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1 ADJUDICATOR:

2 Q. Good morning everyone and welcome here.

3 This is in the matter of the *Human Rights*
4 *Act (2010)* and a complaint filed June 21,
5 2017 by Kimberly and Todd Churchill on
6 behalf of their son, Carter Churchill,
7 against the Newfoundland and Labrador
8 English School District.

9 This hearing is a part of a larger
10 process and an inquiry into that Human
11 Rights complaint, the allegations of
12 discrimination, as well as the responses to
13 those allegations.

14 I've been asked to remind everyone in
15 the room and those who are watching on the
16 live stream to please be respectful to the
17 parties, the lawyers, witnesses and staff.
18 Do not make comments or engage in any form
19 of side discussion in the gallery while the
20 hearing is in session. If possible, do not
21 leave the room once the hearing is in
22 session and take the opportunity to leave
23 the room during breaks in the proceedings.

24 Please ensure that all cellphones are
25 silent or turned off. Do not take any

1 photos, videos or audio recordings while the
2 hearing is in session. This rule equally
3 applies to those who are watching the
4 hearing via the live stream and includes
5 recording and screen capture. Tweeting,
6 texting and other forms of live text based
7 communications are permitted when the
8 hearing is in session, but must be done in a
9 discreet manner that does not interfere with
10 the proceedings.

11 Before we go on to the cross-
12 examination of witnesses on their affidavits
13 that have already been filed, I understand
14 that the Commission will be giving an
15 opening statement. So, I'd ask Ms. Carey
16 Majid to begin that statement.

17 MS. MAJID:

18 Q. Thank you very much and good morning
19 everybody. Again, my name is Carey Majid.
20 I'm the executive director at the
21 Newfoundland and Labrador Human Rights
22 Commission. I'd like to thank the parties
23 and the adjudicator, Mr. Gallant, for
24 allowing me this opportunity to make a short
25 statement. Really, the purpose of this is

1 to fulfill, in part, our public education
2 mandate. It's a bit unusual, but this is a
3 new hearing, type of hearing for us, so I'm
4 going to go with the flow.

5 Really I'm going to talk about our role
6 at this hearing. We're going to - I'm going
7 to review the legal test just for all the
8 people watching in person and on the live
9 stream and raise just a very few public
10 interest issues that we at the Commission
11 consider to be important.

12 So, the Human Rights Commission
13 complaints process, as in any legal process,
14 is unfortunately long and complicated. This
15 complaint has worked its way through our
16 complaint process as set out in the *Human*
17 *Rights Act*. At this stage, when a hearing
18 is held, our job at the Commission is to
19 have carriage of the complaint and represent
20 the public interest in preventing
21 discrimination or harassment.

22 The Human Rights Commission is an
23 independent party and does not represent
24 either the complainant or the respondent.
25 Having carriage of the complaint does not

1 mean however that the Commission will appear
2 and present evidence at every hearing. The
3 Commission, like any other party to the
4 hearing, can choose its level of
5 participation at that hearing.

6 In this case, we will not be presenting
7 evidence or questioning witnesses, though we
8 have participated in the pre-hearing
9 process, filed a legal brief and are
10 responsible for running this hearing. In
11 fact, our articling student, Hillary Winter,
12 who is here, has been instrumental in
13 ensuring an as inclusive and accessible
14 hearing as possible. The live streaming is
15 a first for us, so I'm happy that it could
16 get organized in enough time to allow for
17 more public access.

18 It is certainly clear to us that this -
19 that there is a lot of interest in this case
20 and its decision. So, I'm just going to
21 briefly review the case law as far as how to
22 prove discrimination and the duty to
23 accommodate, again just for those watching
24 live.

25 So, one of the most relevant cases for

1 this hearing is *Moore and British Columbia*,
2 a 2012 Supreme Court of Canada case. In
3 order to prove discrimination, the
4 Complaints, in this case the Churchills on
5 behalf of their son, Carter, must show that
6 he has a protected personal characteristic
7 or we call it a prohibited ground that is
8 protected from discrimination. I think that
9 Carter has disabilities is not disputed in
10 this case. That he has experienced an
11 adverse impact. In education cases, the
12 focus is on whether a student was denied
13 meaningful access to education generally and
14 the protected characteristic was a factor in
15 the adverse impact.

16 If they can meet all three parts of
17 this legal test, they have proven what is
18 often referred to as a prima facia case of
19 discrimination. Prima facia simply means
20 that there is enough evidence to establish a
21 fact, unless it is disproved or rebutted.
22 The threshold for a prima facia case of
23 discrimination is not high because
24 discrimination is often subtle and not
25 overtly obvious.

1 If the case is met, the burden shifts
2 to the Newfoundland and Labrador English
3 School District, or the Respondent, to
4 justify the conduct of practice which led to
5 the adverse impact. In other words, that
6 there was a credible, rational or good faith
7 reason that demonstrates, on a balance of
8 probabilities, that its actions were not
9 discriminatory.

10 Part of this question looks at whether
11 Carter, in this case, was accommodated to
12 the point of undue hardship. Questions such
13 as: were alternative approaches or
14 possibilities investigated; were creative
15 solutions proposed; did the parties work
16 together to find solutions, for example, are
17 all part of this equation.

18 An accommodation would be considered
19 reasonable if it were resolved in equal
20 opportunity to attain the same level of
21 performance or to enjoy the same level of
22 benefits and privileges experienced by
23 others or it is proposed or adopted to
24 achieve opportunity and meets the
25 individual's needs related to their

1 protected personal characteristic.

2 The duty to accommodate is only
3 satisfied if the barrier is removed and the
4 impacted individual had meaningful access or
5 the accommodation process has reached the
6 point of causing undue hardship on the
7 service provider, in this case the
8 Respondent. The service provider must show
9 that it could not have done anything else
10 reasonable or practical to avoid the adverse
11 impact on the person. In most cases, undue
12 hardship is proven by showing quantifiable
13 cost, source of funding or health and safety
14 requirements.

15 So, without commenting on the specifics
16 of this case, it's our position at the Human
17 Rights Commission that the most reasonable
18 accommodation is one that promotes full
19 inclusion and participation, addresses the
20 systemic barriers that exist and provides
21 meaningful access for all students.

22 The decision in this case is important
23 because it could help define what inclusive,
24 meaningful access to education really is in
25 this province and might provide guidance on

1 what the - when the point of undue hardship
2 is met.

3 There are many barriers inherent in the
4 system that we as a society have created,
5 whether it be the delivery of health care,
6 justice or educational services. The
7 concept of the duty to accommodate is used
8 as a way for people to gain access to these
9 systems without really addressing the
10 underlying barriers that exist.

11 Accommodations are necessary because these
12 systems were built without consideration of
13 the needs of people, in this case people
14 with disabilities, in the first place. The
15 system is the barrier, not the disability.

16 It is the Commission's position that
17 the barriers must be addressed and the
18 systems change so that meaningful access
19 exists as a priority and not just as an
20 afterthought. Until this reality exists
21 however, the accommodation process needs to
22 be re-envisioned. We have no doubt that
23 most are doing their best, but it is a long
24 stressful, insecure year-to-year process and
25 adversarial in nature, and again, not

1 talking about the specifics of this case,
2 but this is something that we, at the
3 Commission, hear pretty much in every case
4 that we hear. It also places a heavy burden
5 on those seeking the accommodation.

6 It is clear to me that a Human Rights
7 hearing is not always the best way to
8 resolve these conflicts, particularly for
9 education cases. But unfortunately, it is
10 what exists. I often wonder if the outcome
11 for any kids or any person seeking an
12 accommodation could be different if we had a
13 more holistic relationship based on
14 restorative way to resolve conflict.

15 So, just to end from a quote that I
16 find particularly good and often quoted from
17 the *Moore* decision, "the purpose of the
18 school system, as stated in this case from
19 the *BC School Act*, is to enable all learners
20 to develop their individual potential and to
21 acquire the knowledge, skills and attitudes
22 needed to contribute to a healthy,
23 democratic and pluralistic society and a
24 prosperous and sustainable economy".

25 Though to me it's not always about the

1 economy, I believe that there is a higher
2 good here. But Justice Abella rightly said
3 that "this declaration of purpose is an
4 acknowledgement by the government that the
5 reason all children are entitled to an
6 education is because a healthy democracy and
7 economy require their educated
8 contribution".

9 And this is the quote that gets a lot
10 of attention: "adequate inclusive education
11 therefore is not a dispensable luxury. It
12 is a ramp that provides access to our
13 commitment to education made to all
14 children. Truly inclusive education must be
15 designed with input from all stakeholders
16 and must be properly supported and
17 financed."

18 We must make this commitment not only
19 for our own children, but for all children
20 in the Province of Newfoundland and
21 Labrador. So again, thank you for allowing
22 me these few moments and with that, I will
23 end. Thank you.

24 ADJUDICATOR:

25 Q. Thank you very much. So, as I was getting

1 started, I forgot or overlooked the
2 introductions. So, I'll simply introduce
3 myself. I'm Brodie Gallant. I'm the
4 adjudicator assigned to this complaint.
5 I'll ask Mr. Rees to introduce the
6 complainant and those who are with him at
7 counsel table.

8 MR. REES:

9 Q. Good morning. My name is Kyle Rees. I'm
10 the lawyer for Carter Churchill and his
11 parents. Seated to my right are Todd
12 Churchill and Kim Churchill, Carter's
13 parents, and assisting me on this file,
14 seated to my left, is articling student at
15 our office, Raylene Mackey.

16 ADJUDICATOR:

17 Q. And Mr. Penney for the District.

18 MR. PENNEY:

19 Q. Good morning, Mr. Gallant. My name is Steve
20 Penney. With me as my co-counsel is Sarah
21 Byrne. We're counsel for the NLESD. Also
22 here is Bernadette Cole Gendron, who is
23 sitting behind me. She is in-house counsel
24 with the District.

25 ADJUDICATOR:

1 Q. And it's my understanding that the parties
2 are also going to be making opening
3 statements. So, Mr. Rees.

4 MR. REES:

5 Q. Thank you. Good morning. Adjudicator, you
6 have our written submissions, so I'll be
7 brief here in my opening statement. It just
8 so happened while I was having my morning
9 coffee this morning, I came across a quote
10 from a deaf actress who said "I'm not
11 disabled. I live and work in a world that
12 disables me" and I thought that that
13 reflects very clearly what's at issue here
14 in the case of Carter Churchill. Carter
15 Churchill attends school in a school system
16 that disables him.

17 I've been the lawyer for the Churchills
18 for the last four years for a complaint that
19 has been filed for five years. This is a
20 case about an 11-year-old boy, Carter
21 Churchill, who is deprived of language while
22 he was in the NL school system.

23 When Carter entered kindergarten at
24 Beachy Cove Elementary in 2016, it became
25 apparent to Todd and Kim that the NL English

1 School District would not provide a learning
2 environment for Carter where he could learn
3 and learn in his native language of ASL.
4 That's his first language. So, they filed a
5 Human Rights complaint in 2017 at the
6 conclusion of the kindergarten year to try
7 to get Carter what he should have had in
8 kindergarten, to try to get that for him in
9 grade one.

10 We're now here five years later with
11 Carter going to grade six and the School
12 District still hasn't admitted that its done
13 anything wrong. The School District still
14 will not admit that it discriminated against
15 Carter and in fact, it denies discriminating
16 against Carter Churchill, even though, as
17 you've probably seen in the report and will
18 hear later in evidence, their own expert
19 says that at least, you know, until grade
20 four, Carter's school programming was
21 inadequate.

22 The Churchills realized pretty quickly
23 that it would only be through persistent and
24 public advocacy that they'd have any chance
25 of getting a quality education for their

1 child and it's thanks to those efforts that
2 Carter is now one of seven students in the
3 ASL immersive classroom at East Point
4 Elementary.

5 But let's not lose sight of this. Even
6 after establishing that program, and we
7 would say tacitly acknowledging that it was
8 failing deaf children prior to, the District
9 refuses to commit to offering that
10 programming in the future and refuses to
11 commit to the required level of
12 qualifications for the individuals who
13 provide that program.

14 You've seen affidavits from District
15 administrators, and you're going to hear
16 from them more later, which sort of
17 characterize the failings as being, you
18 know, unfortunate but unavoidable. You
19 know, that no one could have known that
20 Carter needed these things. That seems to
21 be the District's case. No one seemed to
22 have known that deaf students would have
23 required something like an ASL immersive
24 classroom staffed by folks with ASL
25 competency.

1 But you're going to see, in the
2 evidence that gets provided that the
3 province's best experts in deaf education,
4 the teachers who are on the ground dealing
5 with these deaf children, who are experts in
6 the needs of these deaf children, had been
7 advocating for a change to deaf education
8 since 2011. They did it in a very formal
9 way in 2017 with a satellite classroom
10 proposal, which they had to make again in
11 2018 and again in 2019 because they weren't
12 being listened to. These are people who you
13 will hear their evidence that they were
14 ringing the alarm bells that Carter and
15 children like him were being left behind,
16 and the District did nothing.

17 So, thanks to the complaint that was
18 filed, the District has finally been
19 compelled to do something. In fact, they
20 were compelled to do a bunch of small
21 somethings over the course of several years,
22 small steps towards the requisite
23 accommodation, and all this time over the
24 course of these five years, these small
25 steps, all the while this small child was

1 losing his ability to learn his language.
2 He's eating lunch by himself. He's unable
3 to communicate with his classmates, sits
4 alone, unable to speak with anybody.

5 So, we're here because we need you, as
6 the adjudicator empowered as you are through
7 the *Human Rights Act (2010)*, to compel the
8 District to guarantee an educational program
9 for Carter that will meet the bare minimum
10 threshold needed to protect this child's
11 human rights.

12 And we need this ruling to denounce the
13 adverse and discriminatory programing that
14 Carter endured for years in the name of so-
15 called inclusion -- you're going to hear a
16 lot about inclusion over the course of this
17 hearing - to ensure that other children
18 aren't reliant on their parents to fight for
19 years and to spend many thousands of dollars
20 to achieve an equitable education for their
21 child.

22 So, that's what this case is about. We
23 thank the adjudicator and the parties and
24 the Human Rights Commission and all those
25 who are here assisting us today for their

1 commitment to this process, this important
2 process, and we look forward to the
3 proceeding. Thank you.

4 ADJUDICATOR:

5 Q. Thank you, Mr. Rees. Mr. Penney.

6 MR. PENNEY:

7 Q. Thank you. And for the interpreters, was
8 that slow enough? Thank you.

9 I'm not going to suggest to this Board
10 of Inquiry that this case is
11 straightforward. The legal backdrop is
12 complicated. The factual backdrop is
13 complicated and the educational backdrop is
14 complicated, particularly for children with
15 multiple exceptionalities like Carter. As
16 our expert points out, deaf education is
17 controversial and inspires passionate
18 debates.

19 I am also not going to suggest that the
20 Churchills have any motivation other than
21 the love of their son. Their advocacy and
22 persistence are laudable and to be
23 respected.

