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August 31, 2022

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1 ADJUDICATOR:

2 Q. Good morning everyone. We are resuming our
3 hearing and I understand that the next
4 witness that we are scheduled to hear from
5 is [REDACTED]. Is [REDACTED]
6 here with us today? Good morning, [REDACTED]
7 [REDACTED].

8 A. Good morning.

9 Q. Now, in front of you there's a little
10 microphone device and there's a red button
11 that you can press when you want to talk.
12 It seems as though somebody may have turned
13 that on from the back.

14 A. Okay.

15 **Grade 1 & 2 DHH Teacher - Beachy Cove Elementary**
16 MS. SHEILA MACDONALD, SWORN, CROSS-EXAMINATION BY MR.
17 [REDACTED]
18 KYLE REES

19 REPORTER:

20 Q. For the record, can you state your complete
21 name please?

22 A. [REDACTED]

23 Q. Thank you very much. [REDACTED] has been
24 sworn.

25 ADJUDICATOR:

Q. Thank you. [REDACTED], I understand that
Mr. Rees has a series of questions he'd like

1 to ask you.

2 A. Okay.

3 MR. REES:

4 Q. Good morning, [REDACTED].

5 A. Good morning.

6 Q. I am Kyle Rees. I'm the lawyer for the
7 Churchills who I know you know and are sat
8 here beside me. So, the way that this
9 process goes, if it hasn't been explained to
10 you already, is that we've got about an hour
11 scheduled here today where I can ask you
12 some questions about your affidavit and some
13 other documents and thank you for providing
14 the affidavit.

15 I'll be referring you to documents.
16 You can see you're just inundated with paper
17 up there in front of you today. So, at
18 various points, I'll, if necessary, direct
19 you to some documents. It might take a
20 little while to find them, but that's
21 totally okay. I think you have your
22 affidavit there in front of you, do you?
23 That's the thing I'll be talking about the
24 most.

25 A. Yes.

1 Q. So, that's there. When I'm done asking you
2 questions, the lawyer for the School
3 District, Steve Penney, may have some
4 questions for you and the Adjudicator,
5 Brodie Gallant, might have questions for you
6 as well. If at any point, you know, the
7 questions that I'm asking you are unclear,
8 that happens, just let me know. I'll
9 rephrase or repeat it. If you need to take
10 a break for any reason, we can do that too,
11 and I'll do everything I can to have your
12 testimony concluded within the hour, okay?

13 A. Okay.

14 Q. All right. I just want to take you to
15 paragraph 7 of your affidavit. It's on the
16 front page. And you say that while you have
17 no recollection of ever referring to
18 Carter's programming as a shit show, sorry
19 for putting those words in your mouth,
20 "however I did feel that the educational
21 needs of students generally were not being
22 addressed. I believe that there was no plan
23 put in place by the Department of Education
24 or the respective school boards for students
25 who needed ASL after the closure of the

1 Newfoundland School for the Deaf.”

2 A. Um-hm.

3 Q. So, your objection to me saying that you
4 referred to it or the Churchills saying that
5 you referred to it as a shit show is really
6 only language; the idea is still that things
7 were not ideal for deaf students, right?

8 A. Yes, right.

9 Q. Can you tell me about the educational needs
10 that you thought weren't being met for deaf
11 students? You say you don't think the
12 educational needs of deaf students were
13 being met. Tell me about what those needs
14 were and how they were not being met.

15 A. Especially for younger children, if students
16 needed ASL, there was no programming. There
17 was like no service available for students
18 who needed sign language. If they had a
19 language delay, there just didn't seem to be
20 any processes put in place to get these kids
21 going when they were young. There always
22 seemed to be a delay in -- you know, we'll
23 wait till next year and see what happens,
24 and wait till next year and see what
25 happens, and with deafness and language

1 development, time is of the essence.

2 Q. Right.

3 A. You have to work very hard when the kids are
4 young, like even in preschool, to try to
5 develop language, develop vocabulary so that
6 they can succeed in the school system, so
7 that they can succeed in life even.

8 Q. Like so how are those needs of deaf children
9 like Carter different than the needs of
10 hearing students?

11 A. Well, in their language development, if -
12 like say, for example, some students have
13 cochlear implants, some use hearing aids.
14 If, for whatever reason, listening isn't
15 beneficial to those students, if they can't
16 use the implants for whatever reason or
17 their hearing aids, then they don't hear the
18 language. They don't develop language as
19 regular hearing students do.

20 So, basically, you have to teach that
21 student everything. Like a deaf student has
22 to be taught everything, as opposed to a
23 hearing child being able to pick up
24 incidentally. They can pick up words - I
25 mean, a child at five years of age could

1 have 10,000 words in their vocabulary. A
2 deaf child would not because they don't hear
3 it and, you know, incidentally they can hear
4 it from their parents, they can hear it from
5 siblings, any other relatives. They can
6 hear language on the radio, on the TV.
7 Quite often kids, you know, are sat in front
8 of a TV and they can hear all sorts of
9 things. They're going to, you know, the
10 grocery store or to the mall. They can hear
11 people talking. They can hear words and
12 they can hear sentences.

13 That's not the case with the deaf child
14 and so, you have to be very specific in
15 teaching them their language and teaching
16 them vocabulary and trying to develop that
17 as early as possible.

18 Q. Right. In the inclusive education model,
19 deaf students aren't simply going to, you
20 know, pick up ASL, pick up a language based
21 on their surroundings like a hearing child
22 might because they're surrounded by, you
23 know, conversation, oral conversation all
24 the time. That wasn't the case though.
25 When the School for the Deaf was open, there

1 would have been a lot more exposure for
2 children like Carter to an environment where
3 others are signing, right?

4 A. Yes, that's correct. Pretty much everybody
5 at the School for the Deaf knew sign
6 language or most people did. All the
7 teachers did, the principal, the vice-
8 principal. There was one deaf teacher.
9 There was lab technician in the science lab
10 and you had people working in the kitchen
11 who were deaf and cleaning staff and
12 supervisors in the dorm. So, the kids were
13 surrounded. So, it wasn't just in school
14 that they learned the language, like in the
15 classroom as such. They could see people
16 signing in the hallways and if they stayed
17 in the residence, they could - you know,
18 they were talking to other students in the
19 residence and dorm staff. So, they were
20 surrounded by their language at the School
21 for the Deaf.

22 Q. And how does - I mean, you raise this in
23 your affidavit as something you were
24 concerned about. I mean, how does the fact
25 that a student like Carter was not exposed

1 to that kind of environment where he's
2 seeing naturally occurring sign
3 conversations, why was that concerning to
4 you?

5 A. Because he just couldn't develop his
6 language. You can't - you know, there's not
7 enough time then to get vocabulary into him
8 like in a school day and to get all the
9 language that he needs to be successful in
10 the school environment. It's just - it's
11 impossible.

12 ADJUDICATOR:

13 Q. Mr. Rees, we're sort of running into the
14 same problem we had yesterday; that I don't
15 know what time period you're talking about.
16 The questions started off with, you know,
17 what was happening for pre-K children and
18 now, you know, we've sort of jumped into
19 what was occurring at the School for the
20 Deaf and now it's - like maybe we want to
21 talk about what was happening for children
22 who are deaf or hard of hearing before the
23 school closed, compare that. Because I
24 don't know what time period you're talking
25 about now.

1 MR. REES:

2 Q. Well, my question for you about the concerns
3 you had for deaf children like Carter was
4 based around Carter's school experience, for
5 instance, while he was at Beachy Cove
6 Elementary, you know, kindergarten through
7 grade three, where he did not have any
8 signing peers. So, the evidence that you
9 just provided and the concerns that you
10 discussed, they would be applicable to that
11 time period, would they?

12 A. Yes.

13 Q. Okay. You were reporting to Bonnie
14 Woodland? Was she your supervisor?

15 A. Yeah.

16 Q. What was her role in terms of responsibility
17 over you, Bonnie Woodland?

18 A. We just -

19 Q. I'm just trying to get the name. What was
20 her name - like she was your director, your
21 supervisor?

22 A. Yeah, I guess the director, I guess.

23 Q. Okay. And she had no experience in deaf
24 education, deaf culture, any of those sorts
25 of things?

1 A. I'm not sure. I don't know.

2 Q. Did you ever feel challenged, I suppose,
3 when you were bringing some of these
4 concerns about the needs of deaf children to
5 your superiors, that they didn't grasp or
6 appreciate the degree of need that deaf
7 children had?

8 A. I don't think they understood it, even
9 though when the itinerant teachers sent a
10 letter in 2017 asking for a separate
11 classroom for a group of students, and
12 Carter was included, the teachers specified
13 the students had a severe language delay and
14 I don't know if anybody really understood
15 that or took that to heart or whatever, you
16 know. When you had - say a student has a
17 severe language delay, like that should mean
18 something, but I don't think they -

19 Q. Did you ever get an understanding of why,
20 you know, these kinds of concerns that you
21 were raising in 2017 and I understood they
22 had, you know, sometimes been raised before
23 that and certainly got raised after 2017,
24 2018, 2019, did you ever get a sense of, you
25 know, why there was no concrete or no at

1 least immediate concrete action on your
2 concerns? Did you ever get an explanation?

3 A. No.

4 Q. You didn't. So, you had raised these
5 concerns. You had raised these concerns
6 with Bonnie Woodland and others, in many
7 cases in writing. Satellite classroom
8 proposals, we know about those, and there
9 was no action taken until years later?

10 A. Um-hm. That's right.

11 Q. Was that frustrating?

12 A. Yes.

13 Q. Do you think the lack of background in deaf
14 education of your superiors had a bearing on
15 the lack of receptiveness? Do you feel like
16 if they had a background in deaf education
17 or any experience in the area that your
18 concerns would have been addressed?

19 A. It's possible that they would have been
20 addressed. I don't know who they report to
21 or who, you know, they ask these things of,
22 you know, like who do they go to to request
23 for a classroom or did they even, but it
24 would have helped, I think, if they did have
25 some background.

1 Q. I understand that you weren't involved in
2 the 2017 satellite classroom proposal, but
3 you were involved in the 2019 satellite
4 classroom proposal, right?

5 A. Yes.

6 Q. And your 2019 satellite classroom proposal
7 was more or less identical to the 2017 one?
8 You were raising the same concerns for a
9 second time and in your case for a first
10 time because you weren't around during 2017.

11 A. Um-hm.

12 Q. I'm just going to read you some of the
13 deficiencies that were identified in that
14 report. I don't need to take you to the
15 report unless you have specific questions
16 about it. And I'm going to ask you some
17 questions about those deficiencies that were
18 noted. So, some of the deficiencies
19 include: the needs of deaf children were not
20 being met on itinerant teachers' caseloads;
21 the students were not able to access
22 curriculum; support was being delivered by
23 people who were not trained to work with
24 deaf children; support was fragmented; and
25 students weren't making significant gains in

1 language and communication and academic
2 social gaps were getting larger. Those
3 sound like the kinds of concerns you were
4 raising?

5 A. Yes.

6 Q. Explain for me the link that you made, and
7 you alluded to it earlier, between the
8 closure of the School for the Deaf and then
9 the subsequent lack of planning for the
10 cohort, like Carter's cohort of students who
11 entered school years following that closure.
12 What's the link between the closure for the
13 School for the Deaf, the lack of planning
14 and the impact on students like Carter?

15 A. Well, the school closed - when the school
16 closed, the students that were left in the
17 school were junior high and high school
18 students. It was a very systematic closure.
19 So -

20 Q. If I can just interrupt you because I know
21 the adjudicator wants to make sure we get
22 timelines correct. So, the School for the
23 Deaf closes, but at the time the School for
24 the Deaf actually closes its doors, it had
25 stopped accepting new entrants and there

1 were only junior high and high school
2 students left in the School for the Deaf?

3 A. Yes.

4 Q. Right.

5 A. Yes, for many years they didn't accept new
6 students into the school.

7 Q. Right.

8 A. So, the students left were junior high and
9 high school students and those students were
10 put out into the regular school system.

11 Those students had a language developed
12 because they were students at the School for
13 the Deaf. If they needed to use ASL, they
14 had skills in ASL. They could also read and
15 write in English. So, when those students
16 were put out into the regular system, they
17 used interpreters in the classroom. Many of
18 them did not want to do this, but they were
19 told that it's the situation, you have to do
20 it.

21 Q. But what that means is that they didn't want
22 an interpreter interpreting a spoken teacher
23 and interpreting a lesson plan. They wanted
24 to be taught by a deaf teacher. Is that
25 what you imply?

1 A. They wanted to be taught at the School for
2 the Deaf.

3 Q. Right.

4 A. And but, they were able to finish courses
5 and either get diplomas or, you know,
6 certificates or whatever. They completed
7 high school. They had an established
8 language. After the school closed, there
9 didn't seem to be any kind of program for
10 students who needed ASL, for students who
11 could not acquire language through
12 listening.

13 Q. So, there were supports and programs
14 provided to help those junior high and high
15 school students from the School for the
16 Deaf, you know, finish out their education -

17 A. Yes.

18 Q. - in junior high and high school with, you
19 know, qualified interpreters interpreting
20 the lessons in ASL for these students?

21 A. Yes.

22 Q. And these students already could speak ASL
23 themselves and of course, could write. They
24 were literate, they could read and write?

25 A. Yes.

1 Q. But you're telling me there was not
2 equivalent planning for new deaf students
3 who are entering the school system at that
4 time?

5 A. Yes, there didn't seem to be. It just
6 seemed like the students were put out in the
7 regular system and they had to manage as
8 best they could.

9 Q. And did they manage?

10 A. I'm not sure.

11 Q. Tell me about the social aspect of it. I
12 mean, we've had some other folks talk about,
13 and we'll have an expert talk about the
14 academic impacts, tell me about the social
15 concerns that were being raised in your
16 satellite classroom proposal. Because the
17 satellite classroom proposal involved, and
18 just to be clear, you know, getting several
19 deaf children together to be educated
20 together in the same room and to have them
21 sign with each other. Why was it important
22 for the proposal that you helped put
23 together to have deaf children in a room
24 together?

25 A. The deaf children, for one, they needed to

1 see other students like them. They needed
2 to see - like they needed to communicate
3 with each other instead of just going
4 through an adult. It's really not a normal
5 situation when all of your communication has
6 to go through an adult. If you can't
7 communicate with anyone your own age, that's
8 - that doesn't seem right in my mind. I
9 don't know if it seems right in anybody
10 else's mind, but to have all of your
11 communication go through an adult -

12 Q. Through an adult?

13 A. Through an adult if someone has to interpret
14 for you or whatever. If you cannot sit down
15 with someone your own age and talk to them,
16 that's not right.

17 Q. There had been some evidence from some of
18 the other hearing teachers who testified
19 earlier in this proceeding and they said,
20 you know, they thought that Carter could
21 communicate with other kids because he
22 noticed them playing blocks together and
23 things. Is that - and I challenged them
24 that this wasn't communication. Is that the
25 kind of thing you were seeing?

1 A. You could have him playing games and, you
2 know, there's kind of like parallel play,
3 you know, and if - you know, they could be
4 playing a game but still an adult had to be
5 sitting there. The child, the hearing child
6 couldn't really communicate effectively with
7 Carter. You know, they might have to ask
8 the adult, you know, "how do you say this?"
9 or "how do I sign that?" You know, when you
10 hear - when you have the hearing kids
11 playing a game, not only are they playing a
12 game, but they might be chatting about
13 something else, about what they might do
14 after school, you know, or asking questions,
15 you know, "are you going down to the
16 playground after school?" or "no, I don't
17 think so. I'm going to go home" or you
18 know, whatever. They can be chatting about
19 all kinds of different things. They
20 couldn't really do that with Carter.

21 Q. Yeah. As per your affidavit, your
22 involvement with Carter was in the grade -
23 was first at least in the grade one school
24 year, right, 2017 to 2018?

25 A. Yes.

- 1 Q. Do you recall, I mean, how many hours per
2 day you would have been assigned to Carter?
- 3 A. Well, I was there all day with him. I mean,
4 I did have prep periods. They would be
5 like, I guess, half hour at a time or
6 something like that. But, I was assigned to
7 him all day, except at lunchtime and recess
8 time. I still had to go on lunch duty as
9 the other teachers on staff did.
- 10 Q. And what would you do with Carter during the
11 time that you were assigned to him in grade
12 one? What was your role with Carter? I
13 mean, I know it's described in the affidavit
14 but I'd like to give you a chance to talk
15 about it.
- 16 A. I would try to keep him up with the work
17 that was going on in the classroom. The
18 teacher had an FM, so she would speak into
19 that and I would sit next to Carter and when
20 the teacher finished talking or finished
21 explaining a lesson, then I would explain to
22 Carter, you know, what was going on and what
23 we had to do and, you know, all the
24 vocabulary that came along with it.
- 25 Q. I just want to backup and clarify. I know

1 by November of that school year, you're
2 assigned to Carter fulltime, but I think -
3 A. Oh yes.
4 Q. - before that, you're part-time, aren't you?
5 A. Oh, before that, sorry, yeah.
6 Q. So, make it clear during the grade one year,
7 which is 2017 and 2018, you're assigned to
8 him, you know, part-time which is two hours
9 a day?
10 A. Two hours a day.
11 Q. From September till November?
12 A. Um-hm.
13 Q. And then come November, you're increased to
14 fulltime with Carter, which is, you know,
15 most of the day with the exceptions that you
16 mentioned earlier?
17 A. Yes, yeah. Sorry, I misunderstood that.
18 Q. And then during - so, during those, you
19 know, the rest of the hours, during the time
20 that you're part-time and you know, you're
21 with Carter for say two hours a day, you
22 know, the other three, three and a half
23 hours of the day that you're not assigned to
24 Carter, he doesn't have any access to ASL at
25 that time, does he? He doesn't have anyone

1 to teach him ASL during those periods of
2 time?
3 A. No.
4 Q. Or to interpret the lessons for him in ASL?
5 A. No.
6 Q. There's a purple binder there in front of
7 you. You see the purple one?
8 A. Um-hm.
9 Q. For the Adjudicator it's not purple. This
10 is what we've been calling the cross-
11 examination documents binder. Yeah, so you
12 can get that one and turn to Tab 2. It's a
13 document that's titled Psycho-educational
14 report. Do you see that one there?
15 A. Yes.
16 Q. You would have seen - and it's from APSEA.
17 You would have seen documents like this from
18 time to time, yes?
19 A. This is the first one that I had seen.
20 Q. Oh, this was the first time that you had
21 seen one from APSEA at this time?
22 A. Um-hm.
23 Q. Okay. And now that you're looking at it, do
24 you - and you kind of see the title page and
25 things, you understand what it is and why it

1 would have been provided?

2 A. Yes.

3 Q. And I noticed you're listed there, service
4 provider Sheila MacDonald.

5 A. Um-hm.

6 Q. Why would this report - I mean, so this is a
7 report that gets put together by an
8 organization in another province. Why would
9 this report have been sent to you? What was
10 the purpose in it being sent to you, among
11 other people?

12 A. Because I was working with Carter.

13 Q. And the findings in this report, and we can
14 take some time to go through it, if
15 necessary, but I'd put it to you that, you
16 know, this report didn't tell you many
17 things that you didn't already know. A lot
18 of the needs that you were already
19 identifying and the needs that you were
20 already bringing to the attention of the
21 school district were, you know, confirmed by
22 this report?

23 A. Yes.

24 Q. I just want to ask you about one section of
25 the report and find out whether you agree

1 with it. On the executive summary page - in
2 the top left-hand corner, there are page
3 numbers and this says page four.

4 A. Yes.

5 Q. Which is the executive summary and that
6 indicates, halfway through the first
7 paragraph, "Carter is not able to use his
8 voice to communicate. Expressively, he uses
9 sign language as his primary mode of
10 communication, typically single signs, and
11 receptively." So that means that Carter
12 both speaks and understands primarily in
13 ASL, doesn't he?

14 A. Well, he uses sign language to communicate,
15 yes, his expressive language.

16 Q. So, there would have been, you know, no
17 doubt to anyone who was reading this report
18 that Carter needed ASL in order to
19 communicate, right?

20 A. Yes. He cannot use his voice.

21 Q. I notice the report also indicates - sorry,
22 I'm flipping around because I'm trying to
23 get to the part - right, the very, I guess,
24 what would be page one. It's not - there's
25 no page number on the first - sorry, I'll be

1 clear. You're on Tab 2. I'll get you to
2 flip in 1-2-3 pages turned over, which is
3 the first sort of page of this APSEA sign
4 language proficiency interview report. That
5 should be it.

6 A. Okay.

7 Q. And I notice down here at the bottom, under
8 additional comments, it indicates for Carter
9 "his comprehension skills are above average.
10 This is not included in the functional
11 descriptor for the SLPI. With continued and
12 consistent exposure to ASL, Carter will
13 acquire more ASL vocabulary and features
14 such as finger spelling, non-manual markers
15 and number incorporation." Can you tell me
16 about why and what the significance, as a
17 report that you would have reviewed, of
18 "continued and consistent exposure to ASL"?
19 Why does consistency matter?

20 A. Well, if you don't have consistent exposure
21 to language, you won't develop a language.

22 Q. If you don't have consistent exposure to
23 language, it won't develop?

24 A. Yes.

25 Q. So, if it's in bits and pieces, it's less

1 effective?

2 A. Oh yes.

3 Q. Can a person learning ASL, can their skills
4 lapse or regress if they're not exposed for
5 a while?

6 A. Well, any language, if you don't - if you're
7 not exposed to it or if you're not using it,
8 it will lapse. I did a French degree a long
9 time ago and I can't speak a word or you
10 wouldn't want me to speak a word.

11 Q. In your affidavit, you indicated that the
12 main classroom teacher that you were being
13 exposed to at the time, this is grade one,
14 that was delivering the curriculum didn't
15 know sign language, and I think that's a
16 common theme we see throughout his time at
17 Beachy Cove. So, Carter didn't actually get
18 direct instruction from the classroom
19 teacher?

20 A. No.

21 Q. Instead, Carter got the classroom teacher
22 communicating more to you and then you
23 communicating to Carter through sign. So,
24 we'd call that, I guess, indirect or
25 interpretive communication.

- 1 A. Um-hm.
- 2 Q. How did you find that arrangement? Was that
3 a difficult arrangement to communicate the
4 course material?
- 5 A. It was a bit - it was cumbersome.
- 6 Q. Cumbersome?
- 7 A. Yes, it was - like in the classroom, Carter
8 had a sound field system and eventually an
9 FM system. So, the teacher wore an FM
10 around her neck. So, I would let him listen
11 to what the teacher had to say. Like there
12 was no point in me trying to do anything
13 simultaneously as the teacher was talking
14 and then me try to teach him at the same
15 time. Like that's just too distracting and
16 wouldn't work. So, I let him listen to what
17 the teacher had to say and then, you know,
18 if the kids had to do some seatwork or
19 whatever, then I would explain to Carter
20 what was going on and, you know, go over
21 signs and things like that, anything that
22 needed to be done.
- 23 Q. So, you know, unlike the experience that,
24 you know, we have here with our ASL
25 interpretation which is, you know, near

1 simultaneous ASL interpretation, in Carter's
2 case, you know, because he was being
3 instructed by the classroom teacher, you
4 would have to wait for the classroom teacher
5 to sort of conclude their instruction or
6 whatever they were doing and then once that
7 was done, and the other children in the
8 class had moved on to complete the activity
9 or undertake the task, you would then have
10 to turn to Carter and you would have to sign
11 or explain the activity through sign and I
12 mean, just given the time limitations and
13 things, I assume you kind of had to do your
14 own - present your own version of the
15 curriculum material?

16 A. Yes.

17 Q. It couldn't be an exact translation like
18 we're seeing here today?

19 A. No. Carter would not be able to use an
20 interpreter.

21 Q. Right.

22 A. And there would be no point in me standing
23 up in front of the class as an interpreter
24 trying to sign to him as the teacher was
25 talking.

1 Q. Because his language skills were so
2 undeveloped?

3 A. Yes.

4 Q. So, Carter, I mean, there was, I guess you'd
5 say, a lag for Carter, right? I mean, he is
6 always 30 seconds, a minute, a couple
7 minutes behind the rest of the class at that
8 point?

9 A. Yes.

10 Q. There was another room available that you
11 were able to take Carter to, and by this
12 point, I think we're in grade two, because
13 you're still with Carter in grade two,
14 right?

15 A. Yes, in grade one and two.

16 Q. Yeah, and grade two, you were able to take
17 Carter out to another room occasionally to
18 provide him with some ASL instruction,
19 right?

20 A. Yes. There was a room available in grade
21 one as well.

22 Q. Okay.

23 A. Which was a better situation, and a
24 different room in grade two.

25 Q. And tell me about the difference between the

1 rooms during grade one and grade two. I
2 understand grade two was a bit of a problem.

3 A. Yes. In grade one, I pretty much had my own
4 room, a very small room, but still it worked
5 and it was a quiet spot and I could take
6 Carter down there any time that I wanted
7 and, you know, work with him on specific
8 items.

9 Q. And before I get you to talk about grade
10 two, I just want to interrupt you to ask
11 about that situation. I mean, why would
12 that - why was that beneficial to Carter to
13 be able to have some time out of his
14 classroom with his hearing classmates, you
15 know, one on one with you to do instruction
16 and learning? Why was that beneficial?

17 A. Well, he just had to have the one on one.
18 You know, he didn't have the language that
19 the other kids had. He didn't have the
20 vocabulary that the other kids had. He was
21 nowhere near and I had to try to keep him
22 up. My first year working with him, I had
23 to work on counting from one to ten and
24 getting the signs right and, you know, then
25 carry on up to 20 and so on. But I mean,

1 initially, it was, you know, working from
2 one to ten. I had to work on the alphabet
3 and -

4 Q. So, it was advantageous -- from your point
5 of view anyway, it was advantageous to
6 Carter to be taken out of the hearing
7 classroom with his other hearing classmates
8 and be able to do one-on-one work with you
9 in a quiet space?

10 A. Yes.

11 Q. And tell me about grade two then. You were
12 about to tell me about grade two when I
13 interrupted you.

14 A. In grade two, the room that I had used in
15 grade one was taken over and I had to move
16 to a different office space and I shared
17 that with another teacher and that classroom
18 became like a calm-down place for students
19 who had autism. There was at least five
20 students who came in that year who had
21 autism, varying degrees, and sometimes if
22 they needed - if they just needed a space to
23 get away from it all or whatever, they would
24 be brought down to that room. Sometimes
25 they would have a video or a movie or

1 something put on just so that they could
2 calm down. Sometimes they came into the
3 room screaming and I was told there was
4 certain things I could not say to one
5 particular child because that would start
6 him - that would get him upset, and it was
7 distracting because -

8 Q. So, this room that you needed to be able to
9 instruct Carter and you needed to take him
10 out of the loud chaotic hearing classroom
11 environment to, you know, a quiet non-
12 chaotic - you know, because I mean
13 classrooms are visually chaotic too. Kids
14 are moving around and running around and
15 things, makes it hard to focus on somebody's
16 hands. The room that you were using was,
17 you know, being shared use between students
18 with multiple needs?

19 A. Yes.

20 Q. None of which were, you know, were deaf ASL
21 related needs but were primarily autism, I
22 think is your evidence, based needs which
23 were incompatible with what you were doing
24 with Carter, right?

25 A. Yes.

1 Q. And did you feel that as a result of the
2 limitations placed on your use of that
3 classroom that your ability to provide
4 service to Carter was diminished?

5 A. Sometimes it was. Sometimes it was
6 frustrating. Like sometimes we were in
7 there and were doing work and if a student
8 came in and was upset or if we went in and
9 there was already a student there watching a
10 movie or a video or something like that,
11 then you know, it was then that was
12 distracting for Carter. He could hear quite
13 a bit through his cochlear implants and you
14 know, noise was distracting.

15 Q. Enough that the noise would be distracting.
16 So, even if he can't access, you know, the
17 language and the words in the instruction
18 through his cochlear implant, you know,
19 somebody screaming or yelling or crying,
20 certainly he would pick up on that and it
21 would be distracting?

22 A. Oh yeah. He would startle.

23 Q. Yes.

24 A. Yeah. But there was no other space in the
25 school.

- 1 Q. Did you just sort of accept that that was it
2 or did you identify this problem to anyone
3 at the school?
- 4 A. There was no - like the school was literally
5 bursting at the seams.
- 6 Q. Yeah.
- 7 A. I think at the end of that grade two year,
8 they moved a couple of grades out to another
9 school. Like they just had no space.
- 10 Q. Yeah. Aubrey Dawe testified earlier
11 yesterday that it was 773 students, I think
12 he said, and then subsequently, you know, in
13 later years, it went down to 400 or
14 something.
- 15 A. Yes.
- 16 Q. But it was very full.
- 17 A. They moved two grades out, down to the
18 junior high school. So, instead of being K
19 to 6, it was K to 4 or something like that.
- 20 Q. I'm going to get you to look at another
21 document because I know you prepared sort of
22 a progress report on Carter. So, let me get
23 you to look at - see to your left-hand side,
24 there's piles of documents and furthest
25 left, multiple volumes, and I need you to

1 get Volume 2. You'll need to sort through
2 some volumes. Volume 2, and then go to Tab
3 L as in Lima. You recognize that document?
4 A. Um-hm.
5 Q. It was a document that you put together in
6 February 2019 as a progress report. Tell me
7 about how that document came to be.
8 A. What do you mean, how it came to be?
9 Q. Well, you wrote it. Were you -
10 A. Is that part of the report card?
11 Q. That's what I - well, that's kind of what
12 I'm asking you. Were you asked to write it?
13 I seem to recall that you were asked to
14 write it. The psychologist, I think.
15 A. I could have been asked to write it. I'm -
16 Q. Okay. But in any case, you're not sure.
17 You know you did write it?
18 A. Yeah.
19 Q. I guess that's one - and you did write it in
20 February 2019?
21 A. Yeah.
22 Q. Okay. I'm going to ask you, I mean, about
23 the content of that report, some of the
24 questions there. You indicated in the
25 report, you know, that "Carter's come a long

1 way". Then you also indicate that Carter -
2 let me just make sure I find it in the
3 report. You identify that "Carter is the
4 only student who uses sign language" and
5 that there are only two adults in the
6 building, I think that's you and Tammy -

7 A. Yes.

8 Q. - who can communicate with him.

9 A. Yes.

10 Q. And model the correct signs and the use of
11 ASL.

12 A. Um-hm.

13 Q. Why does it matter that there's only the two
14 of you in the building who can model ASL and
15 can sign to him?

16 A. Well, he can only - you know, it's a very
17 limited way to develop a language. You have
18 to keep in mind that he's still developing
19 his first language. He does not yet have an
20 intact first language that he can use to
21 communicate. All the other kids in the
22 school have an intact first language and
23 they had for a few years before that. So,
24 to only have two people in the building, I
25 mean, like what hearing kid is in that

1 situation?

2 Q. Yeah.

3 A. No other hearing child is put in that
4 situation where they only have like one or
5 two people with whom they can communicate,
6 and if I was not in, if I was sick, I don't
7 think there was a substitute that had ASL
8 because that's why I go back substituting
9 now, because there are none who have ASL.

10 Q. And so, I just want to clarify, you go back
11 substituting now, by which - I mean, you're
12 retired?

13 A. Yes.

14 Q. And you normally wouldn't be particularly
15 inclined to go back substituting, I'm taking
16 from your comments, but for the fact that
17 you're concerned that there aren't
18 substitutes who have ASL?

19 A. I was approached by Darlene Fewer Jackson a
20 few years ago and, you know, she said that
21 there's no substitutes who can sign. So, I
22 said "sure, why not".

23 Q. And so, I mean, you're under no obligation
24 to continue working for the School District?

25 A. No.

- 1 Q. You've put your time in. You've earned your
2 pension.
- 3 A. Um-hm.
- 4 Q. Some of those excellent benefits you have
5 under your collective agreement negotiated
6 by your brilliant counsel, and but, you
7 know, the reason why you're going back to
8 substitute is because you were told "look,
9 there's a dire need here" and the
10 implication from Darlene Fewer Jackson is
11 that if you weren't available to substitute,
12 they wouldn't be able to find somebody with
13 ASL?
- 14 A. They may or may not. There's a not a long
15 list of substitutes in the regular system.
16 There's another teacher, Cathy Lawlor, who
17 substitutes as well.
- 18 Q. Right. You mention that you and Tammy
19 Vaters would have been the only two people
20 in the building who could communicate with
21 Carter.
- 22 A. Um-hm.
- 23 Q. Would you and Tammy Vaters be considered
24 Carter's peers?
- 25 A. No, not really.

