

In the Matter Of:

Lisa and Dennis Herrera

vs.

Hillsborough County School

JOYCE WIELAND

March 27, 2013

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1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 TAMPA DIVISION

4 CASE NO: 8:12 cv-02484-JSM-EAJ

5 LISA HERRERA AND DENNIS HERRERA
6 AS CO-PERSONAL REPRESENTATIVES OF
7 THE ESTATE OF ISABELLA HERRERA,
8 DECEASED,

9 Plaintiffs,
10 Vs.

11 HILLSBOROUGH COUNTY SCHOOL
12 BOARD; AND HILLSBOROUGH COUNTY
13 SCHOOL DISTRICT,

14 Defendants.

15

16

VIDEOTAPED

17

DEPOSITION OF: JOYCE WIELAND

18

DATE TAKEN: March 27, 2013

19

TIME: From 8:30 a.m. TO 11:05 a.m.

20

PLACE: Orange Legal
 1000 West Kennedy Boulevard
21 Suite 200
22 Tampa, Florida 33036

23

TAKEN BY: The Plaintiff

24

REPORTED BY: Christine Risher, RPR
25 Court Reporter, Notary Public

26

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29

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ALSO PRESENT:

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Lisa Herrera

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15	It is hereby agreed and so stipulated by and		
16	between the parties hereto, through their		
17	respective counsel, that the reading and signing		
18	of the transcript are not expressly waived by the		
19	Deponent.		
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P R O C E E D I N G S

- - - - -

VIDEOGRAPHER: This is the videotaped deposition of Joyce Wieland taken in the matter of Herrera vs. The Hillsborough County Board of Education, held in Tampa, Florida on March 23rd, [sic] 2013 at approximately 8:40 a.m.

Will counsel please introduce themselves beginning with the plaintiff.

MR. COTTER: My name is Dan Cotter, and I'm with the Maher Law Firm, and we represent Lisa Herrera and Dennis Herrera, and Lisa Herrera is also with me here today.

MR. GONZALEZ: And I'm Tom Gonzalez. I represent the School Board of Hillsborough County, Florida.

MR. MURMAN: Jim Murman, and I also representing the school board.

VIDEOGRAPHER: Thank you very much. Will the court reporter please swear the witness?

COURT REPORTER: Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth.

THE WITNESS: I do.

THEREUPON,

1 JOYCE WIELAND,
2 having been first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. COTTER:

6 Q. Good morning.

7 A. Good morning.

8 Q. Will you tell us your name, please?

9 A. Joyce Wieland.

10 Q. Ms. Wieland, my name is Dan Cotter. I represent
11 the Herreras. I'm here today to take your deposition.

12 If there are any questions that I ask you that
13 you do not understand, please feel free to let me know
14 and I'll try to explain or rephrase the question. Is
15 that agreeable?

16 A. Thank you.

17 Q. And, similarly, if you give a response that I
18 don't understand I'm going to ask you to explain it or
19 to rephrase your response. Is that agreeable?

20 A. That's fine.

21 Q. My hope and my goal here today is that you will
22 understand my questions and I will understand your
23 answers, unless we otherwise advise each other. Is that
24 agreeable?

25 A. That's fair.

1 Q. And, therefore, if you answer my question, I'm
2 going to assume that you understand it. Is that
3 agreeable?

4 A. Yes.

5 Q. If you need to take a break for any reason, look
6 at documents for any reason, just let us know that. Is
7 that acceptable?

8 A. Yes.

9 Q. All right. So tell us your current home address,
10 please?

11 A. 5524 Winhawk Way, Lutz, Florida.

12 Q. And where are you currently employed?

13 A. Hillsborough County Public Schools.

14 Q. And what is your position there?

15 A. I'm the general director of student planning,
16 placement and support.

17 Q. And how long have you been in that position?

18 A. Since January 9th of 2013.

19 Q. And who do you report to?

20 A. Lewis Brinson, the assistant superintendent of
21 administration.

22 Q. And he is your direct report?

23 A. Yes.

24 Q. Okay. And so what is your business address,
25 please?

1 A. It's 901 East Kennedy Boulevard.

2 Q. And have you ever given a deposition before?

3 A. Yes.

4 Q. Under what circumstances?

5 A. A liability issue.

6 Q. What was the nature of that liability issue?

7 A. A parent tripped on a sidewalk at a school
8 function.

9 Q. And when did you give that deposition?

10 A. It had to be between 2005 and 2007 sometime.

11 Q. All right. Can you tell me what, if anything,
12 you did in preparation for your deposition today?

13 A. I just went over the papers that I received from
14 your law firm, and the exhibit -- the 18 exhibit items,
15 and I put together the exhibit items that I could put
16 together for you.

17 Q. Okay. Did you bring those with you?

18 A. Yes.

19 Q. May I have those, please?

20 A. Yes, sir.

21 Q. Thank you.

22 MR. COTTER: All right. I'm going to go
23 ahead and identify this as Exhibit A.

24 (Plaintiff's Exhibit A marked for
25 identification.)

1 BY MR. COTTER:

2 Q. You brought with you today, it looks like, a
3 letter that is identified as Exhibit A, items requested
4 from Joyce Wieland, general director of student planning
5 placement and support program. Is that the cover sheet
6 that you prepared?

7 A. Yes.

8 Q. All right. And with that is a copy of your
9 license, and then it looks like a two-paragraph
10 biography of some sort?

11 A. You asked for a resume, and that's what I had
12 handy.

13 Q. Do you have a resume?

14 A. No.

15 Q. When is the last time you had a resume?

16 A. I can't remember.

17 Q. Okay. All right. Is this something that you
18 recently prepared, this biography?

19 A. Yes.

20 Q. And then there appears to be a State of Florida
21 Department of Education, Professional Educator's
22 Certificate; is that right?

23 A. Yes, sir.

24 Q. And what is that representing?

25 A. That represents my certification in the State of

1 Florida.

2 Q. Certification for?

3 A. There is five things listed on there.

4 Q. All right. Early childhood education,
5 educational leadership, elementary education, English to
6 speakers of other languages, and school principal; is
7 that right?

8 A. Yes.

9 Q. What does that mean, you have a certification in
10 these five areas? To a lay person, what --

11 A. What does that mean?

12 Q. -- is this a license or is this --

13 A. No, it's not a license. It's a certification.
14 It states on that document that I'm eligible to work in
15 any of those areas --

16 Q. I see.

17 A. -- in the State of Florida.

18 Q. And you obtained this in 2009?

19 A. It was renewed in 2009.

20 Q. When was it first issued?

21 A. I believe in 1980.

22 Q. All right. Is it something that was issued for
23 all five areas in 1980, or is this something that you've
24 sort of added on as you progressed?

25 A. I've added it on.

1 Q. Okay. Well talk about that in a little more
2 detail.

3 What is your E-mail address at work?

4 A. Joyce.wieland@sdhc.k12.fl.us.

5 Q. How long has it been that?

6 A. Since E-mails started with the district.

7 Q. All right. When did you first become employed
8 with Hillsborough County Schools?

9 A. I believe it was 1980.

10 Q. All right. Where were you raised?

11 A. Tampa, Florida.

12 Q. Where did you go to high school?

13 A. Hillsborough High School.

14 Q. And did you -- where did you go onto college from
15 there?

16 A. University of Tampa.

17 Q. All right. And what year did you graduate?

18 A. 1979.

19 Q. And did you do any graduate education?

20 A. Yes.

21 Q. Tell me about that, please.

22 A. I started a graduate program at The University of
23 Tampa prior to being married, and then I later went for
24 a master's degree at Nova University in the early 1900s
25 prior to being an assistant principal.

1 Q. Did you obtain a master's degree?

2 A. Yes.

3 Q. And what is that in?

4 A. Educational leadership.

5 Q. So was that in the late 1990s?

6 A. Early '90s.

7 Q. Early 1990s. All right. Any other additional
8 work beyond that?

9 A. Not related to my certification.

10 Q. Was the graduate work that you did, was it at the
11 -- began at The University of Tampa?

12 A. The courses did. I never finished it.

13 Q. All right. And are you married?

14 A. Yes.

15 Q. To whom are you married?

16 A. William Wieland.

17 Q. Okay. And do you have children?

18 A. No.

19 Q. And how long have you been married to
20 Mr. Wieland?

21 A. 26 years.

22 Q. Okay. So is he employed?

23 A. No.

24 Q. Is he retired?

25 A. Yes.

1 Q. What is he retired from doing?

2 A. He is a hospital management consultant for a
3 large corporation.

4 Q. So you, essentially, have lived here in Tampa
5 your entire life?

6 A. Yes.

7 Q. So it appears that you went to work with
8 Hillsborough County Schools right after graduating from
9 The University of Tampa?

10 A. Yes.

11 Q. Did you start as a teacher?

12 A. Yes.

13 Q. Can you just walk me through your experience
14 with --

15 A. My career?

16 Q. Yes, you're career, as best you can. I know
17 we're covering a couple of --

18 A. I'm trying to remember --

19 Q. -- a couple of years there, so if you could try
20 --

21 A. -- my best.

22 Q. -- to plug in some time frames --

23 A. Uh-huh.

24 Q. -- approximately, as we walk through this.

25 A. I graduated from high school in 1975 and began

1 college.

2 I graduated from The University of Tampa, and
3 shortly after my graduation I was offered a teaching
4 position in a program that was called Head Start, and it
5 was -- it's similar to the Head Start program now, but
6 it was working with poverty children in the middle of a
7 project area in downtown Tampa.

8 And they were looking for teachers to teach, and
9 then go on to school to learn, you know, as much as they
10 could about early childhood and the different ways that
11 children learned, and so I volunteered to be part of
12 that program, and I was hired at that school.

13 I later went to another elementary school where I
14 gained a variety of courses in teaching in all different
15 subject areas, and then from there I went -- I
16 changed -- I've taught -- well, actually, three
17 elementary schools prior to being an assistant
18 principal.

19 I was an assistant principal for approximately
20 six years, and a principal for another six, possibly
21 around there, and then later came to the district office
22 as a general director.

23 Q. All right. General director of what?

24 A. Exceptional student education.

25 Q. What year was that?

1 A. 2008.

2 Q. All right. You went fairly broadly through the
3 assignments that you had, and I'd like to talk with you
4 about that in a little more detail.

5 A. Okay.

6 Q. So I would like to talk first, I guess, as your
7 years as a teacher --

8 A. Uh-huh.

9 Q. -- and then we can transition to -- did you go
10 right to being a principal, or was there some
11 administrative work in between?

12 A. Assistant principal.

13 Q. Okay. So let's start with teacher.

14 A. Okay.

15 Q. Tell me where you taught, as best you can recall?

16 A. Where?

17 Q. Where you taught and what levels of curriculum.

18 A. I've taught everything from Head Start to sixth
19 grade and elementary; sixth grade, only math. I've
20 taught all the subject areas. I taught gen-ed kids.
21 I've taught students with disabilities.

22 I've taught English learning language, which was
23 called ESO back in the day of children. I taught
24 poverty children. I've taught wealthy children. I've
25 taught a variety from the different schools that I've

1 worked in as a teacher.

2 Q. Okay. Can you recall what those schools -- the
3 names of those schools?

4 A. Yes. My first teaching position was at Meacham.
5 Then I went to Mort, and then from Mort I went to Cahoon
6 and I worked with a federal program called -- it's
7 called Title One now, where I was a reading resource
8 teacher, and then I went to Northwest.

