

22 Q. In terms of the explanation you gave and how
23 it takes time for kids to learn so that immediately
24 there isn't an effect on performance, and by the same
25 token when the money's removed, it doesn't

1 automatically result in a drop, completely, in
2 performance, would a good way to describe that be
3 what the economists refer to as a lag effect?

4 A. Yes. I think it would. Number one, our
5 teachers are better. In the process of what it is
6 that has happened in Kansas schools, our teachers
7 have learned to be better teachers. We've changed
8 the way we teach. We no longer teach the way you and
9 I learned.

10 There are different -- we've learned that
11 students learn different. They don't all learn in
12 the same manner. Teachers no longer just stand up in
13 front of a classroom like they did maybe when you and
14 I were in class. There's a lot more hands-on
15 learning that takes place.

16 And those machines that you all have in
17 front of you, there are a lot more of those. And the
18 kids really like those. While it may be hard for me
19 to figure out how to make some of them work, it's a
20 whole different method of teaching these days.

21 When you're out in Goodland -- I don't know
22 whether I'm allowed to do this or not. But anyway,
23 the distance learning that takes place, the only
24 reason a lot of our small schools are still open is
25 because of distance learning, because you can't

1 afford to have a teacher and you can't find a teacher
2 to go a lot of places in Kansas anymore.

3 We've consolidated schools to the stage
4 where, as I said, in particularly Western Kansas, we
5 can't consolidate any more. It's too far. Those
6 kids are riding a bus one way longer than an hour a
7 day. That's too far for them to have to go.

8 There's a lot of things that are happening
9 that teachers do things a lot different. And that's
10 part of what professional development is about and
11 what it is that's happening.

12 I'm sorry, I got way off.

13 Q. No.

14 A. I do that sometimes.

15 Q. You've --

16 A. But that's part of what it is that's the
17 answer to the question as to why you don't get a
18 sudden drop-off.

19 Q. I'd like to ask you one more series of
20 questions and then we'll be done.

21 A. Okay.

22 Q. In terms of the achievement gap that we
23 talked about, or Mr. Chalmers talked about, and you
24 said the Commission looked at, Mr. Chalmers has put
25 up all grades in showing you information, all Kansas

1 students. And that's, what, Exhibit 1231. This is
2 the results through 2012 for all Kansas kids. And I
3 take it you haven't seen the assessment scores
4 disaggregated to show --

5 A. No.

6 Q. -- those kids at poverty?

7 A. No.

8 Q. Or African Americans? And if I remember
9 your recommendation in the 2010 Commission to the
10 Legislature, you indicated that just at a time when
11 the scores were improving, we were stunting the
12 growth of some Kansas kids. Do you recall testifying
13 to that?

14 A. Yes.

15 Q. And I want to show you what is marked as
16 Exhibit 416. And this would be the chart that shows
17 the assessment for reading for African Americans.
18 And it shows that the test scores have, in fact, gone
19 down and there's a gap of some almost 30 percent
20 between 100 percent and what they scored on tests.
21 Do you see that?

22 A. Yes.

23 Q. Kind of reinforces what you said, doesn't
24 it?

25 A. Makes me cry.

1 Q. In terms of kids we're leaving behind, would
2 leaving 30 percent of the kids behind be acceptable?

3 A. No.

4 Q. I guess if they improve from .05 to .06 over
5 the last five or six years, that would be acceptable,
6 huh?

7 A. Never.

8 MR. RUPE: No other questions.

9 MR. CHALMERS: If I can see that
10 graph. Thank you.

11 RECROSS-EXAMINATION

12 BY MR. CHALMERS:

13 Q. What Mr. Rupe has done in Exhibit 416 is
14 shown you the reading assessments for African
15 Americans. If we really wanted to know how the gap
16 is going, as he's described it, what we'd have to do
17 is compare the African Americans to all other
18 students and not to the target, wouldn't we?

19 A. I don't know.

20 Q. I mean, we can't tell from this target where
21 everybody else is, that's why we would probably want
22 to show it, graphically, differently, is that right?

23 A. Well, I wouldn't like it if African
24 Americans were going down, would you?

25 Q. No, I wouldn't like it, and I don't like

1 it. But when we look at comparing the gap, we saw
2 other charts showing African Americans, showing that
3 the gap is narrowing between the haves and the have-
4 nots?

5 A. Show me the same chart with the same
6 information on it and I can answer your question.

7 Q. Well, I think we've shown you the chart.
8 But let's talk about this chart for a moment, because
9 the other chart kind of comes from it. That's the
10 big one that you didn't like. It's 1207.

11 A. Yeah.

12 MR. RUPE: Which goes through 2011,
13 and doesn't include what my graph does.

14 MR. CHALMERS: I appreciate that.
15 You just get to get up and make arguments?

16 MR. RUPE: I'm objecting to your
17 showing that as a comparison.

18 JUDGE THEIS: Overruled.

19 Q. (By Mr. Chalmers) I'd like to point out
20 Exhibit 1207. We've talked about that. This shows
21 all the grades in poverty and then the general. So I
22 suppose what we could do is we could take numbers in
23 the poverty or the numbers -- if you want to do it
24 deaggregated by blacks -- and we could compare it to
25 the numbers for the general, couldn't we, and have a

1 better read as to what a gap looks like?

2 A. I can't compare them. I'm an old
3 microbiologist. I'm a research scientist. And what
4 you are showing me, I cannot compare.

5 Q. That's all right. And it breaks all of our
6 hearts that there are kids that are not performing
7 all proficient?

8 A. It breaks my heart that they're going
9 down --

10 Q. Well, I don't know that they are. But it
11 also breaks our hearts, doesn't it, that there are
12 kids in poverty, that there are parents that are not
13 getting their kids to school or can't get their kids
14 to school?

15 A. Oh, yeah.

16 Q. That there are kids that don't have proper
17 food, nutrition, that there are kids that don't have
18 proper clothing, that there are kids that can't even,
19 through their parents, afford to pay for basic
20 supplies that all kids are expected to bring to
21 school. That's a persisting problem that we're all
22 trying to struggle to address, is that correct?

23 A. That's correct.

24 Q. And you're not suggesting that the problem
25 that I've articulated is one that is addressed solely

1 and separately by the education system, are you?

2 A. I never have.

3 MR. CHALMERS: I don't have any
4 other questions.

5 MR. RUPE: I promised her a break.
6 I'm not going to ask any more questions.

7 JUDGE THEIS: Thank you very much.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 JUDGE THEIS: Twenty minutes and
11 then we'll probably go to 12:30. Is that good?

12 JUDGE FLEMING: Yeah.

13 (A recess was taken.)

14 JUDGE THEIS: Be seated. Thank
15 you.

16 MR. RUPE: Your Honor, I need some
17 direction from the Court. In the last 20 minutes we
18 have been handed 12 brand new exhibits that include a
19 chart that is apparently a re-do of what Counsel has
20 admitted is absolutely wrong, 1198 and 1199, that he
21 tried to withdraw this morning that we agreed to not
22 be withdrawn. He has provided, just a few minutes
23 ago, a chart, 1239, that we have not had time to
24 analyze, and it is a chart that is brand new to us.

25 He has given us 1037-A, which he

1 says are missing portions of 1037. New stuff to us.

2 1237, 1238, 1239, I mentioned.

3 1240 is the same as our 235. And 1241, which has
4 some of the documents we've seen.

5 And the fact is this is all brand
6 new today and I'm objecting to every one of them.

7 And it's going to require, I think, keeping the
8 record open. We kept it open for the testimony
9 concerning the waiver. I'm afraid he's going to be
10 arguing at some point that this assessment
11 information is preliminary.

12 They just announced a ruling on
13 healthcare that I could put people on the stand from
14 Dodge City that's going to tell you it's going to
15 cost them a million dollars in additional funds.

16 At some point this has got to end.
17 We are months beyond the designation of exhibits, and
18 he hands them to me on the last day of this case.

19 And I am objecting to every one of those. It is
20 extremely prejudicial, because we have not had a
21 chance to see these.

22 To me, this is trial by ambush. It
23 is absolutely him coming to us at the last minute and
24 dropping 12 new exhibits on us, when we're within a
25 few hours of ending the evidence.

1 JUDGE THEIS: You get a new box of
2 crayons, you just want to use them, right?

3 MR. CHALMERS: Yeah, I suppose.
4 The documents that are being produced are ones that
5 were produced in discovery, with the exception of
6 two, which are demonstrative exhibits that I plan on
7 going through with Mr. Dennis.

8 Trial by ambush, coming from
9 Counsel, is a little bit distressing, in that this
10 is -- how many witnesses did I have that weren't
11 listed in either the pretrial or until the last
12 minute and then --

13 JUDGE THEIS: This isn't a get-even
14 deal. Let's just talk about what you're talking
15 about.

16 MR. CHALMERS: Yesterday, I got
17 exhibits handed to me right before a witness was to
18 testify. My proposal is, let's go ahead.

19 JUDGE THEIS: What are your
20 exhibits?

21 MR. CHALMERS: Exhibit 1040 (sic)
22 is the --

23 JUDGE THEIS: He said it was the
24 same as Plaintiffs', so I don't think we need to
25 worry about that one.

1 MR. CHALMERS: -- same as
2 Plaintiffs' 235. Exhibit 1013 is an exhibit that we
3 put a place card in, saying that we would get that to
4 him, and probably should have been before now. It's
5 excerpts from Senate Bill 294 that describes what the
6 funding levels are for this year; of course, a matter
7 of public record.

8 JUDGE THEIS: This year's Senate
9 Bill 213 (sic)?

10 MR. CHALMERS: That's right. 234
11 (sic).

12 JUDGE FLEMING: 294.

13 MR. CHALMERS: Exhibit 1037 is the
14 statewide current operating expenditures. We've seen
15 diagrams that use this information. The individual
16 information for each one of the districts is in
17 evidence as 1037. We discovered that the State --
18 that there are seven copies from 2004 to 2011,
19 weren't in our exhibit notebook and so we wanted to
20 add those. Those records, of course, were available.

21 Exhibit 1238 is a demonstrative
22 chart, and what it does is gives the information that
23 is used and the source of the information of the
24 exhibit numbers that is used to describe another
25 demonstrative chart.

1 The next demonstrative chart --

2 MR. RUPE: And that one, by the
3 way, is brand new to us. We have never seen that. I
4 don't know when it was created, but I've been asking
5 him -- I'm sorry, I'm interrupting you.

6 MR. CHALMERS: Let me finish, then,
7 if you don't mind, in that you've had your say, and
8 I'd like to have mine. Thank you.

9 Exhibit 38 (sic) is a summation of
10 exhibits that have been produced that were available
11 in discovery.

12 Then there is Exhibit 1237, which I
13 think is new. We obtained this shortly before
14 trial -- no, during trial from Mr. Dennis, if I'm
15 remembering it correctly. It is the source of,
16 largely, the reason why I wanted to substitute the
17 previous exhibits. It is the State records showing
18 the KPERS state aid that is applicable to certain
19 subparts or functions. In other words --

20 JUDGE THEIS: He's going to be
21 here.

22 MR. CHALMERS: He will be here and
23 discuss that.

24 JUDGE THEIS: Foundation can be
25 laid for that.

1 MR. CHALMERS: Exhibit 139 (sic) is
2 the chart that replaces the other charts that is the
3 one that used the summation I talked about. It
4 illustrates the difference between where LPA -- where
5 Mr. Baker's testimony was concerning inflation and
6 what the actual expenditures really are when you look
7 at all sources. That's demonstrative.

8 JUDGE THEIS: What's the source?

9 MR. CHALMERS: Pardon?

10 JUDGE THEIS: What's the source of
11 the comparison besides Baker?

12 MR. CHALMERS: The source of the
13 comparisons are described in this chart, which is
14 Exhibit 138 (sic).

15 MS. TIBBETS: 1238.

16 MR. CHALMERS: 1238. Which has the
17 exhibit numbers that explain the data for that.

18 The Exhibit 1241 is something that
19 I emailed Counsel and told him it would be an exhibit
20 before trial, but I'm not sure if it made it into an
21 exhibit notebook. If it did, we couldn't find it.

22 1241 is a December 12, 2011
23 spreadsheet that Mr. Dennis, who will be here, can
24 testify to, in which he ran the numbers saying what
25 would the --

1 MR. RUPE: You emailed us 1060.
2 What's the difference between your proposed 1241 and
3 Exhibit 1060?

4 MR. CHALMERS: One of them is
5 printed portrait and one is printed --

6 MR. RUPE: So it's the same
7 exhibit?

8 MR. CHALMERS: I don't know. Yeah,
9 should be. Maybe 1060 is the one we were looking
10 for, looks like. But 1241 is --

11 MR. RUPE: Well, then --

12 MR. CHALMERS: -- based on
13 testimony.

14 MR. RUPE: Withdraw 1241 and use
15 1060.

16 MR. CHALMERS: Do we have 1060?
17 I can use 1060.

18 (Defendant's Exhibit Number 1241 was withdrawn.)

19 Those are the nature of the
20 exhibits. And they are here and foundation will be
21 laid to those if Counsel has an objection through
22 Mr. Dennis.

23 MR. RUPE: I will withdraw my
24 objection to 1240, which is the same as our 235. And
25 I will withdraw my objection to the -- withdraw --

1 he's withdrawing 1241 because it's already in
2 evidence as his 1060. And I renew my objections.

3 We've had Dr. Baker come and go in
4 this case. And if I had had, in the exhibit
5 notebooks before trial, the LPA study chart that he
6 just described that has Baker's numbers in it, I
7 would have Dr. Baker testify to it. And now,
8 Dr. Baker is not here. He's back in New Jersey and
9 unavailable to rebut or explain what should have been
10 an exhibit presented to us in advance of trial.

11 JUDGE THEIS: If these charts and
12 exhibits merely identify the evidence that's in,
13 they're argumentative in a sense. If they're
14 demonstrative, I would expect that in some kind of --
15 even in your briefing that you would have, you know,
16 some kind of handcrafted --

17 MR. RUPE: They are not --

18 JUDGE THEIS: -- comparison.

19 MR. RUPE: Your Honor, if I may,
20 they are not demonstrative. He is going to be
21 arguing that the total funding, as shown by this
22 chart, exceeds LPA and exceeds Dr. Baker's -- he's
23 going to make his case on this exhibit, and we don't
24 have an opportunity to have Dr. Baker analyze his
25 data. The KPERS information, through his own

1 admission, is all brand new.

2 MR. CHALMERS: Your Honor, I
3 don't --

4 MR. RUPE: That's 1237.

5 MR. CHALMERS: I don't need that
6 exhibit information for evidence. It is a
7 demonstrative piece of evidence and it's something I
8 would show in closing arguments. I'd show in the
9 findings of fact. It is a calculation based on
10 evidence that's already in the record.

11 But if Mr. Rupe's problem is if it
12 goes in as an exhibit, I don't need it as an
13 exhibit. But I understood I was supposed to mark
14 everything, so I marked it.

15 JUDGE THEIS: All right, as long as
16 it's clearly demonstrative, I don't think, you
17 know --

18 MR. RUPE: Well, to the extent he
19 is offering it as evidence and it is admitted as an
20 exhibit -- which I agreed to do based on the
21 demonstrative exhibits I saw when he was to disclose
22 them -- then I do have a problem with it, because he
23 is going to be arguing that that chart shows
24 something that we have not been able to analyze and
25 have no evidence to rebut.

1 JUDGE THEIS: Well, it doesn't
2 introduce any new facts, I don't think.

3 MR. RUPE: I don't know that.

4 JUDGE BURR: I think he can use it
5 in closing argument. If it's not supported by the
6 facts, then it's not supported by the facts. But
7 it's not evidence at this point.

8 MR. RUPE: Then I would say we not
9 admit it as an exhibit.

10 JUDGE BURR: I don't care about
11 that. I don't know that it is an exhibit.

12 JUDGE THEIS: He's going to hold it
13 up, to us at some point in time -- why don't you wait
14 until he holds it up, and then we'll --

15 MR. CHALMERS: All right.

16 JUDGE THEIS: -- mark the exhibit
17 in argument as demonstrative.

18 JUDGE BURR: I think it should be
19 included in the record if he uses it in closing
20 argument, but I don't know that it's an exhibit as
21 such.

22 MR. RUPE: Well, I would -- again,
23 I would withdraw my objections to 1240 and 1241. And
24 for reasons stated and the fact that we now have 41
25 witnesses on the stand that could testify to these

1 exhibits, and they're not available now because we're
2 on the last day of live presentation, I would object
3 to 1013, 1037-A, 1237, 1238, 1239.

4 JUDGE THEIS: And 1013 is just a
5 recitation of the statute. I don't know how that's
6 something we can judicially notice. If he wants to
7 put it in so he can emphasize it, I don't see any
8 problem with that.

9 Why don't we mark these as the new
10 ones that you claim are demonstrative, only as
11 demonstrative exhibits, after the number and then
12 those you claim that you're going to set foundation
13 here for you can mark them as you set the
14 foundations.

15 How's that, Mr. Chalmers?

16 MR. CHALMERS: All right.

17 MR. RUPE: Which ones are you
18 marking as demonstrative?

19 JUDGE THEIS: 1238. That would be
20 the one we were talking about for the argument.

21 MR. CHALMERS: Yeah, I think 1238,
22 as well as --

23 MR. RUPE: 1239.

24 MR. CHALMERS: -- 1239 are
25 demonstrative exhibits.

1 (Defendant's Demonstrative Exhibit
2 Numbers 1238 and 1239 were marked for
3 identification.)

4 MR. CHALMERS: We have marked a
5 number of exhibits with Mr. Rupe where he's put
6 arguments on and he has had highlighting. And I get
7 those dropped on my desk yesterday. And I know that
8 it's, kind of, maybe not pertinent here, but those
9 have been kind of the game that's been played.

10 So if Mr. Rupe is up here claiming
11 prejudice now, that just isn't fair. This is all
12 information he has had. And I don't have any problem
13 marking these as demonstrative, and I think that
14 cures any problem he has.

15 For him to suggest that he would
16 have witnesses come in now and say something
17 different is just plain out-and-out disingenuous.
18 Mr. Baker was on the stand. I cross-examined him at
19 length about these points. And this should come as
20 no surprise. I made the argument in opening
21 statement.

22 JUDGE THEIS: Seems like that's
23 pretty much assailable by an argument.

24 MR. RUPE: I'm sorry?

25 JUDGE THEIS: They seem they're

1 assailable by argument only, so they would be
2 demonstrative in that sense.

3 MR. RUPE: Well, I just wanted to
4 take issue with the suggestion that we had exhibits
5 that had argument on them. He certainly got those in
6 advance of trial. I didn't give them to him on the
7 last day.

8 MR. CHALMERS: You gave me a packet
9 yesterday.

10 MR. RUPE: Yeah, the preliminary
11 assessment scores that you subpoenaed at the same
12 time I did.

13 JUDGE THEIS: Any time a lawyer
14 puts together a, quote, demonstrative of the
15 evidence, it's argumentative in the sense that you
16 put it together. You know, the question is whether
17 it floats or flies. So I really don't see a problem
18 at this point.

19 MR. RUPE: Dale Dennis, please.

20 DALE DENNIS,
21 Called as a witness for the
22 Plaintiffs, was re-sworn by the reporter and
23 testified under oath as follows:

24 DIRECT EXAMINATION (CONT.)

25 BY MR. RUPE:

1 Q. Good morning, Mr. Dennis.

2 A. Morning, sir.

3 Q. When we left off you were telling the Court
4 that you believe that quote, "When a student
5 graduates from high school, they should have the
6 skills necessary to enter the workforce or attend and
7 participate in higher education," unquote.

8 And my question to you now is, since we want
9 to get a handle on what is a suitable education in
10 Kansas, would you tell us what your definition of a
11 suitable education is?

12 A. I thought I kind of answered that, in that
13 the student, when they graduate, should have the
14 skills to enter the workforce or participate in
15 higher education. I think those are very, very
16 important.

17 Q. With regard to Kansas law, I have a blow-up
18 here of the Rose Factors, 72-1127, and those factors
19 are listed in the statute, but include: The
20 development of sufficient oral and written
21 communication skills to enable students to function;
22 acquisition of sufficient knowledge of economic,
23 social, and political systems; development of
24 students' mental and physical wellness; development
25 of knowledge of the fine arts to enable students to

1 appreciate the cultural and historical heritage of
2 others; training or preparation for advanced training
3 in either academic or vocational fields so as to
4 enable students to choose and pursue life work
5 intelligently; development of sufficient levels of
6 academic or vocational skills to enable them to
7 compete favorably in academics and the job market;
8 and then special education.

9 Are those consistent with what you believe
10 is a suitable education?

11 A. Yes, sir.

12 Q. Is that consistent with what the State Board
13 of Education has stated is a suitable education?

14 A. My opinion, the answer is yes. And I think
15 it says something about the state board as you lead
16 into that statute. Am I correct, sir?

17 Q. You are. Let me put it right back up,
18 because the --

19 A. If I recall correctly.

20 Q. Yeah, it says that every accredited high
21 school in the State of Kansas also shall teach the
22 subjects and areas of instruction necessary to meet
23 the graduation requirements adopted by the state
24 board.

25 And this statute, in the first paragraph,

1 sub A, says, "Every accredited school in the State of
2 Kansas shall teach the subjects of instruction
3 adopted by the state board as of January 1."

4 So your answer to my question about the
5 state board is yes?

6 A. Yes.

7 Q. I want to put up Exhibit 29, and I'll show
8 you what this is.

9 MR. RUPE: Can you turn that on for
10 me, please?

11 Q. Mr. Dennis, do you see this is, School
12 Finance, January 14, 2010? It's a slide presentation
13 that we obtained from Kansas State Department of
14 Education and talks about the history of school
15 finance.

16 What I'd like you to do is tell us, based on
17 your recollection -- and if you need this to refresh
18 your recollection -- what has been the base state aid
19 per pupil in the school years 2001 through 2010?

20 A. In 2001/'02 it was 3,870, and it dropped for
21 the next three years at \$7; I think it was 3,863
22 through 2004/2005. Then, it went up to 4,257, but
23 there's an asterisk on that, and that's an important
24 asterisk. We can talk about that later if you like.

25 And '06/'07 was 4,316. Then, it went to

1 4,374. And that was part of the three-year plan. In
2 '08/'09, it went to 4,400. Then, we dropped to
3 4,012.

4 Q. Carry it through '11/'12 and '12/'13, if you
5 would.

6 A. Okay. In '10/'11, we dropped to 3,937. In
7 '11/'12, we dropped to 3,780. And then in '12/'13,
8 we came back up \$58 to 3,838.

9 Q. Let's cover the asterisk and talk about why
10 the asterisk is there, please.

11 A. The Legislature adjusted some of the
12 weightings and raised the base, but the goal was to
13 make the base look higher but nobody would get any
14 more money or any less money.

15 Q. And in terms of Exhibit 233, does this chart
16 show the base during that period of time clear up to
17 current 2013?

18 A. It appears to, yes, sir.

19 Q. Explain what the Legal Max is.

20 A. The term "Legal Max" is what you're
21 authorized to spend from the general fund for each
22 school district, the amount they are authorized to
23 spend in the general fund.

24 Q. And then help us understand, I'm going to
25 put Plaintiffs' 12 on the overhead, which is the 2012

1 Legal Max. And where it says base state aid per
2 pupil, 3,780, what does that amount reflect?

3 A. In the law there's several adjustments made
4 like current year, prior, three-year average on
5 enrollment. Once you get the enrollment, then you
6 have all the weightings, and then you apply the
7 weightings times 3,780, and that will become your
8 Legal Max.

9 Q. In terms of what the statute states the base
10 is, is that different than that amount?

11 A. Yes.

12 Q. Explain that to the Judges.

13 A. The statute says 4,492, but the
14 appropriation wasn't high enough to fund 4,492, so
15 the statute provides, if you're short of money, you
16 reduce the base down accordingly.

17 Q. Let's look at Plaintiffs' 300. Let me hand
18 it to you, and then I'll put it on the overhead, but
19 explain what Plaintiffs' 300 is.

20 A. Okay. 300 was a printout we were requested
21 to run last month on what the effect would be if the
22 general state aid was reduced a billion dollars.

23 Q. Okay. And who asked you to do that?

24 A. Well, I had three different people ask.

25 There was a -- I have to stop and think. I had a

1 senator and -- a senator, and I think there was a --
2 no, two senators and one House member, as I recall.

3 Q. And show me what your calculation was and
4 explain to the Court what the calculation was.

5 A. Well, what the law provides, when you reduce
6 the State's appropriation for general state aid, you
7 reduce the base accordingly. So I just reduced the
8 base until I had it down to a billion dollar
9 reduction.

10 Q. What does that show?

11 A. It would drop from 3,780 to \$2,272, or a
12 drop of \$1,508.

13 Q. Where is that shown on the last page?

14 A. I'm not looking at it, but I believe it's
15 shown on each column at the top.

16 Q. All right.

17 A. Up at the top, and the total then would be
18 shown at the bottom, yes, sir.

19 Q. Okay. So if I am on track with Plaintiffs'
20 Exhibit 300, that shows the effect of that lost
21 revenue in terms of what it would do to the base?

22 A. Yes.

23 Q. And the base numbers in Column 1 are
24 '11/'12; is that right?

25 A. That's correct, sir.

1 Q. And Column 2 is '11/'12 general fund?

2 A. I think that's general fund and I imagine it
3 excludes special ed. Excludes that, that's correct,
4 sir.

5 Q. And then the third column is what?

6 A. That's the same thing with the billion
7 dollars out, which reduces the base down to 20 --
8 what is it, 2,272?

9 Q. Yes. And then the third column -- or the
10 fourth column is what?

11 A. I just showed the difference, showed what
12 the amount of the budget cut would be on a base per
13 pupil and the amount for each district, as requested.

14 Q. In terms of we've heard the phrase "the base
15 drives the formula" in this courtroom, do you use the
16 base to estimate the effects of cuts?

17 A. Yes, sir. And the reason that's done, sir,
18 is, the law says that if you're short appropriation,
19 you reduce the base until it balances.

20 Q. I think we covered this before, but just a
21 refresher course, in terms of the cuts that have
22 occurred from February 2009, I think that started at
23 the end of '08, through May 13, 2011. Does this
24 Exhibit 241 show those cuts?

25 A. Yes, sir.

1 Q. Okay. And have you had an opportunity since
2 you were last here to look at the total number of
3 cuts as to the amount?

4 A. No, I have not checked the amount, but it's
5 substantial, sir.

6 Q. And I guess you don't argue with the
7 511,020,560 number?

8 A. No.

9 Q. Okay. And again, just to kind of connect
10 all this together, we talked about the cuts you're
11 aware of in terms of the cuts made by districts. And
12 we've heard some testimony, since you were last here,
13 about that. But Exhibit 253 is that report that
14 chronicles those cuts that you talked about last
15 time, is that right?

16 A. Yes, sir.

17 Q. Now, I'd like to talk a little bit about the
18 impact of these cuts on school districts in Kansas,
19 and I want to hand you what has been marked as
20 Exhibit 254, and have you look through that and tell
21 me if you can identify that.

22 A. Yes, sir, that was a survey we did for a
23 legislative group committee.

24 Q. Okay. And what did you survey?

25 A. All school districts.

1 Q. And let me if I could have that. I'll put
2 it on the overhead and we can kind of go through a
3 couple of these. I won't go through the entire
4 document, but 254 was prepared by your office and is
5 a survey of the various programs that were reduced or
6 eliminated in 2010/2011?

7 A. Yes, sir, I believe that's correct.

8 Q. And looks like there were reductions in
9 full-day kindergarten, reductions in staff. There
10 were reductions in all-day kindergarten, at-risk,
11 academic coaching, bilingual, building aides,
12 transportation, elementary, arts, libraries,
13 technology, vocational programs, math, science,
14 summer school, at-risk programs, combined classes,
15 paraprofessionals, technology, professional
16 development, entrepreneurship, after- and summer
17 school programs, athletics, before- and after-school
18 programs, extra-curricular activities, all-day
19 kindergarten, all-day kindergarten, library services,
20 athletics, and so forth.

21 Can we agree that the result of the
22 reductions in revenue by the Legislature have
23 resulted in substantial cuts throughout Kansas to
24 school districts?

25 A. Yes, sir. That was a report that came from

1 each school district.

2 Q. And explain the effect of a cut. Do the
3 weights amplify the reductions of a dollar to the
4 base?

5 A. Yes, sir.

6 Q. Explain to the Judges how that works.

7 A. For example, take at-risk, the weighting is
8 like .456. Multiplying that times 4,400 you get a
9 lot higher answer than if you multiply it times
10 3,780. So the weightings, multiplied by the base,
11 determines what you have to spend.

12 Q. So if I'm on track with your explanation,
13 because of the weightings and the multiplying
14 factors, when money is increased, those weightings
15 help the school district with more funds, and when
16 there's a cut, it hurts the school district more?

17 A. That's correct, sir.

18 Q. What was the year that capital outlay
19 stopped going to the districts that were economically
20 disadvantaged?

21 A. I'm not sure. I think it was '08/'09. May
22 have been the last year. That's what I recall.
23 There hasn't been any the last two, three years. Two
24 years, three years.

25 Q. I think it was '09/'10, but in terms of the

1 last year, was there some confusion that you were
2 consulted about because the statute provided for
3 capital outlay equalization?

4 A. Yes. There was a little bit of confusion in
5 the Legislature, that's correct.

6 Q. And I think we've heard some testimony from
7 Linda Jones, the USD 259 business director, that she
8 told you that that amount of money was reduced in
9 Governor's allotment that year?

10 A. I believe '08/'09 was the last year.

11 Q. Okay.

12 A. We funded that \$22,338,828. Now, yes, there
13 was some confusion in '09/'10. That's where the
14 confusion took place.

15 Q. And explain what the confusion was.

16 A. Well, the Legislature, I believe the
17 committee intended to reduce capital outlay and put
18 it in general state aid for operation, for general
19 operations. There was an error made in that
20 process. And so, later on, the Governor did an
21 executive order and reduced the amount in capital
22 outlay and moved it to general state aid. And then,
23 it hasn't been funded since, sir.

24 Q. And in terms of this executive order, are
25 you talking about the allotment, or something else?

1 A. I don't know if you'd call it an allotment,
2 but the Governor has authority to move money that's
3 already appropriated from one line to another, and
4 that's what he did.

5 Q. Did you tell Linda Jones that it was by
6 reason of the Governor's allotment?

7 A. I probably did, because that's what
8 happened.

9 Q. All right. What is the LOB? Well, we
10 talked about what LOB equalization is, but what
11 percentage of that is funded, and explain that to the
12 Court.

13 A. The LOB is equalized to the 81st
14 percentile -- pardon me for using my hands. But you
15 take the evaluation of the district in the 81st
16 percentile, and everybody's equalized above that. If
17 you're above that, in the top 19 percent wealth, you
18 get no aid under this.

19 And in the last few years, if I understand
20 what you're referring to, we have not funded that
21 formula as the law requires. In '08/'09 -- no, in
22 '09/'10, excuse me, in '09/'10 we funded about 89.5
23 percent. '10/'11 we were at 91.7 percent. And we're
24 about to send out the check for the '11/'12 year, and
25 it'll be 86 percent. And next year's projected to be

1 89 percent.

2 Q. And that equalization aid does what?

3 A. That helps hold the property tax down to a
4 more equitable basis and particularly for the poor.

5 Q. And when you say, the poor, you mean the
6 districts with the poorer property wealth?

7 A. Low assessed valuation per pupil.

8 Q. You've kind of been in a position to see
9 what -- how school districts across the state have
10 been able to support education in their community
11 through your career. And I just want you to tell me
12 if you have any observation about the relative wealth
13 of school districts and their ability to raise LOB
14 dollars.

15 MR. CHALMERS: Lack of foundation.
16 I don't think that's been laid for him to express an
17 opinion on that.

18 JUDGE THEIS: Sounds like you're
19 asking him as a citizen.

20 MR. RUPE: I'm actually asking him
21 as a member of the Department of Education and who
22 follows education pretty closely on what he's
23 observed about -- and maybe I need to ask him more
24 about his background, because I think he's got
25 considerable background in knowing how districts --

1 the wealth of districts and how they perform.