- 1 Q. No.
- 2 A. I would consider a peer to be someone who's
3 closer in age.
- 4 Q. Right. So, a peer would be, you know,
5 another student close to his own age who
6 could sign in ASL?
- 7 A. Yes.
- 8 Q. Right. You also indicated in the report
9 that Carter's in a situation where he's
10 linguistically isolated and that he has to
11 be taught everything and you say that's not
12 a natural way to learn a language and it's
13 made difficult with the lack of human
14 resources, i.e. the people who have the
15 language knowledge to help him.
- 16 A. Um-hm.
- 17 Q. Tell me what you meant by "a lack of human
18 resources".
- 19 A. Lack of people around, going back to there's
20 just two adults in the building with nobody
21 else who can use ASL with him.
- 22 Q. Was it open to you to be able to approach
23 the District and ask for those additional
24 resources and you would get them?
- 25 A. I didn't have the impression that that would

1 be forthcoming. And you see, you have to
2 look at all these resources that are being
3 put in to - put in for Carter, like you
4 know, a fulltime teacher and a student
5 assistant and, you know, they were just say
6 - you know, they had a speech pathologist,
7 auditory verbal therapist and all these
8 resources are being put in, but you have to
9 keep in mind that there's a prerequisite for
10 all of these, all of this help and the
11 prerequisite is that he has to have his
12 intact first language because all these
13 resources are on this foundation, this
14 spindly little foundation that's like
15 toothpicks.

16 Q. I see.

17 A. That, you know, it's just going to collapse
18 because he doesn't have the language to
19 carry on, to keep on going. At the School
20 for the Deaf, if we put students out into
21 the regular system, we made sure that they
22 had language that they could communicate
23 with their teachers and with their friends
24 in the school; that they could understand;
25 that they had enough hearing that they could

1 understand or listening skills, not just
2 hearing, but listening skills or whatever
3 they had to use. They had the skills in
4 place that they could be independent and
5 they could function well on their own. With
6 this model, with Carter, it was like how
7 many adults are you going to put in a room
8 for one child? And people would look at me
9 and say "wow, Carter has his own teacher"
10 and it's like he needs that, but he actually
11 needs a classroom. He needs other people.
12 He needs a teacher of the deaf who can talk
13 to him.

14 Q. Right.

15 A. Not someone who is being a resource. He
16 needs the teacher of the deaf to be his
17 teacher, not a resource person, because in
18 this situation, it's not - it doesn't work.

19 Q. The District, throughout this proceeding,
20 both in terms of its argument and its
21 submissions, has a habit of doing exactly
22 the conduct that you've complained of, which
23 is sort of listing the resources that have
24 been - you know, to be cavalier about it,
25 thrown at Carter. You know, "oh, he has his

1 own teacher. He has" - you know, he has you
2 assigned to him. You know, "look at all the
3 things that we have provided to Carter".
4 Aubrey Dawe had said "we did the best we
5 could with the tools that were given to us".
6 I understand the point that you're making is
7 one that, you know, if - there's no sense in
8 simply putting people, you know, adults in
9 Carter's classroom if you're not building
10 that foundation in acquiring a first
11 language. Is that your evidence?

12 A. Um-hm, that's right.

13 Q. Was there an approved ASL curriculum from
14 the School District? Was there any - I know
15 there's French curriculum and English
16 curriculum. Was there an ASL curriculum?

17 A. I don't think so.

18 Q. I mean, you'd probably know, I mean, given
19 that you were one of a very few people who
20 were teaching it, and you had - there was
21 never any ASL curriculum presented to you,
22 was there?

23 A. No.

24 Q. Did that make things difficult, I mean, not
25 having a prescribed curriculum that you

1 could rely upon?

2 A. Well, what we did at the School for the
3 Deaf, we looked at the outcomes of the
4 courses and we just had to teach those
5 outcomes in the methods that we used as
6 teachers of the deaf and the methods are
7 different to teach deaf students, especially
8 younger ones, because you have to develop
9 the language and the vocabulary. Say in
10 grade one, there's an assumption that
11 students already have a certain amount of
12 vocabulary and language. So, you can just
13 carry on with the curriculum as is written.

14 Methods that we used at the School for
15 the Deaf, for example, we had to teach the
16 vocabulary and, you know, teach the language
17 so we emphasized things that hearing kids
18 wouldn't need and so, in a regular
19 classroom, it's very difficult to catchup,
20 even to stay on par, because in a hearing
21 classroom or a classroom with hearing
22 students that assumption is there that the
23 students already have this vocabulary.

24 Like for example, in grade one, the
25 students were watching a video. They were

1 doing the water cycle and you know, words
2 like precipitation and condensation, and I
3 was like sweet Lord, I have to make sure
4 that he knows rain, the sign for rain and
5 snow and some other forms of precipitation
6 you're finger spelling, so you have to
7 explain it. But the hearing kids knew that.
8 They're listening to the TV at home.
9 They're listening to a weather report on the
10 radio or on the TV. So, they had that
11 language. They had no problem with the
12 video. But that took a lot of extra work
13 with Carter, you know, to explain the
14 different signs and you know, for various
15 forms of precipitation and so on.

16 Q. I understand. Dr. Barbara O'Dea, have you
17 met Dr. Barbara O'Dea before?

18 A. Oh yes.

19 Q. Yeah, amazing person. I know you'd met with
20 her a few times. One time during a meeting
21 with her, I understand, you know, you were
22 sort of brainstorming some possibilities
23 here and she had said, you know, "it would
24 be a great idea for all the deaf children in
25 the metro area, you know, there's a

1 fantastic opportunity with there being
2 several deaf children of a similar age in
3 the metro area, you know, of getting them
4 all together with each other" and you had
5 indicated unfortunately, you know, from the
6 District there was no appetite to do that.
7 Do you recall that?
8 A. I remember meeting with Barbara O'Dea.
9 Q. Yeah.
10 A. And I remember it, yeah.
11 Q. You remember that being an issue. How did
12 you get the sense from the District that
13 there wasn't an appetite to bring all these
14 children together?
15 A. That was said in a meeting.
16 Q. It was said in a meeting?
17 A. Yes.
18 Q. Who said it, do you recall?
19 A. Bonnie Woodland.
20 Q. Bonnie Woodland?
21 A. Yes.
22 Q. And who - so, somebody, you or another
23 itinerant teacher, raised in a meeting that
24 it would be a good idea to get these deaf
25 children in the metro area together and

1 Bonnie Woodland said "there's no appetite
2 for that"?

3 A. "There's no appetite for that." I just
4 remember those words because I just thought
5 it was a very different way to phrase
6 something like that. That just stuck in my
7 head. A lot of things don't stick in my
8 head, but that did.

9 Q. What was - how did that make you feel?

10 A. It is just discouraging, especially when you
11 had a number of kids at the same age who
12 could benefit from being in a classroom
13 together.

14 Q. They could, yeah. I want to jump forward in
15 time a substantial amount. I'm nearly done.
16 I want to jump forward in time to January
17 2022, another Covid lockdown and the world
18 changes substantially during that time, and
19 online learning occurs.

20 A. Um-hm.

21 Q. And we're - many of us are unfamiliar with
22 the difficulties imposed by online learning,
23 and I know you participated in some of these
24 online learning sessions in 2022, January.
25 It was Mrs. Wilkinson? Is that the teacher?

- 1 A. Um-hm.
- 2 Q. So, that's the teacher in the ASL immersion
- 3 -- so you know, East Point Elementary is up
- 4 and running by this point. The ASL
- 5 immersion classroom is up and running and it
- 6 shifted to online learning for a few weeks
- 7 and Mrs. Wilkinson is there. Mrs. Wilkinson
- 8 had very little ASL proficiency, isn't that
- 9 true?
- 10 A. Yes, she was very eager to learn and willing
- 11 to learn.
- 12 Q. Right.
- 13 A. She - yeah, she did her best.
- 14 Q. It's interesting, we've heard from a lot of
- 15 teachers, and we're going to hear from more,
- 16 and all of them are, you know, willing to
- 17 learn, are eager to learn. Almost all of
- 18 them have answered when I've asked them "if
- 19 the District offered additional training
- 20 courses in ASL would you do them?" and they
- 21 said absolutely, but they've all said "but
- 22 the District didn't offer any training. The
- 23 District didn't offer any further education.
- 24 If they had, I would have done it." And so,
- 25 as a result, you know, Mrs. Wilkinson is

- 1 eager but low ASL skills?
- 2 A. Um-hm.
- 3 Q. Right. And you were essentially in that
- 4 classroom then to serve as, you know, an
- 5 informal interpreter, weren't you?
- 6 A. I was told I was not an interpreter as such,
- 7 but I was there to support her. So, I guess
- 8 if she needed help with explaining stuff, I
- 9 could be there.
- 10 Q. But practically that ended up looking like
- 11 you acting - I know you weren't acting as an
- 12 interpreter and you weren't hired as an
- 13 interpreter, but the practical outcome of
- 14 this was that you essentially did act as -
- 15 end up having to act as an interpreter?
- 16 A. Well, it was more just explaining - like it
- 17 wasn't at the same time, I don't think. I
- 18 don't think I was signing at the time. It
- 19 was more of explaining afterwards, I
- 20 believe.
- 21 Q. And there were like three children or so in
- 22 those online sessions, Carter and two
- 23 others, I believe?
- 24 A. I'm not sure how many. I'm not -
- 25 Q. Okay.

1 A. That particular day, there was a few days.

2 Q. The last thing I want to do with you is to
3 clarify something that shows up in your
4 affidavit and appears to be misunderstanding
5 and to clear that misunderstanding up. I
6 recall from reading your affidavit that you
7 believe, and I'm here to tell you that it's
8 not true, that Ms. Churchill indicated that
9 it was harmful for you to act as an
10 assistant. At some point the word "harmful"
11 got used. Did you - do you recall speaking
12 about that in your affidavit?

13 A. Yeah, I wasn't sure what she was referring
14 to.

15 Q. Right. Well, and I can tell you, I mean, if
16 you had read Mrs. Churchill's affidavit and
17 you -

18 ADJUDICATOR:

19 Q. Why don't you allow her to read the section
20 you're referring to?

21 MR. REES:

22 Q. Yeah. So, paragraph 33. Paragraph 33 in
23 your affidavit, you say "I understand that
24 Mrs. Churchill has suggested that the
25 support provided to Mrs. Wilkinson, which is

1 the 2022 online, was highly inappropriate
2 and harmful. However, I do not know why she
3 believed the support provided to be harmful
4 or inappropriate." And I'm telling you that
5 Ms. Churchill has said, in fact, no, that
6 comments that she made about it being
7 harmful concerned Terrilynn Clarke acting as
8 an interpreter when it turns out we found
9 out later her proficiency was extremely
10 poor. She couldn't spell her own name in
11 ASL.

12 MS. CHURCHILL:

13 Q. In kindergarten.

14 MR. REES:

15 Q. In kindergarten. And that comment wasn't
16 about you. So, my question is -

17 A. Oh, okay.

18 Q. - where did you - how did you arrive at the
19 belief that the comments about it being
20 highly inappropriate or harmful were about
21 you? Did someone at the School District
22 tell you that?

23 A. Well, that was in the question, "support
24 provided to Ms. Wilkinson was highly
25 inappropriate and harmful". I'm confused

1 here now.

2 Q. Sorry. Well, how did you - you write a
3 paragraph in paragraph 33 of your affidavit,
4 right?

5 A. Yes, but there was a question.

6 Q. There was a question?

7 MR. PENNEY:

8 Q. Yeah, I mean, I think the passage is in 234
9 of Ms. Churchill's affidavit. "On the first
10 day of online learning, Ms. Wilkinson used
11 an interpreter who was a retired teacher for
12 the deaf. This is highly inappropriate for
13 many reasons."

14 MR. REES:

15 Q. Okay. And highly inappropriate,
16 acknowledged. I just - you know, it's
17 important for Mrs. Churchill, and you know,
18 your relationship, it's a small deaf
19 community, that harmful isn't used, and she
20 certainly doesn't believe that it was
21 harmful.

22 A. Oh, okay.

23 Q. I just wanted to make sure that you hadn't
24 been told by somebody else that Ms.
25 Churchill felt your actions were harmful.

1 A. Okay. No, it's just the way the question
2 that I got initially was worded.

3 Q. The question -

4 A. That it was referring to Ms. Wilkinson and -

5 Q. So, somebody prepared a list of questions
6 for you to answer in your affidavit?

7 A. Yeah.

8 Q. And the list of questions that you received
9 said that Ms. Churchill said that that
10 conduct was highly inappropriate and harmful
11 and that's how you came to that belief?

12 A. Yeah.

13 Q. Okay.

14 A. Yeah, because -

15 Q. And now that you've been told what the
16 actual sentence in the affidavit was, you
17 understand that what you were told wasn't
18 entirely correct?

19 A. Oh yeah.

20 Q. Okay, good.

21 A. That's fine.

22 Q. We're glad to have cleared that up. Just
23 one second, I just want to speak to my
24 clients.

25 Right, okay, there's one small point

1 unrelated to everything else I've been
2 asking, but there'd been a little bit of
3 confusion from some of the other witnesses
4 about when Tammy, Tammy Vaters, started
5 working with Carter, and we just want to
6 confirm Tammy Vaters starts working with
7 Carter during the last three weeks of grade
8 two, right, the very end of - fulltime
9 during the last three weeks of grade two?

10 A. I honestly cannot remember when she started
11 working fulltime.

12 Q. And I think the important part for me to get
13 you to confirm is that, you know, you're
14 working with Carter throughout grade two and
15 for the vast majority of the time when
16 you're working with Carter in grade two, you
17 and Tammy are not there at the same time?

18 A. There was sometimes we were and sometimes we
19 weren't.

20 Q. Right. And then during the last three weeks
21 of grade two, you both would have been - you
22 know, every time you would have been there,
23 she would have been there?

24 A. Um-hm.

25 Q. Right, okay. Those were my questions.

1 Thank you very much.

2 A. Okay.

3 ADJUDICATOR:

4 Q. Mr. Penney, do you have questions?

5 **Grade 1 & 2 DHH Teacher - Beachy Cove Elementary**

CROSS-EXAMINATION BY MR. STEPHEN

6 PENNEY

7 MR. PENNEY:

8 Q. I have a couple, [REDACTED]. I think you
9 sort of explained this, but when you worked
10 at the School for the Deaf, was there a
11 prescribed ASL curriculum?

12 A. No.

13 Q. Okay. And hearing teachers that worked at
14 the School for the Deaf, were they ASL
15 proficiency tested?

16 A. Not as far as I know, no.

17 Q. Okay. I want to pull up the APSEA report
18 which is at Tab 2 of the cross-examination
19 documents. I think it's that coloured -

20 A. This one?

21 Q. Purple.

22 ADJUDICATOR:

23 Q. I'm sorry, could I get the volume and tab
24 again?

25 MR. PENNEY:

1 Q. Sure. It's the rebuttal documents, the
2 cross-examination documents, Volume 2.

3 A. This one?

4 Q. Yeah, it's the APSEA report. No, it's the
5 purple -

6 A. This one, okay. Okay, Tab 2.

7 Q. And you recall my friend took you through
8 some of the - some questions on that
9 document, and I'm going to just bring you up
10 to one passage that he referred you to at
11 page seven, and it says - actually, it's a
12 bit confusing, but it's in the executive
13 summary and there's a page four written on
14 the top. And I noticed you were very
15 careful in your answer and the way the
16 question was put to you, I don't think the
17 full sentence was read to you, so I just
18 want to do that.

19 It says "he uses sign language as his
20 primary mode of communication, typical
21 single signs and receptively, he uses
22 audition combined with sign language". Can
23 you just explain that statement a little
24 bit?

25 A. He can use his hearing. Like to get to

1 understand, he can use his hearing and he
2 can use his sign language.

3 Q. Okay. Thank you.

4 A. But, his audition is not such that he can
5 understand like full running speech like,
6 you know, constant conversations or, you
7 know, a full list of whatever a teacher is
8 explaining.

9 Q. Okay, thank you. And then another question
10 I had, I think you were maybe a little
11 confused because we know that in grade one,
12 either you were teaching him, but it was -
13 if you weren't there, was Tammy Vaters
14 present with Carter?

15 A. Yes, I think so.

16 Q. Okay. Those are my questions. Thank you.

17 A. Okay. Is that it?

Grade 1 & 2 DHH Teacher - Beachy Cove Elementary

18 [REDACTED] CROSS-EXAMINATION BY ADJUDICATOR

19 BRODIE GALLANT

20 ADJUDICATOR:

21 Q. Following up on Mr. Penney's question, I
22 have a couple of questions. Carter's
23 hearing ability is - you that he is able to
24 make use of that in combination with sign
25 language. Can you explain to me, in your

1 experience, what did you observe in terms of
2 his ability to access sound and learn
3 material or not to learn material? What did
4 you observe in terms of his abilities to
5 access sound?

6 A. He could use sound and hearing to supplement
7 the sign language. He could not use
8 audition only. I don't think he would be
9 able to understand fully like, you know, a
10 number of sentences in a row. Through
11 audition alone, for example, he could say -
12 if I was walking behind him, you know,
13 pushing the wheelchair, I might say to him
14 "who's picking you up today?" and he could
15 sign back to me Mom or Dad or, you know,
16 whoever, but I wouldn't be able to continue
17 on of, you know, much more. I could say a
18 phrase here and there, but he would be able
19 to use his audition along with the sign
20 language. Like any modality that you can
21 use with a student can be used and, you
22 know, when I was introducing new vocabulary
23 words, for example, you know, I would sign
24 them and I would use my voice as well so
25 that he would be able to hear, you know,

1 what the word sounds like. It's just a way
2 to help the development of, you know,
3 vocabulary and language.

4 Q. You became involved with Carter in grade one
5 and there's a number of documents and
6 witnesses have discussed the total
7 communication approach to educating Carter.
8 Is that the approach that you were using
9 with Carter or had your approach shifted in
10 a different direction?

11 A. I was using mostly ASL because that's what
12 the parents wanted. When I was at the
13 School for the Deaf, it was more total
14 communication. With the younger students,
15 it was more often total communication.
16 Older students kind of shifted to ASL in the
17 School for the Deaf.

18 Q. So, with the younger students at the School
19 for the - well, maybe let's backup because
20 my friend started - or not my friend, my -
21 not that you're not my friend, Mr. Rees, but
22 in this context, Mr. Rees asked you a series
23 of questions, but I got lost in the time
24 periods that we were talking about and I'd
25 like you to help me with that because you

1 were, I think, trying to describe the
2 difference between what was happening for
3 children who were deaf or hard of hearing
4 while the Newfoundland School for the Deaf
5 existed and what was occurring afterwards.
6 Can you describe for me what's your
7 understanding or what was your involvement
8 with they're not yet students in school,
9 they're pre-kindergarten, while the School
10 for the Deaf existed and what was in place
11 during that time period.

12 A. For students, preschool students, before
13 they came to the School for the Deaf, there
14 was a specific teacher who was assigned to
15 the preschool program and that teacher would
16 meet with parents and if, you know, they had
17 to come into the school, there was a small
18 apartment in the school there where they
19 could come in and visit and do sessions in
20 the school. She would also send out
21 packages of information and activities and
22 things to do with their child. I believe
23 she used to send out VHS tapes back in the
24 day when you had VHS tapes. And way back
25 when, I believe there was enough funding for

1 her to actually go visit parents in their
2 homes so that she could do sessions with the
3 parents and, you know, help them help their
4 children to develop language and vocabulary,
5 but there was on specific teacher assigned
6 to the preschool program.

7 Q. You weren't that teacher, were you?

8 A. No.

9 Q. At any point. Do you know who that teacher
10 was?

11 A. There was a number of teachers who did that.
12 There was Beverley O'Rielly. There was
13 Ellen Penney and there was Diane Mark, I
14 believe.

15 Q. And you said that way back when there was
16 funding for that teacher to do visits, so
17 was that teacher providing - to the best of
18 your knowledge, and if you don't know I'd
19 like you to tell me "I don't know, I don't
20 know", but if you have knowledge of what
21 those teachers were doing, were they
22 providing any direct instruction to the
23 preschool students?

24 A. I'm not 100 percent sure. I wasn't involved
25 with that program. My understanding was

1 that they basically worked with the parents
2 so that the parents could work with the
3 children, you know, help with listening
4 skills and, you know.

5 Q. Here's what I'm not - what I'm struggling
6 with is your evidence earlier in response to
7 Mr. Rees' questions seemed to suggest that
8 after the Newfoundland School for the Deaf
9 closed, there became no plan. But I've
10 heard evidence that after the Newfoundland
11 School for the Deaf closed, the preschool
12 children were assigned to the caseload of
13 existing -

14 A. The itinerant.

15 Q. - itinerant deaf and hard of hearing
16 teachers and that they, in some cases, were
17 providing direct instruction to children,
18 which based on what you're describe - and
19 help me, because it sounds like that's an
20 increase in service.

21 A. Okay. Well, I guess some of the parents
22 that I'm referring to were parents who live
23 outside of St. John's. So, if there were
24 parents in St. John's, she would work
25 directly with them, with the parents with

1 the students. But if they were outside of
2 St. John's, she would still be able to
3 provide the service. Again, like I am not
4 100 percent sure of what the preschool
5 program fully involved.

6 Q. So, why do you have the impression that
7 services declined for preschool students?

8 A. It seemed to be more fragmented; that you
9 had all of the teachers, all of the
10 itinerant teachers were working with
11 preschoolers, instead of having one specific
12 teacher, and it just, you know, seems to be
13 more fragmented and just -

14 Q. In your time at the Newfoundland School for
15 the Deaf, did students arrive - when they
16 arrived in kindergarten or grade one, did
17 students arrive at any point in
18 circumstances like Carter with language
19 delays at the time that they were enrolling
20 in the Newfoundland School for the Deaf?

21 A. Yes.

22 Q. And you said that for those younger
23 students, the Newfoundland School for the
24 Deaf was also using the total communication
25 approach?

- 1 A. Sometimes there was total communication
2 used. Sometimes ASL. There was sign
3 language everywhere.
- 4 Q. Yeah.
- 5 A. So, if a student arrived with no language,
6 no sign language, they had it by the end of
7 their first year. They had it within a
8 month. They were talking to their friends,
9 signing to their teachers.
- 10 Q. And did you have involvement teaching those
11 new students at the Newfoundland School for
12 the Deaf?
- 13 A. No.
- 14 Q. How do you know what their outcomes were in
15 the first month?
- 16 A. You could see them. You could talk to them
17 in the hallway or whatever, and I've heard
18 anecdotes from other staff members that said
19 that, you know, these kids just - you know,
20 they'd pick it up, and the same when other
21 students came in. Any student that came
22 into the School, they would pick up sign
23 language. There's former students in this
24 room here now that can attest to that.
- 25 Q. And can you describe for me what is the

1 difference in the approach that was taken
2 with those new learners at the Newfoundland
3 School for the Deaf when they first arrived?
4 What is the - is there a different approach
5 that was taken with them?

6 A. What do you mean by a different approach?

7 Q. What was different about the Newfoundland
8 School for the Deaf for those early
9 learners?

10 A. The teaching methods are different.

11 Q. In what sense?

12 A. Because in a regular school, the teachers go
13 on the premise that the students already
14 have the vocabulary and the language. So,
15 they can just carry on with any lesson at
16 all. AT the School for the Deaf, you kind
17 of had to go on the assumption that the
18 students didn't have the vocabulary and the
19 language or at least some of them did not,
20 and so you had to step back and teach
21 vocabulary and language. With the very
22 young children, you often had - you used
23 experiences. They were called experience
24 stories or experience charts and you would
25 do activities in the classroom and it could

1 be something like making playdoh where you
2 would get everybody involved in, you know,
3 measuring out, you know, the flour and the
4 salt and water and oil and whatever else,
5 and you would write up sentences then
6 describing your activity, you know, "Billy
7 measured the flour. Susie measured the
8 salt. Joey poured the water into the bowl"
9 or whatever. You'd write up your sentences
10 and highlight different vocabulary words and
11 the students would see the print and you
12 would show them the signs and then you could
13 read over the sentences. So, they had a
14 meaning connected with the language and
15 their activity. So, it just made sense to
16 them and they could just continue developing
17 their language that way.

18 In a regular hearing classroom, you
19 don't need to do that because the students
20 already have the vocabulary. They already
21 have the language. But at the School for
22 the Deaf, they didn't necessarily have that
23 already. So, you had to step way back and
24 start, you know, to develop the words and
25 the vocabulary and the language and then

1 connect that to meanings, meaningful
2 activities for the students, and then that
3 would be connected to, you know, your chart
4 stories and every teacher in the junior
5 department, if something new happened, you
6 would hear every single teacher in the
7 junior department say "oh, I have to write
8 up a chart story" and so, you'd go back to
9 the classroom and write up your sentences
10 and go over it with the students and read
11 over the sentences and show them the words
12 and show the signs so that they would be "oh
13 yeah, I get it now". So, the methods are
14 very different for the young children.

15 Q. Okay. Counsel, questions arising from that?
16 Ms. MacDonald, I appreciate you taking the
17 time to give us your evidence today. There
18 are no more questions for you, so you're
19 free to step away from the witness table,
20 and you can stay and watch the proceedings
21 or you can leave.

22 A. Okay, thank you.

23 Q. Counsel, I think I pushed us a little bit
24 over schedule. Did you want to take a break
25 before the next witness or did you want to

1 start now?

2 MR. REES:

3 Q. It probably makes sense. Counsel are going
4 to change. Raylene Mackey is going to be
5 questioning Ms. Van Geest, so if we took
6 five minutes that would be good.

7 ADJUDICATOR:

8 Q. Okay, five minutes. We'll adjourn.

9 (OFF RECORD)

10 ADJUDICATOR:

11 Q. Okay. And so, the next witness that we are
12 scheduled to hear from is [REDACTED]
13 [REDACTED] and this is [REDACTED]?

14 A. Yeah.

Grade 3 DHH Teacher - Beachy Cove Elementary

15 [REDACTED] AFFIRMED, CROSS-EXAMINATION BY

16 MS. RAYLENE MACKEY

17 REPORTER:

18 Q. [REDACTED] has been affirmed.

19 ADJUDICATOR:

20 Q. [REDACTED], I understand that Ms. Mackey
21 will be asking you a series of questions
22 first.

23 A. Okay.

24 MS. MACKEY:

25 Q. Good morning, [REDACTED].

1 A. Good morning.

2 Q. My name is Raylene Mackey and I am an
3 article clerk that has the privilege to work
4 with Carter's parents, Kim and Todd
5 Churchill, and also counsel, Kyles Rees.
6 I'll be conducting your cross-examination
7 today or at least the large portion of it.
8 I will pose some questions to you and once I
9 am done, Kyle may pose some further
10 questions. After that, the Respondent's
11 counsel, Mr. Steve Penney, may also ask some
12 questions or the Adjudicator, Mr. Brodie
13 Gallant, may have some questions for you.

14 A. Okay.

15 Q. In front of you, you will see your
16 affidavit. Thank you for providing that
17 today, which some of my questions will be
18 focused on, and also you'll see many other
19 documents, a lot of them, which I may refer
20 to during my questioning, but I will direct
21 your attention to them when necessary.

22 As you may already be aware, we are
23 recording for transcript purposes today and
24 this hearing is being livestreamed. We have
25 a wonderful group of interpreters here with

1 us, so it is important for both of us to
2 remember to speak slowly.

3 Lastly, if at any time during this
4 cross-examination you need a clarification
5 or you wish to take a break, please let me
6 know.

7 , you have a Master's of
8 Educational Psychology. Is that correct?

9 A. Yes.

10 Q. With a concentration in education of
11 students who are deaf and hard of hearing?

12 A. Yes.

13 Q. You received that Master's Degree in 2018
14 from Mount Saint Vincent University?

15 A. Yes.

16 Q. That Master's program includes one course
17 that exposes enrolled students to some
18 American Sign Language? Is that correct?

19 A. The way that the university wants you to
20 have your ASL is that it is a requirement to
21 graduate, but they don't provide you with it
22 during - the course is setup that it's an
23 online two-year program, but during each
24 summer, you have to go on site for two
25 weeks. So, during my first summer, one of

1 my professors recommended someone to teach
2 us students our ASL Level 1 during our time
3 there. To finish the next two levels, I did
4 them online. So, I had the qualifications
5 to graduate.

6 Q. I will ask you about your start ASL website
7 experience later. The other portion you
8 mentioned, ASL Level 1, was that a part of
9 the course called GEPY6905 titled
10 Communication for the Deaf and Hard of
11 Hearing?

12 A. I believe I just answered that.

13 Q. I'm just looking for confirmation if it's
14 the course that's a part of the program
15 requirements.

16 A. It's required by the university.

17 Q. Okay. I'd like to direct your attention to
18 the Complainant's white bound book of
19 documents. There's a bunch to your left.
20 Volume 4, Tab Z. And if you could, please
21 turn to page three. They're not numbered
22 unfortunately, but page three, you will see
23 a heading on this page which indicates that
24 this document is the graduate academic
25 calendar information from Mount Saint

1 Vincent University.

2 A. Um-hm.

3 Q. Do you recall reviewing your academic
4 calendar for your Master's program?

5 A. Yes.

6 Q. So, I'll get you to turn to page six. So,
7 these pages here with the beginning of the
8 top specifying that these courses on -
9 starting on this page six, are the course
10 descriptions for the Master's program.

11 A. Can you tell me what's at the top of that
12 page?

13 Q. Yes.

14 A. Because it's not actually indicated what is
15 page six, but -

16 Q. Yes.

17 A. - there's a whole list. There's just a few.

18 Q. Of course. It's - I think it's actually
19 from the other page. It goes into it. It's
20 italicized font that specifies on page five,
21 "the following courses are specialized
22 courses for the education of the blind or
23 visually impaired -

24 A. Okay.

25 Q. - and the deaf or hard of hearing" and then

1 so on page six, it's the rest of that
2 italicized information. So, basically the
3 courses that follow on this page six and
4 onwards refer to those courses.

5 A. Yeah.

6 Q. So, I can give you some time or we could
7 take a break if you need to to read the
8 course descriptions as a refresher, but I
9 will put it to you that after I read it, the
10 course called - on this page six, GEPY 6905
11 Communication for the Deaf and Hard of
12 Hearing, that's the only course in the
13 program, the Master's program, that actually
14 references ASL. Would you believe that to
15 be correct or would you like some time to
16 read through?

17 A. Can I just have a quick read?

18 Q. Yes, of course.

19 A. This is the calendar. This is not the
20 course outline? Is that -

21 Q. This is the academic calendar that the
22 university sets out as the program
23 requirements.

24 A. And this is from what year?

25 Q. This is current, but I will say I did review

1 from 2015 onwards each calendar. I have
2 screenshots of them, but didn't file, didn't
3 file of the calendars because they are
4 large, but the description did remain the
5 same.

6 A. Okay, thank you.

7 Q. From at least 2015 onwards. So, to confirm,
8 there is only one course in the Master's
9 program that explicitly states that students
10 are enrolled to ASL?

11 A. The way that the university works is that we
12 have many courses here that teaches students
13 how to work with students who are deaf and
14 hard of hearing.

15 Q. Right, but only one course -

16 A. Only one is showing, yes, that ASL is a
17 method of communication. But you can see
18 that we also discuss audiology. You know,
19 there's an internship involved. How do we
20 also deal with, you know, additional
21 disabilities? So, lots of things to learn
22 in two years.

23 Q. Of course. And the reason I point this out
24 is because this course does specify - the
25 description says "students will be

1 introduced to different sign language codes
2 with particularly emphasis on ASL and signed
3 English and their applications in
4 educational and social settings." A key
5 sentence here I'd like to point out, "the
6 course will also provide students the
7 opportunity to develop skills at a basic
8 level in the receptive and expressive use of
9 sign language". Is this an - you've
10 completed this course?

11 A. That is not a course. That was an ASL level
12 course that we know as ASL Level 101, 102,
13 103. That is not this. This is just a
14 class where we are just taught about ASL and
15 sign English in general.

16 Q. Right.

17 A. It's two separate things that I'm talking
18 about and what you're talking about.

19 Q. Okay. So, I'm just talking about the
20 courses as it says in this document, "the
21 following courses are specialized courses"
22 for that Master's program.

23 A. They are.

24 Q. So, this is, with the code GEPY 6905, a
25 course.

1 A. It is a Master's degree course. It is not
2 an ASL 101 course. I did that separately.

3 Q. Okay.

4 ADJUDICATOR:

5 Q. Is that course one that you would have
6 completed?

7 A. That's the one I did onsite, 101.

8 Q. The course that Ms. Mackey is referring to,
9 is that part of the Master's program that
10 you completed?

11 A. Yes.

12 Q. And I think you said that you also took ASL
13 instruction outside of -

14 A. Yes.

15 Q. - this Master's program?

16 A. That is correct.

17 MS. MACKEY:

18 Q. I don't have a copy of it. Perhaps I can
19 get it later on, but is there a reason why
20 that wouldn't be mentioned on the program's
21 website as a program requirement?