9 Q. All right. And was Northwest the last teaching
10 position you had?

11 A. Yes, I was there one year.

12 Q. And what time frame was that?

13 A. 1992, '93 or '93, '94.

14 Q. Okay. And did you become an assistant principal
15 after that?

16 A. Yes.

17 Q. Where was your first assignment?

18 A. Dale Mabry Elementary.

19 Q. And how long were you there?

20 A. I was there for ten years?

21 Q. As assistant principal?

22 A. I was there as assistant principal and principal.

23 Q. And how long were you in the assistant principal
24 position?

25 A. Until 2001.

1 Q. And then another four or so years as principal?

2 A. Until 2008 -- no, 2005.

3 Q. 2005. And where did you go from there?

4 A. Westchase Elementary.

5 Q. And what was your position there, principal?

6 A. Yes.

7 Q. How long were you at Westchase?

8 A. Until 2008.

9 Q. And is 2008 when you became the general director
10 of ESE students?

11 A. Yes.

12 Q. Okay. Who hired you for the position of general
13 director of ESE students?

14 A. When you -- if you meet the criteria, you can
15 apply for any position that the superintendent lists as
16 open, and then when you apply you have to go before a
17 screening committee, and then the superintendent staff
18 interview, and then the superintendent recommends your
19 name to the board for board approval for appointment.

20 Q. Okay. And your application went through the
21 process that you've just described?

22 A. Yes, sir.

23 Q. So, ultimately, you were recommended to the board
24 by the superintendent, and the board approved you for
25 that position?

1 A. Yes.

2 Q. And who was the superintendent at the time?

3 A. Maryellen Elia.

4 Q. And when you first assumed that position, who did
5 you directly report to?

6 A. Wynne Tye.

7 Q. And who did Wynne Tye report to?

8 A. It's either Ken Otero --

9 Q. Yes.

10 A. -- and she sits on Maryellen Elia's staff.

11 Q. Okay. Wynne Tye and Ken Otero, are they all
12 still employed here today?

13 A. Ken is retired.

14 Q. Does he in the Tampa area?

15 A. Yes.

16 Q. What about Wynne?

17 A. She is employed.

18 Q. Same position or a different position?

19 A. She has -- her position is assistant
20 superintendent of curriculum and instruction.

21 Q. All right. So you served as the general director
22 of ESE students from 2008 until recent; is that right?

23 A. Yes.

24 Q. Until January of 2013?

25 A. Yes.

1 Q. So approximately five years?

2 A. Yes.

3 Q. How would a person, such as yourself, describe to
4 lay people what the concept of ESE students means?

5 A. A student with disabilities.

6 Q. Well, you used the acronym ESE --

7 A. Okay.

8 Q. -- so whatever it is that you're referring to.

9 A. An ESE? And what is it that you want to know?

10 Q. What does that concept mean? What does it stand
11 for?

12 A. An Exceptional Student Education -- an Exception
13 Student Education program, it's a program.

14 Q. Yes.

15 A. And it's a program for students with
16 disabilities.

17 Q. Okay.

18 A. And a student with disabilities needs to meet
19 criteria by that -- under one of the eight
20 exceptionalities under the federal government.

21 Q. And what are they?

22 A. I don't know all eight by memory, but one of them
23 would be autism, learning disabilities, deaf or hard of
24 hearing, visually impaired, other health impaired.

25 Q. I'm sorry, are you listing among the eight now?

1 in 2008?

2 A. How is it structured? I'll try to -- structured?

3 I don't know what you mean by the word "structured".

4 Q. Well let's -- let's start this way.

5 How many -- approximately how many ESE students

6 were there in the Hillsborough school system at that

7 time?

8 A. Approximately 30,000.

9 Q. And what -- 30,000 out of what general
10 population?

11 A. 99,000. It -- I don't know the current -- the
12 total enrollment at that time.

13 Q. Okay. So approximately one-third of the students
14 were considered ESE students?

15 A. Uh-huh.

16 Q. You have to give us a verbal response. Yes?

17 A. Yes. I'm sorry.

18 Q. And that would mean that those one-third,
19 approximately, one-third students would carry one of
20 those eight diagnoses that you've talked about earlier?

21 A. Yeah, they would have to have an individual
22 education plan.

23 Q. Okay. So what was the structure --

24 A. Okay.

25 Q. -- for which those 30,000 ESE students would be

1 served in Hillsborough County?

2 A. Okay. I ran the day-to-day operations of the
3 exceptional student education department, and I
4 supervised experts in all of those exceptionalities.

5 And they delivered programs -- they oversaw the
6 curriculum and instructional program and the compliance
7 of ESE students, which then would filter down from the
8 district office to the area office and then to the
9 school --

10 Q. And when you use the word --

11 A. -- level.

12 Q. -- sorry.

13 A. That's okay.

14 Q. Are you finished?

15 A. Uh-huh.

16 Q. When you use the word "exceptionalities", are you
17 referring to those eight diagnoses?

18 A. Yes.

19 Q. Now, were those 30,000 students, were there any
20 schools that were just designated for ESE students, or
21 were they dispersed through all of your schools?

22 A. Can I go back to when you used the word
23 diagnosis?

24 Q. Sure.

25 A. We don't diagnose them. We determine if there is

1 a learning disability.

2 A diagnosis is always given by a medical expert,
3 but we are more in the education area. So our people
4 don't do the diagnosis. We do testing to determine if a
5 child has a disability for learning, and we put in an
6 educational plan in place to support them.

7 Q. All right. So we'll use the word assessed. If
8 they are assessed as being an ESE student, were they
9 provided -- being provided services within the structure
10 of the existing schools, or were there separate schools
11 that were designated for ESE students, or both?

12 A. Okay. Every school in Hillsborough County can
13 serve varied exceptionalities of students. There are
14 certain students that require a specific class, and if
15 they require a specific learning environment, then --
16 with a more restrictive setting, or more assistance --
17 those programs are scattered throughout the districts in
18 every area because of the numbers of the children are,
19 you know, you might have five students living in South
20 Tampa that need the intellectual disabilities program,
21 where you may have one in North Tampa.

22 So we try to put the schools -- some -- the class
23 somewhere where it can meet both populations for
24 services, and the children can get the best they can in
25 the location that we select.

1 Q. So who was responsible on your staff for the
2 hiring of the teachers that work with ESE students?

3 A. The hiring --

4 Q. Yes.

5 A. -- for the teachers that are located at the
6 school site?

7 Q. Yes. Who would work with the ESE students?

8 A. The principal of that site is in charge of all
9 the hiring in their building.

10 Q. And would there be different training and
11 experience requirements for teachers who are going to
12 work with ESE students versus those that would work with
13 students from the general education population?

14 A. There -- there is different requirements for
15 teachers to take training. Our district launches a
16 beginning-teacher program, and that beginning-teacher
17 program is, like, the week before school starts, and it
18 trains the teachers on all the content area.

19 Then for the past couple of years the ESE
20 department -- I had leaders spearhead navigating through
21 exceptional-Ed and putting, you know, special -- back
22 into special-Ed is what they called it, and they would
23 get all the new teachers into the area and would bring
24 them in four to six times a year, and the teachers would
25 design their own agendas and be able to say we would

1 need more information on an assessment tool, or we need
2 more science, hands-on materials or practice with that,
3 or we just need to have someone talk us through with
4 compliance.

5 So they would be able to get some one-on-one
6 training and small group training and navigating through
7 ESE. So that was designed by my district resource
8 teachers that lived in the eight area offices.

9 Q. What I'm trying to understand is if a person
10 comes to work for Hillsborough County as a teacher, in
11 order to teach and work with ESE students would they
12 have to have a little different set of learning skills
13 and experience than a teacher who is coming to work for
14 Hillsborough County, who is going to work with and teach
15 students from the general-Ed population?

16 A. Well, I see -- you're putting teachers into two
17 categories. I'm just going to repeat back to you to see
18 if I understand what you said.

19 You have a gen-Ed teacher versus an ESE teacher.

20 Q. Yes.

21 A. Okay. And you want to know if the district has
22 anything different for either one of those kids -- of
23 those teachers?

24 Q. Any training, experience differences in --

25 A. Right.

1 Q. -- what would qualify them to be hired to work
2 with that respective population.

3 A. When we meet that teacher, and the principals
4 hire that teacher, those teachers for either position,
5 they come to us right from the university, or there is
6 an alternative certification program that the State of
7 Florida says you can have an eligibility to be hire as a
8 teacher. They both enter with the same experiences from
9 college and what their colleges offer them.

10 Our district offers a wide range of professional
11 development, and at that time principals at the school
12 site look and observe, through our observation model
13 that the district uses for all teachers, and they design
14 a plan for their teachers to seek in-services in the
15 areas of which they observe their deficiencies in.

16 And, therefore, if we don't have a training for
17 them, and they call professional development,
18 professional development may call me and say, Joyce, you
19 know, this teacher needs help, can you send one of your
20 experts to them, and we would find the best person to
21 send to the site to train that teacher, or pull a group
22 of teachers in that area, if it's common, so they do
23 things like that.

24 But all teachers have access to professional
25 development through the website and can take a multitude

1 of training.

2 Q. So if I'm understanding your response, the answer
3 is, no, there is no different requirements to hire a
4 teacher who is going to work with general-Ed versus ESE
5 students?

6 A. They come with a certification -- a degree from
7 college.

8 Q. Tell me what those degrees might be. What types
9 of degrees would you see?

10 For example, are you seeing teachers coming in
11 with degrees, a certification in ESE teaching?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yeah, they come in.

15 Q. Versus for a teacher who is working with the
16 general-Ed population?

17 A. Come in with a general-Ed, just like a music
18 teacher or a PE teacher who comes in with their degrees.

19 Q. All right. The -- so, is that certification a
20 requirement for an ESE teacher?

21 A. To have ESE certification?

22 Q. Yes.

23 A. When they are hired, they can get hired with an
24 alternative certification program plan.

25 Q. To work with ESE students?

1 A. Oh, yes. Through the State of Florida. That is
2 not in Hillsborough County.

3 **Q. I understand.**

4 A. The State of Florida allows you to be eligible to
5 be hired with a four-year degree in certain areas, and
6 to teach exceptional students, education students,
7 uh-huh.

8 **Q. Now, for example, this certification that you've**
9 **shared with us today, my notes reflect that you received**
10 **at least one of these back around 1990, is that right,**
11 **the first perhaps?**

12 A. 1980 is my first teaching certification.

13 **Q. How does one go about getting a teacher's**
14 **certification?**

15 A. Today is different than back then. Today you
16 have to have a four-year degree, and a lot of new hires
17 will tell you they've been in school for about five
18 years now to get a degree because of different classes
19 they have to take.

20 They become -- they actually apply in our
21 district with references from their university. They do
22 internships. And at that point after the internships,
23 they pass their courses, and they have a paper from the
24 university saying they are graduated with a degree.

25 They come to work for us, and we put them in the

1 beginning-teacher program, and then they file with the
2 state for their certification.

3 Q. I see. So they have to have some practical
4 experience before they are eligible to get a
5 certification?

6 A. Yes. In our district I would say, with our
7 mentor-peer program, for all programs, whether you're
8 physical Ed, driver's education, auto mechanics,
9 special-Ed, gen-Ed, there is a mentor teacher program.

10 Every teacher is assigned a mentor when they
11 first get hired. And they are given the support and
12 someone that they can rely on, and that's a whole lot
13 better than what was offered in the past, in 1980.

14 Q. So does there come a time if a teacher wants to
15 focus his or her career working with ESE students, does
16 there come a time when the county would require them to
17 have this certification in ESE teaching?

18 A. They sign a teaching degree? Well, no, they sign
19 -- I can't remember what the name is, but they do sign a
20 document that they have two years to take this teacher's
21 certification exam.

22 Q. And what happens if they don't take that within
23 two years?

24 A. They are released.

25 Q. All right. What happens if they don't pass the

1 exam?

2 A. They are released.

3 Q. So if I'm understanding you correctly, in order
4 to teach ESE students in Hillsborough County, a teacher
5 -- beyond two years a teacher is going to have to have a
6 certification in ESE?