2 MR. CHALMERS: Proper foundation
3 has not been laid, number one.

4 Number two, I think that we're
5 getting into something that's not helpful. It's not
6 helpful opinion testimony. And I think that's
7 something that the Panel can make a decision on
8 without opinion testimony from him.

9 JUDGE THEIS: Sounds like it's
10 going to be arguing, you're going to ask him to make
11 an argument rather than establish a fact, just from
12 the smell of it, so to speak.

13 MR. RUPE: Well, would you allow me
14 to proceed and then you can decide whether or not
15 it's a fact or just an argument?

16 JUDGE THEIS: You could proffer it
17 and we'll see whether it's admitted.

18 Q. (By Mr. Rupe) Let me lay a little foundation
19 first. How closely do you watch local elections in
20 terms of raising moneys for school, whether it be
21 LOB, whether it be bond elections, or so forth?

22 A. We monitor bond elections rather closely.
23 We look at a lot of budgets, which we're starting
24 next week. And the proration of LOB makes a big
25 difference in the poor districts.

1 Q. I think you testified last time, and I'll
2 just refresh everybody's recollection with this, that
3 you spend, sometimes, about every 15 minutes going
4 through different school districts' budgets and what
5 their financial situations are as they discuss that
6 with you over time?

7 A. We get a lot of telephone calls with a lot
8 of varied questions, that's true, sir.

9 Q. With all that information, are you able to
10 make certain trend observations regarding the
11 performance of property poor school districts in
12 their relative elections?

13 A. Yes, sir.

14 Q. What is your observation?

15 A. It is much easier to get election approved
16 if you're in high-wealth versus if you're in
17 low-wealth.

18 Q. Let me look at Exhibit 296.

19 JUDGE THEIS: I'll go ahead and
20 admit that.

21 MR. RUPE: Thank you, Your Honor.

22 Q. With regard to 296, this is a presentation
23 by KSDE to Edwards County Leadership Enhancement. Do
24 you see that?

25 A. Yes, sir.

1 Q. And is this characteristic of the kinds of
2 presentations that are made by the Department of Ed
3 across the state?

4 A. The answer is probably yes. And what this
5 is, in about January, along in there, a lot of local
6 leadership groups will come to Topeka, visit their
7 legislators, and they'll ask us to make presentations
8 to them. And they'll help drive the train, but they
9 a lot of times want to talk about issues in the
10 Legislature that's coming up.

11 Q. Well, let me see, let me look at some of the
12 information in here. And Exhibit 296, the Edwards
13 County Leadership Enhancement, I want you to walk us
14 through what you told them concerning state aid
15 reductions under funding the 2009/'10 school year,
16 please.

17 A. They asked us to review, Mr. Chairman, kind
18 of what the effects would be in dollars, and the
19 4,400 to 4,012, that equates to 241-plus million at
20 that time, based on the weighted enrollment. And
21 then the LOB -- remember I talked about it -- was
22 prorated. At that time that was the shortfall.

23 Capital outlay, it wasn't funded, but that's
24 what it would cost. Professional development, that's
25 what it was underfunded. But I can go through them

1 all if you want me to, but the bottom line is they
2 wanted to know what reductions had taken place or
3 underfunded.

4 Q. And that's what you told them for the
5 '09/'10 school year?

6 A. Yes, sir.

7 Q. 310 million -- about \$311 million?

8 A. Yes, sir.

9 Q. And then, you quantified for them how many
10 licensed positions were eliminated for the '09/'10
11 school year. And this information that you reported,
12 with administrators, teachers, coaches, other, 2,101
13 estimated dollars, reduced 73 million, where did that
14 information come from?

15 A. Survey from school districts, sir.

16 Q. That one we looked at a little bit earlier?

17 A. I don't know if it's the same one or not.
18 It could have been a different one, but it's where it
19 came from.

20 Q. And then I'm interested in this page that
21 says how other cost saving measures were reduced or
22 eliminated for the 2009/'10 school year, and you've
23 listed programs that include before school, after-
24 school, summer school, Parents As Teachers, fine
25 arts, language arts, career and technical education,

1 where did that information come from?

2 A. School districts.

3 Q. Again, your survey?

4 A. Yes, sir.

5 Q. Then I want to hand a chart to you, or show
6 a chart that is from Commissioner DeBacker,
7 Leadership and Challenging Times, a presentation,
8 Exhibit 249. It's in evidence.

9 And what I want to ask you about is this
10 chart from her that says, what we know. She has
11 indicated in her chart the reductions that you
12 explained to the Edwards County group of \$311 million
13 in reductions or underfunding for '09/'10, what you
14 explained in your presentation, 2,100 licensed
15 positions have been eliminated, 1,603 classified
16 positions have been eliminated.

17 A. Yes, sir.

18 Q. So that information was provided by the
19 Commissioner to a group in leadership in changing
20 times, is that correct?

21 A. Yes, sir.

22 Q. And then the State Board of Education
23 presentation, July 12, 2011, Plaintiffs' Exhibit 248,
24 is it accurate that -- well, let's walk through this,
25 if we could. It says, "Special education, current

1 law provides for 92 percent of excess costs."

2 Explain this chart to the Judges, please.

3 A. This is the chart that we presented to the
4 state board to make recommendations to the upcoming
5 legislature, and we always give them options, give
6 them a little history. And this is the special ed
7 amount. And then they make the recommendation that
8 they choose. And they can pick and choose, but these
9 are just some recommendations in history.

10 Q. All right. And where does the cost
11 information come from?

12 A. The excess cost?

13 Q. Where it says, 92 percent of excess cost,
14 and then it says, cost.

15 A. Okay. That's what it would cost to meet
16 those particular requirements. And in the statute,
17 there's a provision that outlines how you compute
18 excess costs for special ed. And that's what 92
19 percent -- that's what that law provides. And then
20 also, in recent history, because of the federal
21 government's challenges, you might say, on
22 maintenance of effort, we also include that for
23 '11/'12.

24 Q. And it continues on the next page in terms
25 of the cost 2012 to '13; is that right?

1 A. That's correct, sir.

2 Q. And were these programs underfunded?

3 A. Based upon the law that the Legislature
4 finally adopted, the answer would be yes. There's
5 one exception to that, I might say, sir, so we don't
6 have any confusion.

7 Q. All right.

8 A. The bond and interest state aid was funded
9 because it's a demand transfer.

10 Q. That would be the exception to the
11 underfunding?

12 A. Yes, sir, that's correct.

13 Q. And in terms of everything other than the
14 bond and interest, it's underfunded?

15 A. As a general rule, the answer is yes.

16 Q. Have you estimated what it would take to
17 fund the current base? Let me hand you or show you
18 Exhibit 35, a workshop that you did with the
19 Neuenswandars. And I'll put it on the overhead to
20 refresh your recollection. But do you recall a
21 budget workshop for 2011/'12 Fiscal Year?

22 A. Yes, we did do a lot of them every year.
23 The answer is yes.

24 Q. Then, looking at the base budget options,
25 it's Bates Number KSDE 139386, you've got options

1 there with a star that says "current law." Would you
2 explain what that chart shows?

3 A. At that point in time, it gives you an
4 estimate on the number of dollars it would take to
5 fund the base state aid per pupil at the amounts on
6 the chart. For example, 4,492 would take 474
7 million, plus. 4,012 would take 154,512,000.

8 Q. So the amounts are options based on what the
9 statutory amount in the statute says?

10 A. The 4,492 is statute. The others are
11 amounts that the Legislature has adopted in the
12 past. Like the '08/'09 was 4,400. It started out in
13 '08/'09 at 4,433, remember in the other chart, and
14 cut it to 4,400. The law says 4,492. And then one
15 year we was down to 4,012. I believe that may have
16 been in the '09/'10 school year. And then the 3,780
17 is last year.

18 JUDGE THEIS: What exhibit are we
19 looking at?

20 MR. RUPE: This is exhibit -- it's
21 from a budget workshop, Plaintiffs' Exhibit 35.

22 JUDGE THEIS: Thank you.

23 MR. RUPE: And it's Bates Number
24 KSDE 139386.

25 Your Honor, this is probably a good

1 time to break for lunch. I'm not going to be done in
2 ten minutes, and if we could take lunch, I'm going to
3 try for shorter, but I should be able to wrap up
4 pretty quick after lunch.

5 JUDGE THEIS: I told you yesterday
6 don't be standing in front of the door.

7 Come back at 1:30.

8 MR. RUPE: That's fine.

9 JUDGE FLEMING: We're going to
10 carry all the stuff out to -- let's make it an hour
11 and 20 minutes.

12 JUDGE THEIS: You want a quarter
13 to?

14 JUDGE FLEMING: That is too long.
15 That's five minutes too long.

16 JUDGE THEIS: You wanted an hour
17 and 20; that's an hour and 25.

18 If we come back at 1:45, are we
19 going to get pinched?

20 MR. RUPE: I don't believe so.
21 1:45 works.

22 MR. CHALMERS: 1:45's fine.

23 JUDGE THEIS: Mr. Chalmers, as the
24 cross-examiner, said, no, so I'll hold him to it.

25 Thank you.

1 (A recess was taken.)

2 JUDGE THEIS: Be seated. Thank
3 you.

4 MR. RUPE: We're resuming our
5 afternoon session. I have a little more ways to go,
6 but I kind of streamlined some of this, so let's get
7 started.

8 Q. (By Mr. Rupe) As far as you know, is the
9 state currently funding the level of funding
10 recommended in the Augenblick Myers study?

11 A. No.

12 Q. Are they funding to the level of the
13 Legislative Post Audit cost study?

14 A. As I recall, the answer would be no.

15 Q. We won't go through them, but you are aware
16 that the State Board of Education has made
17 recommendations regarding increasing and/or funding
18 the base and/or funding to the statutory level?

19 A. Yes, sir.

20 Q. Have those recommendations been followed by
21 the Legislature?

22 A. No, sir.

23 Q. I want to look at Exhibit 123, which is a
24 presentation you made to the Kansas Livestock
25 Association, and turn to Bates Number KSDE 140436,

1 and ask you with regard to how much professional
2 development money is currently available?

3 A. The answer to that question is zero, none.

4 Q. And it was paid in 2009, but in '10, '11,
5 '12, and this year, there is no funding?

6 A. That's correct. And to fund that formula
7 it's about 8.5 million. That's a partial funding,
8 just so we're clear.

9 Q. I'm sorry, do you want to explain that, what
10 you just said?

11 A. To fund that formula, it's about 8.5
12 million, and they only appropriated about a million-
13 750.

14 Q. Okay.

15 A. That was in -- what year was that, '08/'09?

16 Q. Yes.

17 A. Yeah, mm-hmm.

18 Q. Talk about federal funds with me a second in
19 the same presentation, at 140438, what's the
20 availability of federal funds in Fiscal Year 2012 as
21 far as the ARRA and educational jobs money?

22 A. The ARRA was primarily all distributed in
23 the '09/'10, '10/'11 years. There is no -- and
24 federal jobs money was a one-year program and it also
25 is not available in the future. It's about 92

1 million and it's no longer available. And the
2 stabilization money totaled over the two-year period
3 about 275 or 6 million.

4 Q. And when you say stabilization money, that's
5 the ARRA money?

6 A. Yes, sir.

7 Q. And I cut you off, apparently, when you were
8 explaining an asterisk, and I want to go back to the
9 asterisk. This was in your school finance
10 presentation from January of 2010, and I'll put that
11 back on the overhead. And I want to look at '05/'06
12 with the asterisk for a moment.

13 And you started to explain the base was
14 adjusted in a manner that didn't give anyone any more
15 money. And my question is, do you remember that and
16 can you offer an explanation to us?

17 A. Yes, sir. The Legislature raised the base
18 approximately \$244, and then lowered the weightings
19 so nobody got any additional funds. The purpose was
20 to raise the base, but nobody got any more, nobody
21 got any less, it was just to make the base look
22 higher.

23 Q. Okay.

24 A. And that was \$244, what that equated to.

25 JUDGE THEIS: Which year was that?

1 JUDGE FLEMING: '05/'06.

2 MR. RUPE: '05/'06.

3 Q. Then, back to the budget workshop
4 presentation, which is Exhibit 35, Bates Number KSDE
5 139395. We covered this, but LOB equalization is
6 only being paid at a prorated percentage; is that
7 right?

8 A. That's correct, sir. And at the time we did
9 that, there was some changes took place, just for
10 clarification. And the concept doesn't change, but
11 in '09/'10, we funded it at about 89.5 percent. In
12 '10/'11, we funded it at 91.7. In '11/'12 we were
13 going to fund it at 86.1. We had a large district
14 that dropped their LOB and gave us more money to
15 spend. And '12/'13, it'll be about 80 percent.

16 Q. And we can agree and I can put up the
17 exhibit from the Exhibit 1 from the defense, but we
18 can agree that adequacy and equity are important
19 considerations in administering school finance money
20 to the State of Kansas school districts, can't we?

21 A. Yes, sir.

22 Q. In terms of the elimination of the LOB
23 equalization cost, how does that affect the
24 wealthiest districts in Kansas?

25 A. It does not. There's no effect on the

1 property tax for them.

2 Q. Does the elimination of the capital outlay
3 equalization cost the wealthier districts in Kansas
4 any money?

5 A. No, sir. They're not entitled to any under
6 that law.

7 Q. I'm going to put on the overhead here, from
8 the projection of costs outcome, the LPA study.
9 You're familiar with the LPA cost study?

10 A. I know about it, but I haven't looked at it
11 for a while.

12 Q. Well, let's look at it today. And I just
13 want to track with you what the LPA estimated cost of
14 meeting future performance standards are. And on
15 Bates Number LEG 003410 in Exhibit 197, I want to
16 focus your attention -- and the overhead -- on what
17 the cost study recommended the estimated cost of
18 meeting future performance standards in '08, '07
19 dollars, and do you see the total amounts listed that
20 are highlighted there?

21 A. I can see the highlights, but not the
22 numbers.

23 Q. Okay. 3.6 in '06/'07; 3.8 in '07/'08; 3.9
24 in '08/'09; 4.1 in '09/'10; 4.2 in '10/'11; 4.4 in
25 '11/'12; 4.5 in '12/'13; and 4.7 in '13/'14. Do you

1 see that?

2 A. Yes, sir.

3 Q. And we've heard testimony about those
4 estimated costs of meeting future performance
5 standards from the folks that put that LPA study
6 together.

7 MR. RUPE: Could I have the blow-up
8 of 1239, please?

9 MS. TIBBETS: What does it look
10 like, Alan?

11 MR. RUPE: This.

12 MS. TIBBETS: There's no --

13 MR. RUPE: You don't have a blow-up
14 of that?

15 MS. TIBBETS: No.

16 MR. CHALMERS: If you show it, you
17 should probably put it in evidence, don't you think?

18 MR. RUPE: It's demonstrative
19 evidence already. I'm just going to use it as
20 demonstrative here.

21 Q. (By Mr. Rupe) Let's do it this way, I'm
22 going to give you Exhibit 197. That has those
23 projections on it. Do you see that? And I'm going
24 to put the demonstrative Exhibit 1239 on the
25 overhead. And what I'll show you is the LPA estimate

1 for 2005/2006. And this demonstrative exhibit says

2 2.3. What does the LPA exhibit show for '05/'06?

3 A. This only goes back to '06/'07, I believe.

4 Q. Okay. So nothing for '05/'06?

5 A. I don't see it.

6 Q. What about for '06/'07?

7 A. The total shows 3,620,157,075.

8 Q. Do you see any number for 2.7 for '06/'07?

9 A. There's a foundation level of 2,752,015,150,
10 right below that. That's the current formula, it
11 says.

12 Q. And in terms of their projection, LPA's cost
13 study projection, do you see any number that says
14 2.7?

15 A. Well, 2.7 is the foundation level for
16 '06/'07. And there's, also, the same number is
17 showing for '07/'08, and it goes across. I think
18 there is comparing the foundation level versus their
19 recommendations.

20 Q. So the recommendation level, let me get this
21 clear, the recommendation level according to that
22 exhibit for '06/'07 is what?

23 A. 3-billion-620-157-plus.

24 Q. And the foundation number is something like
25 2.7?

1 A. 2.752.

2 Q. Now, does that have recommended levels for
3 '07/'08, '08/'09, '09/'10, '10/'11 and '11/'12?

4 A. Yes, sir.

5 Q. And do you see any LPA red bar on
6 demonstrative Exhibit 1239 for those years I just
7 read?

8 A. No, I don't see any red bar.

9 Q. Okay. On the one on the screen?

10 A. Oh.

11 Q. For those years. It's shown for '05/'06,
12 which is on the chart, but not on the LPA exhibit
13 that you have. It's shown for 26 -- 2006/'07,
14 different number projected than what you have. And
15 then there is no LPA projected number on
16 demonstrative Exhibit 1239 for '07/'08, '08/'09
17 '09/'10, '10/'11, '11/'12, is there?

18 A. I don't see one, no.

19 Q. Okay. I don't either. Thank you.

20 Okay, let me hand you, we've still got it on
21 the board, this looks like it compares the LPA to
22 actual operating expense or expenditures. Do you see
23 that, where it says, cost function funds excluding
24 KPERS, special ed, 205.5 million federal aid? Do you
25 see that, the green is the what's called the actual

1 operating expenditures?

2 A. I see the green line.

3 Q. Have you seen this before?

4 A. Not that I know of.

5 Q. Didn't the Legislative Post Audit cost study
6 only include the general fund and the state portion
7 of the LOB?

8 MR. CHALMERS: Object to the form.
9 Lack of foundation and misstates prior testimony.

10 Q. (By Mr. Rupe) In terms of what the LPA
11 looked at, take a look at Exhibit 176. And I'll put
12 it on the overhead. This is in evidence and it's
13 from Scott Frank to the members of 2010 Commission.
14 And he says, "Therefore we included both school
15 district general fund budgets and state equalization
16 aid in the comparison." Do you see that?

17 A. Yes, sir, I do, sir.

18 Q. So LPA included the general fund and the
19 state portion of LOB, true?

20 MR. CHALMERS: Lack of foundation.
21 It's not supported by the exhibits you showed, and
22 that's inconsistent with prior testimony.

23 MR. RUPE: It's not, Your Honor.

24 MR. CHALMERS: Yes, it is. If
25 you're talking about this demonstration here, then

1 it's consistent. But if you're trying to represent
2 the LPA study talked about supplemental aid, we've
3 got a wealth of testimony that is just contrary, and
4 I object to the form that suggests a different
5 result.

6 Q. (By Mr. Rupe) Do you consider, as you've
7 testified before, the LOB general money set aside for
8 state aid to be state money?

9 A. When you say "general," it's general -- it's
10 expenditures, general operating expenditures, but
11 it's not state money, because it's come from the
12 local property tax. The state money would be, but
13 not the local.

14 Q. Okay. So in terms of the LOB money, you
15 have state equalization aid that is state money?

16 A. Yes, sir.

17 Q. And you have the local money that is LOB
18 raised at the local level and is not state money?

19 A. That's correct, sir.

20 Q. And so if you wanted to compare apples to
21 apples, you wouldn't include the LOB money without
22 the state equalization money in a comparison of LPA
23 and anything else, would you?

24 A. I wouldn't, no. I think you have to look at
25 the total package.

1 Q. Okay. If you were comparing LPA to current
2 dollars to make apples to apples, would you want to
3 compare the LPA -- wouldn't you compare the general
4 fund and the state portion of the LOB?

5 A. If you're going to compare it with the LPA,
6 yes. I would put the two together in the beginning
7 and the end, because if it's equalized, you would
8 count them both, the general and LOB fund combined.

9 Q. And that's what we did in Plaintiffs'
10 Exhibit 420 Demonstrative that we have created in
11 some short order after getting some exhibits from the
12 other side. And on Plaintiffs' Exhibit 420
13 Demonstrative, you see what we did. And that is
14 we -- here, let me give a copy to him and to the
15 Judges.

16 MR. CHALMERS: I don't have any
17 objection to Demonstrative Exhibit 420 for the
18 record.

19 MR. RUPE: Thank you.

20 (Plaintiffs' Demonstrative Exhibit
21 Number 420 was admitted.)

22 MR. CHALMERS: But I do -- I am a
23 little offended by the suggestion that this was in
24 short order. The exhibits that are marked are ones
25 that were provided at the beginning of the trial. I

1 don't know how long Counsel's had this. To suggest
2 there's been some misstatement or misstep on my part,
3 when throughout, this is what's happened. I've had
4 this stuff dropped on me before an examination.

5 I have to bring it to the record
6 and I object.

7 MR. RUPE: I was handed 1239
8 today. And this is our effort to demonstrate what is
9 an apples-to-apples comparison, and not, what we
10 figured out, was an apples-to-oranges.

11 JUDGE THEIS: Go ahead. They're
12 both pretty --

13 Q. (By Mr. Rupe) In terms of what's on the
14 overhead, 420 Demonstrative, you see that the bar
15 chart with the gray bars is the LPA foundation level
16 plus supplemental aid. Do you see that?

17 A. Yes, sir.

18 Q. And actual general fund plus the
19 supplemental aid is in the gray. Do you see that?

20 A. Yes, sir.

21 Q. Does this show that comparison to the LPA
22 study?

23 MR. CHALMERS: Objection. Lack of
24 foundation.

25 MR. RUPE: Well, it does.

1 MR. CHALMERS: No, it doesn't.

2 And the foundation's not been laid
3 by this witness. He even said he hadn't looked at
4 the LPA for some time.

5 MR. RUPE: Well, if he doesn't have
6 a foundation for this, he doesn't have a foundation
7 for your demonstrative exhibit that you're going to
8 examine him about.

9 MR. CHALMERS: Unfortunately,
10 Mr. Frank has already talked about it in his
11 testimony.

12 Q. Look at Exhibit 420. I will represent to
13 you that this is a comparison of the general fund and
14 the state portion of the LOB. Does this show that we
15 have exceeded the LPA?

16 MR. CHALMERS: Object to the form.
17 Lack of function as to what the LPA provides.

18 JUDGE THEIS: The exhibit is going
19 to show what it shows. Whether or not Mr. Dennis
20 says he's going to see the same thing I'm looking at
21 now -- and I know how he's going to answer, so I
22 don't think we're going too far with it.

23 Q. By the way, couldn't you, using this 1239 --
24 which I misplaced here. Using 1239 demonstrative,
25 could you add the local portion of the LOB on top of

1 the estimates of 1239 -- which we didn't have time to
2 do over lunch?

3 A. If I were going to make comparison, sir, I
4 would use the supplemental general and the general
5 fund. I wouldn't separate out supplemental aid by
6 itself, because you're leaving out the people who
7 don't get any aid, and it'll skew the data when you
8 leave out the property tax portion, in my opinion.

9 Q. And you'd have to add that back on to the
10 LPA if it wasn't included to be apples to apples?

11 A. That's right, sir.

12 Q. You testified earlier that the base is the
13 driver for the school funding formula. Is the amount
14 of education that the State can provide tied to that
15 base?

16 A. That's one of biggest drivers, sir.

17 Q. So that's a yes?

18 A. Yes.

19 Q. So when you affect the base you actually
20 affect the amount of education Kansas kids get, don't
21 you?

22 A. Yes, sir.

23 Q. On the whole, if the current formula were
24 actually funded, do you think the funding formula
25 works?

1 A. Yes, sir.

2 Q. What about when it's not funded, is this
3 like PSA in an aquarium or in a swimming pool, if you
4 throw off some of it by not funding it, does it
5 impact the entire formula?

6 A. It affects the services you deliver, but it
7 may -- it depends what piece. But it may not affect
8 the formula, but it will affect the services you
9 deliver to kids.

10 Q. What do you mean by that?

11 A. Well, for example, if you chose not to fund
12 the LOB state aid, the poor can't afford the property
13 tax, that'll affect it; others, it would not, the
14 rich.

15 Q. So depending on what they've done with it,
16 such as removing equalization aid, that may affect
17 the poorer districts more?

18 A. Yes, sir.

19 Q. Is there any mistake, in your mind, on what
20 the Legislature has been told -- and I'm going to
21 hold up Exhibit 387. Is there any mistake, in your
22 mind, that the Legislature has been told they need to
23 look at a cost-based funding scheme which was based
24 on the actual and necessary cost of education that
25 includes the cost of outcomes?

1 A. I wouldn't argue that that's a memo that
2 went to them.

3 Q. And how does it work in the last two years
4 in the Legislature, three years? Does the State find
5 out how much it costs to educate kids in setting the
6 base, or did the State deliver an amount of money
7 that they wanted the base to be?

8 MR. CHALMERS: Object to the form.
9 I think he's now trying to get testimony from this
10 witness as to legislative intent, and I don't think
11 that would be proper from this witness.

12 MR. RUPE: You're right. I've got
13 that testimony about seven different ways from other
14 sources. I'll withdraw the question.

15 That's all I have. Thank you.

16 CROSS-EXAMINATION

17 BY MR. CHALMERS:

18 Q. Mr. Dennis, I want to hand you a couple of
19 exhibits here. One of them, it's been marked and is
20 in evidence as Plaintiffs' Exhibit 235. The other
21 one I'll hand you, which has been marked 1013.

22 The first document, so that we have an
23 understanding of what it is -- I had it marked as
24 1240, but it's 235 -- is a memo from you in which you
25 show what the expected numbers are for '12/'13, with

1 the \$58 increase in the base amount; is that correct?

2 A. That's correct, sir.

3 Q. So if we wanted to figure out what would be
4 the expected amount that would come to Kansas City,
5 by way of illustration -- because it's the very last
6 one on the list -- if we take -- we have an
7 assumption of what the FTE is; we say, this is what
8 the fund was last year, and we've added \$58 to the
9 3,780, and that is the additional amount that they
10 would get the upcoming year in the general fund?

11 A. Yes, sir. That would be correct, based on
12 if -- your assumption was very good in that the
13 enrollment, that can go up or down. But that's based
14 on that enrollment, you are correct, sir.

15 Q. Now, the way that this \$58 was reached,
16 let's talk about that for a moment, and I handed you
17 Exhibit 1013, and that is a portion of the
18 Appropriation Act House Bill Substitute for Senate
19 Bill 294 that was passed this year, is that correct?

20 A. Yes, sir.

21 MR. CHALMERS: And I move for
22 admission of 1013. I think maybe it's already been
23 handled, but if not I make that motion.

24 MR. RUPE: I did object to it and I
25 understood that the Court admitted it over my

1 objection.

2 JUDGE THEIS: It was just a display
3 of a statute.

4 MR. CHALMERS: Yes.

5 Q. (By Mr. Chalmers) And maybe I handed you my
6 copy that was highlighted, so we'll have to just kind
7 of point out. If we look at Page 30 -- or 130 at the
8 top of the exhibit. Does yours have highlighting on
9 it?

10 A. No, sir.

11 Q. That's all right. This will work. First,
12 there's a number here that shows \$427.7 million for
13 special education services aid. And that's the
14 amount that's been appropriated, then, for the
15 upcoming year, is that correct?

16 A. That would be correct, sir.

17 Q. And then, in addition to that, there's an
18 appropriation in general state aid of \$1.89 billion
19 for the upcoming year, is that correct?

20 A. That's correct, sir.

21 Q. Now, it's the general state aid number that
22 is used to calculate the base amount, is that right?

23 A. That's correct.

24 Q. Because the way the statute reads is if you
25 don't appropriate up to the 400-and -- what is it,

1 47?

2 A. 4,492.

3 Q. Up to the 4,492, then what you do is you
4 calculate the base on whatever has been appropriated
5 that year, is that right?

6 A. That's correct, sir.

7 Q. So in order to get to what the base amount
8 is, for the purpose of Exhibit 235, that kind of
9 works backwards. You take the general fund numbers,
10 you assume a full-time enrollment, you crunch the
11 numbers, and you come up with a figure, is that
12 right?

13 A. That's correct. And you hope you're
14 correct.

15 Q. And on the basis of where we are now, we've
16 got the 3,780, plus the 58, and that's what will be
17 the base that Mr. Rupe refers to as the driver for
18 next year?

19 A. That's the best estimate we can make at this
20 time.

21 Q. Now, in the appropriation act there's also
22 an appropriation for supplemental state aid of
23 300-and, roughly, -40 million dollars. And you talk
24 about how the -- that the statute would talk in terms
25 of equalization aid. This is the equalization aid

1 for the LOB, is that correct?

2 A. That's correct, sir.

3 Q. And where you talk about this year, it looks
4 like the equalization's going to be about 80 percent,
5 I want to visit with you about that. First, the way
6 the statute reads is that if you are under the 81.2nd
7 percentile then you are entitled to some equalization
8 aid, is that right?

9 A. That's correct.

10 Q. And it's a sliding scale depending on where
11 you are in that spectrum, less at the top, more at
12 the bottom?

13 A. Mm-hmm.

14 Q. Is that right?

15 A. That's correct.

16 Q. And the moneys for that equalization comes
17 from what's been appropriated, essentially the \$340
18 million, is that right?

19 A. That's correct.

20 Q. If the top number goes up, if you've got a
21 district or two that come into, by way of
22 illustration, some oil money or gas money, and now
23 the appraised value of their property goes up, that
24 drives up, a little bit, potentially where that
25 81.2nd percentile is, doesn't it?

1 A. The answer is yes, if they were below the
2 81st percentile. If they're above it, it don't make
3 any difference. But if they're below that, the
4 answer is yes.

5 Q. So you've got that as one moving part. And
6 the other moving part, in terms of deciding how much
7 you can get in equalization, is whether that number
8 is big enough to cover the whole 100 percent, right?

9 A. Correct.

10 Q. This number for equalization has been pretty
11 static over, what, the last three or four years of
12 appropriation, is that correct?

13 A. Yes, sir.

14 Q. You've got discretionary funds. You've got
15 other categories, food service, school safety
16 hotline, and mentor teacher programs, for roughly a
17 half million or 500,000 -- no, 484,000; moving
18 expenses, teacher technical grants, technical
19 education, transportation, technical promotion, and
20 then KPERS. And those are other appropriated items
21 that are attributed to education, is that correct?

22 A. You are correct. There's one little thing I
23 might mention, if I might, sir, that teacher mentor,
24 484,000, the Governor vetoed that.

25 Q. Then you've got a couple of other things.

1 There's the deaf and severely handicapped children,
2 and then you've got another \$6 million for a juvenile
3 detention facility that's part of the education
4 budget, is that correct?

5 A. That's correct, sir.

6 Q. Now, we've seen a blow-up of --

7 A. It's insignificant, sir, but I believe the
8 final bill did not include the technical education.
9 It was, I think, the final bill, that was added to
10 general state aid.

11 Q. I think I have --

12 A. It didn't change it.

13 Q. I think I had the books, but it just moved
14 one way or the other, is your recollection?

15 A. That's right. That's right.

16 Q. There's a blow-up that Mr. Rupe has shown as
17 Plaintiffs' Exhibit 236, and I want to talk to you
18 about it for a second. What it does is it shows the
19 base over time. And, first, so that we're clear, up
20 until 2005, the weightings were different than are
21 presently in the act, is that correct?

22 A. That's correct.

23 Q. And so when you would add money on top of
24 the base, it would have been in connection with
25 weightings that really don't generate as much money

1 as our present weightings, is that correct?

2 A. That's correct. It changed when we visited
3 the courtroom across the street.

4 Q. Then when we get to what has been the
5 response to the Montoy suit, we've got a bump in the
6 base.

7 Now, during the time after that bump when it
8 went down, the appropriations -- that is, what we
9 just went through in terms of the general numbers
10 from which you calculate the base -- they stayed
11 pretty stable, didn't they? Went down a little bit,
12 but pretty stable?

13 A. It depends on whether you're looking at just
14 general state aid or the total. And that's a big
15 difference, because during those years, there was an
16 increase in KPERS, there was an increase in bond and
17 interest. But in this area I think you'll find the
18 state aid went down. But overall it was -- it may
19 not have.