24 I am going to suggest, and the evidence
25 will show, that the teachers and other

1 professionals involved are highly trained
2 and skilled, passionate and did their very
3 best for Carter.

4 All of that being said, the District's
5 position is that it did not discriminate
6 against Carter.

7 While there is a lot of publicity about
8 this case, I would urge this tribunal to
9 properly consider and apply the appropriate
10 legal framework as has been outlined by the
11 Commission's counsel.

12 All of the case law I mention is in the
13 District's brief, so I will not provide
14 detailed paragraph references or quotes, but
15 I will mention some of the salient legal
16 principles to bear in mind as this inquiry
17 proceeds.

18 Firstly, the Board of Inquiry needs to
19 be mindful of the direction in *Moore* that
20 Human Rights Tribunals should not expand
21 their inquiry beyond the scope of the
22 particular complaint. This tribunal is not
23 a royal commission into deaf education in
24 the province or into the closure of the
25 School for the Deaf in 2010. It is about

1 the educational services provided to Carter.
2 And I would remind this Board of Inquiry
3 that this principle is clearly reflected in
4 its February 4th, 2022 decision striking the
5 complaint as against the Provincial
6 Government.

7 Secondly, the burdens (sic.) bear the
8 burden to prove prima facie discrimination,
9 namely, and this articulation of the test
10 comes directly from *Moore*, whether Carter
11 was denied meaningful access to the general
12 education available to the public in this
13 province.

14 And there are other helpful principles
15 that one can glean from the case law. The
16 *Dufferin-Peel* case that we talk about
17 extensively in our brief makes a couple of
18 important points. One, the analysis is not
19 whether a student achieved a specific result
20 and two, the assessment requires looking at
21 the successes and challenges in relative
22 terms and when dealing with a child with
23 exceptionalities, boards of inquiry are
24 urged to look at the range of special
25 education goals set by the school and the

1 parents.

2 Moore also notes that educational
3 policies are aspirational in nature and that
4 there needs to be a margin of deference to
5 administrators and teachers in implementing
6 those policies. And we also make the point
7 that education is iterative. That's why
8 education plans and ISSP's are continually
9 adjusted. Sometimes you try things and they
10 do not work or there are ways to improve.

11 Bearing those principles in mind, the
12 District does not accept that Carter was
13 denied meaningful access to education.
14 Ultimately, for each year that Carter has
15 been in school, a specialized plan was
16 prepared for Carter to determine the
17 programming and supports for the year which
18 was agreed upon by a team of professionals
19 and the complainants and then it was
20 operationalized.

21 For kindergarten, in accordance with an
22 ISSP, Carter was provided part-time supports
23 by a student assistant, instructional
24 resource teacher, speech language
25 pathologist and a DHH itinerant, among

1 others.

2 For grade one, Carter was provided
3 part-time supports by a deaf student
4 assistant and a DHH itinerant who was later,
5 by November of that year, assigned to Carter
6 on a full-time basis.

7 For grade two, in accordance with an
8 ISSP, Carter was provided full-time support
9 from a DHH itinerant teacher and part-time
10 support by a deaf student assistant, who was
11 later that year assigned to Carter on a
12 full-time basis.

13 In grade three, in accordance with an
14 ISSP, Carter was provided full-time supports
15 from a DHH itinerant teacher and a deaf
16 student assistant.

17 In grade four, Carter was enrolled in
18 the newly established DHH classroom and was
19 provided support by two co-teachers who are
20 DHH itinerant teachers, three full-time
21 student assistants who were deaf and native
22 signers, as well as part-time support from
23 an audio-verbal therapist, who is also a
24 trained speech language pathologist.

25 And in grade five, Carter remained

1 enrolled in the DHH classroom and was
2 provided support by two co-teachers who were
3 DHH itinerants, three full-time student
4 assistants who were deaf and native signers,
5 two part-time educational interpreters, as
6 well as part-time support from an audio-
7 verbal therapist who is also a trained
8 speech language pathologist.

9 These individualized education plans
10 were prepared in order to provide Carter
11 with meaningful access to education and
12 while the supports and programming may not
13 have been perfect, reasonableness not
14 perfection is the standard.

15 Further, while there are instances when
16 the complainants sought changes or increases
17 in support, the complainants do not have a
18 right to dictate the specific programming
19 and supports provided to Carter, but only to
20 have a right to understand the supports
21 available and to be involved and engaged in
22 the process, which is precisely what has
23 been happening while Carter has been in
24 school.

25 And then onto the third legal aspect,

1 and that's if prima facie discrimination is
2 proven, our position is that Carter was
3 reasonably accommodated by the District to
4 the level of undue hardship. Ms. Majid
5 talked about that standard, but I have a few
6 more comments.

7 As is made clear in a seminal Supreme
8 Court of Canada case, *Renaud*, accommodation
9 is a collaborative process and those seeking
10 accommodation are to be involved. Again,
11 the standard is not perfection. You're not
12 entitled to a perfect accommodation. And at
13 least one of the cases that we talk about in
14 our brief has commented favourably on the
15 import of individualized education plans in
16 this process in demonstrating that the duty
17 to accommodate has been met.

18 When we apply these principles to this
19 case, the standard has been met and I
20 already touched on the extensive IEP's and
21 ISSP's that were prepared to set up the
22 programming for Carter in grades
23 kindergarten to grade three. Issues were
24 raised with the facility of ASL and the
25 student assistants and the level of teaching

1 support in kindergarten. That was improved
2 upon in grade one by assigning a deaf
3 student assistant and a DHH itinerant
4 teacher, initially part-time and then when
5 further accommodation was sought, a full-
6 time student assistant - the creative
7 solution was to assign the DHH itinerant
8 teacher full time by November of that school
9 year. This is a level of support not
10 provided to any other child in the District.

11 In the summer after grade one, home
12 tutoring support was sought and that was
13 provided. Further exposure to native ASL
14 signers was sought in the 2019 ISSP and that
15 was provided. Carter's deaf student
16 assistant was assigned full time by the end
17 of grade two. In June 2019, home tutoring
18 support was sought and provided for in July
19 and August of that summer.

20 In 2019 and 2020, the year of the first
21 and most lengthy and difficult Covid
22 lockdowns, Carter received individualized
23 support from his grade three itinerant
24 teacher at the request of Ms. Churchill,
25 including for a period beyond the at-home

1 teaching period. And again, tutoring was
2 sought and provided for the summer of July
3 and August of 2020.

4 Put simply, the District has put
5 extensive supports in place and responded to
6 the Churchills' requests for accommodation.
7 Carter was not denied meaningful access to
8 education and in any event, appropriate
9 attempts at accommodation were made. Thank
10 you.

11 ADJUDICATOR:

12 Q. Thank you for that, Mr. Penney, and I
13 understand that the first witness to be
14 cross-examined on their affidavit that was
15 previously filed is going to be Kimberly
16 Churchill. Is that correct?

17 MR. PENNEY:

18 Q. Correct.

19 ADJUDICATOR:

20 Q. Ms. Churchill. Okay, we'll have the witness
21 sworn or affirmed. Would you prefer to be
22 swear an oath on a Bible or affirmation?

23 A. Bible.

24 Q. Bible, okay.

25 MS. KIMBERLY ANN CHURCHILL, SWORN, CROSS-EXAMINATION

1 BY MR. STEPHEN PENNEY

2 REPORTER:

3 Q. And for the record, could you state your
4 complete name please?

5 A. It's Kimberly Ann Churchill.

6 Q. And with an E?

7 A. No, L-Y.

8 Q. Thank you very much.

9 ADJUDICATOR:

10 Q. Mr. Penney.

11 MR. PENNEY:

12 Q. Good morning, Ms. Churchill. We met in
13 person - the AV people, can I sit over here?
14 The camera's kind of in the way. Okay, we
15 can see each other better now. Thank you.

16 I'm going to ask you some questions on
17 your affidavit and some of the documents.
18 If you do not understand any of my
19 questions, please ask me to repeat them or
20 ask them another way. I sometimes speak a
21 little quickly, so I'll try very hard not to
22 do that. I'm going to refer some documents
23 to you, so please take what time you need to
24 review those documents and be comfortable
25 with the contents.

1 I appreciate that you may need to take
2 some breaks. So, if you do, please let me
3 know and we'll take a break and we'll take
4 our time. I understand completely that this
5 is very difficult and emotional and I'm not
6 trying to upset you or anything like that,
7 but do understand, I do have to ask some
8 questions as part of the process.

9 I want to ask some questions about the
10 various supports and requests made of the
11 School District and provided to your son,
12 okay, and the first question I have is about
13 Tab 5 of your affidavit. Do you have that
14 in front of you?

15 A. Um-hm, yeah.

16 Q. And this is the individual support services
17 plan, commonly known as an ISSP and we can
18 refer to it as that, for 2013. So, this was
19 when Carter was two years old, I believe.

20 A. Um-hm.

21 Q. And there's a variety of these ISSP's that
22 we will refer to throughout. And you would
23 agree with me that the ISSP is a document
24 which contains input from a variety of
25 professionals and the parents and where they

1 discuss and document a plan for outlining
2 the various services a child with
3 exceptionalities will receive?

4 A. Right, yes.

5 Q. Okay. And when I look at it, the ISSP
6 manager is someone Heather Fogwill?

7 A. Yes.

8 Q. Who is a developmental behavioural
9 psychologist?

10 A. Right.

11 Q. Okay. And when I look at the people
12 involved, she's mentioned, somebody Rhonda
13 Noseworthy, Susan Lawlor, an audiologist,
14 Katie Gale, a speech pathologist. I won't
15 go through all of them. You and your
16 husband are listed there. Correct, yeah?

17 A. Yes.

18 Q. And Cathy Lawlor, itinerant teacher for the
19 deaf?

20 A. Um-hm, yes.

21 Q. Okay. And so, Cathy Lawlor, as I understand
22 it, was a DHH itinerant teacher with the
23 District who, even though she was with the
24 School District, provided some support in
25 the pre-kindergarten years to Carter?

- 1 A. Yes.
- 2 Q. Okay. And she is someone you also hired
3 subsequently to provide private home
4 tutoring to Carter?
- 5 A. Yes.
- 6 Q. I believe in the summer of 2018 and the
7 summer of 2019?
- 8 A. Um-hm.
- 9 Q. Okay, thank you. And when I go through this
10 ISSP, there's no mention of ASL in that
11 document, and feel free to review it if you
12 wish, but I couldn't find it.
- 13 A. Katie Gale, who is the speech language
14 pathologist from the Janeway Hospital, under
15 her notes, she talks about how he's
16 producing the sign for more.
- 17 Q. I was going to ask that question, yeah.
- 18 A. Yeah.
- 19 Q. Yes, that was the one thing I saw was "to
20 continue to produce more sign -
21 A. Yeah.
- 22 Q. - with hand over hand assistance". Yes, I
23 did notice that.
- 24 A. Also on her page, she talks about him making
25 consistently eye contact, which can be

1 considered a part of sign language.

2 Q. Thank you. Okay. The next document I
3 wanted to ask you some questions about is
4 the 2016 ISSP and the best place for that is
5 at Tab 4A of the Supplementary - the First
6 Supplementary Documents of the Department.
7 That's in one of the big white books, Ms.
8 Churchill.

9 A. Sorry, which one?

10 Q. Tab 4, First Supplementary -

11 A. This one?

12 Q. That one I think, yeah, and it's Tab 4A.

13 A. Okay.

14 Q. Okay. So, you're familiar with this
15 document?

16 A. Yes.

17 Q. Okay. The copy is not great so if we need
18 to get a different copy, we can do that if
19 you have any questions. Do you need to take
20 time to have a read through it or review it?

21 A. Depending on your questions.

22 Q. Okay. So, now if I look at the ISSP
23 manager, it's a little difficult to read but
24 I understand that it's Annalise Ellis, who
25 is a speech language pathologist, and then

- 1 you're there as well?
- 2 A. Yes.
- 3 Q. Okay. And similar, there's a variety of
- 4 professionals listed there on that first
- 5 page. You and your husband are listed
- 6 there.
- 7 A. Yes.
- 8 Q. Cathy Lawlor, who is the DHH itinerant
- 9 teacher who you'd been working with before
- 10 and subsequent?
- 11 A. Yes.
- 12 Q. There was - it looked like Margie Spurrell,
- 13 Kid Kampas, that was a - Carter went to a
- 14 conventional preschool?
- 15 A. Yes.
- 16 Q. Okay. And this was the ISSP that was
- 17 ultimately followed in kindergarten,
- 18 correct?
- 19 A. Yes. There was another ISSP though in
- 20 November.
- 21 Q. I think it's an IEP, and we can get into
- 22 that.
- 23 A. Well, it was an ISSP.
- 24 Q. A meeting with the team you mean?
- 25 A. Pardon me? In November?

1 Q. Yeah.

2 A. November 28th, yeah. It was an ISSP. It

3 was.

4 Q. Okay. We'll talk about - I'll get to that

5 document.

6 A. Okay, sure.

7 Q. So, in paragraph 39 of your affidavit, and

8 we can pull it up if you wish -

9 A. Paragraph 39?

10 Q. Yes.

11 A. Okay.

12 Q. So, you mention there that Vikki Duffenais,

13 who was an instructional resource teacher at

14 Beachy Cove, you witnessed had some level of

15 ASL?

16 A. Yeah.

17 Q. Okay, thank you. Carter was also receiving

18 services from Tina Halleran, who is a DHH

19 itinerant teacher, correct?

20 A. Yes.

21 Q. And I understand, and we probably won't

22 agree on this, she says it was three times

23 per seven day cycle. You and your husband

24 dispute that. I understand that dispute,

25 but I think we agree, and her evidence is

1 that she did use ASL with Carter during that
2 year.

3 A. That's debatable as well.

4 Q. Okay.

5 A. Because when you look at her note sessions
6 that she wrote, there's a complete
7 distinction made between what is literacy
8 and what is language and she wasn't teaching
9 American Sign Language because all of her
10 notes dictate literacy. It's all vocab.
11 That's not language.

12 Q. And we can wait to hear from her on that and
13 your lawyer can ask her questions on her
14 evidence on that. In terms of student
15 assistant support, and I appreciate this is
16 where it gets a little complicated, there
17 was Riley Organ, and you say that you did
18 some ASL courses with her?

19 A. Right. So, Riley actually wasn't his
20 student assistant. She only, I think,
21 covered breaks that Ms. Tracey Barron - she
22 was the one that was assigned to Carter.
23 So, she just covered her breaks when she was
24 gone.

25 Q. Right, but - and then, she ultimately, at

1 some point early on, took another job, left
2 that position?