7 A. If she has direct contact with students daily,
8 she does need to have a certification.

9 Q. So that is required if you are going to stay in
10 the system for more than two years?

11 A. If you have direct contact with students.

12 Q. Okay. What other teaching position would you not
13 have direct contact with students, and still --

14 A. A district resource teacher.

15 Q. Would that be considered --

16 A. A teacher.

17 Q. -- an administrative position, or --

18 A. No.

19 Q. -- like a teacher educator?

20 A. It's considered a teacher position out of the
21 classroom that helps teachers.

22 Q. Okay. That's sort of a consultant?

23 A. You would see it that way.

24 Q. So I'm not seeing ESE on your professional
25 educator's certificate. Do you have that?

1 A. No.

2 Q. Have you ever had it?

3 A. No.

4 Q. Did you ever sit for the exam?

5 A. No.

6 Q. Why is it that you don't have that background?

7 A. Because I meet the eligibility by the State to
8 lead a program of a team of experts that have the direct
9 certifications related to the programs they oversee
10 daily.

11 Q. Okay. But you've never been certified in ESE
12 yourself?

13 A. No.

14 Q. But that's a requirement that you have with your
15 teachers?

16 A. If they have direct daily contact.

17 Q. That's the distinction?

18 A. I oversee a team of experts that have direct
19 contact. Their experts -- I oversee experts over all
20 the programs that feed into the schools.

21 Q. I see. And do you require those experts to have
22 the ESE certification?

23 A. Yes.

24 Q. And you oversee them?

25 A. Yes.

1 Q. But you do not have the certification?

2 A. That's correct.

3 Q. Have you ever worked as an ESE student? Strike
4 that. I'm sorry.

5 Have you ever worked as an ESE teacher?

6 A. In a gen-Ed classroom, as a classroom teacher, I
7 had a lot of students with disabilities through the
8 years in my class.

9 Q. My question is have you ever been officially
10 designated as an ESE teacher?

11 A. No.

12 Q. As you see from your notice of deposition --

13 A. Uh-huh.

14 Q. -- and the subpoena, I believe there was a
15 request that you bring some additional documents with
16 you today.

17 A. Yes.

18 Q. Did you make a search for those documents?

19 A. I could not find anything.

20 Q. You -- well, before we talk about that, did you
21 make a search for them?

22 A. Yes.

23 Q. We can go by these requests.

24 Do you have any notes, E-mails, memos, documents
25 of any sort pertaining to Isabella Herrera that you

1 either authored or received copies of?

2 A. No.

3 Q. Have you ever met Mrs. Herrera?

4 A. No.

5 Q. Did you ever have any contact with

6 Isabella Herrera?

7 A. No.

8 Q. How did you learn about the circumstances of her

9 death?

10 A. I learned about the death when I was at home
11 eating dinner and I was watching the news at the same
12 time.

13 Q. Is that the first time you ever recall hearing
14 about Isabella Herrera?

15 A. Yes.

16 Q. Okay. And what action did you take when you were
17 home watching the news and heard about it?

18 A. I was shocked. I called my boss.

19 Q. Okay. What action did you take?

20 A. I just called. I wanted to know who knew. So, I
21 couldn't get a hold of her, so I called my area -- there
22 was an area supervisor over ESE that directly served the
23 school where the child was, but the news did not
24 necessarily say the name of the school that the child
25 attended, or I didn't catch it, you know, as I was home.

1 So I just be -- I just started sending, you know,
2 calls or calling my -- I had eight area supervisors that
3 directly serviced all the schools in their area, like
4 each area has 38 schools or 30 schools.

5 **Q. Yes.**

6 A. So I was able to locate one of the supervisors.
7 And I said, you know, did this just happen, you know,
8 because I didn't know, you know, and then I found out
9 that they were surprised that it was on the news.

10 And then they -- you know, I just made sure that
11 they knew -- they're housed at a different office, so
12 they report to a different boss daily.

13 I wanted to make sure that they told -- that that
14 person knew, and they said they did. So at that point,
15 you know, I just felt horrible.

16 **Q. Did you send E-mails about it?**

17 A. No. I was -- there really wasn't anything for me
18 to send. I can't recall sending anything.

19 **Q. Well, the reason why I ask is I thought you used**
20 **the word "send" when you were talking about making**
21 **calls.**

22 A. I sent messages through the phone.

23 **Q. Does that mean text messages, or --**

24 A. Um, actually, I called -- I remember calling
25 Shelly, and Shelly said it wasn't in her area, and then

1 I said can you call somebody or send a message. I want
2 to hear from all eight of them right now. That's what I
3 said.

4 I want to know who -- where the little girl went
5 to school and who was the supervisor that serviced that
6 school.

7 Q. And who did you learn that to be?

8 A. It was Shannon LesPerance.

9 Q. So Shannon was one of your direct reports?

10 A. Shannon was an ESE supervisor for that school,
11 and she was housed at that time in Area 5, and she daily
12 -- she reported daily to the area leadership director,
13 who is Sherry Sykes that oversees the schools in that
14 area.

15 Q. Can you spell Shannon's last name, please?

16 A. I'm going to try. L-e-s-P-a-r-a-n-s-e [sic].

17 Q. I'm going to come back to this exhibit, but since
18 we're talking about Shannon and Sherry, it's probably a
19 good opportunity for me to ask you, please, to explain,
20 if you will, give a visual description of your
21 organizational chart for the ESE program.

22 A. Okay. My organizational chart would -- starting
23 with me, I have -- or I had 13 supervisors or
24 coordinators under me, totaling 13, either a supervisor
25 or a coordinator over a department.

1 So you would have, for an example, the supervisor
2 of compliance was under me. The supervisor of
3 accountability, the supervisor of speech and language,
4 those were directly under me.

5 Then in the area offices, in the eight area
6 offices, there was an ESE supervisor. An ESE district
7 resource teacher, and an ESE staffing -- staffing
8 personnel, and a staffing coordinator that were housed
9 in the area offices that gave the direct support to the
10 schools, you know, when needed.

11 Q. All right. Let's look at it from the ESE teacher
12 whose in the classroom with the students --

13 A. Okay.

14 Q. -- walk me through the organizational chart from
15 their perspective, who they report to, who evaluates
16 them on up to you, please.

17 A. At a teacher level, if -- for their evaluation is
18 who you want?

19 Q. The evaluation and reporting.

20 A. Okay.

21 Q. I want you to kind of do the reverse of what you
22 just did.

23 A. The reverse of what I did? Okay.

24 A teacher is hired by the principal of the school
25 site. Some principals use a screening committee, and

1 some hire on their own. They are the ones who evaluate
2 the teachers. They are the ones who work on their
3 developmental plans, and they are the ones that
4 supervise the teachers day-to-day.

5 The principals get evaluated by their area
6 director, area leadership director, and that's who they
7 are in contact with, and talk to them about their
8 building, their facility, and their day-to-day
9 operations.

10 Q. All right. So is the connection to your
11 department for a teacher more of a lateral source
12 connection?

13 A. My department, if -- to explain it to someone who
14 doesn't know, it's a -- it's a program department that
15 -- very similar to elementary, which elementary would be
16 easier for you to understand.

17 They have social studies, science and math, you
18 know, and reading supervisors that are experts in their
19 area with their general director overseeing the experts
20 in that area.

21 Where I was the general director of exceptional
22 student education, and I oversaw the experts in that
23 area similar to the reading and writing and math, mine
24 was deaf and hard of hearing, speech and language,
25 visually impaired, visually exceptionality, and then the

1 rest of the seven or eight of them.

2 Q. All right. Now, we'll come back to this list. I
3 just also want to address another area that came up.

4 Going back to learning about Bella's death, you
5 told us about the kind of flurry of calls that you made
6 that evening.

7 Once you found out whose area it was, who the
8 correct supervisor was, what action did you take, what
9 information did you learn?

10 A. Well, she had -- I learned that the district
11 protocol had actually taken place. She did share -- I
12 was -- I was not -- I was surprised by that case.

13 Basically, usually when a child passes away or is
14 medically fragile, I remember the name, you know, it
15 stays with you for a long time, and I didn't remember
16 her name.

17 And so that bothered me that that had happened to
18 a child in the district and I didn't know that name when
19 I heard it. And the way I found out was alarming to me.

20 So -- but my supervisor reassured me that they
21 had attended the services, and that the little girl was
22 taken to the hospital and passed away in the hospital.

23 And then I said, does Sherry know? Does Sherry,
24 you know, tell her boss? So they said, yes, and I said
25 okay at that time, you know, Sherry would know what to

1 do with that position, because that would be in the
2 division of administration, not in the curriculum and
3 instruction division, which I was serving in.

4 Q. All right. Three questions I want to ask in
5 follow-up to that.

6 Once, earlier, I thought you said you were
7 surprised to see this on the news. Did I understand you
8 to say that?

9 A. Yes.

10 Q. Why did that surprise you?

11 A. Because I didn't know about it.

12 Q. So what surprised you was that you didn't hear
13 about it first, that you learned about it first through
14 the television news?

15 A. Well, I think I was surprised that a little girl
16 had died. That's very alarming to me when a child
17 passes away.

18 You know, you're -- I just -- and to know that
19 there was a little -- because usually I would have
20 known. When a child died from a car accident at
21 Middleton High School, I knew.

22 Q. Well, I just want to follow up.

23 The surprise that you expressed about seeing this
24 on the news, was it a surprise that you were learning
25 about this event for the first time on the news and

1 hadn't learned from someone on your staff?

2 A. I can't recall if that was -- I was just alarmed
3 that a little girl had passed away.

4 Q. And I'm going to ask you about that, too, because
5 now you've used that word three times.

6 A. Uh-huh.

7 Q. Alarmed, meaning shocked that this sort of event
8 would happened?

9 A. Uh-huh.

10 Q. Yes?

11 A. Yes.

12 Q. And then -- you then said you were surprised
13 because you -- and I don't want to misquote you, so
14 please correct me if I misunderstood you, but you said
15 you were surprised because you usually know -- you know
16 of the children who are deemed medically fragile, and
17 you were not aware of Isabella Herrera?

18 MR. GONZALEZ: Object to the form of the
19 question. You may answer.

20 THE WITNESS: I can answer?

21 MR. GONZALEZ: Yes, ma'am.

22 A. I -- how you receive that answer is usually when
23 -- my staff comes to me on Wednesdays. They share with
24 me things that happen in their areas. We had Wednesday
25 meetings.

1 And if there was a medically-fragile kid or a
2 child that was hospitalized or something like that, they
3 would always mention it to us, because -- see, what
4 happens when you work with students with disabilities
5 and what my experts, my supervisors and coordinators,
6 you know, have taught me through the years, they become
7 very close to the families and the kids, especially the
8 more fragile the child, the more severe the disability,
9 because they become that support to that family or to
10 that school or to that teacher who needs that support,
11 and they become very close.

12 So it becomes part of our Wednesday updates.
13 It's not information that is protocol to tell me,
14 because those -- when I was a principal, I can only
15 explain to you when I was a principal and a child passed
16 away on a Saturday, I made sure my boss knew to be able
17 to tell the administration, the superintendent over
18 administration, because those were the protocols of a
19 principal.

20 Q. So in your management of the ESE program, you
21 would have regular Wednesday meetings with your staff?

22 A. Uh-huh.

23 Q. And one of the issues that would be regularly
24 discussed is for your staff to make you aware of any
25 medically-fragile students in your system?

1 A. That wasn't a requirement. That was just one of
2 the things that was -- that they could share with me.

3 They would put their own folder for sharing
4 together, however they needed to bring me up-to-date or
5 something that I would need to know.

6 Q. So I'm confused. Was it a part of your Wednesday
7 meeting for you to be advised as to whether they were
8 medically fragile?