22 A. It was required by us. I wouldn't be able
23 to tell you why it's not listed.

24 Q. Is it required through this specific course
25 as a part of it?

1 A. No. It's part of the Master's program as a
2 whole, not 6905.

3 Q. Okay. So, 6905 -

4 ADJUDICATOR:

5 Q. Just do we - I'm sorry. Do we have a copy
6 of the admission and program requirements?
7 It looks like it's next on the - or it's on
8 the list of items on the first page from
9 that document. You said that ASL, I think,
10 wasn't listed as a requirement. Is that
11 somewhere in the evidence?

12 MS. MACKEY:

13 Q. Yes, on the Mount Saint Vincent University
14 summary of program requirements. It's not
15 in this document. It's at their website,
16 which I didn't print unfortunately, but I
17 can get a copy, if that is permitted. They
18 basically summarize the program
19 requirements, so I was just curious where
20 the formal aspect of the ASL course came
21 from.

22 A. We pay for it by our self, like the
23 students.

24 Q. So, it wasn't -

25 A. The ASL separately.

1 Q. So, it wasn't -

2 A. That's why I'm saying it's separate from
3 6905 is because the ASL required to
4 graduate, like the levels 1, 2 and 3 or 101,
5 102, 103, as they are here in Newfoundland,
6 we paid for that by ourselves.

7 ADJUDICATOR:

8 Q. If you want to cross-exam her on what the
9 requirements were or weren't, then - and
10 she's saying it was a requirement, then you
11 at least have to present her with a document
12 showing that it's not a requirement.

13 MS. MACKEY:

14 Q. Okay. So, when you say levels 1 to 3, where
15 do they come from?

16 A. You'll have to clarify what you mean by
17 that.

18 Q. So, you - I'll take you to your affidavit
19 then. It states, at paragraph six, that you
20 completed ASL Level 1 at Mount Saint Vincent
21 University during the summer of 2016 by an
22 instructor who comes recommended by the
23 university.

24 A. Yeah.

25 Q. So that, and that's not a part of the GEPY

- 1 6905 course?
- 2 A. It is not.
- 3 Q. Okay. What did you learn in the ASL Level 1
- 4 in that particular course or that particular
- 5 session?
- 6 A. ASL Level 1 teaches you all the foundations
- 7 that you would need to have conversation.
- 8 You learn about colours, numbers, letters,
- 9 family, I could go on.
- 10 Q. The reason why I assumed or I thought that
- 11 that possibly was the course is because
- 12 following that in your affidavit you state
- 13 that you did Levels 2 and 3 on Start ASL.
- 14 A. I did because, like I said, I had to get the
- 15 other two levels done and the easiest way to
- 16 get them done was by doing them online.
- 17 Q. And the first one was provided not on Start
- 18 ASL because?
- 19 A. Because they offered it while I was there
- 20 for my two-week stint during my first
- 21 summer.
- 22 Q. And not a part of the course which actually
- 23 specifies Level 1 is included in it?
- 24 A. No.
- 25 Q. Okay. To go back to the course though --

1 I'll ask you about Start ASL later - when
2 did you complete the GEPY 6905 course?

3 A. Let me see. I said - so, I graduated in
4 2018. So, 2016 to 2018, during that time, I
5 did that course.

6 Q. Do you remember how long that course was?

7 A. Could have been a spring, summer or winter
8 session. I can't tell you how long it was.

9 Q. Okay. Yeah, I was going to ask because I
10 know summer sessions are typically shorter
11 than the fall and winter.

12 A. They might be shorter - well, the ones that
13 were in the spring and the winter, it would
14 be every Monday for a couple of hours. In
15 the summer, we were nine to five. So, you
16 can say it's shorter by weeks or months, but
17 we still got the same amount of instruction.

18 Q. Okay.

19 A. Just more condensed.

20 Q. I know it was a few years ago, but would you
21 happen to remember not the instructor's
22 name, but some information about who the
23 instructor was and their qualifications?

24 A. Who?

25 Q. I'll ask first about the course, the 6905

- 1 course.
- 2 A. I wouldn't be able to tell you who taught me
- 3 that one.
- 4 Q. Okay. And the instructor of the ASL Level
- 5 1, would you happen to know the
- 6 qualifications of that person?
- 7 A. I don't.
- 8 Q. Do you recall if they had any ASL
- 9 proficiency?
- 10 A. They did. That's why they came recommended
- 11 by the university as someone who was able to
- 12 give us our ASL Level 1.
- 13 Q. Were they off the deaf and hard of hearing
- 14 community?
- 15 A. They were deaf themselves, yes.
- 16 Q. Did they specify if they had been tested at
- 17 any point?
- 18 A. No.
- 19 Q. Okay. Do you remember how much - since
- 20 you've identified that the course, you did
- 21 your ASL Level 1 separate from the course,
- 22 I'll focus on that, do you recall how much
- 23 time was devoted to ASL at that time? You
- 24 said it was two weeks. Was it the entire
- 25 two weeks?

1 A. The ASL provided by the person who was not
2 with the university?

3 Q. The ASL Level 1 course you said that's a
4 part of your program.

5 A. Yes. So, the one that was done by the
6 person not affiliated with the university,
7 she did that over a weekend. It was, you
8 know, a nine to five, Saturday and Sunday
9 we'll say.

10 Q. So, two days?

11 A. Two days, but it was an intense two days.
12 Right now, you know, classes are done for an
13 hour and a half, but they span over so many
14 months. This was just an intensive class.

15 Q. So, you can become ASL Level 1 qualified in
16 two days?

17 A. Yes.

18 Q. Was your ASL proficiency ever tested during
19 or after that two-day program?

20 A. No.

21 Q. Was your ASL proficiency ever tested before
22 entering the Master's program?

23 A. No.

24 Q. Was your ASL proficiency ever tested at the
25 very end of your Master's program as a part

1 of the requirements?

2 A. No, the Master's program is to make us
3 teachers for students who are deaf and hard
4 of hearing. It's not to make us proficient
5 at ASL.

6 Q. So, you would have to independently learn
7 ASL outside of your program?

8 A. Again, you have to understand there's a lot
9 of students out there that are hard of
10 hearing that don't use ASL. So, this course
11 helps us service them as well as students
12 who are deaf.

13 Q. So, would you say it has a focus on hard of
14 hearing education versus deaf education?

15 A. It focuses on both. It's called the deaf
16 and hard of hearing program.

17 Q. Right. So, and deaf and hard of hearing
18 students would use signed English?

19 A. Some do.

20 Q. Can you state the difference between ASL and
21 signed English?

22 A. ASL signs differently than how you and I are
23 speaking now. Signed English would go more
24 in line with how you and I are speaking now.

25 Q. And signed English, what is that?

- 1 A. So, in signed English, you would use more of
2 the words like and, is, if, as opposed to
3 ASL that omits those words.
- 4 Q. In your affidavit at paragraph six, you
5 stated that you completed two ASL levels
6 online through the Start ASL website.
- 7 A. I did.
- 8 Q. Can you tell us more about that?
- 9 A. I completed the other two levels online
10 through the Start ASL website.
- 11 Q. So, these levels, they're specific to Start
12 ASL though? That is, they have their
13 description of what ASL levels 2 and 3 mean?
- 14 A. They do.
- 15 Q. Do you believe Start ASL trained and
16 certified you in those levels?
- 17 A. Yes.
- 18 Q. Are you aware that Start ASL website is not
19 a formal training program?
- 20 A. It was accepted by the university.
- 21 Q. But they didn't certify you, correct?
- 22 A. I did get a certification that I gave to the
23 university.
- 24 Q. Right. So, they provide certificates at the
25 end of going through their informational

1 resources? Is that correct?

2 A. At the completion of a level, they give you
3 a certificate.

4 Q. But the site is just for information, not an
5 actual course?

6 A. Perhaps. To me it was a course and it was
7 okayed by the university.

8 Q. Would we be able to have information about
9 like where that is a part of the program or
10 is it just - never mind. I'd like to direct
11 your attention, there's a document - I'm not
12 sure if I can see it right now. It has a
13 gigantic heading called "Terms and
14 Conditions". It is -

15 A. Yeah.

16 Q. - the Start ASL website's disclaimer. Have
17 you seen -

18 ADJUDICATOR:

19 Q. Where is that document?

20 MS. MACKEY:

21 Q. Oh, sorry.

22 ADJUDICATOR:

23 Q. Do I have a copy of that document?

24 MS. MACKEY:

25 Q. No, I have another copy of that.

1 ADJUDICATOR:

2 Q. Thank you. Did you want to take a moment to
3 read the document?

4 A. I looked at it already, thank you.

5 Q. Okay.

6 MS. MACKEY:

7 Q. Mr. Gallant or Mr. Adjudicator, would I be
8 able to have this admitted as evidence? I'm
9 not sure if it needs to be marked as an
10 exhibit.

11 ADJUDICATOR:

12 Q. You can have the witness identify it first
13 and then Mr. Penney can indicate whether he
14 has any issue with this becoming part of the
15 record.

16 MS. MACKEY:

17 Q. Ms. Van Geest, have you ever read the Start
18 ASL disclaimer before you used their
19 informational resources?

20 MR. PENNEY:

21 Q. You know, I can't see a URL on this. I
22 don't know what this is from or anything.

23 ADJUDICATOR:

24 Q. Was this -

25 MR. PENNEY:

1 Q. Are you familiar with the document at all?

2 A. No.

3 ADJUDICATOR:

4 Q. Did you receive a copy of this document in
5 advance, Mr. Penney?

6 MR. PENNEY:

7 Q. Just this morning. Do you know what this
8 is?

9 A. The terms and conditions from Start ASL, I
10 guess.

11 Q. But have you ever - like you don't - you've
12 never seen it before?

13 A. No.

14 MS. MACKEY:

15 Q. I could get an electronic version. I
16 thought it printed the URL. Sorry.

17 MR. PENNEY:

18 Q. I mean, I don't really see the utility of
19 this. I mean, spend about a half hour
20 asking about a particular ASL course. I
21 think we should move on.

22 ADJUDICATOR:

23 Q. Yeah. Well -

24 MS. MACKEY:

25 Q. I can move on.

1 ADJUDICATOR:

2 Q. You can ask your questions and you know,
3 this is going to be relevant somehow?

4 MS. MACKEY:

5 Q. Yes. It's just to show that the levels that
6 Ms. Van Geest completed aren't actually
7 acknowledged levels in the deaf and hard of
8 hearing community. It's just to show that
9 what she's saying she's qualified in isn't
10 actually a program. It's not a
11 certification. It's not recognized by the
12 deaf and hard of hearing community. So, I
13 was just going to show the disclaimer -

14 MR. PENNEY:

15 Q. Wait, wait, wait. Hang on now. I mean, she
16 went to accredited university and got a
17 Master's degree from it.

18 ADJUDICATOR:

19 Q. Yeah, I -

20 MS. MACKEY:

21 Q. Sorry, it's not an interpretation or
22 linguistics or ASL. There are programs in
23 the country - but I'll leave the experts to
24 talk about that. That's okay.

25 ADJUDICATOR:

1 Q. Yeah, I'm - I mean, you can ask questions to
2 the witness, but I don't know what this
3 document is.

4 MS. MACKEY:

5 Q. That's okay.

6 ADJUDICATOR:

7 Q. And unlike the other cross-examination
8 documents, it wasn't produced in advance. I
9 don't know who the author is. I don't know
10 whether this is current.

11 MR. REES:

12 Q. I think the question is if she was aware of
13 that disclaimer and that's sufficient for -

14 MS. MACKEY:

15 Q. Just that it's a company that provide a
16 certificate for going through their
17 information, not certifying someone to -

18 ADJUDICATOR:

19 Q. We don't know if this disclaimer is new or
20 was this in place when she took the courses
21 and I understand that her evidence was that
22 the university - she received a certificate
23 at the time. Maybe - I don't know whether
24 things have changed. I'm sorry, what year
25 did you take the course potentially?

1 A. Well, I graduated in 2018, so I would have
2 done it between 2016 and 2018.

3 Q. You can ask the question, but -

4 MS. MACKEY:

5 Q. I'm -

6 ADJUDICATOR:

7 Q. - you know, I'll determine the relevance -

8 MS. MACKEY:

9 Q. Yes, I'm essentially done. I was just going
10 to ask -

11 ADJUDICATOR:

12 Q. - or the weight that I'm going to give to it
13 afterwards.

14 MS. MACKEY:

15 Q. That's okay. I'm also totally agreeable
16 also to ditch the document. Thank you.
17 Could you then summarize what your
18 understanding of ASL Levels 1 to 3 is and
19 how long it took you to complete each level?

20 A. ASL Levels 1 to 3 are just progressive
21 levels of learning ASL. You learn different
22 subjects along the way and then it goes from
23 there, levels 4, 5 and 6.

24 Q. Okay. And those are just levels belonging
25 to -

- 1 A. You can ask the Newfoundland Association for
2 the Deaf about their levels of ASL. They
3 can speak to that better than I can.
- 4 Q. So, one final question on your program. In
5 your opinion, do you believe that your
6 Master's program in its entirety provided
7 you with the necessary skills to communicate
8 effectively in ASL with deaf or hard of
9 hearing persons?
- 10 A. Yes.
- 11 Q. What about teaching ASL as a first language
12 to deaf or hard of hearing students?
- 13 A. Yes.
- 14 Q. And there was never a proficiency test for
15 this program?
- 16 A. No.
- 17 Q. Okay, thank you. Ms. Van Geest, prior to
18 being hired to work with Carter, you held
19 other teacher - other teaching positions
20 with the NL English School District?
- 21 A. Um-hm.
- 22 Q. Can you tell us about those positions?
- 23 A. I worked as a hard of hearing itinerant in
24 Avalon West and I worked as a Phys. Ed and
25 French teacher in Harbour Grace.

1 Q. So, yes, in your affidavit at paragraph
2 five, you stated that, and that was during
3 the 2016-2017 school year that you worked as
4 a deaf and hard of hearing itinerant in
5 Avalon West?

6 A. I did.

7 Q. This was before you finished your Master's
8 program?

9 A. Yes.

10 Q. Was this a contract position or was it -

11 A. Replacement.

12 Q. A replacement. And you provided services to
13 the students?

14 A. I did.

15 Q. Could you tell us what sort of needs your
16 students at that time had generally?

17 A. Students varied in their needs. Some had
18 cochlear implants; some had hearing aids and
19 their needs varied. I mean, I don't know if
20 I should go into detail about these
21 students.

22 Q. I think I just ask that because in your
23 affidavit at paragraph eight, you did
24 provide some information about those
25 students.

1 A. I gave an example, but I don't think it's
2 fair to discuss those students.

3 Q. Are you allowed to disclose if any of them
4 required what Carter had needed or similar
5 services?

6 A. Can I answer that?

7 ADJUDICATOR:

8 Q. Yes, you can answer that question.

9 A. Okay. Not to the same extent. Close, one
10 was close. I'm a little bit uncomfortable
11 talking about the students. I don't want
12 them to be - I don't want someone to be able
13 to figure out who it is, if that can be - if
14 that's good.

15 Q. And that's fair.

16 MS. MACKEY:

17 Q. Yeah, I can move along.

18 ADJUDICATOR:

19 Q. You know, the identity of the person I don't
20 think is relevant but did you have
21 experience working with students in the past
22 that had cochlear implants?

23 A. Yes.

24 Q. Did you have experience in the past working
25 with students who were exhibiting language

1 delays?

2 A. Yes.

3 Q. And what age group of students are we
4 talking about?

5 A. I had under five, I'll say, students that
6 had needs; that had cochlear implants and
7 language difficulties.

8 Q. Okay. Go ahead, Ms. Mackey.

9 MS. MACKEY:

10 Q. This is a more general question of how would
11 you teach the curriculum to those students?
12 Could you give some examples of that or one?

13 A. I'm just thinking of a way to give an
14 example without saying.

15 ADJUDICATOR:

16 Q. I'm not sure what the relevance is of how
17 she would have taught curriculum to somebody
18 who may have been under five and had -

19 A. Sorry, I had five - the number of students I
20 had was -

21 Q. The number of students is five?

22 A. Number of students I had were five or under,
23 just so kind of giving general. I just
24 don't want to be able - I don't want people
25 to figure out who I'm talking about and by

1 then being a bit more specific, people might
2 find out and that's not fair to the child
3 who's not part of this.

4 Q. Did the manner in which you taught those
5 students differ from the manner in which you
6 taught Carter?

7 A. Maybe in some subjects, maybe not in others.
8 I mean, a good teacher teaches a variety of
9 ways to educate the child and grow their
10 language and their academics and their
11 independence. So, you know, you might use
12 visuals with one activity. You might use
13 manipulatives with another. I do the same
14 thing with Carter.

15 Q. I don't want to interrupt your cross-
16 examination any further. You know, if
17 there's any concern with questions, Mr.
18 Penney is here to object and we'll go
19 forward. Go ahead.

20 MS. MACKEY:

21 Q. I was just going to request a short break at
22 this moment, just a short one.

23 ADJUDICATOR:

24 Q. How long would you need?

25 MRS. CHURCHILL:

1 Q. Five minutes.

2 MS. MACKEY:

3 Q. Five minutes, please.

4 ADJUDICATOR:

5 Q. Five minutes.

6 MS. MACKEY:

7 Q. Thank you.

8 (OFF RECORD)

9 ADJUDICATOR:

10 Q. We can go back on the record.

11 MS. MACKEY:

12 Q. Also more conscious of the time now, so I'll
13 try to go through a bit faster. So, Ms. Van
14 Geest, you mentioned earlier that you worked
15 as a Physical Education and intermediate
16 late French Immersion teacher. Is that
17 correct?

18 A. It is.

19 Q. And that was during the 2017 to 2018 and
20 2018 to 2019 school years as per paragraph
21 nine of your affidavit?

22 A. That's correct.

23 Q. And you were DELF certified for that
24 position?

25 A. Yes.

- 1 Q. That's a language proficiency certification?
- 2 A. Yes.
- 3 Q. What date were you hired to work with Carter
- 4 at Beachy Cove Elementary?
- 5 A. The administration day of that school year,
- 6 so the day before students started.
- 7 Q. And you were hired for the position of a
- 8 fulltime permanent deaf and hard of hearing
- 9 itinerant?
- 10 A. Replacement.
- 11 Q. Replacement. So, instead of just reading
- 12 it, I will take you to the document, the
- 13 Complainant's white bound Book of Documents
- 14 to your left, Volume 2, Tab A.
- 15 A. Okay.
- 16 Q. This is the job posting for your grade three
- 17 position at Beachy Cove Elementary?
- 18 A. It is.
- 19 Q. And that job description includes that you
- 20 would provide both direct instruction and
- 21 teacher staff parent consultation and
- 22 collaboration for a student who is deaf?
- 23 A. Yes.
- 24 Q. And that student was Carter, correct?
- 25 A. It was.

1 Q. Included among the required qualifications
2 for the position was the ability to
3 communicate effectively in ASL, superior
4 proficiency being preferred. Is that right?

5 A. It is.

6 Q. And you were unable to identify your
7 proficiency at that point because your ASL
8 proficiency had never been tested?

9 A. That's right.

10 Q. So, it is indeterminable whether you met the
11 ability to communicate effectively in ASL
12 requirement?

13 A. No, I can communicate in ASL. I didn't have
14 superior proficiency.

15 Q. Is that a subjective evaluation or were you
16 objectively assessed to be able to
17 communicate effectively?

18 A. I knew I could communicate with Carter in
19 ASL and I did.

20 Q. And that is a subjective opinion? Is that
21 correct?

22 A. If that's what you think.

23 Q. Well, you just said "I" so that's why - just
24 wanted to confirm. In your opinion, do you
25 believe that the ability to communicate

- 1 effectively in ASL, superior proficiency
2 preferred, is an important required
3 qualification for that position?
- 4 A. You would have to ask the School District.
- 5 Q. Did the School District request that your
6 ASL proficiency be assessed?
- 7 A. Yes.
- 8 Q. At what point was that?
- 9 A. When they hired me.
- 10 Q. I'll direct you to Volume 4 of the
11 Complainant's white Book of Documents to
12 your left, Volume 4, Tab Q. These are your
13 ASL proficiency interview results.
- 14 A. Okay.
- 15 Q. You've seen these before, your results?
- 16 A. I did not actually.
- 17 Q. Would you like some time to read the results
18 of your ASL PI?
- 19 A. Yes, please.
- 20 Q. Okay.
- 21 A. Okay.
- 22 Q. Just to go back, you stated that you were
23 tested before you got hired?
- 24 A. No, they said they were going to test me.
- 25 Q. So, the testing wasn't a requirement for the

1 position?

2 A. I already answered this.

3 Q. Just looking to clarify. So, after
4 reviewing your results, you now see that
5 your ASL proficiency is assessed at Level 4,
6 which is described as a survival level?

7 A. I did know that, yes.

8 Q. So, Level 4 is out of 11 possible levels,
9 correct?

10 A. It is.

11 Q. And in this document, it states "the passing
12 grade as a threshold to expression and
13 comprehension is Level 6, intermediate". Is
14 that correct?

15 A. It is.

16 Q. Would you agree that there is a significant
17 difference between Level 4 survival and
18 Level 10 superior?

19 A. Yes.

20 Q. And Level 6 deemed as the passing grade in
21 this document?

22 A. Well, doing my additional tutoring, the
23 tutor did not deem me as survival. She
24 expected me to be intermediate.

25 Q. And your tutoring sessions were before your

1 testing though?

2 A. They were.

3 Q. So, even with those tutor sessions, you
4 still were evaluated as a Level 4 survival
5 level ASL. And the - I'm not sure if I said
6 what the abbreviation was, the American Sign
7 Language Proficiency Interview stated in
8 this document that "Joanne exhibits weakness
9 in receptive and expressive signing. She
10 does not use grammatical features of ASL in
11 relation to time, topic, comments, body
12 shift and classifiers. She struggles with
13 comprehensive, needing repetition and
14 reduced rate of signing when signs are not
15 misproduced and they are signed with clarity
16 but not consistently." Do you believe that
17 that and your Level 4 survival is an
18 adequate level to meet the needs of a deaf
19 child such as Carter?

20 A. I believe my levels, my level of ASL is
21 better than what is described here.

22 Q. So, you're disagreeing with the consultant
23 and interviewer of the ASL proficiency
24 interview?

25 A. Yes.

1 Q. And you're aware that not only does it go
2 through the first person, but it then goes
3 through a panel of -

4 A. Yes, this is also in 2019.

5 Q. Have you since been tested?

6 A. I have not.

7 Q. You did mention that you had taken tutor
8 sessions.

9 A. I did.

10 Q. And that was before your testing?

11 A. It was.

12 Q. I would put it to you that the reason you
13 obtained your Level 4 survival skills or
14 survival level was due to those tutoring
15 sessions.

16 A. That's your thoughts.

17 MR. PENNEY:

18 Q. Look, I mean, we've already established Ms.
19 Van Geest's ASL level. It's in her
20 affidavit. She had been open about it. I'm
21 not sure I see the relevance of continuing
22 to ask her this line of questioning.

23 MS. MACKEY:

24 Q. Sorry, she had specified she'd never seen
25 the results before.

1 MR. PENNEY:

2 Q. She did say that she was aware of it.

3 ADJUDICATOR:

4 Q. You can continue on with your line of
5 questioning, but you know, we're - we do
6 have an amount of time that everyone has
7 agreed is allotted to the witness and I
8 mean, you know, the document says what the
9 document says.

10 MS. MACKEY:

11 Q. Do you believe with your Level 4 survival
12 skills you provided an adequate service to
13 Carter, who needed to be taught ASL?

14 A. Yes.

15 Q. How frequently did you request or rely on
16 the student assistant named Tammy Vaters,
17 who is a deaf and a native signer, to act as
18 an informal interpreter in ASL?

19 A. Tammy signed if I asked her for assistance
20 or if she wanted to. I did not rely on her.

21 Q. I will put it to you that we believe Tammy
22 will provide evidence tomorrow that she was
23 being relied on a lot, to a point where she
24 will express that tomorrow. And you believe
25 how you rely - you requested her to be a

- 1 normal adequate amount of reliance?
- 2 A. Yes.
- 3 Q. In your affidavit, at paragraph 15, you
- 4 stated that Carter was to be fully
- 5 integrated into his grade three classroom.
- 6 What does fully integrated mean?
- 7 A. He was part of the grade three prescribed
- 8 curriculum and in the classroom.
- 9 Q. So, Carter was receiving the curriculum in
- 10 grade three?
- 11 A. Yes.
- 12 Q. Was that in his language?
- 13 A. Yes.
- 14 Q. ASL. And you taught him the curriculum in
- 15 ASL?
- 16 A. Yes.
- 17 Q. Despite the survival level that you have.
- 18 You stated that he was provided certain
- 19 supports. Can you explain what those were?
- 20 A. What are you referring to?
- 21 Q. The same paragraph in your affidavit,
- 22 paragraph 15.
- 23 A. The regular curriculum, the prescribed
- 24 curriculum, he had supports in myself and
- 25 Tammy.

1 Q. And so, you believe, in your opinion, that
2 Carter was fully integrated, despite hearing
3 and - hearing in the classroom that English,
4 as they had English as their first language?
5 I guess, do you believe he was actually
6 fully integrated?

7 A. I don't understand what you're asking.

8 Q. In your opinion, do you believe Carter had
9 been fully integrated, given the
10 circumstances that everyone around him could
11 speak English, the closest ASL person was an
12 interpreter you say not relied on a lot, but
13 we've been advised it was and your level was
14 only survival skills, and you believe he was
15 fully integrated with those supports?

16 A. Carter was always a big part of the
17 classroom. He had a homeroom teacher who
18 provided the whole group instruction and
19 from there, Carter, as well as his
20 classmates, completed their lessons. Myself
21 and Tammy would help Carter complete his
22 lessons after we explained to him, through
23 ASL, what the homeroom teacher had explained
24 in English.

25 Q. So, were you aware of Carter being provided

1 the letter IE in his - when he was being
2 graded on his grade levels in any subject?
3 He received IE in every subject except art
4 and physical education. Were you aware of
5 that?

6 A. Yes.

7 Q. And what does IE mean?

8 A. Just suggest -

9 MR. PENNEY:

10 Q. Just to be clear, I think that's grade four
11 and grade five.

12 MS. MACKEY:

13 Q. Okay. So, I guess, the purpose of that - I
14 skipped ahead my own line of questioning -
15 was that if you taught Carter in grade three
16 and you say that he was fully integrated,
17 was taught the grade three curriculum, then
18 how is it that he still received IEs in both
19 grade four and grade five after that? Don't
20 you think grade three would have prepared
21 him then if he actually was integrated and
22 was taught the curriculum?

23 A. His report card for grade three probably can
24 - what document would that be in? There are
25 documents, right, for - is this it?

1 Q. Volume 3 of the Complainant's white books
2 and it is Tab F. That is Carter's grade
3 three report card.

4 A. That's his grade three report card?

5 Q. Yes.

6 A. So, you can see that he receives twos and
7 threes and ones in his grade three report
8 card, not IEs.

9 Q. No, the IEs were for the previous grades. I
10 was just making the connection. Oh, the
11 following, sorry.

12 A. So, there's - the difference between the
13 numbers and the IE is a difference in the
14 report cards he's receiving now. When I was
15 with him and he was in the classroom, he
16 received a report card, as the other
17 students did, that gave him numbers like
18 twos and threes and ones. Now, he's in a
19 classroom where he is taught with other
20 students that require ASL and therefore we
21 have different report cards for them.

22 Q. So, is IE the normal? Is that - what does
23 that stand for? Why would he receive that?

24 A. It's - the IE suggests to look at a
25 different part of the report card to give

1 the information about what was being taught.

2 Q. Could he -

3 A. It just gives a more detailed explanation.

4 Q. Could he have received a number? Was IE the

5 only option?

6 A. You would have to speak to our director,

7 Alma or Darlene, regarding the setup for the

8 report cards before the classroom began.

9 Q. To the best of your knowledge, is IE similar

10 to inadequate, not applicable? Is it - is

11 there any way to define what that IE stands

12 for or just simply to look at comments?

13 A. I would suggest asking Alma or Darlene.

14 Q. Okay. Have you ever made, I would consider,

15 a negative comment regarding Carter's

16 academic abilities?

17 A. I've made one.

18 Q. And what was that?

19 A. I was concerned that there were further

20 learning difficulties.

21 Q. When did you make that comment?

22 A. September 2019 or October 2019.

23 Q. I will direct your attention to the purple

24 binder, which is the Complainant's rebuttal

25 documents, specifically Tab 7. Do you -

1 I'll let you get to it, sorry. Do you
2 recognize this document?

3 A. I don't think this is the document you're
4 referring to.

5 Q. Well, I know I brought you to this one, but
6 is this a different one than what you're
7 referring to? Oh, sorry, is it not Tab 7?

8 ADJUDICATOR:

9 Q. What document are you trying to have her
10 look at? I'm at Tab 7 of the rebuttal
11 documents. It looks like it's an email.

12 MS. MACKEY:

13 Q. This one here doesn't have that. Yes, it's
14 an email from Ms. Van Geest.

15 A. It's not in mine.

16 Q. Flip one page.

17 A. Yeah.

18 ADJUDICATOR:

19 Q. You can approach and check to make sure -

20 A. I have it here now.

21 Q. - that she's seeing the right document.

22 A. I have the right one.

23 Q. You can make sure it's the same document.

24 A. This was the one I initially had, but then
25 when I flipped, this is the one you want,

1 right?

2 MS. MACKEY:

3 Q. Yes.

4 A. Okay.

5 Q. Do you recognize this document?

6 A. I do.

7 Q. And what is this on this sheet of paper?

8 A. It's an email I wrote to the NLTA.

9 Q. And it was written in September 16, 2019?

10 A. It was.

11 Q. To Deanna Hatcher?

12 A. Yes.

13 Q. What is her role or her position?

14 A. She's an NLTA representative.

15 Q. Towards the bottom of this email, and
16 there's one large paragraph and it's towards
17 the bottom, the fifth line up from that
18 bottom paragraph.

19 A. Um-hm.

20 Q. I'll read it out. It says "again, I think
21 the Churchills have made Carter out to be a
22 brilliant child". Before I continue, can
23 you elaborate on what you meant by that?

24 A. I was in a meeting and it was said that,
25 like quite often, that he was a brilliant

1 child, he was a brilliant child.

2 Q. And don't you think most parents think their
3 child are brilliant? What would you
4 consider a brilliant child? I'm just trying
5 to understand your - what you meant, your
6 intention behind this.

7 A. A child who can communicate without any
8 difficulties, can complete his academics,
9 his or her academics without difficulties
10 and - I'll leave it at that.

11 Q. Do you believe a student would need to have
12 a language to do that?

13 A. He has a language. He has ASL.

14 Q. Well, we can disagree on that; that he
15 actually has a language and was taught a
16 language, but I will continue with the rest
17 of this. It says - so, I'll start from the
18 beginning. "Again, I think the Churchills
19 have made Carter out to be a brilliant
20 child, but there are unfortunately many
21 deficits in Carter's learning from what I've
22 seen. Trust me, I've done a lot of little
23 assessments to see what he is and isn't
24 capable of." So, I'll stop there. Can you
25 explain what these little assessments were

- 1 to determine that he's - that he has many
2 deficiencies - deficits, sorry?
- 3 A. As a teacher, you're always trying to gauge
4 what a student knows, what they don't know.
5 You see there's something they don't know,
6 you try to identify the gaps in that
7 learning and try to close them through a lot
8 of review and review of concept, repetition
9 of concepts. The gaps weren't getting any
10 smaller for Carter. I was concerned.
- 11 Q. And how long did it take you to do those
12 little assessments?
- 13 A. An assessment doesn't have to take very
14 long. It can take - you know, you can do it
15 in a day or you can do one over a period of
16 time.
- 17 Q. And since Carter's language is ASL, you
18 believe you could adequately assess his ASL,
19 despite your lack of ASL yourself?
- 20 A. I wasn't assessing his ASL.
- 21 Q. So, what were you assessing?
- 22 A. I was assessing his math, his reading, his
23 ability to retain information.
- 24 Q. Wouldn't that involve his language?
- 25 A. Are you - you're not a teacher, so you don't

1 understand that what I'm trying to explain
2 is that if you're teaching a child, you try
3 to teach them in a number of different ways
4 to gauge their learning and you can do that
5 through a number of different ways and I did
6 that with Carter.