20 Q. Overall, the number stayed pretty constant.
21 The number went down slightly, but not to the degree
22 of what is shown in the decline in Exhibit 236. And
23 that's because part of that decline is explained by
24 increases in numbers of students?

25 A. Well, a little bit, but the majority was

1 general state aid appropriation. That was the
2 biggie.

3 Q. Part of it, when we're trying to figure
4 out -- and we can probably go back and look at the
5 appropriations to see actually where the levels and
6 how stabilities were, part of it had to do with we
7 had increased numbers of kids and we had increased
8 numbers of kids that were entitled to weighting?

9 A. The increased number of kids entitled to
10 weightings has been going up, that's true. And if
11 you look at from about '08/'09, down to '10/'11,
12 you'll see the dollars drop significantly in general
13 aid not in total.

14 Q. Now, I want to switch gears with you for a
15 second, I think. There is an exhibit -- there's been
16 some discussion of ARRA money. I want to show you
17 what's been marked as Plaintiffs' Exhibit 229. As a
18 reference point, this is the budget for the Wichita
19 School District.

20 MR. RUPE: I think that's Kansas
21 City.

22 Q. Kansas City, Kansas -- I can't wait for this
23 trial to be over -- this is KCK and for the year,
24 this would be '10/'11 year, I think. Let's look and
25 make sure that's right. The '11/'12 year, okay.

1 A. Okay, sir.

2 Q. Now, these budgets, they are prepared for
3 the State -- excuse me, they're prepared for every
4 district in the state by your office, is that
5 correct?

6 A. No, sir. The school district prepares the
7 budget. We will review it if they ask us to. But
8 the local district is responsible and they prepare
9 it, and if they have questions, we help them.

10 Q. I think maybe I asked the wrong question,
11 because this information has to be filed with your
12 office once they prepare the budget, is that right?

13 A. They have to file it with us and the county
14 clerk.

15 Q. And the testimony we received has been that
16 this budget, the numbers are provided to the, State
17 and then the State will go ahead and put it in this
18 format?

19 A. No, we don't change the format. But if
20 their numbers change, like the enrollments come in
21 lower or higher, we'll adjust it based upon the
22 current law, whatever it is.

23 Q. Maybe they were mistaken. The document is
24 provided from information that is reported by
25 districts, in either event, right?

1 A. They report it to us, that's correct, sir.

2 Q. In this document there are items referred to
3 with a D and C in front of it; like, there's a C-11,
4 at-risk 4-year-olds. And those are funds and are
5 defined as funds that these districts will make their
6 report of their expenditures in, is that correct?

7 A. Yes, sir. They have to budget each fund.
8 Under Kansas law you can't exceed the budget unless
9 you get permission, and that usually is a
10 publication.

11 Q. There's an exhibit, which is 1018, that
12 actually has the guidelines for financial reporting
13 that is published by your employer that will help
14 these folks understand what are the various funds and
15 where to put their money?

16 A. That's just trying to help them, make sure
17 they don't get it in the wrong pot and we have to go
18 back and change it.

19 Q. These fund names, the way that they come up,
20 those are funds that are defined by the U.S. -- as
21 defined by the U.S. Census Bureau?

22 A. No. The line items are defined with the
23 Bureau of Census, but the funds are defined by the
24 Legislature.

25 Q. The Legislature will give the name to it,

1 but when you get to the line items --

2 A. Then you have to follow that, that's
3 correct, sir.

4 Q. Now, I was going to ask you about the AARP.

5 MR. RUPE: A.

6 MR. CHALMERS: A.

7 JUDGE BURR: Which we're familiar
8 with.

9 MR. CHALMERS: So am I.

10 Q. And I want to see if I could find -- let's
11 do it this way, let me hand you 229, because you can
12 find it faster. Find the AA -- excuse me, the ARRA
13 money for me, please.

14 A. It's scattered, but I've got some.

15 Q. What are you looking at, the general fund?

16 A. In the general fund this is -- yeah, in the
17 general fund in '09/'10, it's 6.351 million, and in
18 '10/'11, including the jobs money, which is about the
19 same thing, it's about 6.7 million.

20 Q. Let me have it back for a second. Thank
21 you.

22 What we're looking at is Page 12 of
23 Exhibit 229. And what you've read is the first
24 couple of actual numbers. And then, to the right of
25 that, of course, it shows for year '11/'12 that none

1 of this ARRA stabilization money or none of the job
2 money stabilization money was budgeted for this last
3 year, is that right?

4 A. That's correct.

5 Q. That's because there isn't any more money
6 coming from the feds for this year, is that correct?

7 A. For this purpose, that's correct, there is
8 not.

9 Q. There is other federal money coming, but for
10 this purpose --

11 A. Yeah.

12 Q. -- it's not there. Now, going back to the
13 Exhibit 236, the ARRA money was used, I think as you
14 explained it, essentially as part of this base
15 amount, is that correct?

16 A. That is correct.

17 Q. And so in what years would the base have
18 been calculated including the A -- excuse me, the
19 ARRA money?

20 A. '09/'10 and '10/'11. And that money, more
21 or less, comes to the Governor and they chose to use
22 it to help fund the base state aid per pupil.

23 Q. So now without that money is where we've got
24 these base numbers for last year, and more
25 importantly for the upcoming year, is that correct?

1 A. Yes, sir.

2 Q. The point I think being that the base is not
3 influenced, it's not made to go down this year as a
4 result of not having the stimulus or the
5 stabilization money?

6 MR. RUPE: That's argument. I
7 object to the argument.

8 JUDGE THEIS: Well, I'll let him
9 answer if he wants to.

10 He can answer if he wants to.

11 THE WITNESS: Should I go ahead?

12 Q. (By Mr. Chalmers) The ARRA money that we're
13 referring to was '09/'10, '10/'11?

14 A. Yes. And there wasn't any money in '11/'12.

15 Q. Let me talk to you about switching gears and
16 still on the same topic we're talking about,
17 generally, we've looked at weightings and we've heard
18 the phrase "free and reduced lunch." What is a
19 reduced lunch? How is that defined?

20 A. It's based upon your income. If your income
21 is relatively low, you're entitled to a free lunch;
22 if your income is above certain levels, then you pay
23 a reduced price for lunch; and if you're income is
24 above a certain level, then you pay for your lunch,
25 period.

1 Q. I'm assuming for these kids you're talking
2 about the family income?

3 A. Yes, sir, that's very important, the family
4 income.

5 Q. Do you know right offhand what the point is
6 where you're entitled to reduced lunch support?

7 A. The answer is no, because it varies with
8 every member in the family. I think it goes up to
9 eight or nine.

10 Q. The more members in the family, the more you
11 might have access to?

12 A. That's correct, sir.

13 Q. If you have a one-child family, do you have
14 an idea of what that number is for reduced lunch?

15 A. I do not, but it's on the website. But I
16 don't have that memorized.

17 Q. There's been some testimony, I'm not even
18 going to show the exhibits, they are in evidence, but
19 there's been some testimony about cash balances. Did
20 you participate in pulling together information for
21 the Legislature concerning cash balances that were
22 left in the accounts of the individual districts at
23 the end of each fiscal year?

24 A. Yes, sir.

25 Q. And we've got those in evidence, but to

1 summarize it quickly, what they have shown is that
2 there has been a trend of increasing cash balances
3 each year, is that correct?

4 A. Yes, sir.

5 Q. Changing topics again. Just so that we're
6 clear on how the weightings work, and you talked to
7 Mr. Rupe about this to some degree, but your
8 testimony is based on your observations that if
9 adequately funded, that the weightings have proved to
10 do a good job of getting money to the school
11 districts for those kids that have needs as a result
12 of kids that are in poverty; that's the free lunch or
13 reduced lunch, for the kids that are English as a
14 second language, for kids in high concentration
15 poverty areas, middle concentration poverty areas --
16 and have I overlooked any other weightings?

17 A. I'd agree with you except one little factor
18 in there's no extra money for reduced price in the
19 formula.

20 Q. Okay. Now, the weights that we've talked
21 about, they apply the same to all of the districts,
22 is that correct?

23 A. At-risk that's true. For free lunch that's
24 true. That's true for bilingual. But on enrollment
25 weighting, that varies with the size of the district.

1 Q. But the rules for weightings apply equally
2 for all?

3 A. Oh, yes, that's true, that's true.

4 Q. Your point is, is that there is, for
5 enrollment weightings, that rule that might say that
6 you would get more weightings or less weightings
7 depending on where you are --

8 A. Varies with the size, that's correct, sir.

9 Q. The same is true as to if you've got kids
10 that are in poverty, the more kids you have in
11 poverty, the higher the weighting. But the rule is
12 the same for each district, is that correct?

13 A. That's correct, sir.

14 Q. And as such, those rules for weightings,
15 they apply the same to each individual student, don't
16 they?

17 A. Well, each individual student will -- but
18 the district will compute. That student may not even
19 know it, but it's driven the same purpose, but the
20 money goes to the district, but the student drives
21 it.

22 Q. And the rules apply the same to each student
23 within any given district?

24 A. That's correct, sir.

25 Q. Now, let's talk about the LPA study for a

1 moment. And I pulled up Exhibit 199, which is a copy
2 of that study. And when do you think is the last
3 time that you looked at that study?

4 A. I may have looked at it. But as far as sat
5 down and read it, it's been a long time. It's not a
6 hot commodity, normally.

7 Q. In the study there are some -- when I talk
8 about the out -- when it talks about the output part
9 of the study, there are some assumptions made as part
10 of the study's methodology. Do you remember that?

11 A. Not particularly, no, but I think Mr. Frank
12 would be the one that's -- Scott Frank would tell you
13 that.

14 Q. So you would defer to Mr. Frank's
15 description of what the study said is held --

16 A. Yes, I would because he did it.

17 Q. The study was designed to tell what it cost
18 to create an output, and the output was defined as
19 the average test scores on three math tests, three
20 reading tests, and then the graduation rate. Do you
21 remember that?

22 A. I know the concept behind that, yes, sir.

23 Q. And then the study said, what we will look
24 at is how much is a foundation amount to be able to
25 accomplish that we have to produce. And the decision

1 was made to look, in terms of funding that foundation
2 amount, to look at only the general fund. Do you
3 understand that?

4 A. I understand just what you said.

5 Q. Did you remember that that's the case?

6 A. No.

7 Q. And I want you to assume that that's
8 accurate, that all the LPA study was trying to do is
9 fund the general fund, and then what they did after
10 coming up with a number for that, they backed out to
11 calculate the base, \$205.5 million. I want you to
12 assume that, all right? And I want to talk to you
13 about some things for a second.

14 First of all, there's a memo that Mr. Rupe
15 showed you, which is marked as Exhibit 176. And
16 that's from Mr. Frank to the 2010 Commission. Did
17 you have anything to do with the preparation of that
18 memo?

19 A. No.

20 Q. That memo on the back page, second page, had
21 a chart, and I think Mr. Rupe showed you that chart
22 in part. And what Mr. Scott did in this chart was he
23 looked at that foundation level from the LPA study
24 and he added a hold harmless. And you understand
25 hold harmless means that would be the amount that the

1 Legislature might have been interested in funding to
2 make sure that some districts don't actually have
3 less money if the act is implemented. Is that what
4 hold harmless means?

5 A. Yes.

6 Q. Then he added the supplemental aid, as we
7 estimated it, to try to -- well, which would have
8 been supplemental aid, would be the equalization aid,
9 that is the piece that the State has to pay of the
10 LOB, right?

11 A. Mm-hmm.

12 Q. And then he added the KPERS contribution.
13 And KPERS contribution would have been, as it was set
14 up in the LPA study, separate from the foundation
15 level. Do you remember that?

16 A. I do by looking at it.

17 Q. Okay. So he added up on those numbers and
18 came up with a number, that if you funded the
19 foundation level and these other things, this is what
20 it would cost the State for those years. Do you
21 remember that that's what he did?

22 A. Mm-hmm, yes, sir.

23 Q. Now, Mr. Frank testified that after the
24 first three years of his studies, that the data on
25 how you project out what the costs would be was not

1 reliable, or at least he said he wouldn't rely on
2 it. Were you aware of that testimony?

3 A. No.

4 Q. But the study itself, the Exhibit 199, the
5 LPA study, do you remember that when it projected out
6 its numbers, it was only for a three-year period?

7 A. Mm-hmm.

8 Q. Is that correct?

9 A. I don't remember exactly, but I think that's
10 about right.

11 Q. Then, so that we're clear, I think that
12 Mr. Scott testified that this BSAPP, the base amount,
13 would be calculated by looking at the foundation
14 level against the base. In other words, it didn't
15 include those other items in the calculations. And
16 if we knew the numbers of the kids, we could actually
17 double check that to see how he did that, correct?

18 A. Mm-hmm.

19 Q. And you're going "mm-hmm," and I understand
20 that to be yes.

21 A. We just communicated, yeah.

22 Q. The LPA study also did another thing at
23 Appendix C-47 and C-48; and that is, in trying to
24 calculate what you need as the base to get the
25 outputs that were defined as desired, they said, what

1 moneys will we consider. And in this Appendix B,
2 expenditures definitions, they have these general
3 funds that I think we just talked about a moment ago,
4 is that correct?

5 A. Some of them, yes, sir.

6 Q. Yes. Well, they exclude some -- and I think
7 that's what you're talking about, under the excluded
8 category there are other funds that are excluded?

9 A. Mm-hmm.

10 Q. And when we looked at the budget numbers for
11 Wichita, just by way of illustration, what we saw was
12 the sort of things that would be reported each year
13 by the school districts under these various funds; is
14 that right?

15 A. That's correct, sir.

16 Q. And then on the second page, so I don't
17 overlook anything, there's some other things
18 excluded. Then, they also have functions that are
19 included and functions that are excluded?

20 A. Mm-hmm.

21 Q. Right?

22 A. Yes, sir.

23 Q. Let me hand you what's been marked as
24 Exhibit 1037, and there are multiple copies of it, so
25 let me just give you the one. Exhibit 1037, those

1 are publications by your department on your website,
2 is that correct?

3 A. Yes, sir.

4 Q. And what they show are the current operating
5 expenses from the years 2004/'05 to '10/'11; is that
6 correct?

7 A. That's correct.

8 Q. We don't have the '11/'12 yet because we
9 don't have the reports from these various districts
10 as yet, is that correct?

11 A. Correct.

12 Q. Now, using one of these as an illustration,
13 what you have are the function numbers that we just
14 looked at showing instruction services and the like
15 that are as part of Appendix B, is that correct?

16 A. Correct, sir.

17 Q. That's the same -- I mean, the uniform
18 reporting system that's been in place would require
19 the districts to report it in a way that's under the
20 manual, and that that is the same way that it's
21 reported, then, in your current operating
22 expenditures? In essence, you're using the same data
23 to report, correct?

24 A. Yes, sir.

25 Q. The LPA study, as you remember, excluded

1 some funds and included others or some functions and
2 included others. So I'll show you what's been marked
3 as Exhibit 1192. And I want you to assume that those
4 highlighted ones are the ones that are included. And
5 I want to talk to you about the ones that are
6 excluded. Transportation, what is that?

7 A. Transportation is hauling students to and
8 from school, home to school.

9 Q. Food services?

10 A. That's feeding students.

11 Q. Community and adult services?

12 A. That'll be community -- that's services that
13 they provide for adults or somebody in the community.

14 Q. Remove those three, we are basically leaving
15 everything else in there that is an operating
16 expenditure? In other words, we don't have capital
17 expense, bond and interest, correct?

18 A. Yeah. One thing we might point out is if
19 there's equipment capital outlay items in any of
20 those areas in any of those funds they come out on
21 the operating expense.

22 Q. Oh, this doesn't even show the capital
23 outlay?

24 A. No, no, no. No, I said it excludes
25 equipment. The feds require you to exclude that.

1 Q. Okay.

2 A. The 700 object line items comes out and
3 that's immaterial --

4 Q. For instance, in function 1,000, where it
5 says, instruction, there can be, as kind of a
6 sub-part, some capital outlay, can there not?

7 A. There could be, but -- yes, could be.

8 Q. Might be in any one of these various
9 categories, is that correct?

10 A. It's usually pretty small, because they'll
11 go to capital outlay to get it, if they got it.

12 Q. If we look at the LPA list in terms of what
13 they added in or wanted to leave in and we look at
14 Exhibit 199, page C-47, under Item 7, they intended
15 to leave capital outlay in. So these numbers
16 actually would -- if we're trying to compare those
17 funds to these numbers, these may understate somewhat
18 the capital outlay?

19 A. When you do operating expenditures, you
20 normally exclude capital outlay.

21 Q. Now, I want to hand you a couple other
22 things. I talked to you about that one already.

23 Here we go. I want to hand you what's been
24 marked as Exhibit 1237. And, incidentally, I think
25 that we've agreed that 1037-A is admitted, but if

1 not, I move for admission of 1037-A.

2 MR. RUPE: That was over my
3 objection as I understood it.

4 JUDGE THEIS: As long as it's
5 marked as we talked about it.

6 (Defendant's Exhibit Number 1037-A was admitted.)

7 Q. (By Mr. Chalmers) Exhibit 1237, would you
8 identify what that is for the record, please.

9 A. The State, on behalf of school districts,
10 pays the employer's share of KPERS. And the way
11 that's done, four times a year, normally, we send the
12 money to them and it bounces back the same day back
13 to KPERS. So it's laundered through. It's only
14 there for a few hours.

15 And it comes back to the KPERS office. And
16 the Legislature did that because they wanted it to
17 show up in their budget. And all this shows is how
18 that KPERS money is allocated among different line
19 items.

20 Q. So Exhibit 1237 is a document that you
21 prepared at my request to show the KPERS money for
22 '05/'06 through '10/'11, how it's in and out of the
23 various funds, is that correct?

24 A. That's correct.

25 Q. I think 1237 may be in evidence already, but

1 if not, I move for its admission.

2 MR. RUPE: Again, I understood it
3 was over my objection.

4 JUDGE THEIS: I think that's one of
5 the ones we reserved for foundation, and it's been
6 laid.

7 (Defendant's Exhibit Number 1237 was admitted.)

8 Q. (By Mr. Chalmers) Exhibit 1237, just so that
9 we have those raw numbers in front of it, those are
10 the numbers, and they're in function descriptions
11 with a sub-part to it. And that would match up to,
12 if we look at 199, the sub-part for KPERS that needs
13 to be excluded?

14 A. Yes. That's what it is, it's a KPERS fund
15 broken down by function.

16 Q. Otherwise, it would be within -- if we don't
17 exclude it, it's going to be within these functions
18 because it shows up in various spots?

19 A. That's right, mm-hmm.

20 Q. Let me talk to you now about -- 1040, we've
21 already talked about Exhibit 1238, which has been
22 identified as a demonstrative exhibit only, and it's
23 kind of hard to read on this screen, but the first
24 thing it has at the top for the various years are the
25 actual bases. And I think you have already

1 identified for Mr. Rupe what the bases were for those
2 years, is that correct?

3 A. That's correct, sir.

4 Q. The next thing it has for the two years
5 excluding '04/'05, that three-year period that the
6 LPA study is, it has the Scott Franks LPA base
7 in 2007 numbers. And we can look at what's part of
8 Exhibit 176, and we can match those bases up. The
9 659 matches up with the 659 here. And then, you
10 would have to back that out to look at -- actually,
11 you wouldn't have to be in those numbers, you'd just
12 have to look back at what the LPA study shows in
13 199.

14 MR. RUPE: I'm going to object.
15 Lack of foundation on this, which is very clear. I
16 think if Mr. Chalmers wants to testify, that's fine,
17 but this witness has given his knowledge of LPA, and
18 I would object on grounds of lack of foundation.

19 MR. CHALMERS: I'll tell you where
20 I'm going with this, Your Honor, I'm just trying to
21 establish the apples-to-apples comparison that he's
22 talked about, so it's cross-examination.

23 JUDGE THEIS: Let's see. Go ahead
24 and we'll see what happens.

25 Q. Then, we've got Baker's inflated number, and

1 there was an exhibit that was put into evidence,
2 Exhibit 384. And you weren't here when Mr. -- or
3 Dr. Baker testified, but I want you to assume that
4 these are the numbers that he provided by his base
5 inflated in his report.

6 MR. RUPE: I'm going to object to
7 that, because I know 384, and Counsel, show me where
8 that's in there.

9 MR. CHALMERS: I'll be happy to at
10 some other time, Counsel. If you've got cross, you
11 can handle that.

12 MR. RUPE: I'm not going to have
13 him read the whole report to say it's not in there.
14 Why don't you show us where it is?

15 JUDGE THEIS: Let him finish the
16 presentation and then he can show.

17 MR. CHALMERS: And I might have it,
18 so if it'll make him happier, it's page 48 of his
19 report.

20 MR. RUPE: Page Baker 48?

21 MR. CHALMERS: 48, yeah. In
22 Exhibit 384, page 48, Baker 641 --

23 MR. RUPE: Oh, 641?

24 MR. CHALMERS: -- where the numbers
25 that Mr. Baker used to inflate it are included.

1 Q. Now, the inflation rate, I want you to
2 assume that it comes from Exhibit 210, which came
3 from Mr. Myers, because there are inflations
4 involved. And then, we've got the various inflation
5 rates stated.

6 Now, having said that, here is what we
7 really want to get to. If we look at the Legal Max,
8 we can look at what the general fund is both with
9 special education and without special education, is
10 that correct?

11 A. Yes, sir.

12 Q. And in Exhibits 1084 and 1055 --

13 MS. TIBBETS: 1048.

14 Q. Excuse me, 1048 and 1055 are copies of the
15 Legal Max. So if we could take that number in terms
16 of what has been calculated and we could compare that
17 number to -- you really can't see it here real
18 well -- the Baker number with inflation and the LPA
19 with inflation, and in doing that what we could do is
20 take this number, the general number, we could back
21 it out, as you talked about before, and figure out
22 what the -- what the base was.

23 And we could, then, using the Baker
24 calculation, or in terms of what they said the base
25 needed to be, or the LPA calculation, using what they

1 said it should be, we could plug that into the Legal
2 Max for that particular year, and we could come up
3 with a number that tells us using the Baker base,
4 using the LPA base, but using the actual demographics
5 of the kids, the number of kids, the weightings, and
6 we could come up with a number, right or wrong, that
7 could tell us what they estimated in terms of that
8 base number, couldn't we?

9 A. If I know the base, and you're just talking
10 about the general fund, the answer to your question
11 is yes, that can be computed and what the difference
12 is and what it costs.

13 Q. Exactly. You can say, we know what it is
14 that we were saying needed to be the base; that's up
15 here. And what we can do is, we can factor in
16 inflation where appropriate. And we can take that
17 number, put it into the actual Legal Max, and come up
18 with what their figures would predict as the Legal
19 Max?

20 A. For example, if you tell me you want a base
21 of 5,000 and you want a base of 4,600, that can
22 easily be computed for the Legal Max or general fund,
23 whichever you want to call it.

24 Q. The Exhibit 1239, the demonstration, where
25 you've got at '05/'06, what we have is what is

1 plugged out for the Baker LPA with inflation, as he's
2 inflated it, and with the LPA, saying, this is how
3 much the general fund would be; not talking about
4 supplemental aid, not talking about any other
5 expenditures, just talking about what the general
6 fund would be, okay?

7 A. Mm-hmm.

8 Q. Now, that general fund number as we talked
9 about, we're assuming, is supposed to be the
10 equivalent of the foundation amount under the LPA
11 study, which that's really confirmed when it talks
12 about what the foundation level is in the back part
13 of Exhibit 176, isn't it?

14 A. I believe they're using the term
15 "foundation" instead of the school district's general
16 fund or state foundation aid or Legal Max, that's
17 correct.

18 Q. They're using foundation fund to be that
19 number that you need to generate, in terms of
20 revenue, to be able to, at a minimum, get the outputs
21 that they claim you can get through the spending, the
22 outputs as defined by the LPA. Do you understand
23 that?

24 A. Yes, sir.

25 Q. Let's talk about the next few categories.

1 And Exhibit 1037 -- we just looked at that -- that
2 you can take the numbers from that for each one of
3 the years, and you can take just the highlighted
4 numbers -- I mean, you could take the totals -- they
5 are what they are -- and you can take the highlighted
6 numbers, and you can total them up to tell you what
7 are the operating expenses, which we've referred to
8 as cost function funds.

9 So what you have, then, using the
10 information provided by the districts as to what they
11 spent, regardless of whatever source, you would have
12 all those funds together, correct?

13 A. Yes, sir.

14 Q. The LPA, however, said there were certain
15 funds that they didn't want to consider and we talked
16 about those funds. We talked about the employee
17 benefits. And that was the exhibit we just talked
18 about a few minutes ago, where we said that's
19 contained within the instruction fund, we'd have to
20 back that out.

21 A. (Nodding head.)

22 Q. And it would also include KPERS, and that's
23 shown in this exhibit. The KPERS amount can be
24 located, in a global sense, by looking at the Legal
25 Max, is that correct?

1 A. The KPERS, I just want to emphasize, the
2 KPERS is laundered through the school district, but
3 they have no control of the money.

4 Q. Exactly. So you'd want to back that out.
5 And so the KPERS amounts, however, however they flow
6 through, when they are reported by the school
7 districts as an expense, the KPERS moneys find
8 themselves in instruction, pupils, staff, general
9 administration, school administration, don't they?

10 A. That's correct.

11 Q. You're not going to see any KPERS money in
12 operation and maintenance, and probably none in other
13 support services, is that correct?

14 A. There probably will be some because there's
15 people on KPERS in those categories, yes, there will
16 be some.

17 Q. Food services, transportation, community,
18 will there be KPERS in that, as well?

19 A. Hardly anything much in community, adult
20 services, but the rest of them will have people under
21 KPERS. Anybody that works over half time, they're
22 covered.

23 Q. Do you have a rough estimation -- and that's
24 all I require for purposes of my question -- as to
25 what percentage of the KPERS might be within

1 transportation, food services, or community adult
2 services?

3 A. Probably about like these percentages are
4 out here, they would be reasonably close.

5 Q. Maybe 8 to 9 percent?

6 A. In total.

7 MR. RUPE: I'm going to object.
8 Lack of foundation and -- lack of foundation.

9 JUDGE THEIS: When you're talking
10 about holding something up, you need to tell him what
11 number it is.

12 MR. CHALMERS: I apologize. That
13 is Exhibit 1192, Your Honor. And the question was
14 whether, based on his knowledge of the financing
15 system and his following it, if he can estimate
16 approximately how much of the KPERS would be included
17 in the non-highlighted --

18 MR. RUPE: There isn't a
19 foundation. What he's trying to do is argue his
20 1239, and the numbers are funny, and there's not a
21 foundation for them.

22 JUDGE THEIS: I think he questions
23 the KPERS in this 1192 figures, and if so, can you
24 estimate the percentage. And I understood Mr. Dennis
25 to say it's about what it is as reflected on the

1 percentages on the side.

2 THE WITNESS: I want to clarify
3 that. Let me tell you why I want to clarify that.
4 Because a lot of this, this includes school busses
5 and fuel, so that amount will drop to probably 1 or
6 2 percent. And in this area -- I just looked at that
7 today -- food will drive about -- so this will be
8 down to about one or two. With me?

9 Q. (By Mr. Chalmers) Are we talking about 1 or
10 2 percent in total?

11 A. 1 or 2 percent, yes.

12 Q. Okay. So if we remove KPERS, and if we
13 remove all the special ed -- and then, I'll tell you
14 the LPA assumed 205.5 million a stable amount -- if
15 we remove that, would that give us a pretty good,
16 albeit not a precise estimate of what I described as
17 the cost functions total expenditures were in the
18 categories shown in Appendix 47, C-47, 48 of Exhibit
19 199?

20 MR. RUPE: Again, I repeat my
21 objection on the basis of lack of foundation. And I
22 understand it's a demonstrative exhibit, but I don't
23 think that gives you the leeway to say, are we in the
24 ballpark. So I think it's speculative, as well.

25 JUDGE THEIS: I think you're

1 capable of cross-examining it right now. Overruled.

2 THE WITNESS: What was your
3 question again, please, sir?

4 Q. What I'm trying to understand is, if we took
5 the -- let's see, if we took those cost function
6 totals that we talked about that were shown in
7 Exhibit 1037, took all of those, took out
8 transportation, food services, community adult
9 services, took out KPERS, took out special ed,
10 whether or not those totals would be a pretty good
11 estimate of what is the cost, the expenditures as
12 defined in the categories included here and here in
13 Exhibit 1990 or 199?

14 MR. RUPE: Same objection.

15 JUDGE THEIS: Overruled.

16 A. I think that would be a pretty good
17 estimate. But the part that worries me a little bit,
18 those studies don't always start with the same
19 bases. Each one of them are different. Each one's
20 different. So if you're trying to compare it back to
21 that, I don't think it'd be appropriate because they
22 got -- they're starting with a different base, each
23 one of them.

24 Q. Start in 2000 --

25 MR. RUPE: I'm sorry, did you say,

1 I don't think it would be appropriate?

2 THE WITNESS: What I said is, that
3 I don't think it'd be appropriate to go back if
4 you're trying to compare it with the different
5 studies with different definitions. With me?

6 Q. So if we started with a definition in 2000,
7 we would have more funds included, but the funds
8 changed over time. If we look at the last category
9 in the study, what you're saying is -- the one that
10 was used to calculate what was the foundation amount
11 required, then it looks like the calculations we went
12 to would be a fair estimate of what the expenditures
13 were within the included funds and the included
14 functions in the study?

15 MR. RUPE: Objection.
16 Mischaracterization. Lack of foundation.
17 Confusing. Compound.

18 MR. CHALMERS: I think they need --

19 A. If you use the same definition straight
20 through, I think that would work. But the other
21 studies are different definitions. That's the part
22 that worries me.

23 Q. What other studies are you talking about?

24 A. LPA and Myers, the ones you mentioned.

25 Q. This is the LPA study.

1 A. I know. I don't think that's the definition
2 they used.

3 Q. Well, we could look back at the study and
4 Mr. Franks' testimony to see whether or not this is
5 what they used. But let's assume for purposes of
6 your answer --

7 A. My point is, it's important that you have
8 the same basis to start from.

9 Q. Exactly.

10 MR. RUPE: Well, I didn't get a
11 chance to object. I'm going to object, because he's
12 really speculating. He can argue this as a closing
13 argument all day long, but he's asking a witness who
14 doesn't have the information and obviously doesn't
15 feel comfortable about making the comparison.

16 JUDGE THEIS: He says, without
17 information it's as to whether the cost -- what the
18 elements were in one and what the elements were in
19 another and he can't give you a definitive answer.

20 MR. CHALMERS: I understand that,
21 Your Honor. What I think what he's saying -- and
22 maybe I can clarify --

23 Q. In Exhibit 199, I want you to assume that
24 the highlighted items that we've talked about, come
25 from the LPA study. And I think that's what

1 Mr. -- well, I know that's what Mr. Frank testified
2 to. I'm not asking you to verify that, because you'd
3 have to go back and check.

4 But if we assume that that's what -- let's
5 just take the LPA out of it. My question is, just
6 looking at 2004, these funds included 2004, these
7 functions included and excluded, these items excluded
8 in 2004 -- going through the analysis we just went
9 through, we'd have a pretty good estimation that
10 matches up to that, correct?

11 A. Can I see the ones -- the funds were
12 included again, please, sir?

13 Q. Sure. That's the functions. You want the
14 funds, rather?

15 A. If I were doing it -- it's minor, I
16 realize -- but I'd probably exclude gifts, gifts and
17 grants, because those are short-term.

18 Q. I don't know that we ought to include
19 capital outlay. I'm just telling you, let's just
20 assume that those things are in there, okay?

21 A. Okay.

22 Q. And assuming that those are in there, the
23 calculations we went through would give us a pretty
24 good estimation of what the expenditures were, right?