3 A. That's right, yeah.

4 Q. That's right. So, then there's Tracey
5 Barron.

6 A. Um-hm.

7 Q. You take issues with her facility in ASL,
8 but she had - you don't dispute that she had
9 taken some courses or at least -

10 A. Yeah, she had no ASL, none, absolutely not.
11 For a person to have to go to seek out other
12 people in the building to find out how to
13 speak to my son for simple things such as
14 what's the colour, how do you say orange or
15 how do you say yellow, that's very basic
16 primary - I mean, you know, you got to know
17 your colours if you're going to go and teach
18 kindergarten, and if you're going to be a
19 student assistant, clearly that's the very
20 basic elementary first language or first -
21 the first class you would learn in ASL. So,
22 when I found out that she didn't know
23 something as simple as colours that was a
24 huge red flag and it seemed like it was just
25 a consistent, constant thing that she was

1 doing, seeking out Riley and looking up on
2 her phone to find out what signs were for
3 certain words that she needed to use with
4 Carter.

5 Q. And I understand she shortly - she left?

6 A. She left because she was so stressed because
7 she couldn't do the job.

8 Q. Right. Then she was replaced by Terrilynn
9 Clarke?

10 A. Yes.

11 Q. Right. And you take issue with her ASL
12 skills as well?

13 A. Well, I think we both know why. Because the
14 ASL PI showed that she couldn't even finger
15 spell her own name, which we didn't know at
16 the time. We thought she was brilliant
17 because this is the funny thing about when
18 you send your kid off to school, you have to
19 trust apparently the educators because
20 that's what I was told to do the first day I
21 dropped kindergarten - Carter off to
22 kindergarten was "Ms. Churchill, you must
23 trust that the educators know, you know,
24 what's in the best interest of your son".
25 So, I took that of course and that's what

1 most parents do. Unfortunately for our
2 situation, we're not there every day to see
3 are they actually using American Sign
4 Language. Are they using sign in exact
5 English? Are they just waving their hands
6 and making it look like something's
7 happening when nothing is? And that's
8 what's happening with a lot of the situation
9 with my son over the years. People just
10 thought that he was being spoken to in sign
11 language, in American Sign Language, and it
12 turns out he wasn't, and it's - the evidence
13 is there because we had the American Sign
14 Language proficiency interviews testing
15 results.

16 Q. In any event, you took issue with her ASL
17 qualifications and you reached out to Gary
18 Cahill, who was the HR director at the
19 District, and then I think you alluded to
20 it, November 28th there was a further meeting
21 with the ISSP team.

22 A. Yes.

23 Q. Okay. And you talk about that in paragraph
24 55 of your affidavit. And you describe that
25 meeting in your affidavit. I don't actually

1 have any commentary about that, questions
2 about that meeting, but following that, an
3 IEP was created?

4 A. Yes.

5 Q. And there's a little sort of yellow book of
6 - with five documents there.

7 A. Yeah.

8 Q. And it's actually at Tab 4.

9 A. Yes, Tab 4. Tab 4 is for the following
10 year, 2017.

11 Q. Right.

12 A. Did you want me to look at kindergarten
13 year?

14 Q. No, no, we'll go back to it. I wanted to
15 talk about this one actually.

16 A. Okay.

17 Q. So, this was the document that came out -
18 oh, sorry, no, no, that's right. So, the
19 document here is - this is why it was
20 produced, the document at Tab 3, which is
21 what was produced after that meeting?

22 A. Right.

23 Q. And if I go down through, there's a series
24 of needs there. This is on the second page.

25 MR. REES:

1 Q. Sorry, are you at Tab 3 or Tab 4?

2 MR. PENNEY:

3 Q. Tab 3, sorry, Kyle.

4 A. Yes.

5 Q. So, this, we see some needs here. To
6 improve his expressive language skills by
7 using technology or ASL. Similar comments,
8 to combine two to three words to create
9 phrases or simple sentences using
10 ASL/technology. See that there?

11 A. Yes.

12 Q. And then I see it is signed off by you on
13 the last page?

14 A. Yes.

15 Q. Okay. I don't see a request for, you know,
16 additional support from either a DHH
17 itinerant teacher or a deaf student
18 assistant here.

19 A. You know what, one thing I've learned over
20 the six years of being in the education
21 system with my son is that what you say in
22 an ISP or in an IEP means absolutely nothing
23 because what you tell them is not what goes
24 on paper. Unless you pick up the pen
25 yourself and write it down, it will not end

1 up there and one of the things I notice is
2 that - and I mean, this meeting that we had
3 with Mr. Dawe, the principal, with the
4 educational psychologist from District, and
5 a number of other people, we begged - I'm
6 pretty sure I cried, I begged that hard for
7 someone to help my son and that I knew that
8 he was not getting any access to any
9 American Sign Language in the school system
10 and everybody knew. I had spoken to Miss
11 Halleran days before this. In fact, Miss
12 Halleran, as well as all the eight
13 professionals that were in that meeting, all
14 got together just days before this ISP
15 occurred and do you want to know what they
16 were talking about? Concerns with Carter's
17 language. Concerns with whether he's being
18 included in the system. Why would that even
19 be discussed in a meeting among eight
20 professionals that were going to be meeting
21 with Carter's parents in two days? And
22 what's really interesting is that if you
23 look at this IEP form, it states "additional
24 education services, hearing itinerant
25 teacher". Why is that? Why is it a hearing

1 itinerant teacher?

2 Q. You -

3 A. That's the way the system has been treating
4 my son. And just for clarification,
5 technology doesn't mean that you're giving
6 someone an iPad and saying "here's the way
7 you're going to use to communicate".
8 Technology, my husband and I have never been
9 against my son learning how to use an iPad.
10 He's been using one since he could use his
11 fingers, as most kids do. He plays
12 videogames. He plays on the iPad with his
13 apps. He watches videos. And it's
14 extremely important, considering that this
15 day and age everything is technology based,
16 that he learns how to type; that he learns
17 how to write and he has to be able to learn
18 how to read English. So, technology was
19 extremely important and I've always said
20 yes, he needs to have access to that. But
21 what I've been very, very adamant about is
22 that it will never replace his language
23 because an iPad is not a language. So,
24 everybody who listened to us knew that we
25 said iPad is not to be used for language or

1 for communication with respects to that. He
2 still needed to have ASL because that is his
3 first language.

4 Q. Okay. And Ms. Churchill, I appreciate you
5 make all of those points in your affidavit
6 and I have just some very specific questions
7 for you, so that I just want to work
8 through. So, subsequent to this IEP, up to
9 the point of time when you filed the Human
10 Rights complaint on June 21st, 2017, I don't
11 see any written request of the District for
12 more ASL support or anything like that. I'd
13 looked through the file. There's volumes
14 and volumes of paper. I can't find
15 anything.

16 A. Well, it's ironic because we actually had a
17 meeting on Strawberry Marsh Road with senior
18 leaders from District who we said to their
19 faces our son was being isolated. Our son
20 didn't have access to any deaf peers. Our
21 son didn't have access to his language. Our
22 son didn't have access to a curriculum in
23 American Sign Language. He didn't have a
24 teacher. He didn't have a student assistant
25 who knew how to speak to him. He didn't

1 know -- his teacher and his student
2 assistant didn't even know that he was
3 sitting in a classroom all day cold because
4 they didn't know the sign to go get his
5 jacket out of his book bag. How is that
6 appropriate?

7 Q. Do you need to take a moment?

8 A. We spoke to many people before we put in our
9 Human Rights complaint. The problem is that
10 nobody cared. Nobody cared. When you have
11 a principal of your school that your son
12 attends tell you that your son is better off
13 using an iPad because when he goes to grade
14 nine, none of his friends will know American
15 Sign Language and how to talk to him, and
16 then only months later have the educational
17 psychologist tell you at an ISSP meeting in
18 front of eight other professionals that
19 "when your son is 15 and goes to the Avalon
20 Mall, an iPad is better so he could
21 communicate, he could type". That's the
22 support we had. This was the first
23 experience we had our child getting an
24 education. It was clearly evident that
25 nobody gave a damn about him. It was

1 clearly evident that they were doing what
2 was easiest and best for them, not for him.
3 So, yes, we did try. We spoke to people
4 endless times but nobody listened. And you
5 know yourself that in 2017, in May, they had
6 put a satellite classroom proposal and it
7 was turned down. And you know what's really
8 funny? A week later after they had turned
9 down that proposal, we met with these people
10 to their faces and they didn't know there
11 was anything wrong. They sent a letter to
12 us telling us that my son was getting an
13 adequate education and they knew because the
14 teachers of (unintelligible) all had wrote
15 this proposal saying that Carter didn't have
16 a language and that he needed help and
17 everybody ignored it.

18 Q. Do you want to take a few moments, Ms.
19 Churchill? Why don't we take a few moments
20 and you can collect herself?

21 A. I'm sorry.

22 ADJUDICATOR:

23 Q. Mr. Rees, do we want to take a five-minute
24 break?

25 MR. REES:

1 Q. No problem.

2 (OFF RECORD)

3 ADJUDICATOR:

4 Q. Continue. We'll go back on the record.

5 REPORTER:

6 Q. We're on the record. Thank you.

7 ADJUDICATOR:

8 Q. Thank you. Mr. Penney.

9 MR. PENNEY:

10 Q. Anytime you need a break, please, we'll take
11 a break. I understand how - I have two
12 little boys. I understand how emotional
13 talking about your children can be.

14 So, I wanted to ask you some questions
15 about the period of time leading up to grade
16 one. Okay. I did not see an ISSP plan
17 before grade one. I understand that you had
18 filed the Human Rights complaint and that
19 there were certain communications through
20 the Commission and that sort of ultimately
21 resulted in the education plan for him for
22 that year. Is that a fair description?

23 A. So, the ISP -

24 REPORTER:

25 Q. Your microphone, sorry.

1 A. Sorry, I apologize. The ISSP that happened
2 in November was the one that was discussed
3 and was the one that we had - what had ended
4 up happening was just two days before this
5 ISSP meeting, I spoke to Bonnie Woodland and
6 she told me that if we had concerns about
7 the ASL that was happening with Carter that
8 having an ISSP and having a number of people
9 at this meeting would be able to help
10 because it dictates services. So, she
11 actually sent Kim Lawlor to come to the ISSP
12 meeting and we thought when Kim Lawlor was
13 there, okay, this is great. We're going to
14 be able to tell them directly to their faces
15 that this is what we need and this is what's
16 happening. So, we stated in that meeting
17 that Carter was not getting access to ASL
18 and that he needed to have somebody to be
19 able to teach him his language and that what
20 was happening with him, Ms. Halleran giving
21 him two hours here or two hours there every
22 couple of weeks or every month, was not
23 going to give him his language.

24 And so that was all documented in the
25 ISSP and the irony behind it is that at that

1 meeting because so many things were said
2 that upsetted me such as the fact that Mr.
3 Porter, his kindergarten teacher, had told
4 me that - or told us, sorry, that Carter
5 couldn't do a simple three-step direction.
6 For example, he would ask Carter to pick out
7 of a box, to pick the blue coloured ball,
8 and he said that Carter could point to the
9 blue coloured ball and if he asked Carter to
10 pick it up, Carter could pick up the blue
11 coloured ball. But he said that when he
12 asked Carter to put the ball into the
13 sandbox, Carter couldn't do it. So, he
14 said, you know, he can't do three-step
15 directions.

16 Do you know what my response was? And
17 I'm sure you do, because you read my
18 affidavit. His response was - my response
19 to him was "well, did you know how to sign
20 sandbox to him?" That's the problem. If
21 you can't communicate with my child and you
22 don't have the same language as my child,
23 how are you ever going to teach my child and
24 assess my child? You certainly aren't going
25 to understand him. So, he did not know to

1 put the ball into the sandbox because it was
2 stated at that meeting that nobody knew how
3 to sign sandbox. Raven Williams, who was
4 the IRT for Carter, had no sign language
5 whatsoever. She didn't know how to sign
6 sandbox. They said they didn't know if the
7 student assistant knew how to sign sandbox.

8 And so here lies the problem. You've
9 got a child who's stuck in a classroom
10 surrounded by hearing people who only know
11 one language, English, and he is completely
12 isolated. He can't pick up any incidental
13 hearing as most hearing people do, and he's
14 coming to a school system with absolutely no
15 foundation of a language whatsoever and he's
16 being blamed for it. "Carter can't do a
17 three-step direction. He can't pick up the
18 ball and put it in the sandbox." It's not
19 that he can't. He doesn't know what the
20 bloody sandbox is because you haven't taught
21 him what a sandbox is. That's the problem.

22 But furthermore, we stated in that
23 meeting that he needed to have ASL. Kim
24 Lawlor left and we talked about student
25 assistant, the problems we were having for

1 ASL, what could they do, what could they
2 provide. She went back to her office and she
3 looked it up and there's documentation of
4 the emails that went back and forth between
5 her and us about that.

6 When the educational psychologist said
7 towards the end of the meeting that Carter
8 could not go to the Avalon Mall and be 15
9 years old and communicate with anybody
10 unless he had an iPad, I lost it. I was
11 very emotional. As you just seen a few
12 minutes ago that was pretty much my
13 reaction. And I'll be honest with you, when
14 I went home, I could not write up the
15 minutes.

16 I took notes. I took notes throughout
17 the whole thing and I gathered all the
18 information from everybody and I still have
19 all those notes. They're home right now. I
20 only found them probably about two weeks
21 ago, and I can certainly bring them in and
22 show them to you, if you want to see the
23 real document with the real wet signatures
24 on it from individual people that were at
25 that meeting and everything was discussed

1 even right now to Mr. Dawe saying that he
2 was going to get Carter a track ball, a
3 keyboard, everything for his iPad, and we're
4 saying iPad is fine if you want to teach him
5 how to type. That's fine. He needs to
6 learn. But it's not a language. All this
7 is documented.

8 Q. Okay. So, Ms. Churchill, I want to ask you
9 some specific questions. I mean, your
10 affidavit is before - the documents are
11 before the tribunal. I just want to ask you
12 some specific questions, if I could.

13 So, the next document I want to look at
14 is the 2017 IEP which was created in June of
15 2017. So, this would have been before grade
16 one. And so that's at Tab 4 of that yellow.
17 And so, this is sort of the plan for his
18 education for grade one. You agree with me
19 on that?

20 A. Yes.

21 Q. Okay. And this was after meeting with, you
22 know, a series of professionals and I
23 appreciate your evidence is, you know, that
24 the meeting was patronizing, et cetera, but
25 when I look at the last page of that

1 document, it's signed by your husband and
2 you on June 6th and there is a - you had sort
3 of an asterisk there where you asked for
4 "student assistant with proficient ASL.
5 Teaching in ASL and the ASL language has
6 been requested to NLESD. Decision pending."
7 A. Right.
8 Q. Okay. So, that point has been made clear in
9 this document that this is what you're
10 seeking. Agree with that. Promises had not
11 been made, but it just says - the note just
12 says "decision pending". So, that was the
13 status of it back in June. Okay. And so,
14 for grade one, that was in fact provided,
15 correct?
16 A. I'm having a hard time hearing you, sorry.
17 Q. Oh, sorry. For grade one, that was in fact
18 provided, correct?
19 A. Grade one that was what?
20 Q. Provided.
21 A. Provided?
22 Q. Tammy Vaters was -
23 A. Yes.
24 Q. - assigned as the -
25 A. Student assistant.