7 ADJUDICATOR:

8 Q. How long had you been working with Carter at
9 the point that you wrote this email?

10 A. That was at the start of the school year, so
11 I'd probably been with him two or three
12 weeks. So, I'd been working with him for
13 that amount of time reviewing what we had
14 done.

15 Q. You said that you'd tried different methods
16 of teaching Carter and I think at paragraph
17 20 of your affidavit, you describe some of
18 those techniques. Can you elaborate for me
19 on what sort of concepts you would have
20 started working on with Carter at the start
21 of grade three?

22 A. I wouldn't be able to tell you off the top
23 of my head what the curriculum starts with
24 in grade three, I'm sorry.

25 Q. And you were hired to - in this position, I

1 think just - I think the day before school
2 opened that year, there was an admin day, as
3 there often is, and you were hired that day.
4 What information had you been provided with
5 respect to Carter and his abilities and
6 limitations at that time?

7 A. I knew that he used ASL.

8 Q. Um-hm.

9 A. And I was aware also that he had cerebral
10 palsy and was in a wheelchair.

11 Q. And would you have received any information
12 from his past teachers? Would you have
13 reviewed any of that or is there - how does
14 information flow from one year to the next?

15 A. If I had been hired before admin day, I
16 could have gone and looked at his files at
17 Beachy Cove, but unfortunately, I didn't
18 have that luxury. So, I could only go on
19 what I knew of him from people who had
20 worked with him before.

21 Q. And throughout the school year, you said
22 that you were using any method of
23 instruction that you felt was appropriate.
24 Can you describe the types of methods of
25 instruction that you used over the course of

- 1 grade three?
- 2 A. Yes. So, I have written there further in
3 paragraph 20 that I could - after I
4 explained through ASL the lesson, you know,
5 then you might add in manipulatives as you
6 would in math, you know. You base ten
7 blocks, for example. So, you're doing -
8 you're teaching the child in ASL, but you're
9 using manipulatives to help understand.
10 Then you might have the chart here where it
11 says base 100, base 10, base 1. Give him
12 the manipulatives and you ask him, through
13 ASL, how to put the number 354 in a base ten
14 block. I would provide examples in a number
15 of different ways and then I would see if he
16 could remember how to do it himself, pick a
17 number himself and then, you know, place it
18 appropriately, as an example.
- 19 Q. In the paragraph before that, you describe
20 that - I think what you're saying here is
21 that the homeroom teacher, the general
22 classroom teacher, would provide instruction
23 and then you say you would relay that
24 information to Carter and modify it so he
25 could complete the work. Can you elaborate

1 for me? What do you mean by that?

2 A. Well, sometimes the teacher would have a
3 long explanation in English and then go from
4 step one to ten. But with Carter, I would
5 give him an idea of what we're going to do,
6 but complete step one and then teach step
7 two and then teach step three because it was
8 easier for Carter to understand what you got
9 to do first. There was no point in giving
10 him all ten steps when we wanted to focus on
11 the first one and completing that and I
12 wanted him to do the work. So, once we did
13 that, we'd move on to the others. While
14 some students might finish quickly, some
15 students are a little bit slower, I still
16 wanted Carter to complete all this work, no
17 matter how long it took us.

18 Q. And what sort of - did you ever - when
19 you're relaying that information, in what
20 format are you relaying that information?

21 A. ASL.

22 Q. And did you have any - did you experience
23 any difficulties in relaying information to
24 Carter via ASL?

25 A. If I did, then I would ask Tammy for

1 assistance.

2 Q. And what would Tammy do then?

3 A. She would either provide me with the
4 information or the words that I needed to
5 finish what I was trying to explain or
6 sometimes she took it upon herself and
7 sometimes what we'd do is I would explain it
8 one way and then maybe she has an idea of
9 another way to explain it and then maybe if
10 Carter still didn't understand, then I would
11 think of a third way to try and explain it.
12 We were just always trying to make sure that
13 Carter understood what he had to do and how
14 to provide us with what he has learned.

15 Q. You said that sometimes she would give you
16 the word that you needed. What - like do
17 you mean like there might be a - what do you
18 mean by she would give you the word that you
19 might need?

20 A. So, say, you know, we're talking about math
21 and - gosh, I don't know, the word
22 trigonometry, I don't know what that is in
23 sign language we'll say. So, I'd ask her if
24 she could provide me with the sign for that
25 word.

- 1 Q. Okay. And then what would you do with - I
2 mean, is trigonometry, is that a word that
3 you actually would have encountered in grade
4 three?
- 5 A. No, I'm just using that. I was just trying
6 to think of a general word.
- 7 Q. Can you think of any specific examples of
8 the types of words that, you know, would be
9 new vocabulary words to you in grade three?
- 10 A. I'd have to look at the curriculum. I'm
11 sorry. I can't think of anything off the
12 top of my head.
- 13 Q. Okay. And if that's a new vocabulary word
14 to you, but you know what the word is
15 already, how would you go about explaining
16 that new word to Carter?
- 17 A. I would use visuals or I would act it out.
18 Like I would give him the sign first and
19 then I would find a visual on his iPad or I
20 could act it out and maybe sometimes he
21 would act it out with me, just find fun ways
22 to help him retain the new word, if it was
23 new to him.
- 24 Q. And in your observation, is he then able to
25 use that new word?

- 1 A. Sometimes. Carter's ability to retain
2 information was sometimes limited. He could
3 maybe retain it for a couple hours, maybe a
4 week, maybe not five minutes.
- 5 Q. Your affidavit talks about using assistive
6 technology in an iPad. Paragraph 23, you
7 said you were focused on using assistive
8 technology for Carter and felt, and it says
9 in brackets "and still feel strongly that
10 increasing his ability to read would be most
11 the beneficial skill he could learn to help
12 him as he continues his education". Why?
13 Why do you feel that?
- 14 A. The technology or the reading or both?
- 15 Q. Well, let's start with the technology. Why
16 are we using technology?
- 17 A. Well, assistive technology is either no, low
18 or high form of technology. You know, when
19 I went back to work in April, Carter was
20 wearing a new jacket, one that he can put on
21 himself. It's not like a jacket that you
22 and I wear where we zip up the front.
23 Carter could put it on himself and then we
24 could zipper up on the sides. So, it
25 increases his independence, something that

1 works a little bit better for him. So,
2 assistive technology for me, for Carter, was
3 to find ways to improve his education, as
4 well as his independence. So, yeah,
5 assistive technology also is examples of
6 like the hushh-ups. These are the tennis
7 balls that you put on the bottom of the
8 chair so, it decreases the noise in the
9 room.

10 Other examples would be the osmo's kit.
11 It's a - I don't even know how to describe
12 it, but it's like an iPad and he has lots of
13 options to help him with his iPad, where you
14 place it in front. It has a little mirror
15 on it that mirrors down to what you have in
16 front of you. So, it might ask you to spell
17 a word. So, it has a picture of a moose,
18 we'll say for an example, and all the
19 letters are here and you just have to move
20 the letters in front of the mirror and if
21 you get a letter wrong, it just records that
22 you have one letter wrong. But at least
23 with Carter's CP, he can move the letters in
24 front of the mirror and it doesn't - he
25 doesn't have to be steady to do that.

1 With reading, you know, we had - I
2 looked for programs where he could see the
3 visual signing and he could see the words,
4 as well as the video that was animated, so
5 he could learn to read by seeing those three
6 visuals.

7 You know, I think for - you know, for
8 safety even that it benefit Carter. You
9 know, what if he is alone by himself
10 somewhere and the word "stop" is there and
11 he doesn't know what that means? Wouldn't
12 it be great if he did? Wouldn't it be great
13 if he could watch Paw Patrol and understand
14 what everyone is saying instead of just
15 seeing them act it out? This is what I
16 wanted for Carter. I wanted to see if there
17 was anything out there that we could provide
18 him to improve his quality of life through
19 his education.

20 And also, like there's so much hand
21 over hand writing with him. He doesn't gain
22 anything from that. That's not his words.
23 That's not his spelling. I felt he needed
24 to learn to spell on top of his reading
25 because he's in school. We go to school to

1 learn how to read, to write, how to do our
2 math. Why is that any different? A good
3 teacher teaches all students in ways to make
4 their life better and happier and that's all
5 I wanted for Carter.

6 Q. And you felt - did you feel that he was able
7 to learn using the iPad that you've
8 described?

9 A. Sometimes. The iPad - you mean the osmo's
10 kit?

11 Q. Yeah. I guess what was working well -

12 A. Well, the Osmo's kit -

13 Q. - with the iPad?

14 A. - unfortunately only arrived the day - on my
15 last day with Carter in grade three, but I
16 do believe that it would have helped him,
17 but I don't know if it was used after I
18 left, unfortunately. The iPad he did have
19 was set up so it could be up in front of him
20 and then he had his keyboard there, and I
21 had spoken with his OTs to see how we could
22 improve his typing on the keyboard because
23 oftentimes that he wanted to spell the word
24 like "mom", he would hit the letter M, but
25 you know, he'd be looking, looking, he's

1 looking, he's looking, he's looking, he's
2 looking. He'd eventually hit M. Now, his
3 keyboard was set up so he couldn't easily
4 hit more than one letter. He had a cover
5 over his keyboard, another part of assistive
6 technology. And then if he didn't know how
7 to spell the word, I would either sign it or
8 I had it written down. So, he knew to -
9 okay, I type the letter M, I see that it's
10 where it is. I want to be on the iPad. Now
11 I'm going to look here at the list of words
12 or the sentence I'm trying to spell. Okay,
13 the next letter is O and you know, he would
14 sign and go O, O, O, O, O and he'd be
15 looking and looking and looking. Eventually
16 he'd hit O. There is things there. That's
17 okay. Then he's look for the M again and
18 he'd be looking and he'd be looking, he'd be
19 looking, he'd be looking, he'd be looking,
20 he'd be looking, he'd be looking. So, even
21 though he had just typed M, he's looking all
22 over the place again. Sometimes, you know,
23 this could take two minutes and he's hit the
24 M again. You had to remind him to put a
25 period or you had to remind him to put a

1 space.

2 Q. And did he have the same difficulty coming
3 up with say, for example, the sign for Mom?

4 A. No, he knows what that is.

5 Q. Your affidavit says that you felt that the
6 iPad - you said you searched high and low
7 for iPad programs that could support Carter
8 "as I felt this was his best method of
9 producing schoolwork on his own". Did you
10 feel that using the iPad was superior for
11 Carter to using ASL?

12 A. No, they're two totally different things.
13 Like not using the - I'm not using the iPad
14 to communicate and he's not using it to
15 communicate. He's doing it for his
16 schoolwork. It's just - you know, it's the
17 same as a classroom teacher teaching all
18 their students in English and then they
19 produce their work. They're not erasing
20 their spoken language. Like I don't see the
21 relevance in like how one trumps the other
22 here.

23 Q. Now, I took advantage of the little break in
24 your questions and I took a lot of your time
25 and I apologize. Please continue. I may

1 have more questions afterwards, but I've
2 interrupted you and I did want to explore
3 those topics. So, Ms. Mackey will resume
4 her questions.

5 MS. MACKEY:

6 Q. It's okay, Mr. Adjudicator. I only have a
7 few more, but I will be passing it over to
8 counsel Kyle Rees. I wanted to direct your
9 attention back to this email, specifically
10 the second page. There's only one giant
11 paragraph there. I wanted to ask you when
12 you wrote "I know they want some" - sorry,
13 the fourth sentence down. "I've decided not
14 to go ahead with anything personally and
15 that I really don't appreciate what has been
16 put out there regarding my abilities." Can
17 you clarify what that's regarding in terms
18 of not to go ahead with anything?

19 A. I didn't need any additional stress.

20 Q. When you say "I've decided not to go ahead
21 with anything" was that in regards to a -

22 A. Rebuttal.

23 Q. A rebuttal? A complaint?

24 A. Just a rebuttal. I didn't appreciate what
25 was being said about me that was false.

- 1 Q. What was being said that was false?
- 2 A. The radio interview that there's a link in
3 that email and it said I wasn't qualified
4 and among other things, my education.
- 5 Q. Was it just not qualified in ASL or
6 something else? Did you -
- 7 A. I'd have to -
- 8 Q. Did you read it or listen to it?
- 9 A. I haven't listened to it since I first
10 listened to it. I don't need to listen to
11 that again.
- 12 Q. Okay. Was this regarding the Churchills,
13 Todd or Kim Churchill?
- 14 A. It was an interview Kim gave the day she met
15 me.
- 16 Q. What day was that?
- 17 A. The day students started.
- 18 Q. Would you happen to know what that day was?
- 19 A. If you look back at the calendar, you'll be
20 able to find it because I don't know.
- 21 Q. I believe it is the September 7th. So, you
22 met Kim on September 7th?
- 23 A. I did.
- 24 Q. And she made a - she was in the radio about
25 you the following day?

- 1 A. That afternoon or that morning, I believe.
- 2 Q. So, that is how your relationship began with
3 the Churchills?
- 4 A. Unfortunately.
- 5 Q. And then eight days later, on the 16th, which
6 you specified to the Adjudicator's question
7 earlier that you had spent two to three
8 weeks with Carter by the time you assessed
9 him, but you'd only spent eight days with
10 him.
- 11 A. Okay.
- 12 Q. And you again, after starting a poor
13 relationship with the Churchills, then
14 decided eight days later that Carter was
15 deficient?
- 16 A. Yes. I didn't decide that he was deficient.
17 I had concerns about his education. He
18 would need to be assessed to determine - he
19 would need to be assessed formally to
20 determine where deficiencies may lie.
- 21 Q. Right. But you did identify that he had
22 many?
- 23 A. I had written there, as you had already
24 asked, that -
- 25 Q. Yes, just to confirm.

- 1 A. - that I had concerns about deficiencies.
- 2 Q. Yes, you said many, many - you said he had
- 3 many. So, and your relationship with the
- 4 Churchills that obviously did not start well
- 5 had nothing to do with your assessments of
- 6 Carter?
- 7 A. It did not.
- 8 Q. Okay. And one last line of questioning.
- 9 You then stated at the bottom of this
- 10 paragraph, the second last sentence which
- 11 runs into the final sentence, "I'm not going
- 12 to worry about what some unhappy people are
- 13 falsely saying to the media to try and get
- 14 ahead in the world". You wrote that?
- 15 A. I did.
- 16 Q. And those unhappy people you're referencing
- 17 saying false things to the media are the
- 18 Churchills, Todd and Kim Churchill?
- 19 A. They are.
- 20 Q. And you believe that them expressing and
- 21 wanting to advocate for their son's
- 22 education as them trying to get ahead in the
- 23 world?
- 24 A. No, it's the way they're going about it.
- 25 You get more bees with honey than vinegar.

1 MR. CHURCHILL:

2 Q. Yeah, right, try it.

3 MS. MACKEY:

4 Q. So, you believe though, based on this
5 statement here, that they were trying to get
6 ahead in the world by expressing their
7 concerns about their son's education?

8 A. No, I just answered that.

9 Q. I'm going to let Kyle take over now. Thank
10 you.

Grade 3 DHH Teacher - Beachy Cove Elementary

11 CROSS-EXAMINATION BY MR. KYLE

12 REES

13 MR. REES:

14 Q. In fact, Ms. Van Geest, none of my - this is
15 Kyle Rees speaking - none of my questions
16 are new questions. I just had the luxury of
17 being able to take notes while Raylene was
18 speaking with you to be able to sum up. So,
19 this -

20 MR. PENNEY:

21 Q. So, if there's no new questions, why are we
22 asking more questions?

23 MR. REES:

24 Q. Well, because it's - I think it's very
25 important to sum things up. As I indicated

1 the other day, it's pretty standard at the
2 end of cross-examination to sum up the
3 evidence that's been given.

4 MR. PENNEY:

5 Q. You don't get to get two counsel have two
6 cracks at a witness. I totally think this
7 is inappropriate. She's been here for an
8 hour and a half.

9 ADJUDICATOR:

10 Q. Do you have anything new to cover? Are we
11 digging into something she's already
12 answered?

13 MR. REES:

14 Q. Tammy Vaters, student assistant, she's
15 coming in here to testify tomorrow. It
16 wasn't her job to provide curriculum to
17 Carter Churchill, was it? That's not part
18 of her job?

19 A. No.

20 Q. And when you relied upon her - I don't think
21 you said "relied upon". I think you said,
22 you know, you had her assist. You wouldn't
23 say relied. So, she wouldn't be responsible
24 for delivering that curriculum, would she?

25 A. No, but Tammy, I think she can say that she

1 Q. Good afternoon, everyone. I understand that
2 the next witness that we are scheduled to
3 hear from is [REDACTED] and this is [REDACTED]
4 [REDACTED]?

5 A. Yes.

6 **Grade 4 & 5 DHH Teacher - East Point Elementary**
7 [REDACTED] AFFIRMED, CROSS-EXAMINATION BY MR.

8 KYLE REES

9 REPORTER:

10 Q. Could you state your complete name for the
11 record?

12 A. [REDACTED]

13 Q. Thank you very much. [REDACTED] has been
14 affirmed.

15 ADJUDICATOR:

16 Q. Thank you, [REDACTED]. I understand that
17 Mr. Rees is going to have a series of
18 questions for you and then there may be
19 follow-up by Mr. Penney or myself.

20 A. Okay.

21 MR. REES:

22 Q. Hi, [REDACTED]. Kyle Rees, I'm the lawyer
23 for Todd and Kim.

24 A. I'm sorry, could you move a little closer to
25 your microphone?

Q. Yeah. No problem.

1 A. Thank you.

2 Q. In fact, I'll move the microphone closer to
3 me. How about that? Better?

4 A. I think so.

5 Q. Great, good, okay. If at any point you're
6 having difficulty hearing me or seeing me or
7 even understanding what I'm saying, because
8 sometimes my questions can be convoluted,
9 just let me know and I'll rephrase.

10 A. Okay.

11 Q. So, I'm going to ask you questions. Expect
12 to be under an hour. And when I'm
13 concluded, as the Adjudicator said, the
14 Adjudicator and Mr. Penney may have some
15 questions for you as well. I have your
16 affidavit which you prepared and I
17 understand you have a copy of that up there
18 in front of you, right?

19 A. Yes.

20 Q. So, thanks for that. I'll ask you some
21 questions about the affidavit as we go
22 through this. I'll also occasionally be
23 asking you some questions about the various
24 documents that are entombing you there and
25 when I need to refer you to any of those

1 documents, I'll tell you which one we're
2 talking about and we'll take a little while
3 to find it, okay?

4 A. Okay.

5 Q. All right. Your first exposure to Carter
6 Churchill is the last part of the school
7 year in 2020, right, May 2020?

8 A. Yes.

9 Q. And is that at Beachy Cove?

10 A. Yes.

11 Q. It's at Beachy Cove Elementary. That's the
12 last period of time that Carter Churchill is
13 at Beachy Cove Elementary, right?

14 A. Yes.

15 Q. And then thereafter, you are a teacher for
16 Carter at East Point Elementary, the ASL
17 immersive classroom, right?

18 A. Yes.

19 Q. So, you've kind of seen Carter, you know, at
20 the tail end of Beachy Cove and for the last
21 couple of years at East Point?

22 A. Yes.

23 Q. And I understand you're going to be teaching
24 him again this coming year?

25 A. Yes.

1 Q. Excellent, okay. In your affidavit, you
2 talked about how you worked for a period of
3 time at Mount Pearl Intermediate and you
4 were a teacher of the deaf there to one
5 student who was an ASL user, right?

6 A. That's correct.

7 Q. That's right. How did it happen - because
8 we've understood that, you know, this
9 doesn't happen all that often - how did it
10 come to be that you got assigned to, you
11 know, to one student?

12 A. You would have to ask my employer.

13 Q. So, they just - no, that's what I mean.

14 A. I just responded to a job posting.

15 Q. Okay. So, a job posting goes up. That's
16 the answer. A job posting goes up that
17 assigns you to one student and that's a
18 decision that the School District makes that
19 says this one student needs one-on-one
20 teaching and Gillian Lahoda applies for and
21 gets the job.

22 A. From what I understand.

23 Q. Great, good, good. How long did you work
24 with that student one on one in terms of
25 school years?

- 1 A. It was one on one only for the first year.
2 The second year, I was assigned another
3 student who was an ASL user as well.
- 4 Q. Okay.
- 5 A. And then when I left Mount Pearl
6 Intermediate and moved to Mount Pearl
7 Senior, I was in the same classroom, which
8 was the special needs unit, and some other
9 students in the room were part of my
10 responsibility as well.
- 11 Q. I see. When you were initially assigned to
12 that student in Mount Pearl one on one, when
13 you responded to this job ad, to your
14 knowledge did you have any knowledge that
15 the parents of that student, you know, had
16 to publicly advocate or file a Human Rights
17 complaint against the District in order to
18 get that level of services for their child?
- 19 A. I'm not aware of that.
- 20 Q. Yeah, and neither are we. Okay. Before you
21 met the Churchills, were you given - I mean,
22 you know, so you apply for, you get - you
23 eventually get the job to teach Carter
24 Churchill in the spring of 2020. Were you
25 given any kind of direction or advice from

1 the District or the school sort of on how to
2 deal with the Churchills because they had a
3 pending Human Rights complaint? Did that
4 come up in any discussions?

5 A. I was told to copy the principal in on
6 correspondence.

7 Q. Okay, right. So, the principal of the -

8 A. Of Beachy Cove.

9 Q. - of Beachy Cove, which is Aubrey Dawe, who
10 we -

11 A. Yes.

12 Q. - at that time anyway, who we heard from
13 earlier, requested to be copied on any
14 correspondence that you had with the
15 Churchills and you believe that that had
16 something to do with the Human Rights
17 complaint, the ongoing litigation?

18 A. I assumed so.

19 Q. Right. (Todd Churchill whispering) Oh
20 right, that makes sense. It didn't make
21 sense. I didn't understand the timeline
22 there. Spring 2020, of course you're -
23 we're still in Covid time, which it seems to
24 drag on. Spring of 2020 then, you're
25 actually doing virtual sessions with Carter,

- 1 aren't you?
- 2 A. Yes. I met Carter and his family online.
- 3 Q. Right.
- 4 A. And I didn't actually go into Beachy Cove
- 5 school at all.
- 6 Q. Oh, so you never set foot in Beachy Cove?
- 7 You're a teacher at Beachy Cove -
- 8 A. I set foot in there to sign the report card.
- 9 That was it.
- 10 Q. All right. And so, all of your teaching is
- 11 online sessions during that last, you know,
- 12 few months.
- 13 A. For his grade three year, yes.
- 14 Q. For his grade three year at Beachy Cove.
- 15 And then by the time you start at East
- 16 Point, we're back to in-person again, at
- 17 least for a little while, and that's in
- 18 person at East Point then?
- 19 A. Yes.
- 20 Q. Understood. How about your virtual
- 21 sessions? I mean, how - during this Covid
- 22 lockdown in -
- 23 A. Sorry, I missed the beginning.
- 24 Q. Yeah. The virtual sessions that you did in
- 25 May of 2020 and June of 2020, how frequently

1 did they occur?

2 A. We started at once a week and at the
3 beginning of June, we went to once a day.

4 Q. Right. And going to once a day that was as
5 a result of a request by Kim Churchill,
6 right?

7 A. As far as I know it was a request from the
8 DHH director at that time, Darlene Fewer
9 Jackson. She asked me if I would do an hour
10 a day and I said yes.

11 Q. Great. And so, the number of sessions are
12 increased to one hour a day direct service
13 with Carter?

14 A. Yes.

15 Q. Virtually. Were you present at a June 10th,
16 2020 presentation at Strawberry Marsh Road
17 where the ASL immersion program was first
18 introduced?

19 A. Yes.

20 Q. Right, you were - were you invited there or
21 did you find out about it and attend through
22 interest? How did your -

23 A. I was invited as a teacher who had a student
24 who could potentially benefit from such a
25 program.

- 1 Q. And I understand at that time, the program
2 was referred to as the ASL immersion
3 program. Is that your recollection as well?
- 4 A. Yes.
- 5 Q. And it was not referred to as a DHH
6 classroom?
- 7 A. Yes.
- 8 Q. And the term DHH classroom is something that
9 shows up later on and I see the term getting
10 used, but at the time the program is being
11 discussed and formed, people called it the
12 ASL immersive classroom?
- 13 A. That's correct.
- 14 Q. That's right. And when you got hired to
15 teach at that classroom in the 2020-2021
16 school year, when you start teaching there
17 first at East Point, at that time, they
18 still call it the ASL immersive classroom,
19 don't they?
- 20 A. Yes.
- 21 Q. And they don't call it the DHH classroom?
- 22 A. At that time, yes.
- 23 Q. Correct. And your job posting talked about
24 an ASL immersion program, right?
- 25 A. From what I recall.

1 Q. Right. I notice despite that, in your
2 affidavit, which you know, I understand you
3 would have put together with assistance from
4 legal counsel and others, the classroom gets
5 referred to as the DHH classroom and not the
6 ASL classroom. Do you have anything to say
7 about that, like why that would be the case?

8 A. The current director for DHH services, Alma
9 McNiven, felt that DHH was more of an
10 appropriate title for the classroom and she
11 requested that we start calling it that.

12 Q. Okay. Did you ever get a clarification -
13 I'm going to ask Alma McNiven at some point,
14 but did you ever get a clarification from
15 her like why they felt that was a more
16 appropriate title?

17 A. I believe it was a more appropriate title as
18 well. I didn't really question it.

19 Q. Right, okay. Why don't you tell me why you
20 thought it was a more appropriate title?

21 A. Because when you're working with deaf
22 students and hard of hearing students,
23 sometimes you don't only use ASL. For
24 example, if I'm working on literacy skills
25 with a student, I may use more of a signed

1 English. So, I might use ASL signs in more
2 of English word order. I may throw in some
3 verb tenses like the E-D to signify past
4 tense. Some of the students in my classroom
5 do have some residual hearing and can use
6 speech and so, we wanted to, I guess, not
7 solely focus on ASL development, but to
8 utilize what skills children have and help
9 them to become successful in whatever ways
10 that they can.

11 Q. Understood. And I also do understand that,
12 you know, several children in that class do
13 have access to sound. All of these children
14 though would be described properly as deaf
15 and not hard of hearing, correct?

16 A. Not all of them, no.

17 Q. No? Some are hard of hearing?

18 A. There is one student in the room who does
19 not have a hearing loss.

20 Q. Right. So, he's not - but he wouldn't be
21 hard of hearing?

22 A. I believe his hearing is - would, you know,
23 for the hearing thresholds would be normal,
24 but he has a different condition which
25 doesn't really allow for the meaning of

1 speech to, I guess, get to his brain.

2 Q. I understand.

3 A. He does require sign language.

4 Q. And I don't need to get a lot of details

5 there, and I understand the situation in

6 that context as well. Okay. I'm going to

7 ask you some questions about report cards

8 because you would have, you know, had some

9 knowledge of the drafting of report cards

10 for Carter -

11 A. Yes.

12 Q. - by the time he goes to East Point. So, in

13 that first school year, 2020-2021 at East

14 Point, right before the term one report

15 cards came out, it would have been you and

16 Alma McNiven and Line Daly would have met

17 with Todd and Kim Churchill to talk about

18 what to expect for the upcoming report card,

19 right? Do you remember having a meeting

20 about that?

21 A. I think so. I do remember having a meeting

22 for Carter's IEP and perhaps we discussed it

23 at that time.

24 Q. Yeah. And what was discussed at that time

25 was that his report card was going to be

- 1 full of IE's, right?
- 2 A. That's correct.
- 3 Q. And you - and so, when I say IE, you know
4 what I'm talking about for the purposes of
5 the report card?
- 6 A. Yes. The IE refers to insufficient evidence
7 to evaluate.
- 8 Q. Right. And do you recall the Churchills
9 being told that the reason IE's were being
10 used was because Covid put a lot of children
11 behind and so they were going to give all
12 the first term students IE's; that it was
13 really; sort of Covid, we haven't had a
14 chance to assess them, that kind of thing?
- 15 A. Yes, I think that was one of the reasons at
16 the beginning, yes.
- 17 Q. Okay. Were there any other reasons given
18 why IE's be provided beyond Covid, we
19 haven't had a chance to assess?
- 20 A. I can't recall if it came up at that
21 meeting.
- 22 Q. It's not only that report card, of course,
23 that ends up with IE's, the term one, right,
24 term two, term three?
- 25 A. All subsequent report cards have had IE's.

- 1 Q. Right. And the subsequent year, right, term
2 one, two and three, all IE's, IE's, IE's?
- 3 A. Yes.
- 4 Q. Throughout all the rest of them. I know
5 Covid is still a concern, but it hasn't
6 interrupted education to the same degree
7 during every term, but we still see IE's on
8 the report card. You know, the Churchills
9 had some concerns about the use of the term
10 IE. So, then they received an email from
11 Leo Etchegary. You know who Leo Etchegary
12 is?
- 13 A. Yes.
- 14 Q. Director of Schools. And that's only
15 recent. That's June of this year that he
16 indicated to them that IE is used when
17 students are not being taught grade level
18 curriculum. Is that your understanding on
19 the use of IE's as well?
- 20 A. It's definitely one of the reasons. Because
21 the students in my room all have a severe
22 language delay, much of the curriculum and
23 the curricular outcomes at various grade
24 levels cannot be taught the same way that
25 they would be taught to chronological age-

1 matched peers. The idea with the IE's and
2 us using them was - sorry, just give me a
3 second.

4 Q. Yeah, that's okay, yeah.

5 A. We wanted to provide some rich anecdotal
6 evidence for the learning that was taking
7 place in the classroom because we were
8 definitely seeing a lot of progress with the
9 students. In some cases, we were working on
10 grade level outcomes in certain subject
11 areas and in other subject areas, we were
12 pulling outcomes from different grade
13 levels. We wanted to meet the children
14 where they were. We wanted to, I guess,
15 help fill in some of the gaps, conceptual
16 gaps and language gaps.

17 Q. Tell me about Carter particularly then, and
18 there's no point in me showing you the
19 report card because used all IE's there, so
20 you won't gain information from it that way,
21 but you know, what were some areas where
22 Carter Churchill, if any, was being taught
23 grade level curriculum?

24 A. In math.

25 Q. Math?

1 A. Yes.

2 Q. Yeah. I'd suggest, and I don't know if this
3 was your understanding, I mean, the reason
4 why Carter was able to excel in math was
5 because it didn't have the same focus on
6 language that other areas of the curriculum
7 would.

8 A. Perhaps.

9 Q. And that there was no evidence that Carter,
10 you know, beyond his language deprivation,
11 was suffering from any kind of, you know,
12 cognitive delay?

13 A. I think that Carter struggles a lot with
14 reading and writing, even with word
15 recognition. I'm not seeing great gains. I
16 don't - I can't attribute that to the
17 language delay. I don't believe Carter has
18 a cognitive delay, but perhaps a learning
19 disability when it comes to reading and
20 writing. None of that's been formally
21 diagnosed.

22 Q. Okay. I mean, Ms. Van Geest, and I'm going
23 to ask you some questions about her later,
24 but she testified here earlier this morning
25 and she indicated that she contended, you

1 know, that contrary - the way she put it
2 was, you know, contrary to Carter's parents
3 who think that he's brilliant, she didn't
4 think that was the case and that, you know,
5 she said Carter doesn't seem to be able to
6 retain information, and she believed that
7 there was a cognitive issue, in addition to
8 a language issue. Do you share Ms. Van
9 Geest's conclusion?

10 A. I don't think so, no.

11 Q. And I should note, Ms. Van Geest indicated
12 that she formed this conclusion - well, she
13 said it was after two or three weeks. I
14 think we subsequently determined it was
15 after six days.

16 A. I'm sorry, could you come a little closer to
17 the microphone?

18 Q. Sorry, yeah. This conclusion, she said she
19 drew it after spending two to three weeks
20 with Carter. I think we subsequently
21 determined that it was after spending six
22 days with Carter. So, it was a pretty quick
23 conclusion to draw. But you've - in the
24 just over two years you've spent with Carter
25 that hasn't been your experience?

1 A. In the first - during the first half of
2 grade four, which would have been September
3 2020 to I guess just after Christmas, Carter
4 really did not get involved in classroom
5 discussions. When asked a question, he
6 sometimes would just give a one sign answer
7 and we would really have to draw information
8 out of him. I think that until he became
9 comfortable in the room, he wasn't
10 volunteering his ideas very much. But
11 toward the end of grade four, we found -
12 Alma and I both noticed that there was a
13 huge difference in his classroom
14 contribution and his ability to work with
15 other students during group work.

16 Carter definitely has difficulty
17 retaining things like spelling of words.
18 When reading, he still tends to just focus
19 on the first letter of the word. So, we
20 definitely see some struggles. I'm not sure
21 what the cause of that is and we're still
22 looking at different literacy and reading
23 programs to help with him.