9 A. It could come up, but it was not a regular agenda
10 item.

11 Q. So when you say you were surprised about hearing
12 this about Isabella Herrera, were you surprised that she
13 was considered medically fragile, and you were not made
14 aware of her situation prior to her death?

15 A. No.

16 Q. Why, then, did you say that you were surprised
17 that you weren't aware of her situation?

18 A. I was just surprised that the district had lost
19 child.

20 Q. Did I understand you to say earlier that some of
21 the folks that you spoke with that evening told you they
22 were surprised that what happened to Isabella was on the
23 news?

24 MR. GONZALEZ: Object to the form of the
25 question. You can answer.

1 A. I don't recall saying that, I mean, did I say
2 that? Can you read it back to me?

3 BY MR. COTTER:

4 Q. I'm just asking if you recall saying that. It's
5 my recollection. It's not a big deal.

6 A. I don't --

7 Q. You don't recall saying that?

8 A. I don't.

9 Q. Okay. Now -- so, was there any other discussion
10 that you were involved in that evening?

11 A. No.

12 Q. Did you take any action the next day?

13 A. The only action I made was to make a phone call
14 to make sure that my boss knew that we lost another
15 little girl, and it was on the news.

16 Q. And when you say "another little girl" what is it
17 that you are referring to? What other situations are
18 you referring to?

19 A. From the -- well, there was a child that had
20 passed away prior to Isabella.

21 Q. Are you talking about the drowning incident?

22 A. Yes.

23 Q. And the person that you had that conversation
24 with was -- would that have been Wynne?

25 A. I would have called her.

1 Q. And what was her reaction?

2 A. She -- I can't remember.

3 Q. The little girl you're talking about is
4 Jennifer Caballero? Am I saying that correctly? Do you
5 know the name?

6 A. No, I'm talking about Isabella.

7 Q. You said there was another girl who drowned. Do
8 you know her name?

9 A. It's Jenny Caballero.

10 Q. Now, after you called your boss, Wynne Tye, I
11 take it that was the end of your involvement in any
12 investigation regarding of what happened to
13 Isabella Herrera?

14 A. Yes. When a situation needs to be investigated,
15 it's done at the school site or through professional
16 standards --

17 Q. Okay.

18 A. -- or both.

19 Q. But you undertook no investigation; is that
20 right?

21 A. No.

22 Q. Did you ever ask to look at Isabella Herrera's
23 school records or IEPs or any similar documents?

24 A. No.

25 Q. Did you ever make a determine whether she had

1 been assessed as medically fragile?

2 A. No.

3 Q. You never took any efforts, whatsoever, to
4 determine whether your staff had acted appropriately?

5 A. No.

6 Q. Were you ever interviewed by anyone with the
7 school system regarding the circumstances of Isabella's
8 death?

9 A. No.

10 Q. Were you ever interviewed by anyone from law
11 enforcement?

12 A. No.

13 Q. Is today the first day that you're discussing
14 this?

15 A. Yes.

16 Q. And I take that prior to today, you've never
17 looked at Isabella Herrera's file?

18 A. No.

19 Q. Wouldn't it be of interest to you to determine
20 whether or not Isabella's IEP, with regard to related
21 services, specifically transportation, was properly
22 complied with?

23 MR. GONZALEZ: Object to the form of the
24 question. You can answer.

25 A. I can't answer that. I don't, you know, it's not

1 what I -- normally is done.

2 The supervisors may have looked into that.

3 That's what they would do. They would review that to
4 see if it was -- what needed to be done had been done,
5 or they had all the supports that they needed.

6 And if they felt that there was something they
7 didn't need, they would have told me way before that the
8 incident would have happened. They wouldn't have told
9 me after the incident happened, I mean, unless they felt
10 something was in wrongdoing, and that was never a part
11 of our conversation.

12 Q. What supervisor are you referring to?

13 A. Well, any supervisor that was related or sat at
14 an individual, you know, the IEP meetings with the
15 parents to discuss what the child needed in education or
16 related services.

17 If they felt that the child wasn't getting what
18 they needed during that meeting, they would have ran to
19 me.

20 Q. So just so we're clear, you never took it upon
21 yourself to ask your staff was there anything that our
22 department did or could have done to avoid this from
23 happening?

24 A. No.

25 Q. And you've never seen the IEP-related services as

1 it relates to transportation?

2 A. No.

3 Q. It's just not of interest to you?

4 MR. GONZALEZ: Object to the form of the
5 question.

6 A. When you -- when a child gets an IEP I don't --
7 there is 30,000 children. I don't read all 30 active
8 IEPs.

9 When a child needs specialized transportation
10 there is a certain form, it's an MO19, that the team at
11 the IEP meeting fills out, and it is -- that form is
12 sent to transportation, and the general manager of
13 transportation receives that form, and if there is any
14 special requirements related to a child, if a child
15 needs this or needs that on a bus, then John is the one
16 who fulfills that need for that child for the bus.

17 Q. Well, we're going to look at the MO119 [sic] in a
18 few minutes, and we deposed Mr. Franklin yesterday, and
19 we have his perspective on it?

20 A. Okay.

21 Q. You're saying the MO119 [sic] is the form that
22 would indicate whether there is any requirements for
23 special needs in transportation?

24 A. The form is available at an IEP meeting. The
25 mother and father are always invited to an IEP meeting,

1 the teachers, the people in related services could --
2 are usually called, if there is discussion in related
3 services that need to be discussed at the IEP meeting,
4 and at that time there is forms to fill out for
5 different departments if they need the support or, you
6 know, a child needs specialized transportation.

7 Q. Yes, I'm familiar with that process but the
8 question was that the M109 or M119 --

9 A. The transportation request form.

10 Q. The transportation request form is what
11 communicates to transportation what the actual needs
12 are?

13 A. That were decided at the IEP.

14 Q. All right. Now you mentioned that you have these
15 30,000 students.

16 A. Uh-huh.

17 Q. How many of those 30,000 students on an annual
18 basis pass away under circumstances like Isabella or
19 Joanne --

20 MR. GONZALEZ: Object to the form of the
21 question.

22 BY MR. COTTER:

23 Q. Jennifer. I'm sorry. Jennifer.

24 A. I can't -- I can't -- you know, I can't give you
25 an answer and exactly a number, because some parents

1 keep it to themselves and some share it.

2 Q. I'm referring to incidents that happened while
3 these children are in your care and custody.

4 MR. GONZALEZ: Object to the form.

5 BY MR. COTTER:

6 Q. You gave me the impression that you have 30,000
7 students, you can't be familiar with the situations of
8 all 30,000. That was the impression that I got from
9 your response just a few minutes ago about not doing an
10 investigation in this matter.

11 My follow-up question to you is how many
12 situations in the course of a year or your career as
13 general manager at the ESE Department do you have that
14 are similar to what happened to Isabella and Jennifer?

15 A. I don't recall it more than those two.

16 Q. All right. Now the -- getting back to the
17 exhibit request. Did you ever receive any E-mails or
18 documents whatsoever related to Isabella Herrera?

19 A. I couldn't find them.

20 Q. How did you go about looking?

21 A. I looked on whatever I saved. I usually save it
22 under a name of a child.

23 Q. Okay.

24 A. And I didn't have a file with her name on it.

25 Q. All right. Even in your new position you save

1 that on your system?

2 A. I went back to the old office.

3 Q. Okay. When you save it, is it on a system, or is
4 it in a paper file?

5 A. I didn't look on -- you know, I -- if it's
6 deleted it's deleted, and only the -- you know, it can
7 only be found --

8 Q. Right.

9 A. But especially after the event of learning, if
10 there was communication, I would have probably, more
11 likely, I would have saved it into a file, or if there
12 was issues or communication, I always kept good notes on
13 children. I couldn't find a file.

14 Q. Okay. What was the reason why you left your
15 position as general director of ESE students with
16 Hillsborough County?

17 A. I left my position or I requested for a transfer.
18 I requested a transfer, of the superintendent, to
19 another position, because I am very close to retiring.

20 And the superintendent had called a special task
21 force together, and the Council of Great City Schools to
22 review the procedures in the exceptional student
23 education department and make some recommendations for
24 improvements, or review what had been in place at the
25 district level.

1 And at that point I knew that it would be really
2 extensive, and that someone would -- it would be better
3 for someone to have five to seven years in the program
4 than to be short term, as I am, to get something like
5 that off the ground.

6 And I felt that it would be better to select a
7 new person to start off implementing some of the new
8 things that have come out of all of this, or review the
9 things, or get, you know, for the future, take it to the
10 next level where it needed to be, and that I would -- I
11 would still be around if they needed me for the history
12 or the background or the connections with the state
13 department, or the people to talk to if they needed the
14 support.

15 But that -- I really truly didn't feel that, you
16 know, I had the time left to do what needed to be done,
17 and I was not in a position to return after I was
18 retired.

19 **Q. When do you plan to retire?**

20 A. At the end of 2015.

21 **Q. So in approximately 20 or so months?**

22 A. Uh-huh.

23 **Q. The council that you referred to, what was that**
24 **called, the committee or council that came up with**
25 **recommendations?**

1 A. Oh, the Council of Great City Schools.

2 Q. Council of Great City Schools?

3 A. Council of Great City Schools.

4 Q. What is that?

5 A. They are a team of lawyers, I would say, that
6 work. They are an association that goes into different
7 school districts to review different situations or make
8 recommendations on how to restructure.

9 They may come in and look at the department of
10 transportation and make some considerations on how to
11 change things or put things in place.

12 They'll look or ask for policies and procedures.
13 They can look at your organizational chart and make
14 recommendations. You can ask them to come in and do
15 whatever they collect a team of experts from all over
16 the state, or all over the different states and come in
17 and review whatever you have and give you some
18 recommendations of things that you we can put in place,
19 or if this is good or this is, you know, whatever, so...

20 Q. Is this an accrediting organization like SACS?

21 A. I don't know if it's an accrediting association,
22 but I would say it's an association that works very,
23 very closely with the federal government, the state
24 government, the legal agencies, and they have a very
25 good reputation.

1 The -- I can't remember the affiliation that they
2 are with. We just sponsored a convention, The Urban
3 League Collaborative is another supporter of that
4 organization.

5 Q. So this is a voluntary -- this is a voluntary
6 process that the school system has agreed to be assessed
7 by this organization known as the Council of Great City
8 School?

9 A. Mrs. Elia asked them to come in to review our
10 district, the superintendent, Mrs. Elia.

11 Q. When did she ask them to do that?

12 A. I spoke to the Council of Great City Schools. I
13 can't remember the exact date. I want to say it was in
14 November sometime.

15 Q. Of 2012?

16 A. Yes.

17 Q. All right. Is this the first time Hillsborough
18 County Schools, to your knowledge, has agreed to undergo
19 an assessment by an outside organization?

20 A. No.

21 Q. What other assessments are you familiar with?

22 A. I believe the Council of Great City Schools came
23 once before to assess another department.

24 Q. And when was that?

25 A. I can't -- I don't know the department or when it

1 was, I just know that they've been here before.

2 Q. Okay. So is there work here that began, you
3 think, around November of 2012 specifically focused on
4 the ESE department?

5 A. No. I think it was focusing on the district,
6 because the ESE department is part of the Hillsborough
7 County Public Schools. It's just a department within
8 the district.

9 Q. Sure.

10 A. So I think they were looking at the whole
11 district, and the district as a whole and making sure we
12 weren't separate, or making sure that we had a protocol
13 of who to report to and get permission of -- as people
14 and jobs.

15 There is that -- it had a protocol to follow and
16 a reporting system, and a seeking permission system,
17 too, and also a team of experts along the way that
18 worked together, and then they did call in other
19 divisions to see how we all got along with them. So
20 they interviewed and spoke to a variety of different
21 people.