1 Q. - deaf signing, native signer, student
2 assistant and Sheila MacDonald assigned as
3 his teacher for that year?

4 A. Correct.

5 Q. Correct, okay. In early November of 2017 I
6 believe, and you say in your affidavit that
7 you contacted Bonnie Woodland seeking
8 additional student assistant support. I
9 think you wanted Tammy to go fulltime.

10 A. Right.

11 Q. I think the answer was "well, we can't do
12 that for you, but we can assign the teacher
13 fulltime". Maybe not immediately, but that
14 was ultimately what happened?

15 A. Yeah, that's not really what happened.

16 Q. Okay. So, but just work with me on this.

17 A. Yeah.

18 Q. You sought additional student assistant
19 support. I think we all agree that that did
20 not happen for that year, but shortly after
21 that meeting, Sheila MacDonald, the DHH
22 itinerant, was assigned fulltime, correct?

23 A. Yes, Sheila started off giving Carter two
24 hours a day and then once they sent Carter
25 to APSEA, upon the recommendation of the

1 Janeway psychologist who I was forced to go
2 and get an assessment done on Carter because
3 the school apparently believed that he was
4 autistic or had a severely intellectual
5 disability according to a form that got sent
6 home, I was forced to get a psychological
7 assessment done on him and Amy Stackhouse-
8 Harris made the recommendation that, you
9 know, Carter should go up and get an
10 assessment done by APSEA and try to get this
11 sorted out. So, because he's obviously not
12 getting his language. So, that's where all
13 that came from.

14 Once he got back from APSEA and APSEA
15 had stated in their document that all
16 curriculum had to be embedded with ASL, then
17 they felt, I guess, they better put a
18 teacher in there fulltime.

19 Q. Okay. And so, I guess, but -

20 A. But that didn't happen until almost
21 December. Like it was like late -

22 Q. End of November, I think -

23 A. 28th or something, yeah.

24 Q. 28th of November, Sheila MacDonald went with
25 him fulltime is what I understand for grade

1 one. And would you agree with me that this
2 is the highest level of support provided to
3 any child in the system?

4 A. From my recollection or what's been told to
5 me, there was two other teachers that
6 actually at different times had only one
7 student. So, I don't think Carter was an
8 anomaly. There was a teacher out to Mount
9 Pearl - I don't know if it's called
10 Intermediate or Junior or Senior High, I
11 don't know what the name was at the time,
12 but there was a teacher out there who had
13 one student that I think was grandfathered
14 in from the School for the Deaf and then
15 that went to two students and that's all she
16 had. And then there was another lady, I
17 believe out in Waterford Valley High and she
18 had one student.

19 Q. In any event, you'll at least agree with me
20 that this is the highest level of support
21 provided to any student in the system, a
22 fulltime teacher and a part-time -

23 A. I can't say that. I can't say that. It was
24 the most that Carter had received.

25 Q. Right.

- 1 A. But I don't know about anybody else.
- 2 Q. And that summer, you sought some summer
3 tutoring to be paid for and that was
4 provided?
- 5 A. Yes. Yeah, well, we had to fight real hard
6 for it because they were only going to give
7 us ten hours for the entire summer. What
8 are you going to learn in ten hours?
- 9 Q. But in any event, you received - so, what,
10 it was weekly support by Cathy Lawlor?
- 11 A. Yes.
- 12 Q. Okay, thank you.
- 13 A. I also asked for, you know, a language
14 acquisition support worker because District
15 did not seem to understand that Carter did
16 not have a language and they said they
17 weren't going to do that. They would give
18 him a teacher and you know, it's kind of
19 like really ridiculous when you think about
20 it because I mean common sense will tell
21 you, how do you learn a curriculum if you
22 don't even have the language to learn the
23 curriculum. But that's what they were doing
24 to my son.
- 25 Q. Okay. So, again, I'm going to try to focus

1 the questions and get your answers. So
2 then, I want to ask some questions about
3 grade two. Okay. So, in grade two, the
4 ISSP for grade two is at - sorry - Tab 4B or
5 the big white binder, the First
6 Supplementary documents.

7 ADJUDICATOR:

8 Q. Which volume are we looking at?

9 MR. PENNEY:

10 Q. The first volume for supplementary
11 documents.

12 ADJUDICATOR:

13 Q. Could I have the tab reference again?

14 MR. PENNEY:

15 Q. 4A. B, sorry.

16 ADJUDICATOR:

17 Q. Thank you.

18 MR. PENNEY:

19 Q. So, this is the ISSP. It's dated February
20 21st, 2018.

21 A. Tab B you said?

22 Q. Yeah.

23 A. Oh, sorry, I was in C. Yes.

24 Q. Okay. You're the ISSP manager?

25 A. Yes.

1 Q. So, you and Todd are there, Sheila MacDonald
2 who is his teacher or DHH itinerant teacher,
3 and a series of other people signed off on
4 that. If I can turn you sort of towards the
5 end, last page, it says here "parents wish
6 for current supports to remain in place in
7 respect to Carter accessing a student
8 assistant proficient in ASL. In addition,
9 they feel the services of the itinerant for
10 the deaf and hard of hearing remain in place
11 at the permanent - at the current level."
12 See that there?

13 A. Yes, I do.

14 Q. So, nothing - no further supports were
15 sought in this ISSP. Do you agree with me
16 there?

17 A. Well see, the irony once again is that first
18 of all, I didn't write this, but we
19 certainly were playing a part of it
20 obviously, but the interesting part is that
21 once again, you know, my child went through
22 all of kindergarten with absolutely no
23 support whatsoever. He got some support
24 starting in this year and so when we go to
25 this ISSP, we just got a teacher for the

1 first time ever fulltime. We don't want to
2 lose her. So, all we're thinking about is
3 we don't know if there's any guarantees that
4 she's coming back because we were told they
5 couldn't tell us. In September, we'd be
6 fighting for another teacher again. We
7 didn't want to go down that road again. So,
8 we wanted to make sure that it was
9 documented that we want the teacher to stay
10 in place. We want the student assistant to
11 stay in place. We wanted a deaf student
12 assistant because that was the only language
13 person that Carter had access to to learn
14 something from. So, we wanted to make sure
15 that that stayed in place, but was that all
16 we wanted? Heck, no. We wanted a lot more
17 than this. He had no access to any deaf
18 peers. That was something we always talked
19 about; that he was isolated in his hearing
20 environment. But what do you do when you're
21 told that you have no other choice but to
22 force your child to go to a hearing school?
23 There's no options. Like keep him home and
24 then he's going to be more isolated because
25 there's absolutely no language whatsoever,

1 there's no interaction whatsoever. If I was
2 to do what has been done to my child and
3 keep depriving him of a language, I would be
4 probably in jail right now. I certainly
5 would have my child taken away from me.
6 That's for sure. But somehow the English
7 School District can get away with doing it.

8 Q. Okay, but just fulltime DHH teacher
9 allocated to him, Sheila MacDonald, who I
10 understand you think very highly of.

11 A. Yes.

12 Q. Halftime deaf student assistant allocated to
13 him and by the end of that year, Tammy
14 Voters became fulltime, correct?

15 A. Yes. In fact, in grade one, we made a phone
16 call to Bonnie Woodland. I think it was in
17 November of that year and I begged her on
18 the phone. I begged and begged and begged
19 for her to allow Tammy to be with Carter
20 fulltime because it really didn't make sense
21 for Tammy to be with anyone else anyways.
22 She was deaf, he was deaf, the only two deaf
23 people in the whole school, and she was
24 assigned to hearing kids who were runners of
25 all things. So, it made no sense from a

1 rational point of view, but it certainly
2 didn't make sense that the only person in my
3 entire child's life was another deaf person
4 that he didn't even get to spend time with,
5 only during lunch and recess basically, and
6 a few times if he needed gym or music.

7 And Bonnie could not understand. "Why
8 does he need to be with two people, Kim?
9 That doesn't make sense. No, we're not
10 doing that. That's just too much pressure
11 having that many adults in the room for that
12 many kids. You can't do that. That's not
13 something we do." So, I begged and pleaded.
14 No, not going to do it.

15 And then finally, after months and
16 months and months and months and months, and
17 I don't know if I'm allowed to say this or
18 not, but probably due to mediation as well,
19 because I cried so much that guess what,
20 three weeks at the end of that grade, for
21 three weeks, she went fulltime with him, at
22 the very end of that school year. That's
23 all he ever got was three weeks after me
24 begging and pleading for those two years.

25 Q. That summer you sought funding for tutoring

1 for July and August and that was provided,
2 correct?

3 A. Yes.

4 Q. You used Cathy Lawlor for July and Tammy
5 Voters for August? Is that right?

6 A. No. Cathy Lawlor was for July and Colleen
7 Moyst was August.

8 Q. Colleen Moyst was August, okay. I want to
9 ask you some questions about grade three.

10 A. Yes.

11 Q. Okay. If you want to turn over in the white
12 binder to Tab C, this is the 2019 ISSP.

13 A. Yes.

14 ADJUDICATOR:

15 Q. Sorry, could I have that tab reference
16 again?

17 MR. PENNEY:

18 Q. Yeah, Tab 4C.

19 ADJUDICATOR:

20 Q. Thanks.

21 MR. PENNEY:

22 Q. Okay. And so, if I look at that document,
23 you and your husband are the ISSP joint
24 managers?

25 A. Yes.

1 Q. Similar people. Sheila MacDonald is there,
2 school psychologist, variety of people on
3 this ISSP. If we go to the last page, third
4 line, it looks like - it says "it is
5 essential that Carter continue to receive
6 the fulltime services of the itinerant for
7 the deaf and hard of hearing. In addition
8 to being instructed in ASL, Carter requires
9 a student assistant who is fluent in ASL."

10 A. Sorry, the last page on mine was different,
11 so I -

12 Q. Oh sorry, yes, second last page.

13 A. Okay, yeah.

14 Q. Sorry. Second last page, sorry.

15 ADJUDICATOR:

16 Q. Would you read the portion you're referring
17 to again on the second last page?

18 MR. PENNEY:

19 Q. Sure. "It is essential" - third line down.
20 "It is essential that Carter continue to
21 receive fulltime services for the itinerant
22 for the deaf and hard of hearing. In
23 addition to being instructed in ASL, Carter
24 requires a student assistant who is fluent
25 in ASL."

1 A. Yes.

2 Q. Okay. So, maintaining the same level of
3 service. And then we acknowledge on the
4 next page, here it's written "language
5 acquisition still a major need for Carter.
6 Parents wish to increase his exposure to
7 native ASL speakers".

8 A. Yes.

9 Q. Okay. So that's the supports that are
10 sought there. And then I think we've
11 already acknowledged by the end of grade
12 two, Tammy Voters was put fulltime and that
13 remained in place for grade three, correct?

14 A. Yes. Yeah, I had begged Aubrey Dawe to
15 allow her to be with Carter fulltime and he
16 said he would go back to District and talk
17 to them about it and there's even a note on
18 that page that says 34.75, 22 students.
19 That's there because we were talking to him
20 about how many students needed student
21 assistants and the amount of time that's
22 given to them. So, they documented that
23 when we were talking about it. And he never
24 came back and did anything for us.

25 Q. Okay. So, you then -- 2019-2020 starts.

1 You have fulltime DHH itinerant fulltime,
2 deaf student assistant, right? So that was
3 the support that was provided?
4 A. I don't know if you want to call it support.
5 Q. I appreciate you take issues with Joanne Van
6 Geest's ASL skills and that's -
7 A. You would too if you had a teacher that
8 couldn't talk to your child and didn't know
9 his language or her language. You would
10 too.
11 Q. I appreciate that we will have to agree to
12 disagree on that, but -
13 A. Oh, if you're disagreeing -
14 Q. - there was a fulltime DHH -
15 A. - with someone who only has survival skills
16 ASL then you must be okay with a teacher
17 coming into your child's school who has
18 immigrated here from a foreign country that
19 doesn't have any English because that's the
20 equivalent. Why is it okay for a deaf child
21 to go to a school in our province and be
22 taught any lesser and treated any lesser?
23 Why is that okay? Why is that acceptable?
24 Q. Okay.
25 A. Because that's the message that's being

1 clearly sent home; that we don't care about
2 deaf kids. We'll give them somebody who has
3 like subpar, maybe some basic ASL, and I
4 have to argue that she doesn't even know
5 that because when the student assistant
6 asked her on the very first day of school to
7 pick up a coloured ball or whatever the item
8 was, she didn't know the colour. She came
9 back with the wrong colour. I mean, once
10 again, I said in kindergarten the same thing
11 happened. Basic colours, colours are basic.
12 It's literally the first thing you learn in
13 American Sign Language. It's the first
14 course. And you don't know colours? My
15 God, you're teaching kids every day in a
16 primary school.

17 Q. Okay. In any event, Joanne went on leave in
18 March, right, shortly before the Covid
19 lockdown.

20 A. She left on February 14th and never said
21 goodbye to my child, but okay.

22 Q. Sheila MacDonald substituted for a period of
23 time and then they had the Covid lockdowns
24 which threw everything into disarray.

25 A. Yes.

1 Q. Ultimately, Jillian Lahoda was hired and I
2 think in April, late April.

3 A. Yes.

4 Q. And then she started to work with Carter
5 virtually and then I think did some work
6 with him in person and in fact, beyond the
7 required teaching period. Is that correct?

8 A. Well, when she first started, she was given
9 one hour a whole week and then she had told
10 me in the very beginning that her husband
11 was an essential worker and so, and she has
12 four children. So, her home life was
13 extremely complicated during Covid
14 obviously. So, it was clear to me that she
15 never had the time to be able to dedicate to
16 Carter because, you know, to no fault of her
17 own of course, that was the situation that
18 she was facing. And so, I never felt that I
19 could ask for more time.

20 When she told me that the last day that
21 was supposed to be June 5th, I sent an email
22 to my lawyer and said to him - prior to that
23 date, said to him we want to put in a
24 submission again this summer as we have in
25 previous summers that Carter have a teacher

1 that can come this summer and in addition to
2 a language support worker. And so, upon the
3 request of that, your counsel had contacted
4 us and said that Carter's teacher would
5 provide two hours a day.

6 Now, I never expected Jillian Lahoda to
7 do that because I knew that her situation
8 was already complicated. I was looking for
9 a teacher to come - you know, to either
10 virtually or come into our house, whatever
11 could be done, like we've done in previous
12 summers. But anyways, she still couldn't do
13 the two hours a day, even though that's what
14 your counsel told us we were going to get.
15 She did an hour a day after that. So, for
16 an hour a day for the rest of June month was
17 what we received until like the 25th or
18 something, so like ten days or something.

19 Q. And then you sought some funding for
20 tutoring in the summer and received that?

21 A. In 20 -

22 Q. 2020.

23 A. 2020, yes, we did. Like we've did in
24 previous years, we - I mean, it's clearly
25 obvious that Carter's language is suffering,

1 non-existent to that point, and so we had
2 been pushing and pushing for a language
3 support worker, as well as a teacher, and
4 that year we were told that a teacher
5 couldn't be provided because it was on
6 precedent and so, for two summers before
7 that though, he had been receiving teachers.
8 But now all of a sudden, they couldn't do
9 that. But he was given language worker.