24 Q. And those are primarily, you're indicating,
25 literacy related concerns?

1 A. Yes.

2 Q. Right. Back to the use of IE's. You're now
3 agreeing with me that, you know, IE can be
4 used to indicate that you're teaching
5 material below grade level and in fact, you
6 know, as a result of meeting children where
7 they are I think is the way you described
8 it. In almost all areas, except math,
9 Carter would be learning below grade level,
10 up until the conclusion of fifth grade,
11 right?

12 A. I don't think I could put it quite that
13 simply. Certain math outcomes would be at
14 grade level. Other math outcomes might be
15 below that grade level. Certain science
16 outcomes that were taught were at grade
17 level. Certain social studies outcomes were
18 at grade level, but not all of them. So, it
19 is difficult to give a numerical grade when
20 not everything was taught at grade level.

21 Q. Right. I mean, it would be hard to give a
22 child - picking a very simplistic example
23 that wouldn't apply to Carter, but you know,
24 provided if you didn't teach multiplication
25 to a child because that wasn't where they

1 were developmentally, it wouldn't make sense
2 to give them a numerical grade on how well
3 they understood multiplication, right. So,
4 you would put an IE.

5 A. I would like to add as well that the
6 decision to use IE's was a group decision.
7 It involved the administration of the
8 school, the guidance counsellor, educational
9 psychologists, the teachers who were present
10 in the room, the director of DHH services
11 and the program specialists for numeracy and
12 literacy at the School District level.

13 We had meetings to discuss continued
14 use of IE's and it is my understanding that
15 for students who are new Canadians, for
16 example, that are new language learners of
17 English, IE's can be used for up to two
18 years to give them a chance to, I guess, get
19 caught up language wise to be able to access
20 the curriculum.

21 Q. I see. And at this point, Carter has had
22 two years of IE's?

23 A. Yes.

24 Q. Was it a focus of the - because you were
25 part of the group discussion about the use

1 of IE's and the continued use of IE's. Was
2 there a portion of that discussion where you
3 folks talked about how, you know, in Beachy
4 Cove he wasn't receiving IE's, he was
5 receiving ones and twos and threes, and how
6 it appears discordant or not consistent
7 that, you know, suddenly a child who's being
8 evaluated presumably based on grade criteria
9 and being given ones and twos and threes,
10 now is not being assessed at grade criteria?
11 Was there a concern for how to address that
12 change in practice?

13 A. How to address it with families?

14 Q. Yeah, or even to understand it yourselves,
15 right. It seems strange to look at an
16 educational record where a child, you know,
17 goes through four years of school and ones
18 and twos and threes, doing this that and the
19 other thing, presumably being taught at
20 grade level, and then all of a sudden they
21 go to grade four and five and they're not
22 being taught at grade level any more. I
23 mean, do you - I guess what I'm asking is,
24 you know, did you understand that it would
25 appear to be an inconsistent practice to all

1 of a sudden revert to IE's and how did you
2 think about addressing that?

3 A. Could you repeat that last sentence please?

4 Q. Yeah. Did you think it would appear
5 inconsistent suddenly to revert to using
6 IE's on the report card and did it cause you
7 to doubt whether the use of ones and twos
8 and threes in previous years was accurate?

9 A. My personal opinion would be that the use of
10 numbers or children's report cards is
11 probably not the best way to report on their
12 learning. As a parent, I would prefer to
13 see anecdotal comments for my own children
14 as to how they did and what they learned,
15 what they were working on.

16 Q. Yeah, I'm the same way. I go right to the
17 comments on the kid's report card. You're
18 aware that over the course of, you know,
19 several years, but even recently, in
20 February of 2019, you know, there were
21 several reports into deaf education in
22 Newfoundland and Labrador and several, I
23 guess, examinations of issues in deaf
24 education in Newfoundland and Labrador. You
25 know, that there were groups within the

1 province, within the Department of
2 Education, within the School District, who
3 were sort of looking at the issues of deaf
4 education. You generally would be aware of
5 that?

6 A. I was not part of any of those groups.

7 Q. Right, but were you aware that they were,
8 you know, in operation and that reports were
9 being produced?

10 A. Yes.

11 Q. In February of 2019, Darlene Fewer Jackson -
12 you know who Darlene Fewer Jackson is?

13 A. Yes.

14 Q. I think you mentioned her earlier. So,
15 she's a student services consultant with the
16 Department. We understand that she was
17 doing internet searches about other
18 jurisdictions and how deaf education was
19 being handled in other provinces and that
20 she reached out to the Edmonton Public
21 School Board to ask about ASL curriculum,
22 and I can tell you -- you wouldn't have been
23 a party to this email, but I can tell you
24 that in that email, she indicated to the
25 Edmonton Public School Board saying that

1 "our Province's Department of Education is
2 struggling in this area", referring to deaf
3 education. Did you feel at that time that
4 the Department of Education was struggling
5 in the area of deaf education in 2019?

6 A. In 2019, I was still teaching in Mount Pearl
7 and I was really just focused on my
8 classroom then. I wasn't working as an
9 itinerant teacher for the deaf and hard of
10 hearing, even though I had a deaf student.
11 My classification at that time was IRT,
12 which is an instructional resource teacher.

13 Q. Right.

14 A. I really wasn't following a whole lot of
15 what was going on at that time.

16 Q. Fair enough. And you were very
17 concentrated, you know, on the students that
18 you were providing services for. I can
19 understand that. You weren't being provided
20 with any kind of, you know, educational
21 criteria or educational guidelines from the
22 Department for teaching a deaf student, were
23 you? The Department of Education didn't
24 produce - sorry, the School District didn't
25 produce any kind of educational guidelines

1 for a deaf student, any kind of guidance
2 document to say "here are the criteria for
3 educating a deaf child"?

4 A. I didn't see any documents like that.

5 Q. And, I mean, presumably you would have. You
6 were teaching deaf children. If they
7 existed, they would have been brought to you
8 I'm sure.

9 A. Well, the student that I was working with
10 did have an itinerant teacher assigned to
11 him as well, a deaf and hard of hearing
12 itinerant.

13 Q. And how does that impact whether you would
14 have knowledge of whether there was a deaf
15 curriculum?

16 A. I'm assuming that she did, I guess.

17 Q. Oh, okay. Right, right, right. But, and
18 even now though, I mean, now you are working
19 in a - do I call it ASL immersion classroom
20 or DHH classroom? ASL immersive classroom,
21 and to your knowledge, there still is no
22 curriculum guide, curriculum guidelines
23 provided by the Department or the District?

24 A. The guidelines that we use come from APSEA.

25 Q. APSEA?

1 A. Yes.

2 Q. Okay. So, not from the Department of
3 Education, not from the School District, but
4 from an entity outside the province?

5 A. That's correct.

6 Q. And have you been told by the Department or
7 by the District that "here, this is the
8 APSEA guidelines. This is what you must
9 teach" or did you just simply, you know, the
10 staff within the classroom adopt it as kind
11 of a best practice guideline?

12 A. What we have is the APSEA core curriculum.
13 So, it has additional outcomes to work on
14 with deaf and hard of hearing children in
15 the areas of audition, speech, ASL
16 development, social skills, those sorts of
17 things, but we follow the curriculum for the
18 grade levels as well.

19 Q. Right. But my question is like whose
20 decision is it that you follow that APSEA
21 criteria? Like is it something that you as
22 professionals decided or did the Department
23 come to you and say they decided - if
24 tomorrow or next month you decided that, you
25 know, you wanted to follow some other

1 curriculum, you know, could you do that or
2 is that a decision the District makes?

3 A. The decision would come from the director of
4 DHH.

5 Q. Okay. So, and the director of DHH, in this
6 case Darlene Fewer Jackson, I guess it was,
7 right?

8 A. In 2020?

9 Q. Yeah, who told you to follow the APSEA
10 guidelines?

11 A. Darlene.

12 Q. Darlene. Are you familiar with the impacts
13 of late first language acquisition? Is that
14 something that you would have had any cause
15 to experience or learn about over the course
16 of your career?

17 A. Yes.

18 Q. What are some of the impacts of late first
19 language acquisition?

20 A. I think that there would be huge social and
21 emotional implications. Being able to
22 communicate with those around you would
23 become very difficult. I'm not exactly sure
24 what you're asking me.

25 Q. No, I know, and look, there's - we're going

1 to have an expert talk about it tomorrow in
2 any event.

3 A. Okay.

4 Q. So, I don't want to test you on it because,
5 no offence, but we got someone who has a
6 Ph.D. in that area.

7 A. I guess having a strong foundation, having
8 vocabulary, understanding what's going on
9 around you, being able to overhear or
10 oversee conversations that are happening.
11 Language learning is very incidental. Kids
12 pick up on things. If you don't have a
13 first language, I think it would probably
14 impact the way your brain even forms, how
15 you make connections.

16 Q. Yeah, yeah. Is Carter a student who you
17 would say had late first language
18 acquisition?

19 A. Yes.

20 Q. Yeah. As a teacher, and especially as a
21 teacher for the deaf, I mean, how does
22 teaching a student with late first language
23 acquisition impact the way you deliver
24 curriculum to that student? How does it -
25 you know, how does it change your teaching

- 1 methodology?
- 2 A. You have to be very cognizant of what the
3 students understand. In many cases, there
4 are gaps in knowledge and understanding,
5 conceptual gaps. If things have never been
6 explained to a child before, why something
7 happens a certain way or the reason for
8 something, the reason why we do things, it's
9 all new information. There are lots of
10 times when you're teaching you may kind of
11 see eyes glaze over or students not paying
12 attention or students looking confused and
13 you kind of have to backtrack and figure out
14 where the gaps are. We use a lot of visuals
15 in our classroom, lots of pictures. We pull
16 up videos all the time to give a clear
17 picture of what we're talking about. We
18 have three deaf native ASL users in the room
19 with us as well and those student assistants
20 are excellent at helping to fill in the gaps
21 and reach the students where they are and to
22 help build on the knowledge and the language
23 that they have.
- 24 Q. Okay. And these are student assistants?
- 25 A. Yes.

- 1 Q. Right. Carter's very enthusiastic about
2 signing in ASL, isn't he?
- 3 A. Yes.
- 4 Q. It's something that he enjoys?
- 5 A. Yes.
- 6 Q. For a child like Carter who is enthusiastic
7 about communicating in sign language, how
8 important is it for him to be in an
9 environment where people are signing?
- 10 A. I think it's very important.
- 11 Q. You also mention in your affidavit that
12 you've seen great growth for Carter in both
13 receptive and expressive communication.
- 14 A. Could you repeat that please?
- 15 Q. Yeah. You indicated in your affidavit that
16 you've seen growth in both Carter's
17 receptive and expressive communication.
- 18 A. Yes.
- 19 Q. To what extent can you tie that growth to
20 Carter's exposure to the ASL immersive
21 classroom?
- 22 A. Well, I -
- 23 Q. Given that you've seen him from beforehand.
- 24 A. I would like to think that it's made a huge
25 difference. I think that not only being

1 around teachers who are delivering the
2 curriculum in Carter's language, in his
3 first language, and he has full access to
4 the curriculum, I think as well being
5 surrounded by other signers has been
6 critical in his growth, in his language
7 growth. Being able to watch other people
8 have a conversation is probably not
9 something that happened for him a lot.

10 I think as hearing people, we sort of
11 take it for granted that we overhear things
12 all the time. We hear people talking. We
13 hear the radio. We listen to music. We
14 hear lyrics. The TV is on. For a deaf
15 child, particularly a deaf child in a
16 hearing family and in a hearing school,
17 socialization would be affected.

18 Other children learning to sign is
19 usually learning vocabulary. They can talk
20 about surface things, things that are right
21 in front of them. It's not - it's not
22 possible, I don't think, to have a true deep
23 friendship, I guess, if other children all
24 have the ability to communicate with each
25 other very easily and one child does not, f

1 one child is struggling to communicate.

2 I think that having the classroom that
3 we have now where all of the children are
4 signing and the adults in the room are
5 signing, it gives him full access to
6 language. So, I would like to think that
7 it's made a huge positive impact.

8 ADJUDICATOR:

9 Q. You mentioned Carter having full access to
10 the curriculum now. Can you describe for me
11 what changes you have observed in the time
12 you've been working with Carter related to
13 how he's been able to access school
14 curriculum? Just walk me through what
15 changes you've seen, increases in ability,
16 regressions. Just walk me through the time
17 you've been with Carter and how - if you've
18 seen changes in his abilities to access
19 curriculum.

20 A. Okay. When I say access to the curriculum,
21 I mean that it is presented in American Sign
22 Language. We've got some very skilled
23 people working in our classroom. Our
24 student assistants have gone above and
25 beyond their actual roles and

1 responsibilities as student assistants.
2 They've been more like language mentors,
3 facilitators who help the children with
4 their ASL development.

5 Like I said, Carter was really quiet, I
6 guess, at the beginning of the grade four
7 year. He didn't get too involved. Many of
8 the students struggled at that time. With
9 even something like group work, knowing to
10 keep looking at each. One would ask a
11 question and we would have to sort of
12 backtrack and say "okay, when he's asking a
13 question, you have to look at him" and now
14 you have to answer and "you have to keep
15 looking". So, there were lots of things
16 about kind of basic conversation and
17 communication that we had to help the
18 children. We had to facilitate their
19 conversations a lot in the beginning.

20 As the year went on, we noticed a lot
21 more opportunities, I guess. Like even
22 recess and lunchtime, sometimes we would
23 observe the students playing together and
24 we'd see a lot more social interaction
25 between them.

1 With regards to school work, I
2 definitely saw progress with Carter. Like I
3 said, in the beginning, he would often
4 respond with a single sign or two signs and
5 we would really have to work hard to pull
6 information out of him, get him to elaborate
7 more on what he was saying. Sometimes that
8 would involve offering choices like "do you
9 mean this or do you mean this?" and
10 sometimes he wouldn't have the vocabulary to
11 explain what he was trying to say and I
12 definitely see that he has an easier time
13 expressing himself now.

14 When I first met him online, at the end
15 of his grade three year, I remember there
16 was a moment where he couldn't tell us
17 something. He wanted to tell us something
18 and his mom was really trying her best and
19 showing him things and showing him pictures
20 and he couldn't get his point across and he
21 was very upset and he was crying and it was
22 heartbreaking because we couldn't understand
23 what he wanted to say. And you know, this
24 was an eight-year-old child or nine, I
25 guess, at that time, nine-year-old child who

1 couldn't tell us something. It wasn't
2 complicated. He just didn't have the
3 vocabulary to do so.

4 And now, I find Carter will often come
5 to school and he will have news to share
6 with the class and we may not know what he
7 is talking about. For example, he got a new
8 fan installed in his bedroom and we had no
9 idea what he was talking about, but he
10 didn't get upset. He didn't cry. He just
11 kept trying to explain it in different ways
12 and he kept trying to show us what it looked
13 like and how it moved and you know, we
14 eventually figured it out, with the help of
15 his mom actually.

16 But, my point is, I guess, that he
17 persevered and he knows that eventually he
18 will be understood. He knows that there are
19 people out there who want to hear what he
20 has to say.

21 Q. Are you able to quantify or describe the
22 increases in vocabulary that you are
23 observing? Can you give us any sense of
24 concrete examples of increases in
25 vocabulary? I'm trying to understand where

1 he was when he started working with you and
2 how he has progressed, if he has progressed,
3 in his vocabulary, his ability to
4 communicate. I mean, that's one example.
5 But do you have - like you've said at the
6 start -

7 A. I'm not sure I can off the top of my head.

8 Q. - at the start of your work with him, he was
9 - you know, he was speaking in one-word
10 sentences and answers. How long - is he
11 communicating in paragraphs, telling full
12 stories? You know, does he describe to you
13 what he did on the weekend? Does he explain
14 what level of video game he played? Where
15 are we with his expressive language?

16 A. During sharing time during our morning news,
17 he will volunteer his news. In the
18 beginning, he did not. He will now raise
19 his hand. He has something to say and
20 instead of one or two signs, he will
21 potentially throw out five or six signs. It
22 still might not be clear. We may still need
23 to ask him questions to kind of clarify what
24 he's talking about, but he's definitely
25 increased his sign utterances in length.

1 Q. Okay. And in terms of the curriculum,
2 things like social studies and sciences, is
3 he able - what grade level is he engaging
4 with those subjects?

5 A. It would be different outcomes at different
6 levels. A lot of it has to do with not
7 necessarily his ability to do grade level.
8 It's more to do with a lot of knowledge that
9 he doesn't have, just because he's missed
10 out on, I guess, because of language gaps.
11 One example I can think of for that would be
12 in social studies this year we talked
13 briefly about different levels of government
14 and he really struggled with understanding
15 that.

16 MR. REES:

17 Q. In fairness, I do struggle with that.

18 ADJUDICATOR:

19 Q. Sorry, Mr. Rees. I think I hijacked things
20 again. I got into a discussion. Go ahead.

21 MR. REES:

22 Q. No problem. It's fascinating stuff
23 actually. When Carter came - well, I guess
24 you started working with Carter the end of
25 grade three. But when he comes into your

1 East Point classroom in grade four and he's
2 not volunteering information, he's speaking
3 in one or two word sentences, would you say
4 that Carter had a language? I've heard some
5 people talk about like when does Carter have
6 a language and when does he develop a
7 language. So, when he like starts that
8 first day at East Point Elementary, would
9 you say that Carter has a language?

10 A. I'm not sure how to answer that.

11 Q. It's a strange turn of phrase as in like as
12 though you would possess a language, but I
13 guess what we're saying is, you know, does
14 Carter have the ability to communicate with
15 his peers in a language when he comes to you
16 in grade four?

17 A. He has an ability to communicate with his
18 peers. Fluently? Probably not. But his
19 friends did understand what he was saying
20 and they did socialize together.

21 Q. Right, that's - yeah, that's a - we've heard
22 that. I'll change topics here and ask you
23 about something else. There was sort of a
24 change in personnel over the course of 2020
25 - or sorry, '21 and '22. I think the chain

- 1 happens like this, and correct me if I'm
2 wrong. I'm reading from notes I have. Alma
3 McNiven becomes the new provincial director
4 of deaf and hard of hearing education and
5 she had a teaching position at East Point
6 Elementary and she then gets replaced by
7 Joanne Van Geest, right?
- 8 A. Yes.
- 9 Q. And we heard from Joanne just before the
10 lunch break. Joanne Van Geest ends up
11 getting delayed coming back, so she gets a
12 temporary replacement in November by a
13 person named Angela Moyst, right?
- 14 A. Angela started at the beginning of the
15 school year.
- 16 Q. Okay. Her last name is pronounced Most, is
17 it?
- 18 A. Moyst.
- 19 Q. Moyst, oh it's Moyst. And so, then Ms.
20 Moyst has to go back to a previous position
21 and I understood -
- 22 A. I'm sorry, could you say that again?
- 23 Q. Yeah. And then Ms. Moyst goes back to
24 another position, returns to her previous
25 position?

1 A. Yes.

2 Q. And I understood that you made some
3 recommendations for a replacement for that
4 person in December of 2021 and you
5 recommended Marta. How do I pronounce
6 Marta's last name?

7 A. I don't know.

8 Q. I know it's - I'll spell it out, how about
9 that, for the purposes of the record because
10 they're going to ask me later anyway. E-V-
11 S-T-I-G-N-E-E-V, Evstigneev, that would be
12 my guess. Okay. So, and that's Marta is
13 the person who you recommend, right?

14 A. It was not so much a recommendation, more a
15 question as to whether Marta could be hired.
16 She is not a teacher. She is not a
17 certified teacher.

18 Q. Right, because she was interning while doing
19 her Master's program, right?

20 A. That's correct, yes.

21 Q. And she - I understand that, you know, she
22 has sort of ASL proficiency as much as you'd
23 want, I think just short of a native signer,
24 right? She's pretty good.

25 A. She's not a native signer.

- 1 Q. Right, but just short of that, she's
2 superior plus I think?
- 3 A. I don't know Marta's sign level.
- 4 Q. Okay. Did you - was it your view that it
5 was a pretty good ASL from your interactions
6 with her?
- 7 A. I'm sorry, I'm not qualified to judge
8 somebody's American Sign Language skills.
- 9 Q. Fair comment. Well, let me ask you, why did
10 you think Marta would be somebody whose name
11 should be - even if you wouldn't call it a
12 recommendation, a name that should be raised
13 as a replacement?
- 14 A. Honestly, I felt that the kids had been
15 through some changes and she was already
16 familiar with the classroom, familiar with
17 the routines and familiar with the students.
- 18 Q. But instead, Marta wasn't hired. It was Ms.
19 Wilkinson, right, Bridget Wilkinson was
20 hired instead?
- 21 A. We had Sheila MacDonald there for a couple
22 of months in between there. Sheila was a
23 retired teacher of the deaf who was
24 substitute teaching in the room for a couple
25 of months and then it was Bridget after

1 that.

2 Q. Did you know anything about Bridget
3 Wilkinson's proficiency in ASL? Was that
4 ever disclosed to you or discussed with you
5 or did you ever have any concerns about her
6 proficiency?

7 A. I was not told what her ASL proficiency was.

8 Q. Okay. Ms. Van Geest eventually, by April of
9 2022, so we're coming up to the most recent
10 - halfway through the most recent school
11 year, almost all the way through the most
12 recent school year, and Joanne Van Geest
13 goes back into the classroom. I understand
14 you were using a lot of ASL while you were
15 teaching.

16 A. Yes.

17 Q. And your ASL abilities are, you know,
18 commensurate with you being able to do that.
19 I also understand that wasn't something that
20 Ms. Van Geest would do as often. Did you
21 witness Ms. Van Geest signing frequently
22 with Carter and the other deaf children?

23 A. She often signs for herself and we do have
24 interpreters in the room as well.

25 Q. Interpreters. So, these are the student

1 assistants, are they?

2 A. No, the student assistants are the three
3 deaf ladies who work in the room and we also
4 had two ASL English interpreters, not at the
5 same time. They would alternate their
6 schedules and they were available if needed.

7 Q. Do you require ASL interpretation while you
8 teach?

9 A. Sometimes I do.

10 Q. Sometimes. What would be the circumstances?
11 Like if it's a subject area that you don't
12 know the vocab for or if you're tired? I
13 mean, how do you - when do you determine
14 whether or not you need it or not?

15 A. If I'm not understanding something that's
16 being signed, I would ask for
17 interpretation. English is my first
18 language.

19 Q. Yes. Ms. Van Geest almost always required
20 ASL interpretation, didn't she?

21 A. Not always. She sometimes will sign for
22 herself.

23 Q. What percentage of the time would you say
24 that she doesn't sign for herself and
25 requires interpretation? Would you have any

1 guess? I mean, you're there in the
2 classroom.

3 A. I'm not sure I can give a percentage. There
4 are times when I'm not in the classroom.
5 For example, our prep periods are not at the
6 same time. When I'm not there, there is an
7 interpreter there and at least one or two
8 deaf student assistants would be there
9 always as well to help with communication.

10 Q. All right. How about like for instance
11 Joanne Van Geest I notice - I'm told would
12 always use an interpreter while teaching
13 math. Is that your understanding as well?

14 A. An interpreter was always at the table with
15 her. When she was teaching math, I was also
16 teaching at another table, so I wasn't
17 always watching what was going on. We also
18 have the student assistants who would sit at
19 the table as well and help to facilitate
20 communication and make sure that concepts
21 were clear for the students.

22 Q. Do you know if there's a difference between,
23 you know, the qualifications to be an
24 interpreter versus the qualifications to be
25 an educational interpreter? Are you aware

1 if there's a difference between those two
2 things?

3 A. I am aware that an educational interpreter
4 and an interpreter are different things and
5 that there are probably different training
6 involved. But I'm - I don't have a lot of
7 knowledge on the subject.

8 Q. Okay, fair. I just wanted to know if you
9 knew the difference between the two of them.
10 Do you think that the educational
11 interpreters in the classroom or the
12 interpreters who are assisting in that
13 classroom, do you feel they're valuable and
14 necessary in that classroom?

15 A. I think that direct communication is what my
16 students need the most. I think that they
17 need somebody talking directly to them and
18 they need to talk directly back. Having the
19 interpreters in the classroom is definitely
20 valuable for times like when they go to gym
21 or to art and they're mainstreamed, for
22 times when announcements are made. Every
23 morning we have a Google meet announcement
24 where the principal comes on. It's great to
25 have that interpreted. When they make PA

1 announcements throughout the day regarding
2 whether lunch is going to be outside or a
3 hearing teacher or a student comes into the
4 room, it's great to have the interpreter
5 handy. Lots of times there's different
6 committees where other students may
7 volunteer to come and read a book to
8 different classes and so we have an
9 interpreter for those times as well. I
10 think it's valuable to have the interpreter
11 there.

12 Q. I just want to circle back on something you
13 said there. You talked about direct
14 communication is best and direct
15 communication, the opposite of direct
16 communication would be interpretation
17 through - sorry, communication through an
18 interpreter, right?

19 A. Yes.

20 Q. Why is direct communication, you know,
21 better than communication through an
22 interpreter?

23 A. As long as the message is clear, direct
24 communication is superior.

25 Q. I mean, I think it's probably obvious why

- 1 that's the case. It's -
- 2 A. Yeah.
- 3 Q. No need to explain how gravity works, right.
- 4 A. However, I would say that there have been
- 5 instances in my own teaching where I feel
- 6 like I'm not being clear and I will request
- 7 help, whether it's from the interpreter or
- 8 whether it's from one of the deaf student
- 9 assistants.
- 10 Q. I see.
- 11 A. To help me make my message more clear.
- 12 Q. For students in your classroom, you know, to
- 13 get any benefit from an interpreter, those
- 14 students, of course, need to have an
- 15 understanding of an ASL themselves?
- 16 A. I'm sorry, could you repeat that?
- 17 Q. Yes. For a student in your classroom to get
- 18 any benefit from an interpreter -
- 19 A. Getting the benefit?
- 20 Q. Yeah, to get a benefit, you know, to get any
- 21 use out of an interpreter, those students
- 22 would need to be able to understand ASL,
- 23 right?
- 24 A. Yes.
- 25 Q. And they would need to have, you know, some

1 degree of fluency in ASL?

2 A. There's even more to it than just that.

3 They need to be aware that the person who is

4 signing is not the person whose words that

5 is, you know. If you're dealing with a

6 young child and somebody is signing a

7 message to them, they need to understand

8 that that person is not the one who is

9 saying those words; that it's actually

10 somebody else. It's going through somebody.

11 Those are complicated things for children to

12 grasp.

13 Q. Yes.

14 A. And we've worked on those skills and we've

15 talked about that and we've talked about

16 things like the code of ethics and

17 confidentiality and things like that so that

18 these students are going to grow up and

19 they're going to need to use interpreters.

20 So, this is sort of a part of learning how.

21 Q. Right. Do you folks ever assist other

22 children, like children signing between each

23 other? Like if the children are playing a

24 game together and one of them is having a

25 hard time communicating an idea through

- 1 sign, will you guys ever assist, you know,
2 in communicating that message?
- 3 A. Like help to facilitate conversations
4 between students?
- 5 Q. Yeah.
- 6 A. Yes.
- 7 Q. To what degree? Like what if a student is
8 making fun of another, presumably you
9 wouldn't intervene in those cases. Like I'm
10 just wondering like to what degree -
- 11 A. If somebody was making fun of somebody?
- 12 Q. Yeah, one student was making fun of another,
13 presumably you wouldn't translate the
14 insult.
- 15 A. An interpreter would.
- 16 Q. Oh yeah? Interesting. But a teacher, a
17 teacher is more likely to intervene.
- 18 A. A teacher is more likely to probably speak
19 to the student and explain why they should
20 not be making fun of somebody and how their
21 actions might affect somebody, how that
22 other person might feel.
- 23 Q. Interesting. Were you in any position to be
24 able to assess, you know, the grade level of
25 Carter's literacy by the end of grade five?

1 A. Was I in a position to assess it?

2 Q. Yeah, like what would you say Carter's - you
3 know, sometimes you'll say reads at a grade
4 one level, reads at a grade six level. I
5 mean, what kind of level is Carter reading
6 at?

7 A. I would say a kindergarten level.

8 Q. Kindergarten level. You indicate in your
9 affidavit, and I'll just - it's a very short
10 sentence, so I'll just read it to you.

11 "Because" - you're talking about Carter.

12 "Because he had a late start in learning the
13 language and because he didn't have access
14 to a classroom like this until grade four,
15 there exists many language and conceptual
16 gaps." Can you explain how the late start
17 has led to those language and conceptual
18 gaps?

19 A. I feel like I already did.

20 Q. We did talk about this to some degree.

21 Well, I guess the reason why I'm asking that
22 now, and you have explained it, that's a
23 fair point, given that those gaps existed
24 when you took over - took over, when you
25 really started to participate in Carter's

1 learning at East Point, did that indicate to
2 you that there had been problems with
3 Carter's ability to access the curriculum in
4 previous years?

5 A. I think that Carter would have had immense
6 difficulty in hearing what his teachers were
7 saying. He does have access to sound, but
8 his understanding of speech is limited and
9 he requires sign language in order to
10 understand it.

11 Q. You also said in your affidavit, and I'll
12 read this sentence to you because it's the
13 last series of questions I have for you,
14 where you say "I believe that opportunities
15 were missed in his years," Carter's years
16 "in grade K to 3", which is when he's at
17 Beachy Cove, "with regard to language
18 learning and because he was not truly part
19 of a community of learners until now". What
20 did you mean about missed opportunities?
21 What were some of the opportunities that
22 were missed?

23 A. Honestly, I think this goes back to the
24 closing of the School for the Deaf. Deaf
25 children who are mainstreamed into hearing

1 classroom, some will succeed and not every
2 child will. I think in Carter's case, he
3 needed to be surrounded by people who
4 signed. He needed to have friends, true
5 friends, peers who understood him and who he
6 could understand, people that he could play
7 with. He needed to have access to that kind
8 of a community. Kids learn so much from
9 each other, not just from the teacher.

10 Q. And Carter didn't have those opportunities
11 from kindergarten to grade three, did he?

12 A. As far as I know, Carter was the only deaf
13 child in his class. So, if other children
14 were learning ASL at that time, and they may
15 have been, I'm just assuming that there were
16 definitely language barriers for him. I
17 think that there were probably a lot of days
18 when the only person he could really speak
19 to would have been his teacher or his
20 student assistant.

21 Q. Thanks. Those are all the questions I have.

22 ADJUDICATOR:

23 Q. Mr. Penney?

24 MR. PENNEY:

25 Q. No questions.

1 ADJUDICATOR:

2 Q. I don't have any questions for you right
3 now. I appreciate you taking the time to
4 give us your evidence today and you're free
5 to step down. You can stay and watch the
6 proceedings or you can leave if you wish.
7 It's up to yourself. Thank you very much.

8 A. Thank you.

9 Q. And I believe the next witness scheduled for
10 this afternoon, is it [REDACTED]
11 [REDACTED] Did you want to take a
12 break before getting started or are you
13 ready to start?

14 MR. REES:

15 Q. Five minutes would be nice.

16 ADJUDICATOR:

17 Q. Five minutes, we'll adjourn.

18 (OFF RECORD)

19 ADJUDICATOR:

20 Q. Okay. So, I believe the next witness that
21 we are scheduled to hear from is [REDACTED]
22 and this is [REDACTED], is it?

23 A. Yes.

24 Q. Okay. So, [REDACTED] you'll have a
25 microphone in front of you. There's a

1 little button you can press there and it'll
2 turn it on.

Principal - East Point Elementary (AFFIRMED)

3 AFFIRMED, CROSS-EXAMINATION BY MR. KYLE

4 REES

5 REPORTER:

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

8 A. My name is [REDACTED]

9 Q. Could you spell it for us?

10 A. [REDACTED]

11 Q. Thank you very much. [REDACTED] has been
12 affirmed.

13 ADJUDICATOR:

14 Q. Thank you. [REDACTED] I understand that Mr.
15 Rees is going to have a series of questions
16 for you first. Mr. Penney may have some
17 questions afterwards and I may have some
18 questions as well. So, I'll turn it over to
19 Mr. Rees for the time being.

20 MR. REES:

21 Q. Great, thanks. [REDACTED] I'm Kyle Rees.
22 I'm the lawyer for Kim and Todd Churchill,
23 who you see seated beside me, and I'm sure
24 you recognize them as Carter's, a student at
25 the school which you're a principal for a

1 couple of years. I understand you're going
2 back to teaching French now, I'm told.

3 A. Yes.

4 Q. And so, you're not the principal of East
5 Point Elementary for the upcoming school
6 year. I've got a series of questions for
7 you. I should be under an hour. We have an
8 hour scheduled. I'm going to ask you
9 questions, many of them arising out of your
10 affidavit, which I understand you have in
11 front of you. I'll also be referring to one
12 or two of the documents out of the
13 assortment that you see in front of you and
14 I'll point you to that document when we get
15 there and take some time to find it.