22 Q. What precipitated bringing in the Council of
23 Great City Schools?

24 A. Mrs. Elia, our superintendent, wanted to form a
25 task force to talk about how we can become better as a

1 district with what we had learned with the death of the
2 child, and also put in place an outside source that came
3 in, because the task force was inside people from, you
4 know, custodians all the way.

5 And the outside was the Council of Great City
6 Schools coming from outside looking in. So she had an
7 inside and then she had an outside for people to give
8 her their recommendations and their -- related on their
9 expertise, one of what they knew from outside and what
10 they saw from inside, and the other one was what they
11 practicing and how we can get better.

12 Q. And what was the name given to the group that
13 worked from the inside?

14 A. It was -- I believe it was the Exceptional
15 Student Education Task Force, but I can't recall the
16 exact name.

17 Q. And if I'm understanding your answer, both of
18 these task forces were initiated, at least in part, due
19 to the death of Isabella Herrera?

20 A. I don't know if I would call the Council of Great
21 City Schools a task force. It was more of a review
22 team.

23 Q. All right.

24 A. But the task force wasn't -- I can't -- I -- they
25 were put to review the exceptional student education

1 department. I'm sure that was one of the things that
2 was, yes, reviewed.

3 Q. All right. Now, are the recommendations in from
4 both the task force and the council?

5 A. Yes.

6 Q. Have you reviewed them?

7 A. I'm no longer in the department.

8 Q. Did you ever review them while you were in the
9 department?

10 A. December I reviewed the Council of Great City
11 Schools recommendation, yes.

12 Q. What about the task force?

13 A. I have not reviewed the task force.

14 Q. You've never seen it?

15 A. It was presented to the school board.

16 Q. Were you present for that?

17 A. No.

18 Q. Have you read anything about it?

19 A. No.

20 Q. Do you know what any of those recommendations
21 were?

22 A. No.

23 Q. Do you know when that presentation was made to
24 the school board?

25 A. I can't be exact, but possibly late January.

1 Q. All right.

2 A. After I had left.

3 Q. Was one of the recommendations from the council
4 that you read in December for new leadership for the
5 department?

6 A. No.

7 Q. Was one of the recommendations that you be
8 replaced?

9 A. No.

10 Q. Was there any discussion whatsoever about the
11 direction, leadership or management of the ESE program
12 in the council's recommendations and report?

13 A. The council was very complimentary to the
14 department, and felt we had a lot of procedures and a
15 lot of support, direct support to the schools.

16 They did say that we were an extremely large
17 district, and that some districts in a whole under one
18 superintendent had 30,000 kids.

19 And one department was overseeing programs for
20 30,000 children, and that they made a recommendation to
21 add a new instructional unit, and have the ESE
22 department possibly report to the deputy superintendent
23 instead of the, you know, instead of to the assistant
24 superintendent of curriculum and instruction, that was
25 in the report.

1 Q. Now, did your request for a transfer, was that
2 reflected in a letter that you wrote to someone?

3 A. I never wrote a letter.

4 Q. Did you have a meeting?

5 A. I had a meeting.

6 Q. Who did you have the meeting with?

7 A. Mrs. Elia.

8 Q. When did that meeting occur?

9 A. December 10th.

10 Q. Has your replacement been hired yet?

11 A. No.

12 Q. Are you participating in that process at all?

13 A. No.

14 Q. Do you know, is there a search committee of some
15 sort looking for a replacement?

16 A. They've advertised for the position, and they've
17 had applicants.

18 Q. Is there a committee set up to review and assess
19 those?

20 A. The person who will be in charge of hiring that
21 position would be the one setting up the committee, and
22 at that point it's a general director position, so it
23 would be the superintendent and who she selects to sit
24 on that committee.

25 Q. And is there an acting director?

1 A. No.

2 Q. Is there anyone fulfilling the role of director
3 at this time?

4 A. There are three people in the department that
5 have taken over a piece each of the positions that I
6 oversaw.

7 Q. Who are they?

8 A. Maryanne Parks, Suzette Sample and
9 Christina Bonito.

10 Q. And what role, if any, have you had since the
11 time of your resignation in assisting those individuals?

12 A. I didn't resign, I transferred to another
13 department. So as far as helping those individuals
14 since I've left, only if they needed to know how to find
15 something, because they were able to -- they are very
16 good.

17 Q. So, essentially, no support?

18 A. They called if they needed me, but they haven't
19 called.

20 Q. Are you familiar with the Rehabilitation Act of
21 1973?

22 A. Is that the ADA?

23 Q. No, it's the Rehabilitation Act of 1973?

24 A. No.

25 Q. Are you familiar with the Education for All

1 Handicapped Children Act of 1975?

2 A. Is that the ADA one, the American Disabilities?

3 Q. No. It's the Education For All Handicapped
4 Children Act of 1975?

5 A. Not right offhand.

6 Q. Are you familiar with the Handicapped Children
7 Protection Act of 1986?

8 A. No.

9 Q. Are you familiar with the Handicapped Children's
10 Amendments of 1986?

11 A. No.

12 Q. Are you familiar with the Individuals With
13 Disabilities Education Act of 1990?

14 A. Yes.

15 Q. Tell me what you know about that?

16 A. In 1990 it was for the -- to give children the
17 rights, and it talked a lot about mainstreaming children
18 into general -- gen-Ed courses and not to constantly
19 mainstream them or segregate them.

20 Q. That's your understanding?

21 A. That's what I can remember. There is more to it.

22 Q. Do you recall whether or not it created any
23 categories of disability?

24 A. I don't know which one actually did, but I do
25 know one of them did --

1 Q. Which one.

2 A. -- classify. One of the amendments.

3 Q. Amendments to what?

4 A. To the -- what you just asked me.

5 Q. Can you tell me the categories of disability that
6 were contemplated within the Individuals With
7 Disabilities Education Act?

8 A. No.

9 Q. Can you tell me the definition of the terms that
10 were added for assistive services and devices?

11 A. The assisted communication technology.

12 Q. Do you know what definitions were used to define
13 those category of services?

14 A. Not right offhand.

15 Q. Can you tell me what the term "related service"
16 means to you?

17 A. Transportation is a related service. Physical
18 therapy is a related service.

19 Q. Those are examples of related services?

20 A. Yes.

21 Q. What does the term mean, though?

22 A. It means a service that is related to a student
23 that supports them into the education arena or
24 classroom.

25 Q. Would you agree with me that transportation

1 providers play an integral role in the school lives of
2 many children?

3 A. Yes.

4 Q. Including children with disabilities?

5 A. Yes.

6 Q. Would you agree with me that effective
7 communication between schools and transportation
8 providers is essential?

9 A. Yes.

10 Q. Especially essential when communicating
11 information about children with disabilities?

12 A. Yes.

13 Q. Would you agree with me that often special bus
14 equipment is required to be provided for transportation
15 services for children with disabilities?

16 A. Often, no. Sometimes, yes.

17 Q. Would you agree that sometimes too special school
18 assistants, as in staff, is needed in transportation to
19 assist the students with disabilities?

20 A. For the school staff to assist the child to get
21 on a transportation vehicle.

22 Q. For the transportation vehicle to have staff to
23 be available to assist a student with disabilities?

24 A. Yes.

25 Q. And that those services should be addressed in

1 the student's IEP?

2 A. The transportation -- the specialized
3 transportation is addressed in the IEP. The
4 transportation needs is written into --

5 Q. Yes.

6 A. -- the other form that is sent to transportation
7 of the specific needs that are needed in the
8 transportation on the bus.

9 Q. Would you agree with me that children who are
10 considered medically fragile and require special
11 handling and supervision, that the information regarding
12 their disability be communicated to the bus personnel?

13 A. Yes.

14 Q. And would you agree with me that the attendance
15 of transportation personnel at the IEP planning session
16 enhances the communication among all team members?

17 A. Can you ask me that again?

18 Q. Sure. Would you agree with me that the
19 attendance of transportation personnel at the IEP
20 meetings can enhance communication among all team
21 members?

22 A. I don't know if that -- because I -- I don't know
23 if I -- if that would really enhance it or not, because
24 I don't know who they would send to the IEP team
25 meeting, and the time of those meetings and when the

1 drivers need to be on the bus. So, I mean, that would
2 be a question that I would have to ask John.

3 Q. So you disagree with the statement that the
4 attendance of transportation personnel at an IEP meeting
5 can enhance positive communication among team members?

6 A. Well, it can, it can.

7 Q. So you do agree with that statement, then?

8 A. It can. I don't know if it's been done.

9 Q. But you agree with that statement?

10 A. Yes.

11 Q. Yet the policy at Hillsborough County School was
12 not to include transportation personnel in the IEP
13 meetings; is that correct?

14 A. In an IEP meeting, if I was setting up an IEP
15 meeting, I could invite who I needed to be at the
16 meeting, and then it would be up to those individuals
17 whether they could attend or not.

18 If someone specifically wanted someone at the
19 meeting, we would never say, no, you cannot have that
20 person at the meeting.

21 I have never known -- that has not been a
22 practice. It may not be likely that that individual
23 would be invited, because that would not be the
24 individual providing the direct services on that bus
25 daily.

1 So I would have to that -- I -- redirect that
2 question to John on how he would handle that.

3 Q. Okay. My question is pretty straightforward.

4 To your knowledge it was the practice, policy,
5 procedure at Hillsborough County not to include
6 transportation personnel in the IEP meeting, correct?

7 A. I never saw it as a policy or a procedure
8 anywhere. I've never read that.

9 Q. So the answer is yes, that is correct?

10 MR. GONZALEZ: Object to the form of the
11 question.

12 A. Can you restate the question?

13 BY MR. COTTER:

14 Q. Sure. The policy at Hillsborough County Schools
15 while you were director of ESE students was not to
16 include transportation personnel at the IEP meeting?

17 A. That's not a policy. That's -- a policy is
18 written and a procedure is written. That is not a
19 practice to -- I don't remember that as a policy that we
20 don't include people.

21 Q. We're not communicating with each other.

22 Was there a policy in place at Hillsborough
23 County Schools while you were director of ESE to require
24 transportation personnel to attend an IEP meeting?

25 MR. GONZALEZ: You've now changed the entire

1 question now.

2 A. Three times.

3 MR. GONZALEZ: Your question now is --

4 MR. COTTER: If you have an objection,
5 please make it, okay?

6 MR. GONZALEZ: Yeah, the question --

7 MR. COTTER: Make an objection, but no
8 speaking objections, please.

9 MR. GONZALEZ: Do I get to do it? Do I get
10 to do it now.

11 MR. COTTER: You can make an objection to
12 form or something of that nature.

13 MR. GONZALEZ: The form --

14 MR. COTTER: But when you make a speaking
15 objection --

16 MR. GONZALEZ: I'm not making a speaking
17 objection, okay?

18 What you are doing is, number one, engaging
19 an improper question. Number two, it's
20 argumentative. Number three, it's been asked and
21 answered.

22 BY MR. COTTER:

23 Q. Are you ready for the question?

24 A. Yes.

25 Q. Was there a policy in place at Hillsborough

1 County Schools while you were director of ESE students
2 that required transportation personnel to attend IEP
3 meetings?

4 A. I do not remember seeing that written down as a
5 policy.

6 Q. Thank you. Wouldn't you agree that it's
7 essential for transportation personnel providing
8 services to children with disabilities to be
9 knowledgeable about the characteristics and nature of
10 the disabilities of the children that they are serving?

11 A. That who are serving?

12 Q. The transportation personnel.

13 A. In a perfect world, I would love to see everyone,
14 you know, know everything there is and to always put the
15 child before the exceptionality instead of saying the
16 disabled child, to refer to him as a student with
17 disabilities.