10 Q. Yeah, Tammy Vaters?

11 A. Yes.

12 Q. Yeah. And so, the next year is the ASL
13 classroom, correct?

14 A. Yes.

15 Q. And I can't find anything in the
16 documentation about your family seeking an
17 ASL classroom. There's no request, no
18 documents, no paper, no emails, nothing in
19 any of the ISSP's. I can't find anything.

20 A. Yeah, I think that's hilarious and the
21 reason why I think it's hilarious is
22 because, you know, parents don't come into a
23 school system saying that my kid needs a
24 special classroom to be taught in or my kid
25 needs to have - to be with his own peers or

1 my kid needs to have a specialized teacher
2 or my kid needs to have a language
3 acquisition worker or any of the things that
4 we've fought for over these years. No
5 parent comes into a school system - the
6 parents expect the school system to know
7 what their kid needs.

8 If they were really on the ball and
9 knew what was right for their child, they
10 would have had that in place. And you know
11 what, you should have because the proposal
12 was made in 2017. In fact, in 2011, you
13 guys knew about all the problems because
14 there was so many substantial gaps that were
15 listed and you knew these kids were coming
16 into the school system without a language.

17 Like you're going to try to blame it on
18 us now that we didn't ask for a specific
19 classroom? I think that's deplorable.

20 Q. In any event, based on the relief sought in
21 your brief, you and your husband wish for
22 the ASL classroom to continue, correct?

23 A. Yes.

24 Q. Okay. And when I just - you heard in my
25 opening the way I described the supports,

1 but the supports involved two DHH teachers
2 in grade four and three deaf student
3 assistants?

4 A. Yes.

5 Q. And in grade five, the supports were the
6 same. I know you took issue with certain of
7 the teachers' ASL skills, but in addition,
8 educational interpreters were provided as
9 well?

10 A. Yes, but the thing about - you know, going
11 to grade four was obviously the best year
12 that Carter has had. He - you know, in
13 2016, the teachers of the deaf were trying
14 to get these kids together weekly because
15 they knew that the social interaction was
16 key to language development, and it was
17 denied. And it was denied again in 2018 for
18 these kids to get together. Nobody wanted
19 these kids to even meet each other. These
20 kids didn't even know what another child
21 looked like that a cochlear implant on and
22 that was deaf and using American Sign
23 Language. Can you imagine never meeting
24 someone like yourself?

25 Anyways, so when he started East Point,

1 it was finally everything we could have
2 asked for and we were extremely pleased with
3 the level of knowledge that the two teachers
4 had in ASL fluency. We were very pleased
5 that we're finally in a classroom where he
6 could see other deaf children like himself.
7 And we were really, really, really happy
8 that they had three language workers who
9 unfortunately were only classified as
10 student assistants and they weren't getting
11 paid as language workers, even though Todd
12 and I fought for years, for years, for these
13 people to be treated and be financially
14 compensated the way they should be. Because
15 once again, deaf people are not looked at
16 the same as hearing people.

17 The problem with East Point, and we
18 didn't know it at the time, is that Carter
19 would come home on every single report card
20 with IE's, insufficient evidence. So that
21 meant that they didn't know how to grade
22 him. So, every single report card, the
23 first one when we went to the school, we
24 were told and we were given a heads up that,
25 okay, "Carter's going to be getting IE's.

1 Just want to let you know Covid just
2 happened. All the kids are behind in their
3 school. We want to try to get to know
4 everybody. So, we're going to put
5 narratives together because that's going to
6 be the best thing to be able to explain
7 everything about what your child is doing
8 and what we're working on." So, that was
9 acceptable, made complete sense to us.

10 Term two report card comes home, all
11 IE's. So that was kind of like a little bit
12 unusual. It's like, okay, IE's again.
13 Never did we think in a million years that
14 he would come home at the end of grade four
15 with all IE's yet again. And the irony is
16 he only got graded in art and gym. Really,
17 art and gym.

18 So, when school started the following
19 year in September, my husband and I called a
20 meeting with the provincial director of hard
21 of hearing, deaf and hard of hearing, Alma
22 McNiven, as well as the principal at East
23 Point Elementary, which was Line Daly, and a
24 member from the director of schools district
25 office came, which was Leo Etchegary, and we

1 sat down and that was one of the things that
2 we discussed. Why is this on Carter's
3 report card? We weren't expecting it. We
4 were blindsided. And once again, the
5 narrative came up that "well, you know, we
6 feel it's better that we can put a narrative
7 together because it gives more information
8 for the parents to understand", and I'm fine
9 with getting narratives, but why did my son
10 all of a sudden go from kindergarten, grade
11 one, grade two, grade three, all with grades
12 given to him, albeit ones and twos, to all
13 of a sudden insufficient evidence?

14 Because we found out in June, this past
15 June, from Leo Etchegary writing a letter to
16 us after we inquired about it, that
17 insufficient evidence is only given to a
18 student when they're not meeting the
19 curriculum grade level. So, Carter, we find
20 out, is only at kindergarten level. Now,
21 why hasn't someone told us that to our face?
22 Why hasn't someone said anything to us all
23 these years that "your son actually, he's
24 not even close to being - going to grade
25 six"? But that's where he's being pushed

1 to. So, this is what's happened to him and
2 this is not our fault.

3 Q. Those are my questions. Thank you.

4 MR. REES:

5 Q. I have two questions, Kim, for you on re-
6 exam.

7 ADJUDICATOR:

8 Q. Go ahead, Mr. Rees.

9 MS. KIMBERLY CHURCHILL, RE-EXAMINATION BY MR. KYLE
10 REES

11 MR. REES:

12 Q. I want to clarify. My friend asked you
13 about various ISSP meetings and you
14 referenced one that occurred at Strawberry
15 Marsh Road in 2017. Can you explain to me
16 why - the link and why the meeting at
17 Strawberry Marsh Road was an answer to the
18 question my friend was asking wasn't
19 entirely clear to me? Can you tell me about
20 that meeting, when it was on Strawberry
21 Marsh Road, who was there and why that
22 meeting played into the ISSP process?

23 A. That meeting that was the first time that we
24 were asked to go to District Office to
25 discuss the problems that were happening in

1 Carter's education. Ironically, it came
2 about because a man in Ontario, Travis
3 Morgan, he wrote a letter to a number of
4 people, senior staff at District Office, and
5 in his letter, he had said to them that, you
6 know, "I'm a deaf person. I've been working
7 a deaf community all my life." He was the
8 head of one of the major deaf organizations
9 at the time and "Carter's being deprived of
10 a language. He has a right to a language."
11 And so this sparked, I guess, a little fire
12 under someone at District Office.

13 We went to the meeting to discuss all
14 of Carter's needs and what was happening.
15 Bonnie Woodland was there. Kim Lawlor was
16 there. Aubrey Dawe was there. Miranda
17 Gosse was there, myself and Todd, and I want
18 to say June Abbott. June Abbott? You'll
19 have to ask Todd who was the person there
20 because I don't - I'm not sure if it was
21 Lucy Warren or June, but I think it was June
22 Abbott.

23 And so, basically, there was a
24 discussion on what needed to happen and we
25 ended up talking about how Carter did not

1 have a student assistant who had any sign
2 language all of kindergarten year and the
3 fact that they didn't test - they didn't
4 test student assistants. So, how are you
5 supposed to say that a student assistant is
6 qualified? When I called Gary Cahill in
7 November of that year, 2016, and asked him
8 "is the student assistant assigned to my
9 child fluent in American Sign Language? Can
10 you tell me what level she's at?" and he
11 said "oh, we assure you she's qualified
12 because, you know, she needs to be at an
13 intermediate level to talk to your son".

14 Q. So this -

15 A. But how, but how do you know if you don't
16 test them? So, at that meeting, we pushed
17 and we pushed and we said "you need to start
18 doing some testing. Otherwise kids are
19 going to be assigned people who have no
20 language" and so they did testing that
21 summer. On four different dates, they
22 tested. And guess what? Pretty much all of
23 them failed.

24 Q. So, that meeting in April 2017 at Strawberry
25 Marsh Road, ASL is not only raised but

1 concerns and the need to test folks in ASL
2 was raised?

3 A. Absolutely.

4 Q. The last question I have for you is kind of
5 a more generic one. My friend asked you a
6 lot of questions about the ISSP, I think I'm
7 getting the acronym right, the ISSP meetings
8 that you attended and you and Todd signed
9 forms acknowledging that the meeting
10 occurred and that things were asked for.
11 And there were a lot of questions about, you
12 know, what did you ask for, what didn't you
13 ask for at these meetings. Just tell me
14 what is your - what was your belief then and
15 what is your belief now, if they're the same
16 or different, about the value of those
17 meetings and the impact of what you had to
18 say at those meetings?

19 A. Well, I think I might have said earlier how
20 naïve we were coming into this process. I
21 mean, when we went to the first ISSP in
22 February of 2016 and we were told, you know,
23 "Carter's going to have an IRT. Carter's
24 going to have a DHH teacher. Carter's going
25 to have a student assistant." Carter's

1 going to have all these things, an SLP who
2 didn't know any sign language, but see, my
3 experience was the SLP he had had sign
4 language. So, why would I think going to a
5 school system that they're SLP, which you
6 would think is going to be - you know, the
7 school system is up here. Why would they
8 not have a speech language pathologist that
9 didn't know any sign language? Why would
10 they have an AVT that didn't know any sign
11 language? It doesn't make sense. Because
12 that hasn't been my experience.

13 And so, we were very naïve thinking
14 that we were walking into a school system
15 where our child was going to be taught just
16 like the hearing kids. I mean, why would
17 they - why wouldn't he be? Why wouldn't he
18 be? They taut this inclusive school system.
19 So, clearly they're ready for him. They've
20 known about him since 2012 when Cathy Lawlor
21 started working with him. They knew that he
22 needed sign language since 2012. So,
23 clearly they were ready for him.

24 And so, we felt - we were scared, but
25 we felt, you know, all these acronyms are

1 thrown at us. They got everything lined up
2 and ready for him to come in. We realize
3 only probably the end of September when I
4 started getting all these messages from
5 Riley that this is actually not the way that
6 we thought it was going to be. There wasn't
7 even a teacher there. She saw him once the
8 whole month of September. One time.

9 Q. So, are you saying you were given an
10 impression at these meetings?

11 A. Absolutely.

12 Q. And the impression -

13 A. Absolutely, and that impression that became
14 a longstanding image that "oh yes, Ms.
15 Churchill. We'll do the best we can for
16 you. Yes, we're making sure Carter's
17 getting the best education. Carter is
18 definitely - you know, he's getting - we're
19 doing the best that we can with what we have
20 and he's getting all the resources. We got
21 all these - he's getting so much support, so
22 much support. He's being accommodated."

23 But you know what, throwing Ipads at a
24 child and throwing a teacher in for 45
25 minutes once a month or a couple times a

1 month is not going to give my child a
2 language and it's certainly not going to
3 give him any access to a curriculum and
4 giving him student assistants that don't
5 have any language level, sign language, is
6 not going to help him.

7 And furthermore, having him isolated
8 and being deprived from being able to see
9 two-way communication. I mean, you think
10 about when babies are born and toddlers are
11 they're growing up and they're hearing and
12 they're watching their family and their
13 friends and whoever is visiting. They're
14 seeing two-way communication all the time.
15 They understand turn taking. They
16 understand language. They're picking up
17 incidental learning which is the majority of
18 how we learn.

19 My child has gotten to the point now at
20 11 years old, he has to be intentionally
21 instructed, intentionally. That means if I
22 was to ask Carter "what is this glass?
23 What's this glass used for?" if he's never
24 seen this glass and doesn't know that water
25 can go in this glass, he'll probably shrug

1 his shoulders like he used to do to Mr.
2 Porter all the time in kindergarten. I'll
3 have to tell him that what this is used for
4 is to drink. It's a drink. What's inside
5 is water. Probably show him the tap with
6 water coming out of it. Put a glass
7 underneath it and show him how it works.
8 Put it up to my mouth and show it to him.

9 My child was in grade two and he went
10 on a field trip and I remember Tammy telling
11 me that he didn't know how plants were
12 there. What is that? What is that? She
13 had to explain to him how seeds were put
14 into the ground and that it needed to be in
15 soil and that it needed to be watered and
16 needed to have sun and then she had to
17 explain the entire process to him of how
18 plants were there. And it hit me, my child
19 doesn't know something as simple as a plant.

20 When Sheila did a year-end report on
21 him, an assessment, she told me at a meeting
22 that day that there was a picture there and
23 she pointed to the picture and she asked
24 Carter "what is this?" It was a mug. Now,
25 everybody knows what a mug is. Carter had

1 no clue what that was. And you know what,
2 call us crazy, but we don't drink coffee or
3 tea at home, and we actually don't drink any
4 hot chocolate. So, to see a mug in our
5 house would be like seeing an alien come off
6 in a UFO, seriously. So, Carter just said
7 "I don't know what that is". Sheila
8 couldn't believe it. She's like "Kim, he
9 didn't know what a mug was". I was like
10 "yeah, because we don't drink tea or coffee
11 and we don't drink hot chocolate, so what
12 else are you going to put in a mug" right.

13 Q. Kim, can I just bring you back to the ISSP
14 meetings for a second? Because my friend
15 asked you a lot of questions about the ISSP
16 meetings, about your participation in them,
17 and one of the questions was about whether
18 at any of the ISSP meetings you had ever
19 proposed creating an ASL immersive classroom
20 such as exists at East Point. And you had
21 acknowledged that of course, you never did
22 propose that. Were you ever under the
23 impression that if you came into one of
24 these meetings and said "we would like an
25 ASL immersive classroom, please" that the

1 District would do it?

2 A. Absolutely not.

3 Q. And why is that?

4 A. They never did anything for any of the
5 previous ISSP meetings. Why would they
6 start doing it now? I mean, they literally
7 have never provided anything that we asked
8 for. I can't tell you how many times I've
9 cried in front of Mr. Dawe, can't tell you,
10 or anybody else for that matter at District
11 or at the school, begging for even the
12 simplest little things that Carter has
13 gotten.

14 And the irony is they make you feel
15 like you should be so grateful, like that
16 this is something that, you know, they're
17 going above and beyond to give him. That
18 he's not entitled; that he doesn't have a
19 right to have a teacher fulltime; that he
20 doesn't have a right to be with his deaf
21 peers; that he doesn't have a right to be
22 able to have a language worker and a role
23 model to teach him about deaf culture, to
24 teach him about his community? These were
25 all things that were made to seem like, you

1 know, "we're going above and beyond". I
2 mean to ask me a question Carter was the
3 only child given all those accommodations.
4 Really? Really? What does that tell you?
5 That shouldn't have been a question.

6 Q. You were attending these ISSP meetings and
7 you knew that you would be attending some in
8 the future and being able to describe, you
9 know, what you felt your son's needs were.
10 But nonetheless, you felt it necessary to
11 file a Human Rights complaint. Why the
12 Human Rights complaint? Why didn't you
13 think the ISSP process would get you what
14 you needed?