16 In the event that what I'm saying isn't
17 clear or you want me to repeat myself or
18 indeed, if my question is a little ambiguous
19 and not clear, let me know and I'll rephrase
20 it, happy to do that for you.

21 And then when I'm done, Steve Penney,
22 the counsel for the School District, and the
23 Adjudicator, Mr. Gallant, might have
24 questions as well.

25 A. Okay.

1 Q. Great. Tell me about any background that
2 you might have had in deaf education or
3 teaching deaf children. I understand that
4 you don't have any specific training in that
5 area.

6 A. No, I have zero training.

7 Q. And that the no training has, at any time or
8 since, been offered to you by the District
9 in deaf culture, deaf education, ASL? Have
10 you been offered any training in those
11 areas?

12 A. Yes, I was offered some training I'd say the
13 latter half of this school year where it was
14 opened up to any educators who were
15 interested in learning some American Sign
16 Language, but I did not have the time to do
17 it and I knew that there were other staff
18 who were really interested in doing it. So,
19 it filled up quite quickly.

20 Q. Okay, right. So, that would have been the
21 end of 2022?

22 A. Yeah.

23 Q. There would have been some, I guess we'd
24 call them, introductory ASL classes?

25 A. Yes, and now I'm recalling as well, I did

- 1 inquire about it. The person who was
2 teaching the course is Tammy Vaters and I
3 asked her about it and she actually said
4 that it would be a bit too basic for me
5 because I had self-taught some of the signs
6 and learned through them some signs for
7 basic ASL.
- 8 Q. Right. Yeah, Tammy's a real star.
- 9 A. She is.
- 10 Q. Yeah. What - we're going to hear from her
11 tomorrow. As everyone at this hearing
12 knows, at some point East Point Elementary
13 becomes the location of the ASL immersive
14 classroom. So, you were principal at East
15 Point Elementary before the establishment of
16 this classroom, right?
- 17 A. No. The establishment of the classroom
18 happened before the 2020 school year, 2020-
19 21.
- 20 Q. Yeah.
- 21 A. And I was hired on July 15th. So -
- 22 Q. In the lead up to the 2020 school year?
- 23 A. In the lead up to '20, yeah. So, I kind of
24 walked into the school with that program
25 already having been established there.

- 1 Q. Interesting. So, you take over as principal
2 in the school at the time this new program
3 is being implemented?
- 4 A. Yeah.
- 5 Q. What, if anything, did the District tell you
6 about this program, I suppose at the time of
7 your hire? Because it was sort of already
8 being implemented at that time. What were
9 you told about that program?
- 10 A. From what I remember, just that the program
11 was starting there and I would have been
12 told, you know, how many students and what
13 staff would have been made up that program
14 and that there had been a meeting at the
15 school in June prior to everybody coming on
16 and they were still trying to get some
17 students to register into that program.
- 18 Q. Right.
- 19 A. But that's about it, just from what I can
20 recall.
- 21 Q. It was - you know, during all of those
22 discussions and all during that year, the
23 classroom was referred to as an ASL
24 immersive classroom, right?
- 25 A. ASL immersion classroom.

- 1 Q. Yeah, sorry, and sometimes immersive versus
2 immersion, I conflate them, but you're
3 right. So, it's ASL immersion classroom.
- 4 A. Yeah, there was -
- 5 Q. Like a French immersion classroom.
- 6 A. Yeah.
- 7 Q. Right. I notice in your affidavit and in
8 some other places, and you're not the only
9 one to have done this, it's not referred to
10 as an ASL immersion classroom. It's
11 referred to as a DHH classroom. So, when
12 did that change occur or did that change
13 happen? Like why is it called DHH classroom
14 in your affidavit?
- 15 A. I can't pinpoint the exact time, but it was
16 sometime in this past school year where I
17 know we started - I was - it was being
18 referred to me as the DHH classroom, so I
19 guess it kind of evolved to that, but I
20 would -
- 21 Q. So, that's in the past school year that
22 happened?
- 23 A. This past school year, and I'd say the
24 latter half.
- 25 Q. 2021-2022?

- 1 A. Yeah.
- 2 Q. Who started referring to it as a DHH
3 classroom?
- 4 A. I suppose the first time I heard it referred
5 to that would have been through the director
6 of deaf and hard of hearing services, which
7 would have been Alma McNiven.
- 8 Q. Alma McNiven. Did you ever question the
9 change in language or just, you know, sort
10 of go with it?
- 11 A. I can't recall questioning it outright, but
12 I know like it's - the program, as we are
13 learning more about, you know, the students
14 it was servicing and the services that, you
15 know, the students were receiving in that
16 program, it evolved to that. I can't
17 comment more on that.
- 18 Q. Okay. You were never given the impression
19 then at any time that it was being changed
20 to DHH classroom instead of ASL immersion
21 because, you know, we were going to be
22 offering less ASL or ASL wasn't going to be
23 as important in the classroom? Like did you
24 at any point understand it to be we were
25 rebranding it because it was a philosophical

1 change in what the classroom was going to be
2 about?

3 A. No. I guess in my heart I felt it had more
4 to do with who - what students would qualify
5 to receive the services that were offered in
6 that program.

7 Q. I see. So, you understood it to be a name
8 change to sort of broaden the scope of the
9 kind of students who would enter that
10 program?

11 A. Right, more for which students it would
12 serve, as opposed to learning American Sign
13 Language.

14 Q. Right. Why do - and this is, you know, more
15 of a question of vocabulary that I've been
16 curious about because I've encountered it
17 from time to time. Why do we refer to
18 providing education to students as servicing
19 students as opposed to educating? Like why
20 does the word "servicing" come up? Do you
21 know? Particularly, it seems to come up in
22 relation to deaf children.

23 A. Well, just with any student, hearing and
24 deaf children, who require additional
25 learning needs would be referred to as extra

1 services.

2 Q. Okay. You know, despite the change in name
3 to a DHH classroom, a lot of people still
4 frequently refer to the classroom as the ASL
5 immersion classroom and I mean, I know you
6 did even as recently as a fundraising email
7 from this past April, right? I mean, that's
8 still something that's still - it's still
9 the term that people use from time to time
10 referring to this classroom?

11 A. Yeah, I think the two terms were used
12 interchangeably.

13 Q. Interchangeably. Were you aware that the
14 name change that Alma McNiven directed to
15 you to use, to change from ASL immersion
16 classroom to DHH classroom, coincides with
17 the Churchills questioning the proficiency
18 of some of the teachers hired for that
19 classroom? Did you know anything about the
20 link between those two things?

21 A. No. I've honestly felt it had more to do
22 with just to do with who would make up - who
23 the students were in that classroom.

24 Q. I understand there aren't any students in
25 the classroom who are hard of hearing.

- 1 They're all deaf, right?
- 2 A. I believe so, yeah.
- 3 Q. So, you're about to start as principal at
- 4 East Point. It's being described to you
- 5 what this ASL immersion classroom is going
- 6 to look like and what its goals are, who its
- 7 staff are. You know, you're given this
- 8 background. At any point, is it explained
- 9 to you about, I suppose, the challenges that
- 10 the students attending this classroom were
- 11 facing; that they had, you know, language
- 12 delays? That they had limitations to the
- 13 degree to which they had acquired ASL and
- 14 that there would be challenges related to
- 15 that? Was that explained to you at any
- 16 point?
- 17 A. I can't pinpoint an exact moment but I guess
- 18 through multiple conversations with Alma and
- 19 Gillian, who were the teachers that were
- 20 teaching that first year, any conversations
- 21 that we'd had with them, yeah, especially
- 22 when it came to programming and their needs
- 23 because as principal, I need to support
- 24 teachers so that they have what they need to
- 25 teach the children.

1 Q. As principal, it's your job to ensure that
2 the teachers are provided with what they
3 need in order to teach the children. You're
4 the second principal that we've had testify
5 here. We had, previously had Aubrey Dawe
6 who is the president - sorry, the principal
7 of Beachy Cove testify previously and he
8 said sort of a similar thing. What he said
9 is "look, we tried to do the best we could
10 with the tools that we were given". To what
11 degree, if any, did you have the ability to
12 sort of go to the District and say, you
13 know, "we need additional resources here.
14 We need - in order to educate these
15 children, to offer this specialized program,
16 you know, we need additional resources"?
17 Was that something you could do as
18 principal?

19 A. Yeah, absolutely. I would - anything that
20 the teachers came to me with what they
21 needed, I would consult with the director
22 and who would also point me in the right
23 direction to any District resources, such as
24 program specialists.

25 Q. Oh, I see. So, you know, it wasn't just the

- 1 case of you sort of passing the concern
2 along to the Department. In fact, if you -
3 when you passed concerns along, often the
4 Department would work with you to direct you
5 towards the appropriate program or resource?
- 6 A. Yes.
- 7 Q. Right. So, you weren't merely, you know,
8 sort of relaying concerns or acting as a
9 mouthpiece? You were actually, you know,
10 being directed and there was feedback from
11 the District in that regard?
- 12 A. Yeah.
- 13 Q. Right. Well, you've indicated you're going
14 back to teach French, so I assume that means
15 you're qualified to teach. Is it French
16 Immersion that you're teaching?
- 17 A. Yes.
- 18 Q. You would have taken the test they refer to
19 as the DELF test? I know there's some folks
20 who were grandfathered in. Are you
21 grandfathered in or did you do the DELF?
- 22 A. I did not do the DELF.
- 23 Q. Okay. So, you're grandfathered?
- 24 A. Yes, I was hired on as a French Immersion
25 teacher in 2003.

- 1 Q. 2003?
- 2 A. Yeah.
- 3 Q. And that meant though at the time that while
4 you would not have completed the DELF test,
5 I understand there were other kinds of
6 proficiency interview testing that weren't
7 the DELF, it was something else, that you
8 would have had to do. It wasn't just enough
9 to have a French degree. You had to do some
10 kind of testing at your school level. Is
11 that right?
- 12 A. It was mainly through interviews, yes.
- 13 Q. Through interviews?
- 14 A. Yes, and I don't have a French degree. I'm
15 French Canadian, so it's my mother tongue.
- 16 Q. Interesting.
- 17 A. Yeah.
- 18 Q. So, the analogy, to stretch the analogy
19 further, you know, you're somebody who is -
20 as opposed to getting a degree in deaf
21 education, you're somebody who comes from a
22 deaf family, for instance, right? So,
23 you're French Canadian. You spoke French -
24 is English your first language or second?
- 25 A. French is my first language.

- 1 Q. French is your first language. Despite
2 French being your first language, you still
3 did have to conduct French interviews at the
4 school level before you were permitted to
5 teach a French Immersion class, right?
- 6 A. Yes, I would have been interviewed with some
7 French questions and I would have answered
8 them in French, yes.
- 9 Q. And that would have been an interview test
10 administered by the District or District
11 employees, right?
- 12 A. Yes.
- 13 Q. And it wouldn't be enough, in your
14 understanding, I mean, you - French
15 Immersion classes at East Point?
- 16 A. No, there are none.
- 17 Q. Okay. Can't ask you about that one. In any
18 event, you know, your colleagues who would
19 be teaching French Immersion with you this
20 upcoming year, you know, it's not enough for
21 them merely to have a French degree. They
22 would need to complete either the DELF or
23 have been grandfathered in through the
24 previous interview testing program, right?
- 25 A. Yes, that's my understanding, yeah.

1 Q. Were you aware at the time that you were
2 principal for East Point Elementary of any
3 kind of testing for proficiency requirements
4 for ASL?

5 A. Can you repeat that question?

6 Q. Yeah. While you were president - sorry, I
7 keep saying president. All hail to the
8 chief, right. While you were principal of
9 East Point Elementary, did you have any
10 understanding that there were requirements,
11 that there were testing requirements for ASL
12 proficiency?

13 A. No.

14 Q. None of the teachers, at your request in any
15 event, were proficiency tested in their
16 ability to speak ASL?

17 A. If they were, I'm not aware of it. It was
18 not something that I would have asked them.

19 Q. That's something the District would have
20 done or not done?

21 A. The District hired them, so they were
22 already in place when I started as principal
23 at East Point.

24 Q. Right.

25 A. And I had no - nothing to do with the hiring

1 of the teachers and staff in that classroom.

2 So, I can't comment on that.

3 Q. Right. And you - so, you would have no
4 knowledge and with no ASL background
5 yourself, you would, of course, not have any
6 ability to do your own evaluation of a
7 teacher's ASL skills? That's not something
8 you could do?

9 A. None whatsoever, no.

10 Q. Do you recall discussions during that first
11 school year at East Point Elementary about
12 the term one report cards that were going to
13 be issued to the students in the ASL
14 immersion classroom, including Carter
15 Churchill, that how the students were going
16 to be all given IE on their report cards and
17 the report cards would be kind of in a
18 narrative format?

19 A. Yes.

20 Q. IE is usually a pretty unusual thing.
21 Aubrey Dawe testified when he was here
22 yesterday I think that, you know, he'd saw
23 700 report cards three times a year over
24 several years and he said IE was very rare.
25 You know, with the exception of it being

1 used in the immersion classroom, that's your
2 experience as well?

3 A. Well, it's been a couple different years now
4 with the pandemic and you know, there's been
5 some terms where the District would have put
6 out some communication on when it's
7 appropriate to use IE's.

8 Q. And to the best of your recollection, what
9 would that communication have told you about
10 when it's appropriate to use IE?

11 A. I'd have to have the memo in front of me. I
12 can't recall offhand exactly.

13 Q. Okay. Well, I'd put it to you, and in fact,
14 we have an email from Leo Etchegary that
15 says as much, that IE is really to be used
16 when a student is not being taught the grade
17 level curriculum. So, if you got a student,
18 as was the case for Carter Churchill, in
19 grade four and, you know, I think Gillian
20 Lahoda described it as you need to meet a
21 child where they are. So, if you've got a
22 child like Carter Churchill in the ASL
23 immersion classroom in grade four, but he's
24 being taught social studies according to,
25 you know, the grade one or the grade two

1 curriculum, well, it would be unfair to give
2 him a grade on the grade four social studies
3 because he wasn't being taught that. So,
4 you'd give him an IE because you say you
5 can't evaluate him. Is that your
6 understanding of what IE is for?

7 A. Well, it's a different circumstance, but
8 I've also seen IE's used for English second
9 language learners or English language
10 learners. So, and at East Point, there are
11 quite a few of those. So, this is where I
12 would have seen IE's used a lot.

13 Q. Interesting, yeah.

14 A. So, when newcomer students come to us
15 without having the language, enough language
16 to be able to access the curriculum, they
17 can receive IE's on their report cards for
18 up to two years while they close that
19 language gap. So, it would give them time
20 to get the English language skills before
21 they can be evaluated with a numerical grade
22 on the report card.

23 In the case of Carter's class and the
24 children in that class, this was their first
25 year, and the last two years have been their

1 first couple of years in this new program
2 where they're getting, you know, the
3 specialized resources that they need to help
4 close those language gaps.

5 So, we felt that, you know, usually
6 ones and twos on report cards would warrant
7 discussion around programming changes. So,
8 we felt as a team, and this was a team
9 decision, that these students needed to be
10 given the chance to see how we can close
11 that language gap and see how they do and
12 acquire to access that curriculum. And
13 certainly, we discovered quickly, like there
14 was - we saw a lot of growth just in that
15 first term and, but you know, obviously it
16 was - the focus was on language acquisition.
17 So, we felt it appropriate or at the time
18 appropriate for IE's on the report card.
19 And as the year progressed, we felt that
20 they needed more time in their new
21 environment to see if we can close those
22 language - close the language gaps before we
23 assess them on where they are with the
24 curriculum, giving them that chance to catch
25 up so to speak, and it certainly takes more

1 than a year or two years.

2 Q. Yeah, and Gillian Lahoda actually said a
3 very similar thing; that you know, there was
4 two years of closing that gap, as you put
5 it, and I mean, I guess to take your example
6 of - I mean, we're mostly talking about
7 Syrian refugees, I suppose, are we? I mean,
8 it's all kinds of international students?

9 A. All kinds, yeah.

10 Q. Who are coming to East Point Elementary and
11 there's a District policy that says, you
12 know, it's acceptable to provide two years'
13 worth of IE's while you close that gap,
14 because these are students who have never
15 experienced English before, never spoken
16 English, probably never seen English spoken,
17 coming to a country where everyone speaks a
18 language they've never spoken before, and
19 you know, there's an understanding that
20 you've never been exposed to the language,
21 how are you going to access the curriculum.
22 So, you've got, you know, sort of two years
23 to where we're going to give you IE's and
24 then we're going to start grading you.

25 So, did you find - did you - was it

1 your view or was it communicated to you that
2 for the deaf children who are attending at
3 East Point Elementary that, you know,
4 there's a similar gap closing process for
5 children who are being exposed to the
6 language that they're going to learn for the
7 first time? I mean, how close is the
8 analogy I guess is what I'm saying.

9 A. I'd say fairly close, but the difference
10 being that the English second language
11 learners would be getting additional support
12 outside of their classroom with an
13 itinerant, an English - the terms change, so
14 the English as additional language teacher
15 itinerant, I believe that's the term. But
16 the difference with Carter and his class is
17 that it's full days of itinerant services,
18 so to speak, in acquiring and closing that
19 gap. They're getting a lot more time in
20 trying to close that gap.

21 Q. And you know, to ask a very obvious
22 question, if we're talking about closing a
23 gap, there was a gap to close, right?
24 Carter had come to East Point Elementary
25 with substantial language gaps, right?

1 A. That's what I was told, yeah, as all of them
2 were.

3 Q. Did you ever make any queries with respect
4 to the ASL proficiency of any of the
5 teachers at East Point? Ever anything that
6 you had cause to question or did question?

7 A. Never.

8 Q. And that's not because you didn't have
9 concerns. It's because you were not in a
10 position to be able to evaluate and you
11 trusted that the District would provide you
12 with teachers who were - had the skills that
13 were required?

14 A. That's correct, yeah.

15 Q. Have you ever had to employ the English
16 proficiency testing which is a provision
17 under the teacher certification regulations?
18 I can't imagine it comes up all that often.
19 I've never seen it.

20 A. No, I've never had to do that.

21 Q. No, you haven't. Are you aware that it
22 exists, in the event that you had a teacher
23 to come to teach who English was not their
24 first language that they could be English
25 proficiency tested?

1 A. I did not know, no.

2 Q. Again, I can't imagine it comes up all that
3 often, but it exists, but you had no
4 knowledge of that?

5 A. No.

6 Q. Did the District, at any point -- I mean,
7 look, you obviously have an ability as a
8 principal of a school to be able to - you
9 know, as an educator yourself, do some
10 cursory assessment of the teaching abilities
11 of your staff? And I know that it's not
12 something that is done regularly here in
13 Newfoundland and Labrador, you know, where
14 you sort of audit your teachers or anything
15 like that, but you would, through
16 conversation, through interaction,
17 interaction with students, interaction with
18 parents, you'd have some vague sense, I
19 suppose, of teacher competency, wouldn't
20 you?

21 A. Yeah, as principal, we are required to go
22 through the appraisal process and for
23 tenured teachers that's every five years,
24 and we do it for replacement or probationary
25 teachers. But I've not had to do any of the

1 appraisal process with any staff in the ASL
2 immersion class.

3 Q. And I would suggest nor could you.

4 A. No.

5 Q. Because you wouldn't have the skills and
6 ability to be able to, you know, assess a
7 teacher in that capacity, especially
8 regarding things like their ability to use
9 ASL?

10 A. I would get a sense through just like walk-
11 throughs, which I had done quite a few of in
12 all the classrooms, and just get a sense of
13 the activities that are happening, the
14 students' engagement in the activities and
15 having conversations with students about
16 their learning. But, certainly I've seen or
17 have heard of principals, you know, that
18 need to assess French Immersion teachers.
19 They might not have the language, but they
20 can get a sense of what is happening in the
21 classroom quite clearly by the interactions
22 among teachers and students and discussions
23 with students.

24 Q. You were never, at any point though,
25 provided with any resources by the District

- 1 to assist you in evaluating the ASL
2 abilities of any of the teachers in your
3 school, were you?
- 4 A. No, there's no formal requirement of me to
5 assess any of the teachers, but if I had to,
6 I would think that I would have asked for
7 some support there.
- 8 Q. Yeah, you would have been able to ask for
9 like formal testing, for instance?
- 10 A. Yeah, I -
- 11 Q. Because you couldn't do it, is my point.
- 12 A. Yeah, I don't think I need to understand
13 what the teacher is actually saying in order
14 to get a sense of how the teacher is doing.
- 15 Q. Because you would get a sense of that from
16 the students and the parents?
- 17 A. In how they're performing.
- 18 Q. In how the students are performing.
- 19 A. And how they're understanding, and how
20 they're understanding what's going on in the
21 classroom.
- 22 Q. Might be difficult to do, perform that
23 assessment though if you got a report card
24 that's full of IE's, or would you get a
25 sense of how they were doing through another

1 way beyond report cards?

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

3 Q. You said you'd get a sense of how well the
4 student is progressing and that would allow
5 you to evaluate that, and I know you could
6 rely upon a report card to get a sense of
7 whether the students are progressing, but if
8 the report card is replete with IE's,
9 presumably that would be hard for you to do.

10 A. Well, I would be having discussions with the
11 teacher. If I just happened to come across
12 a report card that had IE's in there, I
13 would have a conversation with the teacher
14 as to why there's an IE there. But in this
15 case, we had prior discussion, so I expected
16 the IE's when I looked over the report cards
17 and they were instead - or the - not instead
18 of the report card, but in addition to the
19 report card, there was the anecdotal
20 documents that provided the progress of each
21 student in anecdotal form, with all the
22 outcomes that were worked on with each of
23 those students.

24 Q. Okay. I have just one more line of
25 questioning for you and it comes out of your

1 affidavit, and I don't need to take you
2 there unless you need me to. You said you
3 spoke to Alma McNiven about her experience
4 working with deaf children, and I'm sure you
5 had a bit of a learning experience, as have
6 many of us here at this hearing, you know,
7 of having a large number of social
8 interactions with deaf folks and what the
9 educator experience is like for an educator
10 of deaf children and how that would differ
11 from educating hearing children.

12 And you say in your affidavit that Alma
13 McNiven told you "she spoke of her
14 understanding of students feeling isolated
15 in their schools due to the frustration of
16 not being able to communicate with their
17 teachers and peers and not being able to
18 access the curriculum in ASL". So, you
19 understood that these students, you know,
20 were coming out of a school system where
21 they were experiencing that frustration and
22 not able to access their curriculum.

23 So, what did you, as a teacher, have to
24 do, you know, in order to accommodate or
25 address or deal with the cumulative

1 frustration that these students experienced
2 from other years? I mean, did it result in
3 any kind of programming or behavioural
4 change in the school?

5 A. No. I don't believe so. I felt - like my
6 comment in the affidavit was within the
7 context of Alma speaking to the staff in -
8 because this is a new program coming into
9 the school and where the staff didn't know
10 what to expect. So, Alma had asked if she
11 could speak to the staff during our first
12 staff meeting of the school year, just to
13 talk about the program and talk about these
14 children and I thought that was a wonderful
15 idea just to - if anything, to help
16 integrate this program into the school.

17 There was already a sense of
18 inclusivity and diverse student population
19 in the school, so we wanted to nurture that
20 and preserve that and by Alma speaking of
21 her experience, you know, a lot of teachers
22 were able to understand who these students
23 were and it resulted in the teachers and the
24 students wanting to interact with the
25 students and the staff from that classroom.

1 Q. And even though these deaf students are
2 spending, you know, a lot of time in class
3 with each other and being instructed in ASL
4 and communicating with each other, you know,
5 they're not kept separate or ostracized from
6 the rest of the school, are they?

7 A. No, the -

8 Q. They're integrated.

9 A. The exception would have been in that period
10 where Covid was really rampant and we wanted
11 to - just for the safety of all those
12 children -

13 Q. That was back when cohorting was still a
14 thing.

15 A. That's right.

16 Q. Yeah.

17 A. But aside from that, and even then, there
18 was exceptions made to include some students
19 into that bubble so that there was really
20 quite a few students from the classroom
21 across the hall who really wanted to engage
22 with students in that classroom, learn ASL
23 and so, they became part of that bubble as
24 well.

25 Q. Right. And so, in your experience then, you

- 1 know, having these children in an ASL
2 immersion classroom where they were spending
3 time with other deaf peers and learning and
4 being able to communicate in their language
5 didn't mean that they were, you know,
6 otherwise excluded from the rest of the
7 hearing school, did it?
- 8 A. Not at all, no. It was beautiful to see
9 them integrating in the hallway and people
10 engaging with students and staff.
- 11 Q. Last question I have for you. I understand
12 your time at East Point Elementary is at an
13 end - oh, you're not teaching French at East
14 Point, are you? Somewhere else?
- 15 A. No, the principal is returning. I didn't
16 own the position at East Point. It was a
17 term position and that principal is
18 returning. So, I made the decision to go
19 back to my permanent position, which is at
20 Vanier Elementary.
- 21 Q. I see. Were you ever given any indication
22 during your time at East Point that the ASL
23 immersive classroom, you know, was going to
24 continue indefinitely? Was it sort of a
25 trial program? I guess, was there any

1 assurance given to you that, you know, this
2 program is going to remain in place or was
3 it a year-by-year program?

4 A. My understanding that it would continue up
5 until that there was a cohort of six
6 students that are one year apart and to take
7 them through. But then, there was no
8 assurance of what would happen after.

9 Q. By take them through, you mean take them
10 through East Point Elementary?

11 A. Yes, finish their time at East Point. So,
12 there was a meeting where - a team meeting
13 where we felt it was in everybody's best
14 interest to keep those students who are
15 grade seven age to remain at East Point for
16 these year to stay with the grade six cohort
17 as well. So, they're all together at East
18 Point for this coming school year.

19 Q. Okay. So, East Point goes up until grade
20 seven?

21 A. Six.

22 Q. Grade six.

23 A. Grade six. So, then when Carter's in grade
24 - when Carter finishes this year, then
25 there's talk of the program potentially

1 following them to St. Paul's, but I'm not
2 part of that decision and I'm not aware of
3 any -

4 Q. Right. And I'm going to have to ask some
5 other people about that obviously. That's
6 important to my clients. My question though
7 for you is that you were given no assurance
8 or impression or guarantee one way or the
9 other whether this ASL immersive classroom
10 would follow these students onto St. Paul's
11 or junior high?

12 A. No, I was not. I never - it was not part of
13 any discussion I've ever had or nor was I
14 told that, no.

15 Q. And it also wasn't indicated to you that
16 once these students moved on to St. - St.
17 Paul's?

18 A. Yes.

19 Q. Moved on to St. Paul's that the classroom
20 would continue to exist for any incoming
21 deaf students?

22 A. There's no definite plan. I was not made
23 aware of anything.

24 Q. Okay. Those are all my questions. Thank
25 you.

1 scheduled is Mr. Bob Gardiner. You're Mr.
2 Bob Gardiner, are you?

3 A. That's correct.

4 MR. ROBERT GARDINER, SWORN, CROSS-EXAMINATION BY MR.
5 KYLE REES

6 REPORTER:

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

9 A. Robert Gardiner.

10 Q. Thank you. Mr. Gardiner has been sworn.

11 ADJUDICATOR:

12 Q. Thank you. Mr. Gardiner, I understand that
13 Mr. Rees has a series of questions that he
14 may wish to ask you. Mr. Rees.

15 MR. REES:

16 Q. Thanks, Mr. Gardiner. I'm Kyle Rees. You
17 and I have met before. Sitting to either
18 side of me are Kim and Todd Churchill. They
19 are the parents of Carter Churchill and I
20 understand you've met them once or twice
21 before as well. So, we've got a couple of
22 hours booked for you here today. I'm
23 hopeful that I won't take a couple of hours
24 in asking questions. I'll endeavour to do
25 that. But whereas we don't have an

1 affidavit from you, in your case, you know,
2 I don't know exactly what you're going to
3 say, so it's harder for me to predict how
4 long you'll be. So, it depends on your
5 answers. So, try to agree with me all the
6 time and we'll be out of here very soon.

7 For the purposes of clarifying for the
8 record, I mean, the reason we don't have an
9 affidavit from you, Mr. Gardiner, is not
10 because you're not a willing participant or
11 anything. The timelines on this happened to
12 line up such that you were out of the
13 country at the time that these things were
14 being produced. So, that's why we're
15 conducting this examination in the way in
16 which we are where I'm sort of asking you
17 questions for the first time.

18 So, I'll occasionally be referring you
19 to some documents that are there in front of
20 you and I'll tell you which documents they
21 are at the time we get to them and it'll
22 take a little bit of flipping around. My
23 questions for you are going to be a little
24 more general than they have been for some of
25 the other witnesses because, you know, I

1 need to get a sense of your background for
2 the Commissioner to put into their decision,
3 given the lack of the affidavit.

4 So, I understand you're - you have the
5 luxury of being retired at present?

6 A. Correct.

7 Q. Why don't you tell me what you've been doing
8 for let's say the last ten years? Where
9 have you worked and what positions have you
10 held?

11 A. Well, I can quickly go through my time with
12 Government. So, 2001 I went into the
13 Department of Education as a consultant and
14 from that time till 2013, I held a manager
15 and a couple of directors' positions,
16 evaluation and research, as well as school
17 services. 2013, I moved over to
18 postsecondary education with Advanced
19 Education and Skills as assistant deputy
20 minister. I was there for four years. And
21 in March of 2017, I returned to the
22 Department of Education and Early Childhood
23 Development as deputy minister, and I
24 retired from that position in October of
25 2020.

1 Q. Do you remain an employee or a contractor of
2 any sort with the School District or the
3 Department now?

4 A. No, no.

5 Q. Make sure I got this right. Prior to 2013,
6 you're in a consultant position? Is that
7 right?

8 A. One year as a consultant and then four or
9 five years as manager of high school
10 certification and again five-six years as
11 director -

12 ADJUDICATOR:

13 Q. Sorry, manager of what?

14 A. High school certification.

15 MR. REES:

16 Q. What are you doing in 2011?

17 A. 2011, I was probably director of school
18 services.

19 Q. And what does the director of school
20 services do?

21 A. So, the director of school services with the
22 Department at the time would have been
23 responsible for I'm going to say everything
24 education from the Department's perspective,
25 with the exceptions of - with the exception

1 of programming. So, for example, I would
2 have been responsible for legislative
3 changes, administering the collective
4 agreements, anything that didn't really fall
5 within the purview of, you know, programs
6 and services, evaluation, those types of
7 things.

8 Q. I see.

9 A. More of the administrative type of
10 educational role.

11 Q. And the postsecondary ADM role goes from
12 2013 until March 2017? Is that right?

13 A. '13 till '17, yeah, four years.

14 Q. And then March 2017, you're deputy minister?

15 A. Right.

16 Q. And versus a - do we say assistant or -

17 A. Assistant.

18 Q. Assistant deputy minister.

19 A. Assistant deputy minister.

20 Q. An assistant deputy minister has sort of a
21 more specific portfolio such as you
22 previously had had for postsecondary, but
23 when you are - you know, when you move up to
24 the deputy minister level, your role is more
25 generic then, is it?

- 1 A. Correct, yes, that would be correct.
- 2 Q. So, in March of 2017, you're deputy minister
3 of education?
- 4 A. Correct.
- 5 Q. While -
- 6 A. And when I was assistant deputy minister of
7 postsecondary education, that was not, at
8 the time, part of the Department of
9 Education. That was a different department
10 altogether.
- 11 Q. Yes, it was skills -
- 12 A. Advanced Education, Skills and Labour.
- 13 Q. Right. I'm sure you had to learn a lot of
14 different - they changed a few times.
- 15 A. And that one doesn't exist anymore.
- 16 Q. Yeah, the changes. Who were the various
17 ministers of education that you served under
18 from 2017 until your retirement? What were
19 their names?
- 20 A. So, when I came over, it would have been
21 Dale Kirby, and following Mr. Kirby, it
22 would have been Al Hawkins, and then it
23 would have been Brian Warr and the last
24 minister I would have served under would
25 have been Tom Osborne.

1 Q. Tom Osborne. Do you have any kind of
2 educational background in deaf education or
3 American Sign Language?

4 A. No.

5 Q. You have no general knowledge that you would
6 have picked up through your life experience
7 or through family members, any of those
8 sorts of things?

9 A. No.

10 Q. All right. Let's look at our first
11 document. So, over to your right, furthest
12 right-hand side, there are a pile of
13 documents and they have different volumes on
14 them. So, I'll get you to take Volume 1.