18 But I don't know who actually works in
19 transportation or what their sensitivities are or what
20 they need, you know, that -- that would have to be
21 designed by the leader of transportation based on his
22 assessment of his department.

23 Q. So is the answer, yes, you agree?

24 MR. GONZALEZ: Object to the form of the
25 question.

1 A. Do I agree that everyone should be aware, have
2 awareness of --

3 Q. The transportation personnel that are serving
4 children with disabilities be aware of the nature and
5 characteristics of the child's disability that they are
6 serving?

7 A. Yes.

8 Q. And do you agree that there should be training
9 for the personnel, the transportation personnel, so that
10 they can properly assist the student with their
11 conditions?

12 A. Yes.

13 Q. And that would include assisting the children
14 with being familiar with how to use their assistive
15 devices?

16 A. Yes.

17 Q. And how to address any medical emergency
18 situation that might occur while the child is in their
19 custody?

20 A. Yes.

21 MR. GONZALEZ: Is it a good time for a
22 break.

23 MR. COTTER: Sure.

24 (A recess was taken from 10:02 until 10:10.)

25 BY MR. COTTER:

1 Q. We talked a little bit about this concept of
2 related service. I take it that's in your profession,
3 what I would describe as a word of art, meaning it has a
4 very specialized meaning. Can you explain to us what it
5 means?

6 A. The best way that I can explain it is when a
7 child with a disability comes to us, we are an
8 educational institution, and we educate that child.

9 And a related service is an area that provides
10 that support to that child like in the area of, for an
11 example, assisted communication technology. If a child
12 needs a device to speak, that could be a -- seen as a
13 related service to educational.

14 Transportation is a related service because it
15 helps transport the child to receive their education at
16 a school site.

17 There is physical therapy that can be a related
18 service that offers the -- that helps the child with the
19 physical therapy, and it's not a medical physical
20 therapy it's an educational physical therapy so -- for
21 positioning, and they follow orders that are given by
22 medical experts.

23 Q. All right. Now in 2011 and 2012 while you were a
24 manager and director of the ESE department, am I to
25 understand correctly that the development of an IEP in

1 an individual students case would ultimately be the
2 responsibility of your department?

3 A. To develop the forms and to make sure that the
4 form is correct, yes.

5 To develop an IEP, it was not the responsibility
6 of the department. The IEP forms are online, and they
7 are written by the class -- the case manager at the
8 school site that oversees the IEP.

9 And the involvement of the teachers who serve the
10 child may have input or invitation, and the parents,
11 they are the ones that are responsibility for writing
12 the IEP for the individual child.

13 My department over -- worked with implementing
14 any changes or additions or deletions based on law in
15 the area of compliance to have those forms ready for the
16 school sites to implement.

17 Q. I appreciate that explanation, but what I'm
18 trying to understand is, is it a fair statement to say
19 that the ESE department had overall ownership of the
20 process? I understand there is lots of different
21 professional disciplines that participate in the
22 process.

23 MR. GONZALEZ: Object to the form of the
24 question. You can answer.

25 A. Process is a very big word to me, so I'm going to

1 need to know what you actually mean for the process.

2 BY MR. COTTER:

3 Q. Well, that an IEP is done, that is complies with
4 the law, that it complies with the county's policies and
5 procedures that these be done in a timely manner and
6 address the issues that need to be addressed by law.

7 A. We, actually -- we -- there is a training that is
8 provided to the teachers from the Florida Diagnostic
9 Learning Systems, which is called FDLRS, and
10 Hillsborough County has that full -- it is a grant from
11 the state department, and Hillsborough County is so
12 large we have our own FDLRS.

13 They train the teachers on the IEPs, and it's a
14 three-day training.

15 Q. All right. The school system published a
16 document in 2009 entitled writing quality IEPs, are you
17 familiar with that?

18 A. Oh, yes.

19 Q. Was that a document that came out of your
20 department?

21 A. That was from FDLRS, but I had input in that
22 document.

23 Q. Okay. Who in the school system ultimately be
24 responsible for the production of that document?

25 A. It all depends on what section of the document,

1 because the document is a couple of pages.

2 The -- first let's go talk about the form of the
3 IEP. It would be my office of compliance, which
4 actually the protocol would be we would -- we didn't --
5 have not changed anything in an IEP in the last --
6 during the time I was there.

7 The only additional form we added was in 2008. I
8 believe, we had the parent revoke permission that the
9 state said we had to put in place to give parent
10 permission to revoke services for students. So we only
11 had to design one form.

12 When we designed that form, we take it to a forms
13 committee at the district, and the forms committee says
14 whether or not we can implement it, and then we show the
15 form to the state department after it's approved, and
16 they say they approve it or not, and we can implement
17 it.

18 So at the IEP level, um, the IEP was something
19 that we've had in place for years that the state has
20 seen, that our form committee has seen, and that -- yes,
21 the department that I supervise had -- has great input
22 in laying it out, but it also is seen by the state
23 department, which there is a department for
24 exceptional-student-Eds to make sure we meet state
25 requirements on the IEP, because each district may have

1 an IEP that looks totally different than the other
2 district.

3 So at that point we have those forms all online.
4 We would use those forms in the protocol packet for the
5 IEP training.

6 There is a committee of IEP experts, and they
7 review everything that our lead and IEP training --
8 which her name is Denise Provenzano, she is a trainer
9 for FDLRS. She does the training for IEPs.

10 And then there -- it is being seen and talked
11 about a lot during the process, and all the area
12 supervisors that live in the areas that work directly
13 with the schools may have input to that manual of, this
14 works, this doesn't work, teachers aren't going to
15 interpret this line correctly. They understand it this
16 way because we -- you know, whatever.

17 And then we all look at it, and they agree on it,
18 and we -- we implement that manual. But the manual is
19 seen by a lot of leaders before anything is implemented
20 in our district.

21 Q. So you participated in this publication, writing
22 quality IEP?

23 A. I didn't participate in all the meetings, but I
24 had -- I was always given the IEP packet to take to my
25 boss who would take it to her boss to be reviewed and to

1 know that the district was going to put out anything
2 new.

3 We were -- as a department, like no other
4 organization, you could maybe develop a new memo that
5 you wanted for your department, but is -- would it touch
6 the whole district, it needed -- we follow protocol that
7 it makes it all the way up to the superintendent, and --
8 for her approval, before we implement anything.

9 Q. So you participated in part of the publication of
10 writing quality IEPs?

11 A. I -- I participated in the review of the final
12 project.

13 Q. Do you recall the related services section
14 dealing with bus transportation?

15 A. No, I haven't seen it in a while.

16 Q. What policies and procedures does Hillsborough
17 School District have in place to address the related
18 service transportation for students with disabilities?

19 A. We -- we -- at an IEP meeting, they discuss
20 whether the child needs specialized transportation or
21 not, and at that point I said earlier that the form
22 would go to transportation, and John has been known to
23 organize the trainings and the involvement or a team of
24 experts or what needs to be, you know, be part of that.

25 Q. So at the IEP meeting you identify the

1 transportation needs and communicate that to the
2 transportation department?

3 A. I don't, but the team at -- it is a document that
4 goes to the area office, and the area office forwards it
5 to transportation.

6 Q. The document you're referring to, I have it now
7 and I'm going to show it to you in a few minutes.

8 A. Okay.

9 Q. MO19?

10 A. I believe so.

11 Q. Do you know what the term orthopedic impairment
12 means?

13 A. Not the medical term, but I do -- I'm very
14 familiar with orthopedically-impaired children.

15 Q. Well, when a student with an orthopedic
16 impairment requires related-service transportation, what
17 IEP team members are required to attend the IEP meeting
18 the first time the related-service transportation is
19 addressed?

20 A. I've seen it different ways, and it has to do
21 with the school of experts, and it also has to do with
22 the parents, because the parents have the right to
23 invite whoever they want.

24 They look at the child, and if the child is going
25 to need -- if there is orders from a physician that

1 physical -- if there has been a physical therapy
2 evaluation done outside by a physical therapist, a
3 medical physical therapist for a medical agency, if
4 there is an evaluation, they will bring in PT.

5 If they are -- perhaps a child may be missing
6 part of a hand, they may be bringing in an occupational
7 therapist.

8 So it all -- it really is related to that
9 individual child. That's what makes an IEP, it's based
10 on the child's individual needs and the team of experts
11 that child needs.

12 Q. All right. And perhaps I didn't make myself
13 clear, but when a student with an orthopedic impairment
14 requires related-service transportation, I want to know
15 what IEP team members are requested to attend the IEP
16 meeting the first time the related-service
17 transportation issue is addressed?

18 A. I can't tell you who is required, because I don't
19 know what the orthopedic impairment is related to, if
20 it's an arm, a leg, I don't -- you know, it could be a
21 different person.

22 Q. Does an IEP of a student with an orthopedic
23 impairment who utilizes a wheelchair always address the
24 related-service transportation in Hillsborough County
25 Schools?

1 A. If the child requires specialized transportation.

2 Q. Can you give me an example of how transportation
3 would be addressed for an nonambulatory child in a
4 wheelchair? Would it just be through the MO19 form?

5 A. I'm trying to think. The form would go to
6 transportation, and at that point transportation would
7 -- would be able to review the form and put in place
8 what they needed to put in place for the child in the
9 wheelchair --

10 Q. All right.

11 A. -- on the bus.

12 Q. So I'm clear, you've never reviewed Isabella's
13 IEP, so I take it you would not be in a position to say
14 whether or not related-service transportations were
15 properly addressed in connection with her IEPs in 2011?

16 A. Not at this time.

17 Q. Is the responsibility for recommendations for
18 addressing the related-service transportation one that,
19 in your view in Hillsborough County at least in 2011,
20 was left to the transportation department?

21 A. Can you restate that question, please?

22 Q. Sure. What I'm trying to understand is that with
23 a particular student who has special transportation
24 needs, the recommendations that would be made to address
25 those needs, I'm getting the sense from your -- from

1 your responses, would that be something that would be
2 left to the transportation department to generate and
3 implement?

4 MR. GONZALEZ: Object to the form of the
5 question. You can answer.

6 A. To answer that, I'm thinking of all different
7 possible situations. I would have to give you an
8 example.

9 If the paperwork goes to transportation and it
10 says that, you know, a child may need assistance using
11 crutches to get on -- using crutches on the stairs of
12 the bus and may need assistance by an attendant, at that
13 point then that's where transportation would go and make
14 sure there is an attendant on, you know, on the bus.

15 At that point I don't know John's system of what
16 the regulations are for the buses.

17 Q. Okay. I'm going to show you what we marked
18 yesterday in a deposition as Exhibit 5. It includes
19 some documents that I want to bring to your attention,
20 and I've tabbed them --

21 A. Okay.

22 Q. -- so that we can identify them for each other
23 and look at them together. I think there are three that
24 are tabbed.

25 A. Okay.

1 Q. One is an IEP, the last IEP done for Isabella --

2 A. Okay.

3 Q. -- on October 5th, 2011. And the other two that
4 are tabbed are physical therapy notes that were done on
5 August 25th, 2010 and January 10th, 2012.

6 I want to start with the physical therapy note
7 from 2010, please. Let me know when you've had a chance
8 to review that narrative.

9 MR. MURMAN: What's the date of that
10 physical therapy note?

11 THE WITNESS: It's 8/25 of '10.

12 MR. MURMAN: Thank you.

13 BY MR. COTTER:

14 Q. Have you read the note?

15 A. Uh-huh.

16 Q. Would you mind just taking a minute to read it
17 for us into the record?

18 A. Okay. It says, "Consult with ESE specialist.
19 Student has declined an ability. No longer walking
20 campus distances. Uses classroom furniture for support
21 to walk.