15 A. Well, when I was in the ISSP meeting at
16 Beachy Cove in November and the District
17 psychologist told me that he needed an Ipad
18 and that's how he was going to communicate
19 and Mr. Dawe, who also said he needed an
20 Ipad to be able to communicate -- we had no
21 student assistant that could talk to Carter.
22 We didn't have a teacher of the deaf who was
23 spending any time with him. We knew that he
24 was regressing because he was coming home
25 shrugging his shoulders. We were being told

1 things like "he doesn't know his alphabet".
2 He went to school knowing his alphabet.
3 There were so many red flags that we knew
4 things were actually getting worse. So, if
5 they weren't going to listen to us, who were
6 they going to listen to?

7 Q. And you mean you weren't being listened to
8 at the ISSP meetings?

9 A. No, of course not. They're meaningless and
10 I can guarantee you that any parent out
11 there with a child who has any kind of
12 exceptionalities that have been through the
13 ISSP process, they'll tell you the same
14 thing. They are meaningless.

15 Q. Okay. Thanks, Kim. Those are all the
16 questions I have for you.

17 ADJUDICATOR:

18 Q. Do we want to move on to the next witness?
19 I think we've got Todd Churchill scheduled
20 for the afternoon, but we'll start -

21 MR. PENNEY:

22 Q. I believe I can get him done before
23 lunchtime.

24 ADJUDICATOR:

25 Q. Mr. Churchill. Mr. Churchill, would you

1 prefer to swear an oath or a solemn
2 affirmation?

3 A. A solemn affirmation.

4 MR. TODD CHURCHILL, AFFIRMED, CROSS-EXAMINATION BY MR.
5 STEPHEN PENNEY

6 REPORTER:

7 Q. For the record, could you state your
8 complete name, please?

9 A. Todd Randell Churchill.

10 Q. Thank you very much. Mr. Churchill has been
11 affirmed.

12 MR. PENNEY:

13 Q. Thank you. Mr. Churchill, some of the same
14 things I said to your wife this morning I'll
15 say again. If you don't understand my
16 questions, ask me to repeat them. I'm going
17 to refer a couple of documents to you, so if
18 you want to look at those, take your time to
19 familiarize yourself with them, and also
20 appreciate that this is very difficult and
21 emotional, so if you need to take breaks,
22 fine with that too. Okay, thank you.

23 Just a question about the ASL
24 classroom. And while I appreciate that
25 there's a lot of questions posed by you and

1 your wife prior to enrolling Carter in the
2 ASL classroom in grade four, ultimately you
3 were agreeable to enrolling him and he was
4 in that classroom in grade four, grade five
5 and I assume he's going there in grade six?

6 A. That's correct.

7 Q. Okay. And I mean, I think you'll agree that
8 one of the remedies you've sought is the
9 continuation of that classroom; that that is
10 the preferred environment for Carter on a
11 go-forward basis?

12 A. That's correct, but it's not the preferred
13 environment, it's the only environment that
14 will work for Carter or any deaf child. To
15 have Carter in a classroom as he was in
16 Beachy Cove where he was completely socially
17 isolated, linguistically isolated and
18 prevented from having access to deaf peers
19 is completely unacceptable and should be
20 obvious to the District but clearly is not.
21 So, to say that is the preferred, it's not
22 the preferred, it's the only one that works
23 for deaf children like Carter.

24 Q. Okay. I'm going to just - I want to look at
25 Volume 1 of your documents, Tab W.

1 ADJUDICATOR:

2 Q. Sorry, volume and tab again, please.

3 MR. PENNEY:

4 Q. Volume 1 of the Churchill's' documents, Tab
5 W.

6 ADJUDICATOR:

7 Q. Thank you.

8 MR. PENNEY:

9 Q. So, Mr. Churchill, you're familiar with this
10 document?

11 A. I am.

12 Q. Okay. And you and your wife prepared it?

13 A. We did. We made a submission to the
14 Premier's Task Force on Improving Education
15 Outcomes in March of 2017.

16 Q. And I was interested in the timing of it
17 because I know that that task force did
18 their work, I think it was in July I think
19 of 2017 was their report was provided. So,
20 was this sent - you said this was sent in
21 March of -

22 A. It was, as well as a submission by the
23 Newfoundland and Labrador Association of the
24 Deaf and a group of itinerant teachers
25 experiencing or expressing similar concerns

1 about the deficiencies in deaf education.

2 Q. Okay. So, the date was not there. I just
3 wanted to make sure that we were comfortable
4 with the date. So, go to the last page of
5 that letter. So, you make five requests in
6 this correspondence. See that there?

7 A. That's correct, yeah.

8 Q. Okay. First one, fulltime teacher of the
9 deaf with ASL?

10 A. Correct.

11 Q. And that was provided by November of 20 -
12 November of his grade one year, 2018?

13 A. Well, as my wife said in her testimony, it's
14 debatable because the District does not have
15 any policies in place to actually
16 proficiency test teachers. So, it's hard to
17 know if a teacher is actually qualified in
18 ASL at all. For example, Joanne Van Geest
19 in grade three was hired without even being
20 proficiency tested. Despite the fact that
21 she had ASL as a job requirement, she wasn't
22 even tested. That's how indifferent the
23 District is to the needs of deaf children.
24 Why have a job requirement for something as
25 critical as access to language and then not

1 even test the teacher?

2 Q. Your wife said that she thought highly of
3 Sheila MacDonald. You're not taking
4 exception to Sheila MacDonald's ASL skills?

5 A. All I will say with Sheila MacDonald was she
6 was not tested. She is a former teacher at
7 the Newfoundland School for the Deaf, so we
8 had the assumption that she had the ASL
9 skills that Carter needed.

10 Q. Anyway, she was the teacher that was
11 provided in grade one, a year after - you
12 know, the school year after you wrote this
13 correspondence?

14 A. Yes, she was provided part-time, two hours
15 per day, up until late November or early
16 December.

17 Q. When she was fulltime, okay. You say too,
18 "part of this curriculum to include teaching
19 of ASL to increase his proficiency in the
20 language" and I expect that we won't agree
21 on this. The teachers will say well, you
22 know, by being in the classroom, by teaching
23 with them, by having a deaf SA, he is being
24 taught the language. But your position, as
25 I understand it, is that there needs to be a

1 focused curriculum for ASL. Do I have that
2 right?

3 A. Yeah, absolutely. In 2011, a report was
4 authored by Darlene Fewer Jackson and Nora
5 Cahill entitled "A Review of Services for
6 Students who are Deaf and Hard of Hearing"
7 and it was clearly identified that a lack of
8 approved ASL curriculum was a gap. It still
9 exists today. How is my son supposed to
10 learn American Sign Language if he does not
11 even have an approved curriculum? For a
12 child starting kindergarten next week, I'm
13 sure the expectation of any parent would be
14 they will have an approved English
15 curriculum. However, when I ask for an ASL
16 approved curriculum, I'm asking for the
17 world. It's completely unreasonable to
18 expect the same level of service for my deaf
19 child and that is the definition of
20 discrimination.

21 Q. Some of the teachers who previously taught
22 at the School for the Deaf have given
23 evidence that there was no ASL curriculum at
24 the School for the Deaf. Are you aware of
25 that?

- 1 A. If my son went to the School for the Deaf
2 and there was no ASL curriculum, we would
3 likely be in a meeting room like this
4 because my wife and I would not have
5 accepted it.
- 6 Q. Okay.
- 7 A. What was done at the School for the Deaf is
8 not relevant in this case. What is being
9 done to my son now is relevant and I can
10 only say that if my son went to the
11 Newfoundland School for the Deaf and did not
12 have an approved curriculum, we would take
13 issue with it, as we have now.
- 14 Q. Okay, thank you. I see item three,
15 "assessment method of outcomes should be
16 individualized to Carter". Your wife
17 testified about, you know, her
18 disappointment with the IE's on the report
19 cards. I don't think I need to revisit
20 that. I think it's fair to say that we
21 agree to disagree on that point three.
- 22 A. Yeah, I mean, you know, when Carter started
23 kindergarten, on his report card is a note
24 that says "difficulty in assessing Carter".
25 Well, no kidding. The kindergarten teacher

1 provided had zero sign language and that's
2 not for debate. That's not a contentious
3 issue, he did not. It's openly acknowledged
4 in his own affidavit. So, how can a child
5 with no - how can a teacher with no
6 knowledge of the child's language actually
7 assess him? If a hearing child whose first
8 language is English is being assessed by a
9 teacher who does not know English, how is
10 that a valid assessment?

11 Q. Okay. Item four, "support from an audio-
12 verbal therapist", which I understand is
13 still being done and has been done?

14 A. I believe there's still being one provided
15 at the ASL immersion program.

16 Q. Okay. And five, "tutor/train with ASL over
17 the summer months to help Carter to satisfy
18 the core outcomes from kindergarten". And
19 so that was done after kindergarten, after
20 grade one, after grade two and after grade
21 three?

22 A. It was done for some years and then it was
23 stopped.

24 Q. Okay. There's nothing in here about a
25 congregate setting, about an ASL classroom.

1 Do you agree with me?

2 A. It's not listed here because it was never an
3 option. The inclusive education system
4 mandates that children attend their
5 neighbourhood schools. It's legislated
6 policy. We, as parents, do not have the
7 ability to dictate, as you have already said
8 in your opening statement. I, as a parent,
9 do not have the ability to dictate what will
10 be provided to my son, as you said clearly
11 in your opening statement. So, how would I
12 have the ability to dictate such a setting?

13 Q. I mean, you're writing the Premier here.
14 You're making a submission about what you
15 think is the best education forum and this,
16 to me, when I look at these five points,
17 contemplates, you know, in the regular
18 classroom with supports. It mentions
19 nothing about this congregate setting. You
20 agree with me?

21 A. We wrote this letter within the limits of
22 the environment we were living in.

23 Q. I think everyone agrees that the ASL
24 classroom is a significant improvement and
25 is the preferred method of education. You

1 agree with me there?

2 A. Again, it's not the preferred. It's the
3 only.

4 Q. Okay. And even though you're so certain
5 about that now, I mean, you agree with me
6 there's no mention of that in this
7 correspondence?

8 A. Again, we were -

9 Q. Writing the Premier. This is your wish
10 list. No mention of this in the
11 correspondence.

12 A. We didn't even think it was an option.

13 Q. Okay.

14 A. And to go to the point on the IEP's and the
15 ISSP's, perhaps on the very next one, we
16 will specify directly that this setting be
17 continued in future; a teacher with superior
18 level ASL will be provided, as confirmed by
19 an ASL PI; deaf student assistants will be
20 provided; and direct interaction with deaf
21 peers will be provided, and by your
22 assumption and by your statements, all these
23 things will be provided because it'll be
24 documented in an IEP and an ISSP and that is
25 the approach we'll be taking forward. That

1 will completely eliminate this entire
2 process because all we have to do is
3 document it on these forms and my son will
4 get the support he should have always
5 gotten.

6 Q. The reason I'm pointing this out to you is
7 I'm not suggesting that, you know, when you
8 wrote this, you know, you knew everything
9 and - what I'm suggesting is this: like
10 isn't education iterative? Sometimes
11 teachers try things and then got to change
12 their approach. That's why you do ISSP's
13 every year.

14 A. It's funny because my hearing child, my
15 hearing son -- my wife and I are in a very
16 unique position because we have a deaf child
17 and we have a hearing child. So, we are
18 very aware of what my hearing child gets.
19 We're very aware of what my deaf child gets.
20 There's a dramatic delta between the two.

21 For my hearing child, there's been an
22 iterative process. My son will show up to
23 grade eight in a week or so. He'll have a
24 fulltime teacher. He'll have a teacher who
25 can communicate in his language. He will be

1 with children who can communicate with him.
2 It was like that in kindergarten, grade one,
3 grade two, grade three. They didn't start
4 Carter - Hunter in a school at one hour per
5 week with a teacher and finally worked up to
6 grade eight to get to a fulltime teacher.
7 Hunter had that support from kindergarten.
8 We didn't have to do a bunch of iterations
9 with Hunter's education.

10 These problems with deaf education were
11 clearly identified in 2011. Carter was four
12 months old. There was no need for
13 iterations. The only reason there's been
14 iterations is because my wife and I have
15 been so visually - or vocally critical of
16 the District that supports have been
17 provided to try to assuage and deflect the
18 amount of public scrutiny that the District
19 has had.

20 I was contacted by a parent just last
21 week in rural Newfoundland whose child gets
22 next to no support. Why? Because that
23 parent is not in the media every second day.
24 As clearly articulated -- you mentioned the
25 ASL immersion program, it's clearly

1 articulated in there the amount of support a
2 deaf child gets is partly contingent on the
3 advocacy skills of parents. So, the lesson
4 is in the Department's or the District's own
5 document, if you do not fight for your
6 child, your child will not get what they
7 need, and that's what's happened to that
8 parent in rural Newfoundland. She is not
9 speaking out and hence, her child is not
10 getting what the child needs.

11 Q. So, you don't accept that sometimes in
12 education, teachers are able to try
13 different things, different techniques,
14 different school settings that maybe the
15 consensus can change?

16 A. I don't think any staff member of the
17 District who considers themselves to be a
18 reasonably intelligent person cannot - it's
19 not in - it should be intuitive that you
20 need to provide a student with a teacher
21 fluent in the student's language. That's
22 intuitive. I think you'd have to be
23 completely braindead not to understand that
24 you have to provide a fluent teacher. It's
25 insane. When you look at a hearing child,

1 there's levels. There's levels of
2 safeguards to prevent a teacher not
3 proficient in the child's language from
4 entering into a classroom to teach that
5 student.

6 For example, there is a guideline for
7 internationally educated teachers that
8 clearly specify proficiency testing
9 requirements in English and French, as
10 applicable to the child. There's no such
11 safeguards for my son. You can hire
12 somebody like Joanne Van Geest straight off
13 the street, don't even test. How is that
14 equitable? We have so many safeguards in
15 place to protect hearing, French and English
16 kids, but my child doesn't - is not afforded
17 that and we're supposed to be so thankful
18 we've gotten a teacher that's fulltime.
19 Whether or not she speaks the language, it's
20 irrelevant. And you're going to tell me
21 that I should be so thankful that I have a
22 fulltime teacher, doesn't even speak the
23 language.

24 Q. I'm going to ask you some questions about
25 the remedies that you've sought.

1 A. Sure.

2 Q. And I can - I have a copy of your brief
3 here. I can probably just read it to you,
4 but if it's controversial, I can give it to
5 you too. So, paragraph 95, you say "the
6 District shall not use interpreters as
7 replacement for qualified teachers of the
8 deaf and hard of hearing in accordance with
9 the position of the World Federation of the
10 Deaf in its position paper on inclusive
11 education or the roles of qualified teachers
12 of the deaf and interpreters".