15 A. Okay.

16 Q. And in Volume 1, I'm going to get you to
17 turn to Tab G, as in golf.

18 A. Gotcha.

19 Q. Okay. You see that one? It's got a picture
20 of some people signing on the front?

21 A. Yeah.

22 Q. And it says "A Review of Services for Deaf
23 and Hard of Hearing Students in Newfoundland
24 and Labrador, June 2011" and it's a report
25 written by Darlene Fewer Jackson and Nora

1 Cahill. I understand this is written in
2 2011 when you're dealing - you're director
3 of school services at the time. But
4 subsequently, there's an update that gets
5 made to that report in 2018, and when the
6 update gets made to the report, you're
7 deputy minister of education at the time.
8 Do you remember that report or the update to
9 that report?

10 A. I do not.

11 Q. You do not?

12 A. No.

13 Q. Is it reasonable to assume that as the
14 either director of school services in 2011
15 or during when the update is made in 2018,
16 as the deputy minister of education that
17 this report would have ended up on your desk
18 and you would have read it?

19 A. Certainly not in 2011 as director of school
20 services.

21 Q. Okay.

22 A. Let me just have a quick look. As I look
23 through this, this likely ended up on my
24 desk and I would have read through it, but
25 not for an approval or anything to that

- 1 extent. So, it's -
- 2 Q. Right, but because -
- 3 A. It's vaguely familiar, but -
- 4 Q. It would have been an important -
- 5 A. This is just - this is an update on
- 6 recommendations. Yeah, so I'm not
- 7 intimately familiar with the document.
- 8 Q. How does - and this is the workings of
- 9 government that have always mystified me.
- 10 How does like knowledge transfer work within
- 11 Government? So, you know, this report gets
- 12 published in 2011 and then later in 2018 has
- 13 an update. But you know, you take over as
- 14 deputy minister of education in March of
- 15 2017. This report has been, you know,
- 16 kicking around for six years by that point.
- 17 I mean, when you come into the role, are you
- 18 given a bunch of information to catch up on
- 19 and would have you have reviewed a report
- 20 like this at the time you took over in March
- 21 2017?
- 22 A. So, typically when you come into a new
- 23 department, you'd have - you know, over the
- 24 first couple of weeks, you certainly have
- 25 briefings scheduled with various assistant

1 deputy ministers and their directors to kind
2 of bring you up to speed on where things are
3 to with the Department and some of the - you
4 know, some of the pressing issues. I was
5 with the Department for 13 years before I
6 left and in various positions, so I was
7 fairly familiar with the Department anyway.
8 This is not - of course, this update would
9 have been 2018. So, this wouldn't have been
10 part of my initial briefing certainly. And
11 when you say "published", I'm not sure that
12 this report was actually published and put
13 on our website back in 2018. I don't have
14 any knowledge of that.

15 Q. Okay.

16 A. If it was, it would have been something that
17 should have come through for an approval in
18 an approval process.

19 Q. Well, I mean, maybe if I can't ask - get you
20 to remember, you know, specifics of having
21 read a document four or five years ago, can
22 you tell me whether in 2018 or otherwise
23 during your term as deputy minister, if you
24 were aware that there were substantial
25 problems with deaf education in Newfoundland

1 and Labrador?

2 A. Well, it would depend on your definition of
3 substantial problems. I certainly became
4 aware that it was certainly a topic of
5 conversation and something that needed to be
6 looked at.

7 Q. Right. As part of that topic of
8 conversation and things that need to be
9 looked at, was it ever brought to your
10 attention that there was a report from 2011
11 that received an update in 2018 that
12 contained several recommendations, the
13 majority of which do not get addressed
14 between 2011 and 2018?

15 A. Not that I can remember, no.

16 Q. I mean, is that a typical thing? And again,
17 I don't want to be too pessimistic, but like
18 would it be typical for Government to
19 commission a report, as they appear to have
20 done in June of 2011, and then to look at
21 the report again in 2018 and for there have
22 been very little progress? Is that the kind
23 of thing that happens? Is that exceptional?

24 A. I would say that it's - when you use the
25 words "commissioned a report", I mean, I

1 think at the time, Darlene would have been
2 working with the Department. So, I don't
3 think it would have been a report that would
4 be considered commissioned. It might have
5 been a piece of work that Darlene was asked
6 to undertake as part of her normal duties.
7 Consultants at the Department would
8 undertake various pieces of work that, you
9 know, that would be under the direction of
10 their manager and/or director and/or
11 assistant deputy minister that, you know,
12 would help inform day-to-day operations of
13 the Department that I wouldn't be
14 necessarily involved in the minutia of that.

15 Q. Okay. Well, look, I want to point you to a
16 couple of places in this document and even
17 if you don't recall, you know, you think
18 it's likely that this document would have
19 come through your desk at some point in
20 2018, but even if you don't recall exactly
21 reading it, I want to ask what, if anything,
22 your Department did and you, as deputy
23 minister, did to address some of the gaps
24 that are identified in this report.

25 A. Sure.

1 Q. So, I'll ask you to turn to page eight.

2 A. Yeah.

3 Q. Page eight, I don't care about the first
4 gap. The second gap indicates "current
5 information regarding deaf and hard of
6 hearing students needs to be collected as
7 there is no formalized system in place to
8 document caseloads, audiograms, language
9 assessments and amount of time for service
10 provision to individual students".

11 And there's a recommendation that
12 follows, Recommendation 2 that recommends
13 creating this APSEA, which is an acronym
14 that stands for Atlantic Provinces Special
15 Education Authority, creating a database.
16 And then, if you flip over to Recommendation
17 2 update, so this would have been an update
18 made then in 2018. It says "the Department
19 of Education has partnered with APSEA" and
20 they're planning on doing it. So, it's sort
21 of a - they're sending their caseload
22 information to APSEA now. So, it doesn't
23 happen in 2011 up until 2018 and when 2018
24 comes, Government says they're doing it.

25 Did you have any involvement in

- 1 assisting that database being set up or
2 directing that database to be set up?
- 3 A. So, I wouldn't have had any involvement in
4 the setting up of the database certainly.
5 That wouldn't have been my role. As a
6 member of the APSEA board of directors by
7 default - the deputy minister of Education
8 is on the executive board, as well as the
9 board -
- 10 Q. So, as part of your role as deputy minister,
11 you are on that board?
- 12 A. Correct, yes.
- 13 Q. Yeah.
- 14 A. So, I did have many conversations with the
15 superintendent of APSEA, Lisa Doucet, in
16 terms of how APSEA - how the Government of
17 Newfoundland and Labrador, Department of
18 Education, could facilitate, you know, a
19 greater role for APSEA, if that was
20 possible, in terms of the provision of
21 services not only for the students who are
22 DHH, but students who were BVI, so how we
23 could enhance our role within APSEA. And
24 this would have been one example. I don't
25 recollect every single piece of the puzzle,

1 but whatever - and then of course, you know,
2 APSEA personnel, whether it be Lisa or her
3 directors, would have had conversations with
4 the people who would have been in the know
5 in terms of the operations of, you know,
6 various programs and services.

7 Q. So, when you retired in 2020, had this been
8 done?

9 A. I wouldn't be able to answer that question.
10 I wouldn't be able to tell you how exactly -
11 how much integration there was between the
12 database with the Department and the
13 database with APSEA.

14 Q. Okay. I put it to you that it wasn't done.

15 A. Oh.

16 Q. And that the Churchills were - the first
17 time the Churchills were asked to join that
18 database was in 2021.

19 A. And that could be.

20 Q. Okay. Turn over another page, two pages,
21 apologies, to Gap 5. That's page 11. It
22 says "there is no systemic process in place
23 to offer early language acquisition skills
24 at the preschool level to both the child and
25 the family".

1 And there's a recommendation made for
2 what ought to be done, but then if you turn
3 over the page on page 12, you'll see
4 Recommendation 5 update. "Itinerant
5 teachers now have access to assessment tools
6 and preschool language programs to aid in
7 building early language acquisition skills",
8 but it notes "however, we have no Provincial
9 guidelines for preschool services.
10 Guidelines for frequency and intensity of
11 service needs to be developed."

12 So, in 2011 and then again in 2018,
13 during which you are deputy minister, there
14 are still no Provincial guidelines for
15 preschool services developed. Did you
16 assist, prior to your retirement, in the
17 development of preschool DHH itinerant
18 guidelines?

19 A. Well, I wouldn't have the expertise to
20 assist in the development of those
21 guidelines. That is something that would
22 have to have been taken on by student
23 services branch or section within programs
24 and services that would actually take that
25 on and develop the guidelines, in

1 consultation with, of course, you know,
2 District personnel and others.

3 Q. Okay. So, that's the - that would have been
4 the District's responsibility?

5 A. In conjunction with the Department because
6 it says Provincial guidelines, so it would
7 have been the Department.

8 Q. And this is something that I've always - not
9 just me, but a lot of folks who interface
10 with the education system, have difficulty
11 understanding is the division and separation
12 between the Department and the District.
13 And I understand that, you know, there's a
14 discussion that in the future that may not
15 be separate at all.

16 But, I mean you say that role is the
17 District's responsibility in conjunction
18 with the Department. The reality is that
19 the Department and the District work pretty
20 closely on policy changes, don't they?

21 A. So, in terms of policy changes, absolutely I
22 would suggest the District and the
23 Department work very collaboratively. The
24 Department wouldn't develop policies without
25 input from the District, and I think the key

1 point to make is, you know, the District is
2 responsible for the delivery of education
3 under Section 76 of the *Schools Act*, which I
4 still remember. They have the
5 responsibility of the direct services to
6 students and the Department is more of an
7 overarching and developing policies that
8 would oversee, you know, -- not oversee, but
9 to kind of provide the guidelines and they
10 would be responsible for implementation.
11 So, obviously the Department wouldn't
12 develop a policy without input from those
13 people on the frontlines who are responsible
14 for delivering the programs.

15 Q. The Department would not develop a policy
16 without the input, and I would say
17 participation, of the District, right?

18 A. That would make - yes, yeah.

19 Q. Yeah.

20 A. That would be my opinion.

21 Q. So, by the - and when I say, you know, did
22 you do anything to fulfil this
23 recommendation, you know, I don't mean, you
24 know, did Bob Gardiner sit down and write up
25 the document because I know that's not how

1 these things work. There are a lot of
2 compartmental jobs that different people do.
3 But I guess when I'm asking you about these
4 things what I'm asking is by the time you
5 retired from the Department in 2020, were
6 you aware that there had been any effort
7 made to address any of these issues that I'm
8 about to put to you.

9 And so, I just put this one to you
10 about Provincial guidelines for preschool
11 services for deaf students. So, are you
12 aware of any progress on that?

13 A. No, and the ones that would have initiated
14 progress or initiated anything with respect
15 to that would have been a manager, director
16 or certainly an assistant deputy minister.
17 To your point earlier, you know, certainly
18 at the deputy minister level, you haven't
19 got your hands in the weeds, you know, in
20 terms of development of policy and so on.
21 It's a different role.

22 Q. And I just - you know, I want to be clear.
23 I'm not saying that it was your job to do
24 any of these things. But my question is to
25 you as somebody who was in the Department at

1 the relevant time period, you would have
2 known if these things were being worked on?

3 A. I would have had a sense that there was work
4 being done on DHH programming like there
5 would have been work being done on a myriad
6 of programs.

7 Q. Right, okay.

8 A. And again, as I said before, I mean, I was
9 involved in conversations with Lisa Doucette
10 and APSEA in terms of trying to enhance
11 their role in programs and services for
12 Newfoundland and Labrador as a member of
13 APSEA, but again, I wasn't involved in any
14 intimate conversations between Lisa and her
15 directors and various individuals at the
16 District or the Department for that matter.

17 Q. Right, but being on the board of APSEA, you
18 know, would give you a greater amount of
19 insight than any other executive - sorry,
20 any other deputy minister into issues like
21 deaf education, wouldn't it?

22 A. At a governance level it would be, yeah.

23 Q. You would, yeah. I want to ask you about
24 Gap 7, which is on the bottom of page 12.
25 And that says, and this goes to one of the

1 concerns I raised with you earlier, "there
2 is an ambiguity within the educational
3 system of who is responsible for providing
4 the intensive supports that some deaf and
5 hard of hearing students require to access
6 the curriculum. Districts tend to wait for
7 the Department to approve of additional
8 units for these students as the intensity of
9 support needed is above and beyond what they
10 can provide without impacting the
11 allocations for other students within their
12 District. Therefore, decisions need to be
13 made on who is responsible for the funding
14 required for these students." And then
15 there's a reference to the UN Convention on
16 Rights of the Persons with Disabilities
17 there. That's a document I'm sure you would
18 have been come across over the course of
19 going through your time at APSEA.

20 We heard from several witnesses, you
21 know, principals primarily but also other
22 individuals within the school systems that
23 Carter attended or the schools that Carter
24 attended who said, you know, it was
25 difficult to provide Carter with the

1 resources he needed because, you know, "we
2 were allocated a certain number of student
3 assistant hours, or what have you, by the
4 Department" - sorry, "by the District and
5 then we needed to decide how to parcel those
6 things out."

7 And we're going to hear from the
8 District folks who are going to say, you
9 know, the Department would only allow us so
10 much wiggle room in terms of the amount of
11 this kind of resources we could provide.

12 So, whose job, the Department or the
13 District, whose job is it to decide whether
14 the human resources are sufficient to meet
15 the needs?

16 A. So, it's important to - well, first of all,
17 it's important to make a distinction between
18 two different types of resources, one being
19 human resources and one being other types of
20 resources. So, if we talk about human
21 resources for a second, the model for human
22 resources, particularly teaching units, is
23 that the Department, through a policy, a
24 teacher allocation policy, would allocate
25 teaching resources, fulltime equivalent

1 teaching units, to the District and then the
2 District's responsibility was to deploy
3 those units to schools as they - as the need
4 was determined.

5 Then, so again, important to note, part
6 of that allocation - important for this
7 particular process, part of that allocation
8 process was that in some cases there was a
9 line by line. So, for example, in the
10 allocation letters that would have went out
11 to the School District in previous years,
12 there would have been an allocation of 18
13 itinerants for deaf and hard of hearing. I
14 think the number is 18. I'm pretty
15 confident it is. And there was also a line
16 at some point in time, and I think it was
17 still there when I left, for four teachers
18 of the deaf. So, those would be units that
19 the District would have been required to use
20 in those capacities and if they wanted to -
21 same as there would have been autism
22 itinerant teachers and BVI itinerant
23 teachers, et cetera, et cetera.

24 If the District wanted to deviate from
25 that allocation in terms of lessen it, then

1 they would have had to get permission from
2 the Department to do so. So, if they wanted
3 to use one of those itinerant teachers in
4 another capacity, they would have had to get
5 permission for that.

6 If they needed more of those particular
7 teaching units, as part of the allocation
8 model since 2008, there was what was always
9 referred to as a needs-based allocation.
10 So, there was an allocation based on class
11 caps and certain ratios and certain SL,
12 speech language pathologists 45, educational
13 psychologists 43, and so on and so on.

14 And then there was this broader pot of
15 teachers, if I can refer to it as that. I
16 think it was in probably couple of hundred,
17 could be 230-240, it depends on the year,
18 but I think recently it was in the -
19 certainly over 150, and those units then
20 were at the discretion of the District to
21 address needs. So, if they needed more DHH
22 itinerants or SLPs, and I know they did use
23 a significant portion of that, maybe up to
24 25 or 30 units for additional guidance
25 counsellors. So, wherever they saw the

1 need, that's what they would use those
2 particular units for.

3 Never while I was there, either as a -
4 in the director of school services or as
5 deputy minister, did the District come to
6 the Department and say "we need more DHH
7 itinerants and haven't got anything left".

8 Q. Okay. So, this report gets produced that
9 indicates, you know, the Districts keep look
10 - I mean, the report, if actually you turn
11 over to the next page to page 13, you'll see
12 update on Recommendation 7 says "Districts
13 continue to look for support from the
14 Department when a student needs services
15 beyond what a typical itinerant for deaf or
16 hard of hearing is able to provide on a
17 weekly basis" and you're telling me that
18 update on the recommendation is not true?
19 The time that you spent there at the
20 Department of Education, there was never an
21 approach by the District to come to the
22 Department to say "we need more DHH
23 teachers"? Never happened?

24 A. That would be correct. And if that request
25 were to come in, that would typically be -

1 that would need to be a letter from the CEO
2 of the School District to me as Deputy
3 Minister, and that - I can never remember
4 getting a request saying "we need more DHH
5 itinerant teachers".

6 Q. Who was the CEO of the School District in
7 2018?

8 A. That would have been Tony Stack.

9 Q. And 2019?

10 A. Tony - well, it would have been Tony. So, I
11 started March 2017. Darrin Pike was there
12 at the time.

13 Q. It's still Tony Stack, right?

14 A. Yeah, yeah. Darrin left three or four
15 months after I started as deputy. So, it
16 would have been Tony from then on.

17 Q. Very interesting. Okay. Turn the page over
18 to page 14. I'm going to get you to look at
19 Gap 10. Gap 10 says "there is no formal
20 assessment process in place to determine
21 proficiency levels of American Sign Language
22 skills for teachers of the deaf and hard of
23 hearing, interpreters or student assistants
24 in Newfoundland and Labrador".

25 And then it makes a recommendation that

1 these people should be tested and then
2 update on Recommendation 10 says: "to date
3 this area has not been addressed" and
4 there's a reference to all kinds of tests
5 that do exist and are available, but it
6 hasn't been addressed. At any time during
7 your years of service with the Department,
8 did you make any progress on that point?

9 A. It wouldn't have been our place to make
10 progress on that point. I mean, the
11 Department and Government is responsible for
12 teacher certification and the District is
13 responsible for hiring qualified teachers.
14 So, the same as the Department wouldn't be
15 involved in the - to my knowledge, wouldn't
16 be involved in the administration of
17 proficiency for French, hiring French
18 Immersion teachers. That's a District
19 responsibility to make sure they have
20 qualified teachers to the extent that they
21 can in the classroom. So, that wouldn't be
22 a Department responsibility to provide
23 guidelines for ASL proficiency.

24 Q. So, the Department, not the District, is
25 responsible - sorry, the District, not the

1 Department, is responsible for setting -
2 implementing setting those criteria?

3 A. Because that would be part of the hiring
4 process.

5 ADJUDICATOR:

6 Q. Is it a District responsibility or a
7 Department responsibility to have adopted --
8 I think for French instructors the teachers
9 need to have a DELF assessment done. So,
10 would that be a Department policy that would
11 set that standard or is that a District that
12 would -

13 A. To my mind, that would be a District
14 responsibility, because again, it's the
15 hiring of French Immersion teachers that
16 would be their responsibility. We wouldn't
17 set that standard. It would be similar to
18 say, you know, the Department doesn't say in
19 order to teach math at high school, you have
20 to have a math major. That would be again a
21 District responsibility and when there were
22 four and ten English School Districts at one
23 particular time, Districts could have had
24 different policies in terms of their hiring
25 practices.

1 MR. REES:

2 Q. Right. So, things like the requirement to
3 take the APSEA test -

4 A. Take the -

5 Q. Sorry, sorry. To take the DELF test in
6 order to teach French Immersion, that's
7 something the District figures out? That's
8 not the Department?

9 A. Again, part of the hiring process.

10 Q. Right.

11 A. We would be responsible for certification
12 and important to make a distinction between
13 certification and getting hired. Just
14 because you're a certified teacher doesn't
15 necessarily mean you're going to get hired.

16 Q. That's right.

17 A. Yeah.

18 Q. Now, part of the certification process for
19 teachers would involve if you had a teacher
20 who English was a second language, could
21 involve English proficiency, couldn't it? I
22 mean, that's something the Department does?

23 A. I know -

24 Q. *Teachers Training Act*, right.

25 A. The *Teachers Training Act*, I know there was

1 some work being done and again, I'm not
2 intimately familiar with the *Teacher*
3 *Training Act* right now, but I know there was
4 some work being done. I think it was acted
5 upon in terms of if you are not English - if
6 English or French weren't your first
7 language, then you would have had to do an
8 English or French proficiency test to be -
9 and that was common across all of Canada.
10 That was something that was taken on by the
11 Council of Ministers of Education Canada.

12 Q. Yeah. And so, the testing for English
13 proficiency or, you know, one - English or
14 French, if you don't have either as a first
15 language, that uniquely is a Department
16 responsibility?

17 A. Well, that would be a Department
18 responsibility in conjunction with the other
19 12 Provincial Territorial jurisdictions in
20 Canada. That was something that all
21 registrars of certification in Canada agreed
22 to and adopted.

23 Q. Okay.

24 A. And that goes to the fact that because of
25 the labour mobility, if you're certified in

1 one Province, they have to certify you in
2 another Province. So again, it's part of
3 the certification, but not part of the
4 hiring process.

5 Q. Okay. I'm going to ask you about Gap 11,
6 which is on page 15.

7 A. Yeah.

8 Q. Gap 11, again you know, this first gap is
9 identified in 2011 and the update is in
10 2018. Gap 11 says: "there is no formal ASL
11 curriculum at the primary-elementary level.
12 Some deaf and hard of hearing students will
13 need to be offered a visual language to
14 facilitate communication skills so they can
15 access the curriculum with the assistance of
16 an interpreter and/or teacher of the deaf."

17 And the update to Recommendation 11,
18 and this is a refrain we're going to see a
19 lot, says "to date this area has not been
20 addressed". Department - development of
21 curriculum, Department or District
22 responsibility?

23 A. That would be a Department responsibility.

24 Q. Okay. Why didn't the Department develop any
25 - develop curriculum in this area?

1 A. It was never brought to my attention that
2 that particular curriculum needed to be
3 developed and again that would have been
4 something that would have come up from, you
5 know, programs and services division to say
6 here's a need. I mean, they would be
7 responsible for curriculum development and
8 they would, you know, have an annual plan in
9 terms of what curriculum needs to be
10 renewed, developed, et cetera.

11 I do know there was some local courses
12 developed in American Sign Language that
13 were offered in the Central region, but
14 again, I'm not intimately familiar with, you
15 know, the operations of that.

16 Q. So, when you left the District in 2020,
17 there had been -

18 A. Left the Department.

19 Q. - this wasn't even an issue as far as - when
20 you left the Department in 2020, this wasn't
21 even an issue that was on the Department's
22 radar?

23 A. Not to my knowledge, no.

24 Q. Gap 12 indicates "at the primary, elementary
25 and junior high levels, there is no formal

1 ASL course being taught to hearing peers or
2 staff to facilitate communication in the
3 classroom and to foster meaningful inclusion
4 for deaf students." And then eight - no,
5 sorry, seven years later - I can do math.
6 Seven years later, the update says "to date,
7 this area has not been addressed."

8 Development of courses in the School
9 District, Department or District?

10 A. So, any - so, it's the Department's
11 responsibility to develop curriculum and
12 obviously from curriculum, if it's a math
13 curriculum, then various courses would be
14 developed at an appropriate grade level.
15 So, again, you know, Department's
16 responsibility for developing curriculum.

17 There is what's referred to as a local
18 course policy. So, if there's an identified
19 need in a particular area of the Province,
20 then there's a policy whereby the District
21 and teachers typically would take it on and
22 develop a course that would go through an
23 approval process through the Department to
24 ensure that a standard is being met.

25 But there was no Provincial ASL

1 curriculum that was ever developed, to my
2 knowledge, and no formal ASL course at the
3 Department level that was developed to my
4 knowledge, but doesn't preclude the fact
5 that the District and/or, you know, a
6 particular group of teachers could develop a
7 course and submit it for approval as a local
8 course.

9 Q. Could the District develop an ASL course on
10 its own or would they need to go to the
11 Department?

12 A. No, they would develop it. There's many -
13 like I think, just one off the top of my
14 head, I think there was an outdoor living
15 course that was developed, I think, with
16 some schools in Labrador that was submitted
17 for approval. So, no, the District could
18 take it upon themselves to develop a local
19 course and then would be submitted.
20 Typically it would be at the high school
21 level, but it certainly could be at the
22 primary, elementary level as well. And that
23 would be submitted for approval by the
24 Department.

25 Q. Comes from the District to the Department?

- 1 A. A local course would.
- 2 Q. Yeah. And Department -
- 3 A. Would approve it.
- 4 Q. - approves or doesn't?
- 5 A. Correct. And particularly, that's something
6 that happens at the high school level
7 because it's a credit system. So, if
8 students are doing a particular course, then
9 you want to make sure that they're going to
10 get, you know, high school credits for it.
11 At the primary, elementary, intermediate
12 level, there's probably a little more
13 latitude to fit that kind of stuff within a
14 curriculum that's already existing.
- 15 Q. Okay. Turn over to page 17 for me. Gap 15
16 says "student assistants in Newfoundland and
17 Labrador are not required to have any formal
18 training as a prerequisite to being hired
19 into a school system. In other provinces,
20 deaf students have access to trained para-
21 professionals", interesting word "para-
22 professionals with knowledge of hearing loss
23 and ASL training. Staff working with deaf
24 and hard of hearing students must have this
25 skillset in Newfoundland and Labrador." I

1 think aspirationally is what they mean, it
2 should have this skillset.

3 The update to Recommendation 5, further
4 down the page, says "this recommendation has
5 not been addressed. However, a number of
6 student assistants have participated in
7 learning American Sign Language that's been
8 offered through the Department of Education.
9 Student assistants who work directly with
10 deaf children, do not - do need a role
11 description and specific skill training in
12 deafness, language acquisition, as well as
13 sign language." A Department or a District
14 responsibility?

15 A. Oh, sorry, could you repeat that again?

16 Q. Yeah. You see the up - I'm talking about
17 Gap 15.

18 A. Yeah.

19 Q. And the update on recommendation 15.

20 A. Yeah.

21 Q. Which is there in front of you and you can
22 read it, and I'm asking you is this a
23 Department or a District responsibility?

24 A. That would be a District responsibility.

25 So, the way the student assistant allocation

1 works is the Department would allocate a -
2 unlike teacher allocations where the
3 Department would allocate a specific number
4 of teaching units, the student assistant
5 allocation would be different in that there
6 would be a budget allocated, 25 million or
7 whatever that number might happen to be, and
8 then the District would work within that
9 particular budget amount as opposed to
10 numbers.

11 But again, Districts would be
12 responsible for hiring student assistants
13 and of course that would be in large part
14 dictated by collective agreements or a
15 collective agreement for student assistants
16 in terms of, you know, qualifications and et
17 cetera.

18 Q. So, the District, you know, all these things
19 that you've indicated, and you've indicated
20 almost all of them are District
21 responsibilities -

22 A. For direct services to students, it's -
23 yeah, it's District, yeah.

24 Q. Right. But obviously, you know, the
25 Department of Education holds the purse

1 strings or is the main line to the purse
2 strings, let's say. Does the District need
3 to simply come to the Department identifying
4 these needs and the Department green lights
5 the request?

6 I mean, you've indicated that for, I
7 think, all of these recommendations to your
8 knowledge the District never approached the
9 Department looking for help.

10 A. No, I didn't say that.

11 Q. Okay.

12 A. I said that the District did not come in my
13 years there, my four years as deputy
14 minister, did not come to the Department
15 looking for specifically additional teaching
16 units. With respect to I'll say student
17 assistant hours, if there was a pressure in
18 terms of student assistant hours, that would
19 be brought to our attention and -

20 Q. Was it?

21 A. It was always identified, I guess, as a
22 pressure that the District, you know, were
23 under and I will say that - I can't give you
24 exact amounts, but I know if you go back and
25 look at the budgets for the past number of

1 years, the dollar amount for student
2 assistants certainly increased and that
3 would have been a result of the District,
4 you know, making the Department aware of the
5 pressure from a student assistant
6 perspective and like it did increase I'm
7 going to say by a million or couple million
8 dollars over the two or three years and it
9 could be more than that. But I know the
10 budget for student assistants certainly
11 increased over a number of years and then
12 that would have been a result of obviously
13 the District identifying pressures.

14 Q. Mr. Gardiner, I'm at a bit of a loss to
15 understand what the purpose of this
16 document, which, you know, someone put a lot
17 of work into in 2011 and put a lot more work
18 into again in 2018, what the point of this
19 document was and why it was being completed
20 by somebody at the Department of Education
21 if the majority of the things here that are
22 required are the responsibility of the
23 District. So, I guess, and I'll suggest the
24 answer to you. Is it because it's the
25 Department of Education's job to find, you

1 know, gaps in the education system that can
2 be met by a combination of work by the
3 Department and the District? Is that why in
4 - or can the Department order the District,
5 you know, compel the District to fix these
6 problems?

7 A. So, a couple of things. One is you'd have
8 to ask Darlene and Nora in 2011 who asked
9 them to write this report. I'm not sure who
10 authored the updates in 2018, but again,
11 you'd have to ask them why they did it, who
12 asked them to do it. I can't answer that
13 question.

14 Q. But it must be the Department, right? I
15 mean, they can't go on a lark on their own
16 and write their own report.

17 A. Well, you would think it would be someone
18 from the Department, whether it was their
19 manager or director or what have you, yeah.
20 So, but again, you'd have to ask them.

21 Is it the Department's role to identify
22 gaps? I'd like to think that the Department
23 is always trying to strive for improvements
24 and identify where improvements can be made
25 and I mean, there's lots of examples of that

1 in term - well, one big example is the
2 Premier's Task Force on Improving
3 Educational Outcomes. You know, that was a
4 major piece of work that started before I
5 came back to the Department. We got the
6 report shortly after I got back. I got back
7 in March and the report was delivered in
8 June, released in July. So, there's an
9 example of the Department always looking for
10 opportunities to enhance the education
11 system.

12 Currently ongoing, which happened after
13 I left, is a review of the teacher
14 allocation model. I'm not sure what the
15 status of that is, if a report has been
16 delivered or not.

17 So, there's always ongoing looking for
18 improvements and specifically with respect
19 to DHH education, again I've said to you,
20 I've had many conversations with Lisa Doucet
21 from APSEA to try and figure out how we can
22 improve the education system with respect to
23 students who are DHH.

24 Does the Department have the authority
25 to direct the District to implement X, Y and

1 Z? That depends on what X, Y and Z is. And
2 again, it depends on the legislation and
3 what's in the purview of the Department
4 versus what is articulated in the
5 legislation and is the duties and powers of
6 the School District.

7 Now that said, you know, I would
8 suggest that, you know, in my experience,
9 the Department and District work very
10 closely together and very rarely - I mean,
11 the Minister, I think it's Section 117 of
12 the *Schools Act*, has the authority to issue
13 policy directives.

14 Q. Yeah.

15 A. And again, and the District would have to
16 follow those. But while I was deputy
17 minister, I don't think there was any policy
18 directives issued necessarily.

19 Q. Right. I mean, my - I guess what I'm asking
20 is the purpose of this document, this report
21 that was put together, you know, by the
22 Department, by a Department employee,
23 presumably at the direction of the
24 Department -

25 A. Someone in the Department, yeah.

1 Q. Right, it's got to be.

2 A. Yeah.

3 Q. It's not like the NLTA told them to do it.

4 A. No.

5 Q. Because they wouldn't listen. The document
6 gets put together and it's presumably not
7 just for some Department naval gazing, you
8 know, for them to just have and put on their
9 bookshelf. It exists to change behaviour,
10 and I guess what I'm wondering is when a
11 report like this gets produced, is the idea
12 that it gets passed to the District so that
13 the District can implement changes that are
14 part of its responsibilities or is it then
15 the role of the - or is it does the document
16 stay with the Department and the Department
17 tells the District how to fix its problems?

18 A. So, I can't - again, I can't speak
19 specifically to this particular report.
20 Typically, if a report is commissioned, and
21 I'll go back to the Premier's Task Force
22 report, so once the Department commissioned
23 that, it was an independent report. Once we
24 had the report, then there was significant
25 work done with the District and many other

1 stakeholders that informed a year later the
2 Education Action Plan and there was
3 numerous, numerous committees set up to help
4 implement the 82 recommendations from the
5 Premier's Task Force report. And again, it
6 was done in concert with the District.

7 Again, this particular report, what the
8 genesis of this report was, I don't know.
9 What was done with this report once it was
10 finished, I'll use that word, I'm not sure.
11 I mean, obviously from what I've just seen,
12 I mean, obviously there was input from the
13 District to actually come up with the
14 updates because again, some of the
15 responsibilities are at the District level.
16 So, I would think that Darlene and whoever,
17 you know, authored the updates would have
18 had some discussions with individuals at the
19 District.