25 A. That would be correct using that definition.

1 Q. Now, then, if we go to Exhibit 1239, 1239
2 shows the first couple of years against the green,
3 which is the calculation we just went through. You
4 can't see it on Exhibit 1238 without being blown up,
5 but maybe you could just roughly confirm for the
6 Court the numbers. This would be this bottom number
7 here against the green numbers there?

8 A. Just same numbers.

9 Q. Okay. That's all I really wanted to show.
10 Thank you. And as Judge Theis pointed out, the
11 exhibit speaks for itself, so I won't ask you what it
12 shows, but I do want to talk to you about it in
13 connection with Mr. Rupe's Exhibit 420.

14 Exhibit 420 -- I have one that I had my
15 notes on, but this will work -- it is an attempt to
16 talk about the LPA foundation level and supplemental
17 aid together. So what it purports to do is add, not
18 only what we went through as what the LPA said needed
19 to be the amount necessary for those outputs, but
20 also a part of the LOB that comes from the State, is
21 that correct?

22 A. Yes.

23 Q. And you said you thought if you were going
24 to do that, the fair way to do it would also include
25 that part of the LOB that comes from the local

1 revenue, as well?

2 A. If you're funding the LOB, that's
3 important. If it's funded, then I think they're both
4 operating money and they both should be counted.

5 JUDGE THEIS: You're talking about
6 the 20 mills?

7 THE WITNESS: No. I'm talking
8 about the property tax on the LOB. Judge, if it's
9 equalized and we're funding it, I think the whole
10 supplemental general fund of the LOB and the general
11 fund budget would be counted, those two funds.

12 JUDGE THEIS: The whole levy?

13 THE WITNESS: Yes. If it's funded,
14 it'll be equalized and you won't have the wide
15 disparity in the middle of it.

16 Q. (By Mr. Chalmers) That's right. So if I'm
17 in Galena -- because that's come up before -- the
18 supplemental aid portion of the LOB that they fund is
19 going to be higher than -- well, Satanta doesn't get
20 any LOB, right?

21 A. Satanta doesn't. Burlington doesn't.

22 Q. Sure. But as I move up towards that 81.2nd
23 percentile I will get some LOB from the State, some
24 equalization aid, the rest of it I have to make up
25 with my own funding?

1 A. That's correct. And that's what drives it
2 in the poor districts is the property tax.

3 Q. So your point was that if you're going to
4 compare supplemental aid, you probably ought to look
5 at both pieces of it; not only what the State
6 provides in supplemental aid to get equalization up
7 to the 81.2nd percentile, but also what the districts
8 themselves collect in their LOB, including those that
9 don't get equalization aid. Is that what I think you
10 were saying?

11 A. Yes, sir.

12 Q. But what this shows is a part of the story
13 then it says what the foundation level is, and then
14 another -- whatever it said it was, a couple hundred
15 million in supplemental aid, and then it compares
16 that to the actual general and supplemental aid. And
17 the actual general would have been from Legal Max, I
18 assume?

19 A. The actual general, yes, would have been
20 probably from the Legal Max. That's probably where
21 they got it, true.

22 Q. And the supplemental aid again would include
23 that piece of the equalization aid, but it would not
24 include --

25 A. The property tax piece.

1 Q. Okay. But let's talk about this comparison
2 for a moment. And if what we wanted to know is how
3 much came from general fund and how much came from
4 the State, I think you indicated this is how you
5 would make the comparison, right, in terms of
6 revenue?

7 A. Okay. Let me clarify. The general fund
8 includes property tax and state aid. On that chart
9 in the supplemental general fund or LOB it only
10 includes the state aid portion.

11 Q. Yes.

12 A. I think that's what the chart compares.

13 Q. But if we, for whatever reason -- I'm not
14 saying it makes sense or doesn't make sense -- but if
15 we wanted to compare how much money is coming from
16 the state out of state dollars, plus the, as I think
17 the Judge pointed out, the mandatory 20 mill levy,
18 the local efforts, what we would do is look at the
19 general fund and we would look at that supplemental
20 aid that comes from the state, is that correct?

21 A. Close, not quite.

22 Q. Okay.

23 A. Because in the general fund, the Legal Max,
24 that includes the 20 mill levy, so it's not all state
25 aid.

1 Q. That's my point. This general fund would
2 include state money plus the mandatory 20 mill that
3 each district is required to issue as, quote, local
4 effort, right?

5 A. Yeah, and then some little small amounts,
6 rats and cats stuff.

7 Q. This would be a description of revenue, but
8 it really doesn't talk to us much about how much is
9 being spent or how it's being spent. It's an
10 indication, I guess, because it talks about revenue,
11 but it doesn't tell you how much is being spent on
12 instruction, how much is finding its way to
13 operational expenses or any of those things, does it?

14 A. That doesn't, in and of itself; that's
15 correct.

16 Q. That's why if you want to try to look at
17 what's actually expended, then what you go to is
18 1192, and reports like that that show the operating
19 expenses, is that right?

20 A. Yeah.

21 Q. And this will show it from whatever source,
22 whether it's from a rat or a cat or whether it's from
23 federal or state or local money?

24 A. Revenue source on that operating cost is
25 immaterial, not even considered. It's just what they

1 spent.

2 Q. So if we're trying to use Exhibit 420 to see
3 whether or not the expenditures -- even if we had
4 supplemental aid -- equal, exceed or -- the required
5 LPA estimate, we really don't have the right
6 methodology, do we?

7 A. I would never disagree with LPA, but --

8 Q. No, I'm talking about using this methodology
9 --

10 A. Yeah.

11 Q. -- which is Mr. Rupe's. It's okay to
12 disagree with him.

13 A. That methodology there is the general fund
14 plus the LOB state aid, period. That's it.

15 Q. And it's not going to tell us a comparison
16 between actual expenditures against what the LPA has
17 predicted should have been the expenditures, would
18 it?

19 A. No, it will not.

20 MR. CHALMERS: I don't have any
21 other questions. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. RUPE:

24 Q. If you're going to compare studies, you need
25 to make sure you're comparing apples to apples?

1 A. That's my point, sir.

2 Q. And with regard to the LPA study, I take it,
3 in a comparison of the LPA study, you're not
4 comfortable with what they included and what they
5 excluded. Is that a fair statement?

6 A. That would be a fair statement on the LOB,
7 sir, you are correct.

8 Q. And then, with regard to Dr. Baker's number,
9 which is the only projection in 1239, that goes
10 beyond 2006 and 2007. With regard to Dr. Baker's
11 projection, I'm going to put on the overhead
12 something I want you to take a look at from
13 Plaintiffs' 384, Page 641, which is where Counsel
14 said he got this information.

15 MR. CHALMERS: Actually, it's 48
16 where I got it, Counsel. I'm sorry, the Bates
17 number, I'm sorry.

18 Q. Which is where he got it. Figure 19
19 provides a more recent snapshot of BSAPP actual
20 versus BSAPP proposed, and Senate Bill 549, and
21 subsequently inflated beyond 2010 by 3.28 percent per
22 year, in accordance with figures used by LPA and
23 their projections of cost in subsequent years.

24 Had the Legislature followed through with
25 the proposed increases to BSAPP, the figure would

1 have reached 4,597 by 2010, and have grown to 4,904
2 by 2012. He's talking about the base. But actually
3 BSAPP is only about 77 percent of that target, or
4 alternatively, 23 percent short and clearly wide of
5 that mark.

6 Here's what I want to point out to you:
7 Further, it is questionable as to whether that mark
8 is even reasonable given the incorrect choice of
9 inflator.

10 So Dr. Baker's number was questionable as he
11 projected based on the incorrect choice of inflator.

12 Is that what he said?

13 A. Mm-hmm.

14 Q. All right.

15 A. Yes.

16 Q. In terms of revenue, is it the State's
17 obligation to produce revenue for public education in
18 Kansas?

19 A. I believe under the Constitution the answer
20 is yes.

21 Q. And back to the original question, have they
22 funded the formula to what it takes to meet the
23 actual costs of educating the kids in Kansas today?

24 A. Not based upon the law that the
25 Legislature's approved; that's correct, sir.

1 MR. RUPE: No other questions.

2 RECROSS-EXAMINATION

3 BY MR. CHALMERS:

4 Q. Meaning they haven't funded the base that's
5 in the statute?

6 A. That they adopted, that's correct, sir.

7 MR. CHALMERS: I don't have
8 anything further.

9 JUDGE THEIS: Thank you,
10 Mr. Dennis.

11 MR. RUPE: You have questions for
12 him?

13 EXAMINATION

14 BY THE PANEL:

15 JUDGE THEIS: Let me see here.
16 Only thing, has the Department of Education ever done
17 a model staffing for a school district?

18 THE WITNESS: No, sir. Judge, if I
19 might just respond to that, there's such a wide
20 variation even in size of schools and where the
21 schools are built and number of towns, there's such a
22 wide variation, it would be really difficult to do
23 that, and they have not done that because of that
24 reason.

25 JUDGE THEIS: Not even by squads of

1 schools.

2 THE WITNESS: No, because, like,
3 when you are getting in high poverty, where you may
4 want a considerably lower pupil/teacher ratio than
5 you might in a school that's very affluent so
6 there's -- but no, we have not tried to model any
7 certain school or ratio.

8 JUDGE THEIS: Staffing.

9 THE WITNESS: Staffing ratio.

10 JUDGE THEIS: Do you look at their
11 school districts, the staffing, anything like that?

12 THE WITNESS: We have data. We
13 have all kinds of data about that, Judge, where if
14 you list the number of superintendents and principals
15 and all that, and have a history of that for four,
16 five years -- six, seven, eight years, whatever. We
17 have that information, but the people who drives that
18 train the local board of education. I mean, just to
19 be honest, that's where it's driven, on their
20 staffing.

21 And they'll decide -- in say a district with
22 high income, they may not need too many social
23 workers and people to help at-risk kids. But if you
24 get in the high poverty area, they may have quite a
25 few.

1 JUDGE THEIS: A wealthy district,
2 they might have somebody sharpening their pencils,
3 too.

4 THE WITNESS: That's right. And if
5 they're wealthy enough, why, sometimes they get a
6 nice donation, a gift.

7 JUDGE THEIS: In that historical
8 data you just mentioned, as far as you know, it's not
9 before us right now?

10 THE WITNESS: Not that I know of,
11 Judge, but I haven't been here very much. But the
12 number of certified staff and non-certified staff,
13 the history of that is available.

14 MR. RUPE: Can I ask a follow-up
15 question based on your comment?

16 JUDGE THEIS: Yes.

17 REDIRECT EXAMINATION

18 BY MR. RUPE:

19 Q. Has anyone ever asked the school districts
20 in Kansas from the Legislature for the actual costs
21 of what it costs to do what they do?

22 A. Closest thing, Mr. Rupe, that I can think of
23 is we were asked to do a survey of the Senate
24 Education Committee, at one point in time, that
25 involved 55 school districts. And it was rather a

1 simple survey, what do you think it takes to educate
2 a child with no exceptionalities, no bilingual, no
3 at-risk. And then the next question was how much
4 does it cost for at-risk and how much for bilingual.
5 That was done in about '05.

6 Q. Since then, has there been any?

7 A. No, follow-up to that, sir.

8 EXAMINATION

9 BY THE PANEL:

10 JUDGE THEIS: One more question.
11 Could you put 1013 up, somebody?

12 MR. CHALMERS: While I'm looking
13 for 1013, Your Honor, I think 1078 --

14 JUDGE THEIS: 1013 is the Senate
15 bill that you had up there.

16 MR. RUPE: 1078 is the exhibit. I
17 don't know if this has been discussed, but it
18 provides that historical data that you were asking
19 about

20 What part of 1013 do you want up?

21 JUDGE THEIS: Show him the
22 appropriation bill, Page 130 and 131.

23 I need the next page, I think.

24 MR. CHALMERS: Sure.

25 JUDGE THEIS: In the proviso from

1 paragraph -- or lines about 19 through 26 on Page
2 130, if you've got the exhibit.

3 THE WITNESS: Is this it?

4 JUDGE THEIS: 131, excuse me.

5 THE WITNESS: Okay.

6 JUDGE THEIS: My question, based on
7 your experience, those things they listed there are
8 not exactly as we've seen on some exhibits, so can
9 they be identified into some category and are they --
10 why are they funded separately instead of otherwise?

11 THE WITNESS: Okay. Let me just,
12 if I might, Judges, comment briefly on that. That
13 first one, that 2 million five --

14 JUDGE THEIS: Right.

15 THE WITNESS: -- that's a rounding
16 for the food service program. The 2.5 million is a
17 matching amount that's required by the federal
18 government, and it generates about \$130 million of
19 federal funds for children who are at-risk and poor.

20 JUDGE THEIS: It's funded
21 independently?

22 THE WITNESS: Yes.

23 JUDGE THEIS: Not in the formula?

24 THE WITNESS: Not in the formula.

25 10,000 for school safety hotline, that's just for us,

1 if somebody is going to hurt somebody, they can call
2 the highway patrol and they'll call the school
3 district immediately, day or night, 24/7, and tell
4 folks and try to prevent something from happening if
5 there's a threat.

6 The 484 has been vetoed. The
7 moving expenses, they thought we were going to move
8 and so we're not, so that's not going to be spent.

9 The technical education amounts,
10 Judge, that now, in the last bill, in the bill they
11 passed, that amount was added to general state aid.
12 And vocational weighting will be weighted just like
13 it has been.

14 JUDGE THEIS: Why was it added this
15 time?

16 THE WITNESS: The Governor took it
17 out separately and was going to add some proposed
18 changes. The Legislature didn't agree, so they put
19 the money back in general state aid and --

20 JUDGE THEIS: Where it had been
21 before?

22 THE WITNESS: That's where it had
23 been before.

24 The \$500,000 for transportation
25 that's for hauling kids, a new program brand new this

1 year; haul students from their school district to the
2 technical college. They are trying to promote more
3 kids in skilled training and that helps pay for that.

4 JUDGE THEIS: Again, funded
5 independently of the formula?

6 THE WITNESS: Yes, sir,
7 independent. And the \$50,000 is for promoting that
8 program. Then the rest amount, the KPERS, that we
9 try to make four times a year, but if we're late, why
10 they ...

11 JUDGE THEIS: That's just for your
12 agency?

13 THE WITNESS: Yes, we do it. We
14 send it to the school district and immediately it
15 goes right back to KPERS.

16 JUDGE THEIS: Are all those funds
17 spent or distributed out of your department?

18 THE WITNESS: Yes, sir. Those that
19 are not vetoed and the moving expenses --

20 JUDGE THEIS: Nothing there flows
21 through to make up part of the district contribution
22 to locally?

23 THE WITNESS: Yes, the technical
24 education grants, that 28.9 million, it's now added
25 to the 1 billion 888, on the previous page.

1 JUDGE THEIS: Other than this,
2 though?

3 THE WITNESS: It becomes general
4 state aid.

5 JUDGE THEIS: Other than that
6 there's nothing that flows down to be distributed,
7 right?

8 THE WITNESS: No, no.

9 JUDGE THEIS: Nothing further.

10 Mr. Chalmers.

11 MR. CHALMERS: I wonder about two
12 things. One, should we, as to the exhibit, and I ask
13 Counsel and the Court so we don't get confused later
14 on, should you take the original and mark out the
15 mentor teacher program grant, which was vetoed?

16 MR. RUPE: That's fine. I don't
17 have objection to that.

18 RECROSS-EXAMINATION

19 BY MR. CHALMERS:

20 Q. Secondly, then to Mr. Dennis, when you say
21 they're not distributed, the food service assistance,
22 the school safety hotline, the technical education,
23 transportation, and the technical education
24 promotion, those are funds beyond the general fund
25 that do make their way down to the kids, don't they?

1 A. The 2.5 million makes it down to the school
2 districts. The mentoring is vetoed. And the
3 technical education, that goes to general state aid.
4 And so then, the 500,000 will go for transporting the
5 kids, but not a part of the formula. It's separate.

6 Q. But it gets to the kids, although separate
7 from the formula?

8 A. That's right.

9 Q. Likewise, the discretionary funds, which
10 include the grants that maybe allowed that 322,000,
11 that money may get to the kids --

12 A. Yes, there's two programs, after-school
13 programs there, and some of it are public schools and
14 some of it is not. And it's small amounts. And I
15 suppose you could say it goes to the kids; some of it
16 to districts, some of it to private organizations.

17 EXAMINATION

18 BY THE PANEL:

19 JUDGE THEIS: Are you familiar with
20 the mentor teacher program grants?

21 THE WITNESS: Yes, sir.

22 JUDGE THEIS: Can I ask you to give
23 me just a little synopsis?

24 THE WITNESS: The purpose of that
25 program is set up -- and it's in statute. And the

1 purpose of it, Judge, was to assign a senior teacher
2 to help a beginning teacher. A lot of times,
3 beginning teachers go in, they are a little bit
4 green, new, and getting adjusted. So they assign a
5 mentor teacher that they can go to at any time, and
6 they meet regularly.

7 And this mentor teacher has to have
8 some training before they do that. And they have to
9 have at least three years' experience. But it's to
10 help that teacher be successful. And it's for the
11 first three years, but we only funded it for a year
12 and a half, I guess you could say, one year and part
13 of the next.

14 JUDGE THEIS: The school district
15 could do it on its own with the general fund?

16 THE WITNESS: They would if they
17 had the money, yes, sir. And they have to pay that
18 mentor a \$1,000.

19 JUDGE THEIS: I don't have any
20 further questions.

21 MR. RUPE: Nothing further.

22 MR. CHALMERS: Nothing, Your Honor.

23 JUDGE BURR: I got a question, when
24 are we coming back?

25 JUDGE THEIS: Thank you,

1 Mr. Dennis.

2 THE WITNESS: Yes, sir.

3 (Witness excused.)

4 MR. RUPE: I think we are going to
5 do the Commissioner of Education July 9th. So we'll
6 be getting that to you shortly after that.

7 JUDGE BURR: Talk about some
8 deadlines then.

9 JUDGE THEIS: You can go ahead.

10 THE WITNESS: Thank you, sir.

11 MR. CHALMERS: I am concerned about
12 the July 9th. And this is first we've not heard back
13 from -- does she have a yes or a no?

14 Possibly have an answer before the
15 end of the next week. We'll know more on Monday.

16 MS. CHERYL WHELAN: There's a
17 conference call on Monday. They're very close.

18 MR. CHALMERS: I'm not sure where
19 the 9th fits in. It sounds like it's probably
20 workable. But I did have a potential conflict I had
21 to work through. So I think that's still a working
22 date.

23 JUDGE THEIS: We're talking now --
24 we're asking what you want to -- I assume you both
25 are going to rest now on the evidence other than the

1 Commissioner?

2 MR. RUPE: Well, I may have
3 rebuttal.

4 JUDGE THEIS: You may.

5 MR. RUPE: So at this point --

6 JUDGE THEIS: Boy.

7 MR. RUPE: -- until the State rests
8 their case, I can't say that.

9 JUDGE THEIS: Are you resting?

10 MR. CHALMERS: We are resting our
11 case, yes.

12 MR. RUPE: So you're not going to
13 call --

14 MR. CHALMERS: Subject to, of
15 course, adding DeBacker.

16 JUDGE BURR: That's the video
17 deposition?

18 MR. CHALMERS: That's right.

19 MR. RUPE: And we rested our case.

20 JUDGE THEIS: So your rebuttal.

21 MR. RUPE: Any rebuttal we have
22 would be to her at this point.

23 JUDGE THEIS: Well, what we need to
24 know is what you want to do from here on out and make
25 kind of a time line.

1 MR. RUPE: I think it all depends
2 on when the transcript is available. And once that's
3 available, I think we could probably reach some
4 conclusions on dates.

5 JUDGE FLEMING: I'm probably the
6 one that's most affected. I've got stuff scheduled
7 and I set aside the month of June. And I've got
8 dates now when I can come back and hear your oral
9 arguments. But with every passing day, things get
10 scheduled, so I'm not in a position where I can set
11 aside a month of time and say, Well, I may be going
12 to Topeka. Wouldn't mind doing that.

13 JUDGE THEIS: Just need an idea of
14 what you want to do and give us a time line and then
15 we'll set it.

16 MR. RUPE: I think what we
17 anticipate is once we get the transcript, give us a
18 period of time that we talked about before in order
19 to submit findings of fact, conclusions of law and
20 then --

21 JUDGE THEIS: What kind of period
22 are you thinking of?

23 MR. RUPE: What did we talk about
24 after the transcript?

25 MS. GARNER: We said six weeks.

1 MR. RUPE: Six weeks is what we
2 talked about after we receive the transcript.

3 JUDGE THEIS: I ask you and you
4 almost -- I know the transcript will be good to check
5 things, but I mean, you're well-versed in this and so
6 is Mr. Chalmers, I mean, at least you could recite
7 what you wanted it to say.

8 JUDGE BURR: Judge Fleming I think
9 was looking at, I don't remember, Bob, like the 23rd
10 of August was a possibility. And then, there's
11 several other dates up through about, I don't know,
12 the first week or so in September or so. I mean, is
13 that workable, do you think?

14 MR. RUPE: I'm sure that is.

15 JUDGE FLEMING: I'm talking for
16 oral argument, but if you're talking six weeks --

17 JUDGE BURR: I'm talking oral
18 argument.

19 JUDGE FLEMING: -- after you get
20 the transcript, that's probably pushing it back into
21 October. And Judge Burr's gone the month of
22 October.

23 MS. GARNER: Well, that's what we
24 had said, but I mean, we can change or shorten that.

25 MR. RUPE: We're working around

1 your schedule.

2 MS. GARNER: Whatever your schedule
3 needs, we can work within whatever time period we
4 need to.

5 JUDGE THEIS: You can probably --
6 there'll be a lot of this that I assume you could do
7 and when you get the transcript, you could verify and
8 fill it in.

9 MR. RUPE: If you wanted to set
10 something in that time frame, August 23 to
11 September. I'm out the first two weeks of August.

12 MR. CHALMERS: August 23 works for
13 me on my calendar. I can't speak for Gaye.

14 MS. TIBBETS: That's fine.

15 JUDGE BURR: What's best for you,
16 Bob?

17 JUDGE FLEMING: The best day for me
18 is the 6th of September because I've got to be here
19 on the 7th, anyway. That's a Thursday.

20 MR. CHALMERS: Labor Day is a
21 Monday.

22 JUDGE FLEMING: Is Labor Day the
23 following Monday?

24 JUDGE THEIS: I think that's a
25 Monday.

1 MR. CHALMERS: I was thinking the
2 3rd is probably Labor Day.

3 MS. TIBBETS: It's either the 3rd
4 or 10th. I don't know which one it is.

5 MR. RUPE: I'm going to have to
6 call the office. Sorry.

7 JUDGE BURR: Okay.

8 MR. CHALMERS: So --

9 MR. ROBB: September 6 is what
10 we're looking at.

11 MR. CHALMERS: December 6 -- or
12 September --

13 JUDGE BURR: That was one of the
14 suggestions, anyway. I thought one of you was tied
15 up.

16 JUDGE FLEMING: That's not the only
17 day I can do it, but that's the most convenient day
18 for me.

19 MR. CHALMERS: I think the 6th
20 works. I think that gives us enough time, you know.
21 I understand, I think, the Judge's point, which is
22 that we can certainly start working on findings, and
23 by then I'm sure we'll have the transcript to plug it
24 in and get it to you. I guess we need to have a
25 deadline on when we would have the findings to you in

1 advance of the hearing deadline, perhaps, to respond.

2 MR. RUPE: Judge Fleming, I
3 apologize, I'm in trial on the 6th, but September
4 10th is available.

5 JUDGE THEIS: What about the 30th
6 of August? 30th or 31st?

7 MR. RUPE: 31st works.

8 JUDGE THEIS: On Friday.

9 MS. TIBBETS: That's Labor Day.
10 That's Labor Day Weekend.

11 JUDGE FLEMING: How about the
12 30th?

13 JUDGE THEIS: Is that good with
14 you?

15 JUDGE BURR: It's my wife's
16 birthday. She'll love it.

17 MS. TIBBETS: She can come watch.

18 JUDGE BURR: We'll bring her to
19 Topeka for her birthday.

20 MS. TIBBETS: She can watch the
21 arguments.

22 JUDGE BURR: Happy birthday.

23 MR. RUPE: 31st is a Friday. Labor
24 Day doesn't start until the following Monday.

25 JUDGE FLEMING: But it's the

1 weekend.

2 MS. TIBBETS: I just assumed you
3 wouldn't want to be ...

4 MR. RUPE: Is there a chance we
5 could work on the Friday before Labor Day weekend and
6 do it the 31st?

7 JUDGE THEIS: With great
8 disappointment. I don't know. What about the
9 Wednesday before?

10 MR. RUPE: That's the 30th?

11 JUDGE THEIS: 29th.

12 MS. TIBBETS: 29th of August.

13 MR. RUPE: 29th works.

14 JUDGE THEIS: Gentlemen, I can do
15 it, yeah.

16 JUDGE BURR: Okay with me.

17 MR. RUPE: 29th.

18 JUDGE THEIS: 29th, okay.

19 JUDGE FLEMING: What time?

20 JUDGE THEIS: 9:30.

21 MR. RUPE: 9:30.

22 MR. CHALMERS: Judge, you are a
23 trooper.

24 JUDGE THEIS: Does that work,
25 Mr. Chalmers?

1 MR. CHALMERS: Works for me.

2 JUDGE THEIS: Give me a date you
3 want to get the suggested findings and conclusions
4 in. I think they ought to be maybe simultaneous and
5 get a little window to comment on the other ones.

6 MR. CHALMERS: That's fine. We
7 either have no window to comment or a window,
8 whichever's your preference. But it seems to me
9 given a deadline that we had --

10 JUDGE THEIS: Assuming you get a
11 transcript somewhere around there.

12 MR. CHALMERS: Seems like if, yes,
13 the target somewhere around the end of July, that
14 ought to be reasonable. I may not even have -- I
15 think -- is the end of July is reasonable for a
16 transcript?

17 JUDGE THEIS: I think she's going
18 to send things out as she gets them done, get them in
19 serial form.

20 MR. RUPE: I was going to say
21 August 1, maybe.

22 MR. CHALMERS: August 1 is fine
23 with me. The court reporter's looking at me with an
24 evil look. If we need to go another week, it is fine
25 with me.

1 JUDGE THEIS: Well, how about
2 August 8, does that work?

3 MR. RUPE: Yes.

4 Are we copying these dates down?

5 MS. GARNER: Yes.

6 MR. CHALMERS: Maybe whatever
7 supplement, August 22nd, which would be two weeks
8 later?

9 JUDGE THEIS: I think August 6th is
10 a Monday, isn't it?

11 MR. ROBB: Yes.

12 JUDGE THEIS: Simultaneous by
13 August 6th. And then if you've got a problem, we
14 don't have it quite -- we can play with it then.

15 And one other thing, I'd like you
16 each to have a week to respond to the other. Then,
17 if you wanted to add onto it to, you know, rebut the
18 other one.

19 What I'm going to ask you to do is,
20 also -- findings of fact and legal argument are one
21 thing and sometimes can be a little blinding. I'd
22 like each of you to write an opinion, appellate-style
23 or Reader's Digest-style, as to how you would like
24 the final opinion to read.

25 MR. RUPE: Okay.

1 JUDGE THEIS: In other words, it
2 should be -- your argument would have to be in some
3 form that could be upheld.

4 MR. RUPE: All right.

5 JUDGE BURR: Probably your ideal
6 opinion, if you happen to have that choice.

7 JUDGE THEIS: And that could come
8 in right about that August date, too.

9 JUDGE BURR: I assume Mr. Chalmers'
10 ideal opinion might be a little shorter than your
11 ideal opinion, if I understand the argument.

12 JUDGE THEIS: Anything else to do
13 today?

14 MR. ROBB: Amount of time for
15 closing arguments?

16 JUDGE THEIS: Well, I don't know.
17 Enough time to get both of them on the road so he can
18 get back for his wife's birthday party, or get
19 started early.

20 JUDGE BURR: She may be here.

21 JUDGE THEIS: And Judge Fleming can
22 go back to Labette before the sunset. Maybe 90
23 minutes a side, plus a little time for rebuttal?

24 MR. RUPE: I think that works. If
25 that gives everybody time to get back and work within

1 that, that's fine.

2 JUDGE THEIS: Okay.

3 JUDGE BURR: Okay.

4 MR. RUPE: When you say, a little
5 bit of time for rebuttal, can we put some bookends on
6 it?

7 MS. TIBBETS: Three minutes.

8 MR. RUPE: Three minutes?

9 MR. CHALMERS: All right, four.

10 JUDGE FLEMING: Only thing is,
11 that's three hours, so if we start at 9:30 -- well,
12 that is all right, go to 12:30.

13 JUDGE THEIS: 12:00 or skip a
14 little lunch and get rebuttal and then get you on the
15 road with some more corn and tomatoes.

16 MR. RUPE: Rebuttal how long?

17 JUDGE THEIS: On the arguments?

18 MR. RUPE: Yeah.

19 JUDGE THEIS: I wouldn't think over
20 half an hour.

21 MR. RUPE: Do you want me to split
22 my time, is that what you want me to do?

23 MS. TIBBETS: Yeah.

24 JUDGE THEIS: Probably, that may be
25 the way to work it, so however you want to split it.

1 MR. RUPE: Okay.

2 JUDGE THEIS: All right. We thank
3 you and do appreciate you squeezing it in and getting
4 it in, in the appropriate time, because everyone's
5 got something set and it's important to get done.

6 JUDGE BURR: And I want to commend,
7 not just the lead attorneys, I mean, you obviously
8 understand your cases pretty well, but your staffs
9 have been amazing to me keeping track of all this
10 stuff that we're looking at, so we appreciate that.

11 MR. RUPE: I appreciate it.

12 JUDGE THEIS: We appreciated it
13 without the conflict.

14 JUDGE FLEMING: Are you old enough
15 to remember the television show M.A.S.H.?

16 MS. GARNER: Well, I still watch it
17 sometimes late at night.

18 JUDGE FLEMING: We nicknamed you
19 Radar.

20 MR. CHALMERS: Judge Burr, where do
21 you want us to ship our exhibits to you?

22 JUDGE THEIS: Everything to the
23 addresses that you got for them and me.

24 JUDGE BURR: Maybe I'll take it
25 easy on the mailman, and probably to the clerk of

1 District Court of Sherman County, because I'm up there
2 fairly regularly. That might be easiest. And I'll tell
3 her they're coming and to look for some hard boxes.

4 MR. CHALMERS: Thank you, Your Honors.

5 JUDGE FLEMING: See you next time.

6 MR. ROBB: Thank you.

7 (Court adjourned at 3:45 p.m.)

8 (Defendant's Exhibit Number 418A was
9 marked for identification.)

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CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Liebe Franges, a Certified Court Reporter, and the regularly appointed, qualified, and acting Official Reporter of Division No. 7 of the Third Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype Shorthand the above and foregoing proceeding in, Case No.: 10-C-1569, Gannon, et al, v. The State of Kansas, heard on June 28, 2012, before the Honorable Franklin R. Theis, Judge of the District Court of Shawnee County, Kansas; The Honorable Robert J. Fleming, Judge of the District Court of Labette County, Kansas; and The Honorable Jack L. Burr, Judge of the District Court of Sherman County, Kansas.

I further certify that at the request of Plaintiffs and Defendant, a transcript of my shorthand notes was typed and that the foregoing transcript, consisting of 209 pages, is a true copy of said COURT TRIAL.

SIGNED, OFFICIALLY SEALED, and delivered this 31st day of July, 2012.

LIEBE FRANGES, C.C.R #1671

1 .

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 .

(Main Office)
Topeka, KS
785.273.3063



(Metro Kansas City)
Overland Park, KS
913.383.1131

1 APPEARANCES

2 .

3 .

4 ON BEHALF OF THE PLAINTIFFS:

5 .

6 Mr. Alan L. Rupe

7 Kutak Rock, LLP

8 1605 N. Waterfront Parkway

9 Suite 150

10 Wichita, Kansas 67206

11 316-609-7900

12 Alan.Rupe@KutakRock.com

13 .