13 A. Correct. Interpreters should never be used
14 as a stopgap for having a teacher that's
15 fluent in the child's language. For
16 example, you mentioned the educational
17 interpreters earlier. Two individuals were
18 hired as educational interpreters for the
19 ASL immersive classroom. No testing. There
20 is a standardized testing for such people.
21 It's called the Educational Interpreter
22 Performance Assessment. It's a standard
23 test, very standardized. APSEA actually has
24 a requirement for anyone employed in their
25 system of 3.5 as an absolute minimum. Did

1 we test in Newfoundland? We hired two
2 interpreters straight off the street. No
3 testing. But that's in line with no testing
4 for the teachers. Why would we want to test
5 people to ensure competency? And yet, we'll
6 be told "you've gotten all this support.
7 You've got two interpreters. What else
8 could you ask for?" What exactly makes
9 these people educational interpreters other
10 than the fact they're working in a school?
11 You haven't tested. You haven't confirmed
12 they're competent. Because why would we
13 want to confirm that people are actually
14 competent?

15 Q. I mean, to be fair, in the remedy that
16 you've sought here, you don't say anything
17 about testing. You just say "shall not use
18 interpreters as replacement for qualified
19 teachers".

20 A. Right, because we don't want interpreters at
21 all because we don't think it's an
22 appropriate setting. A student needs a
23 teacher, not an interpreter.

24 Q. Okay. Some people have said to me in my
25 preparation for this that, you know, the

1 more ASL a child is exposed to, whether it's
2 through parents, friends, peers, teachers,
3 interpreters, student assistants, the
4 better. I mean do you disagree with that?

5 A. No, I'd say it's true.

6 Q. Okay. And you don't take any issue with
7 educational interpreters being used in some
8 of the classrooms where they're not with a
9 DHH teacher, like I understand like Phys Ed
10 class and congregate settings like
11 assemblies, that sort of thing?

12 A. If it's an actual education interpreter
13 whose competency has been confirmed using an
14 EIPA. If you're just going to hire somebody
15 and call them that title that doesn't make
16 them - you can call me a ham sandwich. It
17 doesn't make me so.

18 Q. Okay. In paragraph 97 of your brief, you
19 say "the District shall create the position
20 of language acquisition support worker,
21 recruiting culturally deaf individuals as a
22 resource to assist in improving Carter's
23 proficiency in ASL".

24 A. Correct.

25 Q. Correct, and we understand that people were

- 1 working in that position - I agree that they
2 were probably not being paid as much as they
3 should have been and they were being asked
4 to do more than the simple student assistant
5 approach, but would you agree that people
6 like Tammy Vaters and the other people in
7 that class were effectively doing that job?
- 8 A. I wasn't in the classroom. I can only go by
9 the job description. They called them
10 student assistants.
- 11 Q. Okay. Are you aware that APSEA no longer,
12 you know, recommends that? That they
13 actually recommend a deaf educational
14 interpreter?
- 15 A. I'm not in the - we're not in the
16 jurisdiction of APSEA here, so I'm not
17 familiar with what APSEA does, other than
18 the fact they do have a guideline for
19 educational interpreters that specifies
20 certain requirements in terms of proving
21 competency.
- 22 Q. Okay. In the yellow sort of set of
23 documents at Tab 1, I appreciate this is a
24 new document. I'm going to have Alma
25 McNiven speak to it, but this is a new

1 position that they're seeking for the ASL
2 classroom this year. I understand there's
3 going to be two of these in the classroom,
4 teaching and learning assistant deaf and
5 hard of hearing. I understand it's under
6 the NLTA collective agreement and you know,
7 will be - has a job description more aligned
8 with what you're saying. Have you had a
9 chance to review this document?

10 A. I have.

11 Q. Does this satisfy the concerns that you've
12 raised in that remedy?

13 A. It does, in terms of the language
14 acquisition support worker.

15 Q. Okay, thank you. Paragraph 105 of your
16 brief, you seek your legal costs incurred in
17 this case.

18 A. Correct. To be honest with you, I don't
19 think any person who has ever undergone
20 discrimination should ever be punitively
21 financially penalized hundreds of thousands
22 of dollars for fighting for their rights. I
23 think it will actively discourage people
24 from ever trying to go through this process
25 and defend their rights.

1 Q. You will confirm that you have a Go Fund Me
2 page?

3 A. We did.

4 Q. And that the funds raised in that are used
5 solely for this Human Rights -

6 A. Yes, they're long spent.

7 Q. Okay. Well, I looked yesterday and there
8 was \$26,000 there.

9 A. And our legal fees far exceed that.

10 Q. Okay. Thank you. Those are my questions,
11 Mr. Churchill.

12 MR. REES:

13 Q. You stay there because I got some questions
14 for you.

15 A. Oh, sorry.

16 Q. We're moving right along.

17 MR. TODD CHURCHILL, CROSS-EXAMINATION BY ADJUDICATOR
18 GALLANT

19 ADJUDICATOR:

20 Q. Can I just ask a question of clarification
21 before you get started there? This Go Fund
22 Me, there's \$26,000 available in the fund or
23 is there 26 -

24 INTERPRETER:

25 Q. Sorry, can we ask that the microphone be

1 turned on?

2 ADJUDICATOR:

3 Q. Microphone is on. Maybe I'm not speaking
4 loudly enough. The Go Fund Me, did you say
5 that there's \$26,000 in the fund available
6 now or did you say that the \$26,000 has
7 already been spent?

8 A. It's been expended. We far exceeded that
9 already.

10 Q. Is the money there now or has it been
11 removed from the Go Fund Me and paid to
12 someone else?

13 A. How Go Fund Me works is that when people
14 donate to a Go Fund Me, usually weekly
15 you'll get a disbursement of the money into
16 your account and the money's been spent.

17 Q. Okay.

18 A. We far exceeded the \$26,000 that's in the Go
19 Fund Me, far exceeded it.

20 Q. Okay. That clarifies that for me. Go
21 ahead, Mr. Rees.

22 MR. TODD CHURCHILL, RE-EXAMINATION BY MR. KYLE REES

23 MR. REES:

24 Q. Thanks. Three questions for you, Todd, on
25 re-exam. My friend put the letter that you

1 had written to the Premier's Task Force to
2 you with the list of five things you were
3 looking for, most of which were focused on a
4 teaching ASL. At any point prior to the
5 establishment of East Point Elementary, had
6 you or Kim talked about the sort of social
7 need to have kids who - you know, deaf kids
8 get together, kids who speak ASL to each
9 other get together? Did that - had that
10 ever come up or was that a new thing the
11 District came up with when they established
12 East Point?

13 A. No, I mean, we've always felt that Carter
14 was socially isolated. How can you put a
15 deaf child in a classroom surrounded by
16 hearing children and not have them socially
17 isolated? We always felt it was important
18 for Carter to be with children that speak
19 the same language. Carter, in kindergarten,
20 had a mainstream teacher that knew no ASL.
21 And that's not Todd Churchill saying it.
22 That's his affidavit saying it. An IRT, no
23 sign language. Affidavit says it. A
24 student assistant whose ASL, as my wife
25 said, was so poor she couldn't fingerspell

1 her own name when she was finally
2 proficiency tested the following year, and
3 intermittent support with a person who again
4 is not tested, because in Newfoundland and
5 Labrador we don't test teachers. So, Carter
6 was just there and for a parent whose child
7 is starting kindergarten next week, I doubt
8 any parent would ever find that acceptable.
9 So, it's not -

10 Q. But it's not in your 20 - like in your list
11 of five things that my friend put to you,
12 which I think is 2017 letter. It's a 2017
13 letter?

14 A. Um-hm.

15 Q. You don't list having kids get together
16 socially to speak in ASL together. But my
17 question for you is, you know, was that
18 something that you - despite it not being in
19 this letter, had it ever been brought up to
20 the District prior?

21 A. Yes. No, it's been brought up before and
22 again, to clarify, when we wrote the letter
23 to the Premier's Task Force, our level of
24 knowledge at that point was very immature,
25 compared to what it is now and we were

1 functioning or writing the letter within the
2 confines of the inclusive education system
3 that required my son to attend Beachy Cove
4 Elementary. There were no options. I
5 couldn't write "reopen the Newfoundland
6 School for the Deaf". That's not an option.
7 Or I couldn't say "bring all these kids
8 together in one classroom" because the
9 policy of the province didn't allow for
10 that. It wasn't something I could
11 recommend. And again, as Mr. Penney has
12 indicated, I had no power to dictate what
13 was going to be done with my son and how he
14 was going to be educated. Beachy Cove was
15 my only option and I was trying to work
16 within the confines of the restrictions
17 imposed.

18 Q. Last question then that I have for you. My
19 friend asked you about legal fees and the
20 money in your Go Fund Me and you indicated
21 that the \$26,000 or so that had been accrued
22 in the Go Fund Me had been spent already on
23 your legal fees. You know, your legal fees
24 are your business and it's your privilege to
25 waive if you want to let folks know what

1 you've spent. So, you said that the \$26,000
2 in the Go Fund Me has been long spent on
3 your legal fees?

4 A. Um-hm.

5 Q. I would suggest it was worth every penny.
6 Do you mind telling the Commission how much
7 to date you've spent on legal fees and how
8 much you estimate spending by the end - I
9 think you do have an estimate - by the end
10 of the hearing?

11 A. To date, I believe the total cost, as of
12 right now, is \$40,891 with another bill in
13 the mail I'm understanding that will be
14 \$20,300 that will be received this week. In
15 addition to that, an estimated additional
16 further expense of \$35,000. So, we're
17 looking at upwards of 95 to \$100,000 spent
18 to get my son a teacher who can communicate
19 with him.

20 It's insane that in this province a
21 parent has to go to these extreme lengths,
22 spend tens of thousands of dollars to get
23 something that parents of hearing children
24 take for granted and should take for
25 granted. This is a punitively - this is

1 financially punitive against people trying
2 to defend their rights. It honestly is.
3 How are people supposed to defend their
4 rights and stand up and - I mean, I guess
5 the moral of the story is just suck it up
6 because if you don't, we'll financially
7 cripple you.

8 And I think that's been probably the
9 modus operandi of the District of other
10 parents who have actually spoken up that,
11 you know, you just beat the parent down till
12 they give up. And I think we have probably
13 been the outlier. We haven't gone away.
14 We've actually fought it out to the
15 detriment of things like retirement or to
16 the detriment of buying my son a new
17 accessible van that right now could give out
18 any day because it's 11 years old. Those
19 are my priorities I'd like to have, but I'm
20 forced to come here and spend tens of
21 thousands of dollars to fight for something
22 as fundamental to my son's education as a
23 fulltime teacher or a teacher that can
24 actually communicate with him. And I have
25 to -

1 Q. And those efforts continue to bear fruit,
2 don't they? I mean, we looked at Tab 1 of
3 the new List of Documents, that new job
4 posting for the teaching and learning
5 assistant, deaf and hard of hearing, which
6 Mr. Penney put to you. And that's new in
7 the last week, isn't it?

8 A. It is. We haven't had a whole lot of time
9 to look at it. It sounds like it's a sign
10 language or a language acquisition support
11 worker under a different title. But my
12 question is: is this going to be the same as
13 a posting for an itinerant teacher? Are we
14 actually going to test this person or are we
15 just going to hire somebody and say they're
16 the job and we're never even going to test?
17 Because we don't test teachers. We don't
18 test interpreters. So, why is this person
19 going to be tested? We're just going to
20 pull them off the street and now suddenly
21 you're a teaching learning assistant or
22 whatever they're calling it. Like it's - I
23 don't know why I have to explain to the
24 District you have to test and ensure people
25 are competent.

1 Just imagine -- I'm an engineer. Just
2 imagine if my profession actually worked on
3 that basis. I don't think I'd want to cross
4 many bridges or go in many buildings if my
5 profession worked on the principle of you
6 don't have to test my competency as an
7 engineer. I mean, this is probably the only
8 profession I've ever seen where nobody has
9 to be proved competent. It's insane and
10 it's insane that I actually have to explain
11 this. It's so self-evident. It's so
12 intuitive.

13 But I have to spend \$100,000 to come to
14 a venue like this to say I - my son should
15 have a teacher that's actually proficiency
16 tested to confirm he or she can meet the
17 language needs of my son when hearing
18 children have several layers of safeguards
19 to do exactly that and parents of hearing
20 children don't have to spend \$100,000
21 because it's legislatively protected by the
22 *Teachers' Certification Act* that English
23 proficiency testing will be required, if
24 necessary.

25 Q. Thanks, Todd. Those are all the questions I

1 REPORTER:

2 Q. Okay. We're on the record. Thank you.

3 ADJUDICATOR:

4 Q. Thank you everyone for coming back at 1:00.

5 It appears that our next witness, Colleen

6 Moyst, won't be available until 1:30, so

7 we're simply going to take the opportunity

8 to adjourn until 1:30. So, those who are

9 watching on the live stream are aware that

10 we will not be resuming until 1:30. So,

11 we're adjourned.

12 (OFF RECORD)

13 REPORTER:

14 Q. We're on the record. Thank you.

15 ADJUDICATOR:

16 Q. Thank you. Good afternoon everyone. The

17 Human Rights Commission staff have

18 approached me and they've asked me to relay

19 to everyone in the room and those who are

20 watching on the live stream that we are

21 aware that there are issues with the closed

22 captioning system and that it's not

23 performing in a satisfactory manner.

24 Unfortunately, this issue will not be

25 resolved for this afternoon and the current

1 captioning system will continue. But the
2 Human Rights Commission staff and IT
3 professionals are exploring alternatives and
4 hoping that that will be resolved as swiftly
5 as possible.

6 Our next witness is Colleen Moyst. Ms.
7 Moyst, would you prefer to swear an oath on
8 the Bible or a solemn affirmation?

9 A. Bible, please.

10 Q. Okay. And I'll just let you know, Ms.
11 Moyst, that there's a little button in front
12 of you and when you're speaking you press
13 that button, it'll turn red and then you'll
14 be amplified and recorded.

15 A. Okay. So, is this on now?

16 Q. It's on now. And so, we'll have the oath,
17 please.

18 MS. COLLEEN MOYST, SWORN, CROSS-EXAMINATION BY MR.

19 STEPHEN PENNEY

20 REPORTER:

21 Q. For the record, could you state your
22 complete name, please?

23 A. Colleen Jane Moyst.

24 Q. Thank you very much. Ms. Moyst has been
25 sworn.

1 ADJUDICATOR:

2 Q. Ms. Moyst, I believe Mr. Penney has a series
3 of questions that he would like to ask you
4 and then you can expect that Mr. Rees will
5 have some follow-ups. I may have questions
6 or I may not, but these gentlemen are
7 certainly going to have some questions for
8 you. Mr. Penney.

9 MR. PENNEY:

10 Q. Thank you, Ms. Moyst. So, my name is Steve
11 Penney. I'm counsel for the District. I
12 have a few questions for you. If you don't
13 understand the question, please ask me to
14 restate it or reframe it. And also, if I
15 refer to a document, feel free to take the
16 time to review that document to make sure
17 you're comfortable with the contents. I'll
18 direct you to where it is in that pile of
19 paper up there, okay?