20 Q. Was it the Department's decision or the
21 District's level to close the School for the
22 Deaf?

23 A. That would have been before I was - again, I
24 would have been probably director of
25 evaluation and research. So, I would

1 suggest it would be the Department's. This
2 is just my, you know, assumption it would be
3 the Department's because the Department
4 would have been the one that would have been
5 running the School for the Deaf at the time.
6 At the time, there was ten English School
7 Districts. So, it wasn't the purview of any
8 one particular district. So that certainly
9 would have been a Department decision.

10 Q. But then if, you know, upon the closure -
11 and you're correct. It's the Department
12 that closes the School for the Deaf. Any
13 services that then need to be provided to
14 deaf students who would otherwise be at the
15 School for the Deaf and they're instead
16 attending their neighbourhood schools, that
17 then becomes the District's responsibility
18 to provide for those students, right?

19 A. Yes.

20 Q. So, Department closes the School for the
21 Deaf. Districts got to make it work in the
22 neighbourhood schools?

23 A. Correct, yeah.

24 Q. And presumably, you know, the Department
25 isn't just going to, you know, let the

1 District flounder. There would be an
2 ongoing relationship in that kind of a
3 circumstance where the District comes to the
4 Department and the Department assists
5 funding and other things for the District to
6 help them meet those new needs, right?

7 A. That would be correct. I mean, my only
8 knowledge in terms of the transition, if I
9 use that word, when the School for the Deaf
10 closed was the allocation of teaching units
11 because that's something that fell in my
12 purview at the time. So, and I don't know
13 the exact number, but I know when the School
14 for the Deaf closed, there was a specific
15 allocation of teaching units, hence the
16 teachers of the deaf versus the itinerant
17 DHH teachers, and I know that that number
18 was - it might have started off at nine and
19 then there was a plan - and again, I wasn't
20 cognizant of the actual transition plan. I
21 was just the person responsible for
22 allocations and told "here's the number",
23 but the number went from nine to seven to
24 six and ended up at four, based on the
25 assumption that these students were in grade

- 1 11 or grade 12 and they were going to
2 graduate and so, the number was prorated.
- 3 Q. They were trained out.
- 4 A. Trained out. Well, no, the students - I
5 don't know about trained out, but yeah, the
6 students would have finished their K to 12
7 education and so the number of teachers of
8 the deaf for those particular cohort of
9 students would have been less and less and I
10 think it bottomed out at four and four is
11 still the number, to my knowledge, that's
12 used today. But other resources that would
13 have been provided, I wouldn't have any
14 knowledge of.
- 15 Q. You're aware of, you know, the case of
16 Carter Churchill? Like during your time as
17 deputy minister of education, the Churchills
18 were, you know, publicly notorious, publicly
19 known for advocating for what they saw as
20 their son's right to an equitable education.
21 So, they would have been on your radar. You
22 knew about the Churchills and generally what
23 their case was about?
- 24 A. Yeah.
- 25 Q. And you were aware presumably then during

- 1 your time from 2017 till 2020 that, you
2 know, Carter was attending a school where he
3 was the only deaf child and the only child
4 that communicated in ASL?
- 5 A. I would have been aware that he was then in
6 Beachy Cove Elementary. I wouldn't have
7 known definitively that he was the only
8 student there that was DHH.
- 9 Q. Do you recall meeting with the Churchills -
- 10 A. Yes.
- 11 Q. - on July 9th, 2019? You might not remember
12 the exact date.
- 13 A. Not the exact date.
- 14 Q. It was a meeting with the Churchills, you
15 and Brian Warr. He was the minister.
- 16 A. Yeah, I remember that meeting, yeah.
- 17 Q. Brian Warr was the Minister of Education at
18 the time?
- 19 A. Yeah.
- 20 Q. And it was concerns that they had about
21 Carter's education and I think the first
22 thing that they put - I don't know if you
23 remember this. The first thing they pushed
24 to you at the meeting was that there was no
25 ASL curriculum, no language access. He's in

1 a school, you know, isolated, unable to
2 interact with his peers. Do you recall any
3 of those concerns?

4 A. I remember the concerns that he was in a
5 situation that they felt, you know, wasn't
6 conducive to learning and isolation was
7 certainly something that was brought up as
8 part of - as a significant concern.

9 Q. Like why would you take the meeting? Why
10 would you and Brian Warr take the meeting?
11 Why wouldn't you just say "listen, this is a
12 District issue"? Sorry, "this is a
13 Department issue. Talk to the Department.
14 There's -

15 A. It's a District issue, yeah.

16 Q. I keep swapping them around. Boy. Anyway,
17 you're going to have to bear with me. I've
18 - it creates real trouble doing NLTA work, I
19 tell you. Why didn't you just tell them
20 "look, deal with the District. This is a
21 District problem. The Department can't do
22 anything for you"?

23 A. That was a decision that Minister Warr made
24 at the time; that he felt - that was just
25 his nature -- that he wanted to give the

1 opportunity to the Churchills to come in and
2 meet with him.

3 Q. Okay.

4 A. But, it still doesn't change the fact that -
5 and he was aware, like this is a District
6 responsibility, the administration of the
7 school system, you know, direct services to
8 students. But he felt that he wanted to
9 have a meeting with the Churchills.

10 Q. The curriculum, development of curriculum
11 though, that would have been Department,
12 right?

13 A. That would have been Department, yes,
14 correct.

15 Q. Did you guys make any promises during that
16 meeting or any indications that you'd be
17 working on curriculum at that time?

18 A. Not that I can remember.

19 Q. Did you, following that meeting, do any kind
20 of review of documents and reports that had
21 been generated in the Department vis-à-vis
22 deaf education?

23 A. Not that I can remember, no.

24 Q. Okay. And of course, their major complaint,
25 and both publicly and during that meeting,

1 would have been, you know, Carter's
2 isolation while he's at Beachy Cove
3 Elementary, can't speak to anybody else. Do
4 you recall ever being advised about a
5 program called the "Gain a Superpower"
6 program?

7 A. Yes.

8 Q. And that was a program that - a volunteer
9 program that Ms. Churchill and several other
10 volunteers were delivering to schools where
11 they taught basic sign language vocabulary,
12 right?

13 A. Yeah.

14 Q. Did you - were you aware that the - at that
15 time, that the District would not approve
16 that program, would not approve the program
17 to permit Ms. Churchill and other volunteers
18 to come into the school to deliver that?

19 A. I was made aware of the fact that they had
20 gone through or were going through a process
21 in terms of whether it would be approved or
22 not and again, not intimately involved in
23 any conversations with respect to that, but
24 I do know that it was a lot of back and
25 forth in terms of what was appropriate and

1 what was not appropriate and ultimately -
2 and again, it's - you know, it's a District,
3 if not even in this case a school level
4 decision, and ultimately, to my knowledge,
5 the program did get off the ground in at
6 least one, if not couple, three schools, but
7 yeah, so I was aware of the - aware that the
8 Churchills had submitted a proposal to the
9 District to offer this "Gain A Superpower"
10 program and there was significant
11 contentious issues back and forth with them.
12 Again, I wouldn't be able to speak
13 eloquently to what they were. And I know
14 that ultimately there was an approval for
15 that program or they landed somewhere the
16 program was delivered in a couple of
17 schools.

18 Q. Did you have any ability though to, you
19 know, sort of assist in getting the program
20 approved? I mean, I put it to you, and see
21 if you remember this, that you would have
22 had a conversation with Len White during the
23 2019 Provincial Election, he was the advisor
24 to Premier Ball, right?

25 A. Yeah.

- 1 Q. And the conversation - so, you do remember
2 that conversation about "Gain a Superpower"
3 with Len White?
- 4 A. I spoke to Len White, you know, several
5 times about many things, including this
6 particular file, I'll say, deaf education.
7 Was the "Gain a Superpower" program one of
8 the conversations? Maybe. I don't remember
9 that conversation specifically with Len, but
10 I'm not saying I didn't have it.
- 11 Q. What would have been your ability to
12 facilitate getting that program approved by
13 the District, if any?
- 14 A. My only ability would have been to have a
15 conversation with the School District to
16 inquire as to, you know, "so what's the
17 issue? How come you can't do it? Have you
18 thought - you know, have you tried various
19 or explored various options?" and but
20 ultimately, it would be left with them to
21 figure out a way that they could do it, if
22 in fact they could. So, it wasn't a matter
23 of putting pressure on them to say "you got
24 to do this". It's "so, what's the issue?"
25 It was more to be, you know, in the loop in

1 terms of, you know, what the status was, in
2 terms of its approval and so on, and I know
3 they sent it to - they had people at the
4 District review it, in terms of
5 appropriateness and again, it's not my area
6 of expertise, not the Department's role.
7 So, we understood that it was going through
8 a process, an approval process, and
9 ultimately I think the decision was made
10 that they would be allowed to offer the
11 program in some way, shape or form.

12 Q. Okay. So, that's - again, that's the
13 District?

14 A. Absolutely.

15 Q. Right.

16 A. We wouldn't be able to dictate to the
17 District that you offer this particular
18 program, unless it was a curriculum.
19 "Here's grade five curriculum that you must
20 implement." But other than - and again, I
21 think in this particular case, it would have
22 been subject to an individual school, you
23 know, approval.

24 Q. Right. I'm sure you remember the Department
25 of Education's action plan "The Way Forward,

1 June 2018".

2 A. Yeah.

3 Q. Because that's, what, a year after you're
4 there?

5 A. It would have been a year, yeah.

6 Q. So, I imagine that was probably sort of a
7 big part of your initial time at the
8 Department, right?

9 A. Yeah, huge.

10 Q. Is it fair to say that that report, The Way
11 Forward, acknowledged that the inclusive
12 education program, the inclusive education
13 philosophy just wasn't working the way it
14 was intended?

15 A. So, you need to make a distinction, I think,
16 between your reference to the document you
17 just referred to as "The Way Forward", the
18 generic - you know, when people talk about
19 The Way Forward, that's really a generic
20 document that probably goes back four or
21 five years or maybe even more from a Liberal
22 platform kind of thing or maybe it was in
23 the early years of the Liberal Government.
24 Many documents were produced following that.
25 When I was with Advanced Education and

1 Skills and Labour, I wasn't part of it but
2 there was an immigration action plan and it
3 was called - might have been Immigration:
4 The Way Forward. So, it was a phrase that
5 was used -

6 Q. Okay. The Way Forward gets thrown around a
7 lot.

8 A. Right. So, this was - so, I mean, a better
9 reference would be the Education Action
10 Plan, right.

11 Q. Okay.

12 A. Now, so the Education Action Plan actually
13 came from the Premier's Task Force on
14 Improving Educational Outcomes. So, that
15 was a piece of work that was done by
16 independent commissioners. Inclusive
17 education and student mental health and
18 wellbeing were part of that, as well as
19 seven other areas of focus for education,
20 and I would contend that, you know, without
21 chapter one and two, which was inclusive
22 education and student mental health and
23 wellbeing, there probably wouldn't have been
24 - and this is my opinion, wouldn't have been
25 a Premier's Task Force on Improving

1 Educational Outcomes.

2 Q. The importance of that is that that was the
3 most important salient part?

4 A. Well, in my opinion, absolutely. And again,
5 now this was commissioned while I wasn't
6 with the Department, but yeah, I would say
7 absolutely, yes, it was certainly the most
8 important - two most important pieces. So,
9 again, it's an indication of the Department,
10 you know, going out and having a look at how
11 things are operating and seeing how they can
12 better do it.

13 The Education Action Plan, which came
14 from the Premier's Task Force on Improving
15 Educational Outcomes, that didn't really
16 bring anything new to the forefront. Really
17 what that was, in its essence, was kind of a
18 summary of the nine chapters in the
19 Premier's Task Force and then a commitment
20 to implementing the recommendations to the
21 extent possible with a timeline. So, the
22 Education Action Plan, The Way Forward,
23 really wasn't anything new. It was simply a
24 response to the Premier's Task Force.

25 Q. I see. Well so then, in that case, I mean,

1 the Premier's Task Force and the findings by
2 that group would have been the group that
3 had, you know, to sum it up, determined that
4 there were substantial problems with the
5 inclusive education model?

6 A. They would have identified issues with the
7 inclusive education model, absolutely.

8 Q. And part of those problems were that, you
9 know, students like Carter Churchill, who
10 were, you know, subject to the inclusive
11 education model and were being placed in
12 their neighbourhood schools which, you know,
13 we would argue minimal supports, were being
14 left behind?

15 A. I don't know if I'd go that far. There was
16 no specific reference to an individual
17 student per se.

18 Q. No.

19 A. You know, I think - I think, you know, the
20 general consensus was that there needs to be
21 more work done on an inclusive education
22 model, in terms of professional learning,
23 professional development for teachers and
24 others, to ensure that the, you know,
25 inclusive education model is working

1 appropriately and resourced appropriately.

2 You know, and coming from that, just
3 off the top of my head, I mean, three big
4 things from a human resource perspective was
5 the introduction of teaching and learning
6 assistants, which is different than student
7 assistants. They're responsible for, you
8 know, actually delivering of curriculum
9 under the supervision of a teacher, as well
10 as reading specialists and enhanced learning
11 resource teacher allocations and a number of
12 other, you know, financial initiatives, you
13 know, from whether it be learning resources
14 and reading materials, et cetera. So, it
15 was all to enhance the educational system
16 and certainly a lot of that was from an
17 inclusive education perspective.

18 Q. How about the creation of a satellite ASL
19 classroom? Is that something, you know,
20 that whether a classroom like that was going
21 to be created, a specialized program like
22 that was to be created, is that a Department
23 or a District responsibility?

24 A. That would be a District responsibility, not
25 unlike the District offering French

1 Immersion.

2 Q. Okay. So, you may be aware of this, tell me
3 if you're not, you know, 2017, 2018, 2019,
4 deaf itinerant teachers in Newfoundland are
5 writing proposals saying, you know, deaf
6 students are not having their needs met and
7 one way to solve this problem is to
8 introduce this satellite classroom. Like am
9 I speaking a foreign language to you when I
10 say satellite classroom for deaf and hard of
11 hearing? Do you know what I'm talking
12 about?

13 A. I know what you're talking about.

14 Q. Right. Would you have been aware of any of
15 those proposals?

16 A. Not directly aware of any. I wouldn't have
17 seen any of those proposals. Again, I left
18 in October of 2020. I know probably in the
19 last year I knew there was some talk of a
20 possibility of, you know, a central location
21 for students who were deaf and hard of
22 hearing.

23 Q. But like why would that talk be happening in
24 the Department? That's my question.

25 A. Simply because the District would have made

1 us aware of the fact that this is something
2 they were contemplating.

3 Q. Like for your information only, you know,
4 not for specific action or approval?

5 A. Not for approval necessarily, no.

6 Q. The approval is solely in the District's
7 hands?

8 A. For something like that, same as it would be
9 for French Immersion. I mean, they
10 certainly would have had discussions with
11 us, make sure that, you know, that they
12 weren't doing anything offside or, you know,
13 "what's your thoughts on this? Is there" -
14 and again, that would have been something
15 that would have happened at a consultant,
16 manager, director kind of level. So, I was
17 aware of the fact that they were
18 contemplating this type of model and didn't
19 hear any, you know, major concerns or
20 anything, so really - it really wasn't
21 something that I had any discussions on.

22 Q. What if the District needs money in order to
23 implement that proposal? So, the District,
24 you know, has sat down and reviewed a
25 satellite classroom proposal and they

1 realize that they need, you know, seven or
2 eight additional teaching units or various
3 types of human resources roles in order to
4 fill it, do they have to come to the - you
5 know, can they come to the Department and
6 say "hey, we need an extra million bucks in
7 our budget so that we can implement this
8 proposal"?

9 A. So, if they couldn't find it within their
10 current resources, then that's something
11 that they would do. And typically, if - you
12 know, if it was substantial money, then
13 that's something that would have gone
14 through normal Government processes in terms
15 of, you know, the budget cycle I'll say.
16 So, you know, the Department would have went
17 forward and said "look, School District's
18 looking for" - not unlike when I was in
19 postsecondary, whether it was MUN or CNA
20 looking for new programs, they need two
21 million dollars for this particular program
22 or a million dollars for this particular
23 program, and it would have went through the
24 budget process and would have been approved
25 or not. But there was nothing like that

1 came across my desk when I was at the
2 Department for an ASL satellite classroom.

3 Q. Never came across your desk. There's no
4 general rule - sometimes people feel like
5 this is the case, but I get the sense it
6 isn't. There's no general rule of like
7 "look, District, the money that you get at
8 the beginning of every year is the money
9 that you get and don't come looking for any
10 more". There's no rule that says they can't
11 come back to the - the District can't come
12 back to the Department and say "we've got
13 this really special cool program we'd like
14 to implement and we need money to do it"?

15 A. Well, okay, you got to make a distinction
16 now because if it's a really cool program
17 that they want to implement and typically
18 you don't wake up one morning and say "we're
19 going to put this program in place next
20 month". There's a lot of planning that
21 needs to go into it. So, if it's a
22 particular program that's going to be, you
23 know, resource heavy, then there would be a
24 significant amount of planning that would go
25 into this, similar to, you know, whether

1 it's an ASL classroom or I don't know what
2 resources would have been - if extra
3 resources, if you're pooling - you know,
4 bringing DHH students together, then maybe
5 it's less resources because you're not
6 spread out.

7 So, if it's a particular program that's
8 looking to be developed and administered,
9 then there would be a process if they're
10 looking for additional money. So, you know,
11 I use the example of - and this was part of
12 the normal, you know, budget process - not
13 budget process, but normal funding
14 allocation for the School District. It's a
15 matter of, you know, that they may have, you
16 know, a million dollars for -and I'm just
17 picking a number out of the air. They might
18 have a million dollars for, you know,
19 insurance for their buildings and all of a
20 sudden they get a bill for an extra
21 \$300,000. So, yeah, they may come to the
22 Department and say "look, we got hit with
23 this extra \$300,000. We got to pay it by
24 January 31st" and then discussions would
25 happen. "Okay, so where can you - can you

1 cut somewhere else?" Then the Department
2 would have to look and see if, okay, "can we
3 find" - we just can't invent money and we'd
4 need to find it. The Department would need
5 to find it within its, you know, allocation
6 of resources for that particular fiscal
7 year. So, you'd work together and say
8 "okay, well maybe we can save \$100,000 here
9 or maybe" - so, it's - that's ongoing type
10 of budget conversations, as opposed to new
11 programs. You know, that's not something
12 that pops up overnight. So, there would be
13 a different type of program - a different
14 type of process for that. It would be part
15 of the budget process.

16 Q. What month in 2020 did you retire?

17 A. October.

18 Q. So, the satellite classroom proposals get
19 made in 2017, 2018 and 2019. So, all during
20 the time that you are at the Department as
21 deputy minister, which goes from March 2017
22 till October of 2020, and I can indicate to
23 you that by September of 2020, East Point
24 Elementary has been established, the
25 satellite classroom has been - to your

1 knowledge, at any point, is the Department
2 approached for additional funding in order
3 to be able to set up East Point Elementary,
4 the ASL immersive classroom?

5 A. No, not to my knowledge.

6 Q. So, that means, you know, by -

7 A. It didn't cross my desk.

8 Q. By process of elimination then that means
9 that they were able to find existing
10 resources within their already allocated
11 budget?

12 A. Yeah, yes, if additional resources were
13 required, yeah.

14 Q. And just let me take a couple of minutes
15 here to look through my notes because I'm
16 actually eliminating questions here that
17 we've already covered.

18 The District establishes a position,
19 the director of deaf and hard of hearing
20 education. Is that something the District
21 has authority to do or is that something
22 that the Department would direct them to do?

23 A. In this particular case, that basically
24 precipitated out of some conversations that
25 we had, the Department had with the

1 District, and again, you know, trying to pay
2 some attention to deaf and hard of hearing
3 programming. So, you know, we had
4 discussions with the District and said, you
5 know, there may be some benefit here to - we
6 got 18 DHH itinerant teachers and possibly
7 four teachers of the deaf. It might be a
8 good idea to have a director for - you know,
9 from a supervisory perspective and maybe
10 have a look at how they're operating and are
11 there efficiencies that can be, you know,
12 can be found.

13 And I know APSEA has gone through the
14 same type of process because I know some of
15 the itinerant teachers for DHH and many
16 other itinerant services at the Department,
17 there's a lot of time lost travelling, for
18 example, in cars that, you know, we became
19 aware of. So, is there a more efficient way
20 for teachers to provide the services? So,
21 you know, we thought about, you know,
22 collectively, you know, maybe we'd have a
23 director for DHH and BVI and we decided,
24 okay, let's just try this director's
25 position, supervisory type of position, with

1 DHH for the DHH itinerants and teachers of
2 the deaf.

3 Q. And that was Darlene Fewer Jackson, right,
4 who came out -

5 A. That was -

6 Q. She came out of the Department of Education
7 and takes that role at the District?

8 A. Well, the position was created and then
9 advertised and Darlene was the successful
10 candidate. So, there's an example of where
11 we would have had discussions with the
12 District. We couldn't have said "thou shalt
13 hire a director of DHH", but they thought it
14 was a good idea and something that they -
15 you know, that they would try. So, we
16 facilitated that happening.

17 Q. I think you've answered this question
18 already, but just in case I'm
19 misremembering, can you remind me? To your
20 knowledge, the Department didn't have any
21 role in the approval of the ASL immersion
22 classroom at East Point, did it?

23 A. That's correct.

24 Q. I have a couple, and by which I mean two,
25 questions for you on the creation of the

1 steering committee on deaf and hard of
2 hearing education. Are you familiar with
3 that committee?
4 A. I am.
5 Q. That's a Department created committee or a
6 Government created committee?
7 A. Department, yeah, Government.
8 Q. The Department creates it. Are you or were
9 you on that committee at any point?
10 A. No.
11 Q. That's a committee that advises the
12 Department on the needs in terms of deaf
13 education?
14 A. The steering committee?
15 Q. Yes.
16 A. No.
17 Q. What is the steering committee - I don't
18 understand what the steering committee does.
19 A. Okay. So, the genesis of that was again we
20 wanted to do, you know, do - I don't like
21 using the word "review". We wanted to have
22 a look at - we wanted to have a look at the
23 educational programming for students who
24 were DHH. So, we didn't do, you know,
25 Premier's Task Force, you know, big external

1 review, but we did want to have a look at
2 the programming for students who are DHH.
3 So, we decided to establish a steering
4 committee, and I'll get to the purpose of
5 the steering committee in a minute. So, we
6 decided to establish a steering committee,
7 as well as a working group.

8 So, the steering committee would have
9 been made up of a representative from the
10 Department, which would have been the
11 assistant or the - I think at the time it
12 was the special advisor to the Education
13 Action Plan. Subsequent, it would have been
14 the assistant deputy minister when Rick
15 left. But anyway, it would have been
16 Department representative at the executive
17 level, a representative at the executive
18 level from the School District, someone from
19 the Newfoundland and Labrador Association
20 for the Deaf, as well as someone from the
21 Canadian Hard of Hearing Association, and
22 someone from the Atlantic Provinces Special
23 Education Authority.

24 So, the role of those, that particular
25 group, would have been to exactly that,

1 steer any recommendations or suggestions
2 that would have come from a working group.

3 So, the working group would have been
4 comprised of individuals from those same
5 organizations, but certainly at a - won't
6 say a lower level, but more closer to the
7 operations and programming that would have
8 been administered for, you know, students
9 who were DHH. So, the working group again
10 would have been made up of, you know, people
11 from School District, the Department, as
12 well as NLAD and Canadian Hard of Hearing
13 Association and APSEA, and they would have
14 then, you know, connected with, you know,
15 whether it be itinerant teachers, parents,
16 even students if they were, you know,
17 intermediate, secondary students in
18 particular.

19 So, they would have done their work in
20 terms of I'll use the word consultations,
21 discussions with various, you know, key
22 stakeholders. And then the purpose there
23 would have been they would have come forward
24 then with recommendations or suggestions or,
25 you know, they would have presented to the

1 steering committee.

2 The steering committee, its role then -
3 so, they came forward, no different I guess
4 than the 82 recommendations came from the
5 Premier's Task Force. Then it's incumbent
6 on the Department, or in this case the
7 steering committee, to look at the
8 recommendation and kind of I'll use the word
9 "navigate" or figure out, you know, how
10 these could be implemented, if they made
11 sense to implement. I mean, whether it's
12 the bureaucracy of government, and I don't
13 mean bureaucracy in a bad way, but just the
14 workings of government and the workings of
15 the school district, and they may come
16 forward with some, you know, proposed
17 program or whatever that maybe NLAD says
18 "oh, hang on now, we're already doing that.
19 Maybe we can tweak it."

20 So, it's - the purpose of the steering
21 committee wasn't to get down into the - you
22 know, at the low programming, you know, into
23 the weeds, so to speak. It was more the -
24 similar to a board of directors or board of
25 governors. You're not the experts, you

1 know. In this case, we weren't - or the
2 people on the steering committee weren't the
3 experts in deaf education, but they were,
4 you know, the people who could kind of
5 navigate, you know, the bureaucracy, whether
6 it be government or the department or NLAD
7 or CHHA.

8 Q. And they're sort of people who represented
9 different constituencies within the deaf
10 community, weren't they? I mean, you had
11 NLAD on there.

12 A. Sure.

13 Q. Canadian Hard of Hearing on there.

14 A. But both of those organizations would be
15 providing programs to deaf and hard of
16 hearing individuals, besides students even,
17 but you know, the deaf and hard of hearing
18 community and then, of course, the School
19 District and the Department would have
20 responsibility for programming to different
21 degrees.

22 Q. And then at some point, they add a parent
23 representative to that committee, don't
24 they?

25 A. To the steering committee?

- 1 Q. Yes.
- 2 A. Yes.
- 3 Q. Yeah. And presumably the parent
4 representative indicates hearing - a parent
5 of a deaf child?
- 6 A. Say that again.
- 7 Q. Yeah, I mean, they had a DHH child, right?
8 So, there's a parent representative on that
9 committee, you know, presumably I, a parent
10 of two hearing children, wouldn't be
11 appointed to that committee as the parent
12 representative?
- 13 A. So, when the decision was made to appoint a
14 parent to the steering committee, the
15 Department reached out to the Newfoundland
16 and Labrador Association for the Deaf and
17 asked them for a nominee.
- 18 Q. Okay. And the NLAD provided a nominee?
- 19 A. Correct.
- 20 Q. And the Department appointed the nominee
21 that NLAD selected?
- 22 A. Correct.
- 23 Q. With no degree of vetting, no attempt to
24 ensure that that parent was the parent of a
25 deaf child?

1 A. Well, the Department would not have been -
2 would not have had the same connection to
3 the deaf community, deaf and hard of hearing
4 community, as the Newfoundland and Labrador
5 Association for the Deaf. So, we would have
6 relied on them to appoint an appropriate
7 person.

8 Q. That committee -

9 A. If Government were to appoint the person and
10 maybe it would have been accused of
11 government interference, you know, you
12 picked the person you wanted. Well, we left
13 it to, you know, the Provincial association
14 for the deaf to nominate a person.

15 Q. That committee, do you consider that
16 committee to be important in setting the
17 tone for deaf education in the Province,
18 setting the program, the road mark, steering
19 it?

20 A. I would suggest that the role of that
21 committee was extremely important. Once
22 they would have gotten - and again, I wasn't
23 a member of the committee, but once they
24 would have gotten recommendations or a
25 report from the working group -- I'm not

1 sure that they actually did receive a report
2 or recommendations. I know they were quite
3 active from their establishment in fall of
4 2019 and meeting every - I think every
5 couple three weeks, but then of course, come
6 March when Covid hit, then things kind of
7 went off the rails and so, I don't even - to
8 the time I left, I'm not sure if the
9 steering committee even received
10 recommendations or a report from the working
11 committee. If they did, it certainly didn't
12 make its way to my desk. But I don't think
13 they did.

14 Q. One last question for you, and it's
15 something that I omitted to ask you early.
16 You made some reference to the Premier's
17 Task Force.

18 A. Yeah.

19 Q. And which was a fairly, I suppose,
20 influential group that helped decide the
21 priorities and direction of the Department
22 and by extension, the District, right?

23 A. Correct.

24 Q. And were you aware that two of the
25 individuals who assisted and participated in

1 the Premier's Task Force were two of the
2 individuals who were instrumental in the
3 closure of the Newfoundland School for the
4 Deaf?

5 A. So, the Premier's Task Force again was
6 established before I came back to the
7 Department and I know they had some kind of
8 a process to select the four individuals.
9 So, no, I wasn't aware of that.

10 Q. You didn't know that?

11 A. No.

12 Q. Okay. Those are my questions. Thank you.

13 ADJUDICATOR:

14 Q. Mr. Penney?

15 MR. PENNEY:

16 Q. Can I just take five minutes?

17 ADJUDICATOR:

18 Q. We'll adjourn five minutes.

19 (OFF RECORD)

20 ADJUDICATOR:

21 Q. Mr. Penney, before you ask your question, I
22 think Mr. Gardiner was looking to say
23 something.

24 A. Yeah, just one point of clarification on the
25 last question you asked me. You asked me

1 the question was I aware there were two
2 individuals on the Premier's Task Force that
3 were involved in the School for the Deaf and
4 I answered no. Again, back in 2010, I
5 wasn't involved in the discussions or any of
6 the decision making on the closure of the
7 School for the Deaf, but I did realize that
8 Dr. Marian Fushell was the assistant deputy
9 minister at the time and she was also on the
10 Premier's Task Force. So, just wanted to
11 make sure I didn't miss that.

12 MR. REES:

13 Q. Not a problem.

14 ADJUDICATOR:

15 Q. Any other questions arising from that then,
16 Mr. Rees? No. Mr. Penney, go ahead.

17 MR. ROBERT GARDINER, CROSS-EXAMINATION BY MR. STEPHEN
18 PENNEY

19 MR. PENNEY:

20 Q. I just had one question on when you were
21 talking about the different jurisdictions
22 between the District and the Department.
23 Who's responsible for preschool education?

24 A. That's a good question. I'm going to say
25 technic - well, okay. So, right - preschool

1 education, so okay, if we can park, you
2 know, early childhood education from a child
3 care perspective, because that is now part
4 of the Department. It wasn't at - it wasn't
5 up until 2016 or so. But if we're talking
6 about edu - and again, it's - you know, it's
7 tricky.

8 But if you're talking about K to 12
9 education, so the Department and the
10 District, you know, the *Schools Act* is quite
11 specific to say that, you know, the
12 education is for students who are five years
13 old and older. So, the services that are
14 provided to students pre-kindergarten, I'll
15 use that, from an educational perspective,
16 and again, not to take away from the
17 importance of early childhood education in a
18 child care facility, but from an education
19 perspective, there's really no mandate for
20 the - in my opinion, for the Department or
21 the District for the provision of those
22 services.

23 I think, and again, I'm just
24 speculating, I think the - you know, the
25 provision of services in particular for DHH

1 students in the pre-kindergarten that the
2 District is currently undergoing or
3 undertaking is a hold over again from
4 services that were provided pre School for
5 the Deaf closure, and they just assumed
6 those responsibilities.

7 So, for example, when the Department,
8 and I think this is a good example, when the
9 Department is entertaining the idea of a
10 pre-kindergarten program or a junior
11 kindergarten program or a program for four
12 year olds, which is one of the
13 recommendations coming from the Premier's
14 Task Force, before we could actually do
15 that, we would have had to make a change to
16 the *Schools Act* to allow the Department in
17 its capacity from an education, not early
18 childhood education but an education
19 perspective, K to 12, I'll use that word,
20 and the District to have the legislative
21 authority to actually provide an education
22 to four year olds. So, it's a bit of a grey
23 area.

24 Q. Thank you.

25 ADJUDICATOR:

1 Q. No other questions?

2 MR. PENNEY:

3 Q. No.

4 ADJUDICATOR:

5 Q. Mr. Rees, do you have anything arising from
6 that?

7 MR. REES:

8 Q. I do not.

9 ADJUDICATOR:

10 Q. Mr. Gardiner, I don't have any questions
11 that I want to ask you at this time. So, I
12 don't think there's any other witnesses that
13 we're expecting to hear from for this
14 afternoon, so you, sir, are free to go. You
15 can come back and watch the proceedings
16 tomorrow, if you wish, but we're going to be
17 adjourning here shortly. Thank you for
18 coming today and providing your evidence.

19 A. Thanks for the opportunity.

20 Q. So, we will adjourn until tomorrow morning,
21 9:00 a.m., unless there's anything further.
22 We are adjourned.

23 MATTER ADJOURNED TO SEPTEMBER 1, 2022 AT 9:00 A.M.

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CERTIFICATE

I, Cindy Sooley, hereby certify that the foregoing is a true and correct transcript of a NL Human Rights Inquiry heard on the 31st day of August, 2022 before Adjudicator Brodie Gallant at Holiday Inn in St. John's, NL, and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador
This 9th day of September, 2022

Cindy Sooley
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