14 Ms. Jessica L. Garner

15 (Participating via Internet Realtime)

16 Kutak Rock, LLP

17 1605 N. Waterfront Parkway

18 Suite 150

19 Wichita, Kansas 67206

20 316-609-7900

21 Jessica.Garner@KutakRock.com

22 .

23 .

24 .

25 .

(Main Office)
Topeka, KS
785.273.3063



(Metro Kansas City)
Overland Park, KS
913.383.1131

1 Mr. John S. Robb
2 Somers, Robb & Robb
3 110 East Broadway
4 Newton, Kansas 67114
5 316-283-4560
6 johnrobb@robblaw.com

7 .
8 .

9 ON BEHALF OF THE DEFENDANT:

10 .

11 Mr. Arthur S. Chalmers
12 Hite, Fanning & Honeyman
13 100 North Broadway
14 Suite 950
15 Wichita, Kansas 67202
16 316-265-7741
17 chalmers@hitefanning.com

18 .
19 .
20 .
21 .
22 .
23 .
24 .
25 .

(Main Office)
Topeka, KS
785.273.3063

Appino & Biggs
Reporting Service, Inc.
Technology Specialist in Today's Litigation
Toll Free: 888.273.3063
www.appinobiggs.com

(Metro Kansas City)
Overland Park, KS
913.383.1131

1 ON BEHALF OF THE WITNESS:

2 .

3 Ms. Cheryl Whelan

4 Kansas State Department of Education

5 120 Southwest 10th Avenue

6 Topeka, Kansas 66612

7 785-296-3204

8 cwhelan@ksde.org

9 .

10 .

11 ALSO PRESENT:

12 .

13 Ms. Kristine Bateman, Videographer

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25 .

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1 INDEX

2 .

3 .

4 Certificate ----- 114

5 .

6 .

7 WITNESS

8 ON BEHALF OF DEFENDANT: PAGE

9 DIANE DeBACKER, Ph.D.

10 Direct-Examination by Mr. Chalmers 6

11 Cross-Examination by Mr. Rupe 102

12 Redirect-Examination by Mr. Chalmers 108

13 Recross-Examination by Mr. Rupe 111

14 .

15 .

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

22 .

23 .

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785.273.3063



(Metro Kansas City)
Overland Park, KS
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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?

(Main Office)
Topeka, KS
785.273.3063

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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

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

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?

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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.)

13 .

14 .

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(WAIVED)

17 .

DIANE DEBACKER, PH.D.

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25 .

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

1 P R O C E E D I N G S

2 JUDGE THEIS: You can be seated.
3 Thank you. You came back.

4 MR. RUPE: We did.

5 JUDGE THEIS: All right. How long
6 do you anticipate for the arguments?

7 MR. RUPE: Well, I was going to
8 talk for about 60 minutes. May not get all 60
9 minutes in, but then -- I think you gave each side,
10 90 minutes -- and I'd do a 30-minute rebuttal.

11 JUDGE THEIS: We might take a break
12 between stuff. Let's see, 90 and 90 ought to put us
13 close.

14 I think there was a request or two
15 for recording devices. I don't think we'll permit
16 that. We've got the record. That would be an
17 exception and I don't think we want to start that
18 now.

19 I guess we've read the final final
20 matter, so we'll hear the final final arguments.

21 MR. RUPE: Thank you, Your Honor.

22 This case has had considerable time
23 spent on it, a number of witnesses, a number of
24 exhibits, and considerable thought by everybody. And
25 I want to start by first talking about what this

1 Court's standard is. What standard should this Court
2 use to determine whether the State, since Montoy, is
3 meeting its constitutional obligation? I want to
4 talk about that standard for a minute.

5 And some of this is covered in
6 Exhibit 1, which was the primer that we introduced
7 into evidence. And I think what we need to remember
8 is that we are not starting Gannon in a vacuum. We
9 have substantial school finance juris prudence that
10 has come from a series of decisions ending in
11 Montoy.

12 And as I said in opening statement
13 when I stood before you some time ago, Gannon begins
14 where Montoy ends. So I don't think there needs to
15 be a lot of new law created to determine what the
16 State must do to comply with its constitutional
17 obligation pursuant to Article 6 Section 6 of the
18 Kansas Constitution.

19 I think the juris prudence is real
20 clear. And that is, that for the Legislature to
21 comply with Article 6 Section 6, the Legislature has
22 to do three things in crafting a suitable formula for
23 financing public education: One, whether students
24 are provided a suitable education, that's the first
25 thing.

1 Two, the actual costs of providing
2 a constitutionally suitable education. The actual
3 cost includes not only inputs, but outputs; not only
4 what we give to the kids for them to learn, but what
5 they also achieve. Inputs and outputs are important
6 in the consideration of actual costs.

7 JUDGE FLEMING: Let me interrupt
8 you. Hypothetically, what if we adopt the State's
9 position that Kansas students are being provided the
10 opportunity for a suitable education? Is it game
11 over, or do we go on with the rest of the questions?

12 MR. RUPE: Well, you have cut to
13 the heart of what is at essence of the difference
14 between us and them. And the difference is what is
15 meant by "consider." And if you read the Montoy
16 decisions, "consider" has an active component. They
17 can't just look at it and say, we considered it.
18 They have to actually engage it. And there has to be
19 more activity in the consideration than just --

20 JUDGE FLEMING: I think you missed
21 my point. Is it possible for us to find factually
22 that Kansas students are being provided the
23 opportunity for a suitable education, but then go on
24 to address the formula and perhaps find it not in
25 compliance with the Constitution or with Montoy?

1 MR. RUPE: My answer is no, because
2 it's not one leg of the stool. It's all of it, all
3 three legs. It takes a question of whether they're
4 being provided a suitable education -- that's the
5 Supreme Court words. That's not an opportunity,
6 that's an engagement where it's accomplished.

7 Number two, the actual cost of
8 providing that constitutionally suitable education;
9 and three, the equity.

10 So you can't just look at this and
11 say, well, they provided a piece of chalk and a
12 blackboard to every kid in Kansas and they got a
13 teacher standing up in front of the room; game over.
14 They had the opportunity, every kid has the
15 opportunity to learn.

16 That's not enough. And it's not
17 enough according to the Montoy decision. It has to
18 be more active. It has to be looking at not only
19 what was offered, but what was accomplished. That's
20 the notion of inputs and outputs that the Court
21 talked about.

22 In Montoy, that same argument was
23 made and the State Board of Education, through its
24 lawyer, advocated the element of outputs as part of
25 that suitable education, and the Court adopted that

1 reasoning. So it's not just opportunity; it is
2 opportunity with accomplishment that is key here.

3 I don't know if that answered your
4 question, but that's my best attempt at responding to
5 it, because the Montoy case makes it clear that you
6 just can't say, here's the opportunity, everybody has
7 the opportunity, game over. If it were that simple,
8 we probably would not be here, and we sure wouldn't
9 have put on evidence about the deficiencies in what
10 the financing is and what that's caused with the
11 number of kids throughout the State of Kansas.

12 And I would argue that -- we're
13 going to talk about this in a minute -- but when you
14 get to 11 percent of the black kids in 11th -- when
15 you get to the 40 percent of the black kids in 11th,
16 they're not being afforded an opportunity that
17 provides them a suitable education, as a significant
18 number of Kansas kids are not being provided that
19 opportunity that allows them to achieve. And
20 allowing to achieve is part of that standard that the
21 Court has indicated we look at when we look at
22 suitable education.

23 JUDGE FLEMING: I don't want to be
24 like the Court of Appeals and interrupt your every
25 thought, but you just used the words "significant

1 number." And as I recall, on your direct examination
2 of almost every superintendent, principal, and
3 teacher you called, you would conclude by saying,
4 "are you providing a suitable education to all
5 students?" And in your memorandums you mentioned
6 "all" several times. Now you're using "significant."
7 One of your witnesses testified; I think she used the
8 95 percent factor.

9 What is it for us?

10 MR. RUPE: The answer is in the
11 Constitution and in the juris prudence that
12 interprets that Constitution. And going back to
13 Judge Terry Bullock, in the early '90s when he looked
14 at the Mock decision, he said, the duty owed by the
15 Kansas Constitution is to all Kansas kids.

16 And I would submit to you that
17 Superintendent Kiblinger was being gracious when she
18 said, you know, you may not make it all the way to
19 100 percent, you may fall short. And if it were 95
20 percent, we may not be here.

21 I would submit to you that the
22 answer to that question is, all kids. We cannot --
23 and Commissioner DeBacker, in her videotaped
24 deposition, said it, I think, very accurately. And
25 that is, we owe the duty to all kids. And if one kid

1 is not given what they need to do in order to
2 accomplish what we know they can accomplish with the
3 resources that we do not have, then we are falling
4 short.

5 Now, would this Court intervene and
6 say, one kid is not at 100 percent, so it's
7 unconstitutional. I doubt it. But we're not close
8 to that argument. We're nowhere near that argument.
9 We have a significant number of kids that fall into
10 that category; not just one kid, a significant
11 number. So we're here because there is a significant
12 number.

13 I would love to debate whether or
14 not we need to get one kid additional funding so he
15 can make it to 100 percent of all kids. But our duty
16 is not to some of the kids. Our duty isn't to white
17 kids or kids in rich districts or kids in poor
18 districts. Our duty is to the Kansas Constitution,
19 and the Courts have said the duty is to all Kansas
20 kids.

21 JUDGE FLEMING: I'll let you get
22 back on track. Go ahead.

23 JUDGE BURR: When you get back on
24 track, Mr. Rupe, please tell me what the third point
25 was. You had three points and I missed the third

1 one, I think.

2 MR. RUPE: Okay. These aren't
3 Rupe's points. These are the Supreme Court's points.

4 JUDGE BURR: But it's your
5 argument, though.

6 MR. RUPE: And to me the measuring
7 stick that you've got to use in looking at the
8 current situation is whether students are provided a
9 suitable education, the actual costs of providing a
10 constitutionally suitable education, and the equity
11 with which the funds are distributed.

12 And when we talk about the actual
13 costs of providing a constitutionally suitable
14 education and whether students are provided a
15 suitable education, that includes, according to the
16 Court, both inputs and outputs. It's not just
17 opportunity, as the State would have you believe;
18 it's the opportunity and the element of achievement.
19 And I'm going to spend a little time with you in a
20 little bit on why it's clear that money does make a
21 difference.

22 But I don't want there to be any
23 mistake when the State starts their closing argument,
24 or when you set down to start figuring out whether or
25 not there's compliance with Article 6 Section 6. I

1 don't want there to be any mistake on this business
2 of actual cost.

3 And I'm going to refer you to the
4 Montoy decisions here for a second and just highlight
5 a couple of points that the Supreme Court made in
6 Montoy. In Montoy II at 775, the Court said, "The
7 equity with which the funds are distributed and the
8 actual costs of education, including appropriate
9 levels of administrative costs, are critical factors
10 for the Legislature to consider in achieving a
11 suitable formula for financing education. By
12 contrast, the present financing formula increases
13 disparities in funding, not based on cost analysis,
14 but rather on political and other factors not
15 relevant to education."

16 In Montoy IV, at 829, the Supreme
17 Court said, "We now turn this Court's specific
18 concerns about whether the actual cost of providing a
19 constitutionally adequate education were considered
20 as to each of the formula components."

21 In Montoy IV, at 831, the Court
22 said, "At a minimum, the increased BSAPP provided for
23 in the bill that was before them substantially varies
24 from any cost information in the record, and from any
25 recommendation the Board of Education or the State

1 Department of Education."

2 In Montoy IV, at 834, "The State
3 contends that it considered the actual costs of
4 providing a suitable education to bilingual
5 students. The contention is based solely on reliance
6 on historical data showing what the schools had been
7 spending under the financing formula we've held to be
8 unconstitutional. Although the increase in this
9 weighting is significant, it still differs
10 substantially from the cost information in the
11 record."

12 Montoy IV, at 840, "It is clear
13 that the Legislature did not consider what it cost to
14 provide a constitutionally adequate education nor the
15 equities created and worsened by the bill in front of
16 them. At oral argument, counsel for the State could
17 not identify any cost basis or study to support the
18 amount of funding provided. Its constellation of
19 weightings and other provisions are the relationship
20 to one another."

21 JUDGE FLEMING: How do we reconcile
22 that statement from Montoy with KSA 46-1226, which
23 allows the Legislature to reject all of that?

24 MR. RUPE: Well, I think that
25 statute is an abdication of the Legislature's

1 constitutional responsibility. What they're saying
2 in that statute is, you can't hold our cost studies
3 against us. And what the Supreme Court has said to
4 them is, you have to consider the costs, and you have
5 to look at inputs, and you have to look at outputs.

6 And the Legislature, in response to
7 that, substantially cuts the funding and says to the
8 Court, you can't hold those costs against us
9 anymore. And I think that is an abdication of their
10 constitutional responsibility to say that. I think
11 we have to look at cost. But that's not the issue in
12 this case. The issue in this case is, what did they
13 look at and what did they consider. And the evidence
14 is: Absolutely nothing.

15 The evidence is uncontroverted that
16 everybody who testified in that witness stand said,
17 the costs have gone up. There isn't one witness,
18 including their experts, who said -- well, I think
19 Hanushek said, maybe some of the technology has gone
20 down in cost. But with that one exception, every
21 witness has said, the cost has gone up. And as the
22 costs have gone up, the demands have gone up, and the
23 funding has gone down. And that's the issue in this
24 case.

25 What did they look at? Nobody

1 looked at the rising costs. That is undisputed. And
2 in Montoy V, Montoy IV, Montoy -- the parties were
3 directed to address whether the actual costs of
4 providing a suitable education were considered with
5 respect to each component of the formula, Montoy V at
6 page 6.

7 Finally, my last quote is from
8 Montoy V. "It still failed to provide
9 constitutionally suitable funding for public
10 education because the changes were not based upon
11 considerations of the actual costs of providing a
12 constitutionally adequate education and exasperated
13 existing funding disparity."

14 So my point would be -- and we
15 heard from two legislators -- my point would be that
16 the Kansas Legislature did not look at the actual
17 costs when they made the cut. They made the cuts
18 without consideration to the actual costs. They made
19 the cuts without consideration to actual costs. That
20 is undisputed in this case.

21 So the measuring stick are those
22 three points that I talked about. That's what you
23 have to look at.

24 The next question is: Who defines
25 and what is the definition of a suitable education?

1 Well, the Court has made clear in juris prudence, and
2 we've cited Montoy I at page 153, "The Supreme Court
3 has made it very clear that it is the Court and not
4 the Legislature that needs to determine the
5 definition of suitable education."

6 That's your job, is to determine
7 whether it's suitable and what that definition is.

8 Now, one of the things the Court
9 can do, as the Court has done before, is to look at
10 what the Legislature's definition of suitable is.
11 And I would submit to you, and you've seen it ad
12 infinitum, but KSA 72-1127, plus every witness in
13 education who testified, including the Plaintiffs'
14 experts, say that this is the definition of what we
15 want to achieve with our kids in Kansas public
16 schools. This is the definition of suitable.

17 It is what was determined in Rose
18 v. Kentucky, and then, by Judge Bullock in the Mock
19 decision, and carried through the other decisions,
20 and by the Kansas Legislature in statute in one form
21 or another, this is what is a suitable education,
22 this is our definition:

23 Development of sufficient oral and
24 written communication skills which enable students to
25 function and in a complex and rapidly changing

1 society; acquisition of sufficient knowledge of
2 economic, social, and political systems, which enable
3 students to understand the issues that affect the
4 community, state, and the nation; development of
5 students' mental and physical wellness; development
6 of knowledge of the fine arts and enable students to
7 appreciate the cultural and historical heritage of
8 others; training or preparation for advanced training
9 in either academic or vocational fields so as to
10 enable students to choose and pursue life work
11 intelligently.

12 This is the college readiness,
13 career readiness factor that you heard from a number
14 of witnesses. Development of sufficient levels of
15 academic or vocational skills to enable students to
16 compete favorably in academics and other job markets;
17 needs of students requiring special education
18 services. This definition is from the Kansas
19 Legislature. And you can give deference in your
20 determination of what that definition is to what the
21 Legislature has indicated.

22 You look at what the State Board of
23 Education, who has a constitutional responsibility in
24 this arena, what they have said is a suitable
25 education. You can listen to the witnesses, what

1 they have said. And we submit to you that it's your
2 job to determine what the definition is, and this is
3 your definition. And I don't think that's going to
4 be disputed by anyone. That definition says what is
5 suitable education for Kansas kids.

6 The Legislature has spelled out
7 what that definition is and it syncs with what the
8 Courts have said and with what all the witnesses have
9 said. Now, the State would submit to you that we are
10 a system that has 100 percent of the schools
11 accredited, and so accreditation would prove that we
12 are sufficient, adequate, suitable.

13 Well, Kansas accreditation comes
14 through the QPA, and we've seen in the exhibits
15 contained in the QPA manual. And Dr. Lane testified
16 about what those QPA requirements are.

17 And they are every unified school
18 district is required to maintain, offer, and teach
19 kindergarten in grades 1 through 12. All accredited
20 schools in the state are required to teach the
21 subjects and areas of instruction adopted by the
22 State Board. Accredited elementary schools are
23 required to teach the subjects contained in Kansas
24 statute and required by the board.

25 All accredited schools are required

1 to provide courses of instruction consistent with
2 state law and the State Board regs. The high schools
3 are required to provide students with appropriate
4 instruction on Kansas history and government, and
5 should offer a community service program. And there
6 are certain statutes that the districts must comply
7 with.

8 Accreditation through QPA is part
9 of the picture. It is the inputs. And back to the
10 Montoy case series, inputs was what the State argued
11 was all they needed to show in order to prove
12 suitable, because they said, if we give you the
13 opportunity, you have the opportunity and we're good.

14 But inputs alone are not what is
15 suitable in Kansas by their own definition, by the
16 State's own definition, by the Montoy decision, and
17 by the Constitution. You got to consider the
18 outputs. What are we accomplishing with these kids
19 with what we require them to do?

20 And when you get to the outputs,
21 remember two things: Number one, the duty is not
22 owed to school districts; the duty is owed to the
23 kids. Number two is the kids. So we have to look at
24 the outputs with regard to all Kansas kids. And the
25 evidence is real clear on how you look at those

1 achievements to determine whether or not we're doing
2 what we want to do or what we need to do to comply
3 with the definition.

4 Performance on Kansas national and
5 district assessments. We heard about that;
6 substantial evidence on that. Performance on college
7 entrance exams such as the ACT, graduation rates,
8 remediation rates, whether students are receiving an
9 education that complies with the state law, whether
10 they're receiving education that complies with the
11 State Board regs, whether the students are receiving
12 an education that complies with the local board of
13 education requirements, and whether students
14 graduate from high school, college-ready or
15 career-ready. Those are all measures of a suitable
16 education.

17 I submit to you that accreditation
18 is not the only measure. It is only part of the
19 picture.

20 JUDGE FLEMING: But haven't Kansas
21 kids done well in those regards? I'm looking from
22 the State's suggested findings high school graduation
23 rates have increased over the last decade. ACT
24 benchmark, Kansas students surpass the national
25 average. Kansas students are toward the top of

1 academic performance in the Midwest.

2 And the State says this: No one
3 credibly linked these cost-cutting measures to either
4 the loss of school accreditation or to a measurable
5 decrease in student performance.

6 How would you respond to that?

7 MR. RUPE: That's really two
8 issues. First issue is, are we doing pretty well?
9 And I would submit to you the answer is no. Here's
10 what the evidence is --

11 JUDGE FLEMING: Most of your
12 witnesses said yes to that question, that was --

13 MR. RUPE: Sure.

14 JUDGE FLEMING: -- opening question
15 to most of them.

16 MR. RUPE: Every educator is going
17 to tell you they're proud of what they've
18 accomplished with the kids that have accomplished
19 something. There is no doubt about that. They're
20 educators. They're going to be positive about what
21 they've done in the classroom.

22 The question is, are we providing a
23 suitable education to all Kansas kids? And my answer
24 is: There is a significant number we are not. And
25 the witnesses said that, as well, too.

1 I can remember one witness saying,
2 I wish I could say that we were providing all our
3 kids with that opportunity. Dr. Lane talked about
4 what her feelings were when the kids marched across
5 the stage at graduation, and how she knew in her
6 heart that there would about a third of these kids
7 that we were not providing a suitable education. And
8 the numbers bear that out.

9 Exhibit 104, again, Commissioner
10 DeBacker testified that all kids, almost one in six
11 were substandard in the their performance on math.
12 That's close to 70,000 kids in Kansas. White kids
13 10.9 percent; that's about 35,000. Free and reduced
14 lunch kids were close to 51,000 that were not
15 proficient in math. Hispanic kids, 17,572. Limited
16 language learners, 11,489. African American kids,
17 11,569.

18 On 11th grade math, all kids,
19 nearly 20 percent were not proficient; white kids, 13
20 percent; free and reduced lunch, almost a third;
21 Hispanic, almost a third; English language learners,
22 over a third, 38.6 percent; African American kids, 40
23 percent.

24 I submit to you those numbers for
25 Kansas, I don't -- we're not arguing another state's

1 constitution here. We're arguing the Kansas
2 Constitution that requires suitable funding for an
3 adequate education for all Kansas kids. And when we
4 have a commitment through the Constitution to provide
5 that education, in 72-1127, to all Kansas kids, and
6 we have this kind of numbers not making it, I submit
7 to you that's a significant number.

8 JUDGE THEIS: What's the
9 significance of the performance standard on a scale
10 of 100 and only 68 -- which wouldn't get you a C in a
11 grading scale.

12 MR. RUPE: I agree with that. And
13 incidentally, when we talked to the waiver, and we
14 hear from the State's attorney that with the waiver
15 everything is different, that waiver did not change
16 one of the numbers in any of those percentages or in
17 any of those numbers of kids on what they scored on
18 the assessment test that we used to judge
19 proficiency.

20 JUDGE THEIS: You've got 100
21 percent, still they'd only be getting 68 percent of
22 the answers.

23 MR. RUPE: Any way you look at it,
24 the bar is low. And with the waiver, it just got
25 lower, but it didn't change how high kids can jump.

1 And our duty under the Constitution is to all those
2 kids. So there is no other conclusion that we can
3 draw than Kansas is currently leaving significant
4 numbers behind.

5 Now, let's talk about the second
6 part of your question, Your Honor, and that was
7 whether or not the cuts are related. And I think the
8 evidence is just very clear that money and education
9 makes a difference. When you add money, it
10 improves. When you take it away, it decreases.

11 And if you look at the most current
12 assessment scores, and there's substantial evidence
13 of that from Dodge City, Hutchinson, all the
14 districts told you what their assessment scores are
15 currently, when the money is taken away, the
16 performance drops.

17 I submit to you that this argument
18 that the State made in every case that I've been
19 involved in, in the 30 years I've been involved in
20 school finance, this argument that money does not
21 make a difference should fall on deaf ears in this
22 courtroom.

23 Judge Bullock said, with regard to
24 Dodge City in the Montoy case, that dog doesn't hunt
25 in Dodge City. And I would submit to you that the

1 notion that money does not make a difference is wrong
2 in Kansas, because it does. And you heard a whale of
3 evidence from people who told you that money does
4 make a difference.

5 And now I'm off track.

6 We talked about to whom the
7 standard is owed. It's owed to all kids. We talked
8 about the assessment scores. We talked about where
9 we're dropping behind on assessments. And you never
10 see on the State's charts the '11/'12 school
11 assessment results. The State would suggest to you
12 that they received a waiver from AYP and the case is
13 moot. We talked about how that does not change the
14 assessment scores and how that has not changed
15 schools' performance.

16 They would also say they've started
17 to close the achievement gap. Well, in a large part
18 the achievement gap did close in the three-year plan
19 that was adopted during the Montoy case, at least for
20 the first two years there was substantial increase in
21 funding. And you heard the witnesses talk about what
22 they were able to do with the Montoy money by way of
23 reduction of class size, by way of hiring quality
24 teachers, by way of intensive professional
25 development. You heard the testimony that showed

1 what they were able to do and you saw the results.

2 The State now takes credit for
3 that, as they should, but the third year of the plan
4 was when the cuts began. And in every year since
5 then, the achievement gap has either decreased or it
6 is flat lined. So the patient isn't doing any better
7 here. And if we follow their reasoning, it's going
8 to continue to be an achievement gap for quite some
9 time on the waiver.

10 In order to get that waiver, Kansas
11 had -- and this is evidence that you see in the
12 DeBacker deposition and in the exhibits associated
13 with that -- but in the waiver they have to cut that
14 achievement gap by 50 percent, which means in 25
15 years, we're still going to have a 25 percent
16 achievement gap because we aren't addressing the
17 issue of all kids not receiving a suitable education.

18 The new waiver is supposed to cause
19 districts to cut their achievement gap in half over
20 the next six years. And that would mean 25 percent
21 of the gap will remain in 12 years. That's an entire
22 generation of kids that we're going to say, well, you
23 don't get an adequate education, but on average we're
24 doing pretty good. What do we say to the kids in the
25 meantime?

1 All right. What resources are
2 needed to comply with this constitutional duty? Is
3 it this group of plaintiffs in school districts
4 asking for unlimited funds until every kid in Kansas
5 is educated? I don't think that's the evidence. The
6 current Kansas statute says the base should be
7 4,492. Right now it's 3,838. Remember all the
8 evidence about the base. The BSAPP, it is the driver
9 of the formula. The base drives the formula. It is
10 the number from which all the other components are
11 calculated.

12 The State Board of Education has
13 recommended -- now, remember the State Board has the
14 constitutional duty in this case. The State Board
15 has obligation towards all Kansas kids. The State
16 Board takes a careful look at finances. We've heard
17 from a couple of people that talk about their role in
18 school finance within the State Board.

19 And the State Board, last month,
20 the evidence is, recommended that the statutory base
21 be funded to the 4,492 level. That's what their
22 recommendation to the Kansas Legislature was. The
23 Legislature didn't do it.

24 And remember our Montoy case where
25 it said at Montoy IV, 831, at a minimum, the increase

1 BSAPP provided for substantially varies from any cost
2 information in the record and from any recommendation
3 of the Board of Education and the State Department of
4 Education. That's one of the things the Court looked
5 at to determine whether the Legislature was living up
6 to its constitutional duties in Montoy. I submit you
7 need to look at it, as well.

8 Also, look at the 2010 Commission,
9 what they did. They recommended that the base be
10 funded at the statutory level. The Commission
11 believes we cannot sacrifice a generation of Kansas
12 students because the economy is weak. It is the time
13 for the Legislature to take steps to ensure that the
14 revenue and funding policies -- the Legislature allow
15 every Kansas student to achieve his or her full
16 potential.

17 That was the language from
18 Exhibit 179, which was the report that Michelle
19 Chronister testified about as chair of the 2010
20 Commission, a commission that was engaged by the
21 Legislature to make specific recommendations to the
22 Legislature about what funding should be and to tell
23 them what the adequate amount of funding should be
24 for Kansas kids.

25 JUDGE FLEMING: This is probably

1 not in the record if it happened last month. You
2 said the State Board recommended last month 4,492?

3 MR. RUPE: Yeah.

4 JUDGE FLEMING: So we wouldn't have
5 that in our record, would we?

6 MR. RUPE: Yes. Dr. DeBacker was
7 deposed after that and I asked her about that in
8 her --

9 JUDGE FLEMING: Okay.

10 MR. RUPE: It's in her videotaped
11 deposition.

12 We go back to the Augenblick &
13 Myers study and what it projected in Exhibit 237:
14 5,965. And all of these, Your Honors, are set out in
15 Exhibit 237. We have a packet of these that I'm
16 using in closing argument in front of you in case you
17 want to look at those. But it's 237 showing what
18 Augenblick & Myers are -- I'll talk about inflation
19 in just a second -- and about the Legislative Post
20 Audit.

21 But in terms of 2010 Commission,
22 2010 Commission told the Legislature what the funding
23 should be. And I still remember asking
24 Ms. Chronister what was the Legislature's reaction.
25 And she said, they hated me. The 2010 Commission was

1 ignored in what they recommended to the Kansas
2 Legislature in terms of suitable funding.

3 Let's talk about Legislative Post
4 Audit because according to our Exhibit 237, the
5 Legislative Post Audit says the base should be funded
6 at \$6,142, 6,142. And I've known Mr. Chalmers a
7 long, long time and he's very creative. And he has
8 come up with this -- just a footnote and aside, I
9 think I hired Art for his first job, so when he does
10 well in the courtroom I kind of feel like a dad
11 sometimes. The footnote's over.

12 The evidence from -- well, there
13 hasn't been any evidence, but there's been
14 Mr. Chalmers' very creative theory that somehow we
15 are spending more money today than Legislative Post
16 Audit said we should be spending. And it's been kind
17 of fun to watch this theory evolve in the courtroom.

18 As you remember, he had a couple of
19 exhibits the first day of trial that he had to pull
20 back because he had some deficiencies on them. So we
21 backed up and tried this theory again. And
22 ultimately, on the last day of live evidence he came
23 up with the chart that he says shows his theory is
24 right, and he tells you the state is already funding
25 education at the LPA cost study level. And I'm sure

1 we're going to hear about that.

2 I submit to you that Mr. Chalmers
3 is just not right in his theory. Don't drink that
4 Kool-Aid. That theory suggests that we are okay in
5 our funding, and it is wrong, because the demands
6 that you have heard about that were never addressed
7 in LPA have continued to increase.

8 In our Exhibit 105, and all the
9 testimony of the witnesses about what those increased
10 demands have been are real clear. The circumstances
11 have changed. You've seen evidence, and there's a
12 chart that shows the increase in English language
13 learners, that shows the increase in immigrant kids,
14 that shows a huge increase in kids that are free and
15 reduced lunch. Those kids have increased in our
16 districts and across the state in huge numbers.

17 So LPA didn't take into account the
18 increase in the weightings. And we have more kids,
19 more at-risk kids, more bilingual kids. You just
20 can't look at the totals. The base is the
21 multiplier. And when the weightings increase, the
22 total spending has to increase because those weighted
23 kids cost more to educate.

24 LPA said the base should be 4,167
25 in '05/06, and we're starting the '12/'13 school year

1 with a base of 3,838. So what they recommended in
2 '05/'06 is now less in '12/'13, and that base drives
3 the formula. And much of the federal funding that
4 the State's attorney is fond of including is very
5 targeted. It's identified federal funds.

6 I'm going to talk about Emerson
7 Elementary in just a minute. That was a \$2 million
8 investment of federal money. They're taking credit
9 for that in the overall picture, but they couldn't
10 use that \$2 million in Wichita. They couldn't use
11 that \$2 million in some other school district. Those
12 federal funds are targeted, yet the State takes
13 credit for the federal funding in fulfilling its
14 obligation, even though that money cannot be used
15 with different school districts.

16 And then there's what I call the
17 reality check, just a common sense look at Art's
18 theory. Because if you look at Art's chart in 2005
19 and 2006, his chart shows that schools had much more
20 money than the LPA study projected was necessary.
21 Keep that year in mind, 2005/2006.

22 I would tell you that common sense
23 says that if LPA said to increase funding, the
24 Supreme Court said to increase funding, and the
25 Legislature created a three-year plan to do that

1 starting in the '07 school year and ending in 2009
2 school year, schools weren't already receiving more
3 money than they needed in 2006.

4 Look at the common sense of this.
5 When the Supreme Court is saying, it's
6 unconstitutional because it's inadequate funding, his
7 chart shows they've got plenty of money. Schools
8 already had that plenty of money.

9 I submit to you it's a nice
10 theory. Art's -- Mr. Chalmers is a very creative
11 person. But when you look at that formula in the
12 context of what the demands are, what the increasing
13 demands are, and when you give it that reality check
14 of common sense, his theory does not hold up. Also
15 remember, and I think Dr. -- or a couple of the
16 witnesses including Neuenswander made the point that
17 LPA was geared to achieving grade level, and it was
18 not geared to achieving suitability.