22 Pushed in wheelchair on campus. Can't get up
23 from floor without assist. Difficulty holding head up.
24 Instructed ESE specialists in how to assist getting
25 Isabella up from the floor, and they will try to find a

1 beanbag for her lie during listening activities to give
2 her a rest from holding head and self up all day.

3 We'll investigate alternative to PE, and discuss
4 student awareness of changes before more adaptive type
5 setting is offered as alternatives for energy
6 conservation."

7 Q. All right. You would agree with me, would you
8 not, that that description portrays a special needs
9 child with an orthopedic impairment?

10 A. Having difficulty walking, yes.

11 Q. And similarly portrays a special needs child who
12 would be considered medically fragile?

13 A. I don't see a medically fragile, other than she
14 is having a -- that the student has declined --
15 inability, no longer walking on campuses for distance,
16 but it does not -- the orthopedic is here, but the
17 medically fragile, I haven't captured the medically
18 fragile.

19 Q. Okay.

20 A. Because there is no signs of -- it's more
21 mobility.

22 Q. Now, we talked earlier in the deposition about
23 medical diagnoses and your department, your staff, does
24 not engage in medical diagnoses.

25 A. Uh-huh.

1 Q. So when we use the term medically fragile, is
2 that referring to an ESE term of art, and if so, what
3 does it mean?

4 A. A medically fragile student, it may be -- I can't
5 say it's a set term. I know that people are comfortable
6 using that word, and when we speak to parents it's more
7 accepted to be medically fragile. It's a word that is
8 well received by both the user and the receiver.

9 A medically fragile student to me would be
10 students -- we have students that have to have liquid,
11 their protein in liquid as a liquid supplement. They
12 are on IVs. They are on feeding tubes. They -- they
13 can't move at all. They have breathing difficulties.

14 So that is a medically -- a real medical fragile
15 child that, more than likely, an ambulance will come for
16 that child, or a 911 is called for that child, because
17 they are that medically fragile.

18 Q. What I want to understand was medically fragile a
19 term of art, a category that -- that you used, that your
20 staff used to assess students, or is it just a generic
21 word that you say staff, and, perhaps, parents are
22 comfortable using with each other?

23 A. Medically fragile is not an exceptional -- a
24 student with disability. It's not a category. It
25 doesn't -- medically fragile is a term.

1 Q. Okay. But orthopedic impairment is?

2 A. Orthopedic impairment is an eligibility.

3 Q. All right. And so among the concerns that are
4 observed by the author of that document, is difficulty
5 holding head up, correct?

6 A. Yes. Difficulty holding head up.

7 Q. Okay. Let's go to the IEP, which should be the
8 first document tab.

9 Okay. We're going to take a quick little break
10 here. Ma'am I'm being advised that there might be a
11 problem with your necklace and microphone being hooked
12 up with each other.

13 A. Okay. There you go. I'll put in under my
14 jacket. Thank you.

15 Q. Thank you.

16 In particular, I want to look at page 3.

17 A. Okay.

18 Q. And I want to go down to the center of the page
19 and look at the paragraph under independent functioning.
20 Do you have that?

21 A. Yes.

22 Q. Will you take a minute to read that first
23 paragraph, please?

24 A. Yes. Okay.

25 Q. I'm going to ask you to read that into the

1 record.

2 A. "Independent functioning. Bathroom, last year
3 Bella was able to stand, pivot turn and hold onto
4 bathroom railing with one adult assisting.

5 She was able to wipe herself and redress with
6 some assistance.

7 Now Bella is unable to use the restroom
8 independently and requires two adults to assist her.

9 Bella is unable to stand at all due to the left
10 foot turning inward, and no longer has the strength to
11 support her body weight. The right foot has also begun
12 to turn inward.

13 Two adults must lift Bella in order for her to
14 use the toilet. One adult lifts Bella -- Bella's leg
15 while the other lifts her neck, head and upper body.

16 Adults lift Bella out of her chair onto the
17 changing table, remove undergarments, and then lift onto
18 the toilet.

19 Bella is able to hold herself up on the toilet
20 while adults leave the room. Then adults return to wipe
21 her, lift her back onto the changing table, replace
22 clothing and return Bella to her wheelchair. The entire
23 bathroom process takes about 10 to 15 minutes, including
24 travel time to designated restroom.

25 Eating, Bella is now displaying difficulties with

1 feeding herself. It is difficult for her to use
2 utensils, especially the practice where found at school.
3 She require assistance in opening her silverware packet,
4 milk, fruit cups. She is having difficulty lifting food
5 onto her fork -- on the fork to her mouth. She is
6 unable to grasp and lift food with her hands to her
7 mouth, chicken strips.

8 Currently she is bringing her own lunch to
9 school, and due to her motorized wheelchair, there is
10 not a comfortable position for Bella at the lunchroom
11 table.

12 Physical therapy is looking into getting her a
13 food tray. Currently parents report there are no
14 swallowing issues or additional feeding issues at this
15 time.

16 Q. All right. Could you, then, turn to the next
17 page. Let's see, actually, it's page 4 --

18 A. Uh-huh.

19 Q. -- under healthcare and read that paragraph,
20 please.

21 A. Healthcare.

22 Q. Just read it to yourself for a minute, please.

23 A. Okay.

24 Q. Among the information contained in the section on
25 healthcare is the confirmation that Bella has been

1 diagnosed with congenital myopathy, correct?

2 A. Yes.

3 Q. And that teachers have observed Bella's head
4 falling more, correct?

5 A. Yes.

6 Q. And Bella having difficulty picking her head back
7 up by herself, correct?

8 A. Yes.

9 Q. And it's indicated there that Bella's mother has
10 tilted the wheelchair headrest back to assist in -- to
11 assist the staff in keeping Bella's head up, correct?

12 A. Yes.

13 Q. So you've now looked at some of the information
14 in this IEP of October 5th of 2011?

15 A. Uh-huh.

16 Q. Do you still agree Bella is properly assessed
17 with an orthopedic impairment, right?

18 A. Yes.

19 Q. Now would you describe her as medically fragile?

20 A. Um, I don't know if I would call her medically
21 fragile, because she is not on medication, any
22 medication at all.

23 And when I use the term medically fragile, I use
24 it when children are hooked up to food or to machines or
25 taking a series of medicines to keep them alive.

1 Q. So now --

2 A. I mean, that is my definition.

3 Q. Did the -- did Hillsborough County Schools have a
4 -- any kind of criteria to identify a child as medically
5 fragile in this time period, or, again, is this just a
6 term that professionals and families might use to be
7 comfortable in describing a child's condition?

8 A. I don't know if there is a definition for
9 medically fragile. I would -- I -- I would think that,
10 you know, everyone, but I can't say I know for sure, is
11 that medically fragile means that they are being
12 supported to be kept alive somehow.

13 Q. All right. Let's go to the first tab I think we
14 haven't looked at yet. We're going to come back to in
15 that IEP in just a minute.

16 Is the first tab the first page of the IEP?

17 A. Yes, sir.

18 Q. Okay. Then it's probably the second tab that we
19 haven't looked at. You'll see it's another physical
20 therapy note, and it's dated January 2012.

21 A. January 10th?

22 Q. 2012.

23 A. Okay.

24 Q. Would you read to yourself the narrative?

25 A. Okay.

1 Q. Now the -- just go ahead and read that narrative
2 for us into the record.

3 A. "They observed Bella, her power wheelchair
4 returning with classroom from specials. She was
5 operating the power chair response -- reasonably -- or
6 responsibly, but her overall posture was poor.

7 The feet were hanging off of the footplate, and
8 she was slumped in her chair, and the position of her
9 head was flexed.

10 Bella smiled when I told her she was sitting
11 poorly in her chair, and she did not -- she did
12 straighten herself up somewhat.

13 Bella's teacher is concerned with her motivation
14 relating to academics and is looking for solutions. She
15 feels it is partly physical and partly behavioral. Will
16 discuss further with area ART and OT.

17 Q. All right. Now I want to go back to the IEP,
18 please, page 8.

19 The IEP was tabbed with what we had looked at
20 earlier with one of the tabs, and there is a number on
21 the bottom of the page, so you should be able to turn to
22 page 8 there.

23 A. I'm going to give it back to you and see if you
24 can find it.

25 Q. Okay.

1 A. I found up to page 7, and then --

2 Q. This was from Ms. Bergeron's file, so it's
3 possible she didn't have the full IEP in there.

4 I agree with you this stops at page 7. So, I
5 have it with me. I'm going to come over and show it to
6 you, picking up at page 8.

7 Actually, just hold onto that for a minute,
8 because we're going talk about page 7.

9 A. Okay.

10 Q. But here is page 8.

11 A. Okay.

12 Q. Now is it Roman Numeral 15?

13 MR. MURMAN: May I take a look at that?

14 MR. COTTER: Sure.

15 THE WITNESS: Yes.

16 BY MR. COTTER:

17 Q. What Roman Numeral is it there under related
18 service?

19 A. It's XI -- it's 14.

20 Q. 14. Thank you. That is the section of the IEP
21 that deals with the related services discussed in Plan 4
22 at the IEPs; is that right?

23 A. Yes, required.

24 Q. And as a result of this IEP that occurred on
25 October 5th, 2001, specialized transportation was to be

1 arranged for Bella; is that right?

2 A. It's required on this IEP.

3 Q. Okay. And that is the decision that would
4 generate the production of the MO19 form to
5 transportation; is that right?

6 A. Yes.

7 Q. Okay. Thank you. If you can hand that back to
8 me, please.

9 A. Oh, yes.

10 Q. Now if you turn to the previous page, page 7, the
11 last that you have there. Under Roman Numeral 9,
12 support for school personnel in-service, it says:
13 Occupational physical therapy will provide ongoing
14 training to personnel as identified by the school to
15 assist in lifting, posturing, and assistive technology
16 as needed, correct?

17 A. Yes.

18 Q. And that's what the IEP determined to be
19 appropriate in terms of making staff aware about the
20 special needs for Bella regarding lifting, positioning
21 and assistive technology, correct?

22 A. Yes.

23 Q. And you would agree that that staff should
24 include the bus transportation personnel, correct?

25 A. In there?

1 Q. Yes -- no, no, staff includes bus transportation
2 personnel. You would -- you would agree that they would
3 be among the people that would be informed about Bella's
4 positioning, lifting, and assistive technology?

5 A. In that section?

6 Q. In any section. In other words, if a
7 determination had been made that it was necessary to
8 tell the staff who worked with Bella about her lifting,
9 positioning and assistive technology needs, you would
10 expect that that would include the folks that would work
11 with her on the bus?

12 A. Actually, it says the support of school personnel
13 in that section. The MO19 that goes to transportation
14 should indicate the support that -- that's for the bus,
15 you know, for the people on the bus --

16 Q. Yes.

17 A. -- because the bus people don't work at the
18 school.

19 Q. I understand, but they are certainly part of the
20 school system, correct?

21 A. They are part of the school system, but they are
22 not part of the school personnel.

23 Q. Right. But the children are with them in their
24 custody for a certain portion of the day?

25 A. For transportation.

1 Q. Right. And so you're saying the MO19 is the form
2 that would communicate to them whatever Bella's
3 particular needs were, correct?

4 MR. GONZALEZ: Object to the form of the
5 question.

6 A. Yes.

7 BY MR. COTTER:

8 Q. And you would expect the MO19 would communicate
9 the type of information that we've just read, the
10 problem that she has with her head, the problem that she
11 has with her mobility, and all of the other related
12 observations that we've just spoken about for the last
13 few minutes?

14 A. The MO19 would not be that detailed. I believe
15 that at a training that that's where the -- the specific
16 details, but I never attended one of those trainings.