20 A. Okay. May I just say one thing before we
21 start, if it's okay? In my affidavit, as
22 I've gone through it again, I just want to
23 let you know that for the Human Rights
24 question AF, I included a copy of NLCED's
25 report, again to the Pat Channing report.

1 So, it's not the response to Darlene Styles,
2 December 2008 report. So, I just wanted to
3 clarify that; that I did find that mistake.

4 ADJUDICATOR:

5 Q. Mr. Penney, go ahead.

6 MR. PENNEY:

7 Q. Okay. Ms. Moyst, through the School
8 District, you did not teach Carter
9 Churchill, correct?

10 A. No.

11 Q. And you were not involved in any of Carter's
12 ISSP's or IEP's, correct?

13 A. Correct.

14 Q. And you were not involved in any of Carter's
15 educational programming, correct?

16 A. Correct. I did tutor him though the summer
17 after I retired.

18 Q. Yes, I was aware of that. That's - yeah, no
19 dispute there. I just wanted to ask you a
20 few questions about your sort of educational
21 background and training and experience.

22 A. Yes.

23 Q. Okay. So, you have a Master's degree in
24 deaf education, correct?

25 A. Yes.

- 1 Q. Okay. And you have worked in deaf education
2 since the early 1990s, including at the
3 Newfoundland School for the Deaf and as a
4 DHH itinerant in the Newfoundland school
5 system? And I realize it changed names a
6 few times.
- 7 A. Yes. I also worked - began working in the
8 residence at the Newfoundland School for the
9 Deaf in 1989, May, for two years.
- 10 Q. Okay, thank you. And you've done some ASL
11 training, correct?
- 12 A. I have, as most that is offered here in this
13 province.
- 14 Q. And -
- 15 A. And also - I'm sorry. And also, just to be
16 aware, when I was an itinerant teacher on
17 the Burin Peninsula, there were no ASL
18 classes offered there, but once I moved into
19 St. John's, I wanted to bring my ASL skill
20 level back up to as best to where it had
21 been when I was first assessed in APSEA
22 during my Master's degree.
- 23 Q. When I look through your educational
24 background, I see - and this is at your
25 affidavit, Tab A.

- 1 A. Yes.
- 2 Q. I see, six dashes down, "completion of
3 APSEA's sign communication proficiency
4 interview, SCPI, with an outcome
5 intermediate plus level of proficiency".
- 6 A. Yes.
- 7 Q. Okay. You have not been ASLPI tested,
8 correct?
- 9 A. Pardon me?
- 10 Q. There is a - I understand there's a
11 difference; that there's the testing done by
12 NLAD, the Newfoundland and Labrador
13 Association for the Deaf, is called ASLPI
14 testing.
- 15 A. No, I have not been tested by NLAD.
- 16 Q. Okay, thank you.
- 17 A. I have taken all the courses though that
18 they can offer at this point in time.
- 19 Q. Okay. So, based on the ASL standard being
20 sought by the Churchill's, which is someone
21 with superior plus training or superior plus
22 proficiency, you would not be someone - you
23 would not be qualified to teach Carter
24 Churchill, correct?
- 25 A. I believe I would be qualified simply

1 because his ASL proficiency is below mine.
2 From what I have seen from Carter, I believe
3 I could certainly teach him.
4 Q. Thank you. On November 30th, 2017, you wrote
5 an email to Kim Lawlor raising concerns
6 about DHH itinerant teacher loads. Do you
7 remember that?
8 A. I'm sorry, what was the year?
9 Q. 2017, November 30th, 2017.
10 A. Okay.
11 Q. I can show it to you. I don't want to
12 surprise you.
13 A. Sure.
14 Q. This is not an ambush. If you look at Tab 2
15 of the - there's a set of yellow documents
16 there.
17 A. Okay.
18 Q. And if you want to take time to read the
19 whole thing, feel free.
20 A. Yes.
21 Q. You remember that correspondence?
22 A. Yes.
23 Q. Okay, great, thank you. So, in that email,
24 you specifically raise a concern about
25 Sheila MacDonald going fulltime, as a

1 fulltime teacher with Carter Churchill.

2 That would have been in his grade one year.

3 A. Yes.

4 Q. And you were concerned about the impact that
5 this had on the other DHH itinerant
6 caseloads?

7 A. I was concerned in general overall,
8 including for Carter, that what the
9 itinerant teachers were able to provide was
10 certainly not enough. There was not enough
11 of us. The students needed to come together
12 and be with each other and be taught
13 together. My concern, yes, with Sheila
14 gone, then there was point six of her
15 position students not being seen as well.
16 Overall, as a teacher of the deaf, my
17 biggest concern obviously are the needs of
18 the students that I service and teach. Even
19 though Carter was not on my caseload, the
20 impact certainly was felt across all of our
21 caseloads because then - well, that position
22 was gone and there are a number of students
23 who required teaching and service.

24 Q. He was getting a higher level of support
25 than the other children?

1 A. At that point in time, Sheila became - that
2 was November. Sheila became fulltime 2017.
3 The wonderful idea that was brought to us in
4 September 2017 was to provide two hours per
5 day to each of the boys by an itinerant
6 teacher of the deaf. Sheila was assigned to
7 Carter, so she was providing him with two
8 hours per day before she became fulltime
9 with Carter.

10 Q. Thank you, Ms. Moyst. Those are my
11 questions.

12 MS. COLLEEN MOYST, RE-EXAMINATION BY MR. KYLE REES

13 MR. REES:

14 Q. Okay, Colleen, I've got a couple of
15 questions for you, only a couple though, so
16 we're going to conclude here early today, I
17 believe.

18 Your comment, I know that you assisted
19 Carter in 2019 with learning ASL and you
20 provided some commentary about what you
21 believed would be your ability to teach
22 Carter, as long as his ASL proficiency was,
23 you know, was below your own, and that would
24 have been the case I understand in 2019,
25 right?

1 A. Yes.

2 Q. And you haven't taught Carter since 2019,
3 have you?

4 A. No.

5 Q. So, as his proficiency grows and you'd have
6 to hope his proficiency has gotten better in
7 the last three years, we would hope, he
8 would reach a point at some point where, you
9 know, it wouldn't be appropriate until you
10 APSEA tested higher to be able to teach
11 Carter again?

12 A. I'm sorry, can you repeat that?

13 Q. Well, I guess what I'm saying is I think
14 your evidence was that you said you believe
15 that as his proficiency in ASL was below
16 yours, you know, it might be - it was
17 certainly appropriate for you to teach him
18 in 2019.

19 A. Yes.

20 Q. If his proficiency has grown, and I would
21 suggest that it has probably in the last
22 three years, it might not be appropriate for
23 you at your level of ASL testing to teach
24 him ASL?

25 A. Well, at this point in time, I'm three years

1 retired now, and I would say that my ASL
2 skill level has, you know, decreased
3 somewhat because I'm not using it constantly
4 every day. I can still communicate with
5 Carter and when I do, I use ASL.

6 Q. You indicated that you had taken, I mean,
7 almost every ASL course that was available
8 in the province, right?

9 A. Yes. I have taken all of the courses
10 available, even into my retirement.

11 Q. And it seems like you have, you know,
12 maintained and certainly did have an
13 interest in the area.

14 A. I absolutely love working with students who
15 are deaf and hard of hearing, which is why I
16 got into this field.

17 Q. And if, you know, the School District or any
18 other organization within this province had
19 offered any kind of additional ASL training
20 programming, you would have been first in
21 line to take it, wouldn't you?

22 A. Absolutely. As a matter of fact, I paid for
23 my own ASL courses during this time that the
24 students were identified. NLESD did not
25 offer me to go and learn it or you know, to

1 pay for it. I did that of my own freewill
2 and knowing full well that I needed
3 refreshers because if you're not using ASL
4 every day, you will lose it. It's like any
5 language. If you don't use it, you lose it.

6 Q. So, the School District wasn't coming to you
7 offering you additional courses or training
8 or any of those sorts of things, but you
9 would have loved if they did?

10 A. Absolutely. Well, in one of my answers
11 there, I had even proposed for Dr. Barbara
12 O'Dea to come in and provide in-depth
13 professional development to us as group of
14 itinerant teachers and it wasn't acted upon.
15 So, certainly, I mean, any kind of training,
16 anything at all - as a matter of fact, if
17 NLAD was offering 301, I would be taking
18 that, and 302 and 303, simply because I also
19 have friends who are deaf.

20 Q. Right.

21 A. And I would prefer to maintain my skill
22 level in ASL.

23 Q. Yes. Last question for you then. You
24 indicated in answering one of my friend's
25 questions that the loss of - I think you

1 referred to it as the loss of point six of a
2 caseload when one of your colleagues
3 retired, was it Sheila?

4 A. Yes. No, when she went with Carter
5 fulltime.

6 Q. Oh, right.

7 A. 2017.

8 Q. So, and Sheila goes with Carter and
9 therefore there's an additional point six of
10 a caseload that needs to be, you know,
11 shouldered by you and some of your other
12 colleagues?

13 A. Yes.

14 Q. Did the School District at that time take
15 any steps to sort of fill that staffing -
16 the lack of staffing that you just
17 identified, hire anyone new, increase anyone
18 else's hours?

19 A. I believe they were looking. It wasn't
20 until March before that position was filled
21 and as a matter of fact, the NLESD added
22 point four to make it a full unit, and the
23 point four of that position would go to a
24 hearing child who was learning American Sign
25 Language because he was losing his ability

1 for language. So, to me, why could NLESD
2 not provide each of these students with a
3 qualified teacher of the deaf, bring them
4 together? Why were the deaf students not
5 important as was this hearing child? And
6 besides the fact that itinerant teachers of
7 the deaf do not provide service or teaching
8 to hearing students. That is not our
9 responsibility in our job description. So,
10 NLESD, it appeared to me, was changing the
11 role as they saw fit. Does that answer your
12 question?

13 Q. It does. Did you bring these concerns to
14 anybody?

15 A. Absolutely, in emails. The point four, I
16 even asked Kim and Bonnie in an email about
17 what were the guidelines with respect to
18 teaching ASL for students who were deaf and
19 for students who were hearing. And I
20 believe, I'm not sure if this is the email
21 actually that I was asking.

22 Q. Do you recall -

23 A. It's in that email.

24 Q. Do you recall what the answer was?

25 A. It's in this email.

1 Q. Even if not verbatim.

2 A. They didn't answer me.

3 Q. No answer?

4 A. No answer.

5 Q. Was that typical of your experience?

6 A. Typical, all the time.

7 Q. Okay.

8 A. To me, as a group of professionals, we were
9 not respected. We were not listened to over
10 the years. We continually spoke in every
11 meeting about the needs of our students on
12 our caseloads, that there was too many with
13 too many needs that we could not provide a
14 level of service that they required.

15 Carter, in order for him to get what he
16 needed, the proposal we submitted was to
17 bring the students together with two
18 teachers of the deaf who could communicate
19 in American Sign Language and teach Carter
20 and the rest of the students American Sign
21 Language along with student assistants who
22 were deaf who could teach Carter and the
23 students about what it is to be deaf, their
24 experiences as being deaf, deaf culture,
25 deaf history. They were obviously

1 proficient in American Sign Language.
2 They're native American Sign Language users.
3 That's their first language.

4 So, to me, we were - like I don't know
5 if what they thought was absurd. I don't
6 know. But I mean, all hearing kids are
7 together. Why can't all deaf kids come
8 together to learn their first language?
9 Hearing students are together to learn their
10 first language, English. So, it only seems
11 fair to me, the only difference between a
12 child who's deaf and a child who's hearing
13 is the manner in which they learn a
14 language.

15 A deaf child needs to have a visual
16 language in order to understand and
17 communicate with others, to learn social
18 skills, develop their emotional skills,
19 educational skills, be able to participate
20 in co-curricular activities, to learn life
21 skills. All of these are so important and
22 if you do not have a first language, how can
23 you learn a second language, such as English
24 as a speaking language or written language?

25 Q. I follow. Colleen, thanks for your time

1 here. I know you have a lot that you could
2 say on the subject and you've only spoken
3 for a short amount of time here, but your
4 affidavit is very thorough and I thank you
5 for all the work that you did preparing it.
6 I don't have any further questions for you,
7 but the Commissioner might.

8 MS. COLLEEN MOYST, CROSS-EXAMINATION BY ADJUDICATOR
9 GALLANT

10 ADJUDICATOR:

11 Q. Ms. Moyst, I just want to go back to
12 something that Mr. Penney was asking you
13 some questions about and that was that you
14 had completed APSEA's sign communication
15 proficiency interview. When was that?

16 A. Just give me a second. '93, probably May or
17 June of 1993 when I was completing my
18 Master's degree in deaf education.

19 Q. And did I understand you correctly that over
20 time you were concerned that your
21 proficiency level had declined and that's
22 why you were completing additional courses
23 in ASL?

24 A. Absolutely. I wanted refresher, make
25 certain that I was signing correctly. It's

1 very easy to confuse signs as they're so
2 close. You know, for example, like now -
3 wait now. No, I won't go into that. I
4 wanted to make certain that I was still able
5 to communicate well and not using the wrong
6 signs for any - when I interacted with any
7 person who was deaf because if I did not,
8 then communication could be misunderstood
9 and it was as well as part of, I believe, my
10 professional responsibility to maintain my
11 ASL skills, depending on what would happen
12 in the future for me.

13 Q. And after you completed the courses that are
14 listed where you identified your educational
15 background in your affidavit, after you
16 completed those courses, were you retested
17 in terms of your proficiency in ASL?

18 A. No, I was not retested, nor was I asked.

19 Q. So, while you were employed by the
20 Newfoundland English School District as a
21 teacher of the deaf or as an itinerant
22 teacher of deaf and hard of hearing
23 children, at any point were you assessed in
24 terms of your proficiency?

25 A. No. I would have if I was asked. I have no

1 issue with having my ASL skills tested.

2 Q. Okay, thank you. Anything arising from
3 that?

4 MR. REES:

5 Q. No.

6 ADJUDICATOR:

7 Q. Okay, Ms. Moyst, you can step down. I don't
8 think we have any further witnesses who are
9 scheduled or available to give evidence or
10 be cross-examined today. So, unless there's
11 anything further that we can address today,
12 we'll adjourn until tomorrow at nine a.m.

13 MR. REES:

14 Q. Great.

15 ADJUDICATOR:

16 Q. Okay. We are adjourned.

17 MATTER ADJOURNED TO AUGUST 30, 2022 AT 9:00 A.M.

18

1

CERTIFICATE

2

3

I, Cindy Sooley, hereby certify that the

4

foregoing is a true and correct transcript of a NL

5

Human Rights Inquiry heard on the 29th day of August,

6

2022 before Adjudicator Brodie Gallant, held at

7

Holiday Inn, in St. John's, NL, and was transcribed by

8

me to the best of my ability by means of a sound

9

apparatus.

10

11

Dated at St. John's, Newfoundland and Labrador

12

This 1st day of September, 2022

13

14

Cindy Sooley

15

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