19 We're in a situation in which five
20 independent sources have indicated the State is
21 under-funding education currently. You've got plain
22 old inflation. You've got two cost studies. You've
23 got the 2010 Commission. And you've got the
24 legislative reaction to that, which was to cut \$511
25 million.

1 Exhibit 241, chronicles the cuts
2 and this is undisputed in this case. There has been
3 \$511 million a year cut from education. At a time
4 when the demands are going up, the resources are
5 going down. Nobody took issue with Exhibit 241.
6 This is the reality of the situation with regard to
7 the Plaintiffs and the plaintiff districts and all
8 school districts in Kansas.

9 And as I indicated in response to a
10 question a short time ago, the State did not consider
11 the actual cost of providing an adequate education in
12 determining the funding levels. They didn't do it.

13 The Kansas school finance system
14 has never been designed or funded on the basis of the
15 known or knowable costs of providing a
16 constitutionally suitable education. They did it the
17 way they've done it before, and that is they decided
18 on how much money they were going to take away, and
19 they took it away without regard to the costs. And
20 that's the simple fact and it is undisputed.

21 Now, the State claims that they did
22 it in the interest of the economy. Well, that's not
23 the evidence in this case. The evidence is -- and
24 there's a couple of exhibits that show it -- the
25 evidence is that at the time they adopted the three-

1 year plan, they knew they were going to be over \$400
2 million in the hole. That was before the recession.

3 The evidence is that the
4 Legislature has spent over \$500 million in available
5 funds for tax cuts. There's no constitutional
6 obligation for a tax cut. There's a constitutional
7 obligation for funding, adequately, education. And
8 the State, to stand here and tell you that they can
9 take money from a generation of Kansas kids in order
10 to give tax cuts is saying to you that they have the
11 right to violate the Kansas Constitution in order to
12 appease somebody else.

13 I can't emphasize enough what the
14 evidence has been with regard to money making a
15 difference in this case. And I want to underscore
16 that. The only person -- there were 41 witnesses
17 that testified, and only one, maybe two, told you
18 that money does not make a difference and you can't
19 link that money to educational achievement; all the
20 rest of them told you, you could.

21 Dale Dennis told you that. Brad
22 Neuenswander told you that. All the superintendents
23 told you that. Everybody that stands in front of a
24 classroom and watches what kids learn and how they
25 learn and what they learn with told you that.

1 The only person that suggested it
2 may be otherwise was Mr. Hanushek, who has testified
3 in North Carolina, Colorado, New Jersey. He
4 testified in the Montoy cases in Kansas. He's the
5 one that Judge Bullock indicated was not credible
6 with his theory. Interesting theory, but not
7 credible.

8 He wasn't credible in North
9 Carolina or Colorado or in New Jersey and he -- I
10 think the only remarkable thing about Dr. Hanushek's
11 testimony is that he continues to get paid a
12 substantial amount of money for going around and
13 saying that there's no link between money and
14 achievement.

15 JUDGE FLEMING: I don't think he
16 said that. What I recall is he said, you can't
17 correlate given achievement for given infusion of
18 money.

19 MR. RUPE: That's what I meant by
20 link, that there was not a link between student
21 achievement and additional funding. He did say that
22 money does make a difference. He did say that,
23 because he said you've got to have money in the
24 system in order to have the system. He said that.

25 JUDGE THEIS: Money well spent.

1 MR. RUPE: Money well spent, right.
2 And the evidence from the witnesses
3 that I would call the boots on the ground is that
4 that money can make a difference. Teachers, teacher
5 training, after-school programs, extracurricular
6 activities, increased class sizes, decreased course
7 offering, decreased classroom materials, these are
8 all things that educators and others have told you,
9 including our expert -- tell you work to impact
10 student achievement. And when you take it away, it
11 doesn't work.

12 And I think the evidence is
13 overwhelming that money does make a difference. And
14 I'll give you -- I don't know what the exhibit number
15 is. I'm going to call it for my purposes Exhibit A
16 in the constellation of information that you were
17 provided concerning money making a difference. And
18 Exhibit A, the shining star in that constellation is
19 Kansas City, Kansas's Emerson grade school. I call
20 it grade school; it's an elementary school.

21 And I'm not nearly as eloquent as
22 our clients in describing Emerson Elementary School.
23 Small neighborhood school, according to Dr. Lane, and
24 part of the community that's referred to as
25 Argentine; has a rich history of very much

1 community-centered. Part of the history was that
2 three years ago it was declared the lowest-performing
3 elementary school in the State of Kansas.

4 She reminded us that the Kansas --
5 the Federal Department of Education requires a
6 ranking of all schools and Emerson Elementary was at
7 the very bottom of performance. Extremely
8 discouraging and heart wrenching to know that we had
9 fewer than 30 percent of the children in that
10 building who were able to meet standard. So, the
11 worst school in Kansas had 70 percent of the kids
12 that were non-proficient.

13 The demographic make-up of Emerson
14 at the time, she testified, continues to be about 50
15 percent African American, about 48 percent Hispanic;
16 high minority; very few Caucasian children in
17 school.

18 And here's what Dr. Lane said: But
19 we implemented some very extreme interventions, if
20 you will, that were funded by a federal School
21 Improvement Grant. We were really fortunate that
22 this bad news came with resources. The bad news
23 being the lowest-ranked in the state. And we're very
24 pleased to be able to tell you that they have
25 increased their performance on both the reading and

1 math assessments to have more than 85 percent of the
2 children meeting or exceeding expectations just in
3 the last three years. It is a remarkable story.

4 So, according to Dr. Lane, if you
5 look at this constellation of money making a
6 difference, there is a shining star, Emerson, where
7 they got \$2 million in a specific federal grant that
8 couldn't be used for any other school or any other
9 school district, and they targeted that district's
10 poor performance. And they did a complete
11 turnaround. So Dr. Lane is proud of Emerson and its
12 success story.

13 Well, I said, question, let's talk
14 about that turnaround. How did it occur?

15 Here's her answer: Well, the first
16 thing we did was sit down and have a conversation
17 with every employee that was assigned to the
18 building, and as part of that conversation -- was to
19 really determine whether or not they believed that
20 children, regardless of their background and their
21 poverty situation, could learn at high levels of
22 expectation. And to be honest, about 50 percent of
23 them didn't believe they could. And so we removed
24 the principal and we replaced 50 percent of the
25 staff.

1 There are people out there that
2 think you can't educate all the kids to an adequate
3 level. There are people out there that have a
4 mindset that if we are doing 85 percent, we're a
5 success story. And what Emerson needed were those
6 people committed to an adequate education for all
7 Kansas kids. And what Emerson got was those folks,
8 and they were able to turn that school around in a
9 very short period of time.

10 So I would suggest to you that when
11 you ask the question, does money make a difference,
12 one exhibit stands out in the constellation, and that
13 is Emerson. I think Emerson Elementary shows that in
14 Kansas, when we reduce class size, when we do
15 intensive professional development, when we develop
16 the mindset that all kids can learn, we can turn
17 things around, and Emerson did.

18 The third part of the formula, the
19 standard that we started with, is equity. And what I
20 would suggest to you is -- and I don't want to step
21 over my hour that I promised here, but I would
22 suggest -- and I'll talk about a little bit more
23 later, is that what has happened in terms of the
24 school funding, especially the formula is now
25 devised, is that that equity piece has really become

1 a problem.

2 And you heard about what the
3 property tax raises in different areas of Kansas and
4 how disparate those differences can be. And by
5 pushing the state funding to the local option budget,
6 and by pushing the state funding by removing capital
7 outlay and those mechanisms to enhance purchasing
8 power of districts, it has caused an unequal
9 situation, similar to what the Montoy Court observed
10 that caused them to conclude the system was
11 unconstitutional at that time.

12 I don't want to forget about our
13 capital outlay piece, because it goes directly to
14 this business of inadequate, inequitable funding.
15 And I think the evidence is clear that with regard to
16 the capital outlay claim, that's a legal argument
17 claim that we spelled out pretty clearly in our
18 findings of fact and conclusions of law, so I won't
19 dwell on it here.

20 But I think where we end is where I
21 began. And that is, when you look at whether
22 students are provided a suitable education in Kansas,
23 when you consider the obligation that's due all
24 Kansas kids, we come to the conclusion that a
25 significant number of students are not.

1 When you look at the actual costs
2 of providing a constitutionally suitable education,
3 when you look at both inputs and outputs, we have
4 failed. And when you look at the equity, as we spell
5 out in our findings and in our brief and in our
6 opinion that we wrote, we have failed. So I think we
7 have to come to the conclusion that the current
8 system is unconstitutional.

9 JUDGE FLEMING: You're to be an
10 hour and a half, aren't you?

11 MR. CHALMERS: Pretty close to
12 that. I'm always optimistic.

13 JUDGE FLEMING: Would I be
14 disruptive in your argument if we broke in the middle
15 of the argument? Seems early to break now.

16 MR. CHALMERS: That's fine.

17 JUDGE THEIS: Whatever. I'm good
18 with another half hour.

19 MR. RUPE: I'll be glad to suggest
20 a point when we can break.

21 MR. CHALMERS: I have a PowerPoint
22 that I have hard copies, as well, so that if your
23 eyes are like mine ...

24 JUDGE THEIS: Reading all the final
25 final ...

1 MR. CHALMERS: I think I've read
2 all of the cases, maybe not in other jurisdictions,
3 and I think there is a common theme to those that
4 have found that there is, either under a federal or a
5 state constitution, a violation by the system of
6 funding or by the amount of funding. And that is
7 that there is an educational problem, an educational
8 problem that is at crisis; that's buildings that are
9 falling apart, buildings that are falling down. More
10 frequently, it is that there is a large group of
11 kids, inevitably in poverty, who are not performing
12 as is desired, but are receiving less, much less in
13 funding than their counterparts.

14 That's not the Kansas system. In
15 Kansas, we can be proud as Kansans with our
16 educational system, both in terms of quantity of
17 funding, as well as how the money is distributed. In
18 Kansas, I think the evidence has shown that we have a
19 constitutional system that provides the opportunity
20 for a suitable education to students.

21 Now, there has been discussion in
22 the briefing of a violation of federal law, federal
23 constitution substantive to process and equal
24 protection. There's been the discussion of capital
25 outlay and whether there's a private cause of

1 action -- can reach back and grab money from the
2 State, whether that is something that even would be
3 constitutionally permitted in our state.

4 And Mr. Rupe doesn't address any of
5 those, and I won't either unless you've got
6 questions. I think they've all been fully briefed.
7 I do think that the fact that they are not
8 centerpieces of his closing arguments illustrate the
9 weight to the argument, however.

10 My focus then will be on
11 Article 6. And I think a good starting point in that
12 discussion, before I launch into the PowerPoint, is
13 precisely what it is that I think Plaintiffs are
14 asking the Court to find. I think they are saying,
15 and sometimes it's articulated differently, that if
16 there are a significant number of students or kids --
17 I don't want to go to just one kid -- that are not
18 making proficient standards on state assessment tests
19 on any given test -- in other words, you fail in
20 3rd grade, maybe you make it in 4th grade, we don't
21 count that you failed in 3rd grade -- that then, what
22 the State is obligated to do constitutionally is
23 provide more and more and more funding until finally
24 we have whatever that significant number is dwindled
25 down to a non-significant number. That's not the

1 standard, and I think that that's what's shown
2 through the evidence and through the law.

3 Now, Mr. Rupe talks about what
4 standard we look at -- and we being the Panel -- to
5 decide whether or not the decisions made by the
6 Legislature are unconstitutional. And he has a
7 three-part test. I think it really is circular. It
8 is saying that here are things that you need to
9 reach, and if you don't reach them, you have acted in
10 a way that is a violation without really articulating
11 what standard you look at to decide whether they have
12 been addressed or not.

13 The standard that we have
14 articulated, and it's found in some cases that have
15 talked about it in other jurisdictions, is kind of an
16 arbitrariness standard, a reasonably related
17 standard. And the briefing goes into that in
18 detail. But there has to be some way that you look
19 at it as this Panel to decide what is a -- well, a
20 suitable education, and whether the constitutional
21 mandates have been established.

22 It has to pick up the obligations
23 that you have or any Court has to provide a
24 presumption of constitutionality. And it should
25 include the concept that there are equal branches of

1 government, and yet, the Constitution has placed the
2 responsibility on the Legislature to make the
3 judgment on how to fund.

4 May be an arbitrary standard, it
5 may be something different, but the case law seems to
6 say it's arbitrary. But when you look at what the
7 Legislature's knowledge was at the time it made its
8 decision -- see, we're here talking about the next
9 school year, not so much the past -- what the
10 Legislature had when it made its judgment, what you
11 should conclude is that -- whatever standard you want
12 to employ, that the State, through the Legislature,
13 has done what is necessary to meet the constitutional
14 mandate.

15 The first point we suggest in terms
16 of the Legislature's experience and knowledge is,
17 that with all sources of revenue considered, Kansas
18 schools are spending at record levels. Their
19 operational spending is at levels that approximate
20 the Legislative Post Audit study.

21 Now, Mr. Rupe, was my first
22 supervising partner. I was hired by one of his
23 former partners, so he does not have to take the
24 blame for that.

25 And I remember, in some of his

1 mentoring discussions, recommendations as to
2 strategies you employ. And one was that if you have
3 the losing side of the argument, if you don't have
4 the law, you don't have the facts, you stand up and
5 you ridicule it. And I think that's what Mr. Rupe
6 has done when he addresses the question of whether
7 spending levels are appropriate with all various
8 sources considered.

9 And we'll talk about that a little
10 bit more, but that's one of the knowledge bases that
11 the Legislature had. They also had -- and going to
12 the next slide, be a little quicker here -- which
13 doesn't work.

14 Push that for me, Gaye.

15 MS. TIBBETS: Sure.

16 MR. CHALMERS: They had the
17 criteria that was set out in their statutes and set
18 out in Montoy I, which was, do the schools meet the
19 State's accreditation requirements and are students
20 achieving improvements in performance that reflects
21 high academic standards and is measurable.

22 Well, they were all accredited, and
23 we'll talk about the accreditation system, which is
24 now quite rigorous and different than it was when
25 Montoy was involved. And we have improvement in

1 performance that is measurable, and that's shown in
2 the evidence, as well.

3 The next slide talks about what
4 evidence they had in terms of how Kansas students
5 were performing. And again, they were performing
6 generally in all subcategories when compared both
7 internally, but regionally looking at other states
8 and nationally.

9 The proficiency test increased 40
10 percent over the last decade and now exceed 80
11 percent at every level. That's state level. That
12 does not include subgroups. I know, Judge Theis,
13 that you mentioned that if you're at 68 percent, or
14 some percentage like that, that you've got barely a C
15 or less, 80 percent, I guess, would be a B, but I
16 don't think that's the standard.

17 I think it's whether or not you
18 have the opportunity and whether you are moving in
19 the correct direction. Is it increasing performance?
20 Is it facility a measurable standard, which it is,
21 and that's what the documentation shows.

22 Next slide. The Legislature could
23 also consider the recent history of school district
24 spending and taxing. And I know you remember the
25 testimony that there were available to the districts

1 additional taxing authority, both in capital outlay
2 and as well as the LOB, that they didn't always
3 choose to use.

4 Certainly, there were some -- right
5 or wrong, some balances in their accounts that one
6 could conclude that maybe they didn't -- they weren't
7 spending because they didn't need it, or one could
8 conclude that they had to have a balance for
9 accounting purposes, but they did have that taxing
10 authority that they didn't always use.

11 And I want to emphasize in that
12 connection that this is not taxing authority where
13 you have to go to the electorate and say, pass this.
14 This is something the individual school boards decide
15 when they make out their budgets each year, and the
16 Legislature would have known that.

17 The next slide. The Legislature
18 could reasonably conclude the adjustment in state
19 education aid would have disastrous consequences on
20 the Kansas economy, and I'll talk to you about the
21 Great Recession in a moment.

22 JUDGE FLEMING: Let me interrupt
23 you. In fairness, I interrupted Mr. Rupe.

24 MR. CHALMERS: Please.

25 JUDGE FLEMING: I recall your

1 analysis of KSA 72-64c03, which says that education
2 shall be given a priority in funding, basically. And
3 you're saying that the State didn't provide a
4 specific appropriation, but that statute is still law
5 in Kansas. And you say it would have disastrous
6 effects on the economy if funding had been at the
7 level Plaintiffs suggested.

8 And you also said in your opening
9 statement that the tax cut really isn't relevant;
10 it's not a consideration we should make. But given
11 this statute, how can we ignore the tax cut? How can
12 we ignore the fact that the Legislature chose to give
13 a very significant tax cut, while at the same time
14 not providing the funding that the LPA study and the
15 other study has suggested it should?

16 MR. CHALMERS: I take your point
17 and I think it's a good one. The statute that you've
18 addressed does not define how the Legislature
19 determines what priority it will give; says it will
20 give first priority.

21 And I think we're all keenly aware
22 in the recent past it's not only been the
23 appropriations to education that have decreased.
24 Decreases have been felt in all agencies and even
25 more so. So I would say that they do continue to

1 give first priority to education and do satisfy the
2 requirements of that statute.

3 As to the tax cuts --

4 JUDGE FLEMING: The last line of
5 that sentence, that paragraph says, and shall be paid
6 first from existing state revenues.

7 MR. CHALMERS: And I think that
8 there may be an issue if we're dealing with an
9 allotment process, I guess. But again, I think what
10 the statute, as I would interpret it, would say is
11 the Legislature will give the education process the
12 importance that it deserves in deciding how to
13 appropriate. And I think they have, when you compare
14 it to cuts across the board.

15 And then, if you look at it from an
16 allotment process, say we were to have an allotment
17 during the course of this year, then maybe that
18 statute becomes more relevant. Although, I wonder
19 whether that statute can have that interpretation in
20 light of constitutional provisions that would prevent
21 kind of ongoing appropriation.

22 You have to specifically
23 appropriate. I don't think you can do it, if I
24 remember the statutes in the constitutional provision
25 correctly, more than two years. So I wonder if that

1 would be an interpretation one could fairly give even
2 in an allotment context.

3 The cuts this year, I guess the
4 proof will be in the pudding as to whether we see the
5 sort of decrease and whether we see, as a result, the
6 allotment issue. We're not there yet. And I think
7 that if we're testing as we must, whether or not the
8 funding levels that were appropriated just recently
9 are constitutional, we have to do it based on present
10 evidence, not based on what might happen.

11 At some point, to do otherwise
12 would not only require speculation, but really walks
13 this Court into a pace that I don't think it wants to
14 go, and that is to get into making decisions not only
15 on the issues of education, but now tax decisions, as
16 well. I don't think we're at the stage yet where you
17 can say that. I don't think we're close to it where
18 you can say that the Legislature has acted
19 arbitrarily or are in violation of that statute,
20 Your Honor.

21 The point that I was -- and I
22 appreciate that comment, because it helps me
23 understand what's important to talk about. But what
24 I'm trying to say in the fifth point is that there's
25 nothing that I can find in the Montoy decisions are

1 common sense that says we put our heads in the sand
2 and ignore the reality of economic consequences, and
3 that there can be minor ups and downs in funding.
4 And when we talk about the cuts here, I think we're
5 going to see that really the reductions were
6 relatively insignificant.

7 Finally, there is the debate on
8 whether or not putting more money into the system on
9 a macro level will enhance student performance. And
10 the Legislature had information on that from which it
11 could look both as kind of lay people saying, what's
12 happened over the last decade, over the last five
13 years, as well as the information through the LPA
14 study that told them, look, just pouring more money
15 into the system on a macro level doesn't necessarily
16 guarantee anything.

17 Now, that's not saying that money
18 doesn't make a difference. That's saying that if you
19 give districts and schools a bunch of money and you
20 aren't told how they're going to spend it, you don't
21 know whether they've been efficient in the past, that
22 what we learned is that it doesn't seem to generate
23 the outputs that are desired.

24 JUDGE THEIS: Mr. Chalmers, you
25 seem to be making a DiNovo argument with no reference

1 to what Montoy said. We're not here to decide
2 whether Montoy is right, I don't think, are we?

3 MR. CHALMERS: I'm sorry,
4 Your Honor, we're not ...

5 JUDGE THEIS: I don't think we're
6 here to decide whether Montoy was correct, are we?

7 MR. CHALMERS: No. I agree. And I
8 would not ask the Court to overrule Montoy. And I
9 think maybe that's a good point --

10 JUDGE THEIS: I don't think I
11 could.

12 MR. CHALMERS: The starting point,
13 of course, is the Constitution. We deal with one and
14 six. And if we go to the slide after that, and then
15 that's where we want to talk about Montoy.

16 First, there have been some legal
17 underpinnings a lot and the Montoy decision's
18 changed. You have the definition of suitable
19 education has changed. Now you have a rigorous and
20 detailed accreditation system that was not then in
21 place. You have weightings that were not in place in
22 Montoy that were passed on and eventually were found
23 to satisfy their order. And you have an intent that
24 the LOB revenue would now be part of the foundation
25 funding.

1 But you also have -- next slide --
2 differences in the evidence and circumstances from
3 when Montoy was decided. In this case, there's no
4 claim and there was no testimony presented that the
5 current weightings result in a systematic under-
6 funding of districts. Not true. That's exactly what
7 they decided in the Montoy case. It's very different
8 now. And they did that based on the Augenblick &
9 Myers study.

10 Now, we don't dispute that the
11 Augenblick & Myers study and then the LPA study
12 showed that there were weightings that need to be put
13 in place. They also talked about the quantity of
14 money, and that's been implemented.

15 The weightings are supported by the
16 LPA studies that the findings, they were not a
17 political compromise during Montoy. It was mostly
18 what would happen if you had the small districts
19 against the larger districts trying to sort out, as
20 they weighted it then on the size of districts;
21 largely, the biggest issue, how the money would
22 flow. And then you had gaps in proficient scores by
23 minorities that were large in the Montoy case.

24 Now, rather than trying to have a
25 general description of Montoy, I went back in the

1 next slide and tried to pull up what Judge Bullock
2 actually found. He found that the school system then
3 in place failed to equitably distribute resources
4 amongst children equally entitled by the Constitution
5 to a suitable education, or in the alternative to
6 provide a rational basis premised on differing costs
7 for any differential.

8 He found this dramatically and
9 adversely affected the learning and education
10 performance of the most vulnerable and/or protected
11 Kansas children the poor minorities, the physically
12 and mentally disadvantaged, and those who cannot
13 speak English. He was addressing the weightings.

14 He went on. In the next slide, he
15 noted that in large part the factual findings that
16 pupil spending varied by up to 300 percent; not true
17 now. The schools with children most expensive to
18 educate were receiving the least; not true now. That
19 there was a funding that was inadequate and
20 inequitable at a statewide level. That's the
21 Augenblick & Myers study.

22 There is no study saying that now.
23 That there are disaggregated educated test records
24 showing an achievement gap between the most
25 vulnerable, and saying reflecting failure rates in

1 some categories of vulnerable or protected students
2 as high at 80 percent; not true now.

3 In our case the weighting factors
4 are not attacked. There's no statewide evidence of
5 inadequacy either on the entire amount or
6 individually in terms of going to individual schools
7 or districts. And the evidence says we're closing
8 the gap. So if we want to look at Montoy and want to
9 look at the law, feel comfortable in saying we
10 feel -- ended very well.

11 In the next slide we talk about the
12 accreditation and have to back up and talk about the
13 US 229 case. And the USD 229 case I've got a couple
14 quotes from that decision. The issue had to do with
15 whether or not there was adequate funding.

16 And what the school districts had
17 argued is that funding is not suitable when it
18 results in cutting programs deemed necessary by local
19 boards of education. The Court said and approved
20 that the issue was not about cuts, it was not whether
21 the level of finance was optimal or best policy.
22 That's not the constitutional issue.

23 The next page, USD continued that,
24 through the Quality Performance Accreditation
25 standards, the act provides a legislative and

1 regulatory mechanism for judging whether education is
2 suitable. It found that in that case there was no
3 evidence that attacked the accreditation system.
4 They found that it was inappropriate and concluded
5 that it was constitutional.

6 It noted, however, that there was
7 evidence presented by the plaintiffs that argued, and
8 it goes on in this quote from the decision, that the
9 Court -- that there will be closures of schools and
10 in the future the funding won't be suitable. But it
11 said, hey, look, we can't base our judgment on
12 speculation of what might happen in the future. And
13 actually, I believe Marla Luckert was the individual
14 that made that quote and it was approved by the
15 Supreme Court later.

16 JUDGE FLEMING: What should we
17 adopt as the definition of a suitable education?

18 MR. CHALMERS: I think if we go to
19 the next page that kind of answers that. I think
20 that the accreditation standards in Kansas as they
21 exist now do provide that definition for what is a
22 suitable education. And here's where that's
23 important. When you're trying to figure out whether
24 you've made suitable provisions for education, you
25 have to figure out what it is you're making provision

1 for, and that's what we get to, constitutionally
2 adequate or a suitable education.

3 Mr. Rupe talks about inputs and
4 outputs and I think that's important. In the next --
5 well, couple slides down we'll talk about the
6 statute. What Kansas has done, it has set up a
7 statute that has said, we will delegate to the Board
8 of Education to figure out from the outputs that we
9 desire, these general goals, what it is that you'll
10 do to get to those outputs, and then put in place a
11 series of regulations to accomplish that. You also
12 have statutes that talk about specifically what you
13 have to do.

14 So what is a suitable education is
15 defined by those regulations, those statutes which in
16 turn are the accreditation requirements. And we
17 satisfy each one of the accreditation requirements.
18 Each one of these districts certify those things.

19 For instance, one of the
20 accreditation requirements are, do you have the
21 quality teachers necessary to get to those outputs?
22 We do. Do you have the professional development
23 program in place to accomplish that? Yes, we do.

24 QPA is quality, and then you've got
25 performance, and then you get equals accreditation.

1 And the performance are some of the measures you look
2 at, the graduation measures. And now, part of that's
3 changed radically with the waiver, but I think that
4 is how you define what is a suitable education.

5 I think we are in the 229 arena.
6 Montoy's changed. We don't have the evidence that
7 was in place in Montoy. 229 controls and I think
8 tells us that we've got a constitutional system.

9 Montoy I held that the Legislature
10 established the criteria for determining whether it
11 made suitable provision for finance of education by,
12 do the schools meet the state's accreditation
13 requirements, and are students achieving improvement
14 in performance that reflects high academic standards
15 and is measurable. They meet the academic
16 requirements. We talk about improvement and
17 performance, yes, and they are measurable.

18 Kansas accreditation is the next
19 slide. Pursuant to the statutes that's 72-6439 (b)
20 and (a), which we just talked about. And then
21 72-1127, which is the Rose Factors as Mr. Rupe likes
22 to talk about, Kansas accredits these schools and has
23 adopted these regulations. And then every year, you
24 submit information showing that you have verified
25 that.

1 The next slide is the statute. And
2 you'll note that I have underlined that every
3 accredited school shall teach those areas adopted by
4 the State Board of Education in sub-part A. Every
5 subject and area of instruction shall meet the
6 graduation requirements as adopted by the Board of
7 Education. And then in C, subjects in the area of
8 instruction shall be designed by the State Board of
9 Education to achieve the following goals, and then
10 the goals are set forward.

11 If we have a board who is the
12 experts, we're told, in deciding what is a suitable
13 education, if they have determined, here's what
14 courses you need to learn, here's what information
15 you need to know, and we have in place those classes,
16 those requirements to accomplish those, we have a
17 rigorous accreditation program that satisfies the
18 required outputs that's measurable.

19 The next slide talks about the
20 Common Core Standards, and those are important. By
21 statute, the standards are reviewed periodically.
22 Most recently in 2010 they adopted the Common Core
23 Standards. There had been a standard that had been
24 adopted, and I think they first started to test on it
25 in 2006 before that, and then there were standards

1 before that.

2 But the current standards, the one
3 in place for this year that they have been
4 implementing, is a coordinated effort, state-led
5 effort. It's a line to provide students the required
6 knowledge and skills to be college or career-ready.
7 It's nationally, internationally benchmarked and the
8 assessment tests will be formulated to be implemented
9 in 2015.

10 If we're looking at, do we have
11 improvements, do we reflect high academic standards,
12 we have that, I think, by every account. The
13 standards then drive the testimony as the
14 curriculum. You now have standards -- a good friend
15 of mine started teaching a good number of years ago
16 and he's back in the classroom. In 1992, they first
17 came out with Kansas standards.

18 Before that, what you'd do is you'd
19 get your own book and you'd kind of decide what you
20 wanted to teach. He would have a book. He would
21 teach from that book. Now you've got standards that
22 accomplish the same things. And it's not surprising,
23 frankly, that since you've had that uniformity of
24 standards as the standards have become more rigorous
25 and improved we've seen, since 1992, an improvement

1 in test scores.

2 The waiver is a crucial bit of
3 evidence in this case -- and that's the next slide --
4 because it changed how we looked at the performance
5 part of the QPA. We no longer have this annual
6 yearly progress that means you either met or didn't
7 meet test scores. Instead, we have AMOs. Those are
8 Annual Measurable Objectives. We no longer have
9 schools that are re-structuring, improvement.
10 Instead, what we've got are priority schools and
11 focus schools.

12 Now, that's really important
13 because Mr. Rupe talked to you about the Emerson
14 case. Emerson would have been one of these cases
15 that gets funding, but now we've got more flexibility
16 to get the funding where it needs. We funnel,
17 through the state, the federal moneys.

18 Under the waiver, Kansas has
19 committed to having a model evaluation system for
20 teachers. And that's important, too, because as you
21 remember, Dr. Hanushek explained, as did
22 Dr. Podgursky, that the key is trying to improve
23 teachers in the classroom more so than anything else.

24 And there are different ways of
25 looking at test scores now. First, we look at them

1 across the spectrum. We don't just talk about, do
2 you reach one level, are you proficient. Now it's,
3 how are you doing at the top and how are you doing at
4 the bottom and how are you moving. That's part of
5 the API, the Annual Performance Index.

6 But it's only one part of the
7 accountability because we recognize there are schools
8 in different places with different needs and will
9 have to move at different rates and have different
10 improvement levels.

11 The AMO pathways look at student
12 performance for each school. By way of illustration,
13 you take generally the schools and you put them in
14 four different categories. And the expectation for
15 rates of improvement from the schools that may be in
16 the lowest quadrant is higher to different -- than it
17 is at the higher level where we still want to see
18 improvement at the highest quarter.

19 The growth model for schools are
20 different. The rate of reduction of gap is also an
21 AMO that is considered as is the rate of reduction of
22 students below standards, and they review that every
23 six years. And there's a reason they do that.

24 At some level, when you have a test
25 that's been around long enough, we now kind of know

1 where the scores will be. IQ tests don't change too
2 much as do some of the other test scores that have
3 been around for a while. There's an equalization
4 point. And so what you have to do is kind of
5 throttle in and look at what will be the rate of
6 reduction to these standards as you go along, and
7 that's all in Exhibit 1300, by the way, in
8 Dr. DeBacker's testimony.

9 The impact of the waiver is we've
10 got these multiple standards that we have Common Core
11 Standards that are integrated within them, that they
12 can be measured to determine whether students are
13 progressing against these standards, and there's no
14 evidence, absolutely no evidence that implementation
15 of these standards in this waiver will cause expense
16 beyond the normal expense of required professional
17 development, which was always part of our system.
18 And frankly, there was testimony that there were
19 budgets with professional development that were left
20 unspent in some of these districts.

21 Now, Mr. Rupe says demands have
22 increased. Standards have always changed, however.
23 Professional development is required in QPA and will
24 continue to be. And there's no evidence that's been
25 presented that these increased demands, as Mr. Rupe

1 has described them, carry some specific cost above
2 the normal operating costs that are already in
3 place. You're left to speculate.

4 JUDGE THEIS: Because no one's done
5 a study.

6 MR. CHALMERS: That's right. There
7 actually will be a study that has been started and
8 the results won't be out until December. But no one
9 has done a study, you're right. I think the burden
10 of proof, though, remains on the Plaintiffs to
11 establish a violation of the Constitution.