17 I've just heard about another training that took
18 place recently, and -- but -- and how it worked was the
19 people that were involved in an IEP meeting, or John
20 actually called the physical therapy person to come out,
21 and the physical therapy person explained everything
22 that the child was having; some mobility issues with
23 their hand, and they had to grip, and they couldn't baby
24 the child.

25 They had to, you know, put the hand on the

1 gripper for the bus and show the attendant what to do,
2 and they explained why and how and all of those things.
3 Because when you get into documents related to children,
4 there is a fine line between what you can share, even
5 with school personnel, that is not instructional versus
6 what is instructional and what you can verbally explain
7 and teach.

8 So, you know, you go back to a lot of the
9 different regulations that are out there related to, you
10 know, FERPA and all of those things. So, I think they
11 are very cautious.

12 Q. All right. So you would expect the -- the MO19
13 to provide some information about the child's needs, and
14 then if necessary --

15 A. An alert. Uh-huh.

16 Q. An alert. And then you would expect, if
17 necessary, that there might be some direct communication
18 between the bus aide and the physical therapist or the
19 occupational therapist?

20 A. As what I -- yes. I believe that that alert
21 alerts you to make all the phone calls possible. If,
22 you know, I was a receiver, you contact all those
23 involved, or a lead person.

24 Q. So let me go ahead and show you what we've marked
25 yesterday in a deposition as Exhibit 2. And since we

1 only have one exhibit here today, I think we can
2 probably refer to this as Exhibit 2 as well.

3 This is the M019 that Mr. Franklin produced
4 yesterday.

5 A. Uh-huh.

6 Q. Are you familiar with that form?

7 A. I've seen the form.

8 Q. Okay.

9 A. I'm not familiar with this one.

10 Q. Can you tell me where on that form, show me,
11 where on that form there is any information whatsoever
12 communicated to transportation about Bella's particular
13 needs?

14 A. There is one line that is under complete and
15 forward to routing and planning, and it just said, you
16 know, it translates that Sessums, this little girl is
17 assigned to Sessums in the regular education department.

18 It doesn't really classify her, at this point, as
19 an ESE student, just that she is in regular Ed with
20 supports and orthopedic -- orthopedically impaired, and
21 at that point that would be the alert, that word alerts
22 transportation.

23 Q. And my question to you is, where on that form
24 does it say anything about Bella's needs?

25 A. Under -- when you use the label orthopedically

1 impaired, then what I have known John to do, and John
2 can tell you better than I, that word there alerts him
3 that he needs to find out about her needs.

4 Q. Now, that form actually characterizes Bella as a
5 general-Ed student and not a special-Ed student,
6 correct?

7 A. Right.

8 Q. That's wrong, correct?

9 A. I don't know. I've never seen her schedule.

10 Q. Okay. You don't know whether Bella, Isabella,
11 was an ESE student or not?

12 A. I do know that there are orthopedically-impaired
13 students that are taking advanced placement classes that
14 are not considered exceptional student education, they
15 have an IEP for orthopedically impairments only.

16 Q. We just read her IEP, did we not?

17 A. Uh-huh.

18 Q. And you don't know whether she was characterized
19 as an ESE student or not?

20 A. At this time, the parts I read, I know that she
21 is characterized as orthopedically impaired.

22 Q. So to categorize her as a general-Ed student --

23 A. She has an IEP for --

24 Q. -- is incorrect on the form; Isn't that right?

25 A. I don't know if it's incorrect. I don't see her

1 schedule.

2 Q. Can you hand that back to me, please?

3 There is also a place on this form that indicates
4 for medical information, correct?

5 A. Uh-huh.

6 Q. And there is none?

7 A. Nothing.

8 Q. So your testimony is that you would assume that
9 John Franklin would have acted on this and had
10 communication with Isabella's PTs or OTs about what her
11 needs were?

12 A. I don't want to assume that. I know that's the
13 procedure that we have in place --

14 Q. I see.

15 A. -- and that it's been followed.

16 Q. You know --

17 A. You know, in other -- I don't know if it's been
18 followed in this place, but I do know that it has
19 worked.

20 MR. COTTER: I have no further questions for
21 you.

22 THE WITNESS: Thank you.

23 MR. GONZALEZ: May I see the MO19 real
24 quick?

25 CROSS-EXAMINATION

1 BY MR. GONZALEZ:

2 Q. Could you, Ms. Wieland, find the part on -- I
3 think they've been calling it Exhibit Number 2 that
4 refers to general education.

5 A. Yes.

6 Q. Where is it?

7 A. It's under the complete and forward to routing
8 and planning, Sessums regular-Ed with supports and
9 orthopedically impaired.

10 Q. And that's -- that's by a heading that is called
11 assigned program?

12 A. Yes.

13 Q. And let me refer you to page 7 of the IEP for
14 Isabella Herrera, and, in fact, is she not assigned to
15 regular education, for education program?

16 A. Yes, sir.

17 Q. And so notwithstanding that the questions that
18 you've just had, that is, in fact, where
19 Isabella Herrera was assigned was to a general-Ed
20 program, correct?

21 A. Yes.

22 Q. With an IEP, because of her orthopedic
23 impairment?

24 A. That's it.

25 Q. Now, you were asked a question about when you

1 found out about the death of Isabella Herrera, and I
2 believe you told us you found out when you were watching
3 the news.

4 A. Yes.

5 Q. Now, am I correct that the news you were watching
6 was by the new of the press conference by the attorneys
7 who were representing the Herreras?

8 A. No, it was --

9 Q. About the lawsuit?

10 A. It was the broadcast from the news channel.

11 Q. Okay. And do you know what occasion that
12 broadcast, what caused it to be aired?

13 A. No.

14 Q. Do you not remember that it was caused by the
15 press conference that was held by the attorneys for the
16 Herreras?

17 MR. COTTER: Object to the form; leading.

18 A. No.

19 BY MR. GONZALEZ:

20 Q. And before that TV broadcast, whenever it was,
21 had you ever heard of any incident relating to
22 Isabella Herrera?

23 A. No.

24 Q. Before that broadcast, whenever it occurred, and
25 whenever it was motivated by whoever produced it, had

1 you ever heard anything that indicated that there had
2 been something done incorrectly, or not done, with
3 respect to Isabella Herrera?

4 A. No.

5 Q. Education?

6 A. No.

7 Q. Now, you also were asked questions about the MO19
8 and the needs of Isabella Herrera.

9 Are you aware of any need relating to the
10 transportation of Isabella Herrera that was not provided
11 for her?

12 MR. COTTER: Object to the form; leading.

13 A. No.

14 BY MR. GONZALEZ:

15 Q. And are you aware of Ms. Herrera's parents in the
16 IP team, or Ms. Herrera's doctor ever bringing any
17 information to an IEP, or otherwise, to the school board
18 concerning any need that Ms. Herrera had --

19 MR. COTTER: Object to the form; leading.

20 A. No.

21 Q. -- relating to her transportation?

22 A. No. I don't remember ever talking to her about
23 any of that, either.

24 Q. Okay. Now, the last thing I want to ask you
25 about. You were asked about some laws, and -- some old

1 laws, actually.

2 A. They're very old.

3 Q. I want to ask you something about the -- you were
4 asked about the Rehabilitation Act of 1973, and I
5 believe you said you have not heard of that?

6 A. Uh-huh.

7 Q. How about Section 504?

8 A. Oh, yes.

9 Q. So if you were told that Section 504 is what the
10 educational designation is of the Rehabilitation Act of
11 1973, you certainly would recognize 504, would you not?

12 A. Oh, yes.

13 MR. COTTER: Object to form; leading --

14 Q. And --

15 MR. COTTER: Excuse me for minute, ma'am.

16 I'm going to have objections, so I'll ask you to
17 wait until I make my objection, please. Thank
18 you.

19 THE WITNESS: Oh, okay.

20 BY MR. GONZALEZ:

21 Q. And in Section 504, that is not anything to do
22 with exceptional-Ed, is it, in terms of the organization
23 of the school district?

24 MR. COTTER: Object to the form; leading.

25 A. No. 504 is under the American Disabilities Act.

1 BY MR. GONZALEZ:

2 Q. The 504 --

3 A. It is a general-Ed, regular-Ed, as most people
4 call it for regular-Ed students that do not have an
5 individual educational plan or fall under the IDA law.

6 Q. And, therefore, would not be part of the
7 exceptional program in the organization of the school
8 district?

9 MR. COTTER: Object to the form; leading.

10 BY MR. GONZALEZ:

11 Q. I'm sorry?

12 A. No, sir.

13 Q. That's correct?

14 A. That's correct.

15 Q. You were also asked about the Education of the
16 Handicapped Act, and I believe you said you hadn't heard
17 about that.

18 If you were told that the Education of the
19 Handicapped Act was what was later renamed the IBEA, you
20 would be familiar with that, wouldn't you?

21 MR. COTTER: Object to the form; leading.

22 A. Yes.

23 BY MR. GONZALEZ:

24 Q. And you were also asked about the education for
25 all-- I'm sorry, the Handicapped Children's Protection

1 Act of 1986, and I believe you said that you weren't
2 aware of that either.

3 And if I told you that all that law does is
4 provide for attorneys' fees in certain cases, that
5 wouldn't be anything to -- any responsibility that you
6 had in respect to exceptional-Ed, would it?

7 MR. COTTER: Object to the form; lead.

8 A. No.

9 BY MR. GONZALEZ:

10 Q. Now, from the time that you found out about
11 Isabella Herrera and her death, were you also aware of,
12 at that point, the school district being represented by
13 counsel --

14 MR. COTTER: Object to the form; leading.

15 Q. -- in the context of the lawsuit?

16 A. No.

17 MR. GONZALEZ: Thank you. Nothing further.

18 MR. COTTER: That's all. Thank you.

19 MR. GONZALEZ: Thank you.

20 COURT REPORTER: Are you ordering this, sir?

21 MR. COTTER: Yes, please.

22 COURT REPORTER: Copy? Do you want her to
23 read?

24 MR. GONZALEZ: Yes, ma'am.

25 (The deposition concluded at 11:05 a.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Christine Risher, RPR, Notary Public, State of
Florida, do hereby certify that JOYCE WIELAND personally
appeared before me and was duly sworn.

WITNESS my hand and official seal this 1st day of
April, 2013.

Christine Risher

Christine Risher, RPR
Notary Public - State of Florida
Commission No: EE 839278
Commission Expires: December 26, 2016

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Christine Risher, RPR and Notary Public, do hereby
certify that I was authorized to and did
stenographically report the foregoing deposition of
JOYCE WIELAND; that the review of the transcript was
requested; and that the foregoing Pages 4 through 100,
inclusive, are a true and complete record of my
stenographic notes.

I further certify that I am not a relative or
employee of any of the parties, nor am I a relative or
counsel connected with the parties' attorneys or counsel
connected with the action, nor am I financially
interested in the outcome of the action.

DATED this 1st day of April, 2013.

Christine Risher

Christine Risher, RPR
Notary Public - State of Florida

R&S - April 1, 2013

THOMAS M. GONZALEZ, ESQUIRE
Thompson, Sizemore, Gonzalez & Hearing, P.A.
201 North Franklin Street
Suite 1600
Tampa, Florida 33602

In re: March 27, 2013 Deposition of JOYCE WIELAND
Lisa Herrera v. Hillsborough County School Board

Dear Mr. Gonzalez:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for review. Please contact our office at (800)275-7991 to make arrangements for read and sign or sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Federal Rules; however, there is no Florida Statute to this regard.

The original of this transcript has been forward to the ordering party and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely,

Christine Risher, RPR, Court Reporter
Orange Legal

Cc: [Courtesy copy all ordering parties]

Waiver:

I, _____, hereby waive the reading & signing of my deposition transcript.

Deponent Signature

Date

*Federal Civil Procedure Rule 30(3)/Florida Civil Procedure Rule 1.310(e)

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