12 Plaintiff misquotes some
13 information from the waiver and I want to talk about
14 that briefly. Plaintiffs' claim rates of improvement
15 on state assessments have significantly decreased,
16 and they quote the waiver as saying, the State
17 attributes those decreases to the staff and budget
18 cuts taking place in Kansas in 2010.

19 Well, first of all, they have the
20 wrong page number. When you get the right page
21 number, the next page explains that they are talking
22 about the APA growth rates. And when they talk about
23 the API growth rates -- remember I talked to you
24 about equilibrium growth point -- it's not as simple
25 as saying how it will grow. It's at what level to

1 the kids at the very top reach about where they're
2 going to get. This is what our test scores are going
3 to be.

4 Well, we can't improve any more.
5 Obviously, if you move somebody up from the bottom,
6 you get them to the top, that progress goes slower.
7 The important point that is made at page -- and what
8 the waiver actually said, is we can only guess the
9 reason, when they were talking about the slowed math
10 APA growth in recent years, which could, quote, have
11 been cuts, or that the schools were actually
12 approached equilibrium in these subjects or other
13 unknown causes, end quote. But the important part,
14 they go on, is that on the positive side what they
15 saw is that the gap was closing. So the slowing was
16 at the top end, and not the movement at the bottom
17 end, which is important.

18 Plaintiff also misrepresents the
19 function of the API in their proposed findings at
20 449, and I've got a little chart there. I think it's
21 important to know, as the next slide shows, that the
22 API is not a number that describes when that school
23 or student meets or is below standard. It is a
24 multiple measurement that is used as part of the
25 AMOs.

1 The rate for API improvement
2 depends varying upon the schools, and it's based on
3 all student groups. That decision was made after
4 people got together and decided with community
5 members including minorities that that was the
6 fairest and best way to do it. And that's described
7 at page 93 of Exhibit 1300. And of course, there's
8 the equilibrium point.

9 The important thing about the API
10 and about these multiple methods are these AMOs, are
11 that you're attacking gaps in a couple different
12 fashions under the waiver. First, you're looking at
13 it from those who score the lowest against those who
14 score the highest. We're not going to put on
15 ethnicity blinders and say important for that
16 analysis. It's just, who's performing, who isn't,
17 let's close that gap.

18 But then there also are those
19 people on the lower end, we need to narrow that down,
20 and those are part of the AMOs that are included.
21 And yes, there is a rate of improvement that is found
22 to be acceptable and manageable and to be reasonable
23 both by the Kansas Department of Education and the
24 federal authority that approved it.

25 Now, there's a reason, I think in

1 common sense. We step back and say, well, why not
2 have, tomorrow, enough funding to have no gap? And
3 that's because no one's ever done it. The Kansas gap
4 is smaller than other states. It exists. It exists
5 for social and economic reasons. I think that's the
6 old Coleman report from back in the '70s and '60s.
7 And those issues just aren't something that we can
8 wipe away by throwing more money. They are complex
9 questions and they aren't solved by what is being
10 argued in this instance.

11 So going back to my three points on
12 talking about the --

13 JUDGE THEIS: Mr. Chalmers, go
14 ahead until you get to a point that --

15 MR. CHALMERS: This would be a
16 great time to stop, if you want to.

17 JUDGE THEIS: You're chairman. Is
18 that good?

19 MR. CHALMERS: Yeah.

20 JUDGE THEIS: Okay. We'll let's
21 take until 11:30.

22 (A recess was taken.)

23 JUDGE THEIS: You can be seated.

24 Thank you.

25 Mr. Chalmers, I want you to address

1 one thing so I'm -- I don't want any --
2 constitutional procedural, usually is the template to
3 comply with it. Like, if you need a search warrant,
4 you need probable cause; normally need to get a
5 warrant before you can make the arrest.

6 If you have a due process question,
7 generally there needs to be a hearing at some point
8 in time. If you look at Montoy, it sets a template
9 as to how to comply with the Article 6. Are you
10 preaching to the wrong congregation?

11 MR. CHALMERS: No, I think that I'm
12 preaching to the right congregation, and I think that
13 where we may part is on what template that Montoy
14 sets. Montoy talks in terms of -- well, it never
15 talks in terms of some guarantee to a suitable
16 education. You just won't find that in Montoy.
17 We'll talk about opportunity and I'll show you a
18 slide on that in a moment.

19 JUDGE THEIS: Talks about findings
20 you need to make.

21 MR. CHALMERS: It then talks in
22 terms of once you reach the remedy stage, and now
23 they're visiting with what the State has to prove to
24 show that they satisfy, they put it back in the
25 proper order. You've got to consider actual costs,

1 which we did. And secondly, they say you've got to
2 consider equity, which we've got. But that's in the
3 remedy stage.

4 Now, I suppose where Montoy
5 throttles that up differently then the posture of
6 this case -- and I think you're right, it depends on
7 the constitutional analysis as to where you are -- is
8 that they did that in that remedy stage where the
9 burden of proof is shifted to the State, where there
10 was no longer a presumption of constitutional
11 conduct, and where they didn't have to consider
12 separation of powers issues any longer because the
13 Court was in the remedy stage fashioning some remedy,
14 and that, of course, is the language from Montoy that
15 explains that.

16 When they're in that stage,
17 obviously, they're drilling down a lot deeper.
18 They're now getting into, okay, what does the LPA
19 study show, and does this study and you're
20 legislation satisfy us that you have got where you
21 need to go?

22 Now, I don't take the position that
23 you should not look at cost or actual cost. In fact,
24 I think the Legislature has. I think that maybe it's
25 a little bit different view in that it's much more

1 like the analysis for equal protection in that you
2 say, what did the Legislature have before it, and is
3 its decision based on that something that included
4 the consideration or could have included the
5 consideration of actual costs, practical problems
6 otherwise.

7 Obviously, I can't bring in every
8 legislature to say what they talked about, not only
9 because of the numerical issue, but also because of
10 their right not to be hauled into court to testify on
11 their decisions.

12 JUDGE FLEMING: What evidence is
13 there in the record that you would cite as to support
14 your argument that the Legislature did actually
15 consider the actual cost?

16 MR. CHALMERS: Well, you have
17 information that is now, after Montoy, that is being
18 collected by way of statutes that were passed through
19 the Department of Education as to each one of the
20 budgets from every district, as to the general
21 aggregate spending. You have the information that's
22 been collected, again mostly after Montoy, as to the
23 performance that is happening on accreditation.

24 You have that sort of information
25 that would be historical information, say this is how

1 much we spent in the past, here's how we're
2 performing. And in fact, in Montoy, they say there's
3 nothing wrong with using that historical information
4 to assess and value what are actual costs. So that's
5 what they did.

6 JUDGE THEIS: What's the bright
7 line for Legislature to deem whether the costs were
8 necessary?

9 MR. CHALMERS: I think that that
10 bright line as to whether the costs are necessary or
11 not is something that the Legislature decides in its
12 good judgment. I think they look at how are our
13 schools progressing against accreditation. They look
14 at what accreditation requirement's in place. How
15 have we spent in the past. Do we have, in fact,
16 money that is not being spent. Do we have school
17 districts that have taxing authority that aren't
18 using those taxing authority.

19 I think it's a collection of all
20 that information just like a Legislature makes a
21 decision on any budgetary item and reaches its
22 judgement. It is not something that is subject to --
23 and let me interrupt for just one second to finish
24 this -- it is not something that is subject to
25 mathematical calculation. That's the very point that

1 I think the study shows and the literature show. And
2 interrupted, Your Honor.

3 JUDGE THEIS: What if they reduced
4 it to \$3,000? 2,500? You're still making the same
5 argument.

6 MR. CHALMERS: I think that if you
7 reduce it to some stage or you're at a level of
8 funding at some stage where, A, you can't fund your
9 accreditation requirements, that, I think, is the
10 bright line here. Or B, the accreditation
11 requirements you have are not those that are
12 improving knowledge and are measurable, then you have
13 the Montoy situation.

14 Now, of course what's important
15 here is, is that you have funding from all sources,
16 that when you consider that actually exceeds or
17 equals what we were looking at in the LPA studies.
18 You also had the LPA study the Legislature would have
19 been able to look at, along with all sources of
20 funding. And that ties into the importance of the
21 change in direction during Montoy and the Legislature
22 where they say, hey, look, no longer is the LOB for
23 extras. Now it's part of the foundation funding.

24 And more important is that gets
25 into the policy judgments that Legislature makes as

1 to whether it is appropriate to include local control
2 in the equation. The idea being that it is better to
3 have a school district who decides, now, I don't want
4 to increase some taxes here because we really don't
5 need that money and have the local electorate making
6 that decision instead of making it on a statewide
7 basis. We may or may not agree with that
8 philosophy. We use the philosophy that exists and
9 we'd have a rational basis and not be arbitrary.

10 JUDGE BURR: Are your comments any
11 different -- refer to Montoy, and I understand that.
12 But are they any different in taking into light the
13 USD 229 case, and then the later waivers, and the
14 things we've heard mentioned here earlier today? Are
15 your comments any different?

16 MR. CHALMERS: Here's how I
17 reconcile 229 to Montoy. In the 229 case they did
18 not have the statewide evidence that existed in
19 Montoy of lack of sufficient funding across the board
20 and of disparate, I guess, or unequal funding. That
21 is, in Montoy you had districts that didn't need the
22 money as much getting more money. The districts
23 needing the money not getting as much. Not true now.

24 So you have that in Montoy, which
25 when the Court said is Judge Bullock's decision

1 something that we can find substantial competence
2 evidence to support in what I call Montoy II, that's
3 what they focus it on, is that Augenblick & Myers
4 study. We don't have that here.

5 Rather the testimony is, the
6 evidence there is that when you look at the aggregate
7 numbers, we're pretty close to what the LPA study
8 showed and we've got the experience of about five
9 years, or six or seven years now, to tell us that
10 we're doing a good job and the other factors we
11 talked about.

12 In 229, they said, well, if there's
13 no evidence that really assails or assaults this
14 accreditation program, well, we're going to let you,
15 the experts, through your agency, sort out what
16 you've got to have to be accredited to get the
17 outputs that you desire. And if you meet that,
18 that's the end of the story, even if you've got cuts,
19 even if you've got school districts saying, we can't
20 fund programs that we want to fund. And they found
21 that wasn't unconstitutional in 229.

22 So I think the three things that I
23 was talking about in terms of our case as opposed to
24 229, were the weighting factors are not attacked in
25 our case, that there's no statewide evidence of

1 inadequacy, and we are closing the gaps. And when I
2 talk about the weighting factors not attacked, that's
3 the first thing on this screen that I was talking
4 about.

5 In the next screen we talk about
6 the weights that provide more funds. And it's
7 important to understand that, that these weights,
8 which are largely ignored by the plaintiffs, provide
9 more money than was available to those kids who are
10 now recognized to the kids that are in greater need.
11 And in magnitudes, well, this slide shows 178 percent
12 for Wichita, 165 for Hutchinson. You can read the
13 rest of the slide.

14 The next slide shows that between
15 Montoy, '05/'06 -- understanding there was a year
16 where there was partial funding before Montoy
17 approved the funding -- and '11/'12, that the full-
18 time enrollment in Wichita actually decrease, a
19 little bit less than a percent, but the weighting
20 enrollment increased 27 percent.

21 In Hutchinson, there was an
22 increase of a little bit over 2 percent but a 30
23 percent increase in the weighting enrollment. In
24 Dodge, 11 percent increase in actual kids in the
25 classroom, but a 41 -- nearly a 41 percent increase

1 with the weights in terms of how you're getting more
2 money.

3 The importance of Montoy was that
4 we had students who Judge Bullock concluded needed to
5 have the money that were getting the least amount of
6 money. Now we've got students that the Legislature
7 has determined need more money, the Plaintiffs argued
8 need more money, that are getting more money.

9 In fact, the next graph shows
10 statistically how that plots out, that line moving
11 upwards illustrates that, yeah, the districts with
12 the larger percentage of free and reduced priced
13 lunch students are getting more money.

14 The next slide shows some of the
15 larger districts, for instance -- that big circle,
16 not the one on the far right, but the one that has
17 the circle within it, I think that's Kansas City, if
18 I remember correctly -- are getting more money.

19 But the second difference was that
20 there was no statewide evidence -- there is no
21 statewide evidence of inadequacy in this case, unlike
22 there was in Montoy where you had the Augenblick &
23 Myers study that was undisputed that the state had
24 actually requested and had to live with. We don't
25 have a study anymore. Doesn't apply. It's

1 out-dated.

2 The funding has not significantly
3 varied and is at near record levels according to the
4 statistics we set out in this slide, the amount of
5 money in the '12/'13 year. I think it's important to
6 note that we are continuing to spend in excess of 50
7 percent of the state's budget on education. I think
8 the question that went to, is the state getting first
9 priority to education, it continues to spend the
10 majority or more than the majority of its state
11 budget on education. I don't think we can conclude
12 that it's getting short shift to education.

13 The next slide shows all
14 expenditures over time. And I think it's important
15 to put a couple things in perspective. First, there
16 have been reductions, but they have been relatively
17 small when you look at the money that has been
18 spent. In fact, if you look in this slide in terms
19 of per pupil expenditures, it shows that in '09/'10,
20 it was down approximately two and a half -- well,
21 almost 3 percent. In '10/'11, it was down about a
22 third of a percent. Of course, it's up this year.

23 We've heard some raw numbers, but
24 if you look at the magnitude of the spending, which
25 you've had as difficult economic times and the effort

1 to try to maintain the spending levels at the state.

2 In the next slide we talk about it
3 not at per pupil base, but rather expenditures and a
4 gross basis and on the gross basis between '09 and
5 '10 to '10/'11. And these are expenditures we don't
6 have the data, even yet we don't have the data for
7 the last year. That data comes in from the school
8 district and is tabulated and recorded. So what we
9 have as last data is the '10/'11 school year data.
10 It shows that the reduction was 1.4 percent over
11 those last two years.

12 When you look at how those
13 reductions have hit, you look at operating
14 expenditures, and they've been relatively stable. In
15 Wichita, by way of illustration, they increased
16 .32 percent in '09/'10, and then decreased less than
17 1 percent -- well, three-quarters of a percent into
18 the '10/'11 year. Again, in Hutchinson they
19 increased and then decreased. In Dodge City, they
20 decreased and increased. And the same as KC, but
21 never at large magnitudes of money.

22 The money getting to operate the
23 schools has been remained stable, and that's the
24 point. If you look at the per pupil expenditures --
25 because I think it is important to say, well, we've

1 got more kids that are coming into the system, maybe
2 because you're spending more doesn't account for
3 that.

4 So we look at the per pupil
5 expenditures and too show that they have remained
6 relatively stable. They were down a little bit over
7 2 percent in Wichita in '09/'10, down less than
8 1 percent in '10/'11. A similar history is shown for
9 each one of these districts. In fact, there's a
10 slight increase in spending when you look at USD --
11 well, USD 500, which is the Kansas City district.

12 I'm not saying there weren't cuts.
13 I do quarrel with this half a billion dollar per year
14 figure. I think that the evidence really shows that
15 that is what you would have in theory if you include
16 weights, if you include the base, and then you do it
17 over that whole time period. Maybe it does come up
18 to the figure of a half billion. But when you look
19 at how that half billion works out to expenditures
20 per pupil, when you look at how it works in terms of
21 operating expenditures, it has been relatively
22 stable.

23 And then, the next slide is how
24 close are we. And this is the one that -- well, no,
25 if we go back. My copy's a little bit different than

1 up here. I'm not sure what yours will show.

2 This slide is intended to show that
3 the school districts, when they've had these cuts,
4 have attempted to keep those cuts out of the
5 classroom. And actually, the one under, how close
6 are we, then move onto the next one. Come back to
7 that in moment.

8 This slide's the one that Mr. Rupe
9 takes issue with. What we did is we looked at
10 actually what the expenditures are. We looked at
11 what the LPA study said they ought to be. And that's
12 not very complicated, incidentally.

13 What the LPA study said is, look,
14 we're going to focus only on foundation funding, and
15 we're going to figure out how much money do we need
16 to fund the foundation education, that is the
17 education that we think is the required education
18 without any extras, and we're going to fill that
19 pitcher up. This is going to be how much it is.

20 And then, we decide how to pour it
21 out. We're going to use a base amount and we're
22 going to add weights so we know how it goes to
23 different districts. But you got this pitcher full,
24 that's the number.

25 And what we did is we took the full

1 pitcher and then we compared it to what they actually
2 spent when you include all sources of revenue. Now,
3 maybe we won't want to quarrel about whether it's
4 right or not to include all sources of revenue. I
5 don't think that's acceptable. But we don't put our
6 heads in the sand and ignore. We know now how much
7 we spend against what the LPA said we had to spend,
8 and that's what these numbers show.

9 And sure enough, even if you
10 include inflation based on what the LPA study was
11 saying, and you look what our expenditures are, we
12 have been spending money based on what the study
13 says. It is not anything that is made up. It is not
14 anything, I think, particularly imaginative. It's
15 what the numbers show.

16 And if Mr. Rupe has a better
17 response to that, he's certainly saved it because
18 he's never said anything in any of his filings yet.
19 And I think he should accept -- or in his opening
20 this morning. I think that you have to accept that
21 we are spending money based on what the LPA study
22 said.

23 Now, an important point about the
24 LPA study, if you go to the next slide, is that it
25 only looked at spending projections through '06/'07.

1 That study didn't attempt to extend those out. In
2 fact, one of the principal authors of that study,
3 Scott Frank, said you can't use it to predict future
4 years. And I know there's been talk about how you
5 can extrapolate out from the different study.
6 Mr. Frank says you can't do that legitimately.

7 I think it's also important to look
8 at what Dr. Baker said in the context, because what
9 he did is he did this fancy regression analysis and
10 said, well, based on my estimate of what the LPA
11 study needed, this is what it should work out.

12 And he came out and said, KCK
13 should have had a per pupil expenditure of about
14 \$11,000. And guess what, they do. They have
15 10,510. He said, Wichita should be about 8,000. And
16 guess what, they've got just about that, they've got
17 10,105.

18 What the Plaintiffs have done is
19 ignore in their analysis all these other revenue
20 sources. They have also ignored that the cost
21 studies are out-dated. And so, when you see this
22 base vacillate around, and when you see those numbers
23 from those cost studies go up, you need to include
24 the weightings which magnify that number amounts, you
25 need to include in addition to that the other

1 sources, that is the federal money and the LOB
2 money. And when you do that, you find out that we
3 were quite favorable.

4 Now, go to the next slide.

5 JUDGE THEIS: Wouldn't you agree,
6 though, Mr. Chalmers that when you're dealing with
7 constitutional issues -- I mean, facts are very
8 important, so you have to start with facts. So I
9 mean, there has to be empirical evidence before you
10 can do something.

11 MR. CHALMERS: I agree with that.

12 JUDGE THEIS: And the only thing
13 they have, they had, for example, outputs for the
14 year. They could see that, see what the budget was,
15 but they don't have -- what would they use to -- what
16 facts were existing to show them that they can reduce
17 it -- let's assume that they reduced it. What facts
18 would be there? It's kind of like throwing the baby
19 in the deep end and then going to talk on the phone
20 and come back and see if he swam, you know?

21 MR. CHALMERS: I think that the
22 facts are including the idea of how are we doing.
23 When I'm budgeting at home, I guess --

24 JUDGE THEIS: But the --

25 MR. CHALMERS: -- I say, well, I've

1 got to cut back if I only have so much money? How am
2 I getting along? Where can I cut?

3 JUDGE THEIS: But you made a
4 decision based on your own understanding your own
5 situation.

6 MR. CHALMERS: That's exactly what
7 they did. They looked at what the spending levels
8 were at. We can presume they looked at, we're
9 spending above what our study tells us we need to
10 spend, we're already there. We're looking at the
11 other districts. The districts themselves have more
12 money they can get and they're choosing not to get
13 it. They're leaving some in the bank. We're looking
14 at how the kids are doing.

15 JUDGE THEIS: They're throwing the
16 bank account in order to maintain their standard of
17 living.

18 MR. CHALMERS: They are looking at
19 whether or not the money in their bank account is
20 being spent, which they can spend, to decide whether
21 they need more.

22 JUDGE THEIS: If you got a duty to
23 provide for it, you need to fill up your bank
24 account, don't you? You have to keep filling it
25 up --

1 MR. CHALMERS: Which they do every
2 year. And a later slide will show that that balance
3 is increasing every year, the money they're keeping
4 back. So that would imply not that they're having to
5 spend that money to make ends, but rather that
6 they're collecting more money for whatever their
7 purpose. And the Legislature can apply from that, I
8 think, that we can, like any other agency, look at a
9 one or two or three percent decrease this year.

10 JUDGE FLEMING: What's your
11 response to Mr. Rupe's argument that funding for
12 education is the State's responsibility and the State
13 has attempted to shift a portion of that to the local
14 school districts? And I think Justice Rosen, didn't
15 he concur what the dissenting opinion in Montoy
16 cautioned?

17 MR. CHALMERS: Yeah, he cautioned
18 about the change in the LOB in his concern about
19 that, and it was a dissenting opinion, I think, is
20 what I call Montoy IV. I think Mr. Rupe refers to it
21 as Montoy V. That issue really turns on a judgment
22 made by the Legislature on whether there will be
23 greater local control visited to the -- and put on
24 the school districts.

25 The source of funding is the

1 State's, however you want to look at it. The
2 individual school districts have no taxing
3 authority. When you make provision for school
4 finance, if you do that by saying, districts, you now
5 have taxing authority, that authority will allow you
6 to tax, by way of illustration, to get to 30 percent
7 of a calculated general revenue in your LOB, they
8 have made provision to receive those funds. They
9 have made provision for the funding by contemplating
10 and knowing, okay, we've got other sources of revenue
11 that are coming in, how much do we have to spend.

12 I believe the only case that's
13 really kind of looked at that decided in one of the
14 briefs makes that point, that when you look at the
15 Constitution, it does not say the State will provide
16 this out of the State's coffers, rather it says it'll
17 make provision.

18 Now, what I think Justice Rosen's
19 concern was, and I think it's a solid concern, is
20 that what happens if, over time, by doing it in that
21 method you end up having a system where you have a
22 district who cannot afford because maybe the mill
23 levies are too high, or a district who won't for
24 some -- I don't know why they wouldn't raise the
25 money, just choose not to raise the money. Maybe

1 they're just mean-spirited and don't like kids. That
2 would be a legitimate concern. Those aren't our
3 facts.

4 And if we get to a stage where we
5 have districts that cannot use their local authority
6 to raise that money, then -- which in a couple more
7 slides down the way -- then we've got constitutional
8 issues. But that's not the Constitution issues
9 presented to us now.

10 JUDGE THEIS: What happens to a
11 student population if you don't know what the effect
12 of what you do -- what effect it's going to have on
13 it? I mean, haven't you lost like this -- if the
14 Plaintiffs are right, you've wasted a whole --

15 MR. CHALMERS: Yeah --

16 JUDGE THEIS: K-12, 6th grade
17 through 12th grade?

18 MR. CHALMERS: I've heard that
19 hyperbole, the idea if you don't spend now we lose a
20 generation. I don't know there's any evidence on it
21 on the record, truth of the matter is --

22 THE COURT: The four years --

23 MR. CHALMERS: It's not that --

24 THE COURT: -- if you do something
25 without knowing what's going to happen, then the

1 consequences are that severe. You can't go back.
2 There's no -- you know, as an adult, there's -- other
3 than these educational seminars like we have now,
4 there's no opportunity to often -- except by mistake
5 or accident to find out later what you should have
6 known earlier.

7 MR. CHALMERS: That's a difficult
8 judgment the Legislature has to make. But --

9 JUDGE THEIS: To run that risk --

10 MR. CHALMERS: Let's assume that
11 they -- that in '12/'13 they find out that their
12 number was too low and we come back with a study in
13 December and tells us, gosh, the Common Core are
14 going to raise the prices up, and so in 2013/'14 they
15 raise it up. Now, did we lose a generation in
16 that --

17 JUDGE THEIS: If they'd have had a
18 cost study, they would have known that.

19 MR. CHALMERS: Well, if you believe
20 cost studies and their validity perhaps --

21 JUDGE THEIS: Well --

22 MR. CHALMERS: But the question I
23 think, and where I must take issue, is the assumption
24 that you lose a generation if, in refining that, you
25 have one year when it's down and one year when it

1 goes back. The studies don't suggest that's the
2 case. The data in terms of what we provided
3 historically in this case doesn't show that.

4 In fact, I have excerpts from
5 exhibits, 418, it's a supplement. I would not
6 encourage you to read through now, but I just thought
7 I'd make them available. And what these are is the
8 State goes through and they show for the different
9 districts and schools within the districts. Here's
10 how the kids are doing on these performance tests.
11 And you'll find no correlation there.

12 You'll find there are years
13 where -- cuts and scores are up. You'll find years
14 where money's up, scores are down. It's all over the
15 map. It is not that precise and that's what I think
16 is really the issue that was being addressed by
17 Mr. Hanushek and Mr. Podgursky -- or Dr. Hanushek and
18 Dr. Podgursky.

19 They're saying at a macro level it
20 isn't that refined. Remember, if you're talking
21 about these cost studies, by way of illustration,
22 they assume an efficiency at setting that level of 75
23 percent. In other words, they're assuming that there
24 are 25 percent of the districts out there who are
25 wasting money.

1 What we find, I think, life's
2 experience is that when times are hard, you find ways
3 to make do. And maybe we reduced that inefficiency,
4 and maybe that's what happened in Kansas. And if
5 you're a legislature and you're looking at difficult
6 times trying to find moneys, trying to fund all
7 programs, making difficult decisions, and you have
8 all this data saying, look, we're about the same on
9 operational cost, we're about the same on per pupil
10 spending, we are certainly reaching all those
11 categories. And how can we be the same on all that,
12 by the way, if Mr. Rupe is right in saying that
13 somehow we're not reaching what the LPA suggested?

14 So if we've maintained all that,
15 maybe it's time to make the difficult decision to go
16 ahead, based on our experience, and reduce this some
17 amount and basically see what happens, increase it
18 the next year. Do we lose a generation from one
19 year's reduction? There's no evidence to suggest
20 that.

21 JUDGE THEIS: They don't keep
22 teaching the same class over and over.

23 MR. CHALMERS: No, but there's no
24 correlation between the reductions and outputs in any
25 event. If you got a teacher that knows what they're

1 doing, if you got a teacher who has all the
2 professional development, we were told, that once
3 they've been taught that, they don't forgot it the
4 next year when there's a cut when they were talking
5 about this delay.

6 JUDGE THEIS: If you're over
7 working with Johnny, you're not working with Suzy.

8 MR. CHALMERS: There are studies
9 that talk about class size. And what we found in
10 those studies are that class size doesn't seem to
11 make a difference.

12 JUDGE THEIS: In this whole
13 situation, though, who's the body with the
14 expertise?

15 MR. CHALMERS: Well, I think that
16 if you're asking what strategy would work in a
17 particular classroom, I like the chance that a
18 teacher would be able to tell you. If you're asking
19 what amount of money do we need to budget to get to
20 the output we want, that's probably not who I'd want
21 to talk to. I think then you've got somebody -- then
22 I think you've got somebody who's an economist level,
23 someone like Dr. Hanushek. But if we look at how
24 that difficult decision is made under our
25 Constitution, it's the Legislature that has to do

1 that.

2 And if we think that we're going to
3 be able to find some study, some mechanism that tells
4 us how to do that with precision, then we ignore the
5 difference in literature that has found in the LPA
6 study -- and that's part of what we're told. We
7 ignore the study that was done by the KSU professor
8 who looked at the same data said there is no
9 correlation between spending. And we ignore, I
10 think, kind of common sense, and that is just by
11 pouring more money into the system without any
12 controls on how it's spent, we don't necessarily
13 really get any real input.

14 I guess what it boils down to is
15 there's been no testimony and there's no reason to
16 think that it is so refined that a reduction of one
17 or two percent this year means you lose a
18 generation. I think that that is a huge leap that we
19 can't make.

20 JUDGE THEIS: I'm still looking for
21 what the Legislature would look at to make those kind
22 of judgments when you're talking about experts that
23 appeared in trial.

24 MR. CHALMERS: I think what the
25 Legislature would look at --

1 JUDGE THEIS: Four and five years
2 after the situation.

3 MR. CHALMERS: I think what the
4 Legislature looks at are what they talked about in
5 the 229 case. And that is what is our accreditation
6 system, is it rigorous, is it measurable, how are we
7 doing under that system, and can we find that. They
8 look at that. They know how much the schools -- we
9 know their funding levels, we know their budgets, we
10 know what we funded them last year, we have that
11 historical information, and that's what they look at.

12 JUDGE THEIS: The appropriate
13 matter is what we give them?

14 MR. CHALMERS: I think what they do
15 is they do their best judgment as the Legislature
16 does whenever they do any sort of the budgeting. And
17 I don't think that constitutionally there's a way to
18 step in and second guess them and do it with the
19 precision that I think the plaintiffs would want
20 saying that there has to be some study that says
21 that.

22 JUDGE THEIS: That's a pure power
23 argument.

24 MR. CHALMERS: I think that is
25 maybe a pure power argument, but I think in the

1 Montoy case they said that you can look at historical
2 data to make the decision on what is the actual cost.

3 But we were talking about how
4 students are doing. I'll go over that real quickly
5 on closing the gap. The first slide talks about
6 students doing well from Dr. DeBacker's standpoint.

7 The second slide I'll spend just a
8 little bit more time on, and that is from the Kansas
9 City, Kansas website, or was, and it makes, I think
10 the point that is important here. And that is, is
11 that if you're just looking at test scores,
12 Your Honors, that's not a fair statement as to how a
13 school system or a school district is saying.

14 And I think when the Legislature
15 makes their judgement on funding, they can consider
16 that. But there's no single report that can tell the
17 whole story of a district or a school's education
18 program. The report card does not provide
19 information about curriculum, teaching methods,
20 special programs, the climate of a school, or the
21 performance of individual teachers or its
22 administrators. Says you can't rank.

23 APY is no longer the measurement,
24 and so we don't have the progressive measurement.
25 Now we've got multiple measurements and the question

1 is how kids are doing.

2 And if you look at over time how
3 our kids are doing, what you see from 2003 to 2012 --
4 and this is from an exhibit that was added using the
5 preliminary data from 2012 -- that there had been on
6 those things that were used in the LPA study --
7 decide whether or not we had the desired outputs
8 we've had increases each year. In fact, the most
9 radical increases, ironically, were before the Montoy
10 decision.

11 The next slide shows that these
12 improvements, as you recall, are across the board.
13 They're just not people reaching proficiency on the
14 test and stopping, then you've got it moving up in
15 all categories in each group. That is important
16 because it shows that there is a closing of the
17 achievement gap. Now, achievement gaps, however, in
18 the history of man haven't been closed entirely, and
19 I made that point and there was some testimony on
20 that, but Kansas has made progress.

21 And since 2006, every major
22 subgroup was below -- or before 2006 every measured
23 subgroup was below 65 percent proficient in math, and
24 now it's above average increase of 15 percent. And
25 the same pretty much is true for reading. Actually,

1 there was a 10 percent increase there.

2 The next several slides show how
3 the gap was closed. Mr. Rupe indicated to you the
4 gap only closed based on Montoy money. These slides
5 show, I think, a different graphic depiction of
6 that. I particularly like the slide dealing with
7 reading gaps on ethnicity in that it shows when
8 Montoy money first came in place, the gap actually
9 expanded for a period of time.

10 But, the reality is, is that right
11 now, for a long time, Kansas is closing gaps. And
12 then, when you look at how we're doing on national
13 comparisons, we compare well on NEAP. We the Kansas
14 Association of School Districts -- says school boards
15 there -- ranked public education in Kansas in the top
16 ten in seven different categories including NEAP
17 scores.

18 The NEAP rankings are set out in
19 the next couple of slides. The NEAP comparison shows
20 that Kansas is fourth in the nation in terms of
21 performance on the 2011 NEAP scores in an aggregate,
22 that is the poverty kids, and that Kansas also
23 performs better than its surrounding states.

24 On college readiness, we are
25 preparing more kids than we have in the past. We are

1 in the top ten of all states. We rank nationally in
2 the -- rather in the top three in the regionally in
3 college readiness. Important point here, the
4 Governor's 2000 Educational Council noted that there
5 was a gap, and I guess probably still is, between
6 when you get your degree and college readiness.

7 That gap is smaller than the
8 perceived gap but there is an actual gap. And that's
9 what led Kansas to address that actual gap by
10 adoption of the Common Core Standards, which we've
11 been told by the commissioners are something that are
12 measurable and we'd be able to reach.

13 The SAT scores in Kansas are higher
14 than national average the ACT scores are higher than
15 national average. And classes or certain subjects,
16 they look at not only the aggregate, but those
17 subjects of math -- well, I think English is what I'm
18 showing here. If we go to the next slide, we go to
19 those other specific subjects, the benchmark subjects
20 in Kansas is doing better than other states
21 nationally.

22 Now, a footnote to all of this, but
23 in particular the benchmarks, ACT test. I'm not up
24 here telling you that education in the United States
25 is perfect. My personal views wouldn't be relevant

1 anyway.

2 What I'm telling you is, is that
3 constitutionally Kansas is funding and it's making
4 movement in the right direction. We have a lot more
5 to go. Spending more money may be the solution. I
6 don't know. Spending less money, focusing on how you
7 do it, may be the solution. I don't know.

8 What I know is that at a
9 constitutional level, based on what the Legislature
10 has done, that meeting its appropriate standards that
11 are constitutional right now. And I'll leave to the
12 policymakers decisions on how to address that in the
13 future.

14 When you look at the ACT
15 benchmarks, they are different than the Kansas
16 standards in place. And that's a point that I want
17 to make real quickly. Kansas standards measure what
18 Kansas Board of Education decides our kids need to
19 know. The ACT, the benchmarks measure what they
20 think is important to know on their test.

21 There may be an instance, I
22 suppose, where the ACT will say that you need to know
23 something, by way of illustration, about molecular
24 physics that isn't taught in our Kansas core classes,
25 and that may impact how you score on these ACT tests.

1 What's important to us in this
2 discussion and the Legislature in deciding how to
3 fund is not so much are we getting great ACT test
4 scores, but how are we comparing. And we compare
5 favorably both regionally and nationally with the
6 information provided.

7 Now, Plaintiffs tell you that this
8 is all about an individual student, and it's not
9 about -- and then from that they say it's about
10 significant students. And I guess a couple comments
11 real quickly on that.

12 One, Judge Bullock found that the
13 constitutional right extended to the individual
14 student. In Montoy, the Montoy court did not make a
15 finding on that one way or the other. We can imply a
16 couple things. One, Montoy court disagreed, or two,
17 they just don't think it's important to the analysis,
18 and I don't think it is.

19 When we look at what it is,
20 however, that is important, that's the next slide,
21 what Montoy said, what is required is an equitable
22 and fair destruction of funding to provide an
23 opportunity for every student to obtain a suitable
24 education. It's that opportunity, it's the
25 opportunity measured by the accreditation system.

1 In the next slide, it's slide 105
2 that Mr. Rupe likes to talk about, my point is that
3 AYP and assessment scores cannot logically define the
4 constitutional standard. They never have, never
5 will. If they did, at no time we'd ever been
6 constitutional.

7 Looking at 105 for a second and
8 look at the AYP and see that there's been many, many
9 years where we've not been at that standard. But the
10 AYP was a gradual increase. Mr. Rupe's standard says
11 everybody has to be at 100 percent.

12 If we look at the Emerson school,
13 that's the one Mr. Rupe tells you is Exhibit A,
14 that's the one where -- and I think that's an example
15 of where it works, by the way, the system works and
16 will work even better now under the waiver, when
17 you've got a school that needs to be reorganized.
18 And that's what happened in the Emerson case. They
19 came in and fired the principal and got rid of
20 teachers and started from scratch when they couldn't
21 get it to work otherwise.

22 Now the federal funding is more
23 flexible under the waiver. And you can look at how
24 schools are getting along, and you can funnel that
25 money to these schools like Emerson.

1 But if Emerson is Exhibit A, then
2 please note that in 2011/'12 that a third of the
3 African American students were not standard on the
4 reading test, and I think -- or on math tests, and 25
5 percent were not standard or did not meet standard on
6 math tests. They are setting the standard that
7 cannot be reached. It's an opportunity that is the
8 question.

9 JUDGE FLEMING: Is this 1229 from
10 2012, you say?

11 MR. CHALMERS: It is from the
12 '11/'12 numbers. It's that preliminary data that was
13 entered.

14 The next slide talks about there's
15 no formal consideration of actual costs in
16 Article 6. I think that's important because we're
17 now talking about one of Plaintiffs' arguments, and I
18 just want to focus on that for a second.

19 What does Montoy say in actual
20 costs, and I go over this quickly because I think
21 we've talked about it before. It says in
22 Montoy II -- now, that's where they found the act
23 unconstitutional -- that the Legislature failing to
24 do any cost studies, distorted the low enrollment,
25 special education vocational and bilingual -- lingual

1 education and at-risk student weighting factors.

2 What's important here is that
3 Montoy II, when they are sustaining Judge Bullock's
4 finding and talking about actual costs, is, in its
5 initial setting, talking about the weightings. It's
6 talking about -- it's remembering Judge Bullock found
7 that the kids with the greatest need for more money
8 were getting less. The weighting modified that.

9 Thereafter, when they talk about
10 actual costs in the decision, now they're talking
11 about the remedy stage. And as Montoy II says, they
12 shifted the burden of proof to the defendants to show
13 the Legislature's action has resulted in a suitable
14 provision for financing of education as required by
15 Article 6.

16 Montoy III held that the
17 presumption of constitutionality did not apply in the
18 doctrine of separation of powers, did not limit the
19 Court's review, quote, because of the case's remedial
20 posture. That's not where we are now. The burden of
21 proof remains on Plaintiffs.

22 And then the question is, how do
23 you go about looking at actual costs? And I
24 mentioned this a couple times. In Montoy III they
25 state, estimating future reasonable and actual costs

1 based on historical expenditures can be acceptable.
2 That's what we've done. We had the data, we had the
3 information, we know what's going. Now, if you got
4 information, they say, that shows it's inadequate,
5 you can't ignore that and that's what's talking about
6 the Post Audit.

7 If we look at the equity element
8 which Mr. Rupe wants to talk about, we have to
9 decide, well, what are we looking at in terms of
10 equity? Well, what is required is, again, to
11 equitably and fairly make a distribution to, quote,
12 provide an opportunity for every student to obtain a
13 suitable education.

14 Montoy says, equity does not
15 require the Legislature to provide equal funding for
16 every student or school district, end quote. The San
17 Antonio case is important because it is cited in
18 Montoy -- well, it's just an important decision but
19 it is cited in Montoy. And it points out that in any
20 taxing system you're always going to have variances
21 and that's, therefore, not a constitutional
22 prohibition.

23 But when you look at the local
24 property tax mill levies, that is where the rubber
25 meets the road to see, well, if we've adopted the LOB

1 and if we've made that a bigger part of our
2 financing, is that reaching the stage where Justice
3 Rosen's concerns arise. And what you can see is that
4 the mill levies by the school districts are generally
5 distributed between 40 and 60 mills, that 90 percent
6 of those districts, trying to cluster them together,
7 there's about a 16 mill swing is all.

8 In the different Plaintiffs'
9 districts, I've got their mill levies set out, 57.1
10 for Wichita, 57.17 for Hutchinson, and so forth. And
11 then I've compared those to the surrounding
12 communities. In Wyandotte County, where Bonner
13 Springs have higher levying than KCK.

14 In Johnson County, where the
15 thought is that's where it's going to be easier to
16 raise that money and cheaper to have those schools,
17 Blue Valley, Spring Hill, Gardner-Edgerton, De Soto,
18 Olathe, all have higher levies than KCK. I think
19 Shawnee Mission was about the same level.

20 And Sedgwick County, we've got the
21 surrounding communities, Derby, Haysville,
22 Clearwater, Goddard, Mulvane, Renwick, and Cheney,
23 all have higher mill levies than Wichita. And as a
24 footnote, if you cross border into Butler County,
25 Andover has a higher mill levy, as well.

1 By contrast, if you look at whether
2 money is needed, what you conclude is, is that for
3 capital outlay balances, they are carrying a lot of
4 balances in these various districts and statewide.

5 In the next slide, the capital
6 outlay, they are not fully taxing to get to their
7 capital outlay. And then, most importantly, that
8 there's just no evidence that was presented that any
9 district has levied the maximum LOB or capital
10 outlay's taxes is unable to provide for a suitable
11 education, there's not.

12 Moreover, there's no district that
13 has shown that it's been prevented from levying LOB
14 or capital outlay mill levies to the full amount.
15 They've chosen not to. Maybe in another case we have
16 the concern that Justice Rosen has, but not in this
17 case.

18 Then, I have a series of slides
19 here talking about why we would invest. And do this
20 real briefly. If you're in the Legislature or if
21 you're a voter, say my mother who will be 88 years
22 year old next month, and they say, okay, we want you
23 to invest more money to get a certain output.

24 And you say, well, how will the
25 money be spent, can you tell me that? Well, no.

1 Well, you tell me that you're going to get better
2 outputs by spending more money alone but not really
3 telling me how it's spent, is that what you're
4 saying? Yes. Can you explain that to me? Well,
5 I've got a statistical model that says that, but now
6 that statistical model, you need to understand, it's
7 based on old data and the methodology has certain
8 deficiencies.

9 And also, there's no reason for us
10 to assume, based on these studies that you can
11 extrapolate spending more money will have more
12 outputs, because you see, we've actually spent the
13 money that the studies suggested that we need to
14 spend. Why would we think there's more. Oh, and
15 incidentally, there are contrary studies. There are
16 studies that say there's no connection between
17 spending more money and getting output. And one of
18 them done was a peer reviewed published article by a
19 professor at KSU. And where it's been tried, hasn't
20 worked in other places. Are you interested in
21 investing?

22 And then you say to her -- she
23 would say, well, what's the risk? Well, it has a
24 really high financial risk. In the State's instance,
25 it's a real problem.

1 The next slide talks about studies
2 generally. When you get a chance you might take a
3 look at that. The Finstad case versus Washburn is
4 one in which there was discussion of trying to create
5 a common law tort for teacher malpractice. And what
6 the Supreme Court did is it outlined why that's not a
7 good idea, and this sets out some of the sites. The
8 heart of it being there are huge causation problems.

9 There's just so many reasons that
10 kids don't succeed that you can't tie it to
11 teachers. And I think the same discussion extends to
12 you don't tie it to spending more money.

13 The Augenblick & Myers report and
14 the LPA report -- I'm going to skip through a few
15 slides real fast -- they're dated in a lot of
16 different ways. But they're dated in that their
17 authors agreed they have to be updated and they're
18 based on data that was taken back before 2005, and
19 one was before 2001, based on different tests and
20 different standards.

21 I'm not sure how they're really
22 important to us other than the LPA study does a good
23 job of analyzing here's how maybe you ought to spend
24 more on one kid than another kid. But in terms of
25 trying to project future amounts, they really don't

1 help at all.

2 I want to skip to the very last
3 couple of -- well, there's one called Plaintiffs'
4 premise, Legislature is prejudiced. I just want to
5 talk about the real fast. I've got three minutes, so
6 I'll be quick.

7 I hope that it is absurd to this
8 Court to assume that there are members of the
9 Legislature who are sitting around trying to figure
10 out how they can injure Kansas education, that there
11 are members of this Legislature that are looking at
12 projections and saying, okay, I know that we're not
13 going to be able to fund education, but I don't care.

14 I hope that the Court understands
15 that the reasonable people can disagree that they may
16 decide that this is enough based on their experience,
17 based on their inputs.

18 Now, Montoy they found that those
19 reasonable people acted in a way that's
20 unconstitutional. In this case, I think we're into
21 the 229 world and you cannot find that. But do not
22 assume the Legislature has a bunch of monsters that
23 want to ruin Kansas education.

24 Now, last couple of slides. Montoy
25 said there is a point where the Legislature's funding

1 may be so low that regardless of what the State says
2 about accreditation, it's unconstitutional. We're
3 not there. There's no evidence to support that.

4 The Kansas Constitution cannot be
5 interpreted to require an increase in state funding
6 for education every year no matter what happens to
7 the economy. I don't think that we can afford, nor
8 do we want to be back in front of court every year
9 having a case to see whether or not school funding is
10 constitutional. But that's where we're headed under
11 Plaintiffs' theory. Plaintiffs' theory being that if
12 there is a significant number that is undefined, kids
13 that aren't reaching successful rates on tests, we'll
14 be back here every year.

15 If there is a requirement to have a
16 study done every year to say what the actual costs
17 are, we'll be back every year because we won't have a
18 study and practically can't have a study every year.
19 They're almost out-dated when they come up.

20 Last slide, Plaintiffs have failed
21 to prove the current system for primary and secondary
22 school finance violates Article 6. Talked about the
23 presumption of constitutionality.

24 But I would ask the Court in
25 deciding what scope of review you have in evaluating

1 this case, to think about whether it is appropriate
2 or whether you want to wade into all the policy
3 decisions that the Legislature has to make.

4 To say, okay, if we cut this SRS,
5 or we cut highways, or whatever, is that appropriate
6 to try to raise more funds for school when we've done
7 a good job of maintaining those levels. To decide
8 whether or not spending cuts or cuts in taxes are
9 appropriate, where there are arguments on both sides
10 as to whether you want to grow the economy, poverty
11 seems to be the center of the problem in terms of
12 kids.

13 So how do we fight poverty? Do we
14 do it by creating an economic system that fosters it
15 as part of the -- I think the only way the Court gets
16 out of that thicket is to apply a standard of review
17 that is like the standard of review or the standard
18 review that State suggests, which is to look at
19 whether the Legislature has acted arbitrarily, to
20 look at whether the Legislature's motivations are
21 reasonably related to their educational purposes.

22 When you do that, I don't think
23 there's any question but that the constitutional
24 standards are met. If there's some other standard, I
25 still think what we did is constitutional. I ask the

1 Court to consider where the Court comes down on that
2 issue because it puts the Court in an awkward
3 position otherwise as acting as a super-legislature,
4 and I don't think the courts want to be that.

5 I think we're better off having, in
6 a democratic system with all its weaknesses, voters
7 who are closer to legislatures making decisions
8 ultimately on whether the funding for its school
9 education is appropriate.

10 Thank you, Your Honor.

11 JUDGE THEIS: Any questions? One
12 question, if there was a required procedure in a
13 template, and a certain way to act and you can't act,
14 don't you agree that it would be if there's an
15 exception to be proved, it would be on you? For
16 example, if there --

17 MR. CHALMERS: No, I don't --

18 JUDGE THEIS: -- in a due process
19 circumstance, if there was no hearing, you'd have to
20 come forward with evidence as to what's adjusted
21 and ...

22 MR. CHALMERS: Well, I struggle
23 with trying to apply a due process analysis because
24 you get into issues as to what are fundamental rights
25 and all those sorts of stuff. But I think that where

1 I am in agreement is that in a constitutional case
2 where the appropriate standard of review is applied,
3 and I told you what I think it is, that in our view
4 the burden is always going to be on the Plaintiff.
5 There isn't shifting.

6 With the template that you've
7 talked about, I've tried to describe why I don't
8 think that that changes anything, although I agree, I
9 think, with the Court and with Plaintiffs' counsel
10 that actual costs, equity, how kids are doing, are
11 all part of the mix in analyzing is the accreditation
12 system rigorous enough and is it measurable. And
13 here I think it is.

14 I hope I answered your question, or
15 at least that's the answer I'll give.

16 MR. RUPE: I've been doing this a
17 while. I remember vividly the 229 case and the quote
18 about there is a point where lines have to be drawn,
19 and it may be wide of any reasonable mark, is a
20 direct quote from the Thompson case that was cited in
21 229.

22 And here's what's important about
23 the 229 case that Mr. Chalmers is trying to suggest
24 you should use as your North Star in guiding your
25 decision. The 229 case, I can still remember John

1 Robb and I sitting in the judge's chambers and being
2 asked before trial, is anybody challenging the
3 adequacy of school funding? And we said no.

4 It was purely an equity case. It
5 was purely an equal protection case. It was a case
6 in which the classification at that time involving
7 low enrollment remote weighting on one hand, and
8 statewide funding and funding of other school
9 districts on the other hand was at issue.

10 It was not an adequacy case. It
11 was an equal protection case where you looked to see
12 if the classification is based on a rational basis.
13 At that time, a majority of the court, unlike today,
14 did not believe that education was a fundamental
15 right. So they applied a common sense rational basis
16 and declared the system okay as far as the low
17 enrollment weighting. That was what was at issue in
18 229.

19 Montoy was the seat change, because
20 in Montoy we made, not only an equal protection claim
21 that we lost, we also made a claim under Article 6
22 Section 6 saying, you've got to fund to an adequate
23 level. And it's not an arbitrary issue whether
24 you're in good faith or not. You have to focus on
25 the cost and look at costs in terms of inputs and

1 outputs and you have to fund to that level.

2 And what we've heard in this
3 courtroom still has not answered the question, where
4 did the Legislature look at the actual costs. What
5 we've heard is, well, they had in front of them these
6 budgets and they had in front of them all the
7 budgets, and they had in front of them historical
8 costs.

9 By the way, Montoy did not say that
10 you can rely on historical costs. What Montoy said
11 at -- I'll find the page in a minute. But what
12 Montoy said was that the LPA study could look at
13 historical costs as long as it synced with the actual
14 costs that were needed to achieve that, and that's at
15 page 13 of Montoy IV.

16 Estimating future reasonable and
17 actual costs based on historical expenditures can be
18 acceptable if Post Audit ensures that its examination
19 of historical expenditures corrects for the
20 recognized inadequacy of those ensures that a
21 reliable method of extrapolation is adopted.

22 So yes, you can look at historical
23 costs, but you have to look at it in the context of
24 actual costs. And here, if you look at the
25 historical costs and the testimony where everybody

1 said the cost is going up, we heard Common Core
2 changes the cost. We heard the waiver changes the
3 cost. We've heard the cost because of the change in
4 demography of the school districts, ELL kids -- all
5 the evidence has been the cost has increased.

6 So where is the evidence that the
7 Legislature considered those actual costs of
8 educating kids based on those increasing demands?
9 Where's the evidence? There is none. They ignored
10 it.

11 Michelle Chronister said, they
12 hated me when I told them. In answer to the
13 question, where would you look to get advice if I
14 were the Legislature? I'd look to the commission
15 that I call the Blue Ribbon Commission that I
16 employed to tell me what it cost. They didn't follow
17 that.

18 They didn't follow the State Board
19 of Education in the number of years they've demanded
20 increasing costs. Just take it to the statutory
21 level. They have turned their back on that.

22 I guess, based on Mr. Chalmers
23 reasoning and the State's reasoning, I could say I am
24 a health nut because I considered the asparagus
25 before I ate the death by chocolate. You cannot look

1 at it and ignore it and claim to consider it. And
2 you certainly can't do that in light of Montoy,
3 because Montoy, as I started in -- maybe not
4 answering the question you asked earlier, Montoy says
5 there has to be an active component in that
6 consideration.

7 You have to do more than just look
8 at it and turn your back on it. There has to be some
9 consideration that involves implementation. And the
10 evidence in this case is very simply that the
11 Legislature did not look at those actual costs.

12 Now, we continue to hear this stuff
13 about money not making a difference and there's no
14 exact correlation between money spent and
15 achievements. And I just lay out everybody who's
16 testified to the fact that money does make a
17 difference and what they've accomplished as evidence
18 to the contrary.

19 But I would say to Art's mother,
20 Mrs. Chalmers, a study that your son relies a great
21 deal on has said that a one -- let me get the exact
22 language here -- a 1 percent -- a one dollar
23 investment -- hang on, there it is.

24 A one percent increase in district
25 performance outcomes was associated with an 83

1 percent increase in spending, almost a one-to-one
2 relationship. That has not been challenged in this
3 courtroom. That is what LPA concluded when they
4 looked at Kansas and looked at the issue of whether
5 money invested has an effect on student achievement.

6 So I would tell Mrs. Chalmers that
7 if you look to a study your son had relied on, it
8 would suggest that that investment probably is a
9 pretty good idea. The other thing I would tell
10 Mrs. Chalmers is, you know, you better make that
11 investment because the Constitution requires it. And
12 there is a constitutional obligation to fund
13 education, and we can't turn our back on that
14 funding.

15 But given a statute that requires
16 priority and given the demands that we've heard as
17 far as increasing costs and increasing demands, what
18 the Legislature did was implement a tax cut that
19 depleted the state's coffers and will deplete the
20 state's coffers.

21 You know, the State stands here and
22 says that in looking at spending, the fact is we are
23 spending at near record levels. The simple response
24 to that is, well, that may not be enough given the
25 increasing demands and the increasing cost.

1 But also, it's not accurate because
2 the dollars available -- and we've set this out in
3 the findings, the dollars available for general
4 operating purposes are the lowest level in Kansas
5 history since, guess when, 2006, before the Montoy
6 decision.

7 Districts have had to -- we heard
8 the testimony -- significantly reduced licensed
9 staff, reduce or freeze teacher salaries, cut
10 necessary programs, before- and after-school
11 programs, all-day kindergarten, extracurricular
12 activities. I can go on and on, but they're all
13 extended learning opportunities that, like at
14 Emerson, work to impact, in a favorable way, student
15 achievement. That's what's been cut as the result.

16 We're also told that it -- and I
17 wrote it down because I wasn't -- I was not believing
18 me ears, but we were told that the \$511 million is an
19 insignificant amount? The \$511 million a year in
20 cuts is 16 percent of what the budget is.

21 And I challenge Mr. Chalmers to
22 tell those folks seated in the back of the courtroom,
23 including Wichita who lost upwards of \$50 million,
24 that that's an insignificant amount. That
25 insignificant amount of money has caused massive

1 reductions in programs that, unlike that was stated,
2 are statewide and considerable. And it has resulted
3 in a flat line of achievement and a decrease in
4 achievement, and it is a 1 percent to .83 result.

5 What we have here is what we've had
6 in 229 and what we had in Montoy, and that is a
7 decision by the Kansas Legislature to base money for
8 education, not on the actual cost, but on political
9 convenience. And they have flat not paid the school
10 districts the money that is necessary to fund the
11 programs to impact achievement.

12 I would submit that this notion of
13 accreditation being the beginning and the end is just
14 wrong for reasons that I stated earlier, just
15 because -- and virtually all the school districts in
16 Kansas are accredited. But as the Montoy Court said,
17 accreditation isn't the only factor you look to. You
18 look to what they're doing. He has said we have to
19 have inputs that meet outputs. But when you look at
20 the actual outputs, we aren't achieving what the
21 Constitution requires for all Kansas kids.

22 What we also heard was that we'll
23 never achieve 100 percent. And I would indicate I
24 wish some day we were having that discussion. The
25 fact is there are thousands and thousands and

1 thousands of kids right now who are ending up with an
2 inadequate education because of these funding cuts.
3 That's the discussion we're having. And that's the
4 issue you have to resolve by looking at the
5 definition and deciding whether or not the
6 Legislature has done what they are constitutionally
7 obliged to do.

8 Just a word on a statement that we
9 misrepresented something with regard to the waiver.
10 Look in our final findings of fact and conclusions of
11 law, paragraph 462. The State itself has indicated
12 that there is likely a correlation between subpar
13 achievement and the decrease in funding. Rates of
14 improvement on State assessments have significantly
15 decreased, and in application for a waiver from the
16 requirements of NCLB, the State admitted those
17 decreases could be attributed to, quote, the staff
18 and budget cuts taking place in Kansas in 2010.
19 That's at trial Exhibit 1300 at page 57.

20 We heard that Scott Frank did not
21 project out the LPA study. Well, he did. And if you
22 look at Exhibit 197, that is the projection through
23 2012/2013 of the LPA study. We think Kansas
24 education is being under-funded according to multiple
25 measures, and the State stands here and tells you

1 that we need to accept and review and look at all
2 funding and we can see that we're far exceeding our
3 obligation.

4 Well, the obligation is by the
5 State. There is no constitutional obligation by a
6 local school district. And what the local school
7 districts are getting is a shift in the State's
8 responsibility. And the property taxes will go
9 through the ceiling as the State moves that
10 responsibility to the local districts.

11 But I guess if we include all
12 funding, we've got to include those teachers that
13 don't have enough supplies, who go out and buy their
14 own supplies and furnish those to the classes,
15 because the State should be taking credit for that
16 too, because they've cut the funding to the point
17 that is necessary, and those creative districts that
18 have gone out and figured out different ways to try
19 to get by should be given -- the State should receive
20 credit for those efforts.

21 As I indicated, operating levels
22 are as low as they were in 2006. If you look at our
23 findings 216 through 224, you'll see a whole
24 litany -- I'm sorry, through 226, you'll see a whole
25 litany of reasons why you can come to the conclusion

1 that Kansas education is being under-funded according
2 to multiple measures.

3 I think we are now in a situation
4 in which the State of Kansas is left with the
5 argument they have used a number of times, and that
6 is, just because we're taking money away or not
7 funding education, you cannot show that that money
8 will make a difference in student achievement. I
9 think that's their defense in this case, and I don't
10 think that dog hunts.

11 I think we're in a situation where
12 this Court, if it looks at the definition of what is
13 suitable, if you do what the Constitution requires
14 you to do, and that is as the Court determined where
15 the Legislature has lived up to their responsibility,
16 I think what you're going to see is they've ducked
17 it. And they've done it claiming they're doing it
18 because of the economy, but they are affecting an
19 entire generation of kids because they're not
20 receiving an adequate education or suitable funding.

21 Thanks.

22 JUDGE THEIS: Do you have at your
23 fingertips either the findings of fact or the
24 exhibits that reflect what's included in general
25 operating?

1 MR. RUPE: I can get those for you.

2 JUDGE THEIS: And further, is there
3 any place in either party's documents which shows
4 that if you put all these apples and apples in the
5 same thing and operate them, show them as they would
6 have been if you did it the same way in 2004, and if
7 you did it the same way you did it in 2012?

8 MR. RUPE: Look at Exhibit 12. I
9 think that is one that has information in it. And I
10 think Art relies on a -- Mr. Chalmers relies on a
11 publication from the Department of Census on what
12 should be included in operations.

13 JUDGE THEIS: Right. But has
14 anyone ever -- is there a graph or chart or a
15 comparison any place in either one of yours that
16 shows if you treated everything the same like it was
17 in 2004 and project how that would play out, or under
18 either funding source?

19 MR. RUPE: I think the closest that
20 I would point to is the projections that we made in
21 the exhibit that shows the studies, which is
22 Exhibit 237.

23 JUDGE THEIS: I was thinking of
24 something a little more sophisticated.

25 MR. CHALMERS: Your Honor, in the

1 slides, I didn't talk about all of them, I think
2 those are called out. But the one that is, How Close
3 Are We, which talks about the methodology, gives the
4 numbers of the exhibits that -- well, Exhibit 1239
5 is, How Close Are We.

6 The calculation of operational
7 expenses are called out -- I was thinking it was
8 shown here, but it isn't. In the testimony,
9 Your Honor, talking about that slide, How Close Are
10 We, we went through each one of the methodologies
11 showing what were the operating costs, looking back
12 as to what the LPA study said the operational cost
13 was and doing that comparison.

14 And I'd be happy, if it's
15 acceptable to Mr. Rupe, I can send you copies of --
16 actually, I think it's in our findings. Yeah, the
17 findings will actually call out those specific
18 things, as well.

19 JUDGE THEIS: Those exhibits?

20 MR. CHALMERS: Yes.

21 JUDGE THEIS: But nobody's ever
22 done a comparison side by side?

23 MR. CHALMERS: Well, no, I think
24 actually that there are exhibits where we've done
25 that. The How Close Are We exhibit does that, and

1 then some large blow-ups at the beginning where they
2 show, here's what the operational costs are that --
3 from here to here. Maybe I'm not articulating that
4 correctly.

5 MR. RUPE: I think we can agree the
6 Legislature didn't do that before they did anything.

7 JUDGE THEIS: I know, but I'm
8 curious as to --

9 MR. CHALMERS: I think that we can
10 agree that that's an inappropriate comment.

11 JUDGE THEIS: I think it's more
12 dangerous for me to do one. I thought maybe you had.

13 All right. I think I speak for
14 myself and I'm certain for the rest of them, we
15 appreciate the excellent presentations here. They're
16 very professional. It's been an interesting case.

17 If we need anything from you
18 further, we'll contact you formally about it. If we
19 arrive at the conclusion we need you back for some
20 purpose, we'll contact you. And other than that --
21 well, I don't know. Reading what we have already has
22 been difficult, so analyzing is going to take a
23 while. And of course, we all are running a side
24 business, too, so -- so I'm not sure how long it'll
25 be, but it could be 60 to 90 days easy.

1 MR. RUPE: Thank you, Your Honor.

2 MR. CHALMERS: Your Honors, I
3 wonder just if it would make sense just to make a
4 quick inventory of what you should have to make sure
5 that you have it.

6 JUDGE THEIS: Without a checklist,
7 I don't know.

8 MR. RUPE: I think we did that at
9 the conclusion of trial. I think both sides did
10 that, and then the only other thing that you should
11 have are the DeBacker --

12 JUDGE THEIS: Which is admitted.

13 MR. RUPE: -- DVD.

14 JUDGE BURR: Right.

15 MR. RUPE: So I think that covers
16 it.

17 MR. CHALMERS: Well, I was thinking
18 you've got now final findings of fact from both
19 sides, a final proposed memorandum from both sides.
20 The DeBacker deposition transcript, you should have
21 that along with the video. The exhibits have all
22 been exchanged before then, and I think the only two
23 added were with the DeBacker deposition. So if you
24 don't have any of that, that's what I was wondering,
25 but if you've got all that ...

1 JUDGE BURR: We've got summaries of
2 the exhibits, I know.

3 MR. CHALMERS: That's as well.

4 JUDGE THEIS: And I know the
5 DeBacker transcript's quicker than what she gave.

6 MR. RUPE: Thank you.

7 JUDGE BURR: Thank you.

8 JUDGE THEIS: Thank you.

9 JUDGE FLEMING: Thank you.

10 **(Proceedings adjourned at 12:48 p.m.)**

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1 CERTIFICATE

2 STATE OF KANSAS)
) ss:
 3 COUNTY OF SHAWNEE)

4
 5 I, Liebe Franges, a Certified Court
 6 Reporter, and the regularly appointed, qualified, and
 7 acting Official Reporter of Division No. 7 of the
 8 Third Judicial District of the State of Kansas, do
 9 hereby certify that as such Official Reporter, I was
 10 present at and reported in Stenotype Shorthand the
 11 above and foregoing proceeding in, Case No.:
 12 10-C-1569, Gannon, et al, v. The State of Kansas,
 13 heard on August 29, 2012, before the Honorable
 14 Franklin R. Theis, Judge of the District Court of
 15 Shawnee County, Kansas; The Honorable Robert J.
 16 Fleming, Judge of the District Court of Labette
 17 County, Kansas; and The Honorable Jack L. Burr, Judge
 18 of the District Court of Sherman County, Kansas.

19
 20 I further certify that at the request of
 21 Plaintiffs and Defendant, a transcript of my
 22 shorthand notes was typed and that the foregoing
 23 transcript, consisting of 126 pages, is a true copy
 24 of said CLOSING ARGUMENTS.

25
 26 **SIGNED, OFFICIALLY SEALED, and delivered this**
 27 **31st day of October, 2012.**

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 29 LIEBE FRANGES, C.C.R #1